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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas, Twelfth Judicial Circuit

The Honorable Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2022-000303
Civil Action No. 2017-CP-21-01375

April Jones, ……..…..Respondent,

v.

Tim Ringer, individually and as employee/agent of Wal-Mart Stores Inc. d/b/a Wal-Mart Store #630, Wal-Mart Stores, Inc, and Wal-Mart Stores East, L.P., ...Defendants,

of which

Walmart Stores, Inc. and Wal-Mart Stores East, L.P. are the.....Appellants.

RECORD ON APPEAL
VOLUME I

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

April Jones, Plaintiff, v. Tim Ringer, individually and as employee/agent of Wal-Mart Stores, Inc. d/b/a Wal-Mart Store #630; and Wal-Mart Stores, Inc., Defendants.	Civil Action No.: 4:17-cv-02182-RBH **ORDER**

FILED
2017 NOV -7 AM 10:01
DORIS PHILLIPS
CLERK
FLORENCE, SC

This matter is before the Court on Plaintiff April Jones' motion to remand. *See* ECF No. 6. The Court grants the motion for the reasons herein.[1]

Background

Plaintiff originally filed this action in state court, alleging she stepped on a rusty nail in Wal-Mart and eventually lost part of her right leg due to multiple surgical amputations. *See* Complaint [ECF No. 1-1]. Plaintiff is a South Carolina citizen, and she named Tim Ringer and Wal-Mart Stores, Inc. as the two defendants (collectively, "Defendants"). *Id.* Ringer is a South Carolina citizen and a manager of the Wal-Mart store in question, while Wal-Mart is a citizen of Delaware and Arkansas.[2] *Id.*; Notice of Removal [ECF No. 1].

Defendants removed the action to this Court based on federal diversity jurisdiction, asserting

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[1] Pursuant to Local Civil Rule 7.08, the district court may decide motions without a hearing. The Court has reviewed the parties' filings and determined a hearing in this matter is unnecessary.

[2] Defendants assert Wal-Mart Stores East, L.P.—not Wal-Mart Stores, Inc.—is the sole proper corporate defendant. *See* ECF No. 1. at p. 2; ECF No. 9 at p. 1 n.1. However, because both these entities are citizens of Delaware and Arkansas, *see* ECF No. 1. at pp. 2–3, the Court will simply use "Wal-Mart" to refer to the corporate defendant.

Plaintiff fraudulently joined Ringer to defeat diversity. *See* ECF No. 1. Plaintiff filed the instant motion to remand, and Defendants filed a response in opposition. *See* ECF Nos. 6 & 9. Plaintiff did not file a reply.

Legal Standards

The party seeking to remove a case to federal court has the burden of establishing federal jurisdiction. *Mulcahey v. Columbia Organic Chemicals Co.*, 29 F.3d 148, 151 (4th Cir. 1994). Thus, Defendants bear the burden to establish federal jurisdiction is proper in this case. "Because removal jurisdiction raises significant federalism concerns," the Court "must strictly construe removal jurisdiction. If federal jurisdiction is doubtful, a remand is necessary." *Id.* (internal citation omitted).

Title 28 U.S.C. § 1332(a)(1) grants district courts original jurisdiction of any civil action for which the matter in controversy exceeds $75,000 and is between or among citizens of different states. This statute requires *complete* diversity of citizenship, meaning the plaintiff cannot be a citizen of the same state as any defendant. *Carden v. Arkoma Associates*, 494 U.S. 185, 187 (1990). Thus, diversity jurisdiction exists "so long as any two adverse parties are not co-citizens." *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 n.3 (1996). State court defendants may remove a civil action to federal district court if the district court has original subject matter jurisdiction over the action. 28 U.S.C. § 1441(a). If the district court determines at any time before entering final judgment that it lacks subject matter jurisdiction over a removed action, it must remand the action to state court. 28 U.S.C. § 1447(c).

Although complete diversity is necessary for a federal court to exercise diversity jurisdiction, the fraudulent joinder doctrine prohibits a plaintiff from automatically defeating diversity jurisdiction by naming non-diverse defendants. *Weidman v. Exxon Mobil Corp.*, 776 F.3d 214, 218 (4th Cir. 2015). The fraudulent joinder doctrine enables a district court to "'disregard, for jurisdictional purposes, the

citizenship of certain nondiverse defendants, assume jurisdiction over a case, dismiss the nondiverse defendants, and thereby retain jurisdiction.'" *Johnson v. Am. Towers, LLC*, 781 F.3d 693, 704 (4th Cir. 2015) (quoting *Mayes v. Rapoport*, 198 F.3d 457, 461 (4th Cir. 1999)).

> 'Fraudulent joinder' is a term of art, it does not reflect on the integrity of [the] plaintiff or counsel, but is merely the rubric applied when a court finds either that no cause of action is stated against the nondiverse defendant, or *in fact* no cause of action exists. In other words, a joinder is fraudulent if there [is] no real intention to get a joint judgment, and . . . there [is] no colorable ground for so claiming.

AIDS Counseling & Testing Centers v. Grp. W Television, Inc., 903 F.2d 1000, 1003 (4th Cir. 1990) (alterations and omission in original) (internal quotation marks omitted).

"The party alleging fraudulent joinder bears a heavy burden—it must show that the plaintiff cannot establish a claim even after resolving all issues of law and fact in the plaintiff's favor." *Hartley v. CSX Transp., Inc.*, 187 F.3d 422, 424 (4th Cir. 1999). "This standard is even more favorable to the plaintiff than the standard for ruling on a motion to dismiss under Fed. R. Civ. P. 12(b)(6)." *Id.* The Fourth Circuit has recognized two methods by which a defendant may show fraudulent joinder: (1) there is "outright fraud in the plaintiff's pleading of jurisdictional facts"; or (2) "there is *no possibility* that the plaintiff would be able to establish a cause of action against the in-state defendant in state court." *Johnson*, 781 F.3d at 704. "To defeat an allegation of fraudulent joinder, the plaintiff need establish 'only a slight possibility of a right to relief.'" *Hughes v. Wells Fargo Bank, N.A.*, 617 F. App'x 261, 264 (4th Cir. 2015) (quoting *Mayes*, 198 F.3d at 464). In evaluating whether an attempted joinder is fraudulent, a court is not bound by the allegations of the complaint but can "consider the entire record, and determine the basis of joinder by any means available." *Mayes*, 198 F.3d at 464.

Discussion

Plaintiff moves to remand this case to state court, arguing (1) there is not complete diversity because she and Ringer are both South Carolina citizens and (2) Ringer is a proper defendant because South Carolina recognizes joint and several liability. *See* ECF No. 6. Meanwhile, Defendants argue Ringer—the store manager for Wal-Mart—has been fraudulently joined as a sham defendant to defeat diversity jurisdiction. *See* ECF No. 9. Defendants argue Plaintiff has no possibility of establishing a cause of action against Ringer.[3] *Id.* at p. 3.

In her complaint, Plaintiff alleges that on June 26, 2015, she went grocery shopping in Wal-Mart Store #630 in Florence, South Carolina and passed through an area containing pallets. Compl. at ¶¶ 6, 9–10. She began to feel pain in her right foot while hearing a scraping sound under her shoe, and upon looking under her shoe, she saw a rusty nail had pierced through both the shoe and her foot. *Id.* at ¶¶ 10–11. Plaintiff reported the incident to Defendants and visited the hospital. *Id.* at ¶¶ 12, 15. She had to have a hole cut in her foot to treat the wound, which led to multiple surgical amputations that eventually resulted in the loss of her right leg up to just above her knee. *Id.* at ¶ 15. She alleges that at the time of the incident, Ringer was acting as a manager of Wal-Mart Store #630 and was responsible for cleaning, monitoring, and maintaining the store premises to ensure they were safe, clean, and not dangerous for customers. *Id.* at ¶¶ 7–8. Plaintiff sues Defendants for negligence under a theory of premises liability, alleging Defendants created the dangerous condition or knew (or should have known) the floor area where her injuries occurred presented a danger to patrons of Wal-Mart. *Id.* at ¶ 14. In particular, Plaintiff seeks to hold Ringer jointly liable for her injuries.

Defendants argue Ringer did not owe a duty to Plaintiff because he was merely a store *manager*

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[3] Defendants do not argue there was any "outright fraud" in Plaintiff's pleading of jurisdictional facts. *See Johnson*, 781 F.3d at 704.

and not a store *owner*. ECF No. 9 at pp. 4–13. Defendants correctly acknowledge that the undersigned and another judge in this district have determined store managers may owe such a duty—one case even involving a Wal-Mart store manager. *Id.* at pp. 5–8, 13. These cases are: *Griggs v. Dollar General Corp.*, No. 4:15-cv-04600-RBH, 2016 WL 70017 (D.S.C. Jan. 6, 2016); *Cook v. Lowe's Home Centers, Inc.*, No. 5:06-cv-02130-RBH, 2006 WL 3098773 (D.S.C. Oct. 30, 2006); and *Mobley v. Wal-Mart Stores, Inc.*, No. 2:09-cv-03019-DCN, 2010 WL 503101 (D.S.C. Feb. 8, 2010).[4] Defendants also correctly note *Griggs*, *Cook*, and *Mobley* rely in part on two decisions by the South Carolina Supreme Court: *Richards v. Great Atlantic & Pacific Tea Co.*, 226 S.C. 119, 83 S.E.2d 917 (1954); and *Dunbar v. Charleston & W. C. Ry. Co.*, 211 S.C. 209, 44 S.E.2d 314 (1947). ECF No. 9 at p. 5. Defendants then argue "a closer look at these cases reveals" the South Carolina Supreme Court "never intended to expand premises liability in the manner in which Plaintiff asks the Court to do so in the present action, *i.e.*, under a theory of 'control.'" *Id.* In essence, Defendants argue *Griggs*, *Cook*, and *Mobley* misinterpreted *Richards* and *Dunbar* to conclude store managers (and not just owners) can be sued under a theory of premises liability, a result never actually intended by the state supreme court. *See id.* at p. 8. The Court disagrees.

Without unnecessarily repeating the legal principles explained in *Griggs*, *Cook*, and *Mobley*, the Court reiterates its prior determination that "a store manager can be held personally and jointly liable with the store itself for an alleged act of negligence," *Griggs*, 2016 WL 70017, at *4, under "the South Carolina common law of joint and several liability, and the fact that a store manager by virtue of his position has a high level of control over the store." *Cook*, 2006 WL 3098773, at *4. Moreover, "[t]he decisions of the Supreme Court of South Carolina make perfectly plain that in South Carolina a plaintiff

[4] Plaintiff relies on *Cook* and *Mobley* in her motion to remand. *See* ECF No. 6 at pp. 6–7.

suing a master and servant for injuries which he has sustained as a result of the negligence of the servant, within the scope of his employment, may bring a suit against master and servant, and join them as joint tortfeasors. It is useless to re-cite and re-discuss the long line of cases . . . ." *Newton v. S. Grocery Stores*, 16 F. Supp. 164, 165–66 (E.D.S.C. 1936) (finding no fraudulent joinder where two resident store managers were joined as defendants with the non-resident grocery store; and remanding the case to state court).[5] "Pursuant to this concept of joint and several liability, South Carolina law

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[5] Again, Defendants contend the undersigned and Judge Norton (in *Griggs*, *Cook*, and *Mobley*) erroneously construed *Dunbar* and *Richards* "to expand premises liability" and "permit plaintiffs to name a store manager as a defendant," claiming "the state supreme court never intended" such a result. ECF No. 9 at p. 5. Defendants further rely on the principles of agency and vicarious liability to argue that "store managers . . . are agents of the store" and should not face personal liability as such. *See id.* at pp. 10–13.

However, over a decade before *Dunbar* (a 1947 opinion) and *Richards* (a 1954 opinion), U.S. District Judge John Lyles Glenn, Jr. had aptly observed in *Newton* (a 1936 order) that the South Carolina Supreme Court's decisions "make perfectly plain that" a plaintiff "may bring a suit against master and servant, and join them as joint tortfeasors." *Newton*, 16 F. Supp. at 165–66. In fact, as indicated above, *Newton* involved a fraudulent joinder issue where a plaintiff sued a grocery store (a Delaware corporation) and two store managers (South Carolina residents) who were "manager of the grocery store and . . . manager of the market operated in conjunction therewith" and "were the agents of the defendant corporation, Southern Grocery Stores, Inc., ***in active charge, control and direction thereof***." *Id.* at 165 (emphasis added). Judge Glenn found no fraudulent joinder and remanded the case to state court, stating:

> The fact that the negligence alleged against the defendant master may arise entirely out of the negligence of the servants who are also joined as defendants, and the fact that the liability of the master may depend entirely upon the application of respondeat superior, do not prevent the suit from being, under the laws of South Carolina governing the pleadings, a suit for recovery against master and servant alike on the theory of joint tort, and justifying, so far as pleadings are concerned, a recovery against them both in one action. . . .
>
> We think that on its face the complaint alleges sufficiently that the injuries complained of were the result of joint and concurrent negligence on the part of the master and the two servants joined as defendants. . . . [H]owever, . . . the court must look at the allegations of the complaint, the allegations of the petition for removal, the affidavits filed on the hearing, and, if the parties present testimony, this too must be considered, in deciding whether or not the joinder of the resident defendant in such a case is a pure sham and fraud, or whether or not there is in the factual situation, as reasonably pictured by the court, any reasonable basis for joining the resident defendants as defendants along with the nonresident master. . . .
>
> So here we come to the crux of the instant motion, and must rest our decision on the question of whether or not the two resident defendants here, Joye and Johnson, or either one of them, owed, under the allegations of the complaint, reasonably understood and read in the light of the other pleadings presented, any

permits store managers to be sued in tort for injuries to the store's invitees." *Owens v. Dolgencorp, Inc.*, No. 5:08-cv-00467-MBS, 2008 WL 11348726, at *2 (D.S.C. Oct. 22, 2008). The Court further notes a Wal-Mart store manager has specifically been found not to be a sham defendant. *See Mobley*, 2010 WL 503101, at *5. Of course, the facts unique to each case will govern whether a particular store manager can actually be held liable. *See Benjamin v. Wal-Mart Stores, Inc.*, 413 F. Supp. 2d 652, 657 (D.S.C. 2006) ("[M]erely being a manager or employee does not evidence a sufficient level of control.").

Thus, the last task for the Court is to determine whether there is any possibility that Plaintiff can establish a cause of action against Ringer in state court. If so, this case must be remanded.

When a single injury occurs as the proximate result of separate and independent acts of the negligence of two or more parties, these tortfeasors are subject to joint and several liability. *Collins v. Bisson Moving & Storage, Inc.*, 332 S.C. 290, 306, 504 S.E.2d 347, 356 (Ct. App. 1998) (citing *Rourk*

> duties to the plaintiff which are alleged to have been violated and resulted, along with the negligence of the master, in the injury of the plaintiff. As was so well stated by one of the great judges of the South Carolina Supreme Court, the servant does not escape liability for his own negligence by reason of the fact that his master (generally more responsive to a judgment) can also be held liable by reason of the doctrine of respondeat superior for the damages sustained by the plaintiff. The Southern Grocery Stores, though chartered in Delaware, has its main southern office in Atlanta, Ga. All it has in Bennettsville is a store, and the two resident defendants here are charged with the operation of this store. Southern Grocery Stores, Inc., is, of course, liable for their conduct, within the scope of their employment, to any one injured by reason of the negligence of these two men alleged to be in charge of the major departments of this store. Are they also liable, personally and individually, for damages sustained by the plaintiff as a result of their negligence while about their master's business? We think so. A man does not escape from his individual duty to treat with proper care the persons with whom he needs must come in contact in order to carry on the business for a master, and for carrying on of which business he, the servant, receives compensation which he deems to be commensurate with the service that he renders.

Id. at 166–67. In sum, the decisions in *Griggs*, *Cook*, and *Mobley* simply adhere to the longstanding law of South Carolina governing joint tortfeasors; they did not create any new law.

v. Selvey, 252 S.C. 25, 27–28, 164 S.E.2d 909, 910 (1968)). Plaintiff has the right to name whom she sues; and in this case, she has properly named Ringer as one of the parties that is, potentially, jointly responsible for her injuries.[6]

To establish a negligence claim against Ringer, Plaintiff must show he owed her a legal duty, breached that duty, and proximately caused damages to her as a result of that breach. *See Lord v. D & J Enterprises, Inc.*, 407 S.C. 544, 558, 757 S.E.2d 695, 702 (2014). Whether the law recognizes a particular duty is a matter of law to be decided by the Court. *Doe ex rel. Doe v. Wal-Mart Stores, Inc.*, 393 S.C. 240, 246, 711 S.E.2d 908, 911 (2011). Although the common law ordinarily imposes no duty to act, an affirmative legal duty may arise from statute, contract, relationship, property interest, or other special circumstance. *Cowburn v. Leventis*, 366 S.C. 20, 46, 619 S.E.2d 437, 451 (Ct. App. 2005).

In South Carolina, a merchant owes customers a duty of ordinary care to maintain parts of the store ordinarily used by customers in a reasonably safe condition, and the merchant is liable for any injury resulting from a breach of this duty. *Richardson v. Piggly Wiggly Cent., Inc.*, 404 S.C. 231, 234, 743 S.E.2d 858, 859–60 (Ct. App. 2013). "Although a merchant is not an insurer of the safety of his customers, he owes a duty to keep aisles and passageways in a reasonably safe condition." *Wintersteen v. Food Lion, Inc.*, 344 S.C. 32, 36, 542 S.E.2d 728, 730 (2001) (internal citation omitted).

A person who operates a commercial establishment but is neither an owner nor a lessee may nonetheless have a duty to exercise reasonable care to remedy an allegedly dangerous condition.

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[6] *See generally Richards*, 226 S.C. at 126–27, 83 S.E.2d at 920–21 ("When a plaintiff joins two or more alleged wrongdoers as parties defendant in one action, such joinder in itself necessarily implies that he has elected to treat his injury as a joint tort, and to recover upon the theory of joint liability. Such election to sue upon the theory of joint liability logically involves the relinquishment of the right in that action to raise a 'separable controversy' with any one defendant and to recover against one or more separately upon the theory of several liability in any sense other than that the plaintiff in such joint action is not bound to recover against all, but may recover[] against one or more and not against others." (emphasis removed)).

Benjamin, 413 F. Supp. 2d at 655 (citing *Dunbar*, 44 S.E.2d at 317). Liability in such a situation depends upon *control* of the premises, not necessarily ownership. *See Miller v. City of Camden*, 329 S.C. 310, 314, 494 S.E.2d 813, 815 (1997); *Nesbitt v. Lewis*, 335 S.C. 441, 446, 517 S.E.2d 11, 14 (Ct. App. 1999). When evaluating whether a person has sufficient control—and thus a duty to inspect the premises for dangerous conditions—a court should consider the person's power or authority to manage, direct, superintend, restrict, regulate, govern, administer, or oversee the management of the property. *Benjamin*, 413 F. Supp. 2d at 655–56 (citing C.J.S. *Negligence* § 388).

Here, Plaintiff alleges Ringer was "acting as a manager of Wal-Mart Store #630," and that "[a]s manager, Defendant Ringer's responsibilities and duties include, but are not limited to, cleaning, monitoring, and maintaining the premises of Wal-Mart Store #630 to ensure that it is safe, clean, and not dangerous for customers, patrons, and invitees." Compl. at ¶¶ 7–8. Plaintiff further alleges that "due to the negligence of Defendants"—who include Ringer—she stepped on a rusty nail while she was in an area where pallets were located and suffered severe injuries eventually leading to the amputation of half her right leg. *Id.* at ¶¶ 10–11, 13, 15. She also alleges that "Defendants"—who include Ringer—"either knew or should have known that the floor area where Plaintiff's injuries were initiated presented a danger to patrons of Defendant's store, or that Defendant created the dangerous condition." *Id.* at ¶ 14. These allegations indicate Ringer, by virtue of his position as a manager, had a sufficient degree of control over the Wal-Mart store such that he had a duty to reasonably inspect the area where the pallets and rusty nail were located.

Besides the allegations indicating Ringer owed a duty to Wal-Mart customers such as Plaintiff, the complaint also contains allegations that Ringer breached his duty and proximately caused Plaintiff's injuries as a result of the breach. *See id.* at ¶¶ 16–18. Specifically, Plaintiff's allegations suggest she

would not have stepped on the rusty nail but for Ringer's failure to inspect the area where it was located. Accordingly, the Court finds there is a possibility that Plaintiff can establish a negligence claim against Ringer in state court.[7]

Having "resolv[ed] all issues of law and fact in [P]laintiff's favor," *Hartley*, 187 F.3d at 424, the Court finds Defendants cannot meet the heavy burden of showing Plaintiff has no possibility of maintaining a negligence claim against Ringer. In so finding, the Court is mindful that the fraudulent joinder standard is more favorable to Plaintiff than the Rule 12(b)(6) standard. The Court is also mindful that any doubt as to jurisdiction should be resolved in favor of remand, which is necessary in this case. Regarding Plaintiff's motion for remand, the Court notes the only basis for removal was diversity jurisdiction. The proper naming of Ringer as a defendant has destroyed complete diversity of citizenship. Because the Court lacks jurisdiction over Plaintiff's claims, the Court must grant her motion and remand this case to state court.

Conclusion

For the foregoing reasons, the Court **GRANTS** Plaintiff's motion to remand [ECF No. 6] and **REMANDS** this case to the Court of Common Pleas for Florence County, South Carolina, for further proceedings. The Court **DIRECTS** the Clerk to mail a certified copy of this Order to the clerk of the Florence County Court of Common Pleas.

IT IS SO ORDERED.

Florence, South Carolina
November 6, 2017

s/ R. Bryan Harwell
R. Bryan Harwell
United States District Judge

[7] Of course, the Court makes no finding as to Ringer's liability and expresses no opinion on the merits of Plaintiff's claims.

A TRUE COPY ATTEST
Robin L. Blume, Clerk
s/Leah M. Suttles, Deputy Clerk

ELECTRONICALLY FILED - 2019 May 13 10:03 AM - FflorENCE - COMMON PLEAS - CASE#2017CP2101375

IN THE STATE OF SOUTH CAROLINA) COUNTY OF FLORENCE)	IN THE COURT OF COMMON PLEAS FOR THE 12TH JUDICIAL CIRCUIT CASE NO: 2017-CP-21-1375
APRIL JONES, Plaintiff(s), v. TIM RINGER, Individually and as employee/agent of WAL-MART STORES, INC. d/b/a WAL-MART STORE # 630; WAL-MART STORES, INC.; and WAL-MART STORES EAST, L.P., Defendant(s).	**ORDER ON DEFENDANT'S MOTION FOR CONTINUANCE AND ENTRY OF SCHEDULING ORDER**

This matter came to be heard before me upon the Defendant's Motion for Continuance and Entry of Scheduling Order. The Court denies the Motion and instead and orders as follows:

1.) This case is subject to being called for trial during the May 28, 2019 term of court.

2.) Defendant Wal-Mart shall provide dates for their 30(b)(6) witness to be deposed the week of May 20, 2019 and waive the ten (10) day notice requirement.

3.) Defendants have until Friday, May 17, 2019, to disclose expert witnesses and must at the same time provide a written report disclosing the nature of their testimony to include their full opinions and must produce them for deposition waiving the ten (10) day notice requirement.

4.) Plaintiff will have until Wednesday, May 22, 2019 to name counter experts under the same conditions.

AND IT IS SO ORDERED.

ELECTRONICALLY FILED - 2019 May 13 10:03 AM - FLORENCE - COMMON PLEAS - CASE#2017CP2101375

ELECTRONICALLY FILED - 2019 May 13 10:03 AM - FflorENCE - COMMON PLEAS - CASE#2017CP2101375

Florence Common Pleas

Case Caption: April Jones VS Tim Ringer , defendant, et al

Case Number: 2017CP2101375

Type: Order/Scheduling Order

So Ordered

s/ The Honorable Michael G. Nettles #2140

Certificate of Electronic Notification

Recipients

Lee Bagley - Notification transmitted on 05-13-2019 10:04:04 AM.

Sean Tropea - Notification transmitted on 05-13-2019 10:04:05 AM.

Roy Willey - Notification transmitted on 05-13-2019 10:04:05 AM.

Kenneth David - Notification transmitted on 05-13-2019 10:04:05 AM.

Nashiba Boyd - Notification transmitted on 05-13-2019 10:04:05 AM.

Lane Jefferies - Notification transmitted on 05-13-2019 10:04:05 AM.

Eric Poulin - Notification transmitted on 05-13-2019 10:04:05 AM.

ELECTRONICALLY FILED - 2019 May 13 10:04 AM - FLORENCE - COMMON PLEAS - CASE#2017CP2101375

ELECTRONICALLY FILED - 2019 May 13 10:04 AM - FflorENCE - COMMON PLEAS - CASE#2017CP2101375

****** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2017CP2101375

Official File Stamp:	05-13-2019 10:03:54 AM
Court:	CIRCUIT COURT
	Common Pleas
	Florence
Case Caption:	April Jones VS Tim Ringer , defendant, et al
Document(s) Submitted:	Order/Scheduling Order Order/Scheduling Order
Filed by or on behalf of:	Michael G. Nettles

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Nashiba D. Boyd for Tim Ringer et al

Lee Ellen Bagley for Tim Ringer et al

Roy T. Willey, IV for April Jones

Eric Marc Poulin for April Jones

Kenneth Thomas David for April Jones

Sean Michael Tropea for April Jones

Lane Douglas Jefferies for April Jones

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

The South Carolina Court of Appeals

April Jones, Appellant

v.

Tim Ringer, Individually and as employee/agent of WAL-MART STORES, INC. d/b/a WAL-MART STORE #630; WAL-MART STORES, INC.; and WAL-MART STORES EAST, L.P., Respondents.

Appellate Case No. 2019-000949

ORDER

After careful consideration, Respondents' motion to dismiss is granted because the underlying order on appeal is not immediately appealable. *See* S.C. Code Ann. § 14-3-330 (2014). The request for sanctions is denied, but nothing in this order prohibits Respondents from filing a motion for costs and attorneys' fees pursuant to Rule 222 of the South Carolina Appellate Court Rules. The remittitur will be sent as required by Rule 221(b), SCACR.

FOR THE COURT

Columbia, South Carolina

cc:
Lane Douglas Jefferies, Esquire
Nashiba D. Boyd, Esquire
Lee Ellen Bagley, Esquire
Kenneth Thomas David, Esquire
Eric Marc Poulin, Esquire
Roy T. Willey, IV, Esquire

FILED
July 31, 2019

The South Carolina Court of Appeals

April Jones, Appellant

v.

Tim Ringer, Individually and as employee/agent of WAL-MART STORES, INC. d/b/a WAL-MART STORE #630; WAL-MART STORES, INC.; and WAL-MART STORES EAST, L.P., Respondents.

Appellate Case No. 2019-000949

ORDER

First, Appellant's request to file the petition for rehearing out of time is granted. Second, after careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paul E. Short, Jr. J.

J.

J.

Columbia, South Carolina

FILED

November 14, 2019

cc:
Lane Douglas Jefferies, Esquire
Nashiba D. Boyd, Esquire
Lee Ellen Bagley, Esquire
Kenneth Thomas David, Esquire
Eric Marc Poulin, Esquire
Roy T. Willey, IV, Esquire

The Supreme Court of South Carolina

April Jones, Petitioner,

v.

Tim Ringer, Individually and as employee/agent of WAL-MART STORES, INC. d/b/a WAL-MART STORE #630; WAL-MART STORES, INC.; and WAL-MART STORES EAST, L.P., Respondents.

RECEIVED
Jun 16 2020
SC Court of Appeals

Appellate Case No. 2019-002066
Lower Court Case No. 2017-CP-21-01375

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is denied.

FOR THE COURT

BY _____, CLERK

Hearn, J., not participating.

Columbia, South Carolina
June 16, 2020

cc: Lane Douglas Jefferies, Esquire
Kenneth Thomas David, Esquire
Eric Marc Poulin, Esquire
Roy T. Willey, IV, Esquire
Nashiba D. Boyd, Esquire
Lee Ellen Bagley, Esquire
The Honorable Jenny Abbott Kitchings

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Florence
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP2101375

April Jones
PLAINTIFF(S)

Tim Ringer et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Defendant's Motion for Summary Judgment came before the Court on August 17, 2020. After consideration of the evidence presented at the hearing, the Court hereby denies the Motion for Summary Judgment.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/24/2020 .

Walmart Stores East Lp

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2020 Aug 24 2:42 PM - FLORENCE - COMMON PLEAS - CASE#2017CP2101375

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2020 Aug 24 2:42 PM - FLORENCE - COMMON PLEAS - CASE#2017CP2101375

ELECTRONICALLY FILED - 2020 Aug 24 2:42 PM - FLORENCE - COMMON PLEAS - CASE#2017CP2101375

Florence Common Pleas

Case Caption: April Jones VS Tim Ringer , defendant, et al

Case Number: 2017CP2101375

Type: Order/Electronic Form 4

So Ordered

s/ The Honorable Michael G. Nettles #2140

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Florence
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP2101375

April Jones
PLAINTIFF(S)

Tim Ringer et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☑ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

The jury rendered a verdict in favor of the Plaintiff, April Jones, against the Defendant, Walmart, only, in the amount of Ten Million dollars and no/100 ($10,000,000.00).

The jury rendered a verdict in favor of the Defendant, Tim Ringer. No monetary damages.

The parties have 10 days to file post trial motions.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 11/15/2021 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2021 Nov 15 10:15 AM - FLORENCE - COMMON PLEAS - CASE#2017CP2101375

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2021 Nov 15 10:15 AM - FLORENCE - COMMON PLEAS - CASE#2017CP2101375

ELECTRONICALLY FILED - 2021 Nov 15 10:15 AM - FflorENCE - COMMON PLEAS - CASE#2017CP2101375

Florence Common Pleas

Case Caption: April Jones VS Tim Ringer , defendant, et al

Case Number: 2017CP2101375

Type: Order/Electronic Form 4

So Ordered

s/ The Honorable Michael G. Nettles #2140

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Florence
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP2101375

April Jones
PLAINTIFF(S)

Tim Ringer et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

Defendant has moved this court for a judgment notwithstanding the jury's verdict, and, alternatively, a new trial nisi remittitur.

The court has reviewed the transcript from the trial of this case along with all of the related materials. Based upon the briefs submitted by the parties, along with oral arguments – the Defendant's request for relief is denied.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/15/2022 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2022 Feb 15 10:07 AM - FLORENCE - COMMON PLEAS - CASE#2017CP2101375

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED - 2022 Feb 15 10:07 AM - FLORENCE - COMMON PLEAS - CASE#2017CP2101375

ELECTRONICALLY FILED - 2022 Feb 15 10:07 AM - FLORENCE - COMMON PLEAS - CASE#2017CP2101375

Florence Common Pleas

Case Caption: April Jones VS Tim Ringer , defendant, et al

Case Number: 2017CP2101375

Type: Order/Electronic Form 4

So Ordered

s/ The Honorable Michael G. Nettles #2140

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE 12TH JUDICIAL CIRCUIT
CASE NO: 2017-CP-21-1375

FILED
2017 MAY 22 PM 4:43
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

APRIL JONES,

Plaintiff(s),

v.

TIM RINGER, Individually and as employee/agent of WAL-MART STORES, INC. d/b/a WAL-MART STORE # 630, and WAL-MART STORES, INC.,

Defendant(s).

COMPLAINT
(Jury Trial Demanded)

The Plaintiff, complaining of the Defendants, alleges and says as follows:

CASE SYNOPSIS

1. On June 26, 2015, April Jones was a patron of Wal-Mart Store #630 in Florence, South Carolina. Ms. Jones passed through an area where there were several pallets nearby when she suddenly felt a sharp pain in her foot. Ms. Jones inspected her foot and observed that a rusty nail had pierced through her shoe and was lodged into her foot. Ms. Jones visited the hospital and subsequently had to have a hole cut in her foot to treat the wound, which led to multiple surgical amputations, eventually resulting in her losing her right leg up to just above her knee.

SPECIFIC AVERMENTS

1. That the Plaintiff, April Jones, (herein referred to as "Plaintiff") is a citizen and resident of Florence County, State of South Carolina.
2. That the Defendant, Tim Ringer (herein referred to as "Defendant Ringer"), upon information and belief, is a citizen and resident of Darlington County, State of South

Carolina.

3. That the Defendant, Wal-Mart Stores, Inc. (herein referred to as "Defendant Wal-Mart"), is a business incorporated under the laws of Delaware while doing business in and/or owning property in Florence County, State of South Carolina, and its agent to accept service is C T Corporation System which is located at 2 Office Park Court, Suite 103, Columbia, SC 29223.
4. That the injury which is the subject of this action occurred at Wal-Mart Store #630, located in Florence County, State of South Carolina.
5. That this Court has jurisdiction over the parties and the subject matter of this action.
6. That on or about June 26, 2015, the Plaintiff was a customer and patron, as an invitee and for the benefit of the Defendants, at Defendant Wal-Mart's place of business (Wal-Mart Store #630) located at 230 North Beltline Drive, Florence, South Carolina, 29501.
7. That on or about June 26, 2015, Defendant Ringer was an employee/agent of Defendant Wal-Mart, acting as a manager of Wal-Mart Store #630.
8. As manager, Defendant Ringer's responsibilities and duties include, but are not limited to, cleaning, monitoring, and maintaining the premises of Wal-Mart Store #630 to ensure that it is safe, clean, and not dangerous for customers, patrons, and invitees.
9. Upon information and belief, on or about June 26, 2015, Plaintiff noticed a number of pallets on the floor while grocery shopping within Defendants' place of business.
10. Upon information and belief, on or about June 26, 2015, Plaintiff passed through the general area where the pallets were located and began to feel pain in her right foot while hearing a scraping sound under her shoe.
11. Upon information and belief, on or about June 26, 2015, upon feeling the pain and

hearing the scraping sound, Plaintiff looked under her right shoe and observed that a rusty nail had pierced through not only her shoe but also her foot, creating a wound.

12. Upon information and belief, on or about June 26, 2015, after noticing the nail, Plaintiff reported this incident to Defendants.

13. Upon information and belief, on or about June 26, 2015, due to the negligence of Defendants, Plaintiff suffered severe injuries after visiting Defendants' place of business.

14. That Defendants either knew or should have known that the floor area where Plaintiff's injuries were initiated presented a danger to patrons of Defendant's store, or that Defendant created the dangerous condition.

15. Upon information and belief, after the aforementioned incident, Plaintiff visited the hospital and subsequently had to have a hole cut in her foot to treat the wound, which led to multiple surgical amputations, eventually resulting in Plaintiff losing her right leg up to just above her knee.

16. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness, wantonness, and acts and/or omissions of the Defendants, as is set forth more fully above, Plaintiff was injured, has endured pain and suffering, has suffered mentally and emotionally, and has incurred, and will incur various medical expenses, and has otherwise been damaged and injured.

17. The fall and resulting injuries and damages to Plaintiff were caused directly and proximately by one or more of the following negligent, negligent *per se,* grossly negligent, careless, reckless, willful, wanton and unlawful acts, and/or omissions of the Defendants in any one or more of the following ways:

    a. In failing to observe the dangerous condition of the floor;

b. In failing to properly keep the floor clear of harmful objects and apparatuses, including but not limited to nails;

c. In failing to appreciate the gravity of the dangers associated with having harmful objects and apparatuses, including but not limited to nails on the floor;

d. Failing to supervise in the correct cleaning and maintenance of the floor;

e. In failing to enact policies that would ensure the safety of customers, patrons, an/or invitees on the premises;

f. In failing and omitting to take any precaution whatsoever of a reasonable nature to protect this Plaintiff from the dangers of the floor on the occasion that the Plaintiff was using the same;

g. In failing to adequately warn the Plaintiff as to any dangers that may be present on the premises;

h. In failing to clean, monitor, and maintain the premises to ensure that it is safe, clean, and not dangerous for customers, patrons, and invitees; and

i. In any such manner the Plaintiff may discover through the discovery process or trial.

18. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of the Defendants, as is set forth more fully above, Plaintiff has been damaged and injured in the following respects:

a. Plaintiff has been required to expend a significant amount of money for her medical care, treatment and attendant services;

b. Upon information and belief, the nature of the Plaintiff's injuries will require her to expend a significant amount of money for her medical care, treatment and

attendant services in the future;

c. Upon information and belief, the nature of Plaintiff's injuries will deprive her of employment opportunities and income in the future; and

d. The pain of her injuries has resulted in her loss of enjoyment of life and change in her personality, all to the permanent detriment of her health and physical well-being.

19. That Defendants' acts and omissions, as are set forth more fully above, show willful misconduct, malice, wantonness and an entire want of care, raising a presumption of the Defendants' conscious indifference to the consequences of such acts and omissions.

20. That because of the Defendants' acts and omission and the proximate harm resulting to Plaintiff, Plaintiff should be awarded punitive damages in an amount to be determined by the trier of fact, in order to punish and penalize the Defendants and to deter the Defendants and others from similar behavior.

21. That upon information and belief, Plaintiff is entitled to judgment against the Defendant for actual, compensatory, and exemplary or punitive damages for her personal injuries set forth here in an amount that is fair, just and reasonable under the circumstances, plus whatever costs, interest and attorney fees to which she may be entitled to be determined by a jury.

WHEREFORE, the Plaintiff prays for judgment against the Defendant for an amount to be ascertained by the jury at the trial of this action for all damages, punitive and actual, for the cost and disbursements of this action, and both prejudgment and post judgment interest, and for such other and further relief, in law or in equity, as this court may deem just and proper.

[Signature(s) on following page]

Respectfully submitted,

ANASTOPOULO LAW FIRM, LLC

Sean M. Tropea, Esquire
S.C. Bar No.: 102385
Eric M. Poulin, Esquire
S.C. Bar No.: 100209
Roy T. Willey, Esquire
S.C. Bar No.: 101010
Anastopoulo Law Firm, LLC
62 Columbus Street
Charleston, SC 29403
(843) 614-8888

Dated at Charleston, SC
This 18 day of May, 2017.

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA 2017 AUG 31 PM 4:28
FLORENCE DIVISION

DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

April Jones,

Plaintiff,

vs.

Tim Ringer, Individually and as employee/agent of Wal-Mart Stores, Inc. d/b/a Wal-Mart Store # 630, and Wal-Mart Stores, Inc.,

Defendants.

NOTICE OF FILING
NOTICE OF REMOVAL

TO: Honorable Connie Reel-Shearin
Florence County Clerk of Court
180 N. Irby St., MSC-E
Florence, SC 29501

PLEASE TAKE NOTICE that the above-named Defendant did file on August 16, 2017, in the United States District Court for the District of South Carolina, Florence Division, a Notice of Removal in the above-captioned action from the Circuit Court of Florence County to said United States District Court. A copy of the Notice of Removal is attached hereto.

Lee Ellen Bagley, SC Bar No. 77672
Nashiba D. Boyd, SC Bar No. 78376
GAFFNEY LEWIS & EDWARDS, LLC
3700 Forest Drive, Suite 400
Columbia, South Carolina 29204
803.790.8838 (telephone)
803.790.8841 (fax)

Attorneys for Defendants

August 29, 2017

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

April Jones,

Plaintiff,

vs.

Tim Ringer, Individually and as employee/agent of Wal-Mart Stores, Inc. d/b/a Wal-Mart Store # 630, and Wal-Mart Stores, Inc.,

Defendants.

Civil Action No. _____

NOTICE OF REMOVAL

FILED
2017 AUG 31 PM 4:28
CHRIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

1. Defendants Tim Ringer, individually and as employee/agent of Wal-Mart Stores, Inc. d/b/a Wal-Mart Store #630, and Walmart Stores Inc.,[1] (hereinafter collectively "Defendants" or "Wal-Mart") file this Notice of Removal of the above-titled action from the Court of Common Pleas of Florence County, South Carolina, to the United States District Court for the District of South Carolina, Florence Division, pursuant to 28 U.S.C. § 1441.

2. The above-titled action was instituted by the Plaintiff by the service of a Summons and Complaint filed on May 22, 2017 in the Florence County Court of Common Pleas. The action is currently pending in the Court of Common Pleas for Florence County, South Carolina, Case No. 2017-CP-21-1375. No further proceedings have been filed and the Summons and Complaint constitute all process, pleadings or orders properly served in this action. Pursuant to 28 U.S.C. § 1446(a), Defendants file herewith a copy of the Summons and Complaint ("Complaint").

[1] The named Defendants Tim Ringer, Individually and as an employee/agent of Wal-Mart Stores, Inc. d/b/a Wal-Mart Store # 630, and Wal-Mart Stores, Inc. are not proper parties to this action; Wal-Mart Stores East, L.P. is the sole proper corporate defendant. Counsel for Defendants will accept service of an Amended Summons and Complaint substituting the proper entity or, alternatively, will consent to amend the caption to substitute the proper party.

3. There is jurisdiction over this removed action pursuant to 28 U.S.C. § 1441 because Plaintiff could have originally filed the action in this Court pursuant to 28 U.S.C. § 1332. Specifically, this suit is removable because there is complete diversity of citizenship between the Plaintiff and Defendant Wal-Mart Stores, Inc. Defendant Tim Ringer is fraudulently joined as set forth more fully below; thus, his citizenship cannot be used to defeat diversity. Upon information and belief, based upon the Plaintiff's alleged injuries and the claim for relief in her Complaint, including actual and punitive damages, the amount in controversy as to the Plaintiff's claims exceeds Seventy-Five Thousand and 00/100 Dollars ($75,000.00), exclusive of interests and costs.

4. At the time of the commencement of the action, Plaintiff was and still is a citizen and resident of South Carolina. Defendant Wal-Mart Stores, Inc. was, at the time of the commencement of the action, and still is, a corporate entity organized and existing under the laws of a state other than South Carolina and having its principal place of business in a state other than South Carolina. Specifically, pursuant to 28 U.S.C. § 1332(c)(1), Defendant Wal-Mart Stores, Inc. is a citizen of both Delaware and Arkansas, as it is a Delaware corporation with its principal place of business in Arkansas. Wal-Mart Stores East, L.P., the sole proper corporate defendant, operated the subject store at all times relevant to the present matter. It is a Delaware limited partnership with its principal place of business in Arkansas. The partners of Wal-Mart Stores East, L.P. are WSE Management, LLC (general partner), and WSE Investment, LLC (limited partner). Both are Delaware limited liability companies with their principal places of business in Arkansas. The sole member of WSE Management, LLC and WSE Investment, LLC is Wal-Mart Stores East, LLC, which is an Arkansas limited liability company with its principal place of business in Arkansas. Wal-Mart Stores East, LLC is a wholly-owned subsidiary of Wal-

Mart Stores, Inc., which is a Delaware corporation with its principal place of business in Arkansas.

5. Upon information and belief, as the allegations against Defendant Ringer are perfunctory and arise merely as a result of his employment as Store Manager of the subject Wal-Mart store, he is named as a defendant solely by virtue of his position. While Plaintiff asserts that Defendant Ringer is personally liable, the actual basis of Plaintiff's claim against Defendant Ringer is negligence in performing his job duties. *See* Pl.'s Compl. at ¶ 17. Specifically, Plaintiff alleges that Defendant Ringer failed to maintain the premises is a safe manner. *Id.* at ¶¶ 14 and 16-17. It is well-established that premises liability duties are owed by the owner or possessor of the premises, not by the owner's or possessor's employees. *See generally O'Leary-Payne v. R.R. Hilton Head. II, Inc.*, 371 S.C. 340, 348, 638 S.E.2d 96, 100 (Ct. App. 2006), *quoting Bruno v. Pendleton Realty Co.*, 240 S.C. 46, 51, 124 S.E.2d 580, 582 (1962) (finding that "[t]he *owner* of the premises owes the customers the duty of exercising ordinary care to keep the passageways, sidewalks and such other parts of the premises as are ordinarily used by the customers in transacting business in a reasonably safe condition.") (emphasis supplied); *Binnicker v. Adden*, 204 S.C. 487, 490-491, 30 S.E.2d 142, 145 (1944) ("Because *possession and control* are reserved unto the lessor, the law implies an obligation, creates a legal duty, to keep the same in repair, and to operate it properly.") (emphasis supplied); *Creech v. South Carolina Wildlife and Marine Resources Dep't*, 328 S.C. 24, 32, 491 S.E.2d 571, 575 (1997) ("['[T]he traditional 'no duty to warn of the obvious' rule has been modified in many jurisdictions to hold that an *owner* is liable for injuries to an invitee, despite an open and obvious defect...") (emphasis supplied). Thus, it is the clear intent of our Courts to extend premises liability to owners or possessors of land but, not to their employees.

Further, the Restatement (Second) of Torts § 328E, defines "possessor" as follows:

A possessor of land is

(a) A person who is in occupation of the land with intent to control it or

(b) A person who has been in occupation of land with intent to control it, if no other person has subsequently occupied it with intent to control it, or

(c) A person who is entitled to immediate occupation of the land, if no other person is in possession under Clauses (a) or (b).

Manifestly, a store employee such as Defendant Ringer does not fall within this definition. The Restatement is authoritative in this area for South Carolina and our Supreme Court has adopted many of its provisions on premises liability. *See e.g. Callander v. Charleston Doughnut Corp.*, 305 S.C. 123, 126; 406 S.E.2d 361, 362 (1991) (adopting § 343(A), relating to a land owner's duty to warn even of open and obvious dangers, where invitee can be expected to encounter it). Because Defendant Ringer is not an owner or possessor of Wal-Mart's store premises, he personally owed no duty to Plaintiff and, accordingly, there is no colorable basis for liability on his part. Accordingly, Defendant Ringer was fraudulently joined[2] as an in-state defendant to this action as there is no possibility that Plaintiff could establish a cause of action against him. Defendant Ringer's citizenship cannot be considered in determining complete diversity. To allow Plaintiff to name Ringer as a defendant simply by virtue of his position as Store Manager, without any evidence of negligent action on his part, effectively negates Wal-Mart's right to litigate this case in federal court on the basis of diversity and should not be allowed.

5. Plaintiff's Complaint arises from an alleged incident in which the Plaintiff, while

[2] "'Fraudulent joinder' is a term of art, it does not reflect on the integrity of [the] plaintiff or counsel, but is merely the rubric applied when a court finds either that no cause of action is stated against the nondiverse defendant, or in fact no cause of action exists. In other words, a joinder is fraudulent if there [is] no real intention to get a joint judgment, and . . . there [is] no colorable ground for so claiming." *AIDS Counseling & Testing Centers v. Grp. W Television, Inc.*, 903 F.2d 1000, 1003 (4th Cir. 1990) (alterations and omission in original) (internal quotation marks omitted).

shopping in Wal-Mart's retail store located in Florence, South Carolina, stepped on a rusty nail that pierced her shoe and her foot. *See* Pl.'s Compl. at ¶ 11. Plaintiff asserts that Defendants were negligent and alleges that Defendants either created the alleged hazard or had actual or constructive notice of it. *See* Pl.'s Compl. ¶ 14. Plaintiff also alleges that as a result of the subject incident, she sustained significant personal injury that eventually resulted in the amputation of her right leg above the knee, as well as damages to include loss of enjoyment of life, loss of employment opportunities and future income, and permanent detriment of her health and physical well-being. *See* Pl.'s Compl. at ¶ 18. Additionally, Plaintiff seeks an award of punitive damages. *See id.* at ¶¶ 19-21.

6. Upon information and belief, based upon Plaintiff's Complaint, including the alleged injuries and amount of pre-suit medical expenses claimed by Plaintiff, the amount in controversy in this matter exceeds the sum of Seventy-Five Thousand 00/100 Dollars ($75,000.00), exclusive of interest and costs, and said action is one over which the District Court of the United States has original jurisdiction under 28 U.S.C. § 1332 for the reasons set forth above.

7. Defendants hereby give counsel for the Plaintiff written notice of the removal of this action and will provide a copy of the filed Notice of Removal to the Clerk of Court for Florence County, as required by 28 U.S.C. § 1446(d).

8. Defendants file this Notice of Removal within thirty (30) days of the receipt of Plaintiff's Complaint in the state court action, which was the first pleading properly served upon Defendants setting forth Plaintiff's claims for relief and from which Defendants first ascertained that the case is one which is removable.

WHEREFORE, Defendants respectfully submit this Notice of Removal this 16th day of

August, 2017.

s/ Lee Ellen Bagley
Lee Ellen Bagley, USDC ID No. 11453
lebagley@glelawfirm.com
Nashiba Boyd, USDC ID. No. 11408
nboyd@glelawfirm.com
GAFFNEY LEWIS & EDWARDS, LLC
3700 Forest Drive, Suite 400
Columbia, South Carolina 29204
803.790.8838 (telephone)
803.790.8841 (fax)

Attorneys for Defendants

FILED

2017 AUG 31 PM 4:28

DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

April Jones,

Plaintiff,

vs.

Tim Ringer, Individually and as employee/agent Wal-Mart Stores, Inc. d/b/a Wal-Mart Store #630, and Wal-Mart Stores, Inc.,

Defendants.

COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

Civil Action No. 2017-CP-21-1375

CERTIFICATE OF SERVICE

I do hereby certify, on this 29th day of August, 2017, that a copy of the foregoing **Defendant's Notice of Filing Notice of Removal** was served by depositing a copy of the same in the United States Mail, first-class, postage prepaid, addressed to counsel of record as follows:

Sean M. Tropea, Esquire
Eric M. Poulin, Esquire
Roy T. Willey, Esquire
Anastopoulo Law Firm, LLC
62 Columbus Street
Charleston, SC 29403
Attorneys for Plaintiff

Kelli F. Hall, Paralegal

Columbia, South Carolina

GAFFNEY LEWIS
& EDWARDS

FILED
2017 AUG 31 PM 4:28
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

3700 Forest Drive, Suite 400, Columbia, SC 29204 | P: 803.790.8838 | F: 803.790.8841 www.glelawfirm.com

August 29, 2017

Honorable Connie Reel-Shearin
Florence County Clerk of Court
180 N. Irby St., MSC-E
Florence, SC 29501

Re: ***April Jones v. Tim Ringer, Individually and as employee/agent Wal-Mart Stores, Inc. d/b/a Wal-Mart Store #630, and Wal-Mart Stores, Inc.***
State Court C/A No: 2017-CP-21-1375
Federal Court C/A No; 4:17-cv-02182

Dear Clerk:

Enclosed please find the original and one copy of Defendant's Notice of Filing Notice of Removal and Certificate of Service in the above captioned matter. Please file the original with the Court and return a filed copy in the envelope provided. By copy of this letter, I herewith serve counsel for Plaintiff with same.

Should you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

Kelli F. Hall
Paralegal

Enclosure
mailed 9/1/17 cc: Sean Tropea, Esq.
Eric M. Poulin, Esq.
Roy T. Willey, Esq.
Lee Bagley

Amy L. Gaffney, agaffney@glelawfirm.com Regina Hollins Lewis, rlewis@glelawfirm.com Susan Rawls Edwards, sedwards@glelawfirm.com
Lee Ellen Bagley, lebagley@glelawfirm.com Randi Lynn Roberts, rroberts@glelawfirm.com Michelle B. Matthews, mmatthews@glelawfirm.com
Nashiba Boyd, nboyd@glelawfirm.com Kelly T. Evans, kevans@glelawfirm.com

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE 12TH JUDICIAL CIRCUIT
CASE NO: 2017-CP-21-1315

APRIL JONES,

Plaintiff,

v.

TIM RINGER, Individually and as employee/agent of WAL-MART STORES, INC. d/b/a WAL-MART STORE # 630, and WAL-MART STORES, INC., and WAL-MART STORES EAST, L.P.,

Defendants.

AMENDED COMPLAINT
(Jury Trial Demanded)

FILED
2018 JAN 16 PM 2:15
DORIS FOULKS O'HARA
CCP & GS
FLORENCE COUNTY, SC

The Plaintiff, complaining of the Defendants, alleges and says as follows:

CASE SYNOPSIS

1. On June 26, 2015, April Jones was a patron of Wal-Mart Store #630 in Florence, South Carolina. Ms. Jones passed through an area where there were several pallets nearby when she suddenly felt a sharp pain in her foot. Ms. Jones inspected her foot and observed that a rusty nail had pierced through her shoe and was lodged into her foot. Ms. Jones visited the hospital and subsequently had to have a hole cut in her foot to treat the wound, which led to multiple surgical amputations, eventually resulting in her losing her right leg up to just above her knee.

SPECIFIC AVERMENTS

2. That the Plaintiff, April Jones, (herein referred to as "Plaintiff") is a citizen and resident of Florence County, State of South Carolina.
3. That the Defendant, Tim Ringer (herein referred to as "Defendant Ringer"), upon information and belief, is a citizen and resident of Darlington County, State of South

Carolina.

4. That the Defendant, Wal-Mart Stores, Inc. (herein referred to as "Defendant Wal-Mart"), is a business incorporated under the laws of Delaware while doing business in and/or owning property in Florence County, State of South Carolina, and its agent to accept service is C T Corporation System which is located at 2 Office Park Court, Suite 103, Columbia, SC 29223.
5. That the Defendant, Wal-Mart Stores East, L.P., (herein referred to as "Defendant Wal-Mart Stores East"), is a Delaware limited partnership that does business and/or owns property in Florence County, State of South Carolina, and its agent to accept service is C T Corporation System which is located at 2 Office Park Court, Suite 103, Columbia, SC 29223.
6. That the injury which is the subject of this action occurred at Wal-Mart Store #630, located in Florence County, State of South Carolina.
7. That this Court has jurisdiction over the parties and the subject matter of this action.
8. That on or about June 26, 2015, the Plaintiff was a customer and patron, as an invitee and for the benefit of the Defendants, at Defendant Wal-Mart's and Defendant Wal-Mart Stores East's place of business (Wal-Mart Store #630) located at 230 North Beltline Drive, Florence, South Carolina, 29501.
9. That on or about June 26, 2015, Defendant Ringer was an employee/agent of Defendant Wal-Mart and Defendant Wal-Mart Stores East, acting as a manager of Wal-Mart Store #630.
10. As manager, Defendant Ringer's responsibilities and duties include, but are not limited to, cleaning, monitoring, and maintaining the premises of Wal-Mart Store #630 to ensure

that it is safe, clean, and not dangerous for customers, patrons, and invitees.

11. Upon information and belief, on or about June 26, 2015, Plaintiff noticed a number of pallets on the floor while grocery shopping within Defendants' place of business.

12. Upon information and belief, on or about June 26, 2015, Plaintiff passed through the general area where the pallets were located and began to feel pain in her right foot while hearing a scraping sound under her shoe.

13. Upon information and belief, on or about June 26, 2015, upon feeling the pain and hearing the scraping sound, Plaintiff looked under her right shoe and observed that a rusty nail had pierced through not only her shoe but also her foot, creating a wound.

14. Upon information and belief, on or about June 26, 2015, after noticing the nail, Plaintiff reported this incident to Defendants.

15. Upon information and belief, on or about June 26, 2015, due to the negligence of Defendants, Plaintiff suffered severe injuries after visiting Defendants' place of business.

16. That Defendants either knew or should have known that the floor area where Plaintiff's injuries were initiated presented a danger to patrons of Defendant's store, or that Defendant created the dangerous condition.

17. Upon information and belief, after the aforementioned incident, Plaintiff visited the hospital and subsequently had to have a hole cut in her foot to treat the wound, which led to multiple surgical amputations, eventually resulting in Plaintiff losing her right leg up to just above her knee.

18. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness, wantonness, and acts and/or omissions of the Defendants, as is set forth more fully above, Plaintiff was injured, has endured pain and suffering, has

suffered mentally and emotionally, and has incurred, and will incur various medical expenses, and has otherwise been damaged and injured.

19. The fall and resulting injuries and damages to Plaintiff were caused directly and proximately by one or more of the following negligent, negligent *per se,* grossly negligent, careless, reckless, willful, wanton and unlawful acts, and/or omissions of the Defendants in any one or more of the following ways:

    a. In failing to observe the dangerous condition of the floor;

    b. In failing to properly keep the floor clear of harmful objects and apparatuses, including but not limited to nails;

    c. In failing to appreciate the gravity of the dangers associated with having harmful objects and apparatuses, including but not limited to nails on the floor;

    d. Failing to supervise in the correct cleaning and maintenance of the floor;

    e. In failing to enact policies that would ensure the safety of customers, patrons, an/or invitees on the premises;

    f. In failing and omitting to take any precaution whatsoever of a reasonable nature to protect this Plaintiff from the dangers of the floor on the occasion that the Plaintiff was using the same;

    g. In failing to adequately warn the Plaintiff as to any dangers that may be present on the premises;

    h. In failing to clean, monitor, and maintain the premises to ensure that it is safe, clean, and not dangerous for customers, patrons, and invitees; and

    i. In any such manner the Plaintiff may discover through the discovery process or trial.

20. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of the Defendants, as is set forth more fully above, Plaintiff has been damaged and injured in the following respects:

    a. Plaintiff has been required to expend a significant amount of money for her medical care, treatment and attendant services;

    b. Upon information and belief, the nature of the Plaintiff's injuries will require her to expend a significant amount of money for her medical care, treatment and attendant services in the future;

    c. Upon information and belief, the nature of Plaintiff's injuries will deprive her of employment opportunities and income in the future; and

    d. The pain of her injuries has resulted in her loss of enjoyment of life and change in her personality, all to the permanent detriment of her health and physical well-being.

21. That Defendants' acts and omissions, as are set forth more fully above, show willful misconduct, malice, wantonness and an entire want of care, raising a presumption of the Defendants' conscious indifference to the consequences of such acts and omissions.

22. That because of the Defendants' acts and omission and the proximate harm resulting to Plaintiff, Plaintiff should be awarded punitive damages in an amount to be determined by the trier of fact, in order to punish and penalize the Defendants and to deter the Defendants and others from similar behavior.

23. That upon information and belief, Plaintiff is entitled to judgment against the Defendant for actual, compensatory, and exemplary or punitive damages for her personal injuries set forth here in an amount that is fair, just and reasonable under the circumstances, plus

whatever costs, interest and attorney fees to which she may be entitled to be determined by a jury.

WHEREFORE, the Plaintiff prays for judgment against the Defendant for an amount to be ascertained by the jury at the trial of this action for all damages, punitive and actual, for the cost and disbursements of this action, and both prejudgment and post judgment interest, and for such other and further relief, in law or in equity, as this court may deem just and proper.

Respectfully submitted,

ANASTOPOULO LAW FIRM, LLC

Lane D. Jefferies, Esquire
S.C. Bar No.: 101764
Eric M. Poulin, Esquire
S.C. Bar No.: 100209
Roy T. Willey, Esquire
S.C. Bar No.: 101010
Anastopoulo Law Firm, LLC
32 Ann Street
Charleston, SC 29403
(843) 614-8888

Dated at Charleston, SC
This 10th day of January, 2019.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

April Jones,

Plaintiff,

vs.

Tim Ringer, Individually and as employee/ agent of Wal-Mart Stores, Inc. d/b/a Wal-Mart Store #630, and Wal-Mart Stores, Inc., and Wal-Mart Stores East, L.P.,

Defendants.

COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Civil Action No. 2017-CP-21-1375

DEFENDANTS' ANSWER TO PLAINTIFF'S AMENDED COMPLAINT

FILED
2017 MAR 26 PM 3:58

TO: PLAINTIFF AND HER COUNSEL, LANE D. JEFFERIES, ERIC M. POULIN, AND ROY T. WILLEY:

Defendants Tim Ringer, Individually and as employee/agent of Wal-Mart Stores, Inc. d/b/a Wal-Mart Store # 630, Wal-Mart Stores, Inc., and Wal-Mart Stores East, L.P.[1] (hereinafter "Defendants"), by and through undersigned counsel, hereby answer Plaintiff's Amended Complaint in the above-captioned case as set forth below. Defendants deny each and every allegation contained in Plaintiff's Amended Complaint unless specifically admitted herein. Further, Defendants hereby request a jury trial.

FOR A FIRST DEFENSE

1. Defendants admit the allegations of Paragraph 1 only to the extent they allege that Plaintiff was present in the subject store in Florence County, South Carolina on June 26, 2015. Defendants deny all remaining allegations contained in Paragraph 1.

2. Defendants have insufficient information to admit or deny the allegations of the second Paragraph 2; thus, Defendants neither admit nor deny the allegations.

[1] The named Defendants Tim Ringer, Individually and as an employee/agent of Wal-Mart Stores, Inc. d/b/a Wal-Mart Store # 630, and Wal-Mart Stores, Inc. are not proper parties to this action; Wal-Mart Stores East, L.P. is the sole proper corporate defendant.

3. Defendants admit the allegations contained in Paragraph 3.

4. Defendants admit the allegations of Paragraph 4 to the extent that they allege Defendant Wal-Mart Stores, Inc. is a Delaware corporation and that CT Corporation, located at 2 Office Park Court, Suite 103, Columbia, SC 29223, is its registered agent. Defendants deny all remaining allegations of Paragraph 4 and specifically deny that Wal-Mart Stores, Inc. is a proper party to this action.

5. Defendants admit the allegations of Paragraph 5 to the extent they allege that Defendant Wal-Mart Stores East, L.P., the sole proper defendant to this action, is a Delaware limited partnership that does business in Florence County, South Carolina and that CT Corporation, located at 2 Office Park Court, Suite 103, Columbia, SC 29223, is its registered agent. Defendants deny all remaining allegations of Paragraph 5.

6. Defendants deny the allegations of Paragraph 6 but, admit that Plaintiff was present in the subject Wal-Mart store on June 26, 2015, the date on which Plaintiff alleges in her Complaint that she sustained an injury in the subject store.

7. The allegations of Paragraph 7 are jurisdictional in nature and, thus, do not require a response. To the extent a response may be required, Defendants do not contest the Court's jurisdiction.

8. Defendants admit the allegations of Paragraph 8 only to the extent they allege that Plaintiff was present in the subject Wal-Mart store in Florence County, South Carolina on June 26, 2015. The remaining allegations contained in Paragraph 8 state legal conclusions that do not require a response; therefore, to the extent a response is required, Defendants deny all remaining allegations of Paragraph 8.

9. Defendants admit the allegations of Paragraph 9 to the extent that they allege that

Defendant Ringer was an employee of Wal-Mart on June 26, 2015, as he was employed as Store Manager of the subject store on that date. The remaining allegations set forth a legal conclusion, which does not require a response; therefore, to the extent a response may be required, Defendants deny the allegations.

10. Defendants deny the allegations of Paragraph 10.

11. Defendants have insufficient information to admit or deny the allegations of Paragraph 11 pertaining to what Plaintiff noticed on the date of the alleged incident; therefore, they neither admit nor deny the allegations. To the extent a response may be required, Defendants deny the allegations.

12. Defendants deny the allegations of Paragraph 12.

13. Defendants deny the allegations of Paragraph 13.

14. Defendants deny the allegations of Paragraph 14 as stated but, admit that Plaintiff reported the alleged incident to the subject store on June 26, 2015.

15. The allegations of Paragraph 15 state a legal conclusion that does not require a response. To the extent a response is required, Defendants deny the allegations of Paragraph 15. Further, Defendants deny any factual allegations of Paragraph 15.

16. The allegations of Paragraph 16 state legal conclusions that do not require a response. To the extent a response is required, Defendants deny the allegations of Paragraph 16. Defendants further deny any factual allegations contained in Paragraph 16.

17. Defendants deny the allegations of Paragraph 17.

18. The allegations of Paragraph 18 state legal conclusions that do not require a response. To the extent a response is required, Defendants deny the allegations of Paragraph 18. Defendants further deny any factual allegations contained in Paragraph 18.

19. The allegations of Paragraph 19, including all subparts thereof, state legal conclusions that do not require a response. To the extent a response is required, Defendants deny the allegations of Paragraph 19, including all subparts thereof. Defendants further deny any factual allegations contained in Paragraph 19.

20. The allegations of Paragraph 20, including all subparts thereof, state legal conclusions that do not require a response. To the extent a response is required, Defendants deny the allegations of Paragraph 20, including all subparts thereof. Defendants further deny any factual allegations contained in Paragraph 20.

21. The allegations of Paragraph 21 state a legal conclusion that does not require a response. To the extent a response is required, Defendants deny the allegations of Paragraph 21.

22. The allegations of Paragraph 22 state a legal conclusion that does not require a response. To the extent a response is required, Defendants deny the allegations of Paragraph 22.

23. Defendants deny the allegations of Paragraph 23.

24. To the extent that Plaintiff's prayer for relief contains allegations, Defendants deny all such allegations.

FOR A SECOND DEFENSE

25. Defendants adopt and re-allege each and every allegation set forth above as if fully repeated herein.

26. Plaintiff fails to state a claim for which relief may be granted on her cause of action for negligence as Plaintiff cannot prove that Defendants breached any duty owed to Plaintiff, thereby causing her damages. As such, this Honorable Court should dismiss the Amended Complaint pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

27. Defendants adopt and re-allege each and every allegation set forth above as if fully repeated herein.

28. Any alleged injuries sustained by Plaintiff, which Defendants expressly deny, were caused by the sole negligence and/or willfulness of Plaintiff. Further, any alleged injuries sustained by Plaintiff would not have occurred absent Plaintiff's conduct; consequently, Plaintiff is wholly barred from recovery.

FOR A FOURTH DEFENSE

29. Defendants adopt and re-alleges each and every allegation set forth above as if fully repeated herein.

30. Any alleged injuries sustained by Plaintiff, which Defendants expressly deny, were caused by the negligence and/or willfulness of Plaintiff. Further, Plaintiff's negligence and/or willfulness exceeded that which may be attributable to Defendants; consequently, Plaintiff is wholly barred from recovery.

FOR A FIFTH DEFENSE

31. Defendants adopt and re-allege each and every allegation set forth above as if fully repeated herein.

32. Alternatively, to the extent there is any finding that Defendants were negligent, such negligence being expressly denied, any recovery awarded to Plaintiff should be reduced in proportion to Plaintiff's own negligence.

FOR A SIXTH DEFENSE

33. Defendants adopt and re-allege each and every allegation set forth above as if fully repeated herein.

34. Plaintiff fails to state a claim for which relief may be granted to the extent that she asserts a cause of action for negligent supervision against Defendants as Plaintiff cannot show that Defendants knew or should have known that the employment of any particular associate created an undue risk of harm to the public. Additionally, Plaintiff cannot show that Defendants knew or had reason to know of their ability to control any particular associate or that Defendants knew or should have known of the necessity and opportunity for exercising control over the conduct of any particular associate. As such, the Amended Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A SEVENTH DEFENSE

35. Defendants adopt and re-allege each and every allegation set forth above as if fully repeated herein.

36. Any injuries or damages sustained by the Plaintiff, which Defendants expressly deny, were caused by an intervening, superseding act of negligence for which Defendants are not liable; thus, Plaintiff's claims are barred.

FOR AN EIGHTH DEFENSE

37. Defendants adopt and re-allege each and every allegation set forth above as if fully repeated herein.

38. Any damages suffered by Plaintiff, which Defendants expressly deny, were the result of the acts or omissions of a third party, for which Defendants bear no responsibility.

FOR A NINTH DEFENSE

39. Defendants adopt and re-allege each and every allegation set forth above as if fully repeated herein.

40. If a hazardous or dangerous condition existed, which Defendants expressly deny,

Defendants did not create the condition and had no actual or constructive notice of the hazardous or dangerous condition; consequently, Plaintiff's claims are barred.

FOR A TENTH DEFENSE

41. Defendants adopt and re-allege each and every allegation set forth above as if fully repeated herein.

42. Defendants at all times acted reasonably and in good faith in the exercise of their legal rights and at no time breached any duty, acted with any malice or ill-will toward the Plaintiff, or recklessly or wantonly, or with a conscious disregard for the Plaintiff's rights; thus, the Plaintiff cannot sustain a claim for punitive damages against Defendants. Further, punitive damages as sought by the Plaintiff are excessive, unconstitutional and violate the Due Process Clause of the United States and South Carolina Constitutions.

FOR AN ELEVENTH DEFENSE

43. Defendants adopt and re-allege each and every allegation set forth above as if fully repeated herein.

44. The facts not having been fully developed, Defendants reserve any additional and further defenses as may be revealed through the course of discovery and investigation in a manner that is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered Plaintiff's Amended Complaint, Defendants pray that the Court dismiss the Complaint and also pray for such other relief as this Court may deem appropriate.

[Signature page follows.]

Lee Ellen Bagley, SC Bar No. 77672
Nashiba Boyd, SC Bar No. 78376
GAFFNEY LEWIS & EDWARDS, LLC
3700 Forest Drive, Suite 400
Columbia, South Carolina 29204
803.790.8838 (telephone)
803.790.8841 (fax)

Attorneys for Defendants

March 22, 2018

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

April Jones,

Plaintiff,

vs.

Tim Ringer, Individually and as employee/ agent of Wal-Mart Stores, Inc. d/b/a Wal-Mart Store #630, and Wal-Mart Stores, Inc., and Wal-Mart Stores East, L.P.,

Defendants.

COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Civil Action No. 2017-CP-21-1375

CERTIFICATE OF SERVICE

I do hereby certify, on this 22nd day of March, 2018, that a copy of the foregoing **Defendants' Answer to Amended Complaint** was served by depositing a copy of the same in the United States Mail, first-class, postage prepaid, addressed to counsel of record as follows:

Lane Jefferies, Esquire
Eric M. Poulin, Esquire
Roy T. Willey, Esquire
Anastopoulo Law Firm, LLC
32 Ann Street
Charleston, SC 29403
Attorneys for Plaintiff

FILED
2018 MAR 26 PM 3:58
CLERK OF COURT
FLORENCE COUNTY, SC

Kelli F. Hall, Paralegal

Columbia, South Carolina

ELECTRONICALLY FILED - 2019 Apr 24 9:46 AM - FflorENCE - COMMON PLEAS - CASE#2017CP2101375

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE April Jones, Plaintiff, vs. Tim Ringer, Individually and as employee/ agent of Wal-Mart Stores, Inc. d/b/a Wal-Mart Store #630, and Wal-Mart Stores, Inc., and Wal-Mart Stores East, L.P., Defendants.	IN THE COURT OF COMMON PLEAS TWELFTH JUDICIAL CIRCUIT Civil Action No. 2017-CP-21-1375 **MOTION FOR CONTINUANCE AND ENTRY OF SCHEDULING ORDER**

This matter comes before the Court upon Defendants' request to continue the trial of this matter beyond the May 13, 2019 term of court pursuant to Rule 40, South Carolina Rules of Civil Procedure, and for the entry of a scheduling order. In support of this Motion, Defendants respectfully show as follows:

1) Lead counsel for Defendants, Lee Ellen Bagley, is scheduled for oral argument in the South Carolina Court of Appeals on May 15, 2019, in the matter of *Martha M. Fountain and Curtis Fountain v. Fred's Inc., et al.*, Case No. 2017-00068.
2) Defendants' counsel Nashiba Boyd is scheduled for a jury trial during the May 13, 2019 term of court in Barnwell County in the matter of *Marie E. Lee, et al. v. Walmart Store #795, et al.*, Case No. 2016-CP-06-00512;
3) Defendants' counsel Lee Ellen Bagley is also scheduled for a jury trial during the May 13, 2019 term of court in Barnwell County in the matter of *Chad Chisolm v. Wal-Mart Stores East, L.P., et al.*, Case No. 2017-CP-06-00241;

ELECTRONICALLY FILED - 2019 Apr 24 9:46 AM - FLORENCE - COMMON PLEAS - CASE#2017CP2101375

4) Most importantly, the Court previously conducted a status conference with the parties on January 15, 2019, during which time the release of Plaintiff's Social Security Administration ("SSA") records was at issue.[1] Following the conference, counsel notified the Court on the same date that the parties reached an agreement concerning the release of the records and, in order to provide for the anticipated time necessary to obtain the records, the parties submitted a proposed Consent Scheduling Order, which the Court entered on January 16, 2019, rendering the case subject to trial during the May 13, 2019 term of court.

5) Following the above-referenced January 15, 2019 status conference, Defendants' counsel did not receive from Plaintiff the necessary executed release for the SSA records until February 19, 2019. Defendants' counsel immediately submitted the release to the SSA and paid the SSA's February 27, 2019 invoice for the records. To date, the SSA has not produced the records to Defendants' counsel despite numerous follow-up attempts. As of April 17, 2019, Defendants' counsel is informed by the SSA that the records are currently with its national office for certification.

6) The SSA records are necessary in order for Defendants to evaluate any medical treatment identified therein as well as conduct any necessary discovery regarding the same, including the issuance of additional subpoenas for records, depositions of

[1] Defendants filed on November 7, 2018 a Motion to Compel the release of Plaintiff's Social Security Administration ("SSA") records, which Defendants originally requested on March 9, 2018. Judge Russo heard the Motion to Compel on December 20, 2018 and held his ruling in abeyance pending conference by the parties to determine if they may reach an agreement as to the records.

ELECTRONICALLY FILED - 2019 Apr 24 9:46 AM - FLORENCE - COMMON PLEAS - CASE#2017CP2101375

treating physicians, and the identification of any necessary expert witnesses and completion of expert discovery by both parties.

7) Additionally, the parties are in the process of scheduling Plaintiff's 30(b)(6) deposition of Walmart. Defendant Walmart previously filed a Motion for Protective Order regarding Plaintiff's March 1, 2019 Notice of Rule 30(b)(6) Deposition, which Judge Seals heard on April 8, 2019, and granted on April 10, 2019 by Form 4 order with formal order to follow.

8) Based upon the foregoing, Defendants respectfully request that this Honorable Court enter the proposed Scheduling Order and Order of Continuance attached hereto as Exhibit A, thereby continuing this matter from the May 13, 2019 trial roster and setting the case for trial not before the August 19, 2019 term of court, which Defendants' counsel is hopeful will allow the parties time to complete the necessary remaining discovery outlined above.

Pursuant to Rule 11, SCRCP, the undersigned attempted to confer with Plaintiff's counsel regarding this Motion, but did not receive a response prior to the time of filing.

Respectfully submitted,

s/ Lee Ellen Bagley
Lee Ellen Bagley, SC Bar No. 77672
Nashiba D. Boyd, SC Bar No. 78376
GAFFNEYLEWIS LLC
3700 Forest Drive, Suite 400
Columbia, South Carolina 29204
(803) 790-8838

Attorneys for Defendants

April 23, 2019[2]

ELECTRONICALLY FILED - 2019 Apr 24 9:46 AM - FLORENCE - COMMON PLEAS - CASE#2017CP2101375

[2] Initially filed April 19, 2019; refiled pursuant to the Court's instruction to include a proposed order.

Certificate of Electronic Notification

Recipients

Lee Bagley - Notification transmitted on 04-24-2019 09:47:32 AM.

Sean Tropea - Notification transmitted on 04-24-2019 09:47:32 AM.

Roy Willey - Notification transmitted on 04-24-2019 09:47:32 AM.

Kenneth David - Notification transmitted on 04-24-2019 09:47:33 AM.

Nashiba Boyd - Notification transmitted on 04-24-2019 09:47:33 AM.

Lane Jefferies - Notification transmitted on 04-24-2019 09:47:33 AM.

Eric Poulin - Notification transmitted on 04-24-2019 09:47:32 AM.

ELECTRONICALLY FILED - 2019 Apr 24 9:52 AM - FLORENCE - COMMON PLEAS - CASE#2017CP2101375

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****** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

–

A filing has been submitted to the court RE: 2017CP2101375

Official File Stamp:	04-24-2019 09:46:20 AM
Court:	CIRCUIT COURT
	Common Pleas
	Florence
Case Caption:	April Jones VS Tim Ringer , defendant, et al
Document(s) Submitted:	Motion/Continuance
	Proposed Order/Scheduling Order
Filed by or on behalf of:	Lee Ellen Bagley

This notice was automatically generated by the Court's auto-notification system.

–

The following people were served electronically:

Nashiba D. Boyd for Tim Ringer et al

Lee Ellen Bagley for Tim Ringer et al

Roy T. Willey, IV for April Jones

Eric Marc Poulin for April Jones

Kenneth Thomas David for April Jones

Sean Michael Tropea for April Jones

Lane Douglas Jefferies for April Jones

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

ELECTRONICALLY FILED - 2019 May 17 5:43 PM - FflorENCE - COMMON PLEAS - CASE#2017CP2101375

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE April Jones, Plaintiff, vs. Tim Ringer, Individually and as employee/ agent of Wal-Mart Stores, Inc. d/b/a Wal-Mart Store #630, and Wal-Mart Stores, Inc., and Wal-Mart Stores East, L.P., Defendants.	COURT OF COMMON PLEAS TWELFTH JUDICIAL CIRCUIT Civil Action No. 2017-CP-21-1375 **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

COME NOW Defendants Tim Ringer, Individually and as employee/agent of Wal-Mart Stores, Inc. d/b/a Wal-Mart Store # 630, Wal-Mart Stores, Inc., and Wal-Mart Stores East, L.P.[1] (hereinafter "Defendants"), by and through their undersigned counsel, and hereby move this Honorable Court, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for an Order granting summary judgment as to Plaintiff's sole cause of action for negligence. As there is no genuine issue of material fact as to any element of Plaintiff's cause of action, this Honorable Court should grant summary judgment in Defendants' favor. Alternatively, to the extent the Court finds that a genuine issue of material fact exists with regard to Plaintiff's negligence claim, the Court should nevertheless grant summary judgment to Defendants as to Plaintiff's claim for punitive damages.

STATEMENT OF FACTS

On June 26, 2015, Plaintiff visited Walmart Store #630 in Florence, South Carolina. She alleges that while walking through an area of the store that contained several pallets, she stepped

[1] The named Defendants Tim Ringer, Individually and as an employee/agent of Wal-Mart Stores, Inc. d/b/a Wal-Mart Store # 630, and Wal-Mart Stores, Inc. are not proper parties to this action; Wal-Mart Stores East, L.P. is the sole proper corporate defendant.

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on a rusty nail. *See* Ex. A, Pl.'s Compl., ¶ 1. According to Plaintiff, as she walked down the main center aisle, she heard a "metal noise on the bottom of [her] shoe." *See* Ex. B, Pl's Dep., pp. 20: 23 – 21: 11. As a result of the incident, Plaintiff alleges that she sustained severe and permanent personal injury, ultimately requiring the amputation of her right leg above the knee. *See* Ex. A, Pl's Amd. Compl., ¶ 1. She contends that the nail upon which she stepped came from a wooden pallet in the store. *Id.* at ¶¶ 1, 11; Ex. B, Pl's Dep., p. 31: 8-13.

STANDARD OF REVIEW

Summary judgment should be granted if the movant shows that "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the evidence and all the inferences that can be drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Redwend Ltd. P'ship v. Edwards,* 354 S.C. 459, 468, 581 S.E.2d 496, 501 (Ct.App.2003). However, a non-moving party may not rely on speculation to defeat a motion for summary judgment. *See McKnight v. S.C. Dep't of Corr.,* 385 S.C. 380, 389–390, 684 S.E.2d 566, 570–71 (Ct.App.2009).

ARGUMENT

Plaintiff must prove the following elements to establish a cause of action for negligence: (1) a duty of care owed to the plaintiff by the defendant; (2) a breach of that duty by some act or omission; and (3) that the plaintiff suffered damages as a proximate result of the breach. *Staples v. Duell*, 329 S.C. 503, 506, 494 S.E.2d 639, 641 (S.C. Ct. App. 1997). It is well-established in South Carolina that a merchant is not an insurer of the safety of its customers, but owes only the duty of exercising ordinary care to keep the premises in reasonably safe condition. Further, "merchants are not required to continuously inspect their floors for foreign substances." Legette v.

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Piggly Wiggly, Inc., 368 S.C. 576, 579, 629 S.E.2d 375, 377 (Ct. App. 2006). To recover damages for injuries caused by a dangerous or defective condition on a storekeeper's premises, the plaintiff must show either (1) that the injury was caused by a specific act of the storekeeper, which created the dangerous condition; or (2) that the storekeeper had actual or constructive knowledge of the dangerous condition and failed to remedy it. *Garvin v. Bi-Lo, Inc.*, 343 S.C. 625, 628, 541 S.E.2d 831, 832–33 (2001) (internal citations omitted); *see also Pennington v. Zayre Corp.*, 252 S.C. 176, 178, 165 S.E.2d 695, 696 (S.C. 1969); *Denton v. Winn Dixie Greenville, Inc.*, 312 S.C. 119, 120, 439 S.E.2d 292, 293 (S.C. Ct. App. 1993); *Cook v. Food Lion, Inc.*, 328 S.C. 324, 327, 491 S.E.2d 690, 691 (S.C. Ct. App. 1997).

Absent actual notice, a store owner's constructive knowledge of the foreign object may be established by showing that it was "on the floor for a sufficient time and that the storekeeper would have discovered and removed it had the storekeeper used ordinary care"; however, "[t]he mere fact the substance was on the floor is insufficient standing alone to charge the storekeeper with negligence." *Wintersteen v. Food Lion, Inc.*, 336 S.C. 132, 136, 518 S.E.2d 828, 830 (Ct. App. 1999) (internal citations omitted), *aff'd*, 344 S.C. 32, 542 S.E.2d 728 (2001) (reversing jury verdict/denial of directed verdict against store owner where plaintiff failed to present any evidence that store owner's employees knew of the water on the floor or any evidence as to the actual length of time the substance has been on the floor).

It is also well-established that "'[n]ot every accident that occurs gives rise to a cause of action upon which the party injured may recover damages... Thousands of accidents occur every day for which no one is liable in damages, and often no one is to blame, not even the ones who are injured.'" *Young v. Meeting Street Piggly Wiggly*, 288 S.C. 508, 511, 343 S.E.2d 636, 638 (S.C. Ct. App. 1986) (internal citation omitted).

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I. No genuine issue of material fact exists as to whether Defendants created the hazard, or had actual or constructive notice of the same.

Plaintiff's claim of negligence fails as a matter of law because she cannot establish the foreign object, the nail, was placed on the floor by Defendants or their agents or that Defendants otherwise created the hazard.

Assuming for argument purposes only that Plaintiff stepped on the nail in Walmart, there is no question that Defendants did not cause the nail to be present on the store premises. While Plaintiff alleges that she "assumes" it came from a pallet in the store, she admittedly has no evidence whatsoever to support that allegation. *See* Ex. B, Pl.'s Dep. Tr. 31:8-13. In fact, Defendants' expert Marshall White, Ph.D., definitively opines that the nail in question is a roofing nail that would not be used in the assembly, repair, or maintenance of a pallet. *See* Ex. C, Report of White and Ex. D, Photos of Nail. Additionally, it is undisputed that Plaintiff has no knowledge of how the nail came to be on the floor, nor how long the nail was on the floor prior to her stepping on it. *See* Ex. B, Pl.'s Dep., p. 31:8-16. Further, Plaintiff has no information showing that Defendants knew the nail was on the floor. *Id*. at 31:4-7.

Because Plaintiff fails to produce any evidence demonstrating that Defendants created or had actual or construction notice of the alleged hazard, any determination of such by a jury would be pure speculation. Such speculation is insufficient to establish notice. *See Wintersteen,* at 136 ("while the liquid could have been on the floor for an extended period of time, it is just as possible that it had been on the floor for only moments before [plaintiff] fell."); *see also Anderson v. Winn-Dixie Greenville, Inc*., 257 S.C. 75, 77, 184 S.E.2d 77, 77 (1971) ("Proof that a dangerous condition of the floor existed because of the presence of some foreign matter thereon is insufficient,

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standing alone, to support a finding of negligence.").

Based on the foregoing, Plaintiff has not and cannot offer any evidence to show that Defendants either created a dangerous condition by causing the nail to be on the store floor or that they had actual or constructive notice of the nail. Accordingly, Defendants are entitled to judgment as a matter of law.

II. No genuine issue of material fact exists as to Defendant Tim Ringer.

In the event that this Honorable Court finds that a genuine issue of material fact exists with regard to Walmart, it should nevertheless find that no such issue exists as to Defendant Tim Ringer, the Store Manager at the time of the alleged incident. For the same reasons set forth above, Plaintiff cannot show that Defendant Ringer personally caused the nail to be on the floor or that he had personal knowledge or should have had personal knowledge that it was present on the floor. Mr. Ringer was not present at the store the day of the incident. *See* Ex. E, Ringer Dep., p. 10: 4-6. Therefore, he is entitled to summary judgment.

III. Alternatively, Defendants are entitled to summary judgment on the issue of punitive damages because Plaintiff fails to establish by clear and convincing evidence that their conduct was willful, wanton, reckless, or malicious.

Alternatively, the Court should grant partial summary judgment in favor of Defendants on the question of punitive damages because Plaintiff fails to put forth clear and convincing evidence of willful, wanton, reckless, or malicious conduct on the part of Walmart or any of its employees, including Defendant Tim Ringer. "In South Carolina, 'punitive damages are allowed in the interest of society in the nature of punishment and as a warning and example to deter the wrongdoer and others from committing like offenses in the future." *Gamble v. Stevenson*, 305 S.C. I 04, 110, 406 S.E.2d 350, 354 (1991) (quoting *Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 396, 134 S.E.2d 206,210 (1964)). Punitive damages, which may only be awarded upon a finding of actual damages,

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are designed to vindicate a plaintiff who proves his private rights "have been wantonly, willfully[,] or maliciously violated." *Id.* (quoting *Harris v. Burnside*, 261 S.C. 190, 196, 199 S.E.2d 65, 68 (1973)). "The purposes of punitive damages are to punish the wrongdoer and deter the wrongdoer and others from engaging in similar reckless, willful, wanton, or malicious conduct in the future." Clark v. Cantrell, 339 S.C. 369, 378, 529 S.E.2d 528, 533 (2000).

Courts "have long been required, as a threshold matter, to assess the culpability of a defendant's conduct to determine whether punitive damages are available in a given case (i.e. whether the issue should be submitted to the jury)." *S.C. Farm Bureau Mut. Ins. Co. v. Love Chevrolet. Inc*., 324 S.C. 149,152,478 S.E.2d 57, 58 (1996). The court should submit punitive damages to the jury when the plaintiff produces evidence that the defendant's conduct was willful, wanton, or in reckless disregard of another's rights. *Cartee v. Leslev*, 290 S.C. 333, 337, 350 S.E.2d 388, 390 (1986). "Ordinarily, the test is whether the tort has been committed in such a manner or under circumstances that a person of ordinary reason or prudence would have been conscious of it as an invasion of the plaintiff's rights." *Id.* "On the issue of punitive damages, the highest burden of proof known to the civil law is applicable." *Mellen v. Lane*, 377 S.C. 261,290, 659 S.E.2d 236, 251 (Ct. App. 2008). The South Carolina General Assembly has mandated that "[i]n any civil action where punitive damages are claimed, the plaintiff has the burden of proving such damages by clear and convincing evidence." S.C. Code Ann. § 15-33-135 (2005).

It is unquestionable that no conduct of Walmart or Ringer was willful, wanton, reckless, or malicious because there is np evidence in the record to demonstrate that Walmart, Ringer, or any store employee had actual or constructive notice of the nail, much less that they chose to do nothing

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about it such that their actions constituted an intentional or conscious disregard for the rights of others.

Because the plaintiff fails to put forth any evidence of willful, wanton, reckless, or malicious conduct on the part of Walmart or its employees to create a genuine issue of material fact, nor will they be able to prove this by clear and convincing evidence, the Court should grant summary judgment in favor of Defendants on the question of punitive damages. See *Cartee*, 290 S.C. at 337,350 S.E.2d at 390. As noted above, the Plaintiff fails to even create a genuine issue of material fact on the question of liability and, thus, is not entitled to any award of damages. *See Gamble*, 305 S.C. at 110, 406 S.E.2d at 354 (asserting that punitive damages, which may only be awarded upon a finding of actual damages, are designed to vindicate a plaintiff who proves his private rights "have been wantonly, willfully[,], or maliciously violated" (quoting *Harris*, 261 S.C. at 196, 199 S.E.2d at 68)).

CONCLUSION

For the foregoing reasons, Defendants are entitled to judgment as a matter of law on Plaintiff's sole cause of action for negligence. Additionally, to the extent that the Court finds that a genuine issue of material fact exists as to Defendant Walmart, the Court should nevertheless grant summary judgment to Defendant Tim Ringer. Finally, in the alternative, the Court should grant summary judgment to Defendants on Plaintiff's claim for punitive damages.

This Motion is supported by the applicable law, any further memorandum or exhibits that Defendants may submit in support of this Motion, and counsel's arguments at any hearing set on said Motion.

The undersigned counsel certifies that, given the nature of this Motion, consultation with Plaintiff's counsel was not required prior to its filing, pursuant to the South Carolina Rules of Civil

Procedure.

WHEREFORE, Defendants hereby request that the Court grant them the following relief:

1) Enter an Order granting summary judgment in favor of Defendants and dismissing the action with prejudice; or

2) Enter an Order granting summary judgment in favor of Defendant Tim Ringer; or

3) Enter an Order granting summary judgment in favor of Defendants as to Plaintiff's claim for punitive damages; and/or

4) Set a hearing on Defendants' Motion so that Defendants may set forth more fully their arguments for the Court; and/or

5) Such other and further relief as the Court may deem appropriate.

RESPECTFULLY SUBMITTED,

s/ Lee Ellen Bagley

Lee Ellen Bagley, SC Bar No. 77672
Nashiba Boyd, SC Bar No. 78376
GAFFNEYLEWIS LLC
3700 Forest Drive, Suite 400
Columbia, South Carolina 29204
803.790.8838 (telephone)
803.790.8841 (facsimile)

Attorneys for Defendants

May 17, 2019

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IN THE STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE 12TH JUDICIAL CIRCUIT
CASE NO: 2017-CP-21-1376

APRIL JONES,

Plaintiff,

v.

TIM RINGER, Individually and as employee/agent of WAL-MART STORES, INC. d/b/a WAL-MART STORE # 630, and WAL-MART STORES, INC., and WAL-MART STORES EAST, L.P.,

Defendants.

SUMMONS
(Jury Trial Demanded)

FILED
2018 JAN 16 PM 2:16
DORIS POULOS O'HARA
C.C.P. & G.S.
FLORENCE COUNTY, SC

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the Plaintiff or her attorneys, Lane D. Jefferies, Eric M. Poulin, and Roy T. Willey, IV, at their office, 32 Ann Street, Charleston, South Carolina, 29403, within (30) days after the service hereof, exclusive of the day of such service and if you fail to Answer the Complaint within the time aforesaid, Plaintiff will apply to the court for the relief demanded in the Complaint.

Dated at Charleston, South Carolina on the 10th day of January, 2018.

ANASTOPOULO LAW FIRM, LLC

Lane D. Jefferies, Esquire
S.C. Bar No.: 101764
Eric M. Poulin, Esquire
S.C. Bar No.: 100209
Roy T. Willey, Esquire
S.C. Bar No.: 101010
32 Ann Street
Charleston, SC 29403
(843) 614-8888

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

EXHIBIT A

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE 12TH JUDICIAL CIRCUIT
CASE NO: 2017-CP-21-1375

APRIL JONES,

Plaintiff,

v.

TIM RINGER, Individually and as employee/agent of WAL-MART STORES, INC. d/b/a WAL-MART STORE # 630, and WAL-MART STORES, INC., and WAL-MART STORES EAST, L.P.,

Defendants.

AMENDED COMPLAINT
(Jury Trial Demanded)

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P.
FLORENCE, S.C.

FILED
2019 JAN 16 PM 2:16
DORIS FOULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

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The Plaintiff, complaining of the Defendants, alleges and says as follows:

CASE SYNOPSIS

1. On June 26, 2015, April Jones was a patron of Wal-Mart Store #630 in Florence, South Carolina. Ms. Jones passed through an area where there were several pallets nearby when she suddenly felt a sharp pain in her foot. Ms. Jones inspected her foot and observed that a rusty nail had pierced through her shoe and was lodged into her foot. Ms. Jones visited the hospital and subsequently had to have a hole cut in her foot to treat the wound, which led to multiple surgical amputations, eventually resulting in her losing her right leg up to just above her knee.

SPECIFIC AVERMENTS

2. That the Plaintiff, April Jones, (herein referred to as "Plaintiff") is a citizen and resident of Florence County, State of South Carolina.
3. That the Defendant, Tim Ringer (herein referred to as "Defendant Ringer"), upon information and belief, is a citizen and resident of Darlington County, State of South

EXHIBIT A

ELECTRONICALLY FILED - 2019 May 17 5:43 PM - FLORENCE - COMMON PLEAS - CASE#2017CP2101375

Carolina.

4. That the Defendant, Wal-Mart Stores, Inc. (herein referred to as "Defendant Wal-Mart"), is a business incorporated under the laws of Delaware while doing business in and/or owning property in Florence County, State of South Carolina, and its agent to accept service is C T Corporation System which is located at 2 Office Park Court, Suite 103, Columbia, SC 29223.

5. That the Defendant, Wal-Mart Stores East, L.P., (herein referred to as "Defendant Wal-Mart Stores East"), is a Delaware limited partnership that does business and/or owns property in Florence County, State of South Carolina, and its agent to accept service is C T Corporation System which is located at 2 Office Park Court, Suite 103, Columbia, SC 29223.

6. That the injury which is the subject of this action occurred at Wal-Mart Store #630, located in Florence County, State of South Carolina.

7. That this Court has jurisdiction over the parties and the subject matter of this action.

8. That on or about June 26, 2015, the Plaintiff was a customer and patron, as an invitee and for the benefit of the Defendants, at Defendant Wal-Mart's and Defendant Wal-Mart Stores East's place of business (Wal-Mart Store #630) located at 230 North Beltline Drive, Florence, South Carolina, 29501.

9. That on or about June 26, 2015, Defendant Ringer was an employee/agent of Defendant Wal-Mart and Defendant Wal-Mart Stores East, acting as a manager of Wal-Mart Store #630.

10. As manager, Defendant Ringer's responsibilities and duties include, but are not limited to, cleaning, monitoring, and maintaining the premises of Wal-Mart Store #630 to ensure

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that it is safe, clean, and not dangerous for customers, patrons, and invitees.

11. Upon information and belief, on or about June 26, 2015, Plaintiff noticed a number of pallets on the floor while grocery shopping within Defendants' place of business.

12. Upon information and belief, on or about June 26, 2015, Plaintiff passed through the general area where the pallets were located and began to feel pain in her right foot while hearing a scraping sound under her shoe.

13. Upon information and belief, on or about June 26, 2015, upon feeling the pain and hearing the scraping sound, Plaintiff looked under her right shoe and observed that a rusty nail had pierced through not only her shoe but also her foot, creating a wound.

14. Upon information and belief, on or about June 26, 2015, after noticing the nail, Plaintiff reported this incident to Defendants.

15. Upon information and belief, on or about June 26, 2015, due to the negligence of Defendants, Plaintiff suffered severe injuries after visiting Defendants' place of business.

16. That Defendants either knew or should have known that the floor area where Plaintiff's injuries were initiated presented a danger to patrons of Defendant's store, or that Defendant created the dangerous condition.

17. Upon information and belief, after the aforementioned incident, Plaintiff visited the hospital and subsequently had to have a hole cut in her foot to treat the wound, which led to multiple surgical amputations, eventually resulting in Plaintiff losing her right leg up to just above her knee.

18. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness, wantonness, and acts and/or omissions of the Defendants, as is set forth more fully above, Plaintiff was injured, has endured pain and suffering, has

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suffered mentally and emotionally, and has incurred, and will incur various medical expenses, and has otherwise been damaged and injured.

19. The fall and resulting injuries and damages to Plaintiff were caused directly and proximately by one or more of the following negligent, negligent *per se,* grossly negligent, careless, reckless, willful, wanton and unlawful acts, and/or omissions of the Defendants in any one or more of the following ways:

a. In failing to observe the dangerous condition of the floor;

b. In failing to properly keep the floor clear of harmful objects and apparatuses, including but not limited to nails;

c. In failing to appreciate the gravity of the dangers associated with having harmful objects and apparatuses, including but not limited to nails on the floor;

d. Failing to supervise in the correct cleaning and maintenance of the floor;

e. In failing to enact policies that would ensure the safety of customers, patrons, an/or invitees on the premises;

f. In failing and omitting to take any precaution whatsoever of a reasonable nature to protect this Plaintiff from the dangers of the floor on the occasion that the Plaintiff was using the same;

g. In failing to adequately warn the Plaintiff as to any dangers that may be present on the premises;

h. In failing to clean, monitor, and maintain the premises to ensure that it is safe, clean, and not dangerous for customers, patrons, and invitees; and

i. In any such manner the Plaintiff may discover through the discovery process or trial.

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20. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of the Defendants, as is set forth more fully above, Plaintiff has been damaged and injured in the following respects:

    a. Plaintiff has been required to expend a significant amount of money for her medical care, treatment and attendant services;

    b. Upon information and belief, the nature of the Plaintiff's injuries will require her to expend a significant amount of money for her medical care, treatment and attendant services in the future;

    c. Upon information and belief, the nature of Plaintiff's injuries will deprive her of employment opportunities and income in the future; and

    d. The pain of her injuries has resulted in her loss of enjoyment of life and change in her personality, all to the permanent detriment of her health and physical well-being.

21. That Defendants' acts and omissions, as are set forth more fully above, show willful misconduct, malice, wantonness and an entire want of care, raising a presumption of the Defendants' conscious indifference to the consequences of such acts and omissions.

22. That because of the Defendants' acts and omission and the proximate harm resulting to Plaintiff, Plaintiff should be awarded punitive damages in an amount to be determined by the trier of fact, in order to punish and penalize the Defendants and to deter the Defendants and others from similar behavior.

23. That upon information and belief, Plaintiff is entitled to judgment against the Defendant for actual, compensatory, and exemplary or punitive damages for her personal injuries set forth here in an amount that is fair, just and reasonable under the circumstances, plus

whatever costs, interest and attorney fees to which she may be entitled to be determined by a jury.

WHEREFORE, the Plaintiff prays for judgment against the Defendant for an amount to be ascertained by the jury at the trial of this action for all damages, punitive and actual, for the cost and disbursements of this action, and both prejudgment and post judgment interest, and for such other and further relief, in law or in equity, as this court may deem just and proper.

Respectfully submitted,

ANASTOPOULO LAW FIRM, LLC

Lane D. Jefferies, Esquire
S.C. Bar No.: 101764
Eric M. Poulin, Esquire
S.C. Bar No.: 100209
Roy T. Willey, Esquire
S.C. Bar No.: 101010
Anastopoulo Law Firm, LLC
32 Ann Street
Charleston, SC 29403
(843) 614-8888

Dated at Charleston, SC
This 10th day of January, 2019.

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State of South Carolina
In Common Pleas Court
County of Florence
Twelfth Judicial Circuit

April Jones,

plaintiff,

V. 2017-CP-21-1375

Tim Ringer, individually and
as employee/agent of
Wal-Mart Stores, Inc. d/b/a
Wal-Mart Store #630,
and Wal-Mart Stores, Inc.,
and Wal-Mart Stores East, L.P.,

defendants.

Deposition of: April Jones

Location: 150 West Evans Street
Florence, South Carolina

Date: Friday, September 28, 2018

Time: 11:03 a.m. - 1:18 p.m.

Court Reporter: Erica Creel

The deposition is taken pursuant to notice and/or agreement, in the above-entitled cause pending in the above-named court and pursuant to the South Carolina Rules of Civil Procedure.

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A No. I actually bought them that month.

Q Do you remember where you bought them?

A Walmart.

Q So you bought them sometime in June 2015 at Walmart?

A Yes, ma'am.

Q What size shoe do you wear?

A Eleven.

Q And do you remember if those flip flops were sized or if they were just like general, like large, medium, extra large?

A I don't remember.

Q Okay. Do you remember how much you paid for them?

A No, ma'am.

Q And we -- we asked you to bring the shoes, but your attorney explained to me that you could not locate the shoe. Is that correct?

A Yes, ma'am. That's correct.

Q Okay. Please tell me what happened that day.

A I walked in Walmart and I walked down the center aisle, the aisle that separates the clothing from the food. And as I was walking, I

heard a metal noise on the bottom of my shoe. So I lift my foot up, I look back and I seen a nail in my shoe. And I went to pull it out my shoe. I pulled it out and I actually walked up some and I threw the nail on the shelf. And so I looked down and blood was in the shoe. And I turned around. I said, oh, god. I turned around and got the nail off the shelf. Grabbed the bleach and I walked back. I went through the self checkout, paid for the bleach. And then I walked over to customer service and asked to speak with a manager.

Q Okay. Can you describe to me what the nail looked like?

A It was rusty.

Q Okay. Was it like a long nail or short nail?

A It wasn't real long.

Q Are you certain it was a nail and not a screw?

A I'm certain it was a nail.

Q Was it -- I know you said it was -- was the entire nail rusty or just parts?

A The entire nail.

Q And your attorney also told me that -- that they have the nail?

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cleaning your wound or were you just sitting there waiting?

A I was waiting for the report.

Q Do you know whether any Walmart employees knew the nail was on the floor prior to you stepping on it?

A I have no idea.

Q Do you know where the nail came from?

A I assume it came from one of the pallets.

Q But do you have any knowledge that it came from a pallet?

A I don't.

Q Do you know how long the nail had been on the floor before you stepped on it?

A I don't.

Q Other than the statement that the assistant manager completed on your behalf, do you know if any other documents were written up that day?

A I don't.

Q Okay. Did you take any photos of the area where you think you stepped on the nail?

A I didn't.

Q Did you take any video of the area where

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ELECTRONICALLY FILED - 2019 May 17 5:43 PM - FLORENCE - COMMON PLEAS - CASE#2017CP2101375

May 17, 2019

Nashiba Boyd
GaffneyLewis LLC
3700 Forest Drive, Suite400
Columbia, SC 29204

RE: April Jones V Wal-Mart Stores Inc. and Wal-Mart Stores East L.P.

Dear Ms. Boyd

I have examined the materials provided, including the seven (7) photographic images you forwarded. These show different views of a nail, adjacent to a ruler, indicating size. Pallet nails are described in ANSI/MH1, 2005, Pallets, Slipsheets, and Other Bases for Unit Loads, Part 4, “Wood Pallets”. Pallet nails are also described in ASTM F1667-18a, Standard Specification for Driven Fasteners: Nails, Spikes, and Staples, Table 23. The photographic images show a Type 1, Style 18, roofing nail, designation (f1667 nl rf) in Tables 26 and 27 of ASTM F 1667-18a. It is my opinion, to a reasonable degree of professional certainty, that such nails are not used for the assembly or repair and maintenance of wood pallets.

The use of wood pallets as product display bases is a common and safe practice in retail stores. Stretch wrap or shrink film are not attached to wood pallets using nails.

The opinions contained here, are subject to change, pending the development of additional information regarding this matter.

Marshall S. White PhD
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ELECTRONICALLY FILED - 2019 May 17 5:43 PM - FflorENCE - COMMON PLEAS - CASE#2017CP2101375

In The Matter Of:

Jones v.

Ringer, et al.

Tim Ringer

April 5, 2019

Janice D. Hayward, RMR

Independent Court Reporter

843.478.6756

JanHayward1@gmail.com

Original File 040519TRinger.txt

Min-U-Script® with Word Index

EXHIBIT E

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own senses, like you saw it, smelled it, touched it, tasted it, heard it?

A No.

Q None of that. Okay.

And you weren't there that day?

A No.

Q All right. So what you know about the incident you know from Kevin Lane, Ayesha Cook and maybe some others?

A Um-hum.

Q Okay. Tell me what you have learned from Kevin Lane, Ayesha Cook and others involving the incident with April Jones on June 26, 2015.

A That customer came into the store, allegedly stepped on what she said was a nail, and she, on the day that it happened, she stepped on the nail, she continued to shop. She went up to our service desk to report what she said happened.

And Kevin took the information that day, he took the information from her. He, you know, offered her assistance if she needed any assistance. There was no request for an ambulance or anything along those lines.

Q What did Ayesha Cook do?

A As far as I know all she did was

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

The Honorable Michael Nettles, Circuit Court Judge

Case No. 2017-CP-21-1375

April Jones…… ……Appellant

v.

TIM RINGER, Individually and as employee/agent of WAL-MART STORES, INC. d/b/a WAL-MART STORE # 630; WAL-MART STORES, INC.; and WAL-MART STORES EAST, L.P…… ……Respondents

---

NOTICE OF APPEAL

Plaintiff April Jones appeals the Order of the Honorable Michael Nettles, signed May 13, 2019 and entered May 13, 2019, which resulted in, among other things, subsequent rulings disqualifying counsel. Appellant received written notice of said Order on or about May 13, 2019.

May 23, 2019

s/ Lane D. Jefferies

Lane Jefferies, Esquire
Anastopoulo Law Firm, LLC
32 Ann Street
(843) 614-8888
Attorney for Appellant

Counsel of Record for Respondents:
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ELECTRONICALLY FILED - 2019 May 23 2:50 PM - FLORENCE - COMMON PLEAS - CASE#2017CP2101375

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

The Honorable Michael Nettles, Circuit Court Judge

Case No. 2017-CP-21-1375

April Jones…… ……Appellant

v.

TIM RINGER, Individually and as employee/agent of WAL-MART STORES, INC. d/b/a WAL-MART STORE # 630; WAL-MART STORES, INC.; and WAL-MART STORES EAST, L.P…… ……Respondents

---

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Respondents by depositing a copy of it in the United States Mail, postage prepaid, on May 23, 2019, addressed to Respondants attorneys of record, Nashiba Boyd and Lee Ellen Bagley, 3700 Forest Drive, Suite 400, Columbia, SC 29204, and by hand delivering a copy to Nashiba Boyd.

s/ Lane D. Jefferies

Lane Jefferies, Esquire
Anastopoulo Law Firm, LLC
32 Ann Street
(843) 614-8888
Attorney for Appellant

May 23, 2019

ELECTRONICALLY FILED - 2020 Aug 10 4:22 PM - FLORENCE - COMMON PLEAS - CASE#2017CP2101375

IN THE STATE OF SOUTH CAROLINA) COUNTY OF FLORENCE)	IN THE COURT OF COMMON PLEAS FOR THE 12TH JUDICIAL CIRCUIT CASE NO: 2017-CP-21-1375
APRIL JONES, Plaintiff, v. TIM RINGER, Individually and as employee/agent of WAL-MART STORES, INC. d/b/a WAL-MART STORE # 630; WAL-MART STORES, INC.; and WAL-MART STORES EAST, L.P., Defendants.	**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

TO: THE HONORABLE COURT AND ALL COUNSEL OF RECORD

COMES NOW the Plaintiff, April Jones, by and through undersigned counsel, and does submit this memorandum of law in opposition to Defendant Tim Ringer, Individually and as employee/agent of Wal-Mart Stores, Inc. d/b/a Wal-Mart Store # 630, Wal-Mart Stores, Inc., and Wal-Mart Stores East, L.P.'s (herein "Defendants") Motion for Summary Judgment.

There is a genuine issue of material fact as to whether Walmart caused a nail to be present on the store premises where Plaintiff stepped on it. There is also a genuine issue of material fact as to whether Walmart should have known that the nail was present. Because Plaintiff can establish liability under either theory, an issue of fact as to ***either*** theory precludes summary judgment. Here, there is an issue of fact as to both.

Each side has evidence to support its theory of the case. Accordingly, it is not appropriate to resolve this case by summary judgment. Plaintiff has alleged the same basic set of facts all along, to wit, that she stepped on a nail in Walmart.[1] That the nail had come loose from a pallet.[2]

[1] Compl., ¶ 1; Am. Compl., ¶ 1.
[2] Jones Dep. 31:8-10. Ex. A.

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That Walmart has pallets on the sales floor.[3] That the source of the nail at issue was most probably a pallet on the Walmart sales floor.[4] That the injury from the nail ultimately resulted in the amputation of her right leg above the knee.[5] Plaintiff has come forward with evidence to support her allegations.

In contrast, Defendants have told a shifting story. Defendants deny that Plaintiff stepped on a nail in Walmart.[6] Defendants denied that there even were wooden pallets with nails in Walmart.[7] When that position became untenable in light of actual photographs of wooden pallets, Defendants changed their story and admitted the obvious – that Walmart uses wooden pallets on the sales floor.[8] Having been forced to admit that pallets exist in Walmart, Defendants then hired an expert from Virginia to swear that the nail at issue could not possibly have come from a pallet.[9] And in case that failed (it did[10]), Defendants began arguing that it was not the rusty nail in her foot that caused Plaintiff's injuries, but rather her "underlying disease progression."[11] Not surprisingly, Defendants have also come forward with evidence to support their allegations.

[3] Compl., ¶ 9; Am. Compl., ¶ 11.
[4] Durig Aff., May 22, 2019. Ex. G.
[5] Jones Dep. 34:14-36:7. Ex. A.
[6] Answer, ¶ 1; Answer to Am. Compl., ¶ 1.
[7] Defendants' December 22, 2017 Responses to Plaintiff's First Set of Interrogatories. Ex. C; Defendants' December 19, 2018 Amended and Supplemental Responses to Plaintiff's Interrogatories, para 16. Ex. D; Defendants' May 17, 2019 Third Supplemental Responses to Plaintiff's Interrogatories. Ex. E.
[8] Ringer Dep. 64:11-15 (Defendant Ringer conceding "That's wood. That's a pallet."); 88:24 – 89:4. Ex. F.
[9] White Dep. 93:10-16. Ex. B.
[10] When pressed, the expert admitted that the nail, though not best for the job, could have been used in a pallet and could have come out. White Dep. 37:22-38:5, 51:20-53:22. Ex. B.
[11] Defendants' May 17, 2019 Third Supplemental Responses to Plaintiff's Interrogatories. Ex. E.

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And that is where things stand today – Plaintiff has some evidence and Defendant has some opposing evidence. It is the quintessential jury question – which evidence is to be given the greater weight? The Court cannot weigh the evidence. Only the jury can do that.

Summary judgment is an "extreme remedy to be cautiously invoked." *Holloman v. McAllister*, 289 S.C. 183, 186, 345 S.E.2d 723, 729 (1986). "At the summary judgment stage of litigation, the court does not weigh conflicting evidence with respect to a disputed material fact." *S.C. Prop. & Cas. Guar. Ass'n v. Yensen*, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct. App. 2001). Summary judgment is only appropriate where there is no genuine issue of material fact. Rule 56(c), S.C.R.C.P. Furthermore, when the burden of proof is by a preponderance of the evidence a non-moving party need only present a scintilla of evidence to withstand a motion for summary judgment. *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 330, 673, S.E.2d 801, 803 (2009).

Some of the major evidentiary points are shown in the table below and on the following page.[12] Facts on which the parties agree are shown in green. Note that the agreed facts all favor Plaintiff. It is the facts as to which the parties disagree that will need to be decided by the jury.

Plaintiff's Evidence	**Defendants' Evidence**
Plaintiff stepped on a nail in Walmart. (Plf. Dep. 26:25 – 27:1)	**Plaintiff did not step on a nail in Walmart.** (Answer, ¶ 1; Answer to Am. Compl., ¶ 1)
Walmart uses wooden pallets. (Ringer Dep. 64:11-15 (Defendant Ringer conceding "That's wood. That's a pallet."); 88:24 – 89:4.	**Walmart does not use wooden pallets.** (Defendants' December 22, 2017 Responses to Plaintiff's First Set of Interrogatories. Ex. C; Defendants' December 19, 2018 Amended and

[12] There are many genuine issues of material fact, and Plaintiff is glad to walk the Court through them one by one during a hearing on the matter if the Court deems it necessary. For the sake of brevity, this memorandum focuses solely on the major evidentiary issues listed above, as these are sufficient to preclude summary judgment. *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 330, 673, S.E.2d 801, 803 (2009) ("[A] non-moving party need only present a scintilla of evidence to withstand a motion for summary judgment.").

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Ex. F.)	Supplemental Responses to Plaintiff's Interrogatories, para 16. Ex. D; Defendants' May 17, 2019 Third Supplemental Responses to Plaintiff's Interrogatories. Ex. E.)
Walmart uses wooden pallets. (Ringer Dep. 64:11-15 (Defendant Ringer conceding "That's wood. That's a pallet."); 88:24 – 89:4. Ex. F.)	**Walmart uses wooden pallets.** (Ringer Dep. 64:11-15 (Defendant Ringer conceding "That's wood. That's a pallet."); 88:24 – 89:4. Ex. F.)
Nails can come out of wood pallets. (Durig Aff., ¶¶ 4-5; White Dep. 53:2-22)	**Nails can come out of wood pallets.** (Durig Aff., ¶¶ 4-5; White Dep. 51:20-53:22)
The nail at issue could have come out a wood pallet. (Durig Aff., ¶ 5)	**The nail at issue could not have come out a wood pallet.** (Defendants' December 22, 2017 Responses to Plaintiff's First Set of Interrogatories. Ex. C; Defendants' December 19, 2018 Amended and Supplemental Responses to Plaintiff's Interrogatories, para 16. Ex. D; Defendants' May 17, 2019 Third Supplemental Responses to Plaintiff's Interrogatories. Ex. E.)
The nail at issue could have come out a wood pallet. (Durig Aff., ¶ 5, White Dep. 37:22-38:5, 53:2-22)	**The nail at issue could have come out a wood pallet.** (Durig Aff., ¶ 5, White Dep. 37:22-38:5, 53:2-22)
Only Walmart leaves pallets on the sales floor; no memory of vendors or customers leaving pallets on sales floor. (Ringer Dep. 13:8-14, 15:3-8, 17:16-24, 51:22-25)	**Only Walmart leaves pallets on the sales floor; no memory of vendors or customers leaving pallets on sales floor.** (Ringer Dep. 13:8-14, 15:3-8, 17:16-24, 51:22-25)
The nail at issue most probably came from a wooden pallet in Walmart. (Durig Aff., ¶ 5)	**The nail at issue probably did not come from a wooden pallet in Walmart.** (White Dep. 138:21-25)

As shown by the above summary, there is evidence – including the testimony of expert witnesses – to support both sides of the argument. Only the jury can weigh that evidence and

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determine if the nail at issue came out of a pallet that Walmart put on the sales floor. Because there is conflicting evidence on this key issue, summary judgment must be denied.

In addition to the dispute over whether Defendants caused the nail to be present – which is enough standing alone to require denial of summary judgment – there is also a dispute as to whether Defendants should have known of the dangerous condition. Defendant Ringer testified that Defendants have a policy to "do safety sweeps every hour and a half to two hours" and that Defendants "train all of our associates to visually see anything on the floor, to pick it up." (Ringer Dep. 48:12-23).

Here, the Court need not speculate as to whether the nail was on the floor long enough to be spotted during the one of the "every hour and a half to two hours" safety sweeps, because a Walmart employee – allegedly trained "to visually see anything on the floor, [and] to pick it up" – walked right through the subject area ***just one minute*** before Plaintiff stepped on the nail.

Above is a still frame of that employee.[13] Directly to the left of the employee is a wood pallet identified by Defendant Ringer. (Ringer Dep. 64:2-15). The still frame is from video clip #12, which shows "the back side of the grocery action alley." (Ringer Dep. 62:19-24). The

[13] In the video, the employee enters from the bottom of the screen, and walks all the way down Action Alley, disappearing from view at the top of the screen. The videos are submitted on CD as Exhibit H and are incorporated herein in their entirety by reference.

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grocery action alley is ***directly connected*** to the laundry detergent aisle shown in video clip #15. (Ringer Dep. 86:4-14).

The Laundry Aisle is where Plaintiff is shown in video clip #15 pulling a nail from her bloody foot at 11:34 a.m. According to Defendants, the location where Plaintiff is standing is "just a step or two" from the grocery action alley[14] -- the same grocery action alley with the wood pallet that a Walmart employee who was supposed to spot and pick up things like pallet nails had just walked down one minute before.

Based on the above, Plaintiff's counsel asked Defendant Ringer if it would be unusual for a person who stepped on something in the action alley to be seen on video in the laundry aisle looking at their foot. Defendant Ringer replied: "No. It's literally connected." (Ringer Dep. 87:2-10).

In summary, a Walmart employee walks through the subject area just one minute before Plaintiff steps on a nail there. Is it possible that the nail appeared on the floor in the mere seconds between the time the employee passed and when Plaintiff stepped on it? Of course. But it is also a reasonable inference that the nail was already there rather than appearing as if by magic in a matter of seconds. The inference that the nail did not appear in mere seconds is important

[14] Ringer Dep. 86:18-87:1. Ex. F.

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because, in defending this summary judgment motion, Plaintiff is also entitled to "***all*** the inferences that can be reasonably drawn from the evidence." *Huffman v. Sunshine Recycling, LLC*, No. 2016-002080, 2019 WL 1372359, at *3 (S.C. Mar. 27, 2019) (emphasis added). Moreover, Plaintiff is entitled to the evidence and ***all*** the inferences being "viewed in the light most favorable to Plaintiff." *Id.*

After viewing the video clip and the inferences arising from it in the light most favorable to Plaintiff, a jury could easily conclude that Walmart, through its employee, should have known that the nail was on the floor. Because there is a genuine issue of material fact on this issue, summary judgment must be denied.

CONCLUSION

There are two paths to liability – creating the hazard and knowing about the hazard. Evidence of either is sufficient to defeat summary judgment, and Plaintiff has shown evidence as to both. Plaintiff has specifically cited the record showing the existence of genuine issues of material fact as to (a) whether Walmart caused a nail to be present on the store premises where Plaintiff stepped on it, and (b) whether Walmart should have known that the nail was present. Accordingly, Defendants' Motion for Summary Judgment should be denied and this action set for a trial before jury.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC

S/ Lane D. Jefferies
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August 10, 2020

ATTORNEYS FOR THE PLAINTIFF

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State of South Carolina
In Common Pleas Court
County of Florence
Twelfth Judicial Circuit

April Jones,

plaintiff,

V. 2017-CP-21-1375

Tim Ringer, individually and
as employee/agent of
Wal-Mart Stores, Inc. d/b/a
Wal-Mart Store #630,
and Wal-Mart Stores, Inc.,
and Wal-Mart Stores East, L.P.,

defendants.

Deposition of: April Jones

Location: 150 West Evans Street
Florence, South Carolina

Date: Friday, September 28, 2018

Time: 11:03 a.m. - 1:18 p.m.

Court Reporter: Erica Creel

The deposition is taken pursuant to notice and/or agreement, in the above-entitled cause pending in the above-named court and pursuant to the South Carolina Rules of Civil Procedure.

A P P E A R A N C E S

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I N D E X

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E X H I B I T S

pg/ln	ex.	description
DEFENDANT'S		
96/11	1	- photo
96/11	2	- photo

** Uh-huh = Affirmative
Huh-uh = Negative

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S T I P U L A T I O N S

It is stipulated between Counsel that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure; and that all objections, except as to the form of the question, are reserved until the time of trial.

It is also stipulated between Counsel for the respective parties and the deponent that the deponent will waive the right to read and sign this transcript.

THEREUPON,

April Jones,

being first duly sworn by the court reporter, as hereinafter certified, testified as follows:

E X A M I N A T I O N

By Ms. Boyd:

Q Good morning, Ms. Jones.

A Good morning.

Q And we just met a moment ago off record. My name is Nas--- Nashiba Boyd. I'm the attorney for Walmart. And here today about a case that you've brought against the Florence Walmart. Correct?

A Yes.

Q Okay. Have you ever given a deposition

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before?

A No.

Q Okay. So I'm going to go over a couple of ground rules with you. As you know, you were just placed under oath by the court reporter.

A Yes.

Q And while we're not in a courtroom, you have pledged to tell the truth just as if you were in a court of law. Do you understand that?

A Yes. I do.

Q All right. I'm going to ask you a series of questions. That's what a deposition is, an opportunity for me to ask you questions about what happened. So I'm going to ask you quite a bit of questions. I may ask you a question and you anticipate what I'm going to say. Just let me finish my question so that the record reflects what I'm asking you. Okay?

A Yes.

Q And the other thing is, it may get easy for you to just say uh-huh or huh-uh just because we're in a -- we're going in a role. If you'll give verbal answers such as yes or no for the court reporter because she is taking down everything we're saying here today. Okay?

A Yes.

Q And if you forget, I may prompt you by saying something like, did you mean yes or did you mean no? And that's not me being mean to you. That's just me clarifying for the court reporter. Okay?

A Yes.

Q All right. If you have any questions about the question that I'm asking you, you direct those questions to me and not your attorney. Okay?

A Yes.

Q All right. And if you answer the question that I've asked you, I'm going to assume that you understood what I was asking you. Is that fair?

A Yes.

Q Okay. If you need to take a break at any break just let me know. Just say, Ms. Boyd, I need a break and that's fine. You can have as many as you want for as long as you want. Okay?

A Yes.

Q During the break, I ask that you not talk about your testimony with your attorney. Because while normally I can't ask you about what you talked about with your attorney. Since you've

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been sworn under oath today already, I can ask you about those conversations when we are -- come back together. So just avoid talking to him if possible. Okay?

A Yes.

Q All right. Do you have any questions before we begin?

A No, I don't.

Q Okay. Great. And first, let me say Ms. Jones, I understand the grave nature of your injuries that you've alleged here today. And I'm going to ask you a lot of questions about your treatment, your subsequent treatment. And when I ask you questions, possibly, like, and so did it heal or was it okay, I'm not trying to be funny or facetious or mean to you. I'm just trying to get a complete understanding of each treatment you received as we go. Okay? But I do understand the ultimate surgery that you had here. Okay?

A Yes.

Q So I just don't want to appear mean or unsympathetic. I do understand. It's just I'm trying to get a complete record. Okay?

A Yes.

Q All right. I just want to make sure I

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tell you that. All right. Ms. Jones, can you state your name and address for the record, please?

A April Jones, 1410 Trinity Court, Florence, South Carolina 29506.

Q And how long have you lived at that Trinity address?

A Ten years.

Q Who lives there with you at that address?

A My daughter, Brooke Jones. My son, Jason Jones and my daughter's children. Do you need those names too?

Q No. Are they under 18?

A Yes.

Q Okay. No. That's it, your daughter and son, Jason and Brooke?

A Yes.

Q Any other adults?

A No.

Q Okay. And prior to that address, where did you live? Do you remember? Was it in Florence?

A It was in Florence.

Q Okay. So you've lived in Florence county for longer than ten years?

A Yes.

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Q Okay. And what's your date of birth?
A [redacted].
Q And where were you born, Ms. Jones?
A Bridgeton, New Jersey.
Q How did you end up in Florence?
A My sister was here before she passed away.
Q Oh, okay. What year did you come down here?
A 1996.
Q Okay. That's a big difference, huh?
A Yes.
Q Are you married?
A No.
Q Have you ever been married?
A No.
Q Okay. And I know you told me about your daughter, Brooke and your son, Jason. Do you have any other adult children?
A Yes, I do.
Q And what are their -- their names?
A Isaac Jones. Chelsea Riley. And Christian Jones.
Q Are any of your children married?
A Yes.

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Q Just Chelsea?
A Isaac.
Q Isaac's married.
A Uh-huh.
Q And what's his wife's name?
A Shameka Jones.
Q And do you remember what Shameka's maiden name was?
A Williams.
Q Anybody else married?
A No.
Q Do any of your children live in Florence county other than Brooke and Jason?
A Yes.
Q Which ones?
A Isaac Jones.
Q Okay. And so -- and his wife Shameka?
A Yes.
Q Okay. Where do Chelsea and Christian live?
A Chelsea lives in Columbia, South Carolina.
Q Okay.
A And Christian lives in Savannah, Georgia.

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Q Okay. Do you have any other family members in Florence county with a last name other than Jones?
A No. Yes, I do. I'm sorry.
Q All right. It's okay.
A My nephew.
Q Okay. What's your nephew's name?
A Michael Jones.
Q But he is a Jones?
A Yes, he is.
Q Okay. And Chelsea's a Riley. Is that, like, her father's last name?
A Yes.
Q Okay. Is her father in -- in Florence county?
A No.
Q Okay. Do any of your family members work for Walmart?
A No.
Q Okay. Have any of your family members previously filed a claim against Walmart or sued Walmart?
A No.
Q Do you know anyone, whether family or not, who has sued or filed a claim against Walmart?

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A No, I don't.
Q Okay. Now, Ms. Jones, are you currently employed?
A No.
Q Where were you last employed?
A Assurant Group in Florence.
Q And what did you do at Assurant Group?
A Insurance claims.
Q And when was that?
A October 2013.
Q Okay. And why did you stop working there?
A Because I had disability.
Q Okay. And you were a claims adjustor?
A Well, I wasn't a claims adjustor. I more so did -- wrote the claims up and turned them in.
Q So just a claims agent?
A Yes.
Q And what was your salary there? Do you remember?
A I think, 11 dollars an hour.
Q It was a while ago. I understand.
A Yes.
Q And did you graduate high school?

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A No.
Q Did you get a G.E.D. or any type of formalized education?
A No, I didn't.
Q Okay. And so prior to working for Assurant Group, what did you do before then?
A I worked at Sykes.
Q Okay. And what did you do there?
A I did work for Bank of America.
Q What did you do for Bank of America?
A We approved loans. We adjusted payments. We took information, you know, to forward it to -- they had, you know, asked for the loans. Just different things.
Q So, maybe like a customer service role?
A Customer service.
Q Okay. And you mentioned that you stopped working because of disabilities. So have you ever applied for disability benefits through like the social security administration?
A Yes.
Q When was that?
A I believe it was in December of 2013.
Q And what was your disability?
A I had a -- my -- a right nephrectomy.

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Q And that's a kidney removal?
A Yes.
Q Did you get a transplant as well or just a --
A No, I didn't.
Q -- removal? And were you approved after that initial application?
A Yes, I was.
Q Do you remember about when you were approved?
A January of 2014.
Q Okay. And so is your -- you receive disability benefits? Correct?
A Yes.
Q Is that your sole source of income at this time?
A Yes.
Q Other than speak with your lawyer, because I don't want you to tell me about anything like that. Did you do anything to prepare for your deposition today?
A No.
Q Okay. Did you look at any documents in preparation for your deposition today?
A No, I didn't.

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Q Did you discuss your testimony with anyone other than your lawyer, such as a family member or friend?

A No.

Q Ms. Jones, are you currently on any medications?

A Yes.

Q Okay. Which ones?

A I'm on -- I'm on two blood pressure medicines.

Q Okay.

A Nifedipine and Losartan.

Q Just those two blood pressure meds?

A No. I'm on a cholesterol medicine. I can't remember the name right off.

Q Okay.

A And I take pain medication.

Q What type of pain medication do you take?

A I take Oxycodone and I take -- oh, god, I take a nerve medication.

Q Okay.

A I can't remember the name right now.

Q Okay. So we talked about two blood pressure meds, a cholesterol med and two pain meds.

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Do you have any other medication that you take?

A No, ma'am.

Q Okay. How often are you taking the pain medication?

A Well, I actually take it when needed.

Q Okay. And so how often do you normally take it?

A Sometimes four times a day.

Q And this -- is this for pain related to your leg or any other type of pain you have in your body?

A Well, the pain medication they prescribe me for my leg was actually the nerve medication.

Q Uh-huh.

A But that actually don't work without the Oxycodone.

Q Oh, okay.

A It doesn't work.

Q And so, did they prescribe the Oxycodone for your leg or did you already have a prescription or --

A I had the prescription, but they said I can also use it for my leg.

Q Okay. And what did you have the

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prescription for originally?
A Kidney removal and dialysis.
Q Okay. So for pain related to your --
A Yes.
Q -- kidneys? And Ms. Jones, have you ever been arrested?
A Years ago.
Q Okay. Do you remember about when it was?
A No. It's been over 20 years ago.
Q It was over 20 years ago?
A Yes.
Q Do you remember what it was for?
A Fighting.
Q Oh, no, Ms. Jones. Okay. Did that result in a conviction or a plea or it was tossed out?
A No. It was just a misdemeanor.
Q Okay. And have you ever been convicted of anything other than a minor traffic violation?
A No, ma'am.
Q Okay. All right. So we're here to talk about an incident that happened on June 26th, 2016. Correct? Do you remember the date?
A 2015.

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Q Oh, I'm sorry. That's a typo on my behalf. I apologize. I'm sure I have it right somewhere in here. So, 2015. June 26th is the right date though, right?

A Yes, ma'am.

Q Okay. And for purposes going forward, when I refer to accident or incident, I'm talking about this day and your time in Walmart. Okay?

A Yes, ma'am.

Q Okay. Which Walmart did you go into that day?

A The Walmart on Beltline.

Q And had you ever shopped at that Walmart before?

A Yes.

Q About how often?

A Well, I'd say at that particular one, maybe once a month.

Q Okay. Did you frequent another one?

A Yes.

Q Okay. Which one was that?

A Walmart on Irby.

Q Okay. Is that one closer to you, the one on --

A Yes.

Q -- Irby Street? So why did you go to the Beltline Walmart on -- on June 26th, 2015? Do you remember?
A No, I don't.
Q Okay. Had you ever had any complaints about that store prior to this incident?
A No.
Q Do you remember why you went in there? What you were going to purchase?
A Yes, I do.
Q Okay. And what -- what were you going for?
A To purchase some Clorox.
Q Okay. And did you drive there that day?
A Yes, I did.
Q Was anyone with you?
A No, ma'am.
Q Do you remember about what time you arrived at the store?
A No, I don't.
Q How was the weather that day?
A It was pretty hot.
Q Did the store appear to be busy when you arrived on that day?
A Yes.

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Q And what did you do when you first got to the store?
A I walked in.
Q Okay. Did you get a cart?
A Yes.
Q Okay. So you -- you got a cart. And you had your purse?
A Yes, ma'am.
Q Okay. And you placed it in the cart?
A Yes.
Q And then you walked into the store? Correct?
A Yes.
Q What section did you go to?
A I walked in on the food section.
Q Okay. And what type of shoes were you wearing that day?
A Flip flops.
Q And do you remember what kind of flip flops they were?
A They were brown flip flops.
Q Were they rubber? Were they leather?
A They were rubber.
Q Okay. Do you remember if you had them for a long time or if they were new?

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A No. I actually bought them that month.
Q Do you remember where you bought them?
A Walmart.
Q So you bought them sometime in June 2015 at Walmart?
A Yes, ma'am.
Q What size shoe do you wear?
A Eleven.
Q And do you remember if those flip flops were sized or if they were just like general, like large, medium, extra large?
A I don't remember.
Q Okay. Do you remember how much you paid for them?
A No, ma'am.
Q And we -- we asked you to bring the shoes, but your attorney explained to me that you could not locate the shoe. Is that correct?
A Yes, ma'am. That's correct.
Q Okay. Please tell me what happened that day.
A I walked in Walmart and I walked down the center aisle, the aisle that separates the clothing from the food. And as I was walking, I

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heard a metal noise on the bottom of my shoe. So I lift my foot up, I look back and I seen a nail in my shoe. And I went to pull it out my shoe. I pulled it out and I actually walked up some and I threw the nail on the shelf. And so I looked down and blood was in the shoe. And I turned around. I said, oh, god. I turned around and got the nail off the shelf. Grabbed the bleach and I walked back. I went through the self checkout, paid for the bleach. And then I walked over to customer service and asked to speak with a manager.

Q Okay. Can you describe to me what the nail looked like?

A It was rusty.

Q Okay. Was it like a long nail or short nail?

A It wasn't real long.

Q Are you certain it was a nail and not a screw?

A I'm certain it was a nail.

Q Was it -- I know you said it was -- was the entire nail rusty or just parts?

A The entire nail.

Q And your attorney also told me that -- that they have the nail?

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A Yes.
Q Okay. So you no longer have that in your possession?
A Correct.
Q Okay. Do you have any photos of the nail?
A I did, but they erased out my phone.
Q Okay. So you no longer have it. Okay. About how long were you at that store before you noticed the nail in your shoe?
A Not even three minutes. Not even three minutes.
Q Okay. And did you feel pain? You indicated you heard a sound, but did you feel the pain when you stepped on it?
A No. I didn't at the time.
Q At what point did you feel pain?
A Once I took the nail out.
Q And can you describe the pain that you felt?
A It was a throbbing pain.
Q Did you speak with anybody at the store that day?
A Yes, I did.
Q Who did you speak with?

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A I spoke to the manager.
Q Okay. And that was after you discovered the nail. Did you talk to anybody before you discovered the nail in your shoe?
A No, ma'am.
Q And you said that you had noticed the blood in your shoe. Did you see any visible injury to your foot?
A Well, once I went to the front and I sat down, yes.
Q And can you describe the wound to your foot?
A It was just basically a little hole. It -- it was like the nail, excuse me, the nail kind of made a little -- it was like a hole, but then the nail kind of -- I can't explain it.
Q So was it, like, a puncture? So, like, a small -- like something had punctured you?
A No.
Q No. It wasn't a puncture wound? Was it --
A No.
Q -- a hole?
A Yes.
Q Can you give me an example of something

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that was the size of the hole? Like a quarter?

A No. It was smaller than that.

Q A dime?

A It was a little smaller than a dime.

Q Okay. And the nail you stepped on was like a standard size nail or was it -- or was it fat or was it just a normal skinny little nail?

A It was a little thicker than a normal nail.

Q But the hole in your foot was not the same size as the nail?

A No.

Q Okay. Was it larger or smaller?

A It was a little larger.

Q Okay. And you told me that you noticed the nail and then you continue on and -- and purch--- and selected your item. So you continue shopping after you noticed your foot bleeding?

Mr. Jefferies: Object to the form of the question.

Ms. Boyd: Okay. You still have to answer. I'm sorry.

Mr. Jefferies: Yeah. You can go ahead and answer.

Ms. Boyd: So I will rephrase.

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The Deponent: Can --
Ms. Boyd: I will restate it.
The Deponent: Okay.
By Ms. Boyd:
Q After you notice your foot was bleeding, you continue to shop?
Mr. Jefferies: Object to the form of the question.
By Ms. Boyd:
Q Did you continue to shop after you noticed the nail?
Mr. Jefferies: Object to the form of the question.
The Deponent: Yes.
By Ms. Boyd:
Q Okay. And you told me -- at some point you told me, you had placed the nail on the shelf?
A Yes.
Q But you retrieved it off the shelf?
A Yes.
Q Did you notice anything on the -- on the store's floor as you were walking in?
A No.
Q Did you see any Walmart associates working in the area you were in?

A Yes.
Q Did you stop them to tell them about the nail?
A No.
Q Why not?
A It just never occurred to me to tell them.
Q Okay. And so you mentioned to me you talked to a manager. Do you remember his name?
A I don't.
Q Can you describe him for me?
A I want to say he was a little -- about my height.
Q How tall are you?
A I'm 5'5".
Q Okay.
A He might have been, maybe an inch taller.
Q Okay.
A He was a white male. He had short hair.
Q Do you remember the color of his hair?
A No, I don't.
Q Okay. What did you tell the manager?
A I told him that I stepped on a nail in

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his store.

Q Okay. And what did he say?

A At first, he didn't say anything.

Q Okay.

A He just stood there and looked at me.

Q Okay.

A And I asked him was he going to offer me some peroxide or something --

Q Okay.

A -- a paper towel to put -- you know, to dap my feet with.

Q Okay. So you asked for, like, a first aid --

A Yes.

Q -- kit? Okay. Did he give you some first aid, a first aid kit or something?

A He actually said he didn't have a first aid kit. He went and got some peroxide and a roll of paper towels.

Q Okay. And then what happened after he -- and so he went and got those and gave those items to you?

A Yes.

Q All right. And you told me you sat down at some point?

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A Yes.
Q Is that in the customer service area?
A Yes, ma'am.
Q Okay. And did you apply the peroxide and use the paper towels on your foot?
A Yes.
Q Okay. Did -- did the manager offer you any assistance with that?
A As far as what?
Q Like, I don't know, helping you clean off your foot or offering you any aid?
A No.
Q Did he just walk away?
A No. He actually stood there. And then when I was cleaning the wound out and patting it, he kind of stooped down, I guess to act like he was helping me.
Q Okay. And do you know about how long that interaction with the manager lasted?
A Not long.
Q Did you talk to anyone else?
A Yes.
Q Okay.
A He actually told one of his assistants to write me out an accident report.

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Q Okay. Did you get to see the accident report?
A Yes.
Q Did the report look accurate?
A No.
Q Okay. Do you remember what it said?
A I can remember it had about six or eight words on it.
Q Okay. Did you want it to say more?
A Yes.
Q Did you ask to write it yourself?
A No, I didn't.
Q Okay. Okay. What did you think it should say?
A I thought it should have been a little more detailed.
Q Okay. How so?
A As in my name and I stepped on a nail in his store.
Q Okay. So did it have your name on the report?
A Not that I can remember.
Q Okay. And you said it had a few words on it. Do you recall what those words were?
A I know it stated such as I stepped on

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a nail in the store. It might have had my name on it. I'm just not sure --

Q Okay.

A -- in remembering. And it just had I stepped on a nail in their store.

Q Okay. And what additional details would you have added if you could have written it yourself?

A I would have added my name and customer stated that she stepped on a nail in our store and I assisted her, you know, something like that. Or I offered her -- I offered to call her an ambulance or something like that.

Q Okay. Did you ask for an ambulance?

A I didn't.

Q Okay. Did you want them to call you an ambulance?

A It would have been nice.

Q Okay. Well, why didn't you ask for one?

A I mean, at that time, I was frustrated because I waited about 30 minutes to get eight words on a -- on a --

Q Okay.

A -- piece of paper.

Q And during that 30 minute wait, were you

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cleaning your wound or were you just sitting there waiting?

A I was waiting for the report.

Q Do you know whether any Walmart employees knew the nail was on the floor prior to you stepping on it?

A I have no idea.

Q Do you know where the nail came from?

A I assume it came from one of the pallets.

Q But do you have any knowledge that it came from a pallet?

A I don't.

Q Do you know how long the nail had been on the floor before you stepped on it?

A I don't.

Q Other than the statement that the assistant manager completed on your behalf, do you know if any other documents were written up that day?

A I don't.

Q Okay. Did you take any photos of the area where you think you stepped on the nail?

A I didn't.

Q Did you take any video of the area where

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you think you stepped on the nail?

A No, I didn't.

Q Did anyone take any photos of that area on your behalf?

A No.

Q Did anyone make any videos of that area on your behalf?

A Not to my knowledge.

Q Did the store employees look at the nail?

A Yes.

Q And they asked you to -- to hold the nail?

A Yes.

Q And you declined?

A Yes.

Q Why?

A I mean, what's the difference in me holding it and letting them see it then letting them holding it? I didn't understand what would make a difference.

Q Okay. So they were all--- allowed to inspect the nail?

A Yes, they were.

Q Okay. And you told me that the

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paramedics were not called?

A No.

Q Do you know about how long you were in the store that day?

A Altogether?

Q Uh-huh. Yes, ma'am.

A About 40 minutes.

Q And it's your testimony that 30 of those minutes were you waiting for assistance?

A Yes.

Q Is there anything else that you and that manager or the assistant manager talked about that we haven't talked about today?

A No.

Q Do you remember what that assistant -- I know you said she. Was it a female assistant that came and assisted with the report?

A Yes.

Q Do you remember what she looked like?

A She was a black lady. Medium build. That's all I can basically remember.

Q And she just did the report. Did you talk to her other than completing the report?

A No. He actually told her what to write down.

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Q Did you speak to any other Walmart employees that day in the store?
A No.
Q Did you speak with any Walmart employees of that store at any later date about this incident?
A No.
Q Did you speak with anyone else at the store that day regardless of whether they were a Walmart employee?
A No.
Q Did anyone witness you stepping on the nail that day at Walmart?
A No.
Q And what injuries are you claiming as a result of that incident that day in Walmart?
A What injuries?
Q Yes, ma'am.
A In all or --
Q Yes. You can give me everything.
A Well, I basically had -- that day I went to the hospital. They treated me. They cut a hole in my foot about the size of a 50 cent piece. And it was very deep. Then that was on a Friday. I remember that day. Monday, I went to the foot -- I went to a doctor across the street

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from McLeod that looked at my foot and said that it was -- he said that it was, excuse me, he said that I needed to have my big toe cut off.

Q And that was three days later?

A Yes. That was on that Monday. I can't recall if I went into the hospital that day or the next day.

Q We're going to go over your treatment in sequence. I'm just asking you about your general damages, like what all -- what are all the injuries you suffered to date related to your leg, your foot, any other injuries you're claiming. We're going to start broad and then we're going to narrow it down. Okay?

A I don't quite understand what you're saying.

Q So are you claiming that -- I know you're claiming you -- you injured your foot which resulted in an injury to your leg?

A Okay.

Q Are you claiming any other injuries to any other parts of your body as a result of this incident?

A No.

Q Okay. Are you claiming any mental

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health injuries, stress, pain and suffering?

A Yes.

Q Okay. So you're -- both -- to both of those?

A Yes, ma'am.

Q Okay. Anything else?

A No.

Q Okay. And I'll ask you again in case something pops up after we're talking.

A Okay.

Q Okay. All right. While you were in the store with customer service, did you call anybody?

A Yes.

Q Who did you call?

A My daughter.

Q Was that Brooke?

A Yes.

Q What did you tell Brooke?

A I told her to come take me to the hospital.

Q And did she come pick you up?

A Yes.

Q Did she come into the store?

A I believe so.

Q And she took you directly to the

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hospital after the incident?
A Yes.
Q Did you talk to anybody else?
A Yes.
Q Who did you talk to?
A I called my pastor.
Q And what's your pastor's name?
A Joan Deese.
Q I'm sorry. Could you repeat that?
A Joan Deese.
Q Joan Deese?
A Uh-huh.
Q And is that a woman?
A Yes.
Q Okay. And did Ms. Deese also come to give you assistance?
A No.
Q Okay. Do you remember what you told Ms. Deese?
A I can't remember. I know I told her that I stepped on a nail in Walmart.
Q And did she come to the hospital? Did she meet you there?
A No. She didn't meet me there.
Q Okay. You just called her for support?

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A Yes.
Q Anybody else?
A No.
Q All right. And what -- what's the name of your church, Ms. Jones?
A Angels All Around Ministry.
Q And what's your denomination?
A None.
Q And other than Angels All Around Ministries, do you have any affiliation with any other type of church?
A No.
Q Any other type of civic group?
A No.
Q Okay. Did you speak with a Walmart claims agent about your incident at Walmart that day?
A Not that day.
Q Okay. Do you remember when you spoke with them?
A Monday -- that Monday.
Q Okay. So the Monday afterwards. And what did y'all talk about?
A Not much. I basically told them that I was on medication and I wasn't able to really

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talk to them. They can call me back.

Q Did you ever talk to them again?

A I did.

Q Do you remember when that was?

A Basically, a little later on that same day.

Q What did you talk to them about that -- that time?

A Well, they actually called to see if I can tell them what happened. I told them what happened at the store. And that was about it.

Q So you gave a statement to the claims representative?

A I did.

Q Did you give your permission for it to be recorded? Do you recall?

A I did.

Q Did you give a truthful statement to the claims agent that day?

A Yes, I did.

Q Did anyone else speak to that Walmart claims agent on your behalf?

A That day?

Q Yes, ma'am.

A No.

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Q Since that day, did anybody talk to the claims agent on your behalf?

A No.

Q Okay. And I have a snippet of that. I'm just going to verify that this is in fact your recorded interview.

Mr. Jefferies: And is that the recording you produced to us already?

Ms. Boyd: It is.

Mr. Jefferies: All right.

Ms. Boyd: Okay. Here it is. And I apologize. This is a new laptop so I'm still working my way through it. Okay.

(playing of recorded audio)

By Ms. Boyd:

Q And Ms. Jones, was that your voice?

A Yes, it is.

Q Is that the conversation you had recorded with a claims agent?

A Yes, it is.

Q Okay. Did you have any other conversations with that claim adjustor after that day?

A I want to say I did, but I can't remember if I just talked to them or -- well, I

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knew one of my doctors talked to them.

Q Okay. So one of your doctors did talk to them?

A Yes.

Q Do you remember which one?

A Dr. Govindappa.

Q Can you -- do -- do you know name -- the spelling of that?

A G-O-V-I-D-A-P-P-E-R, I believe.

Q Okay. And what type of doctor is Dr. Govindappa?

A He's a kidney doctor.

Q Okay. And do you remember what he talked to them about?

A Yes.

Q What did he talk to them about?

A He told them don't call back.

Q Okay.

A That they'll hear from my lawyer.

Q And was this one day you were talking to them while in his office?

A No. I was actually in the hospital and they kept calling.

Q Did they know you were hospitalized?

A Yes.

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Q And did they call you after that day that he asked them not to call you?
A No, ma'am.
Q Okay. And did you speak to any other Walmart employee or representative that we've not talked about today?
A No, ma'am.
Q Okay. So prior to the incident at Walmart, were you on any medication?
A No, ma'am.
Q So you didn't take any medication for your -- your kidneys at that time?
A No. I don't drive when I'm on the medication.
Q Okay. Did you have any medical conditions at the time of this incident? Like, had you been diagnosed with anything? I know you had -- had your kidney removed. Were you having -- were you seeking active dialysis treatment at that time?
A Yes, I was.
Q Had you had any other type of medical diagnoses at that time?
A No, ma'am.
Q Have you ever been diagnosed with diabetes?

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A Yes.
Q Do you know when you were diagnosed with diabetes?
A Yes. I want to say, probably in 2010.
Q So at the time of this incident, did you have an active diagnosis for diabetes?
A What do you mean by active?
Q Was it cured at that point?
A I won't say that it was cured, but at that time, I was no longer taking medicine for diabetes.
Q Okay. So your diabe--- diabetes was controlled at that point?
A Yes, ma'am.
Q How were you controlling it?
A Basically, it was controlled after they removed my kidney.
Q Were you diagnosed with congestive heart failure at some point?
A In 2013.
Q Were you being treated for that?
A No.
Q Were you diagnosed with renal disease?
A Yes.
Q Were you being treated for that?

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A Yes.
Q And that's the dialysis? Correct?
A Yes.
Q I'm going to go back to the day of the incident. You -- you told me that you went to the emergency room after you left Walmart that day?
A Yes.
Q And that you immediately went there?
A Yes.
Q What did you tell the hospital when you got there?
A I basically told them I stepped on a nail.
Q And you -- you told me that you had pain in your foot. Correct?
A Yes.
Q Did your right foot bleed while you were in Walmart?
A Yes.
Q Did it bleed profusely?
A Yes.
Q Was that bleeding controlled by the time you got to the emergency room?
A Not really.
Q So it was still bleeding when you got

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there?

A Yes.

Q And what did the E.R. do for your foot?

A They basically soaked it. Cleaned it out. The soaked it in some I want to say, Mercurochrome. I'm not sure. And they gave me some antibiotic -- a prescription for antibiotic. And they sent me home.

Q Did they do an x-ray?

A I can't remember.

Q Did they give you a tetanus shot?

A Yes. Yes, they did.

Q Did they -- did you have the nail on you when you went to the emergency room?

A Yes, I did.

Q Did you show the nail to the doctor?

A Yes, I did.

Q Do you know if they took pictures of your foot?

A They did.

Q Do you remember the name of the doctor that saw you in the E.R. that day?

A I don't.

Q And what was your ultimate diagnosis when you left the E.R.?

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A They never really gave me a diagnosis.
Q Did they tell you to return for treatment or seek alternate treatment somewhere?
A Yes.
Q What did they tell you to do?
A They told me to, you know, on Monday come to go to a doctor -- find a doctor.
Q Did you have a primary doctor at that time?
A No, I didn't.
Q Were you insured at that time?
A Yes.
Q Did you have medicare or --
A Yes.
Q -- medicaid? Was it medicare or medicaid?
A Both.
Q Both. And they gave you a prescription for an antibiotic you said?
A Yes.
Q Did you take it?
A Yes.
Q Do you remember what it was?
A I don't.
Q Do you remember how long you took it?

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A No. Because after I went to the doctors on that Monday, they told me to discontinue it.

Q Okay. So you just took it over the weekend?

A Yes.

Q And you went to the doctor on Monday. Where do you -- do you remember the name of the doctor you went to on Monday?

A I can't really -- I can't remember right off.

Q Okay. And that was the doctor that told you to stop taking the antibiotic?

A Yes.

Q Okay. And what else did he tell you?

A He told me that he needed to cut my right toe off.

Q Your large toe?

A Yes.

Q Did he say why?

A He said it was infected.

Q And when you stepped on the nail in Walmart, what -- what part of your foot was punctured?

A It was towards the -- it was like in

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the middle, but kind of towards the back. It was like in the middle of the foot.

Q Okay.

A Uh-huh.

Q So, in the middle of the foot? So is that kind of where your arch is, in that area?

A A little bit further back.

Q Further back towards your heel? I'm going to pull my foot out because I'm a visual person. I'm sorry. Sorry. And then -- this is my feet according -- sorry. So this is my foot. So are you saying it was here?

A Maybe a little bit up.

Q Here?

A Right there.

Q So right here. It kind of -- right below the arch? Right below the arch? Yes?

A I guess so. I don't have a arch, though.

Q Oh, okay. You've got a flat foot?

A Right.

Q So like, right below --

A Yeah.

Q -- slightly below the center --

A Yes.

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Q -- of your foot?
A Yes.
Q Yes? And three days later, your large toe was infected?
A Yes.
Q Was the area in between the -- the wound and your toe also infected?
A No.
Q So it was just the toe?
A Yes.
Q Had the toe been punctured by the nail?
A No.
Q Did he indicate to you why the toe was infected?
A Well, he said being so I had diabetes and that kind of lead in on to that.
Q Oh, for the toe to be infected?
A Yes.
Q So was the infected toe related to the wound?
A Yes.
Q Okay. And what kind of treatment did you receive that day? Do you remember?
A I actually didn't receive any treatment. He was -- I was -- I was -- believe

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that day I was taken over to the hospital.
Q Okay.
A Yeah. That day right after I left his office.
Q And then what -- what -- did you get any treatment at the hospital?
A I can't remember.
Q Okay. Do you recall them doing a -- a debridement of the wound or cleaning it out?
A Yes. They did that.
Q Okay. Was that at the hospital or in the doctor's office?
A At the hospital.
Q Okay. Did they do anything to your toe?
A No.
Q Okay. Did they give you any antibiotics for the infection in your toe?
A I believe so through a I.V.
Q Okay. So, I.V.?
A Uh-huh.
Q And while you're at the hospital, I -- I looked at your medical records in this. It indicated that a doctor suggested you have a vascular study. Do you know if you had that done?
A Uh-huh.

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Q And do you remember what they found?
A I don't.
Q Okay. And do you ever recall being told that you had poor flow to your extremities?
A No.
Q Okay. Prior to the incident at Walmart, had you ever had any blood flow issues?
A No.
Q After the de--- debridement or debridement of your wound, did you heal at that point?
A No.
Q Okay. Did you have any other treatment done to that wound?
A Yes. Within a few days, he came back and told me he needed to cut one, maybe two more toes off.
Q Okay. And you said more. So on that Monday, which was -- would have been the 29th of June -- so that's three days later. Did they cut off that toe that he wanted to cut off? Do you remember?
A I'm having a loss.
Q It's okay. It's okay. I don't have any record if they cut the toe that day. Do you believe

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that they cut a toe that day?

A I can't remember.

Q Okay. So you came back later and they told you they wanted to cut other toes. And that's what you mean by more?

A Yes.

Q Okay. Was that in addition to or they no longer wanted to cut the big toe? Or they wanted to cut all of them? Do you recall if they wanted to cut your big toe and these additional toes?

A No. The big toe was already off.

Q Okay. Do you remember when your big toe was amputated?

A I want to say, but not certain that when he put me in the hospital that time --

Q Okay.

A -- the big toe was amputated.

Q So on the 29th?

A I'm not sure what day.

Q Okay. And then later, you had additional toes amputated?

A A few -- a few more days later. He came back and told me he wanted to cut one, maybe two more toes. And I refused.

Q Okay.

A So I kind of left there. I left McLeod Hospital. And I got out of there. And I went to Carolinas Hospital in another day or so.

Q Okay. But you had the initial toe amputation done at McLeod?

A Yes.

Q Okay. And so the records that I have, and again, I'm just going by the records and the dates may not be right --

A Okay.

Q -- so I'm just going by what I have. I have that your -- you had your toe amputated on or about 07/14/15. About two weeks after the incident at Walmart.

A Maybe that's so. I'm not sure.

Q Okay. Do you recall being told that your -- your toe was mummified?

A What is mummified?

Q Like, it had completely shriveled down, there was no tissue, it was just skin and bone?

A No. They didn't tell me that. I can't recall.

Q Okay. Had you ever had blisters on your foot before the incident at Walmart?

A No.

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Q Do you recall being told that you had a vascular disease in your extremities, in your arms and legs?

A No.

Q Okay. In a few days after the 07/14 amputation, do you recall having a surgery to repair the flow of your blood in your legs?

A I don't.

Q Okay. It was called a femoral endarterectomy, where they fixed your arteries to make your blood flow, to get a clot -- blood clots out. Does that sound familiar?

A So they said I had blood clots?

Q Uh-huh. You had clots in your femoral arteries.

A No. They never told me that.

Q Okay. Do you remember them telling you they needed to restore blood flow to your foot?

A No, I don't.

Q Okay.

A That was McLeod?

Q Yes, ma'am.

A Oh, no. I didn't.

Q Okay. Do you recall whether the heel where your toes were amputated, do you -- do you

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recall if that wound healed? Like, once they were amputated, did the wound ever heal?

A To my toe?

Q Uh-huh. When they amputated your toe?

A I can't recall.

Q Okay. And so then, you told me that you remember like declining some treatment at McLeod and went to Carolinas Hospital. Yes?

A Yes.

Q Okay. And what kind of treatment did you get at Carolinas Hospital? Do you remember?

A Carolinas, basically just kept my foot clean and -- they basically just kept it clean.

Q Okay. Do you remember them ever making a recommendation that you have am--- your -- half of your foot amputated?

A Yes. I do remember that.

Q Okay. And you declined that. Correct?

A Yes, I did.

Q All right. And did you leave after you -- you declined that surgery?

A I did. Yes, I did.

Q Okay. And where did you go? Did you get some alternate treatment after you left Carolinas?

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A I actually went home.
Q Okay.
A And at the time, I had a nurse that would come in every day --
Q Okay.
A -- and clean my foot.
Q So a home health nurse?
A Yes, ma'am.
Q Do you know the name of the company?
A I don't, but her name was Ms. Mary. I can't recall the company's name.
Q Okay. And she came in and -- and kept your foot clean?
A Yes.
Q Okay. And do you remember how long you saw Ms. Mary?
A I saw Ms. Mary up until after they cut my leg off.
Q Okay. So you -- you saw her for quite some time?
A Yes.
Q She continued to be your home health -- did you ever go back to Carolinas Hospital?
A No.
Q So you never sought any additional

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treatment there?

A No. I actually was seeing a doctor that was affiliated with Carolinas. I can't remember his name right off. My memory is not good for remembering what went on too much. But I saw him for a while.

Q Okay.

A And once I -- excuse me. Once I left Carolinas Hospital, I no longer saw him.

Q Do you remember what kind of doctor he was?

A He was a foot doctor.

Q So a podiatrist?

A Yes.

Q Okay. And at some point, did you have your forefoot, the -- the -- the front part of your foot amputated?

A No.

Q You didn't? Okay. Did you have any other amputations between the toes and your above the knee amputation?

A No, ma'am.

Q Okay.

A Not that I can remember, no.

Q Okay. Do you remember being treated at

the wound care center?

A Yes. That's where the doctor was at.

Q Oh, okay.

A The wound care center.

Q Okay. So you saw --

A At Carolinas.

Q Do you remember how long you had -- you were treated at the wound care center?

A I think for a few months.

Q Okay. Do you recall whether your wound ever healed while you were being treated there?

A It was healing good for a while.

Q Then what happened?

A Then one day, I woke up and my foot was black.

Q Your entire foot?

A Yes.

Q Do you remember about when that was?

A I don't.

Q Okay. And then, does February 2016 sound about right? Some time in that time is when you began to have problems again?

A Yes.

Q Okay. Did you return to the hospital when --

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A McLeod.
Q You went to McLeod? Do you remember what they told you about your -- about your foot?
A Yeah. They said it had turned into gangrene.
Q And prior to your wound turning to gangrene, were you still being treated at the wound center?
A Once I left Carolinas, I no longer got treated at the wound center.
Q Okay. Do you remember when your treatment at the wound center ended?
A When I left Carolinas.
Q And you don't know about when that was?
A No.
Q Okay. So there was a time between you getting the wound -- the treatment at the wound center and when you woke up and your foot was black? There was some time between that period?
A Not much time. Not much, but during that I still had my nurse and she was still getting orders from wound care.
Q Okay. So your home healthcare nurse --
A Yes.
Q -- was still coming? And she hadn't

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noticed the onset of the gangrene before it turned completely black?

A It -- one day it was brown, the next day it was black when I woke up. So when I called her and she came, she agreed that I needed to go to the emergency room as soon as possible.

Q Okay. Was Ms. Mary coming to see you every day?

A Every day.

Q And when you went to the hospital, do you remember what they told you about the gangrene and what was going to have to happen to your leg?

A They said that they was going to have to amputate my leg.

Q Okay. Do you remember them telling you, you had an artery disease in your legs?

A No.

Q Something called P.A.D.? Okay. So they -- they told you, you were going to have the above the knee amputation?

A Yes.

Q And did you go ahead and have it at that time?

A Yes.

Q Okay. After the above the knee

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amputation, did you continue to have wounds on your leg, on your -- the remaining portion of your leg? Did you have wounds there?

A Where they cut it at, yes.

Q Uh-huh. Did it heal at any point?

A Yes.

Q Okay. Do you remember about how long it took to heal after the amputation?

A I don't remember.

Q How long were you hospitalized after the amputation?

A Well, I stayed in the hospital a week and then I went to rehab.

Q It was an inpatient rehab?

A Yes.

Q Where was that?

A HealthSouth.

Q And how long did you stay at HealthSouth?

A About three weeks to a month.

Q And did you have any kind of physical therapy while you were at HealthSouth?

A Yes.

Q What about occupational therapy?

A Yes.

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Q Did you continue to experience pain in that leg?
A Yes.
Q What kind of pain did you -- did you have after the amputation?
A I had different kinds of pains. I had phantom pains. I had throbbing pains.
Q Do you still have those pains?
A Yes, I do.
Q And the leg that was the amputated was your right leg. Correct?
A Yes.
Q Have you ever had blisters or ulcers on your left foot?
A No.
Q Did you have any surgeries that were recommended since your amputation that you have not had? Have they said you needed additional surgery on your leg?
A No.
Q Okay. Between the time where you were injured at Walmart and your leg being amputated, did you ever visit any urgent care facilities, like a doctor's care or --
A No.

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Q Prior to the incident at Walmart, did you go to any urgent care facilities?
A What, before?
Q Uh-huh. Before the incident?
A Yes.
Q Do you remember which ones you attended?
A I don't.
Q Okay. Do you remember who your primary doctors were before the incident at Walmart?
A I didn't have a primary doctor.
Q Other than the wound care doctor, have you ever seen any other podiatrist?
A No.
Q Have you ever seen an infectious disease doctor?
A No.
Q Have you ever seen a cardiologist?
A A cardiologist. I seen one at McLeod.
Q While you were hospitalized?
A Yeah. He came up there.
Q So had you ever seen him in his office for any outpatient, non inpatient?
A Yeah. I went to his office.
Q Oh, okay. Do you remember his name?
A Oh, God. I can't remember, but he

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done moved from McLeod.

Q Do you know where he is now?

A I think he's in Marion.

Q Who's Dr. Locklear?

A I don't know.

Q He was referenced in your records. You don't know who a Dr. Locklear is?

A No, I don't.

Q Have you ever been a patient of Hope Health Clinic?

A Yes.

Q Okay. When did you go to the Hope Health Clinic?

A The last time I've been to Hope Health was in 2013.

Q Do you know who you saw over there?

A I saw a lady doctor. I'm not sure of her name.

Q What kind of medical services do they provide over at Hope Health Clinic?

A They're just regular physicians as far as I know.

Q So like, primary health doctors?

A Yes.

Q Is that where you were seeking your

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primary health at that time?

A Yes.

Q And we talked ext--- extensively about the fact that you had a kidney doctor.

A Yes.

Q And -- and you also sought treatment at Carolinas Hospital and McLeod Hospital?

A Yes.

Q We mentioned the -- the doctor with the very weird name.

A Dr. Govindappa.

Q Yes. Are there any other doctors that you saw for your treatment that we've not talked about that you recall?

A Not that I recall.

Q Okay.

A Now, at my kidney doctor, it's quite a few in there.

Q Okay. You have several different doctors in there?

A It's different ones. And they let you see different ones at times.

Q What's the name of the practice?

A It's called Pee Dee Nephrology.

Q How often do you go to the nephrologist?

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A Well, now I don't go because they send them over to dialysis.

Q Okay. Send them to the dialysis?

A And not unless I desperately need to go in the office.

Q Okay. Prior to the incident at Walmart, how often were you going to the nephrologist? Do you remember?

A Probably sometimes once or twice a month.

Q Are there any other providers or places that you sought for your incident at Walmart that we've not discussed today?

A Well, I went to -- I went to the limb doctor. I can't remember the name of his office.

Q The limb doctor?

A Yeah. That do the prosthesis.

Q Oh, okay. And when -- do you have a prosthesis?

A I don't.

Q Did you go for a consult?

A I did.

Q Do you remember when that was?

A That was in 2016. I was felt in, I believe May of 2016.

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Q Okay. And you decided not to go with the pros---

A No. What it is, is basically I'm having a hard time getting my leg to shrink. They want it to shrink a certain size. With me gaining weight and not being able to walk, it's kind of hard.

Q Oh, okay. And so for the last ten year period, you saw your nephrologist. You went to dialysis. You went to several emergency rooms and you saw a prosthetic doctor. Anybody else you've seen for any type of medical treatment that we've not talked about in the last ten years?

A Not that I can remember.

Q Okay. And so at the onset I asked you about your injuries and damages as a result. And we've talked pretty extensively about your leg. You mentioned that you had some other mental issues and stress. Have you gone to see anybody about that?

A No.

Q Okay. Have you talked any kind of counselor, not a doctor, just like a private counselor about it?

A No.

Q Your pastor?

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A Yes.
Q Okay. Anybody else?
A No.
Q Are you under the care of a pain center?
A Yes.
Q What's the name of the pain center you go to?
A It's called First Choice Pain Center.
Q How long have you been going to the pain center?
A I think since November.
Q Of 2017?
A No, 2018.
Q Twenty-eight--- oh, it's -- it's not --
A No --
Q -- '18.
A -- well 2017. I'm sorry.
Q It's okay. It's okay. And what are you being treated for at the pain center?
A Well, basically for my leg and stuff you know.
Q They regulate your Oxycodone and the nerve pain?
A Yes.
Q The -- the pain medicine? Other than

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the oral medication, do you get any other type of pain medicine there?

A No.

Q How often do you see the pain doctor?

A Once a month.

Q Are you still seeing any doctors other than the pain doctor related to your leg?

A No.

Q Related to any other injuries you had since the incident at Walmart?

A No, ma'am.

Q Do you remember the last time you received treatment because of the incident at Walmart?

A I don't recall.

Q Okay. That's fair. Prior to the incident at Walmart, did you take -- did you have a prescription or take pain medicine?

A Yes.

Q Okay. What pain medicine were you on before?

A Oxycodone.

Q And why were you on Oxycodone?

A For my kidney.

Q And I'm sorry, I think you told me that.

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A That's okay.
Q I'm just following some questions. I -- I do now recall that. I apologize. And you told me you didn't take the pain medicine and drive. So you hadn't taken any on that day?
A No, ma'am.
Q Have your -- has your pain medicine been increased since the incident at Walmart?
A No.
Q Where do you get your prescriptions filled?
A I get it mainly filled now at Walgreen's.
Q Have you been getting it filled there for the last five years?
A No.
Q Where did you get it filled?
A I was getting it filled at Rite Aid, sometimes at C.V.S.
Q Rite Aid, C.V.S., Walgreen's, that's about it?
A Uh-huh. And I think a couple of times at Walmart.
Q Okay. And I apologize in advance for this insensitive question, but I really do need the

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answer. What are your limitations as a result of this incident at Walmart?

A What do you mean? Things I can't do?

Q Yes, ma'am. I'm sorry. Do you need a Kleenex, Ms. Jones?

A Uh-huh.

Q Okay.

(off the record.)

By Ms. Boyd:

Q All right. So Ms. Jones, I had asked you what -- just to briefly describe some of the things you can't do anymore.

A Well, I can't get into any of my bedrooms at home. I can't play with my grandchildren. There's a lot of places that I used to go that I really can't go to now and enjoy it. So there's no need in going. A lot of church activities I can't go to that I used to go to.

Q Is it because of your -- your -- it's restricted because of your wheelchair or just because you don't have a desire because --

A Because of my --

Q -- you're sad?

A -- wheelchair. I can't clean my house the way I want to, the way it needs to be cleaned.

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Q Anything else you want to tell me about?
A Well, basically a lot of things that I did, I can't do. And it's like my life now depends on people and they don't have the patience. I was supposed to actually go to Disney World with my grandson with Make-a-Wish on October the 6th, but I won't be going.
Q Why not?
A Well, basically that requires a lot of people pushing me and I need an electric wheelchair and I don't have one. It's kind of hard getting one.
Q Because of costs or a lot of hoops to jump through?
A Basically, if I feel it would more, like, lessen the fun for everybody else and I don't want that.
Q Anything else you want to tell me about?
A No, that's it.
Q Okay. Prior to June 26th, the incident at Walmart, do you remember the last time you had gone to the doctor?
A Probably beginning of that month. I'm not sure.
Q And would that have been dialysis or

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with your --

A It would have been to the regular doctors too -- nephrologist.

Q You said neurologist or nephrologist?

A Nephrologist.

Q Prior to the incident at Walmart, did you routinely check your glucose level?

A No. They checked it at dialysis.

Q Did you have a glucometer?

A No, I don't.

Q And I think you told me that prior to the incident at Walmart, your diabetes was controlled. Correct?

A Correct.

Q Prior to the incident at Walmart, had you ever been diagnosed with diabetic neuropathy?

A No.

Q Prior to the incident at Walmart, had your nephrologist or the doctors at dialysis ever discussed proper foot care with you?

A Yes.

Q Do you remember what they told you?

A Well, basically to keep your foot clean. Don't put lotion between your toes. Keep a clean floor. Make sure you don't step on

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anything that you shouldn't step on. And do a lot of walking.

Q Did they also tell you to check your feet for blisters and ulcers?

A Yes.

Q Did you?

A Yes.

Q How often did you check your feet?

A I check my feet every time I take a bath.

Q And what was your normal every day, like, skin routine for your feet? Do you remember?

A My skin?

Q Yes. How would you check your feet? What was the process you -- you said when you took a bath. Was --

A Yes.

Q -- it in the shower?

A Well, when I got out, I'm going to automatically lotion and stuff. So I check and I watch everything.

Q Had your doctor or -- or his staff ever told you to wear diabetic shoes?

A No.

Q Did they ever tell you the importance of

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wearing socks and shoes?

A Yes.

Q What did they tell you?

A Well, they told me to wear loose fitting socks. And that I could basically buy the diabetic, you know, socks for the diabetic people. No tight shoes.

Q Did they tell you not to wear sandals and flip flops?

A No.

Q Had you ever had a diabetic ulcer on either of your feet prior to the incident at Walmart?

A No.

Q And where did you get your dialysis treatment?

A Church Street dialysis.

Q Is -- do you still go there?

A Yes.

Q How often did you go to dialysis?

A Three times a week.

Q Before the incident at Walmart, you were going three times per week?

A Yes.

Q Did you go every time?

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A As much as possible.
Q What would have kept you from going?
A Being sick.
Q Do you remember going the week of your incident at Walmart?
A I can't recall.
Q Prior to the incident at Walmart, had you experienced any leg weakness or pain?
A No.
Q Prior to the incident at Walmart, had you experienced any recent infections?
A No.
Q Have you ever been treated for any mental health condition, such as depression?
A No.
Q Anxiety?
A No.
Q Bipolar --
A No.
Q -- disorder? Did you experience any accidents within the five years prior to your incident at Walmart? So, like --
A No.
Q -- car accident, any falls?
A No.

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Q Since the incident at Walmart, have you been in any type of accident, like a car accident or --

A No.

Q Have you experienced any other type of accident since your incident at Walmart?

A Other than falls, no.

Q Have you suffered a lot of falls?

A Yes.

Q Is that because of your amputated --

A Yes.

Q -- leg? Are you making any type of claim for lost wages?

A No.

Q Do you have any other prior claims or litigation because of personal injury claims or --

A No.

Q -- accidents? Have you ever submitted a claim for worker's comp or any other type of work related accident?

A No.

Q Have you ever been diagnosed with alcoholism?

A No.

Q Treated for alcohol abuse?

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A No.
Q Ever been diagnosed with any type of substance abuse problem?
A No.
Q Has a medical provider ever refused to give you pain medicine?
A Yes.
Q Why?
A I don't know.
Mr. Jefferies: Object to the form of the question. But you can answer.
The Deponent: I don't know.
By Ms. Boyd:
Q Okay. Do you know what provider it was?
A Yes.
Q Who was it?
A My nephrologist.
Q When did -- did that happen?
A When he referred me to the pain center.
Q So prior to that time before your referral to the pain center, he was giving you pain medication?
A Yes.
Q Have you ever been dismissed from a

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medical practice or had a doctor refuse to see you for any reason?

A No.

Q Have you ever been employed by Walmart?

A No.

Q We submitted a list of questions to your attorney about your incident, about your damages and who you've seen. They're called interrogatories and requests for productions. And your attorney gave us some responses. Let me show them to you. There are the ones they sent us. Let me just straighten -- have you ever seen these, Ms. Jones?

A No, I never seen this.

Q Okay. Are these people, family members who have information about your injuries related to your incident at Walmart?

A Yes.

Q So this information you would have provided to your attorney?

A Yes.

Q Okay. Other than these people listed on these two pages, do you know any other individuals who may have information about your injuries at Walmart that day?

A No.

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Q Okay. Any of your doctors, your physicians? Do you recall telling your attorney you were in a car accident in 2000 -- the year 2000?

A Yes.

Q Okay. All right. So we're going to go through this. Doctors, these are the doctors at Carolinas Hospital System that you saw. And I'm not saying that this is based in your medical records. Kenneth Burns. Oh, God. Pitiranggon --

A Uh-huh.

Q -- Stonecreek -- crock.

A I don't know him.

Q But if they're in your medical records they more than likely treated you for something?

A Right.

Q Is anybody, in addition to this list, that you saw at Carolinas Hospital System --

A No.

Q -- that you're aware of? What about at McLeod Medical -- Regional Medical Center, anybody in addition to these providers that you remember seeing that aren't listed?

A No.

Q Okay. Anybody in addition at Pee Dee Surgical Group?

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A No.
Q And is the home health company -- visiting nurse services that's --
A Yes.
Q And that's Ms. Mary?
A Yes.
Q And also, did you see Jonathan Jackson Meekins?
A I don't remember Jonathan Jackson.
Q Just Ms. Mary?
A Uh-huh.
Q Was there any other medical providers that we -- we didn't go over here that you recall offhand, being treated by?
A No.
Q Okay. And Dr. Wetner is pain -- the pain doctor?
A Yes.
Q And Doctor -- how do you say his name?
A Magsood.
Q Magsood, that's your nephrologist --
A Yes.
Q -- or the main one?
A Yes.
Q But you also see other doctors in Pee

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Dee Nephrology you told me today?

A Yes.

Q Okay. Anybody else that we have not talked about that --

A No.

Q -- you recall being treated by?

A No.

Q Okay. And prior to your incident at Walmart, you were diagnosed with hypertension?

A Yes.

Q Type-two diabetes? End stage renal disease?

A Yes.

Q All of these things are true and accurate? I'm sorry, I -- I don't read them all. Anything not true?

A Well, I see some new ones on there that I wasn't aware of, but if they say so.

Q So which ones do you don't recall being --

A The ventricular.

Q Oh. Okay.

A And --

Q Anything else?

A And that's about it.

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Q Okay. But everything else, you -- you know -- you're aware that you were diagnosed with?

A Yes.

Q Okay. And I know we've been here for a while so I'm going to try to wrap it up. I just want just to make sure I go over everything with you.

A Okay.

Q Okay. I have videos of you walking through the store that day. I just want you to identify yourself.

A Okay.

Q Make sure that who I think it is, is --

A Uh-huh.

Q -- also in fact who it is. And these were the videos that we already provided to you. And I'll pull it up on the computer so you can see. And is that you, Ms. Jones?

A Yes, it is.

Q Are you wearing a white tank top?

A Yes.

Q And some -- I can't tell what color, they're culotte pants.

A Green.

Q Green culotte pants?

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A Yes.
Q All right. That's you entering the store that day. Correct?
A Yes.
Q Okay. And that's you walking on in?
A Right.
Q All right. I promise you're coming. And is that you walking with a cart in the top of the screen?
A Yes.
Q Yes. And did you go in the produce section?
A No.
Q Let me jump all the way down here to 13. You're going to be over here. And is that you right there in the produce section?
A Yeah, that's me.
Q Okay.
A I can't even remember walking --
Q It's okay. I'm kind of tracking you in time sequence. That's why I'm jumping around. Do you see --
A Okay.
Q -- yourself right here?
A Yes.

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Q And you exited produce and you're walking down the action alley?
A Yes.
Q Okay. Do you see yourself stopping?
A Uh-huh.
Q Is this when you first heard the metal, you say?
A I believe so.
Q Okay. And I'm going to give you another view of that. It's around 11:32:39. And this time it's a different angle from further to back of the store so you're all the way at the top here. I know it's kind of hard to see you. But you're a little speck. You're going to come forward. You're right there. It's kind of like you're bending to the side. This isn't a really good view. And maybe when you come on a little further you can see. Do you know who those people are?
A Huh-uh.
Q Do you remember talking to two people in the store?
A I don't.
Q Do you recall seeing this associate walk past you?
A I don't.

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Q Do you have any reason to believe that that's not you?
A No.
Q Okay. I'm going to show you a different angle. Is that you right there?
A Yes.
Q Did you pull the nail out at this point after you already turned the aisle?
A On that aisle, I pulled it out.
Q Oh, okay. Can you see that you're standing there talking to those two people?
A I see me standing there, but I don't remember talking to them.
Q Okay. Let me show you another angle. And this one is an hour early. So I'm going to jump ahead a little bit. Okay. Because this was a whole hour for some reason that, you know, saved earlier. So I'm going to jump to the -- closer to the time. Do you see that's your hair right there? Did you see -- did you see yourself?
A Uh-huh. I do.
Q Can you see you're standing there talking to somebody? The two people that were standing on the aisle with you, you don't recall who those people were? So you have no memory of

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standing there having a conversation --

A I don't.

Q -- with people for about a minute?

A No. I see me talking, but I -- I don't even remember that.

Q Okay. Is this when you pulled the nail, actually pulled it out?

A No. I pulled the nail out on the regular aisle.

Q Okay.

A That's me throwing the nail up there.

Q Okay. And you said you saw that your foot was bleeding at this point?

A Uh-huh.

Q Okay. And that appears to be you selecting bleach. Correct?

A Correct.

Q And at this point, you had already pulled the nail out of your foot?

A Yes.

Q And that was you retrieving it?

A Getting the nail back.

Q Okay. Why did you throw it away initially?

A Because I didn't know it was in my

foot and I was just, like, oh, well.

Q Okay. And at this point in time, your foot was bleeding profusely?

A Uh-huh.

Court Reporter: Is that a yes?

The Deponent: Yes.

By Ms. Boyd:

Q I'm going to show you video 13. But you told me you went to the self checkout?

A Yes.

Q That's not the right one. Sorry. There must be a 14. Me and my typos today. And that's you at the self checkout. Correct?

A Yes.

Q Had you put anything on your foot like a bandage or a paper towel?

A No. Not at that point.

Q Do you see any blood on the floor near where you're standing?

A No. It wasn't on the floor.

Q And you told me the hole was the size of a -- of a small -- little smaller than a dime?

A Yes.

Q And it was bleeding profusely at this point in time?

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A Uh-huh.
Q Okay.
Court Reporter: Is that a yes?
The Deponent: Yes. I'm sorry.
Court Reporter: That's okay.
By Ms. Boyd:
Q And then you went up to the customer service desk?
A Yes.
Q Did you leave a trail of blood anywhere?
A No. The blood was inside the flip flop.
Q Okay. Do you recall talking to that male associate right there --
A Yes.
Q -- that African American male? Is that the manager that you were talking --
A No.
Q -- about?
A He's not the manager.
Q Did you tell him that you had stepped on --
A That I -- yeah.
Q -- the nail?
A And I needed to see the manager.

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Q Okay. And this man right here, that -- that white male --

A Yes.

Q -- in the blue shirt, is the one you're talking --

A That's the manager.

Q -- about?

A Yes. Sorry.

Q It's okay. Prior to talking to you I, know you told he had you waiting. Did you see that he was helping another customer before walking over to you?

A No. I didn't see that.

Q Okay. I'm going to just run this back a little bit. Do you see him over here talking to this other customer?

A I see him now.

Q Okay.

A But I had no idea he was the manager.

Q Oh, okay. I'm going to fast forward us back to him talking to you. Are you're showing him your injury to your foot at that time?

A Yes.

Q Did she bring over the first aid kit?

A No, that's not a first aid kit.

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Q What is it?
A That's not a first aid kit.
Q It's some kind of white box.
A They never brought --
Mr. Jefferies: Object to the form of the question.
By Ms. Boyd:
Q Okay. Do you know what that was?
A No, I don't.
Q Okay. Do you know what he was doing? Do you remember what he was looking for?
A No, I don't.
Q Okay. It looks like it was somebody's last day of work or something. Is that the assistant manager that brought the form, that African American lady that just walked to the back? Do you recall?
A I'm not sure. I didn't really see her.
Q Oh. I'm sorry, I'm just trying to identify people. And you told me it took quite some time so I'm going to make us --
A Uh-huh.
Q -- go faster so that way -- and is this the point he gives you the peroxide and the --

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A No. That's the point, when I told him he can give me --

Q Okay.

A -- something for my foot.

Q Okay. Is this when he's giving it to you at this point?

A Uh-huh. That looks like it.

Q Okay. Now, had she filled out the form at this point or no?

A No.

Q Okay. Does she ever come to talk to you?

A Yeah. She came and asked me for the nail. He's wiping up the blood.

Q And you're cleaning the wound on your foot?

A Yes.

Q Did you ever wrap your foot up or any way to keep it from bleeding or did it just stop?

A I'm not sure. I believe I put some paper towels on the bottom of it.

Q And do you remember if your daughter came in and met you in the customer service area or outside?

A I'm not sure.

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Q Okay.
A I can't remember.
Q Okay. I just wanted to identify the -- the manager. All right. And this is you exiting the store?
A Uh-huh.
Q Do you -- do you think your foot is wrapped up at this point? Can you tell?
A I believe I've got a paper towel --
Q Just inside --
A -- between the foot and the flip flop.
Q Okay. And -- and your daughter wasn't with you in that video?
A No.
Q Okay. And that's you walking out to the parking lot. Correct?
A Uh-huh. Yes.
Q So your -- your daughter didn't meet you in the store?
A She -- evidently she didn't.
Q Okay. And that's just you leaving the store that day?
A Yes. But she's out there.
Q Oh, okay. And so y'all -- did she drive you or did y'all just both go there? Do you recall

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if you drove? If you left to take your car with you?

A I believe I drove.

Q Okay.

A And she followed me.

Q Okay. But you don't recall leaving your car at Walmart and having to go back and get it --

A No.

Q -- or anything like that? Okay. I mean, I can fast forward and see -- I don't know if they showed you backing out or anything. I believe it just shows you --

A But I know she would --

Q -- driving off.

A -- be coming from this way.

Q Yeah. That's you in your car.

A That's me. And she will be coming from the other end.

Q Oh, okay. You did a complete U, huh? All right. And that's you exiting --

A Yeah.

Q -- the parking lot that day? Did you take -- you -- I think you told me you didn't take any photos that day?

A I took photos inside of the store.

Q You did take photos inside of the store?
A I did.
Q When did you take photos inside the store?
A Right over -- right over there at -- where I was sitting at, I took pictures of my foot, the blood and all of that.
Q Oh, you took pictures of your foot? Did you --
A Uh-huh.
Q -- take pictures of the store itself?
A No, I didn't.
Q Oh, okay. And you said that you no longer have those photos?
A No. I don't have them.
Q Okay. Did you turn them over to your attorney before you got rid of them?
A I gave him copies of it in here. I let him -- I transferred it to his phone.
Q Okay. So your attorney would have copies of your --
A He should have them.
Q Okay. But did you take any photos inside of the store of the -- of anything in the store?

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A No.
Q Okay. Have --
A Here's the sign Walmart, up under the customer service.
Q Oh, okay. Have you ever seen this photo before? This is a photo I got from your attorney.
A No. I didn't see that.
Q And that's where I got it, from y'all.
Court Reporter: Do you want to mark it?
Ms. Boyd: Uh-huh. Mark hers.
(Defendant's exhibits numbers 1 and 2 marked for identification.)
By Ms. Boyd:
Q So you didn't take this picture?
A Not that I recall.
Q Do you have any idea what this is a picture of?
A It's looks like a picture of -- of the what you call them, the -- what do you call it?
Q A pallet?
A Yeah. A picture of a pallet.
Q Did you -- you didn't take this picture on the day of your incident did you?
A I can't remember. If I did, I don't remember.

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Q You don't remember. Do you remember where this pallet -- where it may have been in the store?

A The only thing I could think of is the middle aisle that I walked down.

Q Okay. But this specific pallet, do you have a recall -- a recollection of it being in that aisle that day?

A I don't remember.

Q Okay. What about this picture? Did you take this picture?

A Not that I remember.

Q Okay. And do you have a recollection of this blue pallet being in that aisle that day?

A I can't remember.

Q Okay. In the video that we saw today, do you recall seeing this blue pallet in that video?

A I can't remember.

Q Okay. Ms. Jones, is there any medical treatment or any providers we have not talked about today?

A Not that I remember.

Q Anybody else that may have information about your incident at Walmart that we've not discussed?

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A No.

Q Okay. Other than the injuries to your leg and the injuries related to stress and pain and suffering, are you alleging any other injuries related to the incident at Walmart?

A No.

Ms. Boyd: That's all I have.

E X A M I N A T I O N

By Mr. Jefferies:

Q Ms. Jones, if you would bear with me, I might have a few more questions --

A Okay.

Q -- for you myself and Ms. Boyd might have some follow-ups to that.

Mr. Jefferies: Ms. Boyd, can you pull up that laundry detergent video?

Ms. Boyd: I think it was 14. Oh, no. Sorry, wrong one. Let me go to my guide. This one.

Mr. Jefferies: This one. Okay. Yeah.

Ms. Boyd: Okay. Do you want me to fast forward to the time of --

Mr. Jefferies: Yeah, about 11:33 or 34, thereabouts. Right in there is fine.

Ms. Boyd: Okay.

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Mr. Jefferies: That looks like it. Let's try to send this.

By Mr. Jefferies:

Q Ms. Jones, you remember watching this video that says laundry detergent at the bottom?

A Yes.

Q All right. And it says -- now the time looks like 11:32 a.m. In a little bit, you'll appear in this picture. Let's wait until you do. All right. And then about -- You appear in the bottom of the picture. Right?

A Yes.

Q All right. Do you remember that when we were watching this the first time, Ms. Boyd was asking you questions about whether you remembered speaking to people that were in the video?

A Yes.

Q All right. And right now do you see any people aside from yourself in that video?

A No.

Q All right. Let me ask you one other question. I'm holding a copy of our Plaintiff's Answers to Defendant's Interrogatories. Does everyone agree with me that this is a regular sheet of paper, eight-and-a-half by eleven?

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A Yes.

Q All right. I'm putting that in front of the screen of this computer. Do you agree with me that when I put it in front of the screen of this computer it completely covers up the video except for, maybe about half an inch on one side?

A Yes.

Q Okay. And what kind of machine are we watching this video on? Is it a H.P. laptop?

A Yes.

Mr. Jefferies: Okay. That's all I have. We can go off the record unless you have more.

Ms. Boyd: Yeah, I'm done.

(Deponent excused.)

(Whereupon, at 1:18 p.m., the taking of the foregoing deposition was concluded.)

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CERTIFICATE OF REPORTER

State of South Carolina

County of Florence

I, Erica Creel, Court Reporter and Notary Public for the State of South Carolina, do hereby certify that the deponent in the foregoing deposition was, by me, first duly sworn to testify to the truth, the whole truth and nothing but the truth; that said deposition transcript contains a true record of the deposition of said deponent.

I further certify that I am neither attorney nor Counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this the 16th day of October, 2018.

_____

Erica Creel

MY COMMISSION EXPIRES:
March 2, 2022

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DEFENDANT'S EXHIBIT
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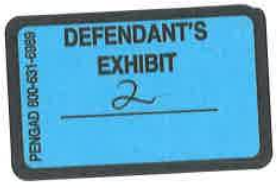

EXHIBIT B

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IN THE STATE OF SOUTH CAROLINA COUNTY OF FLORENCE	) IN THE COURT OF COMMON PLEAS FOR THE 12TH JUDICIAL CIRCUIT
APRIL JONES, Plaintiff, -vs- TIM RINGER, Individually and as employee/agent of WAL-MART STORES, INC. d/b/a WAL-MART STORE #630; WAL-MART STORES, INC.; and WAL-MART STORES EAST, L.P., Defendant(s).	CASE NO. 2017-CP-21-1375

DEPOSITION OF MARSHALL S. WHITE, Ph.D.,

2:18 p.m. to 5:58 p.m.

May 20, 2019

Blacksburg, Virginia

REPORTED BY: Renee A. McDermed, RPR

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Deposition of MARSHALL S. WHITE, Ph.D., taken and transcribed on behalf of the Plaintiff, by and before Renee A. McDermed, Registered Professional Reporter and Notary Public in and for the Commonwealth of Virginia at large, pursuant to Notice to Take Depositions; commencing at 2:18 p.m., May 20, 2019, at 1650 Research Center Drive, Blacksburg, Virginia.

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E X H I B I T S

(Attached to the Transcript)

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Exhibit 2.....112
Color copy of photo showing white wood GMA style pallet, partial four-way
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Color copy of photo showing three pallets
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Exhibit 6.....115
Color copy of up close photograph of a bottom deck board on a pallet
Exhibit 7.....116
Color copy of photo showing a pallet on a floor

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E X H I B I T S (Continued)

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E X H I B I T S (Continued)

Exhibit 17.....122
Color copy of photo showing a kite display on a pallet

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(2:18 p.m., May 20, 2019)

MARSHALL S. WHITE, Ph.D.,

was sworn and testified as follows:

E X A M I N A T I O N

BY MR. WILLEY:

Q Dr. White, my name's Roy Willey. We had the opportunity to meet just before this deposition in which you have been named as an expert witness. I represent a lady named April Jones, who had three different amputations, the final amputation being an above-the-knee amputation, as a result of stepping on a nail at Wal-Mart and then that becoming infected and leading to the series of amputations. So, that's the case we're here about. And you've been named as an expert. Just to give you a few ground rules, you've had your deposition taken before, right?

A Yes.

Q Twice?

A Over the years, maybe ten times.

Q Maybe ten times over the years. Okay. I'll give you a few background rules that I'm required to give you in South Carolina just so we're on the same page. The first is that this is not a marathon. I'm not the type of lawyer who is going

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to try to wear you down and make you say something you don't want to say. So, if at any point you need a break, just let us know and we'll take a break for as long as you need.

MR. WILLEY: And that goes for you as well.

BY MR. WILLEY:

Q Okay? All right?

A Yes.

Q All right. That's the other thing, which you already know, is the court reporter is here taking down everything we say into a written transcript. So, it's important that when I ask you a question, you let me finish it before you begin your answer, and I'll let you finish your answer before I begin my next question. Okay?

A Yes.

Q All right. If for any reason you don't understand any of my questions today, I'm going to ask that you direct your inquiry about my question to me rather than to Ms. Bagley. Okay?

A Yes.

Q All right. Once the deposition starts, which it has, and at any time, anything you and Ms. Bagley talk about I can ask about. What you

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may hear during the course of the deposition is her object to the form. And that's just a lawyer term for saying she doesn't like how I asked the question. So, there's a number of objections to the form. And if I think I need to, then I'll reword the question. Otherwise, we'll ask you to answer that question. Okay?

A Yes.

Q All right. Finally, at the end of the deposition today -- we're on an expedited schedule. So, I'm going to ask the court reporter to go ahead and prepare it, but you will have the opportunity, if you want, to read and sign the deposition. Okay?

A Understood.

Q All right. Dr. White, where are we today?

A You're at the Brooks Forest Products Center, specifically at the William H. Sardo, Jr., Pallet and Container Research Laboratory on the Virginia Tech campus in Blacksburg, Virginia.

Q All right. And how long have you been employed on this campus?

A Since the fall of 1974.

Q Okay. And what types of courses do you teach?

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A In the past --
Q In the past?
A Yes. I have taught pallet design and performance, both industry and our own undergraduate and graduate students; unit load design and performance; packaging design and performance. I have taught courses in lumber manufacturing early on before I became involved in the packaging program here at Virginia Tech.
Q Okay. And your educational background, where -- where did you go to school?
A My Bachelor of Science degree at Colorado State University within the discipline of wood science and forest products and a Master of Science and a Ph.D. here at Virginia Tech in the same discipline.
Q Okay. When you left college, what was your first job?
A I worked on the Raritan River Railroad.
Q Okay. And how long did you work on the railroad?
A Less than a year.
Q Okay. And what did you do after that?
A Returned to graduate school.

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Q Okay. Here?
A Correct.
Q All right. And you -- when you returned, it was for the program that you eventually completed in wood science?
A That's correct.
Q Okay. Why did you decide to study wood science originally? What intrigued you about it?
A My academic performance in high school was not stellar; and it was a very unique, small discipline for which they needed students.
Q Okay. When you decided to go into wood science, what were the types of jobs that were discussed as being available to graduates with that degree?
A In the discipline of wood science, it was primarily employment with forest products manufacturing companies.
Q Okay. And when we say forest product manufacturing companies, at that point in time, what specifically are we talking about?
A Everything from lumber manufacturing all the way to pallet manufacturing, wood-based composites manufacturing, and including paper.

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Q Okay. So, these would have been manufacturing basically as a general form of products made of trees?

A Products made predominantly of wood fiber from trees.

Q Okay. When you graduated with your Ph.D. from Virginia Tech, what -- what was your first job?

A I was hired here at Virginia Tech as an extension specialist to assist the lumber manufacturers, primarily the hardwood lumber manufacturers, in the State of Virginia to become more efficient and more profitable. And, so, I toured the state constantly working with hardwood lumber manufacturers to help them become more efficient in their processing.

Q All right. When you talk about hardwood lumber manufacturers, what sort of industry is that?

A These are sawmills that specialize in sawing hardwood logs into hardwood lumber for multiple products.

Q All right. And when you were consulting with them on profitability, what sort of things would you look at?

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A I was looking at how much yield they could retain from a log to increase the value of a log and maximize that value. And, so, we were focused on helping them adapt new technologies, basically digital and electronic technologies that would improve their sawing efficiency and maximize the value of a log by maximizing the product value that came from that log.

Q And after that position, what was your next position?

A I became director of the William H. Sardo, Jr., Pallet Container Research Laboratory.

Q Okay. And when was that?

A That was in 1980.

Q Was that at that time a new program, or had that program existed prior to you getting that position?

A The building was completed in 1976. Dr. E. George Stern was director at that time until I took over the directorship.

Q Okay. And how long were you in that position?

A Till 2006.

Q All right. And did you retire?

A I retired.

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Q Right. When you retired from that position, what did you do next?

A As emeriti faculty and ever since, I'm mentoring graduate students here in their graduate research. So, I serve on and I continue to serve on since then till now as advisers to the graduate students studying for masters degrees and Ph.D. degrees in packaging science here. However, I set up a company, White & Company, LLC. This -- this was set up, basically incorporated in 2007.

Q Okay. With respect to the work that you still do in mentoring in packaging sciences, what does that discipline include today?

A It's very broad-based. Our research focus here is studying how packaged product on top of a pallet interact with the pallet mechanically and how the unit load, which is the pallet and the packaging together, mechanically interacts with all the handling, storage, and shipping equipment used to move unit loads.

Q Is it safe to say that the primary interest of the industry with respect to this discipline is how much product they can get onto a pallet and still move it safely?

A That's certainly one of the

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emphases --

Q Okay.

A -- to improve materials handling efficiency safely is certainly one of those.

Q Okay. What would be some of the other large bucket kind of interests?

A Well, you want to do it -- our world in design, whether it's unit loads or pallets, is we're balancing cost with performance. And we have to strike an appropriate balance so that it is efficient but still safe. So, efficiency is important.

Q And with respect to that, you would agree with me that with increased efficiency, there oftentimes is some tradeoff in safety and vice versa?

MS. BAGLEY: Object to the form.

A No.

BY MR. WILLEY:

Q No? Okay.

A We balance this. In fact, I just lectured on it, this particular subject, at the ISTA meeting last week in Denver, Colorado. And safety is Job 1.

Q Safety is Job Number 1, right? You

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agree with that?

A Yes.

Q And what I'm asking is when we talk about a balance, oftentimes we're talking about increase of this is a reduction in this, you know, efficiency and safety, for example, and we're trying to find that perfect medium where we maximize safety while not totally decreasing efficiency.

A We are balancing performance with cost, absolutely.

Q Okay. And you do that in the industry in terms of how pallets move in a facility; is that accurate?

A Well, pallets are the base of unit load materials handling. 86 percent of our product moves in that form. And, so, pallets are integral to the efficiency of supply chains of both consumer and industrial products.

Q And what I'm getting at is primarily when you are looking at balancing the efficiency and safety, it's how you can move the maximal amount of product in the shortest period of time in the most safe fashion; is that accurate?

A It's a reasonable description.

Q Okay. When you are looking at that,

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you indicated that one of the topics is how the load interacts with the physical pallet, right?

A Correct.

Q Okay. Will you explain some of the factors that you look at or some of the measurements that are important in that analysis?

A Rephrase your question.

Q Okay. So, with respect to how a load interacts with the pallet --

A Okay.

Q -- when we are looking at maximum load capacity for a particular pallet --

A Okay.

Q -- what are some of the factors that are to be considered with respect to safety in that equation?

A Okay. All components of the unit load, you have two primary goals to achieve. Number 1, is it strong enough. That's always a performance criteria in designing load-bearing structures.

Number 2 is functionality. Now, functionality is a long list of issues. For example, in the case of a pallet, is it the correct size of the pallet? Okay? Is it the correct weight

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of a pallet? And, so -- and that list goes on and on. Is it recyclable? Is it repairable? So, all those functionality characteristics, there's a long list of performance characteristics.

The same thing applies to the packages on top of the pallet, and the same thing applies to the unit load when you put these together into a form where you have a pallet base and all the packaging on top of it. So, we have those two fundamental performance criteria when we are designing these structures.

Q All right. And your focus in the academic sphere has been primarily with the design of those structures with respect to those two factors, efficiency and safety; is that fair?

A Yes, designing unit loads and all their components to get the correct balance of cost and performance.

Q Right. And what I'm getting at is you have never worked as, you know, the guy on the line running the nail gun to manufacture pallets, have you?

A No, not in a production operation.

Q Okay. And you've never worked in a distribution facility where pallets are being

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manufactured or repaired outside of your consulting work; is that fair?

A I have never earned a salary doing those tasks, but I have been in pallet manufacturing operations throughout the world and distribution centers all over this country.

Q As part of your consulting business; is that fair?

A Well, it's -- if I'm going to teach students, I have to be in those environments so that I can describe these environments to our students. So, no, it's not just my consulting work. It's to -- to really make me a better teacher of those disciplines.

Q But prior to taking on -- you said you started your consulting business in what year?

A Consulting work, the consulting business was started in 2007.

Q Okay. And when did you start consulting work?

A I consulted as a faculty member here off and on since probably the 1980s, somewhere in that time frame.

Q Okay. So, sometime after becoming the director of the Stern Center -- is it okay if I call

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it that?

A It's the William H. Sardo, Jr., Pallet and Container Research Laboratory --

Q Okay.

A -- affectionately known as The Pallet Lab.

Q Okay. And I apologize. Dr. Stern was the first director of that?

A That is correct.

Q Okay. That was my confusion. Prior to taking that position, you didn't travel nationally or internationally and visit distribution centers; is that fair?

A That is fair.

Q And is it also fair that in the first part of that directorship prior to beginning the consulting work that you didn't travel and visit distribution centers and manufacturing centers nationally and internationally?

A No. I traveled internationally representing Virginia Tech. Did I do consulting work for the materials handling sector, the pallet manufacturers prior to my retirement? The answer is yes, I did, while employed by Virginia Tech.

Q Right. And that would have been from

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about what year?

A 1980 on.

Q Okay. And as part of that consulting work, you were compensated outside of your employment with Virginia Tech; is that right?

A When I did my consulting while employed by Virginia Tech, that is correct.

Q Okay. And prior to doing that consulting, you had never actually been employed earning a salary in a manufacturing or distribution facility of pallets, correct?

A No.

Q Okay. When did you decide to do what we call forensic consulting, which basically means work for lawyers?

A My first cases probably go back to 1993, '94.

Q All right. And why did you decide to get involved in this industry?

A Well, obviously, it was supplemental income for what I was paid by Virginia Tech, but more importantly is when you do that, you can get a change from an unsafe practice to a safe practice.

Q Okay. What do you mean by that?

A Failure of a unit load. I do my

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forensic work, I give my opinion, I may be working for the plaintiff or defense. Occasionally, working for the plaintiff, after the case is over, the defense would come back and ask me to design a safer structure.

Q Okay. And isn't it true that the vast majority of your forensic consulting work has involved unit load, pallet unit load, and systems consulting?

A Yeah, pallets, unit loads predominantly.

Q Right. And that refers to how much weight we can actually put on a pallet, right, what the load of that pallet is?

A Again, as I said, there are two performance criteria. Strength is Number 1, always required, and then all the functionality characteristics.

Q Okay. How many cases total would you say that you've handled as a -- as a paid expert witness?

A I would say roughly since the early 1990s, probably 50, maybe up to 60 cases, but certainly 50.

Q All right. And do you keep a list of

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those cases?

A No, I don't keep a list of all those cases.

Q Okay. If you were going to write a memoir about all of the cases that you have handled, where would you go to find the names of the cases that you've handled?

A Well, I retain some files, hard copy, of some of those cases. And, so, I would go to my files and resurrect some of those file copies.

Q Okay. Is there anywhere else that you could look?

A Well, those would be the locations I would look in.

Q Okay. And those are hard copy files?

A Predominantly because we're going back quite a few years, although more recently there are electronic files that I have.

Q Okay. How many files would you estimate that you have retained of those 50 to 60 cases?

A I would say I might have as many as 20.

Q Okay. And those are fairly easy for you to access?

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A Somewhat easy, yeah.
Q Okay. And would it be any problem for you to put those cases and where they were pending on a list for us?
A All the cases, whether I was deposed or testified, all those cases?
Q That you would have access to.
A It would be a task, but it's possible.
Q Okay. With respect to cases where you have been deposed or testified, how many times have you given in-court testimony?
A I believe only twice.
Q Okay. And I know about one of those cases, the Grotto case. Do you recall the name of the other case?
A No.
Q All right. Do you recall where that case was pending?
A The -- there was a case involving a Wal-Mart, if that's -- there are basically two cases in the last five years --
Q Right.
A -- in which I have been deposed or I gave testimony, and that one involving Wal-Mart was in Pennsylvania.

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Q Right. That was in Philadelphia, and you gave trial testimony.

A Correct.

Q Was there another trial testimony case in your career?

A Yes, but I cannot remember. Ah, yes, there was a case in Idaho of an accident. A young girl was injured in a Home Depot store. Those might be the only two could I have testimony.

Q Do you recall if the Idaho case was in Federal Court or state court?

A I don't recall.

Q Do you know where you went to give the testimony, what city you went to?

A It was near Boise, but I do not remember the city.

Q All right. Do you remember whether you testified for the plaintiff or the defendant?

A In that case, I was testifying for the plaintiff.

Q Okay. And do you recall her name?

A I do not.

Q What was the nature of the injury in that case?

A It was a unit load of countertops that

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was being moved within a Home Depot store, and it came apart while it was being moved on the forklifts. And these countertops basically injected themselves into another aisle and injured the young girl.

Q And what were your opinions in that case basically? I know you probably don't remember them verbatim.

A There was a defect in the wooden skid. That defect probably resulted in the failure of the skid when it was being moved, which then reduced the tension on the strapping; and the unit load came apart.

Q Okay. With respect to the other case that you mentioned -- strike that. I'm going to come back to that.

When you -- when you say skid, just so -- I know what you mean, but if everyone else knows what you mean, can you explain what the skid is on a pallet?

A A pallet has a top deck and a bottom deck. A skid only has a top deck.

Q Okay. When you say deck, you're talking about the boards on the top and the bottom of the pallet?

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A Yes.
Q Okay. And if it's a skid, there is no bottom decking?
A Correct.
Q Correct. Okay. What are the other parts of a pallet, just so we can cover this part?
A Basically, there's a top deck and a bottom deck. In the case of stringer pallets, there are stringer members. In the case of a block pallet, there's a stringer board and blocks.
Q Okay. With respect to the other case that you -- that I know about that you testified for Wal-Mart in, the estate of Stephen Stewart case, have you ever testified for Wal-Mart in any other cases?
A Not that I can remember.
Q Okay. Have you ever testified against Wal-Mart in any case?
A Not that I can remember.
Q The -- in the estate of Stephen Stewart case, do you remember what your opinions were in that case?
A In general, that the repair or -- excuse me, the sortation, the pallet sortation program that is going on within the DC was very

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typical and standard and complied with the requirements of Wal-Mart, who allocated that portion of the store for use for pallet sortation by a third party. And, so, I was basically saying this is very, very typical in the way the sortation and separation was occurring.

Q And in that case, the issue involved an employee of that third party, correct?

A Yes.

Q Okay. And that was -- I don't know how you say this -- Rehrig Penn Logistics; is that accurate?

A Correct.

Q And in that case, do you recall how the plaintiff was injured?

A Apparently during sorting and lifting and moving pallets, which is the sorting process, he retained a scratch on his finger apparently due to a nail in one of the pallets.

Q And is that -- when I say that, I mean nails popping out of pallets either partially or entirely -- somewhat common with wood pallets?

A Wood pallets get damaged, and nails are exposed.

Q And in that case, do you recall how

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the injury with the plaintiff developed?

A Well, it became infected; and it became a very, very serious infection.

Q In that case, didn't you also offer an opinion on the infection of Mr. Stewart? Do you recall that?

A I doubt it. I'm not a doctor. So, I would not have -- to the best of my knowledge, I didn't say anything regarding the medical condition.

Q Okay. Isn't it -- do you recall in that case making any opinion or conclusions as to the contractual agreements between Wal-Mart and the third party?

A Yes, that they complied with the policies of Wal-Mart as Wal-Mart stated them regarding third parties operating in their facility, yes.

Q And isn't it true as well that part of your deposition testimony in that case involved whether or not Rehrig was an independent contractor with respect to that contract and who would have had responsibility for that pallet movement system?

A I don't recall that, but I do recall stating that, of course, Rehrig was responsible for their own employees operating in that facility.

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Q Okay. And do you recall what your trial testimony was on that topic?
A I don't.
Q Okay. When you were contacted in this case to offer an opinion, how were you contacted?
A Ms. Bagley contacted me by e-mail, I believe.
Q Have you all corresponded via e-mail or letters since then?
A Yes.
Q And have you all spoken on the phone or met in person?
A We have spoken on the phone. We have not met in person.
Q Do you keep notes of those telephone calls as part of your file?
A I have no notes on those communications.
Q Do you have the ability to access your full file in this case?
A Yes, I have a file of materials that I have been given by counsel. Of course, there are e-mails.
Q Okay. And where -- where is that file, just logistically?

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A It's on that computer right there.

Q Okay. When Ms. Bagley contacted you about this case, what did she tell you about it?

A Well, eventually, described the fact that a woman had stepped on a nail, presumably in a store, and that it became infected and it resulted in a serious injury.

Q Anything -- did she tell you what she was looking for in an opinion or --

A She sent me photographic images of the nail in question and asked me whether it was a nail used in pallets.

Q Okay. In your letter to her, you indicate that you received seven photographs. Did you receive anything else related to this case as part of your file other than those seven photographic images?

A Yes. I've received the amended complaint, responses to that amended complaint, deposition of Mr. Ringer, and deposition of Ms. Jones. And I received the PDQ guidelines that Wal-Mart publishes for display-ready.

Q Okay. How would the complaint and the response to the complaint assist you in determining whether or not a nail should be used in a pallet?

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A Pallets are wood and nails, unless they're plastic. So, it didn't assist at all.
Q Okay. So, did -- is that something you asked for or something that she just sent you?
A I don't understand your question.
Q Okay. Did you ask her to send you the summons and complaint and the answer, or did she send that without your asking?
A I might have asked for it.
Q Why would you have asked for it?
A It helps me as an expert to understand what the issues are in a case, and that tends to help me understand the issues.
Q Your opinion in this case is what?
A That nail that I saw in the photographic images is not used in pallet assembly.
Q Okay. And is that your position, that it could never be used in pallet assembly, or just that it should not be used in pallet assembly?
A Anything's possible, but that type of a nail is never used in pallet assembly.
Q So, are you saying that that type of nail you are able to testify has never been used in a pallet anywhere in the world?
A Sir, you know the answer to that.

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Q Right.
A Anything is possible.
Q And, so, my understanding from your opinions is that based on the ANSI Standards, that the type of nail, you believe, based on those standards, should not be used in pallet assembly; is that fair?
A That nail is not used in pallets because it cannot hold a pallet together, which is the purpose of a nail.
Q Okay. And, again, that's not my question. My question is -- let me just read it to you. This -- this is what your opinion as you wrote it out is. "It is my opinion to a reasonable degree of professional certainty that such nails are not used for the assembly or repair and maintenance of wood pallets"; is that fair?
A That's fair.
Q Okay. And it's also fair to say that you have not seen every pallet that's ever been assembled, correct?
A Obviously not.
Q Okay. And you haven't seen every pallet that's ever been repaired or maintained, correct?

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A Obviously not.
Q Okay. And, so, are you really able to say to a reasonable degree of professional certainty that that kind of nail has never been used, is not used for repair and maintenance of wood pallets?
A Yes.
Q And how are you able to say that?
A I have seen more pallets assembled and used than probably anybody else in the world and I've seen it worldwide and that particular nail would not be used because when you -- the first time you tried to lift the pallet, it would come apart. It would not happen.
Q And are you saying that Wal-Mart pallets and their pallets that are brought in by their vendors never come apart because of the way they're constructed?
A They come apart if enough stress is applied when they're used, but this particular nail would come apart even before use.
Q Explain that to me.
A The function of the nail is to attach deck boards to stringers, it's to attach deck boards to stringer boards, it's to attach deck boards to blocks. The nail is not even long enough to

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penetrate a deck board on a pallet. Therefore, you can't use it to fasten it to any other member.

Q Well, let's talk about that. So, you said the nail is about an inch long, right?

A From the photographic image, it appears to be an inch long.

Q And you would agree with me that bottom deck boards on pallets are generally nominally half an inch thick, right?

A Most often they are five-eighths of an inch thick, but half-inch deck boards are being used.

Q Half-inch deck boards are used in the industry?

A Correct.

Q The half-inch measurement is a nominal measurement, correct?

A That is correct.

Q Right, which means that it may be slightly less than half an inch or slightly more than half an inch, right?

A Yes.

Q Okay. And as I understand your testimony, it's that a inch-long nail could never hold a nominal half-inch deck board on the bottom of

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a pallet.

A Correct.

Q Do you agree with that, upon thinking about it?

A There's not enough penetration into any of the other members to make that connection reasonably functional or functional at all. The minimum penetration depth is one-and-a-quarter inch. And, so, you size your fasteners according to that.

Q For a load-bearing deck or a block that is bearing load, right?

A To attach any component of the pallet to another component of the pallet, whether it's load-bearing or not.

Q So, your position is that to attach a nominal half-inch board to anything, it needs to be -- the nail needs to be at least an inch-and-a-half long?

A One-and-three-quarter inches long.

Q And, so, if I took a half-inch deck board and went and got an inch-long nail and nailed it into that wall over there, your position is it wouldn't fasten it to the wall?

A It would be extremely easy to pull off.

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Q Right, extremely easy to pull off, but it would be fastened, right?

A It would be connected, yes.

Q And if it were extremely easy to pull off, we would expect the board and the nails to all pull off, correct?

MS. BAGLEY: Object to the form.

A Well, there are two modes of failure. So, either the board comes off with the nail remaining, or the nail comes off with the board.

BY MR. WILLEY:

Q Right. And what you were talking about is fastening strength, correct?

A Correct.

Q All right. And with respect to fastening strength, if that was the component of failure, we would expect the nail and the board to fall off together, correct?

A Either in the case of a stringer pallet, the nail remained in the stringer or the nail came off with the board in the board.

Q Right. And it would be possible that once that board and stringer then fell with the nail in it, the nail could become dislodged from the board, right?

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A It's possible.
Q Okay. And you have no way of saying that that did not happen in this case, right?
A It -- it could have happened in this case.
Q Right. With respect to the other ANSI Standards regarding pallets, let me just back up to say that the new ANSI Standard is 2016, correct?
A Correct.
Q Okay. And your opinion in this case is based on the 2005 standard, correct?
A Correct.
Q And that's because that would have been the applicable standard at the time of this incident?
A Yes.
Q All right. What was your role in drafting those standards?
A Well, they had been updated. I drafted the original and several of the updates, but not all of them.
Q Okay. You did not draft the entire standard, right?
A Part 4, I drafted the original and several updates, but not all of the updates.

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Q Okay. So, and the original would have been?

A Probably -- okay. Part 4 of the ANSI Standard is also the industry standard published by the National Wooden Pallet Container Association and actually maintained by them, but adopted by ANSI. The original version I wrote the industry standard, which is now a consensus standard, probably the late 1980s. It goes back that far.

Q When you wrote that, did you write the entire Part 4 by yourself?

A I had a committee created the first draft. The committee helped me do the edits. That's basically the way it works. So, did I draft the entire document? Probably 90 plus percent of it.

Q Okay. And with respect to the 2005 updates, do you recall what role you had in those updates?

A Well, again, what happens in that process is the Pallet Association, which issues the industry standard, makes it -- makes revisions and submits those revisions to ANSI. So, I served on the Standards Committee of the industry. And through that process, they then are migrated into

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the ANSI Standard.

But I also chaired the ANSI -- the ASME and MH1 Committee.

Q In 2005?

A Yes, and beyond.

Q And with respect to when we talk about the industry submitting changes, the industry we're talking about is the industry that generates a profit from manufacturing and distributing pallets, fair?

A That is correct.

Q Okay. And their primary focus and operation is generating a profit, fair?

A Well, that's certainly one motive area.

Q All right. What -- what are -- I mean, why else do people go into the pallet-making business other than to make money?

A Well, obviously, they're not going to sell any product unless it contributes to the value of the supply chain of their customers.

Q Okay. So, let me -- let me just kind of back up on this a little bit. The ANSI Standards in 2005, you chaired the industry portion, right?

A I did not.

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Q Okay.

A The industry had their own committee. I was a member of the committee, but I did not chair it.

Q Okay. And, so, you were a member of the Industry Committee, correct?

A Correct.

Q And the Industry Committee has the opportunity to suggest changes to the ANSI Standards; is that fair?

A That is correct.

Q And then as I understand it, members of the ANSI Committee and members of the Industry Committee essentially form a Conference Committee to come up with a final product?

A Well, the ANSI Standard is a consensus standard.

Q Right.

A It is a standard of both the seller, which is the pallet manufacturer, and the buyer. So, there has to be a consensus reached between the two; and that's its function.

Q And when we talk about consensus, again, we're talking about really the tradeoff between cost, functionality, efficiency, and safety;

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is that fair?

A It's balancing cost and performance.

Q Right. So, the people manufacturing and repairing pallets want to be able to spend the least amount in manufacturing and repairing them and sell them for the largest profit; is that fair?

A No. The buyer and user of the pallet wants the lowest-cost safe pallet to use.

Q Okay. And, so, the buyer and seller of the pallet are different people, right?

A The seller is a pallet manufacturer. The buyer is a user of the pallet typically.

Q Okay. And typically the way that it works in most industries is the buyer would like to pay a lower price, right?

A They obviously want the correct balance. They don't want overdesign because it's uneconomical.

Q Right. They want to pay the -- the buyer wants to pay a lower price, fair?

A They don't want underdesign because it's dangerous.

Q Okay. Would you agree with me that generally in the pallet industry, the buyer of the pallet wants to pay the lowest possible price for a

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pallet that will work for their needs?

A Yes.

Q Okay. And would you agree with me that a seller, a manufacturer of a pallet wants to sell that same pallet for the highest possible profit?

A They like to be profitable.

Q Right. So, the consensus that we are trying to reach is really between the profit margin and the functionality of the pallet?

A The consensus is the balance between cost and performance.

Q All right. You will agree with me that components of pallets cost different depending on the component, correct? If we use, for example, if we use pine versus oak, there is a cost differential in those two woods, right?

A Not necessarily.

Q Explain that to me.

A Hardwood, depending on -- again, the best way for me to explain that to you is that we do not saw logs to make pallet lumber. We saw logs to make framing for buildings on the softwood side, i.e., pine, and we saw logs to make molding, furniture, millwork, the higher grade on the

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hardwood side. So, what happens is is we use the lower grade material out of both of these logs, okay, for use in pallets because it's the performance of the pallet, the strength and functionality, it's not the appearance that's important.

Therefore, depending on the marketplace for housing and depending on the marketplace for furniture, the pricing fluctuates between hardwoods and softwoods, between oak and pine.

BY MR. WILLEY:

Q Is it generally higher for oak or higher for pine?

A It depends on the quarter of the year and the year it fluctuates.

Q Okay. All right. What is the general fluctuation?

A Significant. Right now, softwood prices over a year are changing 30 percent.

Q Okay. Is it the same with respect to fasteners? In other words, a two-inch fastener sometimes can be less in price than a similarly made one-inch fastener?

A Fasteners are sold on a weight basis.

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And, so, the number of nails you get per pound varies on -- depends on the length and diameter and the material from which it is manufactured obviously. So, it's hard to answer that question.

Q Okay. But it's safe to say that a similarly designed nail made of the same metal is going to be more expensive if it is longer than if it is shorter?

A Same diameter, same steel alloy, I would say that's -- that would be a very reasonable statement.

Q Okay. Do you need to take it?

A I wanted to turn it off.

Q Oh, okay.

A So it didn't bother us. I'm sorry.

Q No, if you need to take it, that's fine.

The ANSI Standards are a voluntary standard. Would you agree with that?

A Correct.

Q Okay. And when we talk about a consensus standard, the consensus is really among the parties who make up the committees, right?

A Well, they -- they all represent constituencies.

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Q Right.

A And, so, you assume, and in fact it's true with Department of Defense, who is on those committees, that they represent the logistics within the entire DOD supply chain. So, every member represents a larger constituency.

Q But it's fair to say that the guy down the street who's not in the formal pallet business that's repairing pallets for his own personal use may not be aware of the ANSI Standards, right?

MS. BAGLEY: Object to the form.

A It's -- it's possible that -- anything's possible, but this standard is so well used that it would be an obscure situation when that's true.

BY MR. WILLEY:

Q Is there any enforcement mechanism for the violation of the ANSI Standards?

A Give me an example of what you mean by enforcement.

Q You know, if you violate the building code, the building inspector can come out and not give you a certificate of occupancy to move into the building. If you violate the speeding code, you can get a speeding ticket from the cop. Is there

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anything like that with respect to the manufacture or repair of pallets?

A Only insofar as that standard becomes a requirement in a contract.

Q Between a buyer and a seller of pallets?

A Typically.

Q When -- when would it be anything else?

A I don't understand your question.

Q When -- when would that contract regarding the pallets specifications be between any other parties than a buyer or seller of those pallets?

A I don't know. So, it's between buyer and seller.

Q And there is no third-party enforcement to ensure that a particular agreement or contract is within the ANSI Standards, fair?

A Well, there are third parties that inspect pallets for compliance with whatever specification that is being used for the buyer and seller. Those typically include reference to the ANSI Standard or the industry standard or both.

Q Those inspections are typically done

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by auditors hired by either the buyers or the sellers, correct?

A Well, generally the seller requires that inspection. And, so, the burden of payment generally goes to the seller; but they are required to participate in that inspection program by a buyer.

Q Right. And other than those situations, you would expect it to be common for not every buyer of pallets to inspect every single pallet that they receive, correct?

A Most of the time, they all inspect incoming pallets using sampling and techniques.

Q Using sampling techniques of the lot, not every individual pallet is inspected, fair?

A Rarely every pallet's inspected.

Q Especially for a large company like Wal-Mart, you would agree with that?

MS. BAGLEY: Object to the form.

A Well, you have to understand -- let me explain something to you. They use rental pallets, and they have a contract with a Georgia company to inspect all their vendor suppliers and repair operations for compliance with their pallet specifications. So, Wal-Mart relies on the third

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party to inspect.

BY MR. WILLEY:

Q That third party isn't expected to inspect every single pallet used in Wal-Mart stores, correct?

A They are expected to use a sampling technique, which statistically, depending on the sample size and the variation, results in a specified confidence level as a result of what you would expect of all the population. That's what sampling does.

Q So, going back to my original question, just so the jury understands, there is no individual or group of people who is responsible for inspecting every pallet that is used in Wal-Mart stores?

A That is correct.

Q Okay. With respect to this case, have you spoken with anyone about it other than Ms. Bagley?

A I mentioned to my wife today that I was having a deposition this afternoon.

Q All right. But you haven't spoken to anybody from Wal-Mart or CHEP or any of these other outfits?

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A No.
Q No? Okay. What are the primary safety concerns with respect to wooden pallets?
A The pallet has to be strong enough to support the load in a supply chain in which it's designed to be used, and it has to be functional in the functionality characteristics.
Q So, that aspect has to do with cases like your Idaho Home Depot case, right, where a pallet fails and somebody gets injured as a result, fair? Does that make sense?
A Repeat the question.
Q Okay. So, when we're talking about load, what we're really talking about in layman's terms is the ability of the pallet to carry the thing for which we are attempting to use it.
A Yes.
Q Okay.
A To -- to carry it under the conditions in which it's going to be used.
Q Right. So, one element of danger associated with wooden pallets is that that pallet is not and as a result, somebody gets injured, fair?
A The pallet, for one reason or another, is not strong enough to support the load that's

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placed on top of it for the conditions in which it's going to be used.

Q Right. Isn't it true that another element of danger associated with wood pallets is the fact that they use nails and the ability of nails to stab people or scrape people?

A Well, within the standard, the ANSI Standards and the industry standard, the amount of exposed nails is limited and that is a safety issue.

Q Exposed nails is a safety issue?

A Yes.

Q Okay. And aren't the risks of exposed nails exacerbated when pallets are exposed to the elements?

A Elements, define that.

Q For example, moisture and the change between moisture levels in a pallet may increase the likelihood that a nail moves out of its fastened position in the pallet?

A In the case of threaded nails, no. But in the case of plain shank nails, that can happen. The swelling and the shrinkage due to cyclic moisture changes associated with the wood, those nails may protrude upward, i.e., exposing a nail head. That's why we use threaded nails in

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pallets.

Q That's why you use threaded nails in pallets, right?

A That's why everyone who makes pallets uses threaded nails.

Q So, if we go anywhere in town and bring pallets, if I bring pallets to -- to this trial in Florence, you can tell this jury with 100 percent certainty that every one of those pallets will have a threaded nail in it?

A I can never say that.

Q Okay.

MS. BAGLEY: Object to the form.

BY MR. WILLEY:

Q And that's my point. My point is you can testify as to what the ANSI Standard says fairly in my opinion, correct?

A Yes.

Q Okay. You can testify as to best practices in terms of moving loads and systems related to pallet distribution, fair?

A Absolutely, yes.

Q But you can't tell the jury how every single pallet even in one Wal-Mart store has been repaired or maintained over the course of time?

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A Well, of course, I haven't seen the pallet during its period of use, no.

Q Right. And during a pallet's period of use, if in fact it had a non-threaded nail and had been exposed to moisture, we would expect some change in that pallet, right?

A Repeat the question.

Q A pallet that uses a non-threaded nail, if it were exposed to moisture and brought back into another store and dried, we would expect to see some change in the relationship between the nails and wood in that pallet, fair?

A There will be changes in pallets during use.

Q Right. And some of those changes may be nail pops, right?

A Yes.

Q Okay. And the joints may loosen?

A Yes.

Q And in that process, nails may become dislodged?

A Extremely rarely, but it's possible.

Q When you say extremely rarely, let's just use one Wal-Mart store. I mean, how often would you expect it to happen in a decade that a

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nail popped or became otherwise dislodged in one of their pallets?

A Nail head popping will occur. Again, I come back to the way pallet joints fail. Either the nail remains in what we call the nailing member, or the nail remains in the nailed member. That would be a deck board. Could that deck board break and a nail come off of that deck board? It's possible, but it would be a rare occurrence.

Q All right. How rare is what I'm asking?

A It would be very rare.

Q Okay. With respect to pallets that are manually handled -- are all pallets manually handled?

A Not all, but most are.

Q Okay. And is that another contributing factor towards nail loosening, joint loosening, wood chipping of the pallets?

A Any handling, but that's rare when you're handling it manually because the pallet is empty at that point. It's typically during forklift handling when the pallet is under load that you have the most stress on connections.

Q Okay. And the fact is that the issues

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related to load distribution on the pallet apply in all pallets, plastic pallets, GMA pallets, CHEP pallets, steel pallets, any kind of pallet where the surface is bearing the load, correct?

A What do you mean by load distribution?

Q Well, what we were talking about earlier, kind of two areas of safety with respect to wood pallets. We have the load issues where a pallet fails because the load is distributed incorrectly is one way, right?

A The load exceeded the capacity of the pallet in terms of mass and force, sure.

Q Right. Or the load is distributed on the surface not in an even fashion, which causes it to fall, right?

A Can you give me an example or repeat the question?

Q All right. So, if I'm hauling countertops on one pallet and I put them all on the front of the pallet, that's not the best way to do that, right?

A Well, they're distributed across the pallet deck.

Q That's right. And that's my point. If I put them all to one side of the pallet, that

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would create a safety hazard with respect to the load, right, because it would not be distributed?

A If the load is applied asymmetrically significantly, it would be less stable.

Q Okay. And asymmetrically significantly means all on one side, fair?

A A lot of the weight on one side.

Q Okay. All right. The other safety issue with respect to wooden pallets are nails, nail pops, nail sticking out the side, nail falling off and going through someone's foot, just nails in general --

MS. BAGLEY: Object to the form.

BY MR. WILLEY:

Q -- fair?

A Exposed nails can be a safety hazard.

Q Right. If they come in contact with an unsuspecting person?

A If they come in contact with someone, yes.

Q Okay. That safety hazard, nails, doesn't apply to all pallets, correct?

A Well, there are pallets that are not assembled with nails.

Q Right. What are some of those types

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of pallets?

A Molded plastic pallets. Very rarely do we glue them. Corrugated pallets are glued, but not wood pallets. And of course, metal pallets are typically welded, although some of them are bolted.

Q Any others you can think of?

A No, not right off the top of my head.

Q What about molded wood pallets?

A There is a composite, wood-based composite that is molded, a single face skid design, yes.

Q What is the price differential between a CHEP style wood pallet and that pallet, the molded wood pallet?

A Well, to a Wal-Mart, huge. The molded pallet is much more expensive to use than the CHEP pallet.

Q Let's take the Wal-Mart equation out of it because I recognize they get them for free basically. Okay. Fair?

A Yes.

MS. BAGLEY: Object to the form.

BY MR. WILLEY:

Q The cost differential on the marketplace in general between a CHEP pallet and a

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molded wood pallet, what does that look like?

A If I were to go buy a molded pallet from Litco and I was to go buy a CHEP pallet before it's painted blue and owned by CHEP, there is a significant difference in price. The CHEP style pallet is more expensive than a molded wood pallet.

Q Okay. What about with respect to the CHEP style pallet and a plastic pallet, plastic molded pallet?

A Well, again, you've got the CHEP pallet, the PECO pallet, and the IGPS --

Q Right.

A -- and which CHEP participates in their programs for storing and receiving. The CHEP pallet and the PECO pallet are identical pretty much with the exception of color.

The IGPS pallet is a plastic pallet. Again, IGPS, CHEP, and PECO rent their pallets. They don't sell them. So, we have to be careful about comparing ownership.

Q Sure.

A Wal-Mart never owns that pallet. The title remains with the renting organization.

Q Right.

A So, try your question again, please.

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Q And I'm asking you about on the open market, not -- not with respect to Wal-Mart. If you were to go and buy a plastic molded pallet or a CHEP pallet before it's painted blue, what is the cost differential between those two products?

A Okay. I can buy a non-painted CHEP pallet new that they don't own and have title to. The mold of the IGPS pallet, I could not buy that pallet. It is very proprietary and IGPS owns the product coming out of that mold. And they, of course, rent that pallet, so, I can't buy it.

Q Are there any molded plastic pallets that you can buy?

A Yes.

Q Okay. Tell me one.

A Oh, many, manufactured by many companies, Rehrig Pacific, ORBIS. They manufacturer plastic pallets of all levels of functionality.

Q And in general, those pallets with respect to cost on the market and the unpainted CHEP pallet, what's the differential? What does that look like?

A If you get a pallet of comparable performance, so, that's my assumption here, the plastic pallet would be more expensive than the wood

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version.

Q All right. With respect to the case where you gave deposition testimony in the last five years, which is the Grottoes case, and I can tell you the exact --

A Remind me, please.

Q It had to do with acrobat ant infestation. Do you remember that one?

A I remember, thank you.

Q What do you remember about it?

A The issue was contamination of empty packaging, glass or plastic bottles, I vaguely remember, being shipped into basically a manufacturer who had used that packaging and that the pallets were contaminated with some pest that then contaminated the packaging.

Q Right. Acrobat ants. Sound right?

A I have a colleague who is an entomologist and he received a sample and he did that identification.

Q My college roommate's an entomologist, one of them.

One of the issues in that case had to do with the inspection of the pallets by one of the parties. Do you recall that?

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A I don't.

Q Okay. I'm going to just read you a section of your deposition in that case, and then I'm going to just ask you about it. Okay?

A Go ahead.

Q "QUESTION: When you're talking about these defects, while they may have a higher likelihood of defects, that's where the inspection comes in as to which parts of those woods you use and which parts you don't in the manufacture of pallets?

"ANSWER: During the manufacture of pallets, the parts should be inspected prior to assembling into a pallet.

"QUESTION: Correct. And, so, when you're using low grade lumber, it's an issue of inspection, not wholesale defect. It's a wholesale defect where it's low grade. Therefore, we shouldn't use it. It's low grade. Therefore, there's higher incidences of defects that we will remove or that the manufacturer should remove as part of the manufacturing pallets."

It's a long question. Here's what I want to know. Would you agree with me that prior to using a pallet, it's important to inspect the pallet

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for defects?

A Yes.

Q Okay.

MS. BAGLEY: Object to the form.

BY MR. WILLEY:

Q Would you agree with me that prior to selling a pallet, it's important to inspect the pallet for defects?

A The manufacturer should inspect; and the user, upon receipt, should inspect, yes.

Q Okay. If that does not happen, is it a violation of the industry standard?

A I believe it's stated clearly in the industry and ANSI Standard that pallets should be inspected before they're used.

Q Is that, would you say, more or less important when the pallet is going to be taken onto a sales floor where there are members of the general public?

MS. BAGLEY: Object to the form.

A I have stated clearly in the past that we should take great care in inspecting pallets when nonprofessionals would come into contact with them, yes.

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BY MR. WILLEY:

Q Okay. And as part of your opinion in the Home Depot case, did you opine on the level and the standard of care when merchandise is being put into a publicly accessible area?

A Yes. I believe that when we are using pallets, for example, Home Depot or club stores, we now have essentially a quasi warehouse environment in which nonprofessionals are in the vicinity. So, it is -- it is a different level.

Q And that level of care with respect to those pallets, you would agree, should be higher as opposed to pallets solely used in shipping?

A Generally, we use higher quality pallets in those environments.

Q Okay. With respect to the Stewart case, you recall that the plaintiff in that case was working in a warehouse type facility. Do you recall that?

A Yes.

Q Okay. And when he was cut with the nail and it became infected, part of the question was whether or not he should have been wearing gloves pursuant to the OSHA standards. You recall that?

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A That was part -- that was a subject, yes, yes.

Q Okay. When we have pallets that are in stores where the public can access, you would agree with me that we have no way of knowing, other than no shoes, no shirt, no service, how people are going to be clothed coming into those facilities, right?

MS. BAGLEY: Object to the form.

A Repeat the question.

BY MR. WILLEY:

Q Yeah. Let me ask it a different way. You would agree with me that Wal-Mart cannot mandate that every customer come in in steel-toed boots and utility gloves, right?

A I would agree with that.

Q Okay. And as a result of their inability to regulate that and their being open to the public to make a profit, they have a higher standard of care than individuals working with pallets in a distribution or manufacturing facility. Would you agree with that?

MS. BAGLEY: Object to the form.

A I would -- I would agree with that in general, yes.

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BY MR. WILLEY:

Q Okay. Do you believe that in this case, the nail came from anywhere other than Wal-Mart and made its way into my client's foot? Do you have any evidence of that?

A Well, I don't know specifically where this occurred --

Q Okay.

A -- and those circumstances. So, I really can't answer that.

Q So, in this case, you have not seen the surveillance videos; is that fair?

A I have seen a video that included some people in an aisle walking around with carts, et cetera. Yes, I have seen a video.

Q Okay. Was my client identified for you in that video, or do you know if she was in that video?

A Your client was not identified by anyone in that video that I could see.

Q Okay. What significance, if any, did that video play in your opinion?

A Nothing. It looked like customers in a store. I don't even know that it was a Wal-Mart store.

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Q Okay. Have you seen -- did they provide for you the video of my client pulling the nail out of her foot in the Wal-Mart store?

A No.

Q Okay. Did they -- strike that.

What PDQs did they provide for you?

A It was a Wal-Mart PDQ for display-ready and for unitized non-display-ready.

Q Okay. And you have a copy of that on your computer?

A Correct.

Q And, so, we'll look at that during the break. But let me just ask this question now: What role or impact did that PDQ have on your opinion, if any?

A None.

Q Okay. Other than the articles and information that was listed on the CV that you provided, are there any other articles or books that have to do with nails that you have written?

A I don't believe so.

Q Okay. And I just ask that. Usually when we're creating our CVs, we include everything unless there is like one thing from 20 years ago. And, so, I just wanted to be sure that you didn't

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know of anything. I'm not trying to trick you.

We talked about the file. What is your hourly rate for a case like this?

A Consultation's 400 per hour, deposition's 500 per hour, and testimony 500 per hour.

Q Okay. And do you charge for travel?

A Yes.

Q Okay. And the same, same rates, depending on what you're traveling to?

A You mean my hours of travel?

Q Yes.

A Yes. They are billed.

Q Okay. And are they billed, for example, if you are going somewhere to review something, do you bill it at 300 per hour, 200 per hour? Where does that get billed?

A 400 per hour if it's a consultation.

Q And if you're traveling to trial, then you would bill that travel time at 500 per hour?

A Yes.

Q Okay. What percentage of your earned income is related to paid expert witness work?

A Again, an estimate. First of all, what happens now is that I will invoice for my

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services against my consulting company, White & Company, LLC. White & Company receives those funds. I am no longer president of that company. I am a consultant to the company. My agreement with White & Company is that we share that revenue 50/50. So, now we're talking about probably less than five percent. In the past, it could have been as high as ten or 15 percent.

Q Okay. And in 2018, how much gross income did you receive from being a paid expert witness?

MS. BAGLEY: Object to the form.

A I don't recall if any. I don't recall.

BY MR. WILLEY:

Q Okay. Do you know -- I mean, would it have been more than a thousand dollars?

A May have been.

Q Okay. You have no idea?

A I'm 71 years old. My memory is weak. In 2018, yeah, I -- that's a good question. I don't know --

Q Okay.

A -- as I'm sitting here. I apologize.

Q But you could get us those numbers

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historically for trial?

A Yes.

Q Okay. With respect to everything you've relied on in this opinion, in making this opinion, is it anything other than what you've listed in your written report?

A Well, it's all my experience.

Q All right. Have you reviewed or been asked to review anything since then?

A Yes. I was sent some photographic images of pallets in storage today.

Q All right. And how -- how were you sent those?

A Ms. Bagley forwarded them with an e-mail.

Q Okay. Did you discuss -- I know it was from me. Did you discuss those images with Ms. Bagley?

A Yes, we talked over the phone.

Q Okay. What did you all discuss?

A We discussed -- I'm going to go back. We discussed these are typical damages. You have one photograph of a nail. That's the stub nail. It's a one-and-a-quarter-inch annularly threaded nail that's used to attach the deck board of a CHEP

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pallet to the stringer board. That's about what we discussed.

Q And are you talking about the nail that is off the pallet in the aisle?

A Correct. There was a nail on a floor or something, yeah.

Q Okay. All right. And we'll come back to that. Did you also see the pallet with the nail sticking out the side?

A Yes.

Q Okay. And is that ANSI-compliant?

A No. That particular nail, for example, with that type of damage should be removed from service.

Q Okay. And what about the pallet that had the nail falling out of it, that one would not be ANSI-compliant, would it?

A I don't recall that photographic image.

Q Okay. We'll come back to that. With respect to Wal-Mart's pallet distribution process, what is your experience and knowledge of that?

A Very familiar with it.

Q Okay. Tell us how first, how are you familiar with it?

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A Well, for example, I had my graduate students follow Wal-Mart trucks from distribution centers to stores, inspect pallets and packaging before and after. So, I've done research.

I have been into their distribution centers for visits from time to time at the request -- so I could show my students supply chain operations.

Of course, I have worked with their vendor suppliers who -- who rent -- again, that's a front-end-loaded system who rent -- Procter & Gamble, for example -- who rent CHEP pallets. I've designed materials handling systems for the soap division of P&G to be compatible with the CHEP pallet.

And of course, I've been through their entire supply chain from the manufacturers of their vendor suppliers on through to their distribution centers on through to their stores in various capacities over the years.

Q So, other than the case involving Mr. Stewart and this case, have you ever done any other consulting work for Wal-Mart?

A Not that I can recall.

Q Okay. When you talk about obviously

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taking your students to show them how that scale of distribution works, you were doing that in an academic setting, fair?

A Correct. They actually reimburse the university, not me. It was a research project.

Q I see. For -- but -- this is what I'm getting to. That research project, Wal-Mart benefited from that?

A I hope so.

Q Okay. You just did not actually receive the payment personally. Your department at the university received the payment, fair?

A Correct. And it was expenses only.

Q Right. And how often in the course of your academic career did you perform that type of research for Wal-Mart?

A I think that may have been the only time.

Q Okay. Other than that research project, this case, and the case for Mr. Stewart in Philadelphia, have you done any other consulting or research work for Wal-Mart?

A I don't think so. I can't remember, to be honest with you.

Q What is your familiarity with the

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pallet repair process at Wal-Mart, if any?

A Well, I doubt they do any repair at the store level. And basically, they use third parties to repair at DC level.

Q When you say you doubt, you don't know one way or another whether or not Wal-Mart's ever conducted pallet repair at the store level, correct?

A Again, my opinion is they don't. But could they have done some? Perhaps.

Q Right. But your opinion isn't based on personal knowledge, fair?

A Again, I work with the distribution centers. And in that process, I understand the flow of pallets through their entire supply chain to the store. And in talking with the folks at DC level, I have been told that these are not maintained at a store level. And in fact, Wal-Mart doesn't repair their pallets. They use third parties to do it.

Q Right. And that's not what I'm asking you because I have no doubt that you have experience at the distribution level with how pallet distribution systems work and the third party nature of the contracts and all like that.

What I'm asking is you have no personal firsthand knowledge of how the retail

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environment at the store level functions; is that fair?

A I mean, I have followed all their produce from their receiving dock out to the floor.

Q Right. And once it gets to the floor, that is where your study stops, fair?

A Yes.

Q Yes. And that's all I'm asking. I mean, there's no doubt that with Mr. Stewart's case, for example, it's a distribution question. Okay. With respect to the case in Idaho, it's a question of pallet design. With respect to the Grotto case, it's a question of really pallet design, but also sterilization to a certain degree. Okay?

Here, we're dealing with the retail front of Wal-Mart, and you have never done any research or study on how a retail store operates with respect to pallet repair, maintenance, et cetera, correct?

A No, that's not true.

Q All right. Tell me about it.

A You reference Idaho. Of course, that's Home Depot --

Q Right.

A -- but I know very well what Home

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Depot does when it receives its pallets, uses its pallets. And to the extent they maintain them, I'm intimately familiar with that entire supply chain.

Q Right. And I'm just talking about Wal-Mart now. I'm focused back in --

A I apologize. You didn't qualify your question.

Q No, it's my fault. And I understand.

With respect to Wal-Mart, you don't have that same level of familiarity with the retail setting, correct?

A That's correct.

Q Okay. And with respect to the photographs, for example, that you saw, is it fair to say that you don't know what Wal-Mart's policy would be, for example, on how to handle the nail sticking out the side of the pallet in the store?

A I do not know their criteria. They have an acceptance criteria for the pallet and its condition and quality. In terms of what they do with something that does not comply with that, I am not familiar with that procedure --

Q Right.

A -- at the store level.

Q Right. And, so, if, for example, an

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associate was walking around the store and saw that, you wouldn't know whether it was Wal-Mart's policy that they should go get a hammer and bend the thing back or totally remove the pallet from the floor, fair?

A Yes, I don't know that procedure.

Q Okay. With respect to pallets that are missing components at the Wal-Mart store that are on display or being put on display, you don't know what their policy, if any, is with respect on how to handle those situations at the retail level, correct?

A Well, I know their quality criteria and the amount of damage and types of damages that are acceptable. But as to the disposition of that at the store level, I am not now familiar with that.

Q Right. And when you're talking about their acceptance criteria, you're talking about a pallet's condition when Wal-Mart accepts that pallet from either a third party or a distribution center or a seller, correct?

A It's on the supply side. That's the -- that's the condition on the supply side.

Q Right. And, so, that supply side condition may very well have some relation or no

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relation to the condition of that pallet by the time it makes its way to the sales floor; is that fair?

A The condition of the pallet could change during that time.

Q Right. And you have no experience or expertise on how Wal-Mart handles pallets in that retail environment once they are accepted and the condition has changed, correct?

A I don't know their procedures regarding the disposition of those pallets.

Q Okay. With respect to Wal-Mart pallets in general, what types of pallets does Wal-Mart use, as far as you know?

A Well, they heavily use the rental pallets. And then they use basically a standard 48 40, we call it the white wood pallet, with three stringers notched. And they use the half pallet, which is -- can vary in design, for their display-ready, basis of their display-ready. So, that would generally describe the range of pallets that would end up in the store.

Q Okay. Are you aware if they use plastic pallets at all?

A Well, they -- they participate in the IGPS rental program. They sort that pallet.

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Q Okay. And that, the IGPS rental program, for the benefit of those of us who don't know quite as much necessarily about pallets as you do, but know a fair amount, what is the IGPS rental program? That is with respect to what type of pallets?

A Well, it's a 48 40 footprint.

Q Right.

A It's a post style, nine-post style plastic pallets with top and bottom decks.

Q So, Wal-Mart also uses plastic molded pallets, correct?

A Correct. They also use nine-post skids molded plastic molded for the base of some of their display-ready as well.

Q All right. And you can buy a plastic molded pallet that is capable of carrying the same load as a wooden pallet, fair?

A Yes.

Q All right. And you can buy a wooden molded pallet that is capable of carrying the same load as a wooden nailed pallet, correct?

A I think the answer to that is correct.

Q Okay. With respect to pallets and fasteners, your experience in that field has been

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primarily with the load-bearing capabilities of different woods and connector fasteners or plate connector systems; is that fair?

A Well, the fastener doesn't affect the strength of the pallet much at all. What it does is affect the resistance to damage during handling. So, those are two different things.

Q That's right. With respect to resistance to damage during handling, are metal connector plates or shank nails first better?

A What's a shank nail?

Q Well, we're talking about just a straight shank nail, not with a spiral end.

A So, you're talking about a plain shank nail?

Q Right.

A And you're comparing it to a metal connector plate? We don't use metal connector plates to attach components of pallets together. We use those metal connector plates maybe to repair damage to a pallet. So, their uses are very different. I can't make that comparison.

Q Let me ask it a different way. When would it be preferable to use a metal connector plate to repair a pallet as opposed to a nail?

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A Well, for example, the metal connector plate, its primary use in repairing pallets is to -- is to repair a crack that occurs in the fillet of a notch in a stringer. Well, a nail can't be used to repair that damage. That's why metal connector plates are used.

Q What about metal connector plates being used on the corners to stabilize pallets, do you know anything about that?

A So, when you say stabilize, stabilize relative to what deformation?

Q Twisting.

A So, racking resistance of the pallet?

Q Right.

A This is what you would call it. Are metal connector plates used for that purpose? I guess it's possible, but it wouldn't make sense. You would have to put the metal connector plate on the bottom of the pallet, which means you're tearing up floors. If you put it on the top of the pallet, of course, now you're connecting to the package product. Any other orientation of a metal connector plate's probably not going to improve its racking resistance.

Q Okay. The bottom deck boards on a

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pallet, what is their primary function?

A Their primary function is to allow for stacking of unit loads one on top of another.

Q I'm trying to think of the best way to have you say that without showing us. I know what you mean because we get a full square as opposed to, you know -- what you're saying in that context is that their primary function is not to bear the load that is affixed on the pallet of which they are a component, correct?

A No, that's incorrect.

Q Okay. Explain that.

A So, in supply chains, we stack one unit load on top of another unit load. We do that in the warehouse, and we do that in trailers in the shipping environment. The purpose of the bottom deck is to distribute the force on the lower loads so that you don't compress or damage it. So, it is load-bearing.

Q Load bearing when -- well, at all times, right?

A Could be. On conveyor systems, it's a load-bearing structure. Chain conveyors, roller conveyors, it now becomes a load-bearing component of the pallet.

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Q And the nails that are used to affix those bottom boards, the head of the nails are always on the bottom of the pallet, correct?

A I'm trying to think of an exception to that, and I cannot.

Q So, yes?

A Yes.

Q All right. And that means essentially that for the majority of that pallet's life, the load on the pallet is actually pressing down the stringers on the pallet to the bottom deck boards, right?

So, in other words, as long as there is a load on the pallet or it's sitting on the floor, they're not going to come off?

A No, that's not true. There are conveyor systems, there's drive-in racking systems in which these boards are stressed in bending, and that can affect the bottom joints.

Q Okay. Let's talk about a concrete floor situation. Okay? One of these pallets with a bottom deck board sitting on a concrete floor, that bottom deck board is not going to come off until or unless that pallet is moved, correct?

A I would say you are correct.

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Q Okay. If that pallet is moved or shifted, that bottom deck board may come off, correct?

A If it's pushed, it could come off, sure.

Q All right. And that's because the nail that is holding that bottom deck board on is only expected to support the weight of that deck board, right?

A I don't understand your question.

Q Well, the nail that is holding the bottom deck board on is only expected to hold that bottom deck board on, correct?

A Yes.

Q In other words, if that pallet is not moved or shifted, that deck board is perhaps held straight by the nail, but is really pushed down with gravity and the weight of the load, right?

A I mean, I'm having trouble understanding your question.

Q The deck boards that are used on the bottom of pallets, are they the same deck boards that are used on the top of pallets?

A No.

Q Okay. Why?

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A Because the performance of the top deck, the requirements of the performance of the top deck are different than the bottom deck.

Q Okay. That would also be true of the nails, that the performance of the nails holding on the top deck boards are different than the performance of the nails holding on the bottom deck boards, correct?

A No.

Q All right. When a forklift picks up that pallet -- are you with me?

A I'm with you.

Q It's putting stress or force on those top deck boards, correct?

A Yes.

Q And that force is the difference between the load that is on top of the deck boards and the gravity below it combined with the movement of the forklift, correct?

A Correct, but there's also stress on the bottom deck board as well.

Q And what is the stress on those bottom deck boards at the time the forklift has lifted that load?

A Predominantly because the entire

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pallet bends.

Q Right.

A The top deck doesn't bend separately. They are fastened together.

Q Right. You would agree with me that the force applied in that situation to the top deck boards is greater than the force that the bottom deck boards are undergoing during that same maneuver, right?

A I would say much of the time you're right, but not all of the time.

Q The vast majority of the time, unless that load is shifting in such a way that it's requiring the bottom deck boards to twist, that force is much greater on the top deck board. You would agree with that?

A Again, when a pallet is lifted on its fork tines, it bends. It bends over outside of the fork tines, and it bends between the fork tines. The stress is transmitted straight to the bottom deck by the stringers or the blocks. So, it's going to be similar stress if it's being lifted by a forklift, in fact, higher stress, because generally, we have fewer components on the bottom than the top. And, so, the top deck itself is somewhat stronger.

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Q And I didn't ask about the deck. I'm talking about the boards, not the entire structure as a whole because I understand when a pallet shifts, the whole thing shifts.

What I'm asking you is a forklift picks up a pallet. Let's say the pallet's empty. You would agree with me that the force on the top deck boards in that situation is greater than the force on the bottom deck boards?

A Okay. Yes.

Q That's why the specifications for those deck boards are different, correct?

A I don't know what you mean by specification. The quality of components, size of components is the same top and bottom deck board, fastenings are the same top and bottom.

Q According to the standard, right?

A According to industry practice.

Q As you are familiar with it, right?

A Yes.

Q Okay. My question then with respect to the nails used is the same. You would agree that that's a similar calculation, right?

A I don't understand your question.

Q All right.

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MR. WILLEY: Can you read back my third -- three questions ago?

THE REPORTER: "QUESTION: That's why the specifications for those deck boards are different, correct?"

BY MR. WILLEY:

Q And you agreed with that. You agreed that the specifications for the top deck boards are different than the bottom deck boards, right?

A I believe I said that we use the same quality materials, same size components, same fastenings top and bottom.

Q Right. But there are more deck boards on the top than the bottom, right?

A Not always, but most of the time.

Q The vast majority of the time, would you agree?

A It depends. Reversible pallets have the same deck top and bottom, and they're commonly used.

Q What percentage of Wal-Mart's pallets are reversible?

A Very few.

Q Okay. So, with respect to Wal-Mart pallets, you would agree that the deck boards on the

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top are expected to undergo more stress based on the design of the pallet?

A Yes. I want to state if you would make it clear with respect to Wal-Mart versus my world of pallets, then I can get these questions answered a lot quicker for you.

Q Okay. So, with respect to Wal-Mart, you agree with that?

A Yes.

Q That same calculation would apply to the fasteners, correct?

A I'm sorry, what calculation? Again, could you repeat what calculations?

Q The stress on the fasteners for the top deck boards versus the stress on the fasteners for the bottom deck boards being lifted on the forklift.

A I would say the top deck boards, as I said before, are under a greater level of bending stress than the bottom deck boards if that pallet is lifted empty.

MR. WILLEY: Let's take this short break just so I can make this call and we can all use the restroom.

(Recess, 4:10 p.m. to 4:42 p.m.)

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BY MR. WILLEY:

Q We took a little break. We're back refreshed, all of that. Earlier you said that nails are dislodged in pallets extremely rarely. You remember that?

A Yes.

Q Okay. When you say extremely rarely, in the course of a year, do you mean that would happen one out of every hundred pallets, one out of every thousand pallets, one out of every million pallets, or can you not say?

A No, to completely come off of a pallet, out of all the wood parts, I would say somewhere in the one every 500 or so pallets it will happen.

Q Okay. In the course of a year?

A And I want to qualify that during use. Obviously, in the pallet repair business, you know, they come loose intentionally actually.

Q Okay. What is, for customers on a store floor, what is the safest type of pallet?

A I mean, it comes back to strength and functionality. It doesn't matter what it's made out of, and it doesn't matter how it's fabricated. Is it strong enough, Number 1, to support the load.

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And is it functional, that is, it can be used for its intended purpose.

Q All right. You would agree with me that plastic pallets are made and can be as strong and functional as wooden pallets put together with nails, correct?

A They can be.

Q Okay. So, the only other issue safety-related would be with nail pops or nails coming dislodged, right, if we're not dealing with load issues?

A With regard to a wooden pallet?

Q Right.

A Repeat the question. I'm sorry.

Q Okay. Let me ask you this: On the sales floor, assuming a plastic pallet and a wooden nailed pallet can hold the same load, you would agree with me that a plastic pallet is generally safer for a customer in that store?

A No.

Q Why?

A Because if the pallet is made of wood and nails and properly maintained and in good condition, it's as safe and as strong as a plastic pallet. Plastic pallet, we could have a damaged

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foot on that pallet and it could be unstable. There are, in most plastic pallets, no nails.

Q Right. And, so, that harm potential of a nail is not present in a plastic pallet, right?

A Correct.

Q Okay. Are you aware of any Wal-Mart policies or procedures regarding plastic pallets on the sales floor?

A I know they're being used, but I don't know their specification and use in the stores.

Q Okay.

A I'm not aware of that.

Q All right.

A But I know they are being used in the stores, yes.

Q We talked a little bit earlier about the buyers and sellers inspecting pallets at the time of that transaction sometimes through a third party, right?

A Yes.

Q Okay. Would you expect that in a retail environment, once a pallet is delivered to the sales floor, that it would likewise be inspected?

A Pallets are to be inspected, it's

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written in the standards, prior to their use. I would not expect the condition to change once it's set down and it's not moved, the condition would remain the same. So, there would not necessarily be a need to inspect periodically unless the pallet was being moved or the product and the pallet together were being moved. But, again, they should be inspected prior to each use.

Q So, when that pallet is first delivered to the sales floor and that forklift drops it down, that is a period for that pallet where you would expect the damage potential to be higher than when that pallet is sitting there on the third day by itself and not being moved, correct?

A The possibility of damage is going to occur when it's being used and moved.

Q Right. And, so, that's my question. When it's first brought out and moved and placed onto the sales floor, would you expect that that pallet should be inspected at that time?

A Yes.

Q Okay. And if it's not, is that a violation of the standard?

A The ANSI Standard clearly states the pallet should be examined prior to each use.

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Q And if that pallet is, in fact, inspected, examined and it has a defect, does the standard require that defect to be fixed or the pallet to be replaced?

A Correct.

Q All right. And if that defect is not fixed or the pallet is not replaced, would you agree that that's a violation of the standard?

A Yes.

Q All right. And your opinion in this case has essentially been that because using this type of nail would be a violation of the standard, it's your opinion that this type of nail would never be used in the repair or maintenance of a pallet, correct?

A Yes.

Q All right. So, if you knew that an individual or a company routinely or regularly violated the standard with respect to pallets, might that change your level of certainty on your opinion in this case?

MS. BAGLEY: Object to the form.

A If -- if this particular nail that I saw in the photographic images -- and that's the only basis for evaluating this -- applied to a ruler

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so that it -- the measurement appeared to be a nominal one-inch fastener -- this fastener should not be used in pallet construction, assembly, or repair.

BY MR. WILLEY:

Q Right. But my question to you is if a user repairer of pallets routinely violated the standards with respect to maintenance and inspection of those standards, would your certainty level that they would not use a nonstandard nail in repair of a pallet decrease?

A Somewhat, but, again, this -- no pallet manufacturer or repair operation would use this type of a nail in pallets.

Q No ANSI-compliant pallet manufacturer or repair operation would use this type of nail?

A Anybody in the pallet business would not use this type of nail.

Q If they wanted to comply with the standard, correct?

A Whether they complied with the standard or not, this nail wouldn't be used.

Q You can say without a shadow of a doubt that anybody anywhere ever repairing a pallet would not use a nominal one-inch straight shank

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nail? That's a tough spot.

A I can say that nothing is never. How can I answer that? Anything is possible, but it is very remote that a nail like this would be used to assemble or repair a pallet because the pallet performance would be horrible.

Q Right. And that goes back to my earlier question, which is if we had an individual or an outfit that regularly had poorly maintained pallets that they were using, your level of certainty in what they might or might not do would necessarily decrease with respect to this nail, right?

A I suppose it is possible that there is some repair operation out there that may have used a nail like this, but it would be extremely rare.

Q Right. Or just a person or just an individual might use this nail. Forget about repair operation. Just an individual might use it, right?

A They would certainly use it to roof houses.

Q Right. And they could use it to hang a picture on the wall, right?

A Correct.

Q And they could use it to keep a leg

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stable on a table if the leg were thin enough, right?

A Yes.

Q Okay. And you could use that nail on any variety of wood projects; you just would not be within the ANSI Standards, right?

A If this nail were used in the assembly or repair of a pallet, the pallet is not in compliance with the ANSI or industry standards.

Q Okay. Are you aware of anywhere else in Wal-Mart with respect to displays or anywhere else in the store where they use nails regularly other than pallets?

A No.

Q Okay. If two nails are identical in every respect except length, the longer nail is more expensive, right?

A Yes.

Q Earlier, you said the ANSI Standard is so well used. How many companies manufacture pallets?

A I think estimates run between 1500 and maybe 2500 manufacturers or repairers of pallets in the US.

Q In the US. Okay. And does the ANSI

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Standard only apply to those US companies, or is it international?

A That is a US American National Standards Institute standard.

Q Is there a similar international standard?

A Yes.

Q Do you know how many companies nationally make or repair pallets? Internationally, excuse me.

A I can give you one data point that gives you an indication. In the United States, we are producing annually the equivalent of 25 percent of the world's production.

Q Okay. So, you would expect that roughly there would be three times as many companies outside of the United States manufacturing or repairing pallets as there are inside the United States?

A Well, it would be very rough because we don't know the size and the volume of each manufacturer.

Q Right. And they're probably just thrown in the ocean when they're done. That's not a question.

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Do you know how many of the US companies use the ANSI Standard?

A No.

Q Okay. How many of those companies have you personally visited, just roughly?

A Roughly, pallet suppliers in this country, again, you have to be careful because a company has maybe three, four, five different manufacturing locations. So, over my career, within North America, probably -- I can say several hundred. I would say somewhere between 500 and a thousand over the years.

Q And are you able to say that all of those companies that you visited were ANSI-compliant?

A No.

Q Do you know how many of them were not ANSI-compliant?

A No.

Q Who inspects Wal-Mart's pallets for ANSI compliance?

A Well, again, CHEP has inspectors. You understand the way the rental pallet systems work, they hire third parties to inspect the pallets. Okay? And that is Packaging Research Lab in

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Conyers, Georgia. That's the third party that monitors their pallets, as well as the manufacturers and repairers of their pallets.

Again, at the distribution centers, they have several third parties at the DCs that sort their pallets for them. And of course, they're inspecting them because, depending on their condition and what pallet it is, rental pallet or white wood pallet, it goes in a different direction, if you will.

Q Do you know who at the Wal-Mart store inspects the pallets once they're put into the retail environment?

A I don't know who does that.

Q The pallets that we're talking about are made of wood, right?

A Well, I don't know what pallets we're talking about.

Q If we're talking about general Wal-Mart pallets, are we talking about pallets made of wood?

A Or plastic internationally corrugated.

Q Okay. Any pallet that would have a nail in it would be made of wood, right?

A Most likely.

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Q Okay. And would you agree with me that exposure to rain and moisture degrades wood over time?

A Very slowly.

Q Okay. Would you agree that exposure to changes in temperature changes wood over time?

A Minimal.

Q Okay. Will you agree with me that pallets with empty nail holes would be more likely to change over time with exposure to rain and moisture?

A A pallet that has a lower quality connection, a missing nail, could change -- the components of that missing connection of -- or missing nail could change more over time than if the -- than if the connection was -- was as original.

Q Okay. How -- how do multiple unfilled nail holes in a repaired pallet, for example, affect the strength of the pallet?

A Okay. That depends on whether this is a component that has been removed from a pallet in which the nails were removed and then that was used to repair a pallet or that was used to make what we call a remanufactured pallet. Depending on the

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location of those nail holes, they can change the strength of that board. For example, if those nail holes in -- in -- in a salvaged part were put back into another pallet, if those nail holes were between the stringer members, it would reduce the bending strength of that component.

Q How many empty nail holes in a stringer component would you say is too many, it's time to throw out that component?

A Interesting question. Empty nail holes. If you look at the standard -- you know, I'm not sure of the answer to that question. I'd have to do some research on that subject.

Q Okay. What -- what would a range be? More than a hundred empty nail holes in a stringer component would be too many, right?

A Well, I can only give you a comparison that's in the standards. Okay? The ANSI Standard says that if a nail is protruding and you're repairing it, you put that nail back. You do restore -- if you have the specification for that pallet and a repair specification and, for example, the connection requires three nails and there's one missing, during repair, you should put that nail, another nail in. Okay? That's fairly clear in all

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of the repair standards.

In terms of open splits in which -- around a nail in which the integrity is compromised, that's limited in each pallet. There's only so many open splits permitted. So, with regard to missing nails, that's where the standard plays in.

Q So, are you able to give me a range of how many empty nail holes would be appropriate in a single stringer component?

A If there's an empty nail hole, another nail should be inserted to compensate for that. So, no.

Q Okay. Aside from being less expensive, is there any other reason to use a wood pallet instead of a plastic pallet?

A Good question. Most -- under most conditions, when the pallet is not to be reused, a so-called one way pallet, the wood pallet will be the less expensive. As far as a reusable pallet like the CHEP, PECO, and IGPS plastic, there's no particular reason. They both last the same length.

The cost to use them can be similar per use. Some people prefer the plastic pallet because of sanitary requirements in a manufacturing environment because in certain environments, they

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are cleaner if you clean them. But in terms of reusable pallets, many of which, of course, Wal-Mart uses, there's no particular reason. It's not because they're less expensive.

Q Okay. With respect to the sanitary situation that you just mentioned, you would agree with me that in general, a plastic pallet is more sanitary than a wooden pallet?

A If you clean it.

Q Would you agree with me that in general, it is difficult to get a puncture injury from a plastic pallet?

MS. BAGLEY: Object to the form.

A If the plastic pallet has no nails or mechanical fasteners in it, they're certainly less likely to have puncture from nails.

BY MR. WILLEY:

Q Okay. Does a wooden pallet perform better than a plastic pallet in any respect?

A It is very hard to answer that question because your question is so general. I cannot answer it in just comparing all wood pallets with all plastic pallets. Give me a situation, and I will tell you which one is better for that situation.

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Q So, you -- we've compared two types of -- I'll tell you what, give me the most similar wood pallet to the most similar plastic pallet.

A Well, I think IGPS and the CHEP or PECO pallets would be good examples.

Q Okay. And in that situation, does the wooden CHEP pallet in any respect perform better than the comparable plastic pallet?

A Yes, both from a strength point of view, the CHEP pallet is stronger than the IGPS pallet in load-bearing and very definitely from a stiffness point of view. The deck of the CHEP pallet has a transmissibility level of 1.4, the IGPS pallet 2.6.

What that means is that due to vibrations, the stresses that the plastic pallet impose on the product is almost twice as much as the stress on the wood pallet. And then finally, in terms of coefficient of friction and load slip, unfortunately plastic pallets tend to be slipperier than a wood pallet.

Q So, with respect to the plastic pallets and the vibration, the main benefit there is to the product that they're holding, correct?

A And in terms of load stability or load

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shift. They're much more stable, the wood pallet.

Q So, the vibration wouldn't be expected to have any impact on the structure of the plastic pallet itself, correct?

A Fatigue over time.

Q Right. Similar to the vibration on the wooden pallet where it could impact the decking or the nails, right?

A But, again, it doesn't vibrate as much is my point just made before. It's stiffer.

Q Well, it doesn't vibrate as much or it absorbs the vibration better? It absorbs the vibration better is what I think you're trying to say.

A All pallets are springs.

Q Right.

A The plastic pallet amplifies the input accelerations to a far greater degree than a wood pallet because in Hooke's Law. It's different.

Q Right. So, the wood and the nails in that wooden pallet are actually absorbing the vibration that the plastic pallet is passing along to the load, correct?

A No, no. The deck is stiffer itself. Forget about the fastenings or connections. In

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fact, in a plastic pallet, because it's molded, you have a stiff connection, if you will, infinitely stiff. It's the way we model it using FEA models, whereas we have semi rigid joints in wood pallets. But that has nothing to do with it. The fact of the matter is that wood has an MOE of 1.5 million PSI and plastic an MOE of a hundred thousand PSI.

Q Right. But again, we're talking about the passed-on impact to the product. For example, two forklifts carrying the same load on a plastic pallet versus a wooden pallet traveling down the same aisle, the impact from the input on the forklift arms to those two pallets is the same. You would agree with that?

A Well, I didn't realize we were talking about shocks. Shocks are very different. When an impact -- when a forklift impacts a pallet moving it a half a mile an hour, we have inertia in the system. That's totally different.

Q Right. And my terminology was inarticulate there. I am talking about carrying a pallet. Okay? Carrying a pallet down an aisle, same forklift, same load, the only distinction is we have a plastic pallet and a wood pallet. You would agree with me that the force and all of the inputs

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on each of those pallets from that forklift are the same. The difference is in how those pallets interact with the load.

A The response is different. The plastic pallet will deform much more than the wood pallet.

Q Okay. Fair enough. I asked you about the PDQ earlier; and you said it didn't have any impact on your opinion, right?

A Correct.

Q Okay. What do you recall about the PDQ? Was anything in there even relevant to you with respect to this case and your opinion?

A Well, a couple of issues, and this will come back to your question. First of all, your display-ready packaging is not attached in any way with mechanical fasteners or adhesives, and I've been in Wal-Mart stores and actually observed that.

Number 2, they have a pallet standard there, and I'm familiar with their pallet standard. They accept IGPS and CHEP, and then they have a GMA Grade I, which is pretty well known in the marketplace in terms of pallet standard and quality. Okay? So, that's what I remember.

Q Okay. Did it speak at all about

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Wal-Mart's policy as to leaving wooden pallets on the sales floor?

A Don't recall reading anything about that.

Q Okay. Anything about whether wooden pallets should be placed upon plastic bases, any preference one way or the other?

A It seems like both occur. I don't recall.

Q And, again, you don't have any expertise in the retail environment as far as what is preferred in terms of store displays; is that fair?

A Well, I know about pallets and there are pallets on the floor of a store.

Q Right, but you are not -- you are not a store display expert as far as what to do if, you know, there should be a plastic pallet here or a wooden pallet there, what's better in this particular aisle, anything along those lines?

A Well, as far as the graphics on display-ready packaging, no, I am very familiar with their corrugated standard and requirement and the ECT requirements and burst strength requirements, very well familiar with design of display-ready

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corrugated containers. I teach it. And of course very familiar with -- with the pallets that are specified, the half and full pallet and the fact that they don't use a quarter pallet.

Q Are you aware of what the standards say about merchandise being placed on top of a plastic -- strike that.

Are you aware of what the standards say about wooden pallets being placed on top of plastic bases in a retail environment?

A I just -- I know from the point of view of the Wal-Mart PDQ, they do specify a 48-inch height, and that includes the pallet. So, it's possible that if you double-stacked, you might exceed that height.

Q Is there anything that you're aware of about whether or not the entirety of the wooden pallet should be on the plastic base or whether it's appropriate or allowable to have a hangover?

A Overhang? From a stability point of view, you should always limit underhang and overhang.

Q That's what the standard says?

A Actually, I believe in the PDQ, it limits it to one inch.

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Q And the PDQ is actually Wal-Mart's internal policy, as you understand it, correct?

A Seems to be their publication. I assume it's their internal.

Q So, would you expect an outfit that doesn't follow its own internal publications to be more or less likely to follow external standards and publications?

MS. BAGLEY: Object to the form.

A Yeah, I'm not sure -- no, I don't expect it to be more or less.

MR. WILLEY: Okay. What I'm going to do -- Lee Ellen, are you there? Can you hear us?

MS. BAGLEY: Yes.

MR. WILLEY: Okay. I'm going to e-mail the same photos that we sent to you to the court reporter just so that she can mark the actual originals in the same order. Okay?

MS. BAGLEY: Okay.

MR. WILLEY: I'm going to talk about them in that order from the top so that you can follow along since you can't see what we're looking at. Okay?

MS. BAGLEY: Okay. Thank you.

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BY MR. WILLEY:

Q So, the -- I'm actually going to come to your side of the table so I can be sure we're looking at the same thing. All right. So, Image Number 1, which we'll mark as Plaintiff's Exhibit 1, what is this an image of?

A Stacks of pallets.

Q All right. And do you know what types of pallets are in this stack?

A Yes. I can see IGPS, PECO, and in the image you're showing me now, they appear to be CHEP pallets. And then over to the right here are some what we call white wood pallets, GMA style.

Q All right. And these are, fair to say, the mix of pallets that Wal-Mart typically uses, as far as you know?

A And there are some half pallets as well, which I don't see here.

Q All right. The second image, tell us what you see.

A I see a white wood GMA style pallet partial four-way. And it looks like one of the deck boards -- I see an exposed nail. It appears that the stringer has been split. And as a result, the nail is exposed.

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Q All right. And is this pallet on a Wal-Mart sales floor?
A I have no idea.
Q Okay. You can't tell from looking at this image whether or not this is a sales floor?
A It might be a sales floor but I can't say and I have no idea whether it's Wal-Mart.
Q Okay. This particular pallet that we're looking at, would this pallet be ANSI-compliant?
A This pallet should be repaired, removed from service, and repaired.
Q All right. So, this pallet would not be ANSI-compliant?
A It -- that damage there would exceed the allowable damage allowable in the ANSI Standard or the industry standard.
Q Okay. So, with a yes or no, as this pallet is in its current state, is it ANSI-compliant?
A MH1 Part 4, it is not compliant.
Q Okay. What type of pallet is that an Image 2, again?
A The generic name for it is GMA, Grocery Manufacturers of America. It is now less a

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technical name that's accurate and more a trade name or a name used in the trade for this particular type of pallet.

Q In other words, just so the jury understands, in the past, we would have expected these pallets primarily or singularly to have been manufactured by the Grocery Manufacturers of America, but no longer?

A No, no.

Q No? Okay. Tell us what you mean by that then because I don't think I understand.

A Yeah. Okay. This goes back to the early 1960s where the food industry was trying to establish a standard wooden pallet specification. And through the Grocery Manufacturers of America, through that particular organization, they adopted a pallet standard. Actually, it's called the GPC, but -- Grocery Pallet Council standard. But because the Grocery Manufacturers of America developed the GPC standard, it was called the GMA pallet.

It has evolved. The original specifications vary from this, but the overall three stringers, 48 40, partial four-way design with the top deck and the bottom deck is still affectionately called a GMA pallet.

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Q Image 3 is what?
A Stacks of pallets. Again, I see CHEP pallets, PECO pallets, and I see a couple of GMA pallets.
Q The Wal-Mart bin -- strike that.
The watermelon bin, do you see the watermelon bin?
A I see a corrugated bulk container, yes.
Q That says what?
A Says water --
Q It does say watermelons.
A Does it? Yes, it appears to say watermelons, yeah.
Q Okay. On the pallet that this bin is on, is there overhang or underhang?
A This is an octagonal bin. So, when you look at it, if you look at the full width of the pallet and -- of the box and the full length, it would probably be close to 48 40. Don't be misled by these walls. It's octagonal in shape.
Q Okay. And, so, there -- would there or would there not be some overhang or underhang if that bin were placed on that pallet?
A Well, that particular bin, I think,

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would fit the pallet.

Q Okay. Image 4, do you know what this is?

A Well, I -- looks like garbage, but I do see three pallets at least.

Q Okay. And is there shrink wrap around the product on those pallets, as best you can tell?

A There is -- I see some -- this is not shrink. This is probably stretch film.

Q Okay. The red pallet that's on top of the product here, would this be an ANSI-compliant way to store product?

A Part 4 does not get into how pallets are used. So, I can't answer that question, the ANSI Standard.

Q All right. Photograph Number 5 is -- is this pallet ANSI-compliant?

A Appears to be the same pallet you showed me before, which I said no.

Q All right. Photograph Number 6, I will submit to you, is an up close photograph of a bottom deck board and -- on a pallet. Okay. Does it appear to be --

A I have no idea. There's a board there, yes.

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Q All right. Is it typical that pallets would break apart in this manner when they're being moved?

A I can't tell. I have no idea what the orientation or components are except for that bottom deck board. I have no idea how it's attached and to what it's attached to.

Q Okay. What about the nail that's sticking out, would you expect that to be in a store where the public was visiting?

A Well, again, you don't want exposed fasteners --

Q Right.

A -- in a new pallet, a used pallet, or during their use. That appears to be a nail that's bent and -- but I don't know how exposed it is because I have no orientation within that photograph.

Q Okay. The next photograph, do you know what that -- is that a pallet in a store?

A Could be. Could be. It's -- it's a pallet on a floor. I -- these are shelves. I see some unit loads above.

Q Do the -- do the standards say anything about whether or not wooden pallets should

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be left in store aisles?

A You would have to go back to 1910.176 OSHA and look into it. That -- although I'm roughly familiar with that document with regard to pallet use, I don't know whether there's any reference in that -- and that's Department of Labor -- standard to this situation. So, I cannot answer.

Q Right. And the OSHA standard, as you understand it, is the occupational safety standard for employees, correct?

A That is really what it is for, exactly.

Q Right. The ANSI Standards don't say anything about how pallets are to be situated in a retail store, correct?

A No, they don't discuss the issue of where an empty pallet could be placed or not, no, there's nothing from the ANSI Standards that includes that.

Q The next image -- and I'm on Exhibit --

MR. WILLEY: Take a break a moment, tell me what exhibit I'm on.

(Brief discussion off the record)

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BY MR. WILLEY:

Q Exhibit 8 and 9 go hand-in-hand. They are the same pallet, okay, as is ten, as is 11. All right?

A Okay.

Q Going back to eight, what -- what do you see here?

A I see a nail.

Q Okay. What type of nail, if you know?

A Yeah, it is what is commonly called a stub nail. This is a nail that CHEP used to use to attach the top deck boards to the stringer board. It's one-and-a-quarter inches long. It's annularly threaded and placed through. When you recess the head, it goes almost all the way through both components.

Q Okay. And you would expect that this nail came out of a pallet, right?

A I would say if that's a stub nail. It looks like a stub nail. It may not be. But if it did, it -- it could have come from a CHEP pallet because that was a nail used in a CHEP pallet.

Q All right. The splitting of the deck board in Exhibit 8, does that mean anything to you?

A Nothing. It's a -- it's a -- it's a

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common occurrence in pallets. This is what we call a hairline split in which you cannot see the shank of the nail. You couldn't see it. So, therefore, it's acceptable. The level or number of splits is not limited in the ANSI or industry standard.

Q Okay. If that split went all the way through the board, would that change your opinion?

A No.

Q Okay.

A No.

Q All right. The diagonal notch off the end of this deck board, does that mean anything to you?

A You can see there was a knot. There was a branch in that tree when that board was cut. And, so, one side of it has -- has come off.

Q And is that -- does the ANSI Standard say anything about that?

A It does. That level would not -- how do I say it? That's compliant with the ANSI Standard, to use your terminology.

Q Okay. Looking at Exhibit 9, I'm going to show you a nail in the kind of bottom right-hand corner.

A Yes.

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Q That nail is not going through a deck board; is that correct?

A Correct.

Q And, so, that's a protruding nail. Would you agree with that?

A Yes.

Q And that's not compliant with the ANSI Standard, correct?

A Correct. There is -- how should I say this? There is a limitation to the number of these that can occur in a pallet structure in the ANSI or industry standard.

Q All right. And also in Exhibit 9, on the deck board just up from that, we're able to see staples?

A Yes, I see staples.

Q And they're going through the top of the deck board. Is that accurate?

A I would say so, yes.

Q Okay. Is it ANSI-compliant to use staples to hold together pallets?

A Yes.

Q Do those appear to be the types of staples that you might use in the repair or construction of a pallet?

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A It's hard to tell from just looking at the crown of a staple. It's difficult to answer that.

Q All right. You would agree with me though that this pallet does, towards the northern end, the top, appear to have empty nail holes, correct?

A I cannot tell from that photograph.

Q Okay. Fair. The -- going to Exhibit Number 12, we're looking at -- what are we looking at? Algaecide Clarifier made by Clorox. Is -- what do you see here with respect to the pallet display?

A Well, I see a display-ready corrugated shelf rack sitting on top of -- I can't tell. It could be a half pallet.

Q I'll show you 13. That's the side of it?

A Sitting on top of what would be equivalent to a half pallet.

Q And, so, in Photographs Exhibits 12 and 13, that pallet is experiencing some overhang on the plastic base; is that correct?

A Well, there appears to be an inch or so overhang on this corner facing us. Appears to be twisted. The pallet appears to be twisted.

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Q All right. And is that the safest way to display a pallet on top of a plastic base in a retail environment, or do you know?

A It's a little bit outside of my expertise. I'm not a safety engineer.

Q Okay. Number 15 and 16 and 17, we're looking at the same pallet, okay, which is -- appears to be kites. I'm going to show you 16, which is a farther-out view of the photograph we looked at earlier that you weren't able to get a sense of. Let me count it. Six.

A Thank you. Thank you.

Q Okay. So, six is really a closeup of these later views. And you're able to see the pallet there. What -- I mean, first of all, what kind of pallet is this?

A Well, this is a repaired GMA -- well, I think. Is it a half pallet, or is it a full pallet? No, it's a full pallet. So, it's a repaired 48 40 pallet, and they've nailed a companion component to the broken stringer.

Q Right. And that would have been done prior to it being put on the sales floor most likely, right?

A Quite certain.

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Q All right. And the nail that's sticking out of the side off the bottom deck board of this pallet would not be ANSI-compliant, correct?

A Again, there are a certain number of shiners. That's called a shiner, shiner being part of the nail is sticking out. Okay? And, so, with regard to the ANSI Standard, I think -- no. Shiners to the outside of the pallet are not acceptable.

Q Okay. And this level of damage on a pallet, I mean, do you have any opinion about that? I mean, we can see wood chips over here.

A Well, again, what's happening here is a standard repair practice for taking a broken stringer, in this case, the foot of the stringer, we call that portion around the notch, is gone, i.e., for one reason or another. They've put a companion component adjacent to it.

What they will do, and I suppose they did, is they nail the top deck and the bottom deck to this companion since there's nothing to nail left in the original stringer. And then they have injected some side nails in there to further stabilize this companion component. So, what you see there is a standard repair procedure for broken stringers.

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Q And that would -- you would expect to see a notch like that in the bottom of the pallet?

A Yes. You can see the original stringer was, but the companion does not have that notch.

Q So, on the center of this pallet, looking at the last exhibit now, you're able to see the deck boards. Do those -- do those appear to you to be ANSI-compliant?

A I can't tell from the photograph.

Q Okay. Are you able to tell from any of this photograph what types of nails were used in the repair of this pallet?

A No.

Q Okay. What about in Exhibit 12, the second-from-the-left deck board, are you able to tell what kind of nail is holding that in just from looking at this photograph?

A No.

Q Okay. And in Exhibit 12, commonsense, but does it appear to you that the wood that fell off of this fell off after it was placed on the sales floor?

A I'm sorry, the end of the stringer that is missing?

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Q The wood that is separated entirely from the stringer, you would have expected that to have fallen off at the time it was placed on the sales floor, correct?

A I don't have an image of what fell off.

Q Just the chips I'm talking about here.

A That's a tiny chip. You're missing a significant portion of that stringer.

Q Right.

A No, I -- that's the reason they repaired it. So, that damage was long before it got to whatever store it's in. I don't even know that.

Q Right. All right. Let's take a short break just to make sure I didn't miss anything. You can call home. They might be wondering where you are.

(Recess, 5:35 p.m. to 5:39 p.m.)

BY MR. WILLEY:

Q Do you know how many pallets Wal-Mart uses in the course of a year?

A No.

Q Okay. Do you have a round ballpark estimate?

A I wouldn't even hazard a guess.

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Q Okay. Your -- we talked about your opinions and everything. And your methodology basically for reaching those opinions has just been your professional experience; is that fair?

A Well, no. It's the fastener standards.

Q Right. The standards and your familiarity with them, right?

A And my experience.

Q Right. But you did not --

A Yes.

Q Right. You did not use a similar nail to see if a top deck board or bottom deck board could be held on with that nail, fair?

A I have not done any tests.

Q Okay. With respect to a stub nail that we talked about appearing in the photograph, are you able to give me a full description of that?

A It's been a while, but I believe if you get a copy of the CHEP specification, probably a few years back -- their specification evolved -- I believe it's a 135 wire diameter, one-and-a-quarter annularly threaded nail. The head diameter's probably 280/1000 on that nail, could be 300/1000. That would be a close description of that

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specification.

Q All right. And what type of --

A It's a no-point nail.

Q No-point nail? What type of metal would it be made out of?

A They're all low carbon steels. So, in terms of an SAE number, it's probably a ten -- a 1020 SAE alloy.

Q So, a nail that you would expect to rust over time?

A Yes. These are not coated in any way. They do rust.

Q If it were a galvanized nail, you would expect no rusting over time?

A No, that's not correct. Galvanized is a sacrificial coating. It will eventually degrade.

Q How long about would you say that would generally take in a retail environment for a galvanized nail to rust?

A If you're talking about a nail placed in a pallet, it will depend on the wood species and the moisture content of the pallet at the time of assembly and how that moisture content changes over time. So, you'll get varying degrees of corrosion, iron oxide formation.

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Q What about in a Wal-Mart pallet, wooden pallet?

A Well, first of all, the CHEP pallets are assembled with wood at about 22 percent maximum moisture content. So, your corrosion in a CHEP pallet's going to be quite low. Now, they are stored outside. So, the head will rust, but the shank will not in a CHEP pallet, a PECO pallet. And a white wood pallet made of kiln dried wood, there will be very little corrosion over time.

Q What about in a GMA pallet?

A Dense hardwood pallet manufactured green out of oak, you get corrosion over time.

Q With respect to a stub nail, is there anything else you could use it for other than a pallet?

A I have never seen that nail used or that type of a nail used in other applications. It was something that was developed by CHEP. Generally, if you look at the head on the nail, it will have a C on it, and that indicates that it is a CHEP specification nail.

Q Does it always have a C on it, or do you know?

A That's a very good question. I think

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most of the time, because of the vendors who supply them, I think Bostitch was a big supplier, the C was quite common.

Q Okay. And is it a raised C or an engraved C?

A Very good question. Is it embossed or is it raised? You see, what happens in a nail machine is you have a header, you put the wire through, and you head it. As I speak to you, I cannot remember which way it goes.

Q Okay. Would it be possible to use a stub nail to hang a photograph on the wall?

A Depending on what you're nailing into and how much of the shank is penetrating, it could be used for other purposes. The no-point nail doesn't split. That's why you have a no-point nail.

Q Have you ever done any farming?

A Have I done any farming? Other than my garden in the back of my house, no.

Q Okay. So, have you ever seen on a farm kind of all the leftover nails from all the projects that we have, you know, kind of go into a coffee tin or whatever you have and there is this process by which we decide which nail to use, which is we just pull one out and we say, "Well, that will

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do." Have you ever used that kind of process in selecting what type of nail to use in a project?

A Not in a pallet.

Q Okay. In any project?

A I have a couple of coffee tins full of nails, and I have gone through and selected nails of different kinds for different uses.

Q All right. So, even you have not always used the nail designed for the purpose that you were using it for; is that fair?

A No, it's probably why I selected that nail, because it would be useful for my intended use, I think.

Q Right, but my point is we have different types of nails. We have roofing nails, we have stub nails, we have framing nails. You don't always have to use a framing nail for framing, correct?

A Well, we have to be careful of the definition of a framing nail. I'm sorry. With regard to roofing nails, I've done roof work, and I use roofing nails in shingles.

Q And we talked about roofing nails. We could use them to hang a picture on a wall or nail a deck board to the wall. What I'm asking is with

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respect to other types of nails, they could be used for purposes other than their name might imply. You would agree with that, right?

A I think if you got the right style of nail of the right length, there are multiple uses for that nail.

Q Okay. The final thing was you agreed that you would send me a copy of your full file. So, I'm just going to give you my e-mail address. Can you just do that sometime tomorrow?

A Clarify what you mean by full file.

Q Full file is just anything that you relied on in forming your opinions that I would not already have unless you wrote notes on it. So, if you wrote notes on the summons and complaint or the depositions, then I would like those. If you wrote notes on anything else, I would like those notes along with any e-mail or letter correspondence that you've had.

A Can you articulate to me in an e-mail as to exactly what you want and I will supply it?

Q Yes. And in fact, I have -- it's in -- yes, I will put it in an e-mail about that. What I'm going to ask you for is just your e-mails that you've had about this case, any correspondence

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you've had related to this case, any notes you've written related to this case, and anything that you relied on related to this case.

A Copies of the standards?

Q Right. And if she, for example, if Lee Ellen e-mailed you all of the photographs and things and you printed them out and took notes on them, I'd like that e-mail forwarded, but I would also like copies of your notes.

A I have no notes on anything for this case.

Q Perfect. If that's the case, then you can just e-mail me what you relied on along with the correspondence.

A Again, several correspondence are verbal, but we do have e-mail.

Q Right.

A I can send you copies of the e-mails.

Q Yes.

A Obviously, if you are entitled to them, I have no problem.

Q I am. I am. And then do you -- is your agreement in this case -- do you have a contract in this case?

A No contract. I have submitted my fee

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schedule to counsel. And as I understand it, I've been retained; but there is no contract.

Q Okay. Have you been paid anything in this case?

A No.

Q Okay. Do you know how much you've billed in this case so far?

A I've billed nothing except for the retainer. It's not a bill. I merely stated that in a letter that I do require a retainer.

Q Of what amount?

A One day's work, $3,200.

Q And have you gone beyond that retainer in your work on this case?

A To counsel, yes, I'm a little bit beyond it. I believe the hours I spend with you is billable to you, or am I wrong?

Q Do you expect to spend any more time before trial outside of this deposition?

A I could do some more research on the general subject, yes, I could spend more time.

Q Okay. And do you expect for any reason that your opinions in this case would change prior to trial?

A They could.

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Q Under what circumstances would -- might they change?

A Really it depends on additional information I would receive between now and then.

Q All right. And if your opinions do change prior to trial, will you let me know through counsel?

A I will certainly let counsel know. I leave the disposition up to them.

Q That's perfectly all right. Is there anything that you, having gone through the deposition so far, would like to review that you have not had the opportunity to review?

A Well, I'd like to see the nail.

Q Okay. All right. Anything other than that?

A At this point, but -- right now, nothing occurs to me, but that could change.

Q Okay. Great. All right. I think that's all that I have for now.

MR. WILLEY: Lee Ellen, do you have anything, or can we go for pizza and beer?

EXAMINATION

BY MS. BAGLEY:

Q Dr. White, you mentioned you would

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like to see the nail.

MS. BAGLEY: Roy, do you have that with you?

MR. WILLEY: I do not.

MS. BAGLEY: Why not?

MR. WILLEY: I forgot it, to be completely honest with you. And when he just asked me for it, I just remembered that I was going to bring it and I did not. So, what I will agree to do is make time prior to trial or his testimony that he can see that and whatever we need to do, take a break, do it in the evening, I'm fine. I don't know when he plans to arrive, how far in advance, but I promise you I'll work with you on that because I honestly just forgot it.

MS. BAGLEY: Okay. Thanks.

MR. WILLEY: I meant to bring that for you.

BY MS. BAGLEY:

Q Dr. White, can you hear me?

A Yes, I can.

Q Okay. Do you recall your testimony earlier you were questioned whether it was possible that a nail such as the one at issue in this case could have come from a pallet in Wal-Mart? Do you

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recall that?

A I remember the discussion.

Q Okay. And do you recall that you said something to the effect of it could have happened, that it was -- did you say it was possible?

A Yes.

Q Okay. What level of possibility are we talking about when you say that?

A I can't give it to you statistically, but it's a very remote situation that a nail like this would end up in a pallet. It would likely never be used for assembly. It would never be used for repair.

Q And would you agree that pallet manufacturers, suppliers, or repair personnel working for these companies have an interest in making sure that their pallets stay together and don't fall apart?

MR. WILLEY: Object to the form.

A Absolutely agree. The cost to them of pallet failures would be significant.

BY MS. BAGLEY:

Q And in what respect?

A Well, unfortunately, liability gets moved around depending on the situation. But the

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pallet manufacturers themselves are liable if there's an injury associated with the use of their pallet. So, best practices, they reduce that possibility as much as possible.

Q Are you aware of anyone that could speak to every pallet ever used by any retailer?

MR. WILLEY: Object to the form.

A Obviously, no one can.

BY MS. BAGLEY:

Q Based on your experience and knowledge, does Wal-Mart's use of wooden pallets comply with industry practice?

MR. WILLEY: Object to the form.

A Yes, I have observed their use of pallets and they -- they are -- Wal-Mart's supply chains are extremely efficient and well run. In fact, they have become a model. And Sam's Club is part of that model, and the distribution systems are similar. They go to great pains in terms of maintaining pallet quality. I use it as a model for my students as a demonstration.

BY MS. BAGLEY:

Q And, so, then is it fair to say that other retailers use wooden pallets on their sales floors?

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A Oh, yes, it's a common practice.

Q Do any of the nails depicted in the photographs that you were shown at the end of your most -- well, strike that.

Did any of the photos that you were recently shown, I believe that was Exhibit 12 collectively, show any nail that resembles the nail at issue in this case?

A No.

Q And do any of those -- does anything in those photographs indicate to you the pallets or the condition of those pallets that were in use in the subject Wal-Mart store on April 26th, 2015, almost four years ago?

MR. WILLEY: Object to the form.

A I have a very short video, and I can't tell from the video whether there's any correlation at all between what I saw in those exhibits and what was being used in the store.

BY MS. BAGLEY:

Q Do you have any reason whatsoever to expect that the nail at issue in this case came from a wooden pallet inside the Wal-Mart store?

A No. It, in my opinion, did not come from a wooden pallet.

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Q All right. Those are all the questions I have. Thank you.

EXAMINATION

BY MR. WILLEY:

Q All right. Just briefly, when you talk about the supply chain being a model, you're talking about what happens from the manufacturer through the distribution through it getting through the back door of the store, correct?

A Correct.

Q In other words, you have no expertise on how Wal-Mart handles pallets on its sales floor or whether what they do with pallets on the sales floor is a leader or even meets the industry standard; is that fair?

A I have not seen the in-store pallet handling practices.

MR. WILLEY: That's all I have.

EXAMINATION

BY MS. BAGLEY:

Q Dr. White, to your knowledge or -- I understood your testimony earlier to be that Wal-Mart does not repair its pallets in-house. Is that your understanding?

MR. WILLEY: I object to the form.

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A Yes. Wal-Mart relies on third parties to maintain their pallets.

MS. BAGLEY: Thank you.

(Off the record at 5:58 p.m.)

(Signature waived.)

* * * * *

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COMMONWEALTH OF VIRGINIA AT LARGE, to wit:

I, Renee A. McDermed, Registered Professional Reporter and Notary Public in and for the Commonwealth of Virginia at Large, and whose commission expires December 31, 2021, do certify that the aforementioned appeared before me, was sworn by me, and was thereupon examined by counsel; and that the foregoing is a true, correct, and full transcript of the testimony adduced.

I further certify that I am neither related to nor associated with any counsel or party to this proceeding, nor otherwise interested in the event thereof.

Given under my hand and notarial seal at Floyd, Virginia, this 22nd day of May, 2019.

_____

Renee A. McDermed, Notary Public No. 7204975

Commonwealth of Virginia at Large

REGISTERED PROFESSIONAL REPORTER

BY MR. WILLEY: [23] 7/4 8/6 15/18 37/10 44/11 46/15 49/1 52/13 56/13 57/22 62/4 62/24 64/10 64/25 68/14 87/5 88/25 94/4 103/16 110/24 117/24 125/18 139/3
BY MS. BAGLEY: [7] 134/23 135/18 136/21 137/8 137/21 138/19 139/19
MR. WILLEY: [17] 8/4 86/25 88/21 110/11 110/14 110/19 117/21 134/20 135/3 135/5 135/16 136/18 137/6 137/12 138/14 139/17 139/24
MS. BAGLEY: [22] 15/16 37/6 46/10 48/18 52/12 56/12 57/21 62/3 62/19 64/8 64/22 68/11 93/21 103/12 110/8 110/13 110/18 110/23 135/1 135/4 135/15 140/2

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5:58 [2] 1/18 140/4

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8888 [1] 2/15

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9.....116
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above-the-knee [1] 7/11
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absorbing [1] 105/21
absorbs [2] 105/12 105/12
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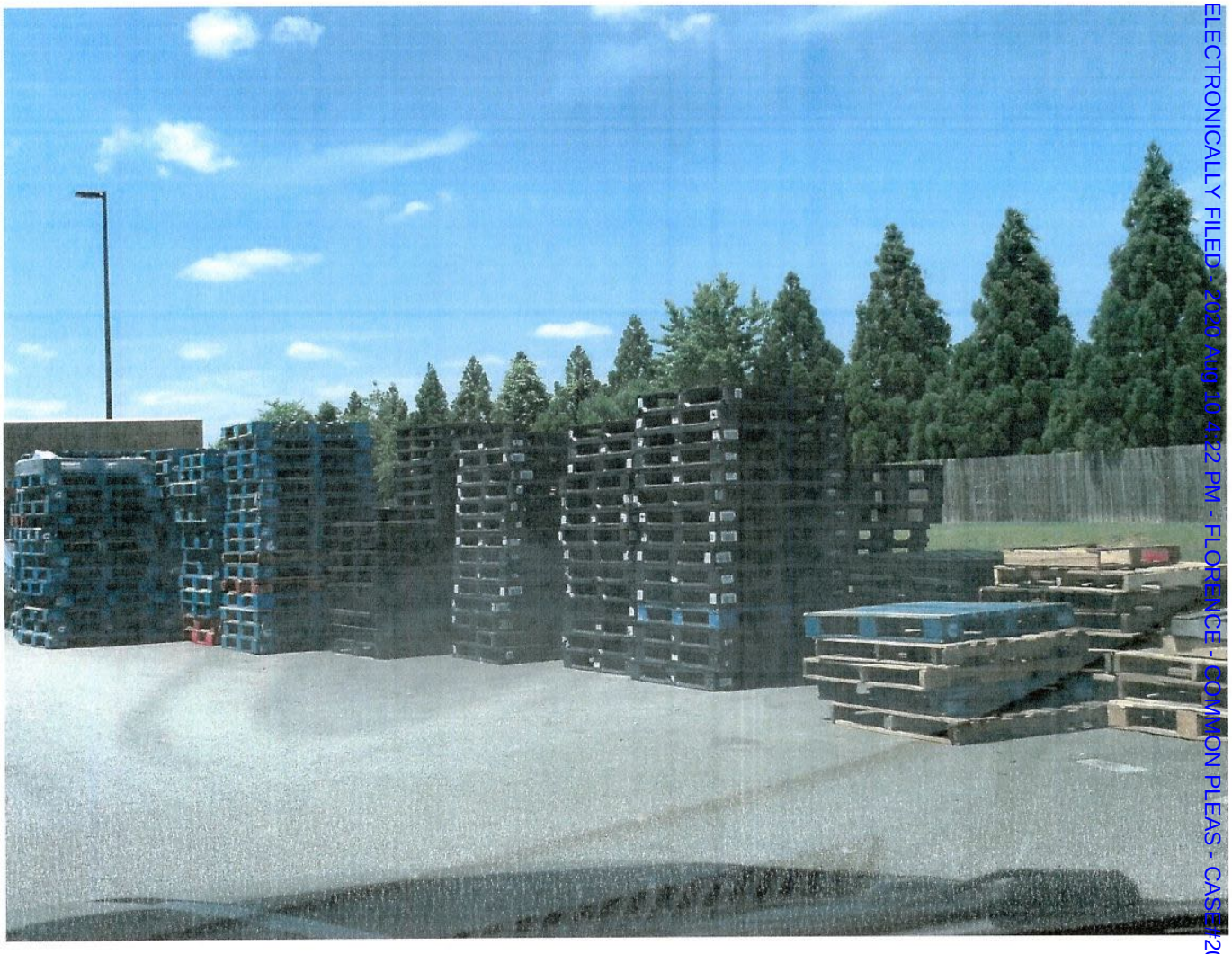

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PLAINTIFF'S EXHIBIT
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PLAINTIFF'S EXHIBIT
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White 5-2019
PENGAD 800-631-6989

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PLAINTIFF'S EXHIBIT
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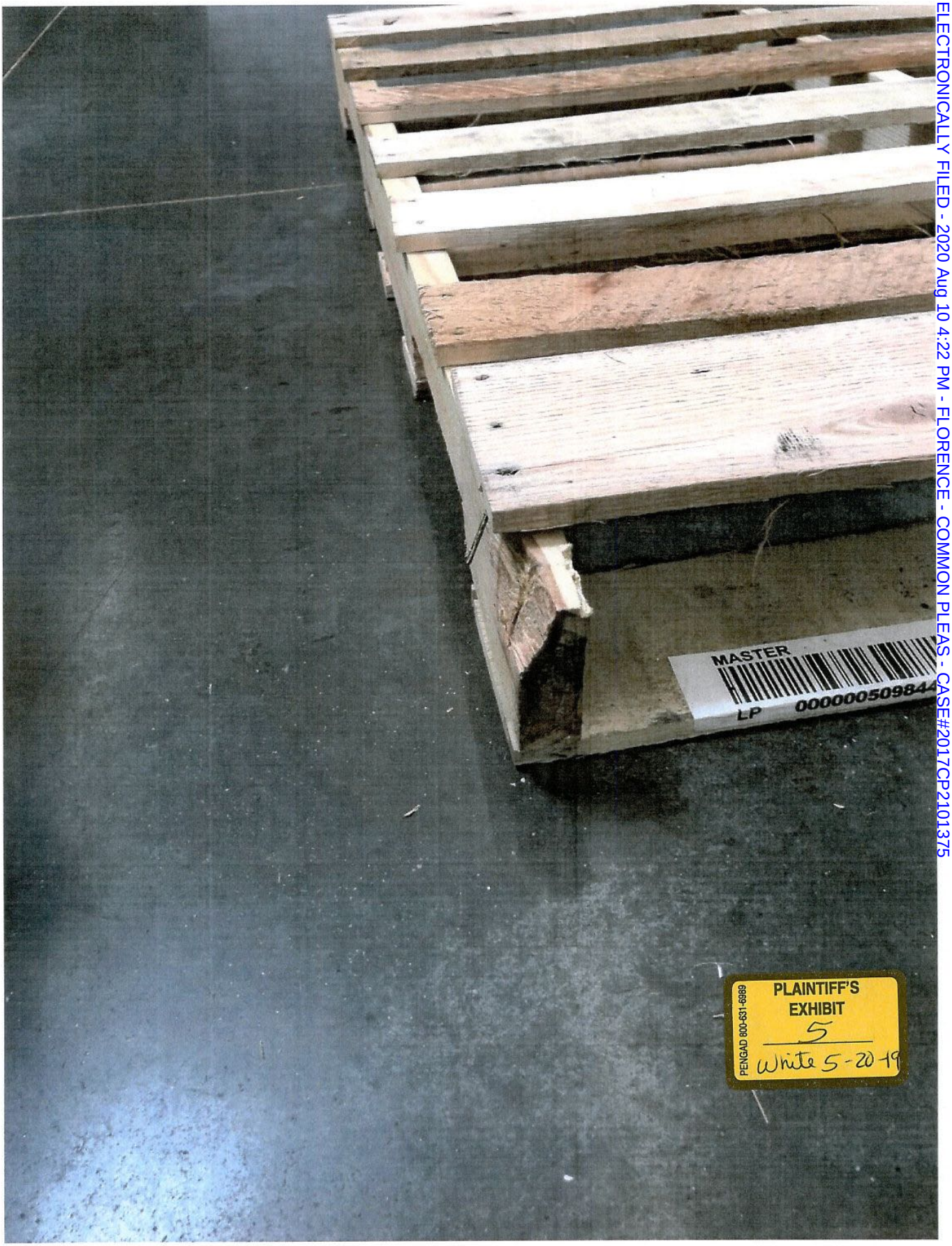

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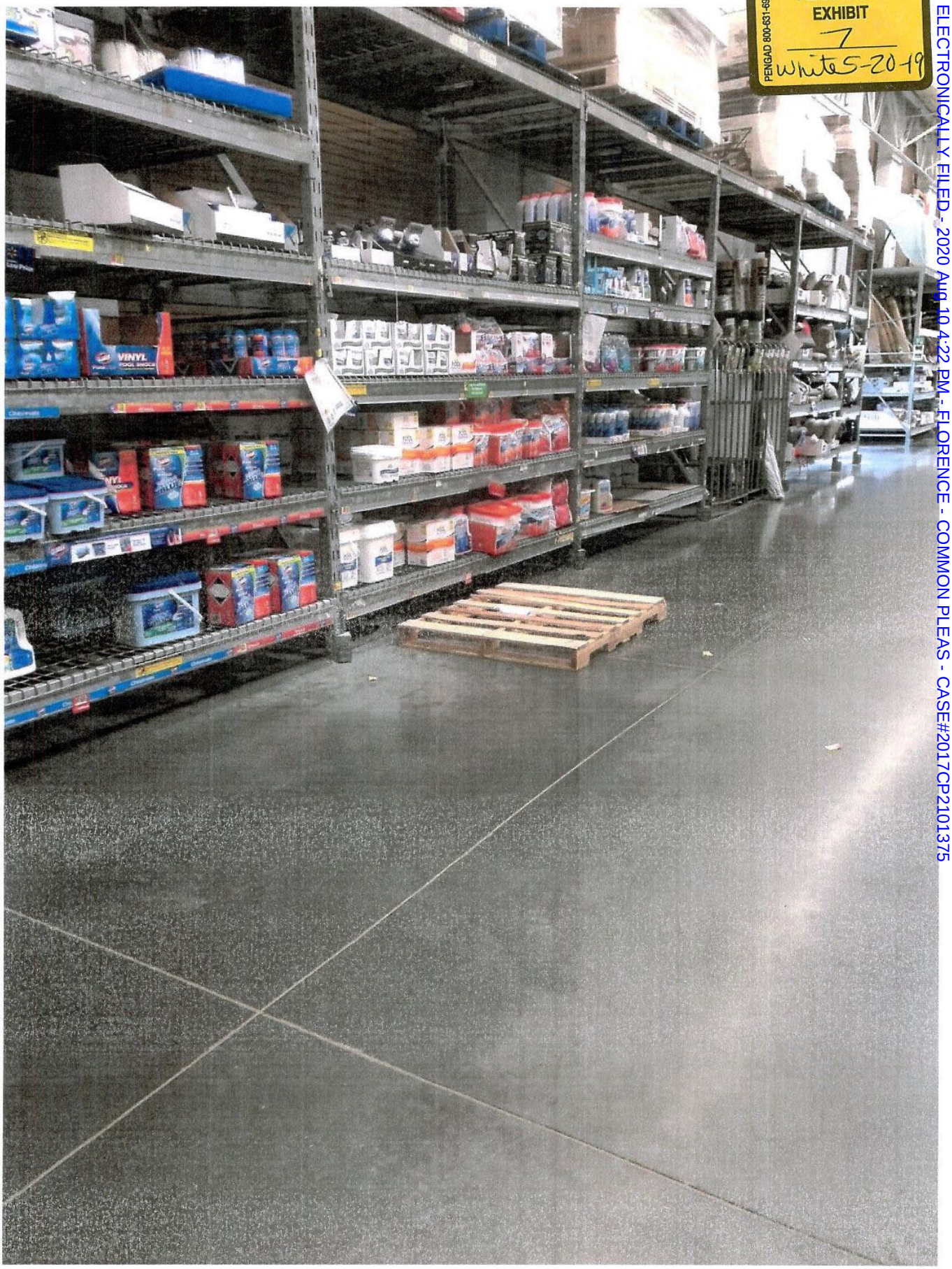

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PLAINTIFF'S EXHIBIT
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White 5-20-19
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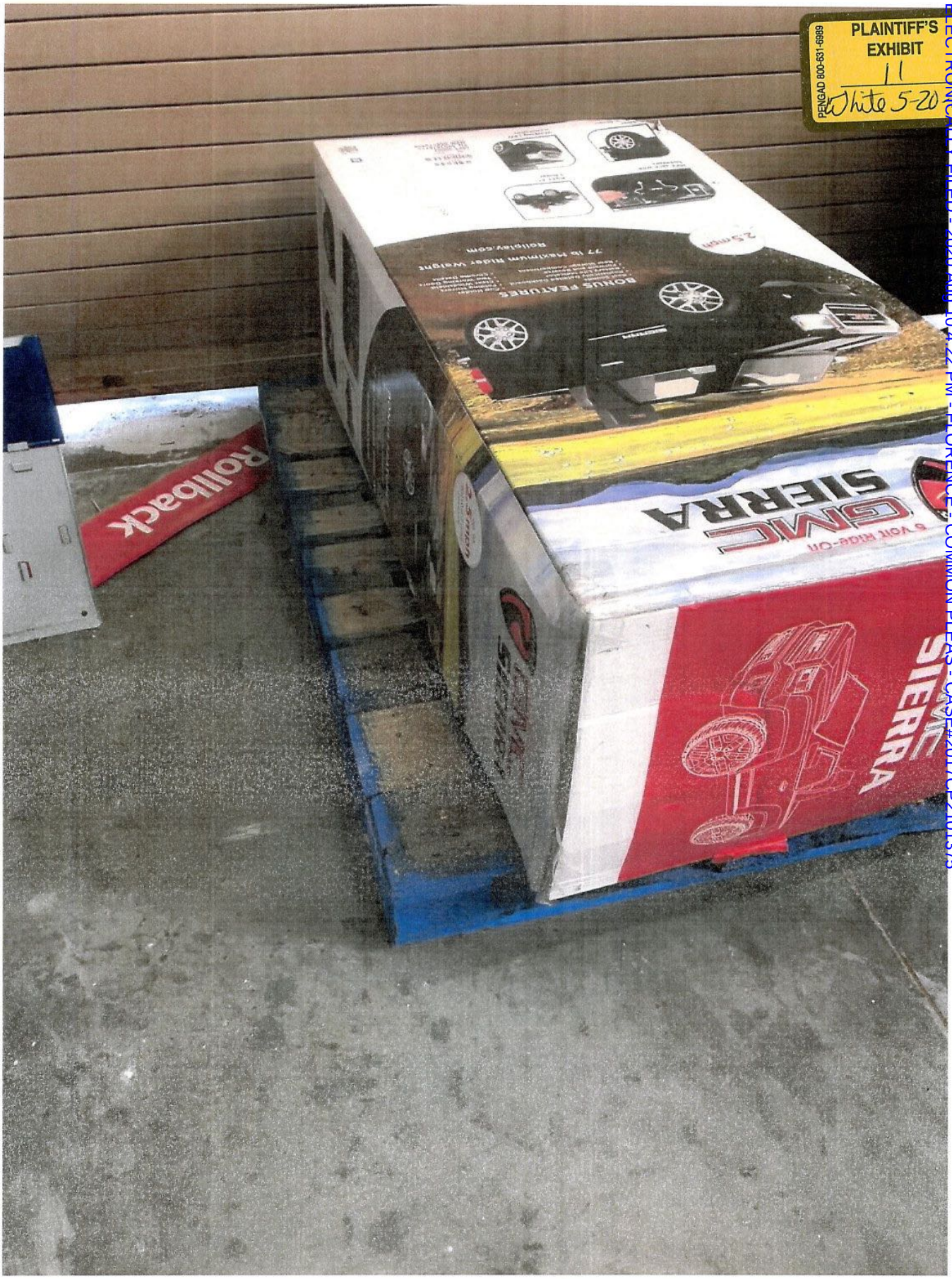

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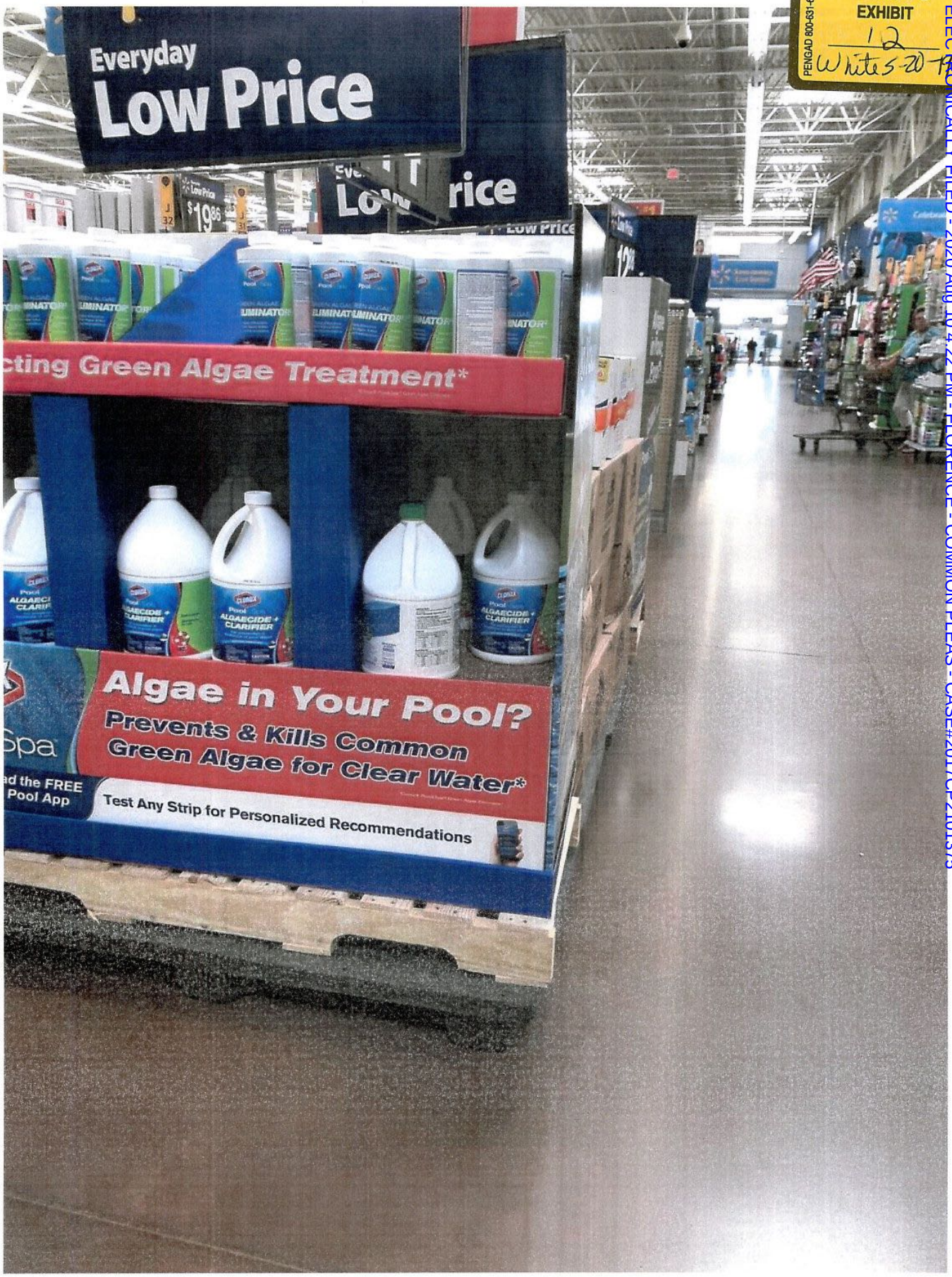

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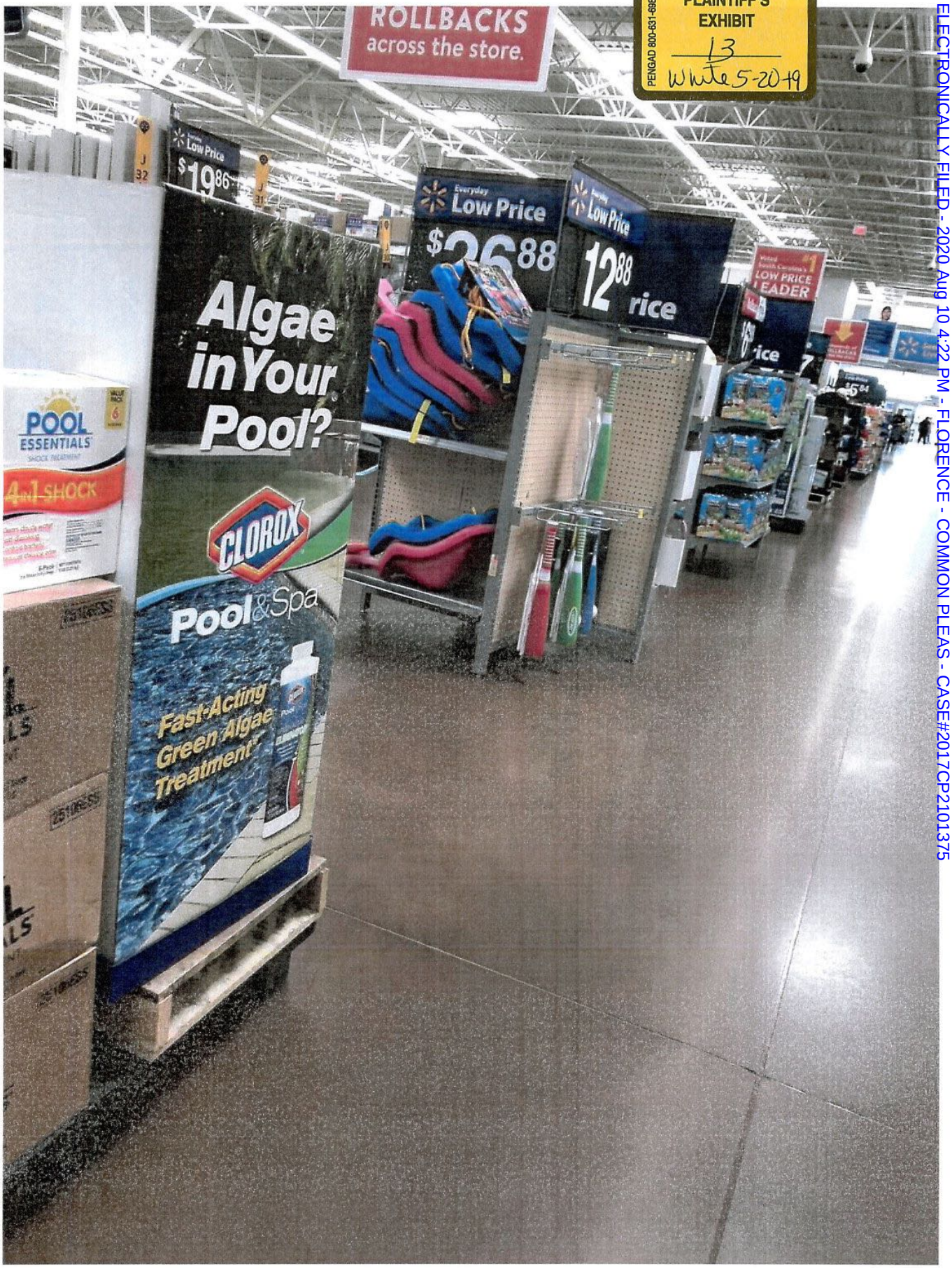

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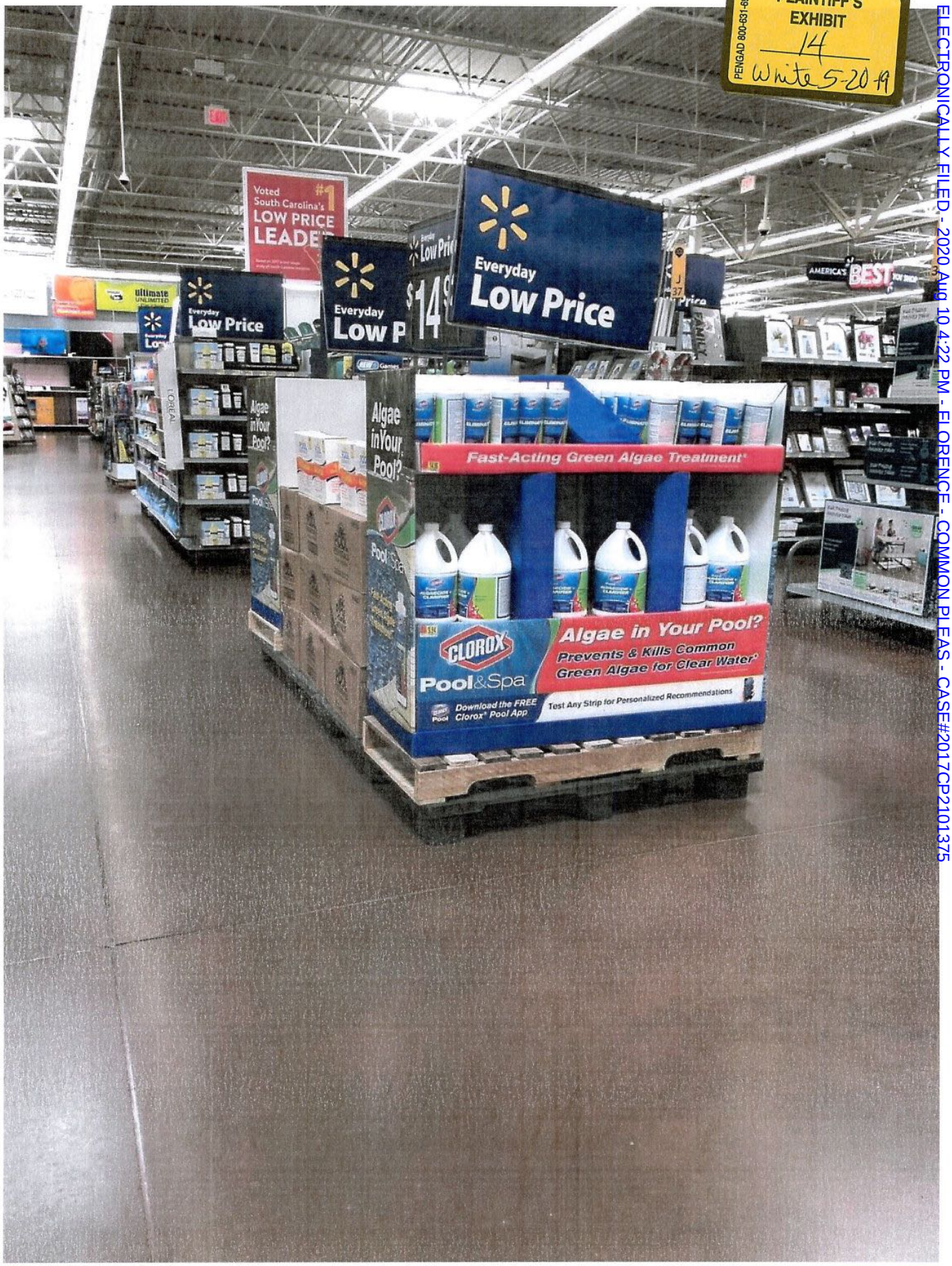

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PLAINTIFF'S EXHIBIT
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White 5-20-19
PENGAD 800-631-6989

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EXHIBIT C

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STATE OF SOUTH CAROLINA COUNTY OF FLORENCE April Jones, Plaintiff, vs. Tim Ringer, Individually and as employee/agent Wal-Mart Stores, Inc. d/b/a Wal- Mart Store #630, and Wal-Mart Stores, Inc., Defendants.	COURT OF COMMON PLEAS TWELFTH JUDICIAL CIRCUIT Civil Action No. 2017-CP-21-1375 **DEFENDANT WAL-MART'S RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

TO: PLAINTIFF AND HER COUNSEL, ROY T. WILEY, IV, ERIC POULIN, AND SEAN TROPEA:

Defendant Wal-Mart Stores, Inc.[1] (hereinafter, "Wal-Mart" or "Defendant"), by and through undersigned counsel, hereby responds to Plaintiff's First and Supplemental Interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure as follows:

GENERAL OBJECTIONS

Defendant Wal-Mart objects to the Interrogatories and Requests for Production of Documents to the extent that they seek information protected by the attorney-client privilege, the work-product privilege, or any other privilege, protection, or immunity applicable under the governing law.

Defendant Wal-Mart objects to the Interrogatories and Requests for Production of Documents to the extent that they are overly broad, unduly burdensome, oppressive, and/or seek information that is not relevant to the issues in this lawsuit or reasonably calculated to lead to the discovery of admissible evidence.

These General Objections are made, to the extent applicable, in response to each of the

[1] The named Defendant Wal-Mart Stores, Inc. is not a proper party to this action; Wal-Mart Stores East, L.P. is the sole proper corporate defendant.

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Interrogatories and Requests for Production of Documents as if the objections were fully set forth therein.

Defendant Wal-Mart responds to each of the Interrogatories and Requests for Production of Documents based upon information and documentation available as of the date hereof and reserve the right to supplement and amend their responses.

RESPONSES TO STANDARD INTERROGATORIES

1. Give the names, addresses and telephone numbers of persons who may-be witnesses concerning the facts of this action or who have knowledge of relevant facts concerning this incident, and indicate whether or not written or recorded statements have been taken from the witnesses, and indicate who has possession of such statements.

RESPONSE:

April Jones: Ms. Jones is the Plaintiff in the above-referenced action. She provided a recorded statement to Defendant Wal-Mart's claims manager, Claims Management, Inc. ("CMI") on June 29, 2015, a copy of which Defendant Wal-Mart herewith produces (WM A JONES D00002).

Ayesha Cooke: Ms. Cooke is as Assistant Manager with the subject store who responded to the alleged incident. Ms. Cooke prepared the Store Incident Report (WM A JONES D00003-4), Customer Incident Report (WM A JONES D00005) and Video Request Form (WM A JONES D00007) associated with the alleged incident, copies of which Defendant Wal-Mart herewith produces. Defendant is unaware of any written or recorded statement taken from Ms. Cooke. Ms. Cooke may be contacted only through counsel for Defendants.

Kevin Lane: Mr. Lane was a Co-Manager of the subject store on the date of the alleged incident, but is currently assigned to the Walmart store located at 2014 Irby Street in Florence. Upon information and belief, he did not witness the alleged incident, but responded after Plaintiff reported the alleged incident to the Customer Service Desk. Defendant is unaware of any written or recorded statement taken from Mr. Lane. He may be contacted only through counsel for Defendants.

Virginia Wright: Ms. Wright is an Asset Protection Manager with the subject store. Upon information and belief, she did not witness the alleged incident but, obtained the surveillance video associated with the incident (WM A JONES D00001) and completed a written summary of the video surveillance footage (WM A JONES D00006), copies of which Defendant herewith produces. Defendant is unaware of any written or recorded

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statement taken from Ms. Wright. She may be contacted only through counsel for Defendants.

2. For each person listed in response to the above Interrogatory, set forth either a summary sufficient to inform the Plaintiff of the important facts known to or observed by such witness or, if applicable, provide a copy of any written or recorded statements taken from such witnesses.

RESPONSE: Please see response to Interrogatory Number 1 above.

3. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the Defendant, or counsel, that relates to the claim or defense in this case.

RESPONSE: Defendant Wal-Mart objects to this Interrogatory on the basis of the work product doctrine and attorney-client privilege to the extent that it seeks the contents of notes or reports of the claims personnel who worked on this file and/or correspondence between Defendant Wal-Mart and its counsel. Any claims personnel notes and/or reports were made in anticipation of litigation and are protected by the work product doctrine. A Privilege Log containing a description of the documents withheld is herewith produced.

Subject to and without waiving these or any other objections, Defendant Wal-Mart responds that it is in possession of the following non-privileged materials responsive to this Interrogatory, which Defendant Wal-Mart herewith produces:

a. Surveillance Video – WM A JONES D00001;
b. Recorded Statement of Plaintiff – WM A JONES D00002;
c. Store Incident Report – WM A JONES D00003-4;
d. Customer Incident Report –WM A JONES D00005;
e. Video Summary – WM A JONES D00006;
f. Video Request Form – WM A JONES D00007; and
g. Correspondence between Plaintiff/Plaintiff's counsel and CMI/Wal-Mart – WM A JONES D00008-17.

4. Set forth the names and addresses of all insurance companies which have liability insurance coverage or property damage covering relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

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RESPONSE: Defendant Wal-Mart objects to this Interrogatory on the basis that it seeks information that is not relevant and that is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving this or any other objection, Defendant Wal-Mart responds that it maintains a self-insured retention applicable to this case, which must be exhausted before insurance can be considered. Defendant Wal-Mart will produce a copy of the declarations page for the self-insurance upon the entry of a duly executed confidentiality order.

5. List the names, addresses, and telephone numbers of any individual whom you propose to use as an expert witness at the trial of this action and for each state in detail their qualifications to testify and the substance of his or her opinions and the basis for his or her opinion.

RESPONSE: Defendant Wal-Mart has not retained any expert witness at this time but, specifically reserves the right to do so at a later date and will supplement this response accordingly.

6. If the Defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended Summons and Pleading reflecting the correct information.

RESPONSE: The named Defendants Tim Ringer, Individually and as an employee/agent of Wal-Mart Stores, Inc. d/b/a Wal-Mart Store # 630, and Wal-Mart Stores, Inc. are not proper parties to this action; Wal-Mart Stores East, L.P. is the sole proper corporate defendant. Counsel for Defendants will accept service of an Amended Summons and Complaint substituting the proper entity or, alternatively, will consent to amend the caption to substitute the proper party.

REPONSES TO SUPPLEMENTAL INTERROGATORIES

1. As to each expert witness listed in response to Standard Interrogatory Number 5 above, please state:

a. A Complete statement of all opinions the 'witness will express and the basis and reasons for them;

b. The data and other information considered by the Witness in forming the opinions;

c. A description of any exhibits the witness or counsel intends to introduce to summarize or support these opinions (to be provided to Requests for Production);

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d. The witness's qualifications, including a list of all publications authored in the previous ten years;

e. A list of all other cases in which, during the previous 5 years, the witness testified as an expert at trial or by deposition;

f. A statement of the compensation to be paid for the study and testimony in the case.

RESPONSE: Defendant Wal-Mart has not retained any expert witness at this time but, specifically reserves the right to do so at a later date and will supplement this response accordingly.

2. For each affirmative defense that is raised in your answer, please state with particularity each and every fact or basis in law upon which you allege to have "good grounds," as defined in Rule 11 SCRCP, to assert such a defense. A full and complete response should include, for each defense:

a. Identify all witnesses that support this contention.

b. Identify all writings that support this contention.

c. Identify all court cases upon which you base this contention.

d. Identify all statutes that you rely on to support this contention.

RESPONSE: Defendant Wal-Mart objects to this Interrogatory pursuant to Rule 26, SCRCP, on the basis of the work product doctrine to the extent it seeks to obtain the mental impressions, conclusions, opinions, and legal theories of counsel. Subject to and without waiving this or any other objection, Defendant Wal-Mart refers Plaintiff to its response to Standard Interrogatory #1 and #3 for a list of witnesses and documents that support Defendant Wal-Mart's affirmative defenses. Furthermore, Defendant Wal-Mart has not identified all legal authorities it contends are applicable to this action or to any claim or defense. Nevertheless, Defendant Wal-Mart reserves the right to rely on any and all authorities to which it is legally entitled, in accordance with the South Carolina Rules of Civil Procedure and any court directive, including those authorities that address laws, statutes, ordinances, acts, codes, regulations, legal principles, standards, customs and usages pertaining to premises liability.

3. For all photographs relating to this case which are in the possession of the Defendant or the Defendant's counsel, please provide:

a. A brief description of the content of the photograph;

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b: The date the photograph was taken;

c. The name, address and employer of the person who took the photograph.

RESPONSE: Defendant Wal-Mart is not in possession of any photographs responsive to this Supplemental Interrogatory.

4. Has the Defendant ever been involved in any other legal action, either as a Defendant or as a Plaintiff? If so, please state:

a. The date and place each such action was filed, giving the name of the other party or parties involved, the number of such actions, and the names of the attorneys representing all parties;

b. A description of the nature of each action; and

c. The result of each such action.

RESPONSE: Defendant Wal-Mart objects to this Interrogatory as overbroad with respect to the time period and the fact that it is not limited to any particular category of injury. Furthermore, Defendant Wal-Mart contends that this Interrogatory seeks information that is wholly irrelevant to the present matter, is not proportional to the needs of the case, and is not reasonably calculated to lead to the discovery of admissible evidence. *See Simmons v. Winn-Dixie*, 318 S.C. 310, 457 S.E.2d 608 (1995) (prior incidents cannot be used to establish constructive notice); *Wintersteen v. Food Lion*, 344 S.C. 32, 542 S.E.2d 728 (2001) (holding "we have not required storekeepers to take actions to prevent or minimize the foreseeable risk of a foreign substance on the floor of its premises."). Finally, any such lawsuits would be a matter of public record and equally available to the Plaintiff.

5. State separately each fact of which the Defendant or the Defendant's attorney, has knowledge, or plans to use as evidence against the Plaintiff. For each separate fact identify the following;

a. The individual's name, address, and telephone number who will testify to this fact;

b. The source of the fact to which this individual will testify; and

c. Any documents which support the allegations.

RESPONSE: Defendant Wal-Mart objects to this Interrogatory case pursuant to Rule 26, SCRCP, on the basis of the work product doctrine to the extent it seeks to obtain the mental impressions, conclusions, opinions, and legal theories of counsel, which may be used at any trial of this. Defendant Wal-Mart further objects to the extent it seeks information that Defendant may use solely for purposes of impeachment. Subject to and

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without waiving these or any other objections, Defendant Wal-Mart responds that it has not yet determined which facts it will present or materials it intends to introduce into evidence at any trial of this case; however, it reserves the right to rely upon any materials exchanged during the course of discovery, whether produced by Plaintiff or Defendants, or obtained by subpoena or other manner permissible under the South Carolina Rules of Civil Procedure.

6. Were any statements (oral or written) concerning the incident made to you, any police officer, private investigator, insurance company agent or adjuster, or anyone else? If so, state:

a. The name, address and employer of the person to whom the statement was made;

b. The date of each statement;

c. Whether the statement was oral or written, and if oral, whether it was recorded;

d. The name and address of the custodian(s) of each statement.

RESPONSE: Defendant Wal-Mart objects to this Interrogatory on the basis of the work product doctrine and attorney-client privilege to the extent that it seeks the contents of notes or reports of the claims personnel who worked on this file and/or correspondence between Defendant Wal-Mart and its counsel. Any claims personnel notes and/or reports were made in anticipation of litigation and are protected by the work product doctrine. A Privilege Log containing a description of the documents withheld is herewith produced. Please see response to Interrogatory Number 3 above for a list of all responsive, non-privileged documents.

7. Please identify all video cameras on Defendant's premises at the time of the incident and within how many feet of the incident they captured film. If no cameras, so state.

RESPONSE: Defendant Wal-Mart will produce a copy of the camera schematics for the subject store upon the entry of a duly executed confidentiality order. Defendant further refers Plaintiff to the video surveillance herewith produced for a depiction of the distance between each camera and Plaintiff (WM A JONES D00001).

8. Describe with particularity exactly what occurred in the ten minutes prior to the incident which is the subject of the above action (hereinafter referred to as "the incident"), what occurred during the incident, and what occurred in the ten minutes after the incident, including anything said by or to you or one of your agents or employees. State what you, or any of your

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agents or employees saw happen with respect to the incident and what you or any one of your agents or employees did to assist Plaintiff after the incident.

a. Five minutes prior to the incident;

b. During the incident (including a description of how the incident occurred);

c. Ten minutes after the incident.

RESPONSE: Defendant Wal-Mart objects to this Interrogatory pursuant to Rule 26, SCRCP, on the basis of the work product doctrine to the extent it seeks to obtain the mental impressions, conclusions, opinions, and legal theories of counsel, which may be used at any trial of this case.

Subject to and without waiving this or any other objection, Defendant Wal-Mart responds that upon information and belief, and as shown on the video surveillance of the subject events, while walking in the subject store, Plaintiff stopped twice to inspect the bottom of her shoe. Plaintiff then continued shopping and eventually purchased bleach through the self-checkout lane. After making her purchase, Plaintiff went to the Customer Service Desk where she told Assistant Manager Ayesha Cooke and Co-Manager Kevin Lane that she stepped on a nail while shopping in the store. Plaintiff showed the nail to the associates but refused to allow them to inspect the nail. Ms. Cooke and Mr. Lane then assisted Plaintiff.

9. Other than this incident, has any person reported similar incidents on the premises where this incident occurred during the five-year period prior to the date of this incident, up to present day? If so, as to each such reported incident, please provide the following information:

a. The date of each such incident;

b. A brief description of each such incident;

c. A brief description of the injuries suffered by any person involved in each such incident;

d. Whether any of the incidents referred to above resulted in a claim and/or lawsuit, and if so, the name of each claimant, date of the filing of each such claim and/or lawsuit, the civil number, and a summary of the disposition of each such claim or lawsuit.

RESPONSE: Defendant Wal-Mart objects to this Interrogatory as overbroad with respect to the time period and the fact that it is not limited to any particular category of injury. Furthermore, Defendant Wal-Marts contend that this Interrogatory seeks information that is wholly irrelevant to the present matter, is not proportional to the needs of the case and not reasonably calculated to lead to the discovery of admissible evidence. *See Simmons v. Winn-Dixie*, 318 S.C. 310, 457 S.E.2d 608 (1995) (prior incidents cannot be

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used to establish constructive notice); *Wintersteen v. Food Lion*, 344 S.C. 32, 542 S.E.2d 728 (2001) (holding "we have not required storekeepers to take actions to prevent or minimize the foreseeable risk of a foreign substance on the floor of its premises.").

Subject to and without waiving these or any other objections, Defendant Wal-Mart responds that it conducted a search of its data for any customer claim arising from an incident involving a cut, wound or puncture by a nail, which occurred in the subject store in the three (3) year period including and preceding the date of the incident in question and located no claim other than the Plaintiff's subject claim.

10. Please list all employees, faculty, and/or staff members who were present on the premises during the time at which the incident referred to in the Complaint took place and as to each person listed, please provide a brief description of:

a. Where this person was physically located; and

b. How long this person had been an employee up to the point in time of the incident.

RESPONSE: Defendant Wal-Mart objects to this request on the basis that it is overly broad, unduly burdensome, as well as seeks information that is wholly irrelevant to the present matter and not reasonably calculated to lead to the discovery of admissible evidence as Defendant Wal-Mart provided in its response to Interrogatory Number 1 the names of all store employees identified as having any knowledge regarding the facts of the present case. In addition, the store in question employed over 360 employees on the date of the alleged incident and, thus, Plaintiff's request for information regarding all such employees would impose an undue burden upon Plaintiff to search for and produce information that has no bearing whatsoever on the present litigation.

11. During the five-year period before this incident, did you receive any reports and/or complaints with regard to debris coming from wooden pallets like the pallets involved in the incident in question? If so, please state:

a. The date of such complaint and/or report;

b. Whether or not you have or maintained any documentary material of any kind or nature relating or referring to such complaints and/or reports;

c. What action, if any, was taken by you with respect to such complaint and/or report.

RESPONSE: Defendant Wal-Mart objects to this Interrogatory as overbroad in time and scope. Furthermore, Defendant Wal-Mart contends that this Interrogatory seeks information that is wholly irrelevant to the present matter, is not proportional to the needs

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of the case and is not reasonably calculated to lead to the discovery of admissible evidence. *See Simmons v. Winn-Dixie*, 318 S.C. 310, 457 S.E.2d 608 (1995) (prior incidents cannot be used to establish constructive notice); *Wintersteen v. Food Lion*, 344 S.C. 32, 542 S.E.2d 728 (2001) (holding "we have not required storekeepers to take actions to prevent or minimize the foreseeable risk of a foreign substance on the floor of its premises."). Finally, compliance with the request would be impossible and unduly burdensome to the extent the Interrogatory seeks information regarding verbal and/or written complaints that may not have resulted in a claim.

Subject to and without waiving these or any other objections, Defendant Wal-Mart responds that it conducted a search of its data for any customer claim arising from an incident involving a cut, wound or puncture by object, which occurred in the subject store in the three (3) year period including and preceding the date of the incident in question and located no claim concerning debris from a pallet other than the Plaintiff's underlying claim.

12. Identify the party who was responsible for maintaining the premises and monitoring for dangerous conditions such as rusty nails in areas.

RESPONSE: Defendant objects to this Interrogatory on the basis that it is overly broad in scope and time, as well as seeks information that is wholly irrelevant to the present matter and not reasonably calculated to lead to the discovery of admissible evidence to the extent the request pertains to all areas within the subject store. Subject to and without waiving these or any other objection, Defendant Wal-Mart responds that it is each associate's responsibility to maintain the store in a safe condition.

13. Identify any procedures you followed at and before the time of the incident in question regarding the inspection and maintenance of the location of the incident.

RESPONSE: Defendant responds that the store conducts periodic safety sweeps throughout the day to identify conditions that require maintenance. Defendant further responds that it will produce all relevant policies and procedures in effect on the date of the subject incident upon the entry of a duly executed confidentiality order.

14. At the time of the incident, do you contend that any person or entity other than you, your employee(s), and/or agent(s) was responsible for the maintenance of the premises on which the incident occurred and if so, please state each and every fact on which you base your contention and identify each and every writing that supports that contention.

RESPONSE: No.

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15. If anyone investigated this matter for you, state their name(s) and address(es), and state whether such investigation was reduced to writing, and the substance of their investigation and findings. If said investigators obtained any signed, recorded, transcribed or oral statement from any individual, identify the person who gave the statement and the present custodian of such statement. "Investigators" is deemed to include, but is not limited-to, medical experts, private investigators, and/or insurance adjusters.

RESPONSE: Defendant Wal-Mart objects to this Interrogatory on the basis of the attorney work product doctrine and attorney-client privilege to the extent that it seeks the contents of notes or reports of the claims personnel who worked on this file and/or correspondence between Defendant Wal-Mart and its counsel. Any claims personnel notes and/or reports were made both in anticipation of litigation and after the subject lawsuit was filed and are protected by the work product doctrine. A privilege log containing a description of the documents withheld is herewith produced.

Subject to and without waiving this or any other objection, Defendant Wal-Mart responds that Morgan Stewart, a case manager for Defendant Wal-Mart's claim handler, Claims Management, Inc. ("CMI"), managed the underlying claim following Plaintiff's report of same to the store in question. She may be contacted only through counsel for Defendant Wal-Mart. Further, Defendant herewith produces a copy of the June 29, 2015 recorded statement given by Plaintiff to CMI (WM A JONES D00002).

16. Do you believe or have any information tending to show that the injuries to the plaintiff were due to any cause other than the cause referred to in the complaint? If so, state:

a. Each fact on which the defendant bases this claim and all information within the Defendant's knowledge that tends to show alleged negligence on the part of the Plaintiff;

b. The name, address, and telephone number of each person having personal knowledge of the facts and information set forth in the answer to this interrogatory.

RESPONSE: Defendant Wal-Mart responds that the pallets in the area of the subject store where the alleged incident occurred, the grocery area action alley, are plastic and do not contain nails. Defendant Wal-Mart further responds that wooden pallets are occasionally used in seasonal displays, but upon information and belief, no such displays were in place in the subject store on the day of the alleged incident. Furthermore, the alleged source of the subject nail is entirely speculative and Defendant maintains that Plaintiff's own negligence in failing to keep a proper lookout at the time that she stepped on said nail caused or contributed to cause the alleged incident.

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17. If you contend that Plaintiff and/or any other party, person, or entity was guilty of comparative/contributory negligence and/or otherwise responsible for Plaintiff's injuries, then fully and specifically describe. Upon what conduct, acts, and/or omissions of Plaintiff that you base your contention.

RESPONSE: Defendant Wal-Mart maintains that the source of the subject nail is entirely speculative and that Plaintiff's own negligence in failing to keep a proper lookout at the time that she stepped on said nail caused or contributed to cause the alleged incident. Defendant further responds that, upon information and belief, the condition alleged to have caused Plaintiff's injury may have resulted from a superseding, intervening act of negligence on the part of a yet unidentified third party as the pallets present in the area of the subject incident were plastic and did not contain nails. Moreover, even to the extent that wooden pallets were present in the subject area, Plaintiff's allegation that the nail originated from one of said pallets remains entirely speculative.

18. Identify by name, title, residence, and business address(es) (if employed by Defendant, so state, as well as in what capacity) all persons and/or business entities who provided Defendant's premises with wooden pallets, such as the pallets involved in this incident, from January 1, 2015 to the present.

RESPONSE: Defendant Wal-Mart objects to this Interrogatory on the basis that it is overly broad as well as seeks information that is wholly irrelevant to the present matter and not reasonably calculated to lead to the discovery of admissible evidence, particularly to the extent that it seeks information pertaining to any entity that supplied the store with wooden pallets after the date of the subject incident. Subject to and without waiving these or any other objections, Defendant responds that, upon information and belief, there were no wooden pallets in the subject walkway on the date of the alleged incident.

19. Identify by name, title, residence, and business address(es) (if employed by Defendant, so, state, as well as in what capacity) all persons and/or business entities who should have examined, inspected, and/or maintained the aforementioned pallets used by Defendant.

RESPONSE: Defendant Wal-Mart objects to this Interrogatory on the basis that it seeks information that is wholly irrelevant to the present matter and not reasonably calculated to lead to the discovery of admissible evidence as, upon information and belief, there were no wooden pallets in the subject walkway on the date of the alleged incident.

20. State your net worth.

RESPONSE: Defendant Wal-Mart objects to this Interrogatory on the basis that it is not reasonably calculated to lead to the discovery of admissible evidence and seeks information that is wholly irrelevant to the present case at this time as the issue of punitive damages is not currently before the Court or the parties for consideration. Subject to and without waiving these or any other objections, Defendant Wal-Mart responds that Wal-Mart's annual reports are available at the following web address: http://stock.walmart.com/annual-reports.

Lee Ellen Bagley, SC Bar No. 77672
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Attorneys for Defendants

December 22, 2017

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STATE OF SOUTH CAROLINA COUNTY OF FLORENCE April Jones, Plaintiff, vs. Tim Ringer, Individually and as employee/agent Wal-Mart Stores, Inc. d/b/a Wal-Mart Store #630, and Wal-Mart Stores, Inc., Defendants.	COURT OF COMMON PLEAS TWELFTH JUDICIAL CIRCUIT Civil Action No. 2017-CP-21-1375 **CERTIFICATE OF SERVICE**

I do hereby certify, on this 22nd day of December, 2017, that a copy of the foregoing **Defendant Walmart Stores, Inc.'s Responses to: Plaintiff's First Interrogatories, Supplemental Interrogatories, Requests for Production and Privilege Log** were served by depositing a copy of the same in the United States Mail, first-class, postage prepaid, addressed to counsel of record as follows:

Sean M. Tropea, Esquire
Anastopoulo Law Firm, LLC
32 Ann Street
Charleston, SC 29403
Attorneys for Plaintiff

Kelli F. Hall, Paralegal

Columbia, South Carolina

EXHIBIT D

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STATE OF SOUTH CAROLINA COUNTY OF FLORENCE April Jones, Plaintiff, vs. Tim Ringer, Individually and as employee/agent Wal-Mart Stores, Inc. d/b/a Wal- Mart Store #630, and Wal-Mart Stores, Inc., and Wal-Mart Stores East, L.P. Defendants.	COURT OF COMMON PLEAS TWELFTH JUDICIAL CIRCUIT Civil Action No. 2017-CP-21-1375 **DEFENDANTS' AMENDED AND SUPPLEMENTAL RESPONSES TO PLAINTIFF'S INTERROGATORIES**

TO: PLAINTIFF AND HER COUNSEL OF RECORD:

Defendants, by and through undersigned counsel, hereby respond to Plaintiff's First and Supplemental Interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure as follows (supplemental information in **bold**):

GENERAL OBJECTIONS

Defendants object to the Interrogatories and Requests for Production of Documents to the extent that they seek information protected by the attorney-client privilege, the work-product privilege, or any other privilege, protection, or immunity applicable under the governing law.

Defendants object to the Interrogatories and Requests for Production of Documents to the extent that they are overly broad, unduly burdensome, oppressive, and/or seek information that is not relevant to the issues in this lawsuit or reasonably calculated to lead to the discovery of admissible evidence.

These General Objections are made, to the extent applicable, in response to each of the Interrogatories and Requests for Production of Documents as if the objections were fully set forth therein.

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Defendants respond to each of the Interrogatories and Requests for Production of Documents based upon information and documentation available as of the date hereof and reserve the right to supplement and amend their responses.

RESPONSES TO STANDARD INTERROGATORIES

1. Give the names, addresses and telephone numbers of persons who may-be witnesses concerning the facts of this action or who have knowledge of relevant facts concerning this incident, and indicate whether or not written or recorded statements have been taken from the witnesses, and indicate who has possession of such statements.

RESPONSE:

April Jones: Ms. Jones is the Plaintiff in the above-referenced action. She provided a recorded statement to Defendant Wal-Mart's claims manager, Claims Management, Inc. ("CMI") on June 29, 2015, a copy of which Defendant Wal-Mart previously produced (WM A JONES D00002).

Ayesha Cooke: Ms. Cooke is as Assistant Manager with the subject store who responded to the alleged incident. Ms. Cooke prepared the Store Incident Report (WM A JONES D00003-4), Customer Incident Report (WM A JONES D00005) and Video Request Form (WM A JONES D00007) associated with the alleged incident, copies of which Defendant Wal-Mart previously produced. Defendant is unaware of any written or recorded statement taken from Ms. Cooke. Ms. Cooke may be contacted only through counsel for Defendants.

Kevin Lane: Mr. Lane was a Co-Manager of the subject store on the date of the alleged incident, but is currently assigned to the Walmart store located at 2014 Irby Street in Florence. Upon information and belief, he did not witness the alleged incident, but responded after Plaintiff reported the alleged incident to the Customer Service Desk. Defendants are unaware of any written or recorded statement taken from Mr. Lane. He may be contacted only through counsel for Defendants.

Virginia Wright: Ms. Wright is an Asset Protection Manager with the subject store. Upon information and belief, she did not witness the alleged incident but, obtained the surveillance video associated with the incident (WM A JONES D00001) and completed a written summary of the video surveillance footage (WM A JONES D00006), copies of which Defendant Wal-Mart previously produced. Defendants are unaware of any written or recorded statement taken from Ms. Wright. She may be contacted only through counsel for Defendants.

2. For each person listed in response to the above Interrogatory, set forth either a summary sufficient to inform the Plaintiff of the important facts known to or observed by such

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witness or, if applicable, provide a copy of any written or recorded statements taken from such witnesses.

RESPONSE: Please see response to Interrogatory Number 1 above.

3. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the Defendant, or counsel, that relates to the claim or defense in this case.

RESPONSE: Defendants object to this Interrogatory on the basis of the work product doctrine and attorney-client privilege to the extent that it seeks the contents of notes or reports of the claims personnel who worked on this file and/or correspondence between Defendants and their counsel. Any claims personnel notes and/or reports were made in anticipation of litigation and are protected by the work product doctrine. A Privilege Log containing a description of the documents withheld was previously produced.

Subject to and without waiving these or any other objections, Defendants respond that they are in possession of the following non-privileged materials responsive to this Interrogatory, which Defendant Wal-Mart previously produced:

a. Surveillance Video – WM A JONES D00001;
b. Recorded Statement of Plaintiff – WM A JONES D00002;
c. Store Incident Report – WM A JONES D00003-4;
d. Customer Incident Report –WM A JONES D00005;
e. Video Summary – WM A JONES D00006;
f. Video Request Form – WM A JONES D00007; and
g. Correspondence between Plaintiff/Plaintiff's counsel and CMI/Wal-Mart – WM A JONES D00008-17.

Defendants are also in possession of the following medical records received pursuant to subpoena:

a. Carolina Hospital System – WM A JONES CHS00001-1665;
b. First Choice Health Care - WM A JONES FCHC00001-39;
c. Florence Visiting Nurses – WM A JONES FVN00001-515;
d. McLeod Regional Medical Center – WM A JONES MRMC00001-394, **WM A JONES MRMC00395-447**;
e. Pee Dee Nephrology - WM A JONES PDN00001-62, **WM A JONES PDN0073-93**;
f. Pee Dee Surgical - WM A JONES PDS00001-129;
g. Fresenius Medical Care Billing – WM A JONES FMCB000001-000367;
h. Fresenius Kidney Care Church Street – WM A JONES FKC000001-001995;
i. Rite Aid -WM A JONES RA000001-000017.

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4. Set forth the names and addresses of all insurance companies which have liability insurance coverage or property damage covering relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

RESPONSE: Defendants object to this Interrogatory on the basis that it seeks information that is not relevant and that is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving this or any other objection, Defendants respond that Wal-Mart maintains a self-insured retention applicable to this case, which must be exhausted before insurance can be considered. Defendant Wal-Mart will produce a copy of the declarations page for the self-insurance upon the entry of a duly executed confidentiality order.

5. List the names, addresses, and telephone numbers of any individual whom you propose to use as an expert witness at the trial of this action and for each state in detail their qualifications to testify and the substance of his or her opinions and the basis for his or her opinion.

RESPONSE: Defendants have not retained any expert witness whom they propose at this time to call as a witness at trial, but specifically reserve the right to do so at a later date and will supplement this response accordingly.

6. If the Defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended Summons and Pleading reflecting the correct information.

RESPONSE: The named Defendants Tim Ringer, Individually and as an employee/agent of Wal-Mart Stores, Inc. d/b/a Wal-Mart Store # 630, and Wal-Mart Stores, Inc. are not proper parties to this action; Wal-Mart Stores East, L.P. is the sole proper corporate defendant. Counsel for Defendants will accept service of an Amended Summons and Complaint naming only the proper entity or, alternatively, will consent to amend the caption to designate the only proper party.

REPONSES TO SUPPLEMENTAL INTERROGATORIES

1. As to each expert witness listed in response to Standard Interrogatory Number 5 above, please state:

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a. A Complete statement of all opinions the 'witness will express and the basis and reasons for them;

b. The data and other information considered by the Witness in forming the opinions;

c. A description of any exhibits the witness or counsel intends to introduce to summarize or support these opinions (to be provided to Requests for Production);

d. The witness's qualifications, including a list of all publications authored in the previous ten years;

e. A list of all other cases in which, during the previous 5 years, the witness testified as an expert at trial or by deposition;

f. A statement of the compensation to be paid for the study and testimony in the case.

RESPONSE: Defendants have not retained any expert witness whom they propose at this time to call as a witness at trial, but specifically reserve the right to do so at a later date and will supplement this response accordingly.

2. For each affirmative defense that is raised in your answer, please state with particularity each and every fact or basis in law upon which you allege to have "good grounds," as defined in Rule 11 SCRCP, to assert such a defense. A full and complete response should include, for each defense:

a. Identify all witnesses that support this contention.

b. Identify all writings that support this contention.

c. Identify all court cases upon which you base this contention.

d. Identify all statutes that you rely on to support this contention.

RESPONSE: Defendants object to this Interrogatory pursuant to Rule 26, SCRCP, on the basis of the work product doctrine to the extent it seeks to obtain the mental impressions, conclusions, opinions, and legal theories of counsel. Subject to and without waiving this or any other objection, Defendants refer Plaintiff to their response to Standard Interrogatory #1 and #3 for a list of witnesses and documents that support their affirmative defenses. Furthermore, Defendants have not identified all legal authorities they contend are applicable to this action or to any claim or defense. Nevertheless, Defendants reserve the right to rely on any and all authorities to which they are legally entitled, in accordance with the South Carolina Rules of Civil Procedure and any court directive, including those authorities that address laws, statutes, ordinances, acts, codes, regulations, legal principles, standards, customs and usages pertaining to

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premises liability.

3. For all photographs relating to this case which are in the possession of the Defendant or the Defendant's counsel, please provide:

a. A brief description of the content of the photograph;

b: The date the photograph was taken;

c. The name, address and employer of the person who took the photograph.

RESPONSE: Defendants are not in possession of any photographs responsive to this Supplemental Interrogatory.

4. Has the Defendant ever been involved in any other legal action, either as a Defendant or as a Plaintiff? If so, please state:

a. The date and place each such action was filed, giving the name of the other party or parties involved, the number of such actions, and the names of the attorneys representing all parties;

b. A description of the nature of each action; and

c. The result of each such action.

RESPONSE: Defendants object to this Interrogatory as overbroad with respect to the time period and the fact that it is not limited to any particular category of injury. Furthermore, this Interrogatory seeks information that is wholly irrelevant to the present matter, is not proportional to the needs of the case, and is not reasonably calculated to lead to the discovery of admissible evidence. *See Simmons v. Winn-Dixie*, 318 S.C. 310, 457 S.E.2d 608 (1995) (prior incidents cannot be used to establish constructive notice); *Wintersteen v. Food Lion*, 344 S.C. 32, 542 S.E.2d 728 (2001) (holding "we have not required storekeepers to take actions to prevent or minimize the foreseeable risk of a foreign substance on the floor of its premises."). Finally, any such lawsuits would be a matter of public record and equally available to the Plaintiff.

5. State separately each fact of which the Defendant or the Defendant's attorney, has knowledge, or plans to use as evidence against the Plaintiff. For each separate fact identify the following;

a. The individual's name, address, and telephone number who will testify to this fact;

b. The source of the fact to which this individual will testify; and

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c. Any documents which support the allegations.

RESPONSE: Defendants object to this Interrogatory pursuant to Rule 26, SCRCP, on the basis of the work product doctrine to the extent it seeks to obtain the mental impressions, conclusions, opinions, and legal theories of counsel, which may be used at any trial of this. Defendants further object to the extent it seeks information that Defendants may use solely for purposes of impeachment. Subject to and without waiving these or any other objections, Defendants respond that they have not yet determined which facts they will present or materials they intend to introduce into evidence at any trial of this case; however, they reserve the right to rely upon any materials exchanged during the course of discovery, whether produced by Plaintiff or Defendants, or obtained by subpoena or other manner permissible under the South Carolina Rules of Civil Procedure.

6. Were any statements (oral or written) concerning the incident made to you, any police officer, private investigator, insurance company agent or adjuster, or anyone else? If so, state:

a. The name, address and employer of the person to whom the statement was made;

b. The date of each statement;

c. Whether the statement was oral or written, and if oral, whether it was recorded;

d. The name and address of the custodian(s) of each statement.

RESPONSE: Defendants object to this Interrogatory on the basis of the work product doctrine and attorney-client privilege to the extent that it seeks the contents of notes or reports of the claims personnel who worked on this file and/or correspondence between Defendants and their counsel. Any claims personnel notes and/or reports were made in anticipation of litigation and are protected by the work product doctrine. A Privilege Log containing a description of the documents withheld was previously produced. Please see response to Interrogatory Number 3 above for a list of all responsive, non-privileged documents.

7. Please identify all video cameras on Defendant's premises at the time of the incident and within how many feet of the incident they captured film. If no cameras, so state.

RESPONSE: Defendant Wal-Mart will produce a copy of the camera schematics for the subject store upon the entry of a duly executed confidentiality order. Defendants further refer Plaintiff to the video surveillance previously produced for a depiction of the distance between each camera and Plaintiff (WM A JONES D00001).

8. Describe with particularity exactly what occurred in the ten minutes prior to the incident which is the subject of the above action (hereinafter referred to as "the incident"), what

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occurred during the incident, and what occurred in the ten minutes after the incident, including anything said by or to you or one of your agents or employees. State what you, or any of your agents or employees saw happen with respect to the incident and what you or any one of your agents or employees did to assist Plaintiff after the incident.

a. Five minutes prior to the incident;

b. During the incident (including a description of how the incident occurred);

c. Ten minutes after the incident.

RESPONSE: Defendants object to this Interrogatory pursuant to Rule 26, SCRCP, on the basis of the work product doctrine to the extent it seeks to obtain the mental impressions, conclusions, opinions, and legal theories of counsel, which may be used at any trial of this case.

Subject to and without waiving this or any other objection, Defendants respond that upon information and belief, and as shown on the video surveillance of the subject events, while walking in the subject store, Plaintiff stopped twice to inspect the bottom of her shoe. Plaintiff then continued shopping and eventually purchased bleach through the self-checkout lane. After making her purchase, Plaintiff went to the Customer Service Desk where she told Assistant Manager Ayesha Cooke and Co-Manager Kevin Lane that she stepped on a nail while shopping in the store. Plaintiff showed the nail to the associates but refused to allow them to inspect the nail. Ms. Cooke and Mr. Lane then assisted Plaintiff.

9. Other than this incident, has any person reported similar incidents on the premises where this incident occurred during the five-year period prior to the date of this incident, up to present day? If so, as to each such reported incident, please provide the following information:

a. The date of each such incident;

b. A brief description of each such incident;

c. A brief description of the injuries suffered by any person involved in each such incident;

d. Whether any of the incidents referred to above resulted in a claim and/or lawsuit, and if so, the name of each claimant, date of the filing of each such claim and/or lawsuit, the civil number, and a summary of the disposition of each such claim or lawsuit.

RESPONSE: Defendants object to this Interrogatory as overbroad with respect to the time period and the fact that it is not limited to any particular category of injury. Furthermore, this Interrogatory seeks information that is wholly irrelevant to the present matter, is not proportional to the needs of the case and not reasonably calculated to lead to the discovery of

admissible evidence. *See Simmons v. Winn-Dixie*, 318 S.C. 310, 457 S.E.2d 608 (1995) (prior incidents cannot be used to establish constructive notice); *Wintersteen v. Food Lion*, 344 S.C. 32, 542 S.E.2d 728 (2001) (holding "we have not required storekeepers to take actions to prevent or minimize the foreseeable risk of a foreign substance on the floor of its premises.").

Subject to and without waiving these or any other objections, Defendant Wal-Mart responds that it conducted a search of its data for any customer claim arising from an incident involving a cut, wound or puncture by a nail, which occurred in the subject store in the three (3) year period including and preceding the date of the incident in question and located no claim other than the Plaintiff's subject claim.

10. Please list all employees, faculty, and/or staff members who were present on the premises during the time at which the incident referred to in the Complaint took place and as to each person listed, please provide a brief description of:

a. Where this person was physically located; and

b. How long this person had been an employee up to the point in time of the incident.

RESPONSE: Defendants object to this request on the basis that it is overly broad, unduly burdensome, as well as seeks information that is wholly irrelevant to the present matter and not reasonably calculated to lead to the discovery of admissible evidence as Defendants provided in response to Interrogatory Number 1 the names of all store employees identified as having any knowledge regarding the facts of the present case. In addition, the store in question employed over 360 associates on the date of the alleged incident and, thus, Plaintiff's request for information regarding all such employees would impose an undue burden upon Defendants to search for and produce information that has no bearing whatsoever on the present litigation.

11. During the five-year period before this incident, did you receive any reports and/or complaints with regard to debris coming from wooden pallets like the pallets involved in the incident in question? If so, please state:

a. The date of such complaint and/or report;

b. Whether or not you have or maintained any documentary material of any kind or nature relating or referring to such complaints and/or reports;

c. What action, if any, was taken by you with respect to such complaint and/or report.

RESPONSE: Defendants object to this Interrogatory as overbroad in time and scope. Furthermore, this Interrogatory seeks information that is wholly irrelevant to the present matter, is not proportional to the needs of the case and is not reasonably calculated to lead to the

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discovery of admissible evidence. *See Simmons v. Winn-Dixie*, 318 S.C. 310, 457 S.E.2d 608 (1995) (prior incidents cannot be used to establish constructive notice); *Wintersteen v. Food Lion*, 344 S.C. 32, 542 S.E.2d 728 (2001) (holding "we have not required storekeepers to take actions to prevent or minimize the foreseeable risk of a foreign substance on the floor of its premises."). Finally, compliance with the request would be impossible and unduly burdensome to the extent the Interrogatory seeks information regarding verbal and/or written complaints that may not have resulted in a claim.

Subject to and without waiving these or any other objections, Defendant Wal-Mart responds that it conducted a search of its data for any customer claim arising from an incident involving a cut, wound or puncture by object, which occurred in the subject store in the three (3) year period including and preceding the date of the incident in question and located no claim concerning debris from a pallet other than the Plaintiff's underlying claim.

12. Identify the party who was responsible for maintaining the premises and monitoring for dangerous conditions such as rusty nails in areas.

RESPONSE: Defendants object to this Interrogatory on the basis that it is overly broad in scope and time, as well as seeks information that is wholly irrelevant to the present matter and not reasonably calculated to lead to the discovery of admissible evidence to the extent the request pertains to all areas within the subject store. Subject to and without waiving these or any other objection, Defendants respond that it is each associate's responsibility to maintain the store in a safe condition.

13. Identify any procedures you followed at and before the time of the incident in question regarding the inspection and maintenance of the location of the incident.

RESPONSE: Defendants respond that the store conducts periodic safety sweeps throughout the day to identify conditions that require maintenance. Defendant Wal-Mart further responds that it will produce all relevant policies and procedures in effect on the date of the subject incident upon the entry of a duly executed confidentiality order.

14. At the time of the incident, do you contend that any person or entity other than you, your employee(s), and/or agent(s) was responsible for the maintenance of the premises on which the incident occurred and if so, please state each and every fact on which you base your contention and identify each and every writing that supports that contention.

RESPONSE: No.

15. If anyone investigated this matter for you, state their name(s) and address(es), and state whether such investigation was reduced to writing, and the substance of their investigation

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and findings. If said investigators obtained any signed, recorded, transcribed or oral statement from any individual, identify the person who gave the statement and the present custodian of such statement. "Investigators" is deemed to include, but is not limited-to, medical experts, private investigators, and/or insurance adjusters.

RESPONSE: Defendants object to this Interrogatory on the basis of the attorney work product doctrine and attorney-client privilege to the extent that it seeks the contents of notes or reports of the claims personnel who worked on this file and/or correspondence between Defendants and their counsel. Any claims personnel notes and/or reports were made both in anticipation of litigation and after the subject lawsuit was filed and are protected by the work product doctrine. A Privilege Log containing a description of the documents withheld was previously produced.

Subject to and without waiving this or any other objection, Defendant Wal-Mart responds that Morgan Stewart, a case manager for its claims handler, Claims Management, Inc. ("CMI"), managed the underlying claim following Plaintiff's report of same to the store in question. She may be contacted only through counsel for Defendants. Further, Defendant Wal-Mart previously produced a copy of the June 29, 2015 recorded statement given by Plaintiff to CMI (WM A JONES D00002).

16. Do you believe or have any information tending to show that the injuries to the plaintiff were due to any cause other than the cause referred to in the complaint? If so, state:

a. Each fact on which the defendant bases this claim and all information within the Defendant's knowledge that tends to show alleged negligence on the part of the Plaintiff;

b. The name, address, and telephone number of each person having personal knowledge of the facts and information set forth in the answer to this interrogatory.

RESPONSE: Defendants respond that the pallets in the area of the subject store where the alleged incident occurred, the grocery area action alley, are plastic and do not contain nails. Defendants further respond that wooden pallets are occasionally used in seasonal displays, but upon information and belief, no such displays were in place in the subject store on the day of the alleged incident. Furthermore, the alleged source of the subject nail is entirely speculative and Defendants maintain that Plaintiff's own negligence in failing to keep a proper lookout at the time that she stepped on said nail caused or contributed to cause the alleged incident.

17. If you contend that Plaintiff and/or any other party, person, or entity was guilty of

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comparative/contributory negligence and/or otherwise responsible for Plaintiff's injuries, then fully and specifically describe. Upon what conduct, acts, and/or omissions of Plaintiff that you base your contention.

RESPONSE: Defendants maintains that the source of the subject nail is entirely speculative and that Plaintiff's own negligence in failing to keep a proper lookout at the time that she stepped on said nail caused or contributed to cause the alleged incident. Defendants further respond that, upon information and belief, the condition alleged to have caused Plaintiff's injury may have resulted from a superseding, intervening act of negligence on the part of a yet unidentified third party as the pallets present in the area of the subject incident were plastic and did not contain nails. Moreover, even to the extent that wooden pallets were present in the subject area, Plaintiff's allegation that the nail originated from one of said pallets remains entirely speculative.

18. Identify by name, title, residence, and business address(es) (if employed by Defendant, so state, as well as in what capacity) all persons and/or business entities who provided Defendant's premises with wooden pallets, such as the pallets involved in this incident, from January 1, 2015 to the present.

RESPONSE: Defendants object to this Interrogatory on the basis that it is overly broad as well as seeks information that is wholly irrelevant to the present matter and not reasonably calculated to lead to the discovery of admissible evidence, particularly to the extent that it seeks information pertaining to any entity that supplied the store with wooden pallets after the date of the subject incident. Subject to and without waiving these or any other objections, Defendants respond that, upon information and belief, there were no wooden pallets in the subject walkway on the date of the alleged incident.

19. Identify by name, title, residence, and business address(es) (if employed by Defendant, so, state, as well as in what capacity) all persons and/or business entities who should have examined, inspected, and/or maintained the aforementioned pallets used by Defendant.

RESPONSE: Defendants object to this Interrogatory on the basis that it seeks information that is wholly irrelevant to the present matter and not reasonably calculated to lead to the discovery of admissible evidence as, upon information and belief, there were no wooden pallets in the subject walkway on the date of the alleged incident.

20. State your net worth.

RESPONSE: Defendants object to this Interrogatory on the basis that it is not reasonably calculated to lead to the discovery of admissible evidence and seeks information that is wholly irrelevant to the present case at this time as the issue of punitive damages is not currently before

the Court or the parties for consideration. Subject to and without waiving these or any other objections, Defendant Wal-Mart responds that Wal-Mart's annual reports are available at the following web address: http://stock.walmart.com/annual-reports.

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December 19, 2018

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EXHIBIT E

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STATE OF SOUTH CAROLINA COUNTY OF FLORENCE April Jones, Plaintiff, vs. Tim Ringer, Individually and as employee/agent Wal-Mart Stores, Inc. d/b/a Wal- Mart Store #630, and Wal-Mart Stores, Inc., and Wal-Mart Stores East, L.P. Defendants.	COURT OF COMMON PLEAS TWELFTH JUDICIAL CIRCUIT Civil Action No. 2017-CP-21-01375 **DEFENDANTS' THIRD SUPPLEMENTAL RESPONSES TO PLAINTIFF'S INTERROGATORIES**

TO: PLAINTIFF AND HER COUNSEL OF RECORD:

Defendants, by and through undersigned counsel, hereby supplement their previously served responses to Plaintiff's First and Supplemental Interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure as follows (supplemental information in **bold**):

STANDARD INTERROGATORIES

1. Give the names, addresses and telephone numbers of persons who may-be witnesses concerning the facts of this action or who have knowledge of relevant facts concerning this incident, and indicate whether or not written or recorded statements have been taken from the witnesses, and indicate who has possession of such statements.

RESPONSE:

April Jones: Ms. Jones is the Plaintiff in the above-referenced action. She provided a recorded statement to Defendant Wal-Mart's claims manager, Claims Management, Inc. ("CMI") on June 29, 2015, a copy of which Defendant Wal-Mart previously produced (WM A JONES D00002).

Ayesha Cooke: Ms. Cooke is as Assistant Manager with the subject store who responded to the alleged incident. Ms. Cooke prepared the Store Incident Report (WM A JONES D00003-4), Customer Incident Report (WM A JONES D00005) and Video Request Form (WM A JONES D00007) associated with the alleged incident, copies of which Defendant Wal-Mart previously

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produced. Defendant is unaware of any written or recorded statement taken from Ms. Cooke. Ms. Cooke may be contacted only through counsel for Defendants.

Kevin Lane: Mr. Lane was a Co-Manager of the subject store on the date of the alleged incident, but is currently assigned to the Walmart store located at 2014 Irby Street in Florence. Upon information and belief, he did not witness the alleged incident, but responded after Plaintiff reported the alleged incident to the Customer Service Desk. Defendants are unaware of any written or recorded statement taken from Mr. Lane. He may be contacted only through counsel for Defendants.

Virginia Wright: Ms. Wright is an Asset Protection Manager with the subject store. Upon information and belief, she did not witness the alleged incident, but obtained the surveillance video associated with the incident (WM A JONES D00001) and completed a written summary of the video surveillance footage (WM A JONES D00006), copies of which Defendant Wal-Mart previously produced. Defendants are unaware of any written or recorded statement taken from Ms. Wright. She may be contacted only through counsel for Defendants.

Defendants reserve the right to call any witness identified by Plaintiff.

2. For each person listed in response to the above Interrogatory, set forth either a summary sufficient to inform the Plaintiff of the important facts known to or observed by such witness or, if applicable, provide a copy of any written or recorded statements taken from such witnesses.

RESPONSE: Please see response to Interrogatory Number 1 above.

3. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the Defendant, or counsel, that relate to the claim or defense in this case.

RESPONSE: Defendants object to this Interrogatory on the basis of the work product doctrine and attorney-client privilege to the extent that it seeks the contents of notes or reports of the claims personnel who worked on this file and/or correspondence between Defendants and their counsel. Any claims personnel notes and/or reports were made in anticipation of litigation and are protected by the work product doctrine. A Privilege Log containing a description of the documents withheld was previously produced.

Subject to and without waiving these or any other objections, Defendants respond that they are in possession of the following non-privileged materials responsive to this Interrogatory, which Defendant Wal-Mart previously produced:

a. Surveillance Video – WM A JONES D00001;
b. Recorded Statement of Plaintiff – WM A JONES D00002;

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c. Store Incident Report – WM A JONES D00003-4;
d. Customer Incident Report –WM A JONES D00005;
e. Video Summary – WM A JONES D00006;
f. Video Request Form – WM A JONES D00007;
g. Correspondence between Plaintiff/Plaintiff's counsel and CMI/Wal-Mart – WM A JONES D00008-17;
h. Store Floor Plan – WM A JONES D000066; and
i. Photographs of nail taken December 3, 2018 by Defendants' counsel at office of Plaintiff's counsel – WM A JONES D000067-000073.

Defendants are also in possession of the following medical records received pursuant to subpoena:

a. Carolina Hospital System – WM A JONES CHS00001-1665; **WM A JONES CHS001666-1687 (color copies of photographs previously produced within CHS00001-1665);**
b. First Choice Health Care - WM A JONES FCHC00001-39;
c. Florence Visiting Nurses – WM A JONES FVN00001-515;
d. McLeod Regional Medical Center – WM A JONES MRMC00001-394, WM A JONES MRMC00395-447;
e. Pee Dee Nephrology - WM A JONES PDN00001-62, WM A JONES PDN0073-93;
f. Pee Dee Surgical - WM A JONES PDS00001-129;
g. Fresenius Medical Care Billing – WM A JONES FMCB000001-000367;
h. Fresenius Kidney Care Church Street – WM A JONES FKC000001-001995;
i. Rite Aid -WM A JONES RA000001-000017;
j. Hope Heath Clinic - WM A JONES HHC000001-000039;
l. Hartsville Nephrology - WM A JONES HN000001-000009;
m. Carolina Pines Regional Medical Center – WM A JONES CP000001-000009;
n. Health South Rehab Billing – WM A JONES HSRH000001-000015;
o. Health South Rehab – WM A JONES HSRR000001-000969; and
p. Social Security Administration Records – WM A JONES SSA000001-000613.

5. List the names, addresses, and telephone numbers of any individual whom you propose to use as an expert witness at the trial of this action and for each state in detail their qualifications to testify and the substance of his or her opinions and the basis for his or her opinion.

RESPONSE: Please see the following produced herewith:

a) Report and C.V. of John R. Ross, Sr., M.D. (WM A JONES D000018-000031). Dr. Ross's opinions are based on the medical history and

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treatment of Plaintiff, as documents in her medical records.

b) **Report and C.V. of Marshall S. White, Ph.D. (WM A JONES D000034-00047). Dr. White's opinions are based on his review of the materials provided, as set forth below.**

c) **Sarah Lustig BSN, RN, CLCP, CNLCP, CBIS. Please see C.V. produced herewith (WM A JONES D000048-000054). Defendants intend to call Ms. Lustig only as a rebuttal witness in the event that Plaintiff identifies a nurse and/or life care planner as an expert witness. As such, she has not formulated a final opinion on this matter.**

d) **Defendants reserve the right to identify and call any additional expert witnesses in rebuttal to any expert identified by Plaintiff.**

e) **Defendants further reserve the right to call at trial and elicit expert testimony from any of Plaintiff's treating physicians identified in the medical records produced by the parties in this matter.**

SUPPLEMENTAL INTERROGATORIES

1. As to each expert witness listed in response to Standard Interrogatory Number 5 above, please state:

a. A Complete statement of all opinions the witness will express and the basis and reasons for them;

b. The data and other information considered by the Witness in forming the opinions;

c. A description of any exhibits the witness or counsel intends to introduce to summarize or support these opinions (to be provided to Requests for Production);

d. The witness's qualifications, including a list of all publications authored in the previous ten years;

e. A list of all other cases in which, during the previous 5 years, the witness testified as an expert at trial or by deposition;

f. A statement of the compensation to be paid for the study and testimony in the case.

RESPONSE: Defendants object to this interrogatory as overly broad in scope. Subject to and without waiving this or any other applicable objection, Defendants respond as follows:

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John R. Ross, Sr., M.D.

a. **A Complete statement of all opinions the witness will express and the basis and reasons for them;**

Please see report produced herewith. Defendants further crave reference to Plaintiff's medical records. Defendants further reserve the right for Dr. Ross to supplement and/or amend his opinion as necessary.

b. **The data and other information considered by the Witness in forming the opinions;**

Medical history and treatment of Plaintiff; Plaintiff's deposition testimony; recorded interview of Plaintiff by CMI, photographs of subject nail, pertinent video surveillance.

c. **A description of any exhibits the witness or counsel intends to introduce to summarize or support these opinions (to be provided to Requests for Production);**

Defendants object to this Interrogatory pursuant to Rule 26, SCRCP, on the basis of the work product doctrine to the extent it seeks to obtain the mental impressions, conclusions, opinions, and/or legal theories of counsel. Subject to and without waiving this or any other objection, a determination has not yet been made as to any exhibits the witness may utilize at the trial of this case.

d. **The witness's qualifications, including a list of all publications authored in the previous ten years;**

Please see C.V. produced herewith.

e. **A list of all other cases in which, during the previous 5 years, the witness testified as an expert at trial or by deposition;**

To be supplemented to the extent Dr. Ross maintains such a list.

f. **A statement of the compensation to be paid for the study and testimony in the case.**

Please see attached fee schedule for Dr. Ross.

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Marshall S. White, Ph.D.

a. **A Complete statement of all opinions the witness will express and the basis and reasons for them;**

Please see report produced herewith. Defendants further reserve the right for Dr. White to supplement and/or amend his opinion as necessary.

b. **The data and other information considered by the Witness in forming the opinions;**

Photographs of subject nail, photographs produced by Plaintiff of unidentified pallets, Walmart Labeling & Packaging Logistics Distribution Center Guide, deposition testimony of Plaintiff and Tim Ringer; pertinent video surveillance, pleadings.

c. **A description of any exhibits the witness or counsel intends to introduce to summarize or support these opinions (to be provided to Requests for Production);**

Defendants object to this Interrogatory pursuant to Rule 26, SCRCP, on the basis of the work product doctrine to the extent it seeks to obtain the mental impressions, conclusions, opinions, and/or legal theories of counsel. Subject to and without waiving this or any other objection, a determination has not yet been made as to any exhibits the witness may utilize at the trial of this case.

d. **The witness's qualifications, including a list of all publications authored in the previous ten years;**

Please see C.V. produced herewith.

e. **A list of all other cases in which, during the previous 5 years, the witness testified as an expert at trial or by deposition;**

To be supplemented.

f. **A statement of the compensation to be paid for the study and testimony in the case.**

Dr. White's fee schedule is as follows: $400.00 per hour for consultations, $500.00 per hour for deposition and trial testimony, plus expenses.

Sarah Lustig BSN, RN, CLCP, CNLCP, CBIS

a. **A Complete statement of all opinions the witness will express and the basis and reasons for them;**

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Ms. Lustig will serve only as a rebuttal witness to the extent necessary, as set forth above. Therefore, she has not formulated a final opinion in this matter. However, Defendants crave reference to Plaintiff's medical records produced by the parties in this matter.

b. The data and other information considered by the Witness in forming the opinions;

Ms. Lustig will serve only as a rebuttal witness to the extent necessary, as set forth above. Therefore, she has not formulated a final opinion in this matter. However, to date, she has considered the medical history and treatment of Plaintiff; Plaintiff's deposition testimony; recorded interview of Plaintiff by CMI, photographs of subject nail, and the pertinent video surveillance.

c. A description of any exhibits the witness or counsel intends to introduce to summarize or support these opinions (to be provided to Requests for Production);

Defendants object to this Interrogatory pursuant to Rule 26, SCRCP, on the basis of the work product doctrine to the extent it seeks to obtain the mental impressions, conclusions, opinions, and/or legal theories of counsel. Subject to and without waiving this or any other objection, a determination has not yet been made as to any exhibits the witness may utilize at the trial of this case.

d. The witness's qualifications, including a list of all publications authored in the previous ten years;

Please see C.V. produced herewith.

e. A list of all other cases in which, during the previous 5 years, the witness testified as an expert at trial or by deposition;

Please see list of testimony produced herewith.

f. A statement of the compensation to be paid for the study and testimony in the case.

Ms. Lustig's fee schedule is as follows: $275.00 per hour.

16. Do you believe or have any information tending to show that the injuries to the plaintiff were due to any cause other than the cause referred to in the complaint? If so, state:

a. Each fact on which the defendant bases this claim and all information within the Defendant's knowledge that tends to show alleged negligence on the part of

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the Plaintiff;

b. The name, address, and telephone number of each person having personal knowledge of the facts and information set forth in the answer to this interrogatory.

RESPONSE: Defendants object to this Interrogatory pursuant to Rule 26, SCRCP, on the basis of the work product doctrine to the extent it seeks to obtain the mental impressions, conclusions, opinions, and/or legal theories of counsel. Subject to and without waiving this or any other objection, Defendants respond that the pallets present in the area of the subject store where the alleged incident occurred were plastic and did not contain nails. Defendants further respond that, while wooden pallets may have been used for certain displays in the subject store, the nail at issue in the present matter is a roofing nail and did not originate from a wooden pallet. Additionally, the alleged source and location of the subject nail at the time that Plaintiff originally stepped on the same is entirely speculative and Defendants maintain that Plaintiff's own negligence in failing to keep a proper lookout caused or contributed to cause the alleged incident. Moreover, Defendants maintain that the alleged incident did not cause the injuries claimed by Plaintiff, which were the result of her underlying disease progression. In support of the foregoing, Defendants rely upon the witnesses identified herein.

17. If you contend that Plaintiff and/or any other party, person, or entity was guilty of comparative/contributory negligence and/or otherwise responsible for Plaintiff's injuries, then fully and specifically describe. Upon what conduct, acts, and/or omissions of Plaintiff that you base your contention.

RESPONSE: Please see response to Interrogatory No. 16.

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May 17, 2019