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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 III

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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 *IN LIMINE* TO EXCLUDE PHOTOGRAPHIC EVIDENCE AND FOR SANCTIONS**

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. (hereinafter "Defendants"), by and through their undersigned counsel, to move this Honorable Court for an Order excluding from evidence at trial certain photographs produced by Plaintiff, as set forth more fully below, because the proffered photographs were taken by Plaintiff's counsel or his agents several years after the subject incident, they are not probative of the condition of the pallets at the time of Plaintiff's alleged incident and thus, are irrelevant and inadmissible. As further set forth below, the circumstances under which the photographs were taken is not in compliance with the South Carolina Rules of Civil Procedure and thus, the photographs should be excluded.

STATEMENT OF THE 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 on a rusty nail. *See* Pl.'s Amd. 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. A, Pl's Dep., pp. 20:

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23 – 21:11. As a result of the incident, Plaintiff, who is diabetic, alleges that she sustained severe and permanent personal injury, ultimately requiring the amputation of her right leg above the knee. *See* Pl's Amd. Compl., ¶ 1. Despite a lack of evidence establishing the source of the nail, Plaintiff contends that the nail on which she stepped came from a wooden pallet in the store. *Id.* at ¶¶ 1, 11; Ex. A, Pl's Dep., p. 31:8-13.

LEGAL STANDARD

A motion *in limine* is a pretrial motion which requests that the court exclude inadmissible or unduly prejudicial evidence before it is actually offered at trial. *See Luce v. U.S.*, 469 U.S. 38, 40 n. 2 (1984). A motion *in limine* is "an important tool available to the trial judge to ensure the expeditious and evenhanded management of the trial proceedings." *Jonasson v. Lutheran Child & Family Servs.*, 115 F.3d 436, 440 (7th Cir. 1997). Many motions *in limine* seek to exclude evidence on the basis of relevance or prejudice. Relevant evidence is merely evidence which tends to prove or disprove the existence of a material fact. *See* Rule 401, SCRE (defining relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence"). The dictates of Rule 401 are subject to the balancing requirement of Rule 403, SCRE, which requires a court to exclude relevant evidence upon a showing that its admission would be more prejudicial than probative. *See* Rule 403, SCRE (excluding relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice").

ARGUMENT

I. The Court should exclude reference to and the use of any photographs or videos taken by Plaintiff's counsel on May 15, 2019.

Defendants respectfully request that the Court exclude any testimony, reference to, or admission of the photographs or videos taken by Plaintiff's counsel on May 15, 2019.

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Unbeknownst to Defendants or their counsel, Plaintiff's counsel Lane Jefferies, along with two companions, visited the subject store on May 15, 2019, and took photographs of pallets and possibly recorded video while on the premises. Specifically, Store Manager Tim Ringer, also a defendant to the action, contacted Defendants' counsel to inform them of the same after he observed Plaintiff's counsel, Lane Jefferies, in the store and asked him the purpose of his taking video and/or photos in the store. Defendants' counsel learned from Defendant Ringer that store video surveillance showed Plaintiff's counsel Lane Jefferies and two companions in the store on May 15, 2019. A review of the video surveillance shows that the group was present in the store, taking action with regard to certain pallet displays within the store, including the use by Jefferies' companions of gloves and a hammer obtained from within the store.[1] *See* Ex. B, May 15, 2019, video surveillance, and Ex. C, associated still frames of video surveillance and Affidavit of Virginia Wright. Such action constitutes an inspection under Rule 34, SCRP, which requires a party to serve a request on the opposing party for an inspection and provides in pertinent part as follows:

> **(b) Procedure.** The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. ***The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.***

(emphasis supplied). Despite the requirements of the foregoing, Plaintiff's counsel did not serve Defendants with any request for such inspection that detailed with particularity what he intended to inspect at the subject store, nor did Plaintiff's counsel provide any form of notice to Defendants'

[1] At 2:38:33 – 2:38:43 of the surveillance video (Video 11 – Action Alley Electronics to TLE), the kite display can be seen moving and the items on the display shaking as if the display is being moved or manipulated in some manner. Plaintiff's counsel's two companions appear in view at 2:38:49. Pictures of this same display, shown with splintered wood on the floor were presented as Plaintiff's Exhibits 15 and 16 during Dr. White's deposition.

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counsel of his intention to visit the premises to obtain photographs or video. In fact, Defendant's counsel only learned of the "inspection" when Defendant Ringer informed counsel of his observations of Plaintiff's counsel in the store. Upon learning of the same, Defendants' counsel emailed Plaintiff's counsel regarding the visit and requested that he produce any photographs/videos taken during the visit. *See* Ex. D, May 15, 2019, Email. Plaintiff's counsel did not respond. However, ten (10) minutes prior to the scheduled start time of the deposition of Defendants' pallet expert, Marshall White, Ph.D., on May 20, 2019 in Blacksburg, Virginia, Plaintiff's counsel emailed Defendants' counsel seventeen (17) photographs believed to have been taken during the unauthorized visit to the store. *See* Ex. E, May 20, 2019, Email with photographs. Plaintiff's counsel provided no information regarding the identity of the person who took the photos, the date taken, location, etc. The photographs were used under objection as exhibits during the deposition of Defendants' expert Dr. White. *See* Ex. F, Photographs, White Depo., Exs. 1-17.

Further, Plaintiff's expert Bryan Durig relies upon said photographs to support his speculative opinion that the nail at issue may have come from a pallet in Walmart. *See* Ex. F, Photographs, White Depo., Exs. 1-17, and Ex. G, Affidavit of Durig. The actions of Plaintiff's counsel do not comply with the applicable discovery rules and practice in South Carolina and, as such, the images should be excluded in their entirety, including any testimony, expert opinion based on the photographs, or other reference to said images.

Moreover, even setting aside Plaintiff's failure to comply with proper discovery procedures, the images were taken nearly four (4) years after Plaintiff's alleged June 26, 2015, incident. Plaintiff has not and cannot present any evidence that any pallets present in the subject area of the store on the date at issue were in the same condition as those depicted in the May 15, 2019 images. Plaintiff has asserted that the images are merely being presented to refute

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Defendants' contention of the use of plastic pallets in the grocery action alley, but Plaintiff's expert witness, Bryan Durig, specifically relies on the condition on the pallets in the photos to form several of his opinions. *See* Ex. G, Affidavit of Durig. Even if Plaintiff's expert did not inappropriately rely on the subject photos, Plaintiff has presented no evidence that any of the pallets in these images were in the same area of the store where Plaintiff's alleged incident occurred. None of the images taken on May 15, 2019 depict pallets from the grocery action alley. In fact, several of the photos clearly depict areas outside of the store, including a trash storage area and the garden center. Additionally, the surveillance video of Plaintiff's counsel and his representatives show that they are taking photos of pallets in the general merchandise section of the store, which is located on the other side of the more than the approximately 150,000 square foot store. *See* Ex. B, May 15, 2019, video surveillance. As such, the photos, which are wholly unrelated to the subject incident, are irrelevant. Plaintiff simply wishes to use the images to invite the jury to speculate and engage in conjecture to conclude that the same type of pallets may have been in existence in the area where Plaintiff walked on the day of the incident, despite there being no evidence to support this contention. Importantly, even if wooden pallets had been in the same area where Plaintiff was on the day of the incident, Plaintiff's evidence is woefully short of establishing that the nail on which she allegedly stepped came from any pallet in Walmart. Moreover, Plaintiff has not and cannot show that Walmart created a hazardous condition with regard to the nail or that it had actual or constructive notice of such a condition. Simply put, the photographs, as well as any video, which were obtained in violation of the rules, are irrelevant and should be excluded in their entirety for this additional and independent reason.

II. The Court should exclude photographs taken by Plaintiff's counsel on April 11, 2017.

Defendants respectfully request that the Court also exclude from admission two (2)

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photographs of pallets taken by Plaintiff's counsel on April 11, 2017, as well as any testimony or other reference to the photographs or pallets depicted therein, which were marked as exhibits to Plaintiff's deposition. *See* Ex. H, Apr. 11, 2017 Photos (exhibits 1 and 2 to Pl's Dep.). The photographs were taken nearly two (2) years after the June 26, 2015, incident alleged in Plaintiff's Complaint. *See* Ex. I, Pl's Answers to Defendants' Second Set of Interrogatories, Nos. 1-2. As such, they are irrelevant as they have no bearing whatsoever on any fact for determination in the present matter. Just as with the 2019 photographs, Plaintiff has not presented any evidence that the pallets depicted in the subject photographs were in the subject store at the time of the alleged incident, nor has she presented any evidence that any pallet in the subject store at the time of the alleged incident was in the same condition as the pallets depicted in the photographs. Again, Plaintiff simply wishes to use the images to lead the jury to infer the existence of the same pallets in the area where Plaintiff walked on the day of the incident, despite there being no evidence to support this contention. Any probative value of the photographs, which Defendants deny, is substantially outweighed by the danger of unfair prejudice to Defendants. Accordingly, Defendants request that the Court exclude reference to and deny admission of the two (2) photographs marked as exhibits during Plaintiff's deposition. *See* Ex. H, Apr. 11, 2017, Photos.

III. Discovery Sanctions should be imposed on Plaintiff's counsel for the conduct in obtaining photographs and video without complying with the applicable rules.

Rule 37, SCRCP, grants this court the discretion to impose sanctions for certain conduct such as Plaintiff's counsel's failure to properly notice his inspection of the subject store. While the sanction is solely within the discretion of the trial judge, it may include excluding any evidence obtained during the improper inspection from admission at trial. Pursuant to Rule 37, Defendants respectfully request that the Court exclude from admission any photographs or videos taken by Plaintiff or Plaintiff's counsel after the date of the subject incident, June 26, 2015, as well as any

testimony or other reference thereto, including any testimony elicited from Defendant Tim Ringer or Defendants' pallet expert Dr. White, as well as any opinion by Plaintiff's expert Bryan Durig regarding the same, along with any other action the Court may deem appropriate, including the attorneys' fees and costs associated with this Motion and the underlying events.

CONCLUSION

Based upon the foregoing, Defendants respectfully request that this Honorable Court enter an Order granting this Motion *in Limine* and for Sanctions, as set forth above.

The undersigned certifies pursuant to Rule 11, SCRCP, that given the nature of this Motion consultation with opposing counsel would serve no useful purpose.

Respectfully submitted,

s/Nashiba Boyd

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October 27, 2021

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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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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

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?

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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.

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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.

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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

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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.

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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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14 88:12 98:17
1410 7:3
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16th 101:17
18 7:13 68:16
1969 8:2
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2017 68:12,17
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29403 2:3
29506 7:4
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ELECTRONICALLY FILED - 2021 Oct 27 12:30 PM - FLORENCE - COMMON PLEAS - CASE#2017CP2101375

April Jones 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.

CIVIL ACTION NO.: 2017-CP-21-01375

EXHIBIT B TO DEFENDANT'S MOTION IN LIMINE TO EXCLUDE PHOTOGRAPHIC EVIDENCE AND FOR SANCTIONS (Video Clip will be mailed to Florence County Clerk of Court)

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EXHIBIT H

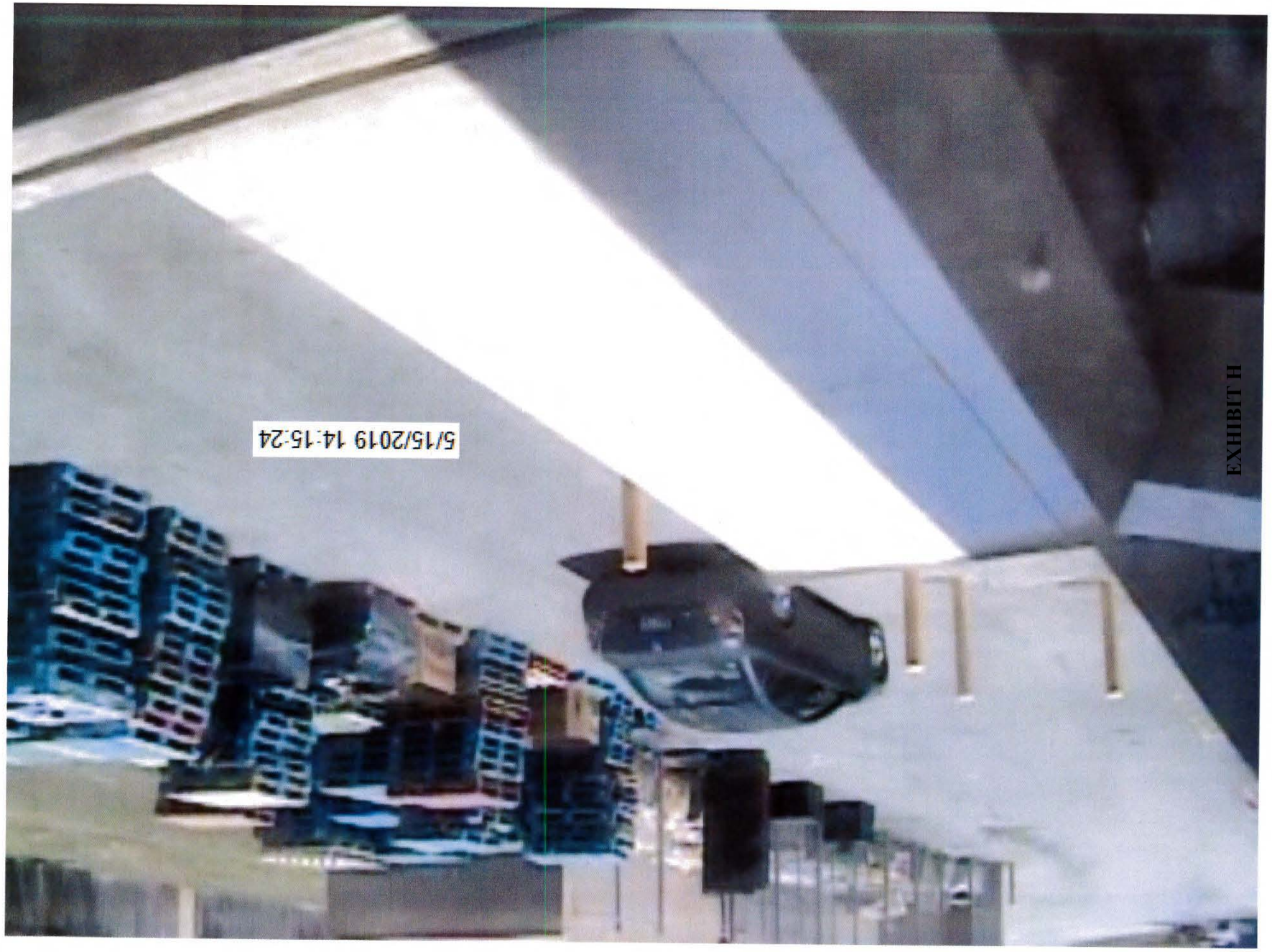

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EXHIBIT H

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EXHIBIT H

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EXHIBIT H

EXHIBIT H

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ELECTRONICALLY FILED - 2021 Oct 27 12:30 PM - FLORENCE - COMMON PLEAS - CASE#2017CP2101375

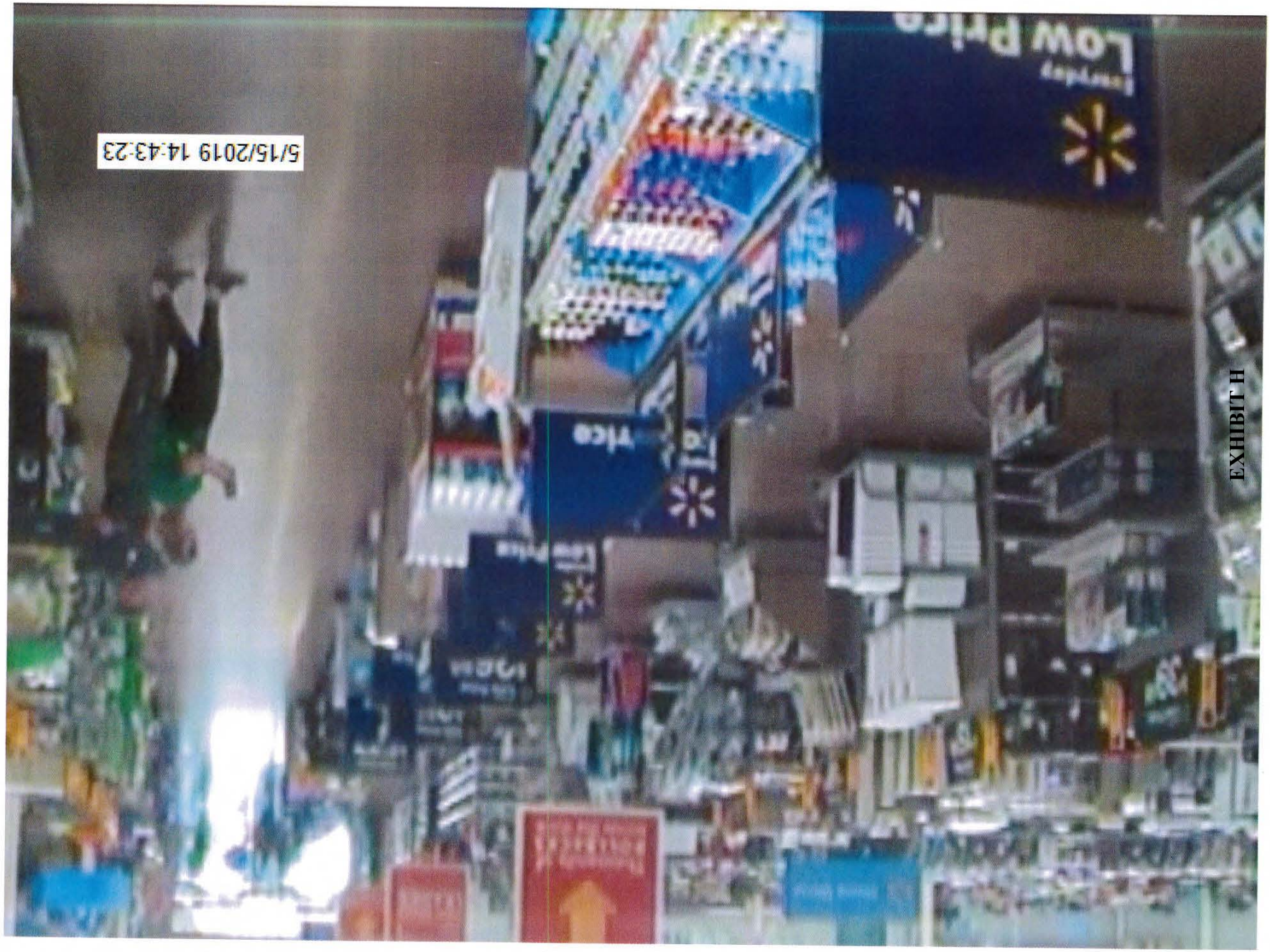

EXHIBIT H

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Low Price
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1058

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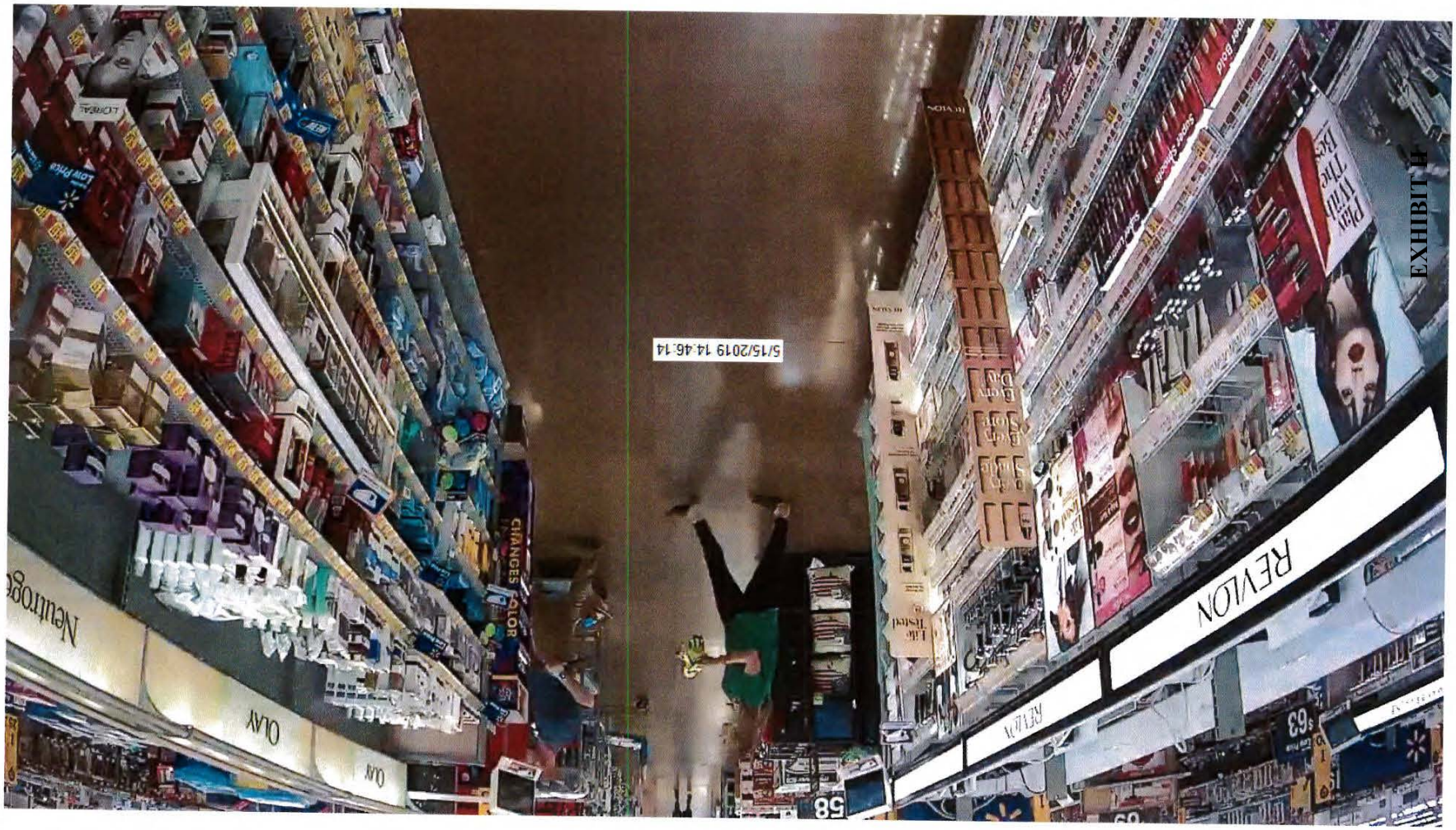

EXHIBIT H

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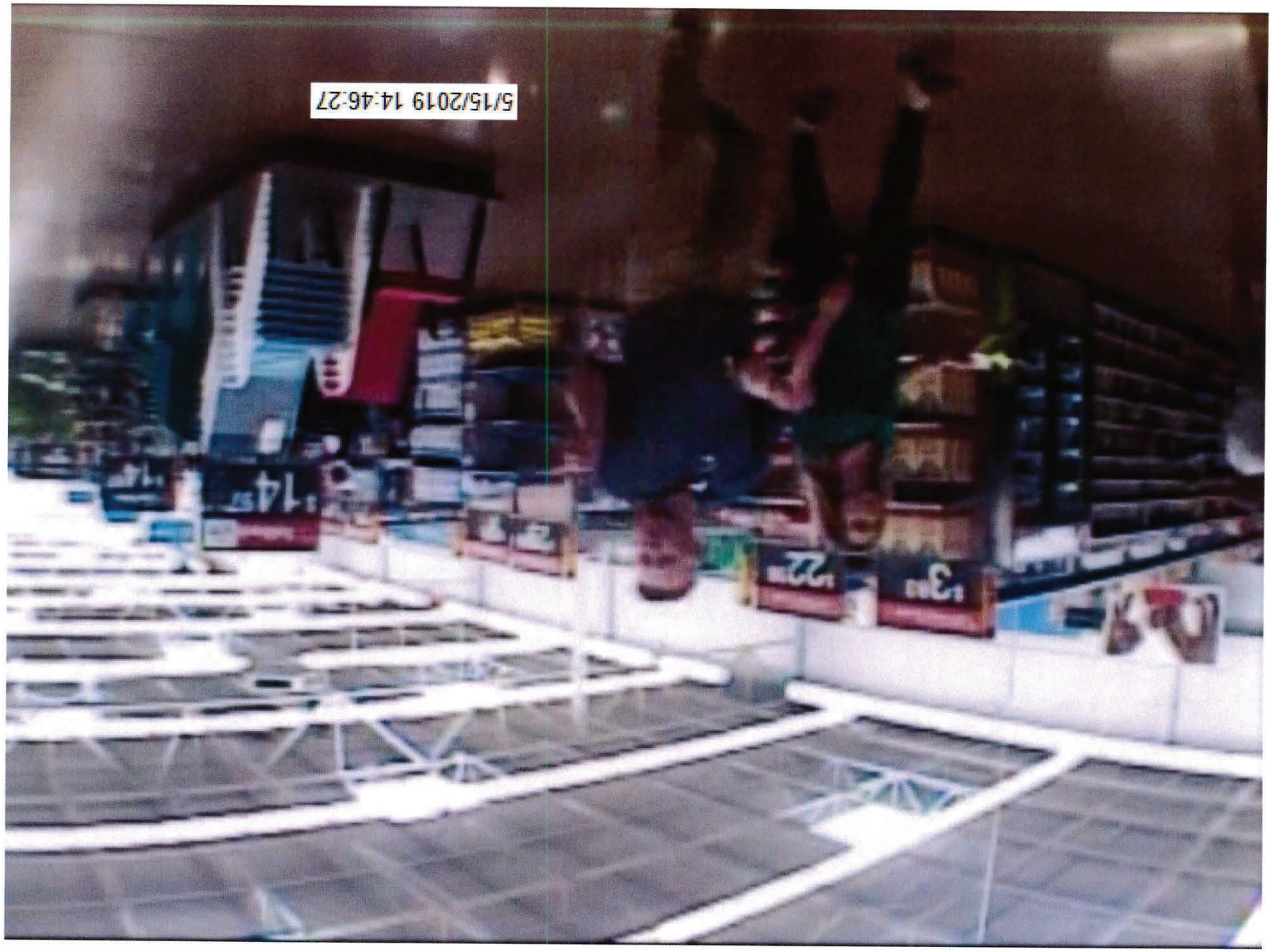
EXHIBIT H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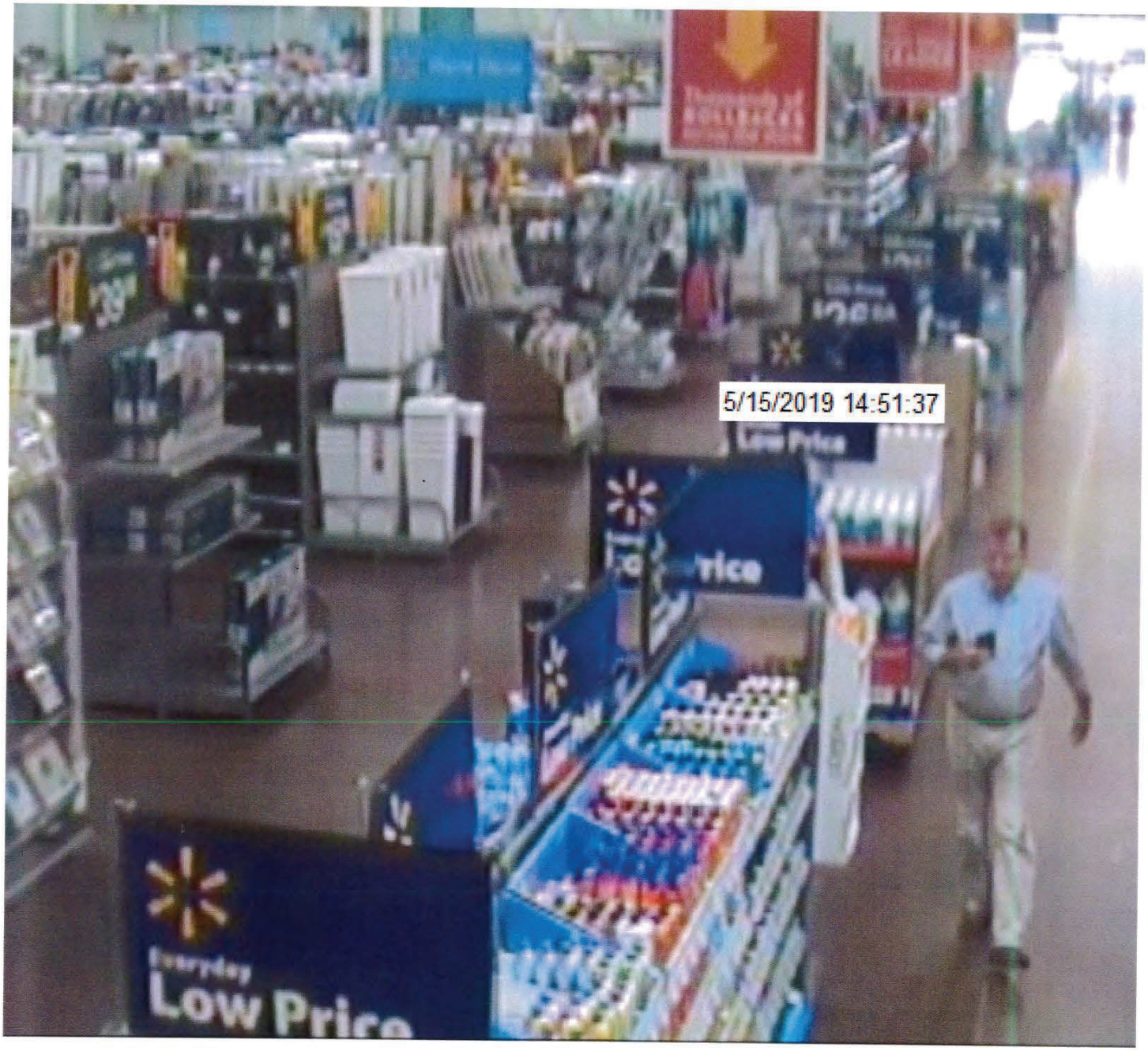
5/15/2019 14:50:09
Lawn & Garden
Pharmacy
Entertainment
Pickup



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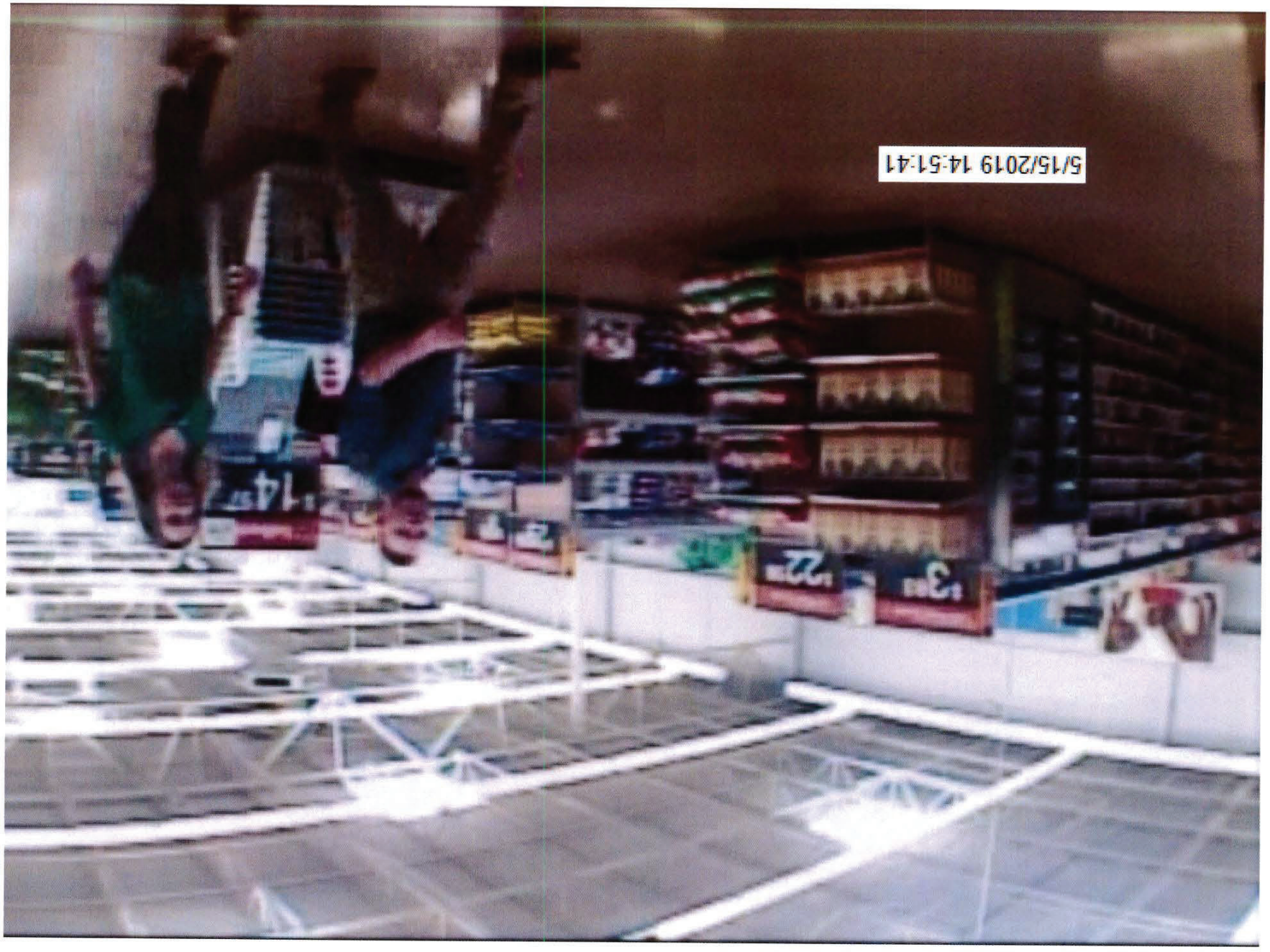
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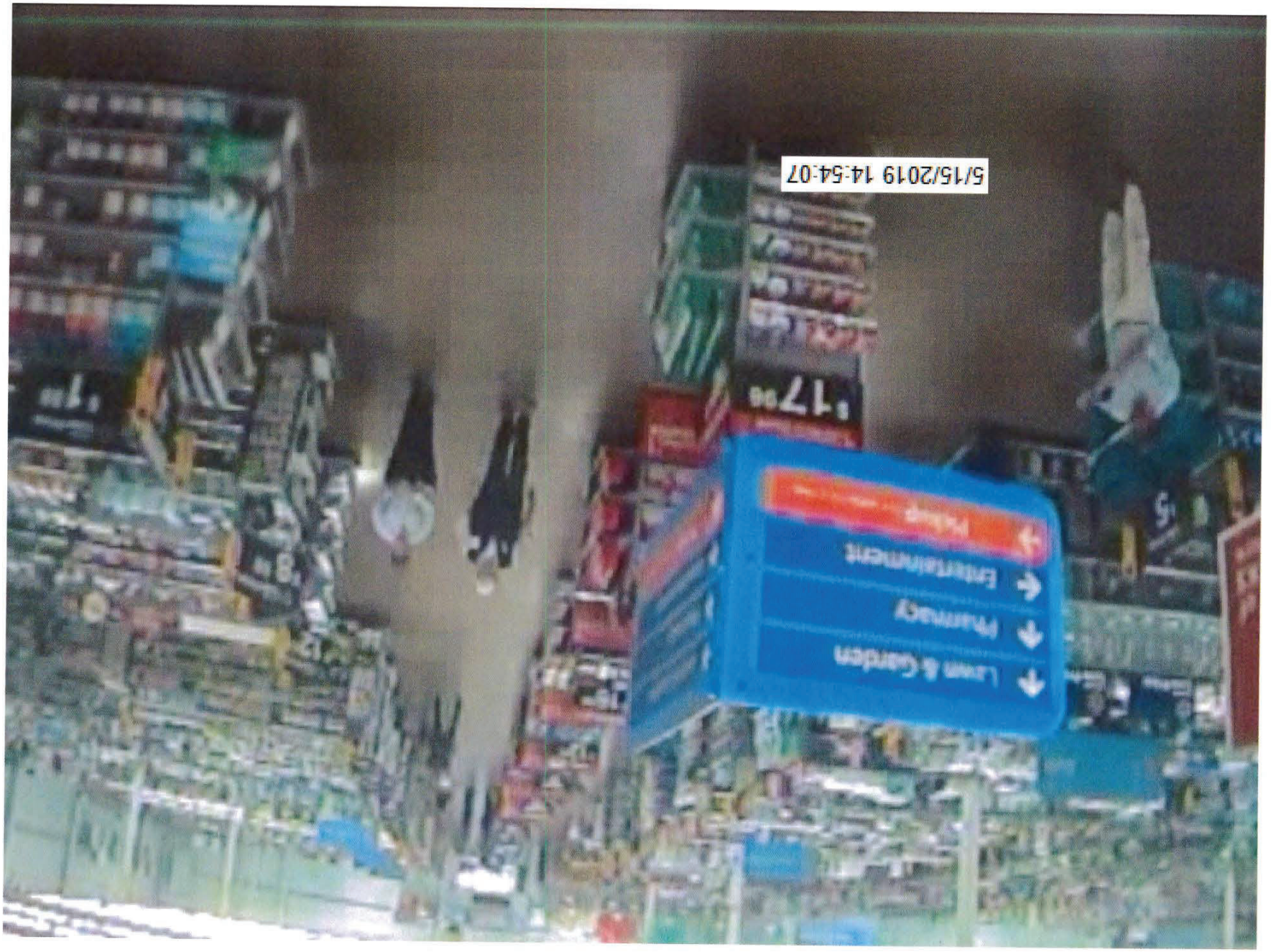

1071

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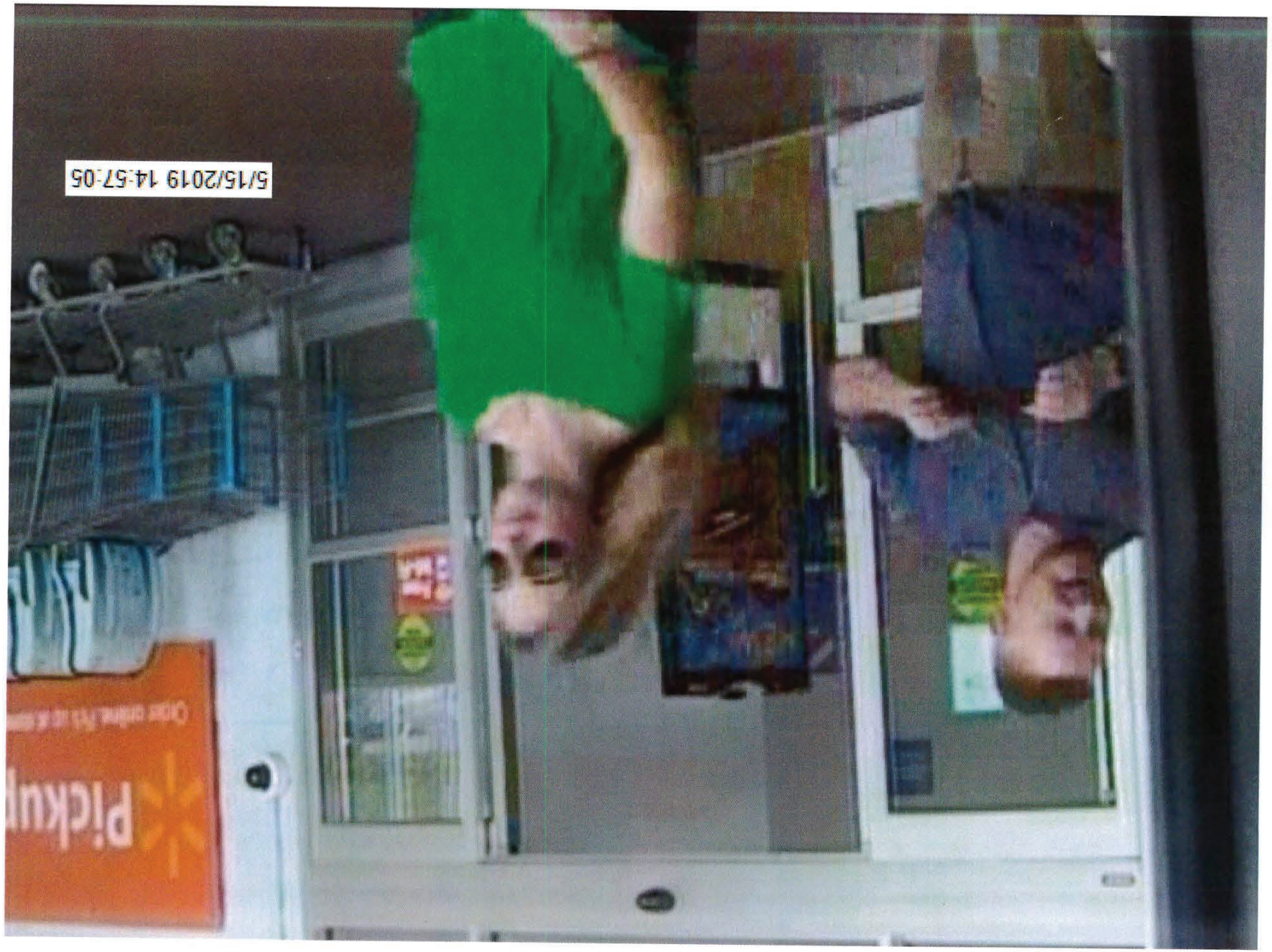
5/15/2019 14:57:03


5/15/2019 14:57:05

5/15/2019 14:57:06

AFFIDAVIT OF VIRGINA WRIGHT

My name is Virginia Wright. I am the Asset Protection Assistant Manager of Walmart store 630 in Florence, South Carolina, where April Jones alleges she stepped on a nail on June 26, 2015. I was alerted that on May 15, 2019, Store Manager Tim Ringer observed Ms. Jones' attorney Lane Jefferies in the store filming or taking photos. I reviewed the store video surveillance and observed Mr. Jefferies and two other people at various locations in the store. I secured the surveillance video, consisting of 30 clips, and provided a copy to Walmart's attorney Lee Ellen Bagley. The clips provided are true and accurate copies of the store video surveillance from May 15, 2019.

Thank you,

Virginia Wright

Virginia Wright

Sworn to before me this 22nd day of May, 2019.

Notary Public for South Carolina
My commission expires: 9/13/2021

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Lee Ellen Bagley

From: Lee Ellen Bagley
Sent: Wednesday, May 15, 2019 5:15 PM
To: Lane Jefferies (lane@akimlawfirm.com); roy@akimlawfirm.com
Cc: teamjefferies@googlegroups.com; Nashiba Boyd
Subject: April Jones v. Walmart

Lane,

I understand that you visited the subject Walmart store today and filmed certain areas of the store. This constitutes an inspection of my client's property for which no request was made through my office. While I understand that Walmart is generally open to the public, it would have been appropriate for you to request and inspection and coordinate the same with my office or, at a minimum, to provide us with notice of the inspection. As you know, your actions resulted in you speaking directly with my client Tim Ringer, who is a defendant to the action. Please refrain from taking any such action in the future without discussing the same with me or Nashiba.

Please produce a copy of any video, photos, or other recordings taken today, or at any other time, in relation to this action.

Thanks,

Lee Ellen

Lee Ellen Bagley
GAFFNEYLEWIS LLC
3700 Forest Drive, Suite 400
Columbia, South Carolina 29204
t: 803.790.8838 *f:* 803.790.8841
www.gaffneylewis.com

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EXHIBIT D
1077

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Lee Ellen Bagley

From: Lane Jefferies <lane@akimlawfirm.com>
Sent: Monday, May 20, 2019 1:50 PM
To: Lee Ellen Bagley
Cc: TeamJefferies; Roy, Eric, Matt
Subject: Jones, April -- photos and court reporter

Dear Lee Ellen —

Here are photos that we may use at today's deposition. Please allow this to supplement our discovery responses.

Also, the court reporter's number is 434.242.4360. Renee McDermed.

Best,
Lane

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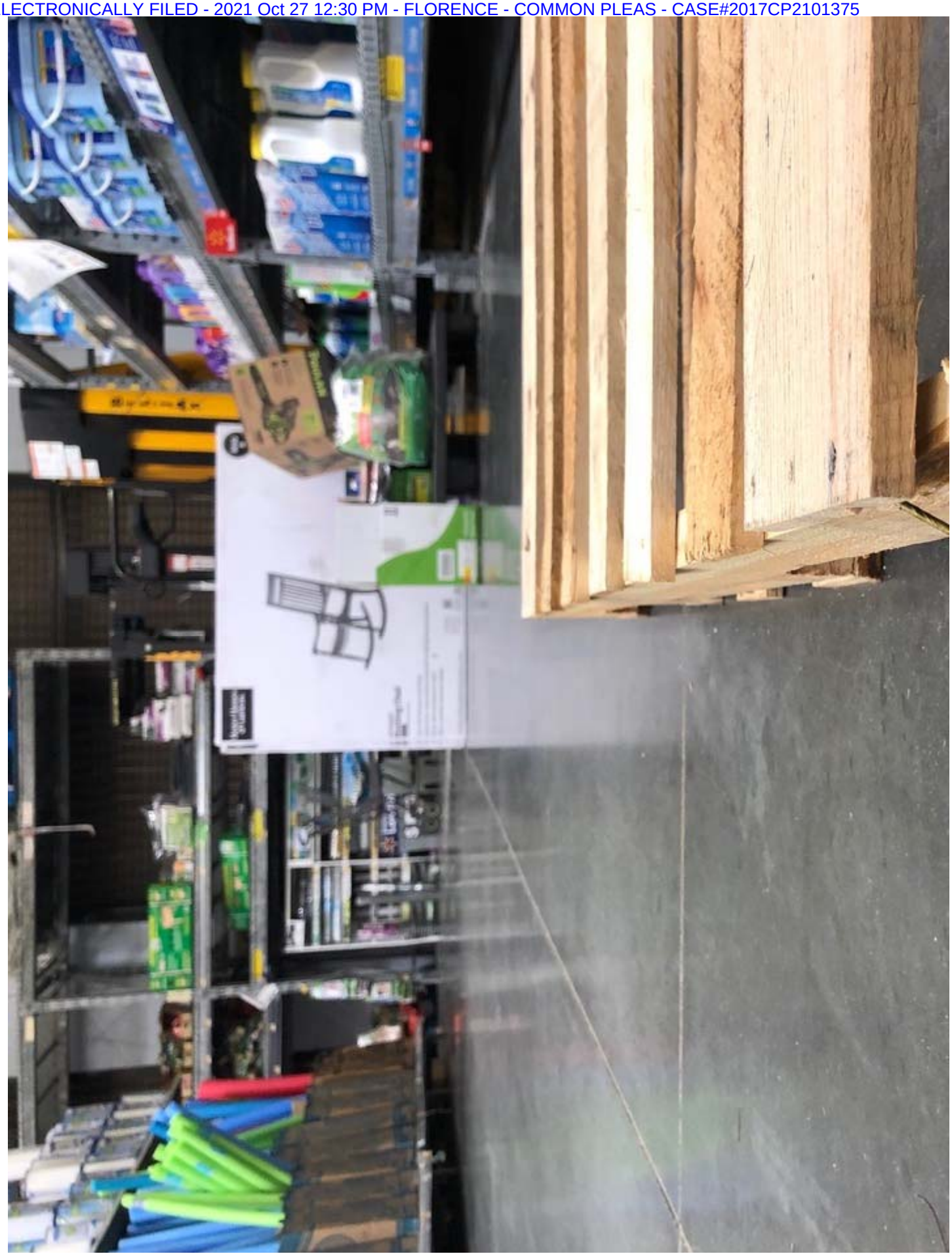
EXHIBIT E
1079



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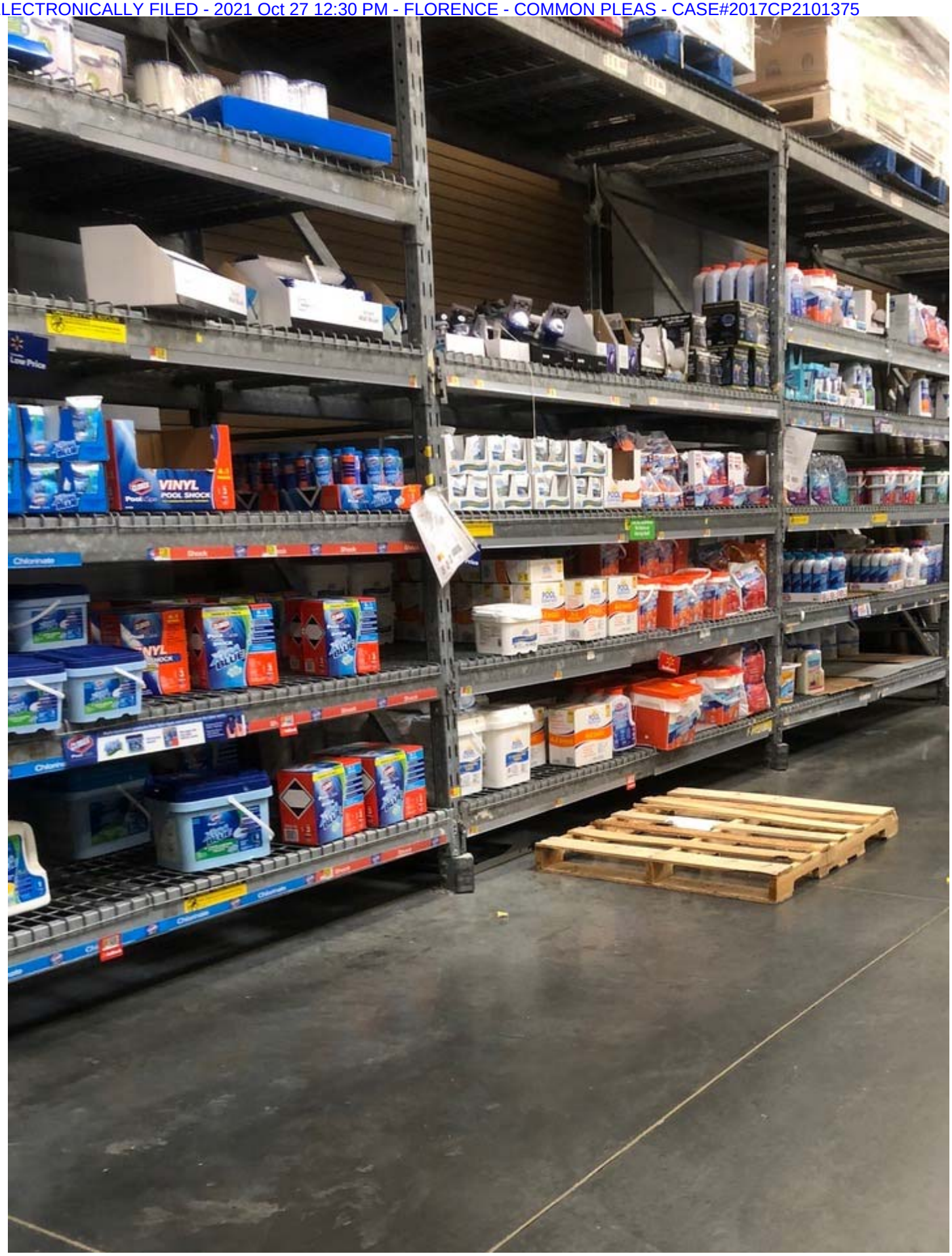

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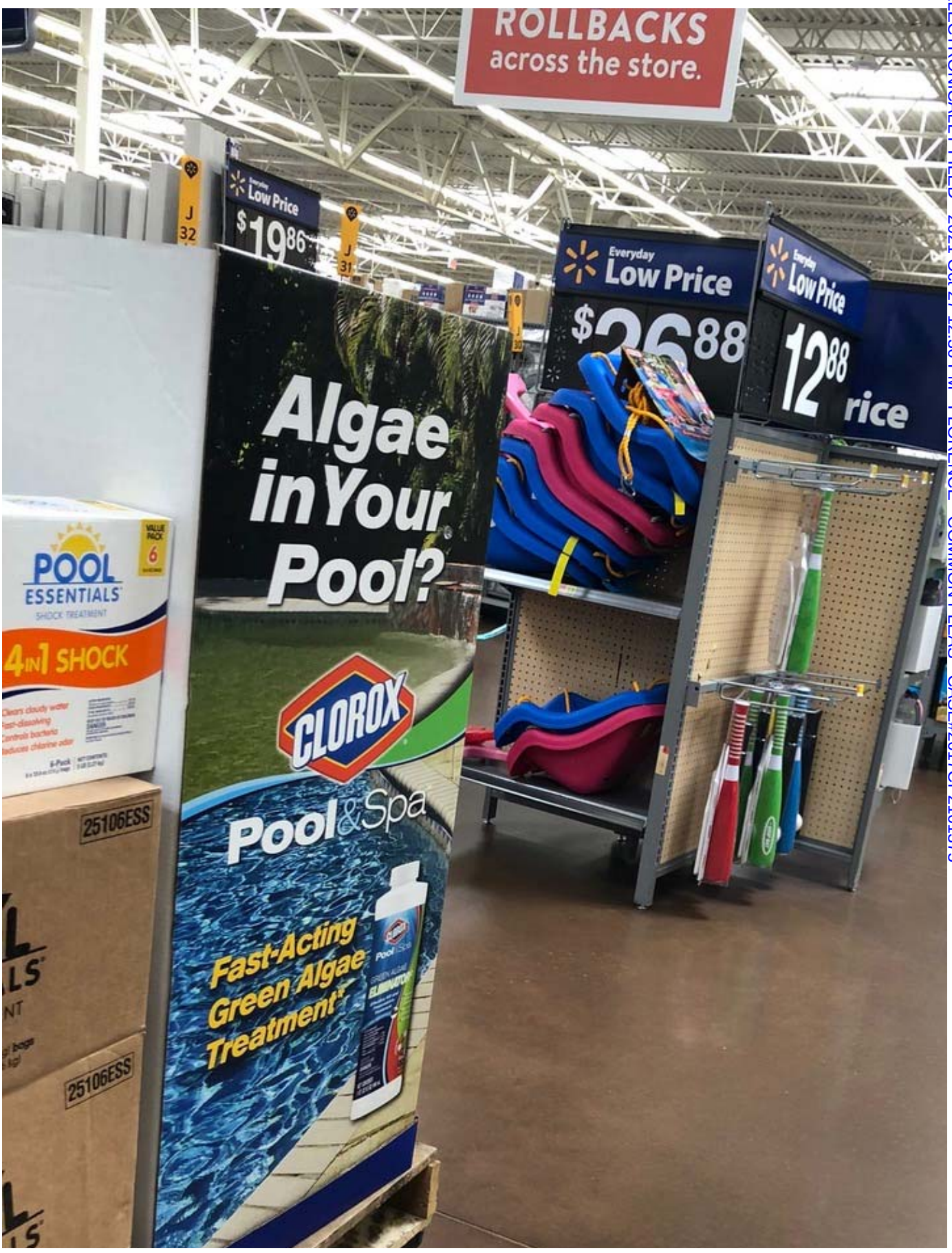

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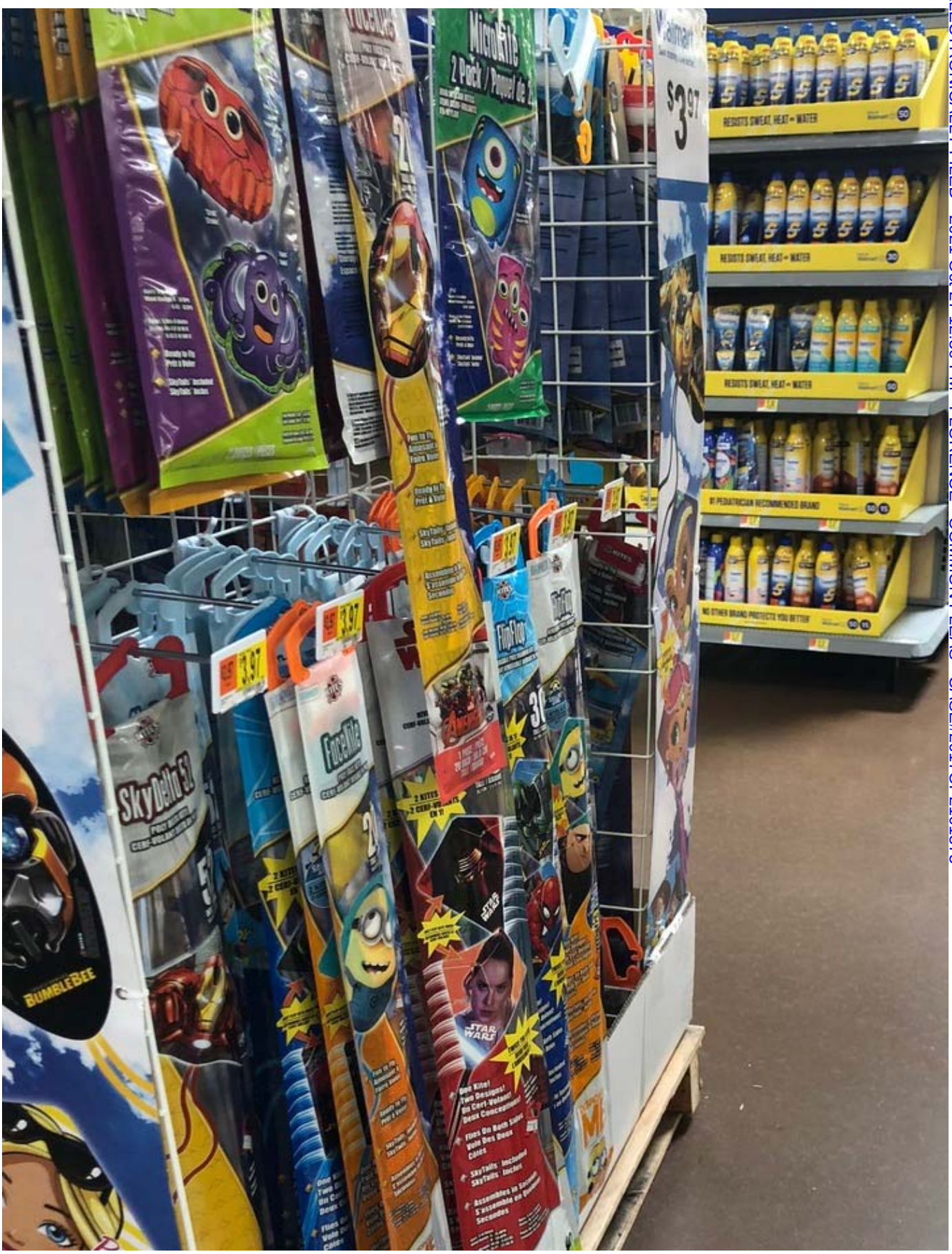

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EXHIBIT E
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Lane D. Jefferies
Trial Lawyer
Anastopoulo Law Firm, LLC
32 Ann Street | Charleston, SC 29403
Tel: 843-614-8888 | Fax: 843-494-5536

www.akimlawfirm.com | TeamJefferies@GoogleGroups.com

Office Locations: Charleston | N. Charleston | Florence | Columbia | Greenville| Myrtle Beach | Raleigh, NC

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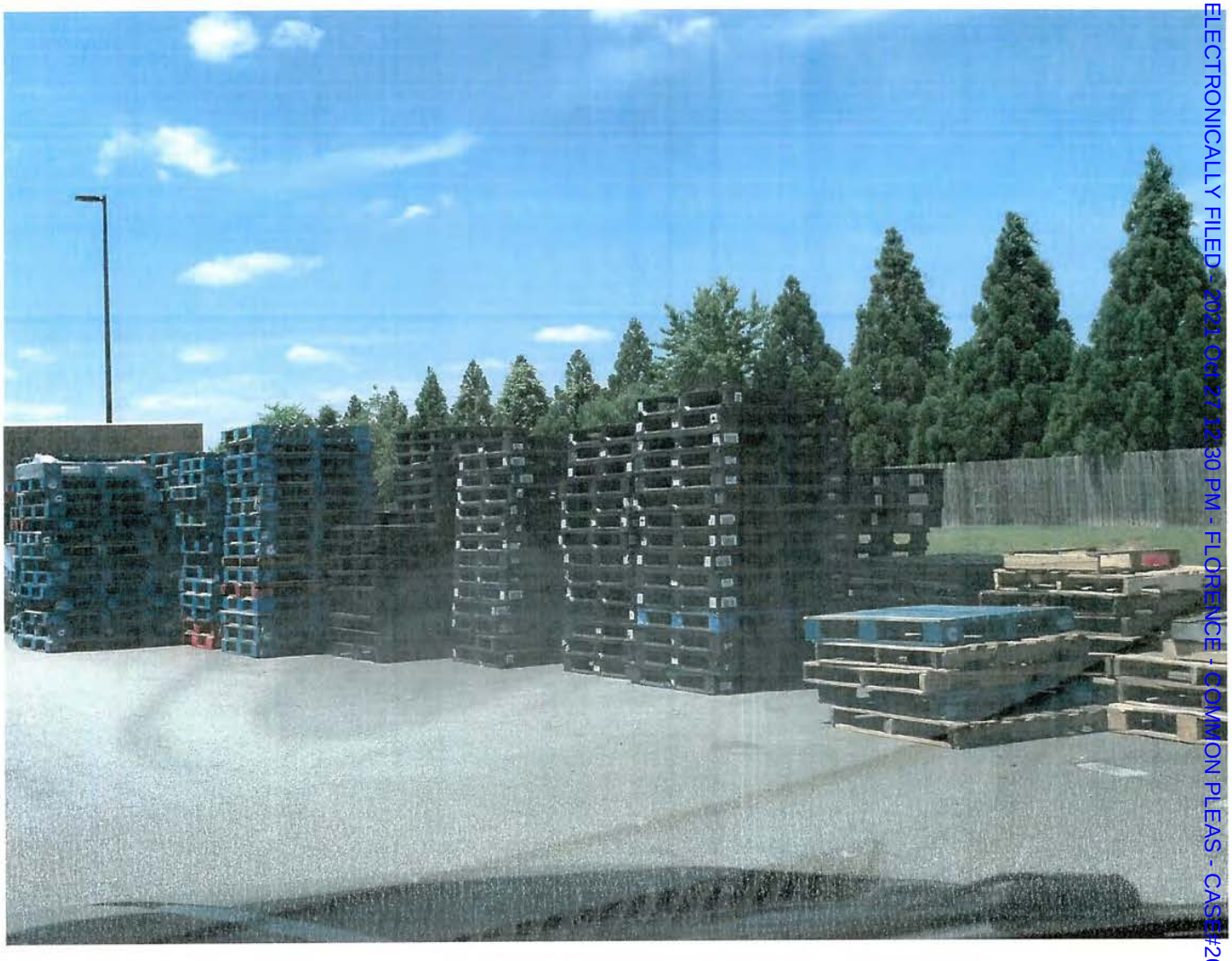

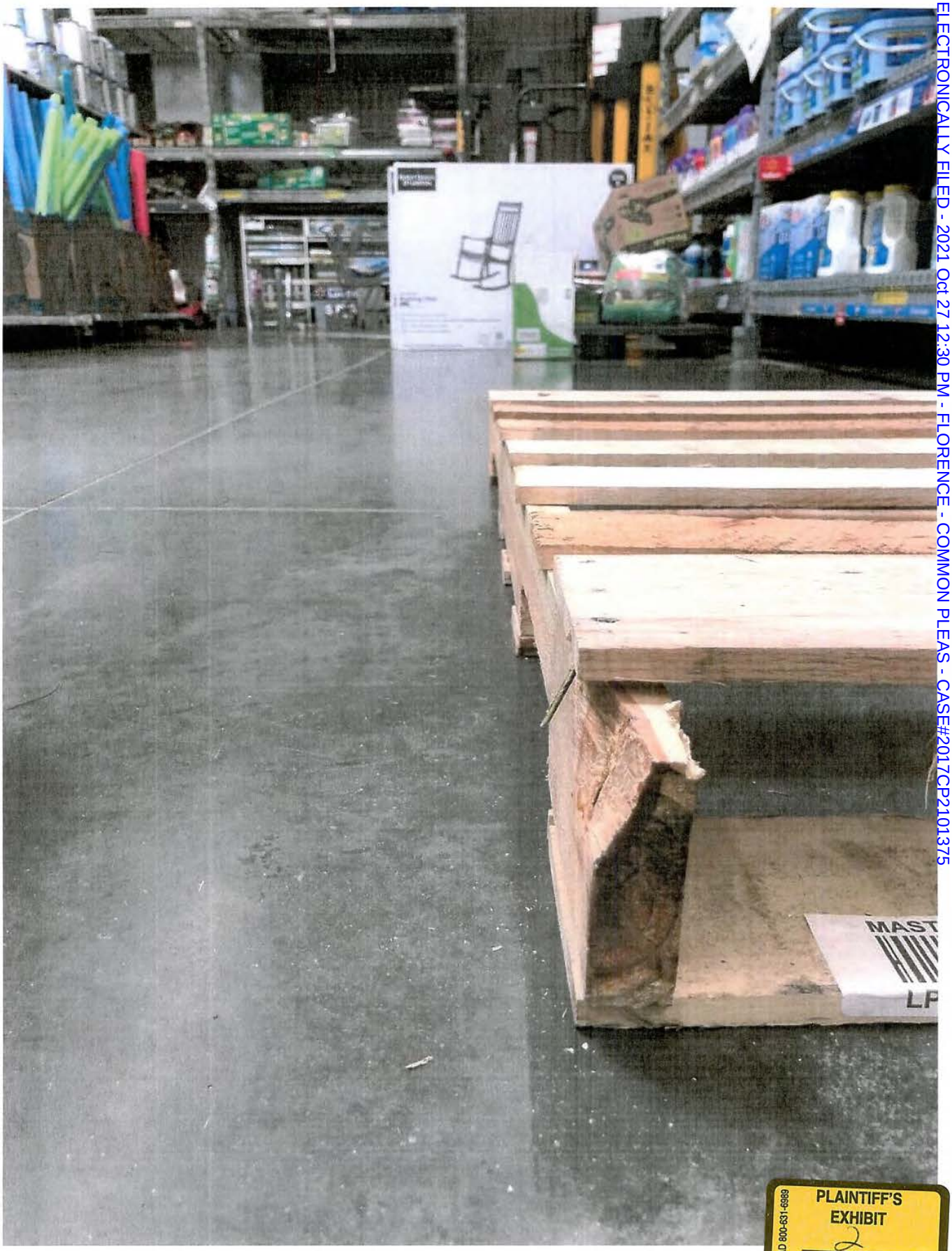

PLAINTIFF'S EXHIBIT
2
White 5-20-19
PENGAD 800-631-6989

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PLAINTIFF'S EXHIBIT 3 White 5-2019
PENGAD 800-631-6989

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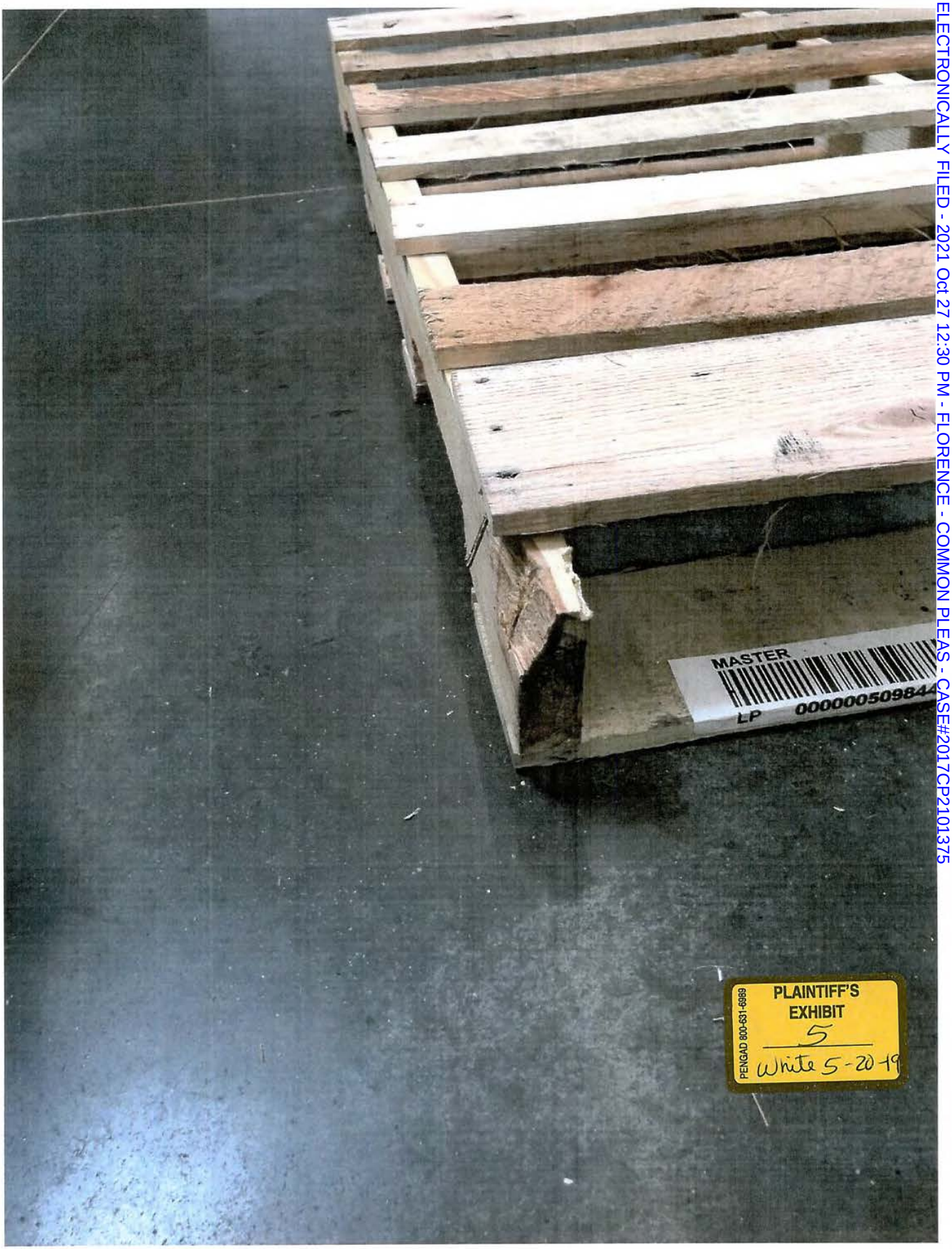
PLAINTIFF'S EXHIBIT 4 White 5-2019

PENGAD 800-631-6989



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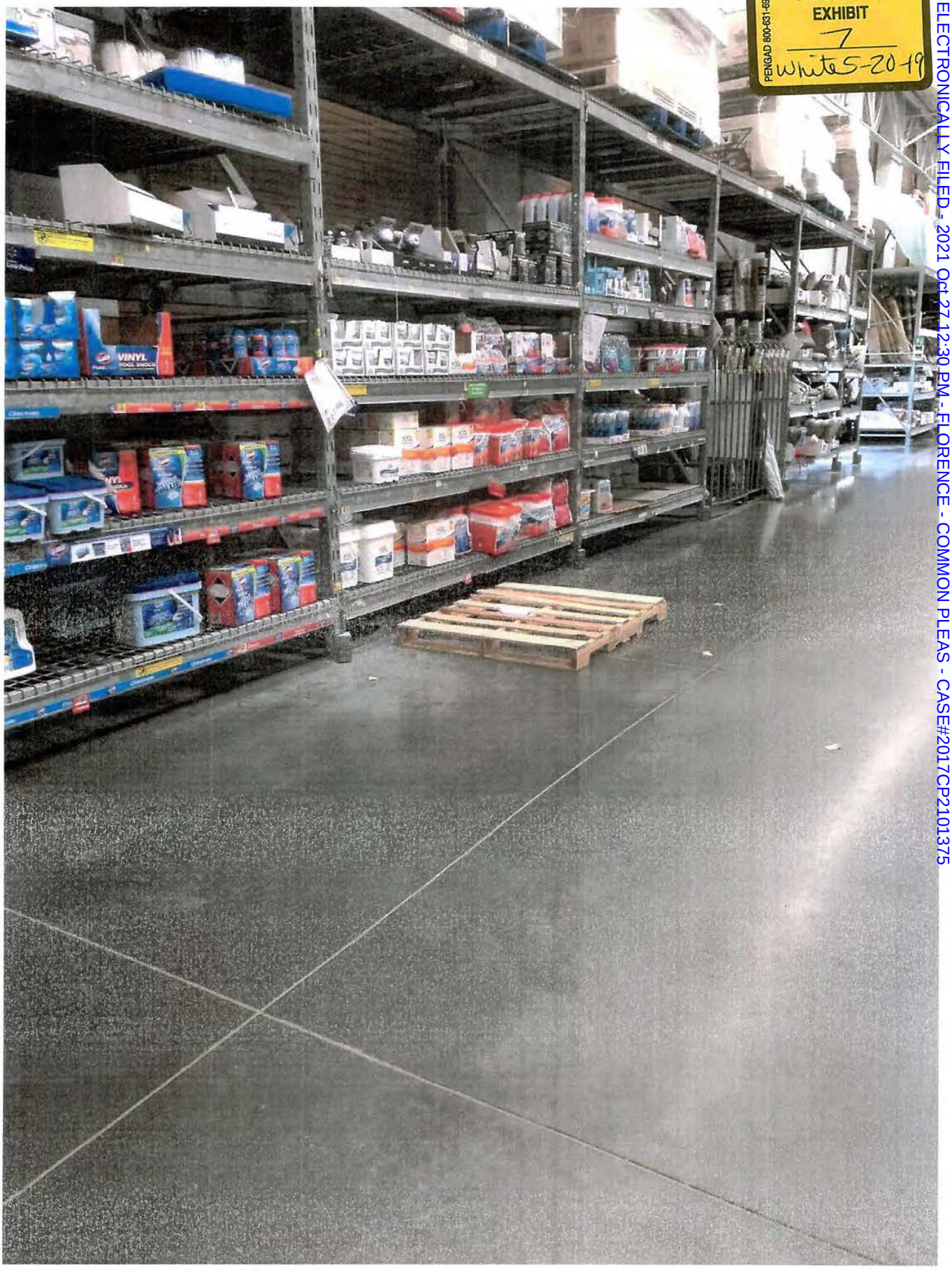

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PLAINTIFF'S EXHIBIT 8 White 5-20-19

PENGAD 800-631-6989

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PENGAD 800-631-6989
PLAINTIFF'S EXHIBIT
12
Whites 20

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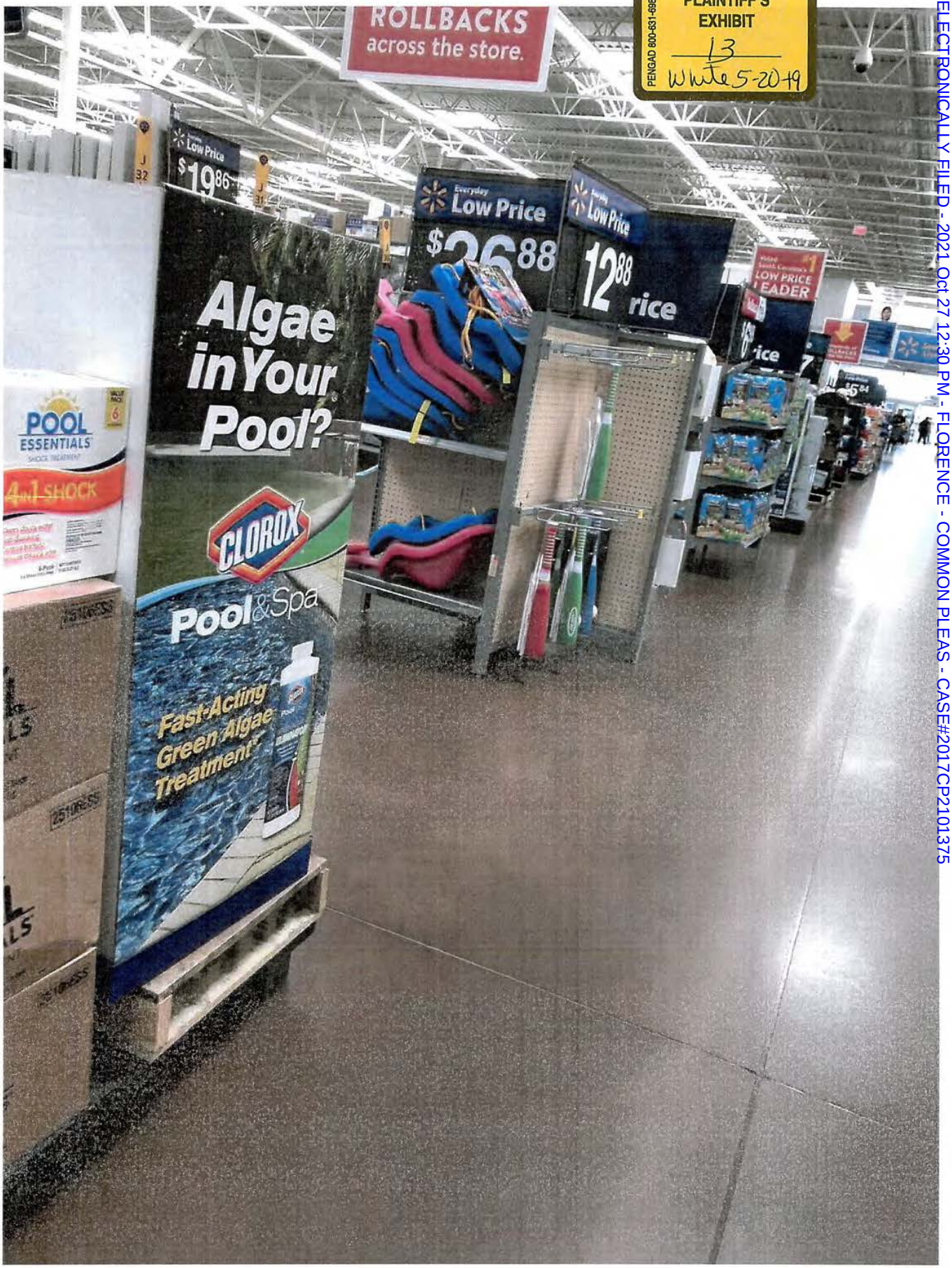

PLAINTIFF'S EXHIBIT
13
White 5-2019
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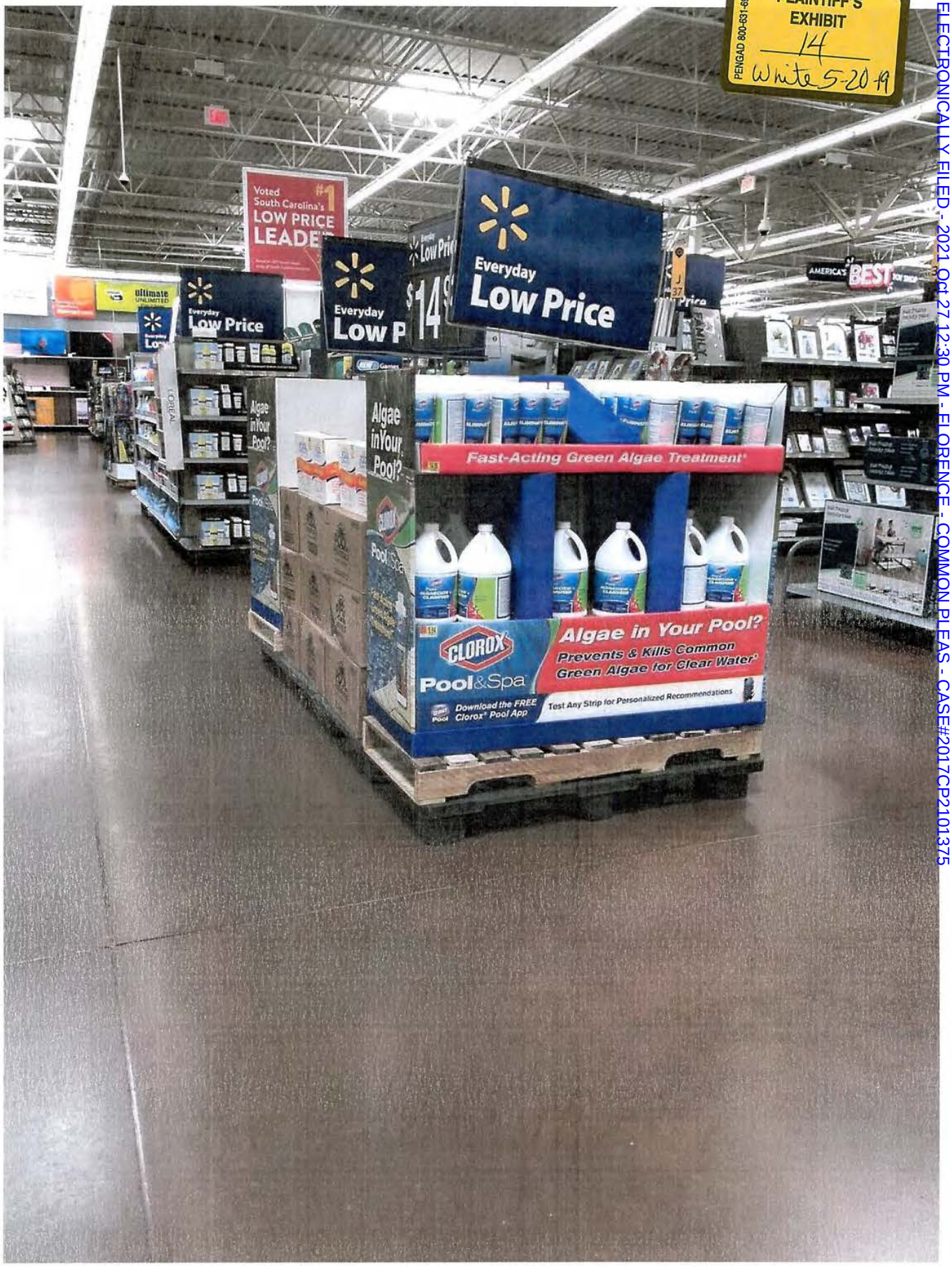

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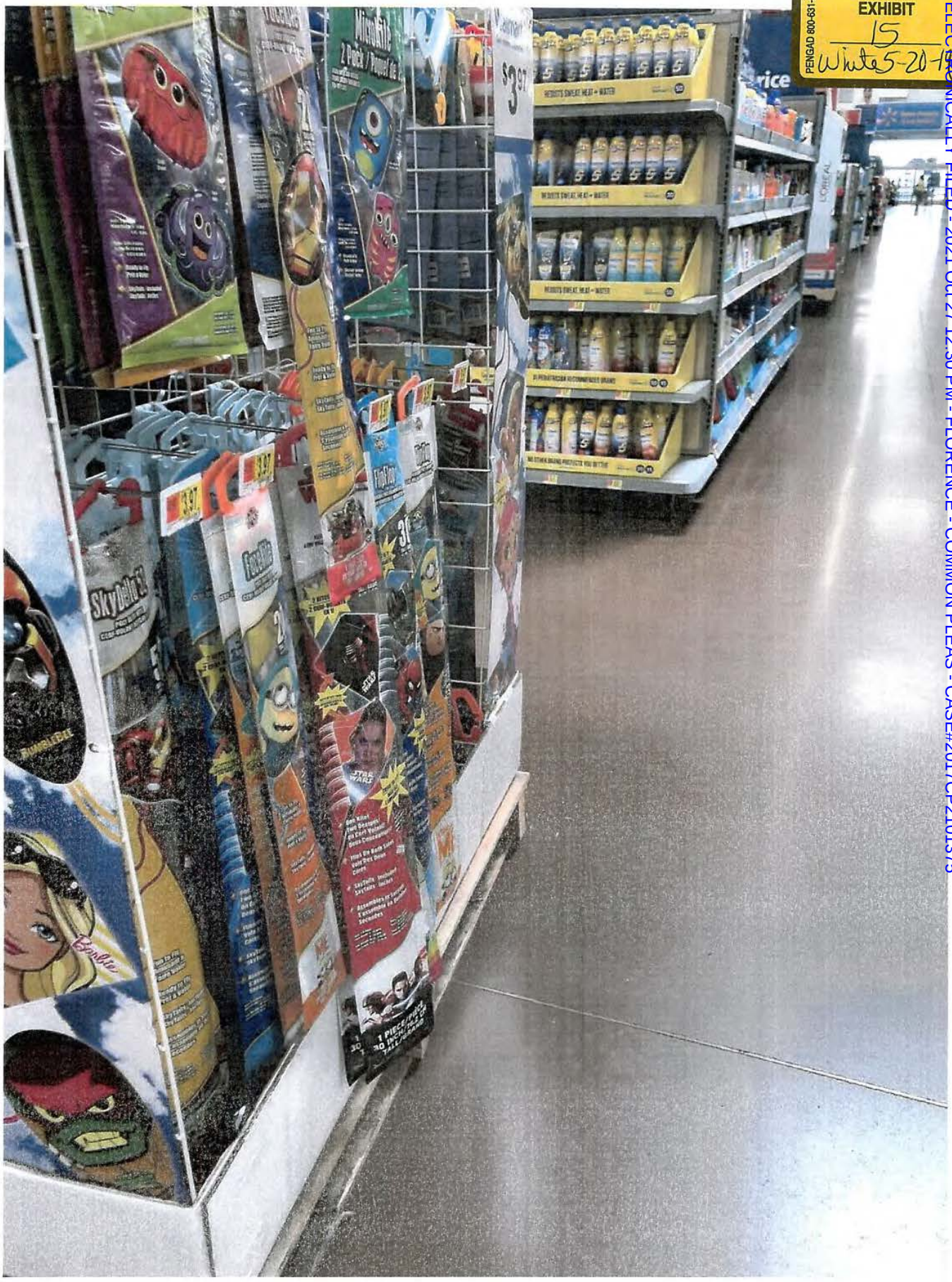

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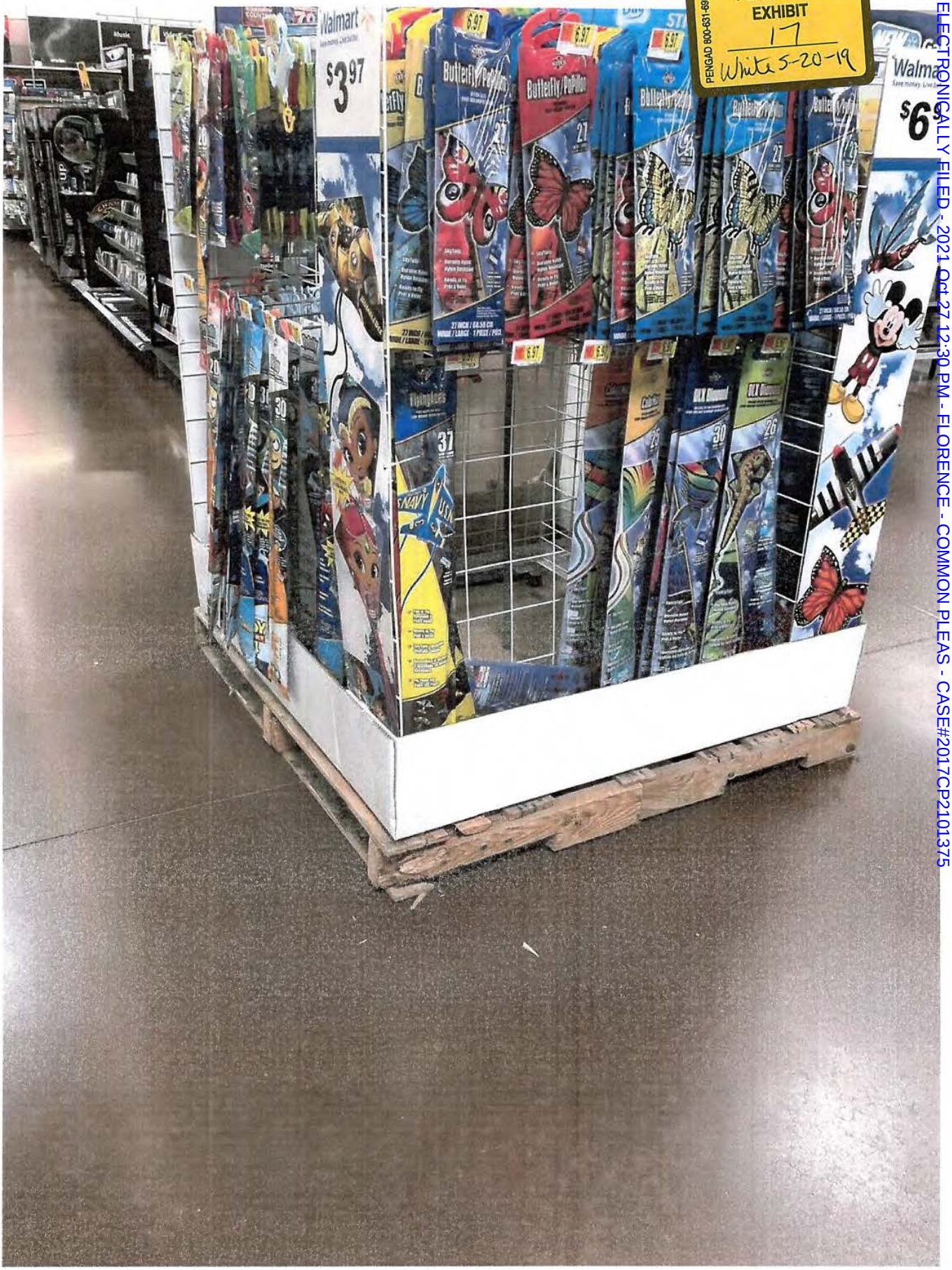

PLAINTIFF'S EXHIBIT 17 White 5-20-19

PENGAD 800-631-6989

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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-21-1375
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).	**AFFIDAVIT OF Bryan R. Durig, Ph.D., P.E.**

I, Bryan R. Durig, Ph.D., P.E., am over 21 years of age, of sound mind, and in all respects qualified to make this Affidavit based upon personal knowledge, upon information and belief as to matters I believe to be true, and upon my knowledge, skill, experience, training, and/or education as set forth in Exhibit A attached hereto and incorporated by reference, being duly sworn depose and state as follows:

1. I have conducted an engineering investigation of an incident in which April Jones reportedly stepped on a loose nail near display pallets at a Wal-Mart store in Florence County, South Carolina. The photograph of the subject nail shows it is dark and approximately 7/8 inch in length. The flat head suggests it is a typical roofing nail. Roofing nails are used to attach wooden roof decking material to wooden roof rafters. Wooden roof decking typically ranges from 0.40 to 0.55 inches thick. The 7/8 inch long nail is long enough to penetrate the roof decking into the wooden rafters to hold the wood decking in place.

2. Wooden pallets are constructed in a similar fashion as roof decking. A solid piece of wood plywood or individual boards are attached to vertically oriented 2x4's of 4x4's depending on required loading capabilities. Many different fastener manufacturers sell pallet nails that start around 1-1/4 inch long and go up to 3 inches long. The longer the

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nail, the stronger the connection (pullout strength) for the pallet top and bottom. Some Chinese companies market their fasteners as "15 degree Pallet Roofing Coil Nails" and "Best Price Common Coil Nails Pallet Nail Roofing Coil Nail" with lengths starting at ¾ inch to 2 inches long and including 7/8 inch-long nails. These nails are advertised with both Pallet and Roofing in their name, similar design and numerous lengths.

3. Although the recommended length for a pallet nail is typically longer than 7/8 inches in length, there is nothing that would prevent someone from using a 7/8 inch long nail (similar to the one shown in the photograph that injured Ms. Jones) in making a repair to an existing pallet. The 7/8 inch length would be long enough to penetrate through the pallet decking boards and into the base wood timbers to hold the deck boards in place – especially when product is placed on top of the wood deck boards.

4. I have reviewed numerous photographs taken at the same Wal-Mart store where Ms. Jones was injured, and there are a variety of wooden pallets in use at that Wal-Mart store. Some pallets appear newer, and others look old with several repairs. One pallet shows the nails are missing at the end where the wood base has been damaged and actually broken away. In another photograph, the longer pallet nail is barely being retained in the pallet deck board as the base wood has broken away and exposed the majority of the nail shank. Other pallets are observed with split deck boards. These photographs show that not all pallets at the Wal-Mart store are maintained in perfect or even acceptable condition, and not all pallets at the Wal-Mart store would meet all industry standards for wooden pallets.

5. The most probable source for a loose nail sitting on the floor of a Wal-Mart store adjacent to a main display aisle that displays merchandise on wooden pallets, is the wooden pallets. Wood decking on wooden pallets gets broken and damaged frequently during shipping, moving and handling. If a shorter than typical length nail was used to make repairs to a wooden pallet, it is more likely it would fall out of the wooden base timbers when the decking gets damaged/split compared to a 2 inch or 3 inch long pallet nail.

6. The opinions and conclusions stated herein are stated to a reasonable degree of engineering certainty and are based on information available as of this writing. It is

conceivable that additional information may be forthcoming which bears on these conclusions and opinions. The right is reserved, therefore, to review all conclusions and opinions at any future point in time should, in fact, additional information become available.

I reserve the right to alter, amend, modify, change, and/or add information contained within this Affidavit.

Bryan R. Durig, Ph.D., P.E.

State of SC County of Richland

The foregoing instrument was acknowledged before me this 22 day of May 2019

(L.S.)
Notary Public Signature

My Commission Expires 7/9/2023

SWORN TO AND SUBSCRIBED
BEFORE ME THIS DATE
MAY 22 2019
SYDNEY QUINN LEDEE
Notary Public of South Carolina
My Commission Expires 7/9/2023

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Exhibit A

SUMMIT ENGINEERING
SUMM
P.O. Box 211426
COLUMBIA, SC 29221-6426

TEL (803) 731-1200
FAX (803) 731-1202

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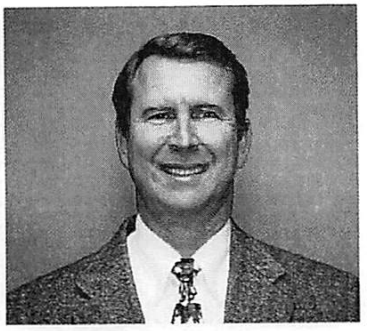

BRYAN R. DURIG, Ph.D., P.E.

Engineer: Mechanical, Metallurgical

Technical Investigations
Failure Analysis
Fire Investigations
Property Loss Claims Consultation
Machinery & Equipment Accidents
Products Liability
Premises Liability

Education

1993 **Master of Business Administration**
University of South Carolina

1988 **Doctor of Philosophy in Mechanical Engineering**
University of South Carolina

1985 **Master of Science in Mechanical Engineering**
University of South Carolina

1984 **Bachelor of Science in Mechanical Engineering**
University of South Carolina

Experience

January 1994 to Present

Summit Engineering, L.L.P., Columbia, South Carolina. Consulting Engineer performing specialized consulting in the areas of: **Accident Evaluation, Failure Analysis and Products Liability:** (machinery, equipment and consumer products) analysis and evaluation of designs, component testing, controls, guards and warnings, standards and code compliance, and maintenance; **Property Loss Claims Consultation**: cause of the loss, repair or replacement analysis, scope of damage, estimate of repair, actual cash value, salvage value, and time to repair; **Fire Investigations**: industrial, commercial and residential.

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April 1993 to December 1993

Laboratory Manager, Engineering Design & Testing Corp., Columbia, South Carolina. Responsible for management of the metallurgical laboratory including budgeting, personnel and reporting of results.

June 1991 to December 1993

Consulting Engineer, Engineering Design & Testing Corp., Columbia, South Carolina. Responsibilities included performing specialized consulting in the areas of design, engineering analysis, failure analysis and accident reconstruction. Clients included industrial manufacturing facilities, attorneys, insurance companies and adjusters.

June 1988 to May 1991

Research Engineer, Westinghouse Savannah River Company, Savannah River Laboratory, Aiken, South Carolina. Responsibilities included conducting thermal hydraulic research on SRS reactor assemblies and systems and analytical analyses of reactor hardware to support reactor operations.

January 1986 to May 1988

Research Assistant, College of Engineering, Columbia, South Carolina. Senior research assistant in a research group consisting of several graduate and undergraduate students working in the areas of biomechanics and fracture mechanics. Research consisted of Digital Image Processing and Computer Data Acquisition of fracture specimens and biological tissues.

June 1986 to July 1986

Scientist II, U.S. Naval Research Laboratory. Duties included setting up a digital image processing system (hardware/software) and finite element analysis.

January 1985 to December 1988

Administrative Assistant, College of Science and Mathematics, University of South Carolina. Primary responsibilities included general accounting of the College budget and transferring of the College budget to a Rainbow Personal Computer.

January 1984 to December 1984

Teaching Assistant, Engineering Department, University of South Carolina. Lab instructor for Microprocessor Lab. Duties included explaining and building of a circuit board using a Motorola 6801 chip for experiments such as controlling the speed of a motor and collecting data from a strain gage.

June 1980 to September 1983
(Summers)

Research Assistant, Chemistry Department, University of South Carolina. This research included the purification of chemical samples using a low pressure fractionation column, and performing chemical analysis on a Nicolet.

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Courses and Seminars Presented

September 30, 1994

Seminar to University of South Carolina Senior Machine Design class on Products Liability and Design Safety.

December 6, 1994

Three-hour, State of North Carolina Approved Continuing Education Course entitled "Identification of a Products Liability Claim", Charlotte, North Carolina.

July 9, 1997

Three-hour, State of North Carolina Approved Continuing Education Course entitled "Identification of a Products Liability Claim", Charlotte, North Carolina.

May 3, 2003

The Absolute Litigators Conference VIII Course entitled "Fire Investigations", Las Vegas, Nevada.

October 12, 2009

Kitchen Fires and Subrogation, Columbia, South Carolina

Professional Organizations and Honorary Societies

American Society of Mechanical Engineers (Local Chapter Chairman 1992 - 1995)

ASM International

International Associations of Arson Investigators

National Association of Fire Investigators

National Fire Protection Association

National Safety Council

Publications

"Flow in a Rectangular Closed-Loop with Vertical Heat Transfer Passages," Proceedings from A.S.M.E. Winter Meeting, Paper No. 86-WA/HT-78, 1986 (co-authored with M.A. Shadday).

"Conformational Studies Utilizing Asymmetric Torsional Frequencies," J. Mol. Struct., 126, 83 (1985), (co-authored with J.R. Durig, D.T. Durig and J.F. Sullivan).

"Determination of Mixed Mode Stress Intensity Factors Using Digital Image Correlation," Proceedings for Society of Experimental Mechanics, Spring 1988 Meeting (co-authored with W.H. Peters III, M.A. Sutton, S.R. McNeill and Y.J. Choa).

"Mechanical Testing of Soft Tissue," Proceedings for Society of Experimental Mechanics, Spring 1988 Meeting (co-authored with W.H. Peters III, L. Terracio and T.K. Borg).

"Digital Image Correlation Measurements of Strain in Bovine Retina," Optical Testing and Metrology, Proceedings of the International Symposium on Optical Engineering and Industrial Sensing (SPIE), Vol. 954, pp. 438-443, 1988 (co-authored with W.H. Peters III and M.E. Hammer).

"Experimental Mechanics in Biomechanics," Proceedings for Society of Experimental Mechanics Spring 1989 Meeting (co-authored with W.H. Peters III, M.A. Sutton, J.L. Turner, T. Borg, L. Terracio and E. Berg).

"A Study of Mixed Mode Fracture in Photoelasticity and Digital Image Analysis," Optics and Lasers in Engineering, Vol. 14, pp. 203-215, 1991 (co-authored with W.H. Peters III, F. Zhang, S.R. McNeill and Y.J. Choa).

"Mechanical Stress Relaxation of the Retina," submitted to Journal of Investigative Ophthalmology, April 1989, (co-authored with W.H. Peters III and M.E. Hammer).

"Fracture of Wire Rope Drum Shaft Due to Fretting Fatigue," Proceedings from A.S.M.E. Winter Meeting, Paper No. 93-WA/DE-9, 1993 (co-authored with T.A. Jur).

Materials for Department of Insurance, State of North Carolina, Approved Continuing Education Course entitled "Identification of a Products Liability Claim", Course Number 03489, Provider Number 0445, Date Approved: September 29, 1994.

Registration

Registered Professional Engineer in South Carolina (#14877)
Registered Professional Engineer in North Carolina (#022737)
Registered Professional Engineer in Georgia (#PE030339)
Registered Professional Engineer in Tennessee (#110004)
Registered Professional Engineer in Alabama (#28023-E)
Registered Professional Engineer in Florida (#75756)
Registered Professional Engineer in Mississippi (#21174)

Continuing Education

December 1991	ASM International Seminar on "Principals of Failure Analysis"
May 1993	Algor Finite Element Training
October 1993	Richardson Engineering Services "General Construction and Process Plant Estimating"
December 1993	Mitchell International's Seminar on Ford Diagnostics
January 1996	Electrical Fire Investigations, International Association of Arson Investigators, Inc.
July 1996	Sprinkler System Design Compliance, Society of Fire Protection Engineers

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May 1997	HVAC Plant Improvement, Boiler Efficiency Institute
May 1998	Vehicle Fires, S.C. Chapter IAAI
August 1998	Sponsored and attended "Fire Dynamics-Small Group Seminar", Lilly & Associates
October 1998	Investigation of Electrical Appliance Related Fires, IAAI/Association of Home Appliance Manufacturers
July 1999	Sponsored and attended "Appliance Fires -Small Group Seminar", Jack Sanderson
September 1999	IAAI Annual Seminar; Beckley, West Virginia
September 2000	Sponsored and attended "Electrical Fires - Small Group Seminar", Jim Finneran
November 2000	Investigation of Vehicle Fires, Lee S. Cole & Associates, Inc.
April 2001	Basic Industrial Electricity, Lewellyn Technology, Inc.
September 2001	Electrical Fire Investigation, Tom R. Bradshaw, CFI and Jim Elkins, CFI
October 2001	Sponsored and attended "Electrical Fire Causes - Small Group Seminar", Chris W. Korinek, P.E.
September 2002	DRI Fire and Casualty Seminar, New Orleans, Louisiana
June 2003	Sponsored and attended "Fire Explosion - Small Group Seminar", John DeHaan, Ph.D.
October 2003	7th Annual Fire Investigative Approaches; "Practical Aspects of Fuel Gas Explosions", Dave Lilley.
October 2003	7th Annual Fire Investigative Approaches; "Gas Appliance Failure – Product Liability", Jack Sanderson.
April 2004	Sponsored and attended "The Physics of Electrical Fires", Vytenis Babrauskas, Ph.D.
November 2004	NFPA Certified Fire Protection Specialist; Certification Number: 2100

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September 2005	Inspection, Testing and Maintenance of Fire Alarm Systems Seminar, NFPA, Charlotte, North Carolina
November 2005	DRI Fire and Casualty Seminar, Chicago, Illinois
June 2006	Sponsored and attended "Flammable Gas Explosions", John L. Schumacher, MChE, PE, CFI
June 2006	International Symposium on Fire Investigation Science and Technology, Cincinnati, Ohio
June 2007	Sponsored and attended "The Ignition of Gases, Liquids and Solids by Hot Bodies", Vytenis Babrauskas, Ph.D.
March 2008	South Carolina Association of Arson Investigators & South Carolina Insurance Fraud Investigators 1st Quarter Training, Monks Corner, South Carolina
September 2008	Sponsored and attended "Understanding Post-Flashover Fires" - Small Group Seminar", Carman & Associates
November 2008	DRI Fire and Casualty Seminar, Chicago, Illinois
June 2009	Sponsored and attended "Residential Electrical Fire Safety - Small Group Seminar", Charleston, South Carolina
June 2010	Postflashover Fires, CFITrainer
June 2010	Arc Mapping Basics, CFITrainer
September 2010	International Symposium on Fire Investigation Science and Technology, University of Maryland
December 2010	A Ventilation-Focused Approach to the Impact of Building Structures and Systems on Fire, CFITrainer.net
December 2011	Understanding Fire Through the Candle Experiments, CFITrainer.net Explosion Dynamics, CFITrainer.net Digital Photography and the Fire Investigator, CFITrainer.net Documenting the Event, CFITrainer.net

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September 2012	International Symposium on Fire Investigation Science and Technology, University of Maryland
December 2013	Critical Thinking Solves Cases, CFITrainer.net Electrical Safety, CFITrainer.net Evidence Examination: What Happens at the Lab, CFITrainer.net Physical Evidence at the Fire Scene, CFITrainer.net
December 2104	Florida Engineers Laws & Rules Engineering Ethics Energy Performance of LEED for New Construction Buildings 2010 ADA Standards for Accessible Design Part 1
January 2015	2010 ADA Standards for Accessible Design Part 2
December 2015	Safeguarding Equipment: Protecting Workers from Amputations OSHA – Stairway and Ladders Materials Handling and Storage Fire Protection and Prevention During Construction Fall Protection in Construction Engineering Ethics for the North Carolina Controlling Electrical Hazards
December 2016	Introduction to Piping Engineering Florida Engineer Laws & Rules Ethics for U.S. Engineers What Every Engineer Should Know About Fire Protection Electrical Engineering Fundamentals for Non-Electrical Engineers Asbestos Fundamentals
January 2017	Solar Power Part 1 HVAC Design – Fundamentals HVAC Design – Industrial Ventilation Intellectual Property and Patents for the Professional Engineer Forensic Analysis Involving Fugitive Natural Gas and Propane

Rev. 1/16/17

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DEFENDANT'S EXHIBIT
PENGAD 800-631-6989

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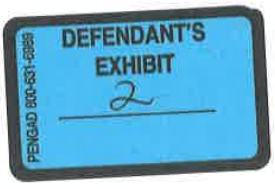

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IN THE STATE OF SOUTH CAROLINA) COUNTY OF FLORENCE)	IN THE COURT OF COMMON PLEAS FOR THE 12TH JUDICIAL CIRCUIT CASE NO: 2017-CP-21-1375
APRIL JONES, Plaintiff, v. TIM RINGER, Individually and as employee/agent of WAL-MART STORES, INC. d/b/a WAL-MART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

TO: DEFENDANTS AND ALL COUNSEL OF RECORD

1. Give the name, address and telephone number of the person(s) who took each of the two (2) photographs produced with Plaintiff's December 13, 2017 Response to Defendants' Request for Production No. 5, attached hereto as Exhibits A & B.

ANSWER:

Ahmah Jackson c/o Anastopoulo Law Firm
32 Ann Street, Charleston, SC 29412
(843) 614-8888

2. Please state with specificity the date that each of the photographs (Exhibits A & B) were taken, the address of the facility in which each photograph was taken, the specific location within the facility in which each photograph was taken.

ANSWER: Exhibits A & B were taken on April 11, 2017 at Wal-Mart located on 230 North Beltine Drive, Florence, SC 29501; Photographs were taken in the grocery department near the bottled water section.

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3. Give the name, address and telephone number of each and every person present when each of the photographs was taken. If you have insufficient information to identify any person, provide with specificity a physical description of each such person, any information you have regarding the status of that person, e.g. an employee, customer, or other status.

ANSWER: None other than Mr. Jackson.

4. Give the name, address and telephone number of each and every person with whom the photographer(s) spoke while at the facility in which each photograph was taken and describe with specificity each and every statement made by the photographer(s) and each such person. If you have insufficient information to identify any person, provide with specificity a physical description of each such person, any information you have regarding the status of that person, e.g. employee, customer, or other status.

ANSWER: None.

5. Please state whether the photographer(s) was authorized to access the area(s) in which the photographs were taken. If you answer in the affirmative, please provide the basis for your assertion.

ANSWER: The area was open to the public.

6. If Plaintiff contends that either of the photographs attached hereto as Exhibits A & B have any bearing whatsoever upon any matter at issue in the present action, please state each and every basis for such contention.

ANSWER: Please refer to the Complaint. Plaintiff noticed a number of pallets on the floor while grocery shopping within Defendants' place of business. 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. 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.

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC

Roy T. Willey, IV
S.C. Bar No.: 101010
Eric M. Poulin
S.C. Bar No.: 100209
Lane D. Jefferies
S.C. Bar No.: 101764
Kenneth T. David
S.C. Bar No.: 103434
32 Ann Street
Charleston, South Carolina 29403
(843) 614-8888

ATTORNEYS FOR THE PLAINTIFF

Dated at Charleston, SC
This 1st day of April, 2019

CERTIFICATE OF SERVICE
THE UNDERSIGNED HEREBY CERTIFIES THAT (S)HE SERVED A COPY OF THE PLEADING OR FOREGOING PAPERS ON ALL COUNSEL OF RECORD THIS 1st DAY OF Apnl, 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-21-1375

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 *IN LIMINE* TO EXCLUDE PHOTOGRAPHIC EVIDENCE AND FOR SANCTIONS

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") Defendants' Amended Motion *in Limine* to Exclude Photographic Evidence and For Sanctions.

Defendants' motion is presented in three sections, which Plaintiff addresses in order below. For the reasons set forth herein, Defendants' motion should be denied in its entirety.

Plaintiff's right leg was amputated above the knee as the result of an infection she contracted from stepping on a nail in Wal-Mart. Plaintiff alleges that nail came from a wooden pallet. Initially, Defendants first denied that there even were wooden pallets with nails in Wal-Mart.[1] When that position became untenable in light of actual photographs of wooden pallets in the subject store, Defendants changed their story and admitted the obvious – that Wal-Mart uses

[1] See Defs.' December 22, 2017 Resp. to Pl.'s First Set of Interrog., **Ex. A**; Defs.' December 19, 2018 Am. and Suppl. Resp. to Pl.'s Interrog., para 16., **Ex. B**; Defs.' May 17, 2019 Third Suppl. Resp. to Pl.'s Interrog., **Ex. C**.

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wooden pallets on the sales floor.[2] Having been forced to admit that wooden pallets exist in Wal-Mart, Defendants then hired an expert from Virginia to swear that the nail at issue could not possibly have come from a wooden pallet.[3]

I. A Rule 34 request is not required for publicly available information.

Defendants argue that photos taken on May 15, 2019 should not be admitted into evidence because they were not taken via a Rule 34 request.[4] Defendants are mistaken about the application of Rule 34.

Defendants' argument depends on an assumption that is contrary to common sense, not supported by any South Carolina authority, and directly contradicted by authority in other jurisdictions. Specifically, Defendants' motion hinges on the assumption that a party ***must*** make a Rule 34 request in order to take photos in a public place. That assumption is wrong.

Based on their unsupported, illogical, and erroneous assumption, Defendants asked this court to sanction Plaintiff and her counsel for taking pictures in a publicly accessible Wal-Mart store. Defendants provided approximately forty minutes of video for the Court's review to establish what Plaintiff readily agrees to – that Plaintiff's counsel took photographs in a publicly accessible Wal-Mart store. This has never been in dispute.

Rule 34 provides a means for parties to examine, copy, and photograph documents, land, or other property ***which they would otherwise not have access to***. However, nothing in the rules states that Rule 34 is the ***only*** way to examine, copy, or photograph items that are available to the

[2] See Ringer Dep. 64:11-15 (Defendant Ringer conceding "That's wood. That's a pallet."); 88:24 – 89:4, **Ex. D.**
[3] See White Dep. 93:10-16, **Ex. E**.
[4] It is also worthy of note that Defendants' did not object to any of the seventeen photos when they were entered as exhibits during Plaintiff's deposition of Defendants' expert. No objection to form. No objection for lack of foundation. No objection for evidence improperly obtained. Nothing. Defendants' failure to object to any of the photos was not because defense counsel was bashful. Indeed, Defendants objected on fifteen ***other*** occasions throughout the deposition, but not even once with respect to these photos. White Dep. 15:17; 37:7; 46:11; 48:19; 52:13; 56:13; 57:22; 62:4; 62:20; 64:9; 64:23; 68:12; 93:22; 103:13; 110:9.

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public. In fact, defendants frequently take the position that Rule 34 ***cannot*** be used to obtain publicly available information and documents.[5] As a result, parties routinely obtain evidence in all manner of other ways – FOIA requests, subpoenas, libraries, Google searches, public records, drive-by inspections, and taking independent witness statements, to name a few.

While our South Carolina courts appear not to have reached this issue, likely because it is obvious and our collegial bar does not bring sanctions motions lightly, other courts have. Those which have most deeply analyzed the issue have reached the same conclusion – that ***a party does not need permission via Rule 34[6] to inspect property that is open to the public***, or to which it otherwise has the right of access. *See, e.g.*, *Kamal v. Kohl's Corp.*, No. 18-CV-25-JDP, 2019 WL 1051007, at *4 (W.D. Wis. Mar. 5, 2019) ("Kohl's cites no authority for the proposition that a party needs permission to inspect property that is open to the public."); *Am. Unites for Kids v. Lyon*, No. CV 15-2124 PA (AJWX), 2015 WL 9412099, at *7 (C.D. Cal. Dec. 21, 2015) (Rule 34 not violated by a "nondestructive unannounced inspection of an area open to the public."); *Buchanan v. Lowe's Home Centers, LLC*, No. LACV1407560JAKFFMX, 2015 WL 12661944, at *7 (C.D. Cal. Aug. 17, 2015) (not making a Rule 34 request "is not an independent reason to exclude [the expert's] opinions because the retail location at issue is open to the public during regular business hours."); *Rodriguez v. Cty. of Stanislaus*, No. 1:08-CV-00856 OWW GS, 2010 WL 3733843, at *2 (E.D. Cal. Sept. 16, 2010) ("Rule 34 of the Federal Rules of Civil Procedure to require requests for inspection in circumstances plainly distinguished from the factual scenario present here. In other words, inspection requests are required on private property or property not

[5] Here, Defendants have taken the incongruous position that Plaintiff ***cannot*** use Rule 34 to obtain information about prior lawsuits that Defendants have been involved in, because that information is publicly available, while at the same time insisting that Plaintiff ***must*** use Rule 34 to obtain information about what the sales floor of a Wal-Mart looks like, despite that information also being publicly available. (See Def. Wal-Mart's [First] Resp. to Pl.'s First Interrog., No. 4, **Ex. A**).

[6] There is no relevant substantive difference between the Federal Rule 34 and South Carolina's Rule 34.

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open to the public in the same way BNSF's property is used by the public."); *Grabau v. Target Corp.*, No. CIVA06CV01308-WDMKLM, 2008 WL 616068, at *2–3 (D. Colo. Feb. 29, 2008) ("I do not think that failure to request an inspection as contemplated in Fed.R.Civ.P. 34 is a basis for excluding evidence. I note that Rule 34 is permissive rather than compulsory and that, by its plain language, contemplates that the rule applies to evidence or property that is possessed by or under the control of the opposing party. Taking into account the intention and reason behind the rule, the rule arguably does not apply when the opposing party does not control access to the property such as when the property is open to the public."); *Mony Life Ins. Co. v. Hinsdale Mgmt. Corp.*, No. 00 C 1563, 2002 WL 1285076, at *3 (N.D. Ill. June 6, 2002) (Rule 34 applies "where, absent the lawsuit, the requesting party would have no right to enter that premises").

In full candor, a minority of courts have taken a weakly opposite view (albeit without analysis or explanation). However, even where the knee-jerk opinion was that "[t]he '***spirit***' of Rule 34 was violated" by unannounced visits, those courts still have not excluded photos as a result. *Dawson v. Mt. Brighton, Inc.*, No. CIV.A. 11-10233, 2013 WL 1276555, at *7 (E.D. Mich. Mar. 27, 2013) ("no order has been entered by the Court striking the photographs or finding that Plaintiffs violated Rule 34."); *see also*, *Askew v. George Matick Chevrolet, Inc.*, No. 4:16-CV-13148, 2019 WL 1002090, at *2 (E.D. Mich. Feb. 28, 2019) (Not holding that Rule 34 was violated, and not granting sanctions, and not excluding photographs taken during inspection, but merely excluding statements of defendant's employees made during the inspection ***on other grounds*** (to wit, rules of professional conduct concerning attorney communication with represented parties)).

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The well-reasoned view is that merely taking photographs in a place that is open to the general public, or that the party is otherwise allowed to be, does not require a Rule 34 request. In addition to it being the law as cited above, it is also common sense. Under the Defendants' theory that a Rule 34 request is required ***every*** time a party wants to stand on someone else's property and take a picture of it, regardless of whether they have an independent ability to do so, each of the following would be required to make a Rule 34 request:

- A driver suing SCDOT in order to photograph a dangerous intersection;
- A tenant suing her current landlord in order to photograph a dangerous staircase;
- A nursing home resident suing the nursing home in order to photograph the dangerous bed;
- A beachgoer suing the City of Myrtle Beach in order to photograph the improper placement of lifeguard stations;
- A hiker suing the park system in order to photograph a dangerous hiking trail;
- A library patron suing the library in order to photograph a dangerous pile of books.

Defendant has not cited any authority to suggest that South Carolina would adopt such a counter-intuitive and judicially burdensome application of Rule 34. Instead, South Carolina is more likely to follow a commonsense application of the Rule as other jurisdictions who have analyzed the matter have done. Accordingly, unless any of the above property-owners have a policy that forbids the general public from taking photographs on their property, then there is nothing to prevent a plaintiff from doing the same. Wal-Mart does not post any policy forbidding photography in its stores. Nor does it appear to enforce one.[7] Indeed, Defendant Ringer specifically told Plaintiff's counsel on May 15, 2019 that Wal-Mart does not have a policy forbidding photography in its stores, after which he permitted Mr. Jefferies and his companions to continue to take photographs inside the store. Both the law and common sense say that Plaintiff did not need the assistance of Rule 34 to obtain photos of Wal-Mart.

[7] *See* https://www.peopleofwalmart.com/.

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As described in the above-cited authority, Rule 34 is permissive rather than compulsory. It provides that a "party ***may*** serve on any other party a request . . . to permit entry upon designated land . . . for the purpose of . . . photographing." Rule 34(a), SCRCP (emphasis added). Obviously, if the party is already permitted entry, then she does not need Rule 34's assistance. And since the rule says "may" rather than "must" or "shall," she is not required to use Rule 34.

Based on the above analysis, Plaintiff's counsel did not make a Rule 34 request before taking photos on the open-to-the-public sales floor of Wal-Mart. Plaintiff's counsel reasonably believed (and continues to believe) that this was proper. As shown in the video clips provided by Defendants, Plaintiff's counsel took no action to conceal his photographic activities despite being well aware from Defendant Ringer's recent testimony that Wal-Mart was videotaping him. Why would he, since he was doing nothing wrong?

Plaintiff strongly encourages the Court to review the video provided by Defendants (Exhibit B to Defs.' Mot.) along with the still shots extracted from the video (also provided by Defendants as Exhibit C to their motion). What the Court will see is people walking around Wal-Mart, occasionally taking photos with their phones. That is it.

II. The Court should not exclude photographs taken by Plaintiff's counsel on April 11, 2017, as Defendants have not shown any risk of unfair prejudice.

There is no basis for excluding the photos at this time. As an initial matter, Plaintiff has not yet indicated that she even intends to offer the photos into evidence, and thus has not been required to lay a foundation for them. By way of background, these are two photos of portions of two unmaintained pallets with rusty nails (see photos on page 10). They were taken on the sales floor of the subject Wal-Mart on April 11, 2017 by an investigator working for Plaintiff's Counsel – all of which was fully disclosed to Defendants (As Defendants agree. See Defs.' Mot., at 6).

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The photos are relevant (among other reasons) because they refute Wal-Mart's contention that it did not know and had no reason to know that "unmaintained wooden pallets with loose, rusty nails were being placed in areas where invitees [were foreseeable]" prior to December 6, 2017. (Defs.' December 6, 2017 Resp. to Pl.'s First Req. for Admis., **Ex. F**).

A review of Defendants' response to Requests to Admit reveals that not only do Defendants deny that unmaintained wooden pallets with loose, rusty nails were present on the sales floor on the particular date of injury, they also deny that such pallets were on the sales floor at any time in the past. And they further deny that such a pallets are on the sales floor now. Compare Defendants' specific denials in responses 8 and 9 with their general denial in response 7.

8. Admit that the placement of unmaintained wooden pallets with loose, rusty nails in areas where invitees passing through is or should be foreseeable presented a dangerous condition for those shopping on the premises.

RESPONSE: Denied as stated as, upon information and belief, no unmaintained wooden pallets with loose, rusty nails were present in the subject areas of the store at the time of the alleged incident.

9. Admit that on June 26, 2015, Defendant knew or should have known that unmaintained wooden pallets with loose, rusty nails were being placed in areas where invitees passing through was or should have been foreseeable of Wal-Mart #630.

RESPONSE: Denied.

7. Admit that Defendant knew or should have known that unmaintained wooden pallets with loose, rusty nails were being placed in areas where invitees passing through was or should have been foreseeable.

RESPONSE: Denied.

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Defendants have not retreated from this position, i.e. that the nail could not have come from a pallet, because those kinds of pallets are not used in Wal-Mart – not just on the subject day, but ***in the past at all***. Indeed, Defendants repeated their general denial of the use of wooden pallets with loose, rusty nails a year later in their November 29, 2018 Amended Responses to Plaintiff's First Requests to Admit. (**Ex. G**).

Not only did Defendants claim that wooden pallets were not used in the past, they also have repeatedly claimed that wooden pallets are not ***currently*** used, as shown below. Note Defendants' use of the present tense – "are plastic", not "were plastic" and not "were plastic at the time of injury."

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

Defs.' December 22, 2017 Resp. to Pl.'s Interrog. No. 16, Ex. A (highlighting added).

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' December 19, 2018 Resp. to Pl.'s Interrog. No. 16, Ex. B (highlighting added).

By making and repeating such broad statements about their supposed non-use of wooden pallets both in the past and currently, Defendants opened the door to Plaintiff's impeachment evidence – to wit, photos showing that, in fact, such pallets were and are used in Wal-Mart.

As to Defendants' remaining ground for exclusion of the photos, Defendants offer no explanation at all for their naked assertion that the probative value of the photos "is substantially outweighed by the danger of unfair prejudice to Defendants." (Defs.' Mot., at 6). "All evidence is meant to be prejudicial; it is only ***unfair*** prejudice which must be scrutinized under Rule 403."

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State v. McGee, 408 S.C. 278, 288–89, 758 S.E.2d 730, 736 (Ct. App. 2014) (emphasis in original). "[U]nfair prejudice means an undue tendency to suggest decision on an improper basis. Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest decision on an improper basis. Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one." *State v. McGee*, 408 S.C. 278, 288–89, 758 S.E.2d 730, 736 (Ct. App. 2014) (internal quotations and citations omitted).

Defendants have not pointed to any aspect of the photos that might suggest decision on an improper basis (such as emotion, racial animus, sympathy, religious intolerance, or the like). The photos are shown below. As the Court can see, there is nothing on the face of them to suggest unfair prejudice – they are not photos of exposed brains, partially eaten children, or naked bodies.[8] Accordingly, the burden falls on Defendants to explain. They have not done so.

Defendants have not explained how these two photos of some boards and nails might encourage the jury to make a decision based on emotion, racial animus, sympathy, religious intolerance, or any other improper basis.

[8] All of which were properly admitted into evidence under the particular facts of those cases despite Rule 403 challenges. *State v. Gray*, 408 S.C. 601, 609, 759 S.E.2d 160, 165 (Ct. App. 2014); *State v. Collins*, 409 S.C. 524, 539, 763 S.E.2d 22, 30 (2014); *State v. Berry*, No. 2013-UP-396, 2013 WL 8541516, at *3 (S.C. Ct. App. Oct. 30, 2013).

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III. There is no basis for sanctioning Plaintiff or her counsel under Rule 37.

Defendants ground their request for sanctions in Section IV solely upon Rule 37. However, Rule 37 authorizes a court to issue sanctions only under a very narrow set of circumstances, none of which apply here.

Specifically, a court may issue Rule 37 sanctions only against a party who:

1. Violates an order of the court to provide or permit discovery;
2. Fails to answer discovery requests; or
3. Fails to attend his own deposition. *Richardson on Behalf of 15th Circuit Drug Enf't Unit v. Twenty-One Thousand & no/100 Dollars ($21,000.00) U.S. Currency & Various Jewelry*, No. 2017-002365, 2020 WL 3261430, at *2 (S.C. Ct. App. June 17, 2020).

There are no allegations here that Plaintiff failed to answer discovery requests or failed to attend a deposition. As a result, there is no available basis here for sanctions under Rule 37.

To the extent that Defendants base the Rule 37 motion for sanctions on their unsupported and false accusation that Plaintiff's attorney and his "companions" used "gloves and a hammer" in "taking action with regard to certain pallet displays," that should be denied as well for several reasons. First, as described above, such does not fall within Rule 37, even if it were true. Second, it's not true.

Wal-Mart has just one "witness" to the alleged "gloves and hammer" events. Her name is Virginia Wright. As it turns out, Ms. Wright did not witness anything improper at all. Yesterday, Ms. Wright testified under oath that she did NOT see anybody hit anything with a hammer, she did NOT see anybody steal anything, and she did NOT see anybody vandalize anything. Indeed, after three hours of meticulously reviewing video and still photos, all Ms. Wright could say she saw was people "suspiciously" bending down and taking pictures of pallets, and in one instance somebody might have touched a pallet. That's it. And Ms. Wright is the ***sole*** witness to these alleged events.

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Ms. Wright reviewed each and every one of the 31 photos submitted by Defendants. As to each one, Ms. Wright was asked to identify anywhere that she saw anybody steal anything, vandalize anything, or hit anything with a hammer. For each and every one, Ms. Wright conceded that she was unable to identify any such conduct at all. After all the photos had been reviewed, Ms. Wright was asked once again, just to be sure.

Q Okay. If I understand -- I just want to make sure I'm understanding you correctly. You're saying that in these pictures you can't identify anybody vandalizing anything but that might be because they're just pictures and not video?
A Correct.

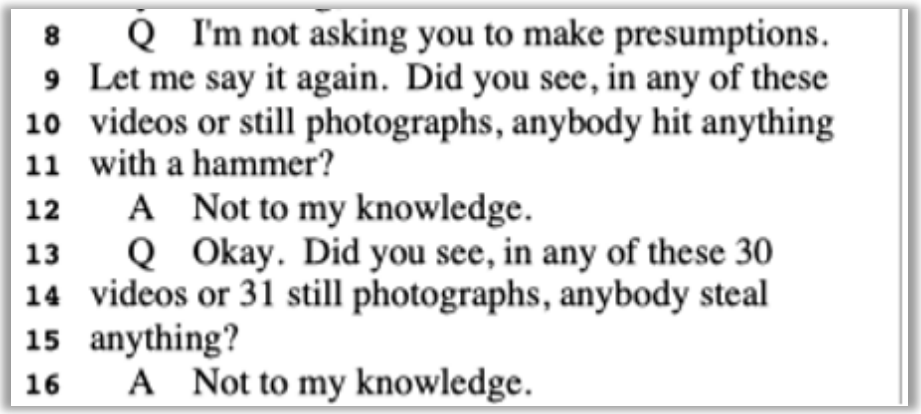
Wright Dep. 75:2-7 (Exhibit H)

Having found no evidence of improper conduct in the still photos, Ms. Wright was asked to review the videos. Ms. Wright reviewed at each and every one of the 30 videos in its entirety. As to each one Ms. Wright was asked to identify anywhere that she saw anybody steal anything, vandalize anything, or hit anything with a hammer. As with the photos, as to each and every video Ms. Wright conceded that she was unable to identify any such conduct at all. After all the photos had been reviewed, Ms. Wright was asked once again, just to be sure.

Q My question to you is, is there anywhere in the videos where you can point and say there he is vandalizing -- I see him right there in the video vandalizing something. Is there any video where you can say that?
A Not to my knowledge.

Wright Dep. 132:7-12

Plaintiff's counsel specifically asked is Ms. Wright saw anybody hit anything with a hammer or steal anything. She did not.



Q I'm not asking you to make presumptions. Let me say it again. Did you see, in any of these videos or still photographs, anybody hit anything with a hammer?
A Not to my knowledge.
Q Okay. Did you see, in any of these 30 videos or 31 still photographs, anybody steal anything?
A Not to my knowledge.

Wright Dep. 120:8-16

Virginia Wright is Wal-Mart's sole witness. And she did not see a thing. I would certainly be improper to impose sanctions or to exclude evidence based on what defense counsel imagines might have happened.[9]

CONCLUSION

As described above, Defendants have come before this Court seeking (a) to exclude evidence based on conduct that South Carolina has never held to be wrongful (and that other jurisdictions approve of), (c) to exclude other evidence based on unfair prejudice without any explanation as to how the two pictures of a pallet could possibly incite a jury to make a decision based on emotion, racial animus, sympathy, religious intolerance, or any other improper basis, (d) to sanction Plaintiff under a rule that does not provide sanctions under these circumstances and for conduct that there is no evidence ever occurred.

[9] Even more so in light of the fact that Ms. Wright did not testify before the Court in person as to the alleged authenticity of the photos and videos submitted by Wal-Mart with its motion, but rather merely submitted a document purporting to be an affidavit. However, the document is not a valid affidavit, because, among other things, it does not contain any mention whatsoever of there being any penalty of making a false statement. At best, the document might be a notarized letter, and the rules do not provide for deciding motions on mere letters (notarized or not) – the rules require valid affidavits or live testimony.

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For the reasons set forth above, and as may be further explained in supplemental memoranda and/or during a hearing on the matter, Plaintiff respectfully requests that this Court deny in its entirety Defendants' grab-bag of relief to which they are not entitled.

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC

s/ Roy T. Willey
Roy T. Willey, IV, Esquire
S.C. Bar Number: 101010
Lane D. Jefferies, Esquire
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ATTORNEYS FOR THE PLAINTIFF

Charleston, South Carolina
November 5, 2021

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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
Nashiba Boyd, SC Bar No. 78376
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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

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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

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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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Attorneys for Defendants

December 19, 2018

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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., 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

EXHIBIT D

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In The Matter Of:

Jones v.

Ringer, et al.

Tim Ringer

April 5, 2019

Janice D. Hayward, RMR

Independent Court Reporter

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STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
:
COUNTY OF FLORENCE) CASE NO. 2017-CP-21-1375

APRIL JONES,

Plaintiff,

-versus-

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.

WITNESS: TIMOTHY B. RINGER

DATE: Friday, April 5, 2019

TIME: 10:20 a.m.

LOCATION: Anastopoulo Law Firm
150 West Evans Street
Florence, South Carolina 29501

REPORTED BY: Janice D. Hayward, RMR
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(Timothy B. Ringer, after being sworn, testified as follows:)

EXAMINATION

BY MR. JEFFERIES:

Q Good morning, Mr. Ringer. We met off the record but just for the record my name is Lane Jefferies. I represent the plaintiff in this matter in which you've been named as a defendant due to your relationship with Walmart.

So if you can put your full name on the record for me.

A It's Timothy Blake Ringer.

Q Mr. Ringer, do you currently work at Walmart?

A Yes.

Q And what is your position there now?

A I'm store manager.

Q All right. How long have you been store manager?

A At that location?

Q Yes, at that location.

A Approximately five years.

Q So that would go back to twenty -- let's see, it's 2019, so 2014?

A Um-hum.

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Q Were you a store manager at another location -- well, let me back up and ask that a different way. When you say at that location, which location do you mean?

A At the one we're discussing today.

Q Which is the --

A 230 North Beltline Drive.

Q 230 North Beltline.

All right. And is there an internal term that you all use for that store? Does it have a store number?

A Store 630.

Q 630.

And people typically call it what, like the Florence store, or do you just refer to it by number?

A It's usually West Florence.

Q West Florence.

Throughout the rest of the deposition we're going to talk primarily about this particular store, Number 630, 231 North Beltline, West Florence store, so if I say the store, that's what I'm going to mean.

A Yes. Certainly.

Q Prior to being the store manager of the

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West Florence store were you store manager somewhere else?

A Yes.

Q Where was that?

A Hartsville, South Carolina.

Q And for about how long were you store manager at Hartsville?

A Fourteen, 15 years.

Q What caused you to decide to move from Hartsville to the Florence, West Florence store?

A Just job opportunity.

Q Very nice.

Prior to your 14 or 15 years as store manager of the Hartsville store what were you doing?

A I was still employed with Walmart in different roles.

Q Okay. Department manager, that sort of thing?

A I was actually hired in as a customer service manager, became a support manager, assistant manager.

Q So kind of worked your -- are you a lifelong Walmart employee?

A 25 years.

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Q Congratulations. Very nice.

Worked your way up?

A (No audible response.)

Q Is there a step beyond store manager? Do you have aspirations to go to corporate or is store manager like kind of where you want to be?

A I'm comfortable.

Q That's good. We find in a lot of corporate settings that people move up one step beyond where they're happy.

A Yeah.

Q And then they realize that there's no going back. So you're a wise man. Stop where you're happy.

As you'll remember, the lawsuit here -- I think you'll remember, lawsuit here came out of an incident that occurred on June 26th of 2015 in which Miss April Jones was shopping in the Walmart store at West Florence.

A Yes.

Q All right. And you were store manager on the date of that incident, June 26, 2015?

A Yes.

Q All right. Do you know about the incident which Miss Jones stepped on the nail and had an

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injury to her foot?

A I read the incident reports. I had conversations with people who took the reports.

Q Who were the people who took those reports?

A Kevin Lane was a co-manager who was -- as I recall, I don't believe I was even in the building. Kevin would be like my direct report -- he reports directly to me. So he was in the building that day. He was involved with it.

Ayesha Cook was an assistant manager who actually input the information into our computer system that we log in incidents or accidents into.

Beyond that at this point in time I couldn't tell you who was directly involved with it.

Q Okay. So you remember speaking to Kevin Lane and Ayesha Cook and may have spoken to others, but --

A Yeah, been a while.

Q Been a while.

Do you have any personal knowledge of the incident itself? And what I mean is knowledge that you gathered directly with your

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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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literally enter the information into the computer system.

Q Okay. You don't know if she actually spoke with Miss Jones?

A No, I couldn't speak to that, no.

Q All right. Is there anything else that you can think of that you learned about the incident from Kevin Lane, Ayesha Cook or anyone else?

A Other than -- no, not really.

Q Do you recall the area of the store in which this took place? And I'm thinking really two things. I should clarify.

There's some video, we'll look at that later, that shows Miss Jones with a bloody sock and pulling a nail out of her foot. Apparently that -- you don't actually see her step on the nail in that video. So there's another area in the store where she apparently stepped on the nail.

Do you have any idea where those areas are right now? And we'll look at the video.

A To my understanding it took place in what we refer to as an action alley, a grocery action alley which is a main aisle where we put displays in the stores.

Q Let me ask you about terminology within

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the stores just so I'm understanding. When I go into a Walmart, or really any store like that of that type, see a bunch of shelves that look to me to be essentially permanent. You know, they're always there, they're always in the same place.

A Side counters.

Q Tell me what you call those.

A Side counters.

Q Side counters. Okay.

And those are permanent essentially?

A Yes, they're nonmoving.

Q All right. And then there are other things, sometimes I'll see a display in an area one week, I'll go back the next week, there's nothing there, just floor space. What do you call those kinds of displays that are not permanent?

A I mean, we just refer to them as displays. We refer to them as stack bases which are like a plastic, a hard plastic mold that you would stack merchandise on top of --

Q Okay.

A -- that is mobile.

You can also have other types of fixturing that you can build displays on as well.

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Q And what sort of things would you choose to put on the stack bases or other kind of movable, nonpermanent displays?

A High volume merchandise. It could be new items, seasonally relevant items.

Q Do you all have -- I know in the restaurant business we have terms, front of the house, back of the house, that sort of thing, to distinguish the area where the customers are from the kitchen and other employee-only areas.

Do you all have that same kind of terminology in a Walmart or how do you talk about the area where the customer is? What do you call that?

A Sales floor.

Q Just the sales floor? All right.

And then everything else in the store is --

A Actually you have the sales floor and you have a back room.

Q Okay. Is there much in the back room? I've never been off the sales floor of a Walmart.

A There's quite a bit.

Q Is there? Okay.

And that's all inventory waiting

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to come out?

A Yes.

Q All right. So walk me through this process. Inventory shows up at a Walmart presumably in a truck. How does it then -- what's that process from it being on the truck to it being out where I as a customer can pick it up and buy it?

A Depends on the source that it comes from. The majority of our merchandise comes from our Walmart Distribution Centers. And they come in on trucks that we unload by hand. We pick up each individual box, put it on a system of rollers that's a belt, that you send it down a line, it's sorted, it's put onto carts or pallets.

And then at the designated time which generally is overnight, starting about 10 o'clock at night that merchandise will be taken to the floor when you have a lower traffic count in a building and the merchandise is then placed on the shelves.

Q And that's the majority of merchandise. Is there stuff that comes in, the minority that comes in from elsewhere other than your distribution center?

A Direct store deliveries, whether that

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be, an example would be a vendor, would be a Pepsi-Cola vendor or a Frito-Lay vendor or something like that, they bring their merchandise in, we check it in, and they actually stock the merchandise to the shelves themselves.

Q Okay.

A And then there's other merchandise that comes in through common carriers that would be unloaded and again we would go through the process of checking it in, and then based on what it is, you know, size and everything, on how we transport it to the floor.

Q Is there a reason that certain things would come in by common carrier?

A Certain stuff comes directly from a vendor or manufacturer that doesn't go through our warehouse.

Q Who makes that decision about whether stuff goes through a warehouse or comes directly --

A Way above me.

Q Okay. You don't know who that is but somebody in corporate?

A (No audible response.)

Q All right. What about all the food items, do those -- let me back up. Not all the food items.

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Obviously you just talked about Pepsi and Frito-Lay and other things that come directly to the store.

A Now, our grocery trucks, they'll come in, that stuff is palletized, it's already palletized.

Q Is that common carrier?

A No, that comes in through Walmart trucks as well. That comes in as palletized. We pull it off the truck, we unstack it from the pallets, we sort it, we put it onto carts, and then that is rolled out to the floor and then stocked on the shelves. And that can be dry grocery, frozen, dairy, or any of our, what we consider fresh product.

Q And that grocery is also from a Walmart --

A -- Distribution Center, yes.

Q Walmart Distribution Center. All right.

So aside from those four, I'll call it four ways, the majority of stuff coming from a Walmart Distribution Center, some stuff coming directly to the store from a vendor such as, for example, Pepsi, other things coming by a common carrier, a truck line, and then finally grocery items coming from the Walmart Distribution Center, is there any other way that inventory gets onto the

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sales floor besides those four sources?

A No. So that would encompass 99 percent.

Q All right. And you can't think of anything else, that other tenth of a percent or whatever, you can't think of any other way it would get there?

A Not off the top of my head, no, sir.

Q All right. If I'm understanding you correctly, of the four ways we talked about, three of them involved Walmart people actually getting the material off of a truck and putting it on the sales floor.

The fourth would be vendors like Pepsi who actually bring the items into the sales floor themselves and put it on the floor?

A Yes.

Q Okay. And I'm guessing that it's a relatively modest number of big sort of vendors who actually deliver items to the sales floor. Like a small vendor wouldn't do that, or would they?

A It varies. I mean, we have quite a few vendor partners that handle their own merchandise inside.

Q Do you have any idea, and I know you might not know the exact number, but roughly just give me

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an idea of scale. Is that half a dozen? A dozen? A hundred? And I'm thinking just of your store, outside vendors that actually set their own people onto your sales floor to stock merchandise.

A I'd say at least a dozen.

Q Okay. Can you think of any of those dozen or so -- I know it might be more, might be less -- any of those dozen or so vendors that deliver inventory directly to your sales floor that would use a wooden pallet either to bring that inventory actually onto the sales floor, bring the pallet onto the floor, or would have the inventory stacked on a pallet maybe when it arrives in a truck?

A Most vendors don't use pallets, most of them use hard plastic mold pallets.

Q Okay. Are you aware of any outside vendors that do use a wooden pallet in your store, and specifically would have used it back around the time of April Jones' injury?

A I can't think of anyone that would because, again, most of the vendors that deliver palletized freight where they bring their own 18-wheelers, they use and have used the plastic mold pallets for a long time.

Many of the other vendors that

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come in, they literally deliver on hand trucks through our back door.

Q Okay. And I think I've seen that like with a Pepsi delivery that's coming in and hand trucks getting wheeled out there and stacked up.

A Okay.

Q Who would know in your store who all the vendors were back in June of 2015 and in the few months prior who were actually delivering merchandise into the sales floor themselves?

A I mean, we still have some I'm sure that I know that were delivering then and deliver now. As far as a full vendor listing, I'd have to do some research on that. I don't know a full list to be able to tell you.

Q Okay. And that would be -- is there somebody in your store who coordinates that or is that coordinated --

A That would be more, we would have a listing of people that can come in, but somebody come in every day, somebody come in once a month, somebody coming in every -- you know what I'm saying, there's a big variance in there.

Q Do they have to like check in or something?

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A Yes.
Q Okay. Who would they check in with?
A They check in with, back at our direct/DSD area, our people checking it in.
Q Tell me what that term means.
A Direct store shipments.
Q Direct store shipment. Okay.
A Yeah.
Q Direct store shipment.
Who is in charge of that direct store shipment department now in your store?
A Hourly associates that operate right there.
Q Would you have records of who was working in the direct store shipment department back in April, May, June of 2015?
A I'm sure we could go back and look at it.
Q Okay. And do you know, and I know you might not know this 'cause I know you sit at the top of this organization so you probably don't see every single form that somebody laid down for you to sign, but do you have any idea the kinds of records they keep, say Pepsi shows up, I'm the Pepsi guy here to deliver Pepsi, is there like a form or something --

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A It's changed. It's updated over the last few years.

Q Okay.

A Whereas everything at some point even through 2015 would have been checked in electronically using handheld terminals.

Q Okay.

A Back then -- and again, I can't remember the progression of the changes we've made, but there was a day and time there were paper invoices, which now you don't generally see a whole lot of paper invoices. Most everything's done electronically.

Q So somewhere, whether it's paper or electronic, there would be a record of what --

A There would be a record of --

Q -- outside vendors brought stuff in in April, May, June of 2015?

A Yes.

Q And we could get that by talking to Walmart's attorney, Miss Boyd, she could find that for us somehow?

A Yes.

Q Okay. The inventory that arrives on wooden pallets, are you aware of whether it's an

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outside vendor or whether it's stuff coming from your distribution center? It arrives on wooden pallets. Are there instances where it gets delivered to the sales floor actually on that wooden pallet?

A What do you mean, delivered?

Q So what I mean is is there an instance where the wooden pallet actually, instead of being unloaded, the wooden pallet along with the inventory gets out onto the sales floor?

A Yes.

Q Okay. And is there any generalization about what types of items would go out to the sales floor on a wooden pallet or is it kind of all over the map?

A All over the map.

Q All right. Could be food, could be stereo equipment, just could be whatever came on a wooden pallet?

A Yeah.

Q Okay. What sort of truck arrives that's got a wooden pallet with some kind of inventory on it and it's one of those instances where the wooden pallet is actually going to go out onto the sales floor, is there any sort of safety check that's

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performed on that pallet, not just for nails but for anything, like whether it's stable enough to be out there, it's not going to collapse and topple over onto people or rough edges that somebody could get hurt on or nails or whatever, is there any kind of safety check that Walmart does before that pallet gets out onto the floor?

A If you have to stack a pallet, we call it a bump test where you want to make sure that the merchandise is stacked stable.

Q Tell me about a bump test.

A You just give it a little push to make sure that it was stable and it wasn't going to just topple over easily.

Q Okay.

A If something is questionable, they need to use shrink-wrap to wrap the merchandise to the pallet.

Q Okay. Anything else you do, before that pallet with its merchandise gets out on the floor, any other safety inspections that are done? And it doesn't have to be highly technical. I'm just thinking anything you do to inspect to make sure that it's safe for people to be around it before it goes out on the floor.

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A No.
Q We talked earlier about permanent displays which I think you described as side counters, side counters?
A Side counters that never move.
Q That never move.
A Right.
Q So that's one thing. Pallets and merchandise wouldn't have anything to do with that 'cause that merchandise actually goes onto those shelves, right?
A Right.
Q Okay. So if there were merchandise on a pallet, it would be out there on one of the movable displays?
A On a stack base.
Q On a stack base. Okay.

And so tell me about how that would work. Is that just -- let's think of something for an example. I don't know what might come on a pallet, but something that's on a pallet, some grocery item that comes in on a pallet.

Pallet and the items get brought into the store and they're set down. Does anything happen after that or is that just the display just

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the way it is?

A I'm not sure I understand what you're saying. But as far as anything that's displayed on a stack base, it's hand stacked onto it.

Q Okay.

A We literally would take it off of a cart or a pallet and you would stack it onto that --

Q Onto that base?

A -- that stack base.

Q What is that stack base? Describe that to me.

A 4x4 black plastic, hard plastic mold.

Q How high is it?

A About six inches off the ground.

Q Okay. And that just, instead of stacking the merchandise directly on the floor, that just provides something for it to sit on?

A Yeah.

Q Okay. So if merchandise came in on a pallet, it gets stacked from the pallet onto the stack base, the pallet then gets picked up and leaves the sales area?

A (No audible response.)

Q Is there ever a time where that pallet and its merchandise would stay in the sales area and it

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become the display?

A That's not a general practice. Not going to say it never ever can happen but it's not a general practice.

Q Because typically a display would be the stack base?

A Yes.

Q Is there a policy or anything about that? Like how do you know to do that? Why would somebody not just bring in a pallet and put it there?

A Because they're ugly.

Q Because they're ugly. Fair enough.

You said as a general practice you would remove items from the pallet, put them on to the stack base, but that you couldn't be certain that a pallet was never just set in there as a display.

Is that -- who would be in charge of that? Like who would walk around the store and say, hey, guys, I see we got in all these Keurig machines and you put them out on display on a pallet. That's ugly. Get rid of that. Let's put them on a stack base. Who is that? Like a department manager that does that?

A Department manager could do it, an

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assistant manager could do it, a co-manager could do it. I could do it. I mean, anyone who understands the basic expectations of merchandise display would be able to speak to that.

Q All right. Whose responsibility is it to, if let's say it's in the grocery section, I'm just saying like reporting lines. If you walked through the grocery section as the general manager and saw something like that and said, man, I don't like this at all in my store, who would you be going to to say, hey, why did you not fix this? Whose, like, responsibility is it to look after that?

A Again, it could be a department manager, an assistant manager, it could be an hourly associate that works in the area that I saw them with hands on it. Why did you do this?

Q And so you have department managers that handle certain areas of the store?

A Yes.

Q How many of those do you have in round numbers?

A Somewhere between 25 and 30.

Q Okay. And I'm guessing if you have between 25 and 30 department managers you do not off the top of your head remember who all of them were

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back in April, May and June of 2015?

A No, sir.

Q How could we find out who they were back in April, May and June of 2015?

A You'd have to go back through the personnel records.

Q Is that something that Miss Boyd could get for us from Walmart?

A Yes, that would be something she would have to follow up on.

Q So if I understand you correctly, with respect to wooden pallets, what you've said is you can't guarantee that they've never ended up staying on the sales floor, but that's not what Walmart wants to happen, that's not what you want to happen. If that happens and you spot it or somebody else spots it you say, fix it, get those off of the sales floor?

A Yes.

Q Would there be any record made necessarily of that happening or is that just something that, you know, you see it, you say to the guy, hey, get this thing out of here, and it leaves?

A There's no written record, no.

Q There wouldn't be any written record.

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Okay.

Would there be any video record of that sort of thing? The reason I ask that is this. This incident took place over three years ago. I don't know how long Walmart keeps video. You take a lot of video. Would you still have video records dating back that far?

A Unless it was burned onto a DVD, it wouldn't be. Our data bank would not hold information for that time period.

Q Do you know how long it does hold it for?

A 60 days.

Q 60 days. Okay.

So if an incident, something is reported to you all within 60 days you can capture the video, outside of that, you might have it but you might not?

A It also depends on where it took place, if there were cameras in that area.

Q Are there areas of a Walmart that aren't covered by camera?

A Yes.

Q Wow.

MS. BOYD: And I tell you guys that all the time.

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BY MR. JEFFERIES:

Q I'm shocked, yeah, I'm amazed.

Do you have any idea why there would be uncovered areas?

A The actual square footage. You wouldn't want a camera near a fitting room or a dressing room, would you?

Q Fair. Right.

A Yeah, that's just -- my particular store is over 200,000 square feet.

Q Wow. And you might not know the answer to this question, but of that, do you have any idea what the square footage that isn't observed by cameras might be?

A I have no idea.

Q Is it half, or?

A I have no idea.

Q Do you have anything to do with the camera placement coverage and all that or is that corporate?

A I do not have any direct say on that. I can request a camera to be moved or for a placement, but there is a whole division of our company that handles all that, asset protection handles all that.

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Q Asset protection. Okay.

Do you know the name of a particular contact there, or?

A That would probably be something Miss Boyd can get for you.

Q Miss Boyd can get that. Okay.

I know you mentioned that you don't like having wooden pallets on the floor 'cause they're ugly, that you use them sometimes to transport inventory out to the floor, unload it, take the pallet away.

Is there any sort of written policy that says that's how you do it? Like how would somebody know that?

A I'm not aware of a written policy that says that you use pallets to transport merchandise. But it is a common practice to be able to move merchandise based off the size and the quantity.

Q And I'm thinking more of not a policy that says use the pallet to move it, but a policy that says if you use the pallet to move it, don't leave that pallet out there, take the pallet away.

Is there something that if I were a new Walmart employee, how would I know that

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I'm supposed to unload that wooden pallet and not leave it out on the floor?

A Oh, we train all of our associates that you do not leave an empty pallet. If for some reason something has to sit on the floor for a short period of time until you can transport something from one place to the other or replace something on it, they're all trained to put some type of an object on the corners so it doesn't become a trip hazard.

Q Like around the four corners of the thing?

A Yes.

Q And so that would be, in terms of that, what they call a policy or training item, that would be in some sort of training manual?

A Yes.

Q Okay. And with the training manuals, is that something that's kept there in the store or is that off --

A All the training is all online.

Q That's all online. I got you.

So if we wanted to see what the training manual has to say about unloading pallets or if you have to leave pallets, et cetera, there wouldn't be a sheet of paper, it would be something

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electronic that Miss Boyd could get for us?

A All our training is done online.

MS. BOYD: And I'm just going to purport to you that Walmart will give it to you in paper form, a printout of the electronic version. So, yeah, we can give it to you electronic versus the proprietary video.

It's just like the transcript and photos of what they see. They're called computer-based learning or CBLs is how they --

MR. JEFFERIES: And so what the employee sees is a video and audio but what you'll produce to us are still video shots and a transcript of the audio?

MS. BOYD: Yes.

MR. JEFFERIES: Which is much better for my purposes than the actual video in any cases. Maybe not as good for Jan because I'd have to hire her to transcribe it, so.

MS. BOYD: Yes.

BY MR. JEFFERIES:

Q All right. So to the extent there's a

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policy about what to do with pallets when they come out on the sales floor, really, it's in that training?

A Yes.

Q Okay. And that would include any safety precautions or anything like that?

A Yes.

Q Let's look at a slightly bigger picture. What's Walmart's vision as a company?

A To provide lost-cost merchandise, pleasant shopping experience to our customers.

Q And is that mission communicated down through the chain of command down to the lowest-level employees in the store?

A Sure.

Q And how do you do that? Is it company meetings or is it posters or how do you communicate that mission?

A All of the above.

Q Anything else besides, I guess computer-based learning as well, is that -- would that be right?

A From the day that they're orientated, first day of orientation we talk about the focus is customer service, taking care of our customers,

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providing them the best price. Save money, live better. I'm sure you've probably heard Walmart's message out there before.

Q I have. You all have a pervasive advertising program.

A Yeah.

Q That works.

What about safety, does Walmart have a particular mission with respect to customer safety in the stores or a particular, you know, kind of guiding principle with regard to safety in the stores?

A Sure.

Q What would that be?

A It begins with the training of the associates. Everyone has to go through basic, what I call basic training. And then it can be -- become more specialized based on the area that you are working in.

But everyone goes through a very in-depth training process through their CBLs as she spoke to earlier. We have safety teams within our building. Our safety teams meet on a weekly basis.

I myself sit in on the safety meetings weekly along with other salaried members of

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management and hourly associates. Safety is talked about on a regular basis within the meetings that we have.

We personally, we will have multiple meetings per day with each shift. I'm not about to sit here and tell you that every single meeting that was ever held, that, you know, a safety topic is covered, but safety is discussed in these meetings.

Q And what sort of topics with respect to safety would you discuss? Say, you know, I know you might not talk about it every single day, but over the course of a month what kind of safety topics would you emphasize?

A For us one of the biggest opportunities we have from an associate standpoint would be proper lifting procedures. We call it staying in the green zone.

From a customer standpoint, just like today, I'm sure my team had their meeting this morning while I was en route here talking about make sure that we have the wet floor cone signs out, the dry mops at the front door, the rugs down at the front door, everybody's got a towel in their pocket.

We actually refer to it as a TIP

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program, T-I-P, towel in pocket. So as you walk through the store, you see water that has come in off of someone's umbrella, a shopping cart or whatever, you stop and wipe it up. We talk about that. I mean, those are just general things that we would discuss.

Q And I know the wet floor thing is huge. Anything else that comes up with respect to customers' safety, anything else that comes up frequently?

A We'll discuss the fact that make sure that we -- you know, if you see it, pick it up.

Q And that would apply to really I guess anything that's on the floor?

A I would -- I wouldn't want to share with you all the things I picked up off the floor.

Q I can imagine.

Is your store -- back at the time, back in April, May, June of 2015, was your store 24 hours a day?

A Yes.

Q Are they all that way now?

A No.

Q Do you have any idea how Walmart decides which ones are 24 hours, which ones aren't?

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A Not my pay scale.

Q Understood.

Now, you talked about a safety team. Tell me about the personnel with that. Is there like a director of safety or some title like that?

A It's an hourly associate that has shown the ability to want to step up and take on extra roles within the store. They have a salaried manager sponsor that helps them. They conduct the actual meetings themselves and the sponsor will be at the meetings.

Topics are put out monthly by the home office, specific topics that need to be covered in those meetings. Different talking points, things of that nature come down for them to be covered when they have those meetings. We have safety meetings and we have compliance meetings.

Q What's the difference between the safety meetings and the compliance meetings?

A Lot of it's bleed-over, quite honestly.

Q And compliance would be like compliance with Walmart's policies?

A (No audible response.) Which ties directly into a lot of the safety issues.

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Q Lot of safety issues.

Those monthly directives that come out about topics to be addressed, is that electronic?

A Yes.

THE WITNESS: I'm sorry.

MS. BOYD: She's recording you so if you'll just try to say --

THE WITNESS: Yeah.

BY MR. JEFFERIES:

Q Could we get from Miss Boyd those monthly, what do you call them, bulletins?

A Yeah, I mean, they're safety topics.

Q Safety topics. Is that something we could get from Miss Boyd for the, you know, 12 months, let's say, prior to June of 2015?

A I feel like that would be something she could provide.

Q Excellent.

MS. BOYD: I'm getting a lot of homework here.

BY MS. BOYD:

Q What about security in the -- in your store. Is there a -- how is that handled? Is there a separate like security department that handles

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that?

A Are you talking about security from a loss prevention standpoint? Security -- I'm not sure.

Q Yeah, I think that would be a big part of it. Are there other aspects of security that you think about besides loss prevention?

A We have in-house loss prevention that monitors the store for theft.

Q Okay.

A They also, you know, of course, are involved with looking at anything that may seem suspicious within the facility.

Q Right. Okay.

A But that's our in-house, yes, we do that.

Q And is that run by a special -- is that like its own department with a department head, or how is that?

A There's an assistant manager that's over that at this time. In 2015, I'm trying to think back, they were also a salaried member of management at that time as well, yes.

Q And that's something I know you don't know all that off the top of your head. That's

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something, again, that in terms of an organizational chart for your store, that's something we could get from Miss Boyd that shows --

A Yes.

Q -- who the people were and who reported to whom.

A Yes.

MS. BOYD: And I believe, I'm just going to clarify for the record, you earlier talked about asset protection. That's loss prevention. When you said interchangeably, so it's one department.

MR. JEFFERIES: Asset prevention/loss protection.

THE WITNESS: Asset protection is what it's referred to currently; was loss prevention.

MR. JEFFERIES: Loss prevention. Got you.

BY MR. JEFFERIES:

Q So that is the department, it has a salaried manager, et cetera. Safety is not a department of its own. It is like a program that is run by an hourly person with a particular manager that kind of sponsors?

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A And the salaried manager from asset protection is what we refer to the sponsor.

Q Okay. So that person is the sponsor, 'cause they kind of go hand in hand?

A Yes.

Q Is there a separate budget for the safety component versus the asset protection component?

A As far as what type of budgetary --

Q Well, I'm guessing, and I don't know but I'm guessing in your store there's a certain amount of your store budget that's dedicated to that -- to the asset protection department. They've got to hire people, certain numbers of people, they got to spend money on things, I don't know what all those things might be, but that they have a particular budget that they have to work in? Or maybe that's not the way it is. I don't know how your store is set up.

A They don't have -- my budget is for my store, and all actions within that store with the exception of a pharmacy is -- comes out of one bucket, so to speak. Does that make sense?

Q Right. Yeah. And then everything else comes out of another bucket, essentially, the entire rest of the store. There's -- the pharmacy is its

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own thing?

A Pharmacy has its own P and L. They have their own budget, their own P and L that they answer to. And the rest of the store falls under the total store, even though the pharmacy does roll up into my profitability.

Q So it's not the case -- I was thinking about this, maybe I'm wrong, but if I were the manager of the electronics department, I don't have my own electronics department budget for which I'm responsible?

A No.

Q Okay. I'm just responsible for managing those people and getting stuff out on the shelves, right, and all that?

A Yes.

Q All right. Do you know or could you find out what the store budgeted towards security, that asset protection department, back in 2015?

A I don't know that you would find a line item on the budget for something that vague as far as security. Because there are different things that would fall in that, whether it be supplies, whether it be wages, whether it be different things.

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Q Is that not something that Walmart tracks, like what it spends on its asset protection?

A It does, but there again, it would -- each of those different things has a different line item within a P and L within a budgetary situation. I mean, it's nothing that I would see that would say we spent -- you have a $15,000 budget for asset protection for the month of June. It's not broken down that way.

Q Okay. I was thinking in terms of like Walmart analyzing it. If you had no asset protection program, certain stuff would get stolen out of your store; we just know that would happen. Probably certain stuff gets stolen anyway.

And if you're spending, I don't know, let's say half a million dollars a year to reduce theft by only a hundred thousand, well, would be cheaper just to let them steal it. So I'm wondering if Walmart analyzes that, looks at --

A I'm sure at some level they do.

Q But not your store?

A Not a store level.

Q Do you analyze in any way the expenses associated with safety? Like you mentioned the towel-in-pocket program. You mentioned dealing with

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rain is a big issue, I'm sure.

Do you have any idea how much money you spend to do that, to make sure that those umbrella bags are out there and that everybody has a towel that you obviously had to buy somewhere?

A I'd have to go back, it would be something we would have to go back and look at. Those actually fall under supplies and not safety.

Q All right. So it's not something that, safety is not something that's broken out separately in the budget?

A No.

Q And if I wanted to know more about your store budget, are you the best person to talk to about that or do you have like a financial person that --

A I would recommend that that would go through corporate finance.

Q Corporate finance?

A (No audible response.)

Q Any particular person there?

A I have no idea. That's a whole nother world.

Q Okay. Why don't we do this. Why don't we take a brief break, I'm going to pull up some video.

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We have hours of video, we are not watching hours of video.

A Okay.

Q All I want to do with the video is have you tell me what part of the store I'm looking at. I think it should be self-evident from the labels, but I just want to make sure I understand what I'm looking at in the store.

So let's take a brief break while I get that up and we'll come back together and get that done.

MS. BOYD: Sure. Okay.

MR. JEFFERIES: We can go off the record.

(Recess.)

MR. JEFFERIES: Let's go back on the record and we'll just look at these videos real quick.

BY MR. JEFFERIES:

Q All right. So we are now about to look at what was labeled clip number two. And these are all, Mr. Ringer, these are all videos that were provided by Miss Boyd to us. You can see the date on this video is June 26th, 2015.

Do you recognize the area of the

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store depicted in that video?
A Yes, sir.
Q All right. What area is that?
A We refer to that as grocery action alley.
Q Okay. And does it look like -- what's off to the left of it? Is that like a McDonald's symbol? Is there a McDonald's?
A There's a McDonald's at the front of the store.
Q At the front of the store. Okay.
And grocery action alley is this main kind of -- main sort of hallway through the store that leads out to the doors we see in the video?
A Yes.
Q And in the center of that are various displays.
A Yes.
Q And are those permanent displays or movable displays or something --
A They're movable.
Q They're movable. Okay.
What would be off to the right on this?

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A Those would be the grocery side counters.

Q Okay. So in this grocery action alley, this is the sort of area where if someone brought merchandise in on a pallet, and contrary to Walmart's policy, didn't immediately unstack it and remove the pallet, that's the kind of area where that pallet would end up, is that right, versus over here to the right inside the side counter aisles?

A Pallets can be pulled anywhere in the store.

Q Okay.

A I mean, they're not restricted to only that area.

Q Okay. So a wooden pallet could be virtually anywhere within the store, not necessarily --

A Yeah, I mean, you can pull it down those aisles.

Q Okay. So if a nail were to fall off of a pallet, there's nowhere in particular in the store you would expect that to happen? That could happen anywhere in the store?

MS. BOYD: Objection to form of the question.

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You can answer.

BY MR. JEFFERIES:

Q You can go ahead and answer.

A I'm sure anything could fall off of anything anywhere in that store. I mean, it could be anywhere.

Q Okay. Is there any particular policy, protocol, anything like that to essentially sweep visually or physically the store for items that do end up on the floor, not just big things but small things like a pallet nail, that sort of thing?

A As I told you earlier, we train all of our associates to visually see anything on the floor, to pick it up. We do safety sweeps every hour and a half to two hours where a member of our maintenance team or another associate, because a lot of times things need attention before maintenance can get there, and they will get a broom, what we call a dustmop, which is approximately, what, three feet, and they'll go through an area and sweep the floor to make sure that trash and debris or whatever the case may be on the floor is swept up.

Q And that safety sweep occurs every, what did you say, hour, hour and a half?

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A About hour and a half, two hours.
Q Are there any kind of records of that or is that just something that happens?
A That's just something that happens. There's no written documentation.
Q Is there a way to -- how do you know that it actually gets done?
A If you saw a bunch of dirt on the floor you'd know it hadn't been done. Physically see the people on the sales floor with broom in hand going up and down the aisles.
Q Okay. So there's no -- I'm thinking about like I go in the bathroom at a gas station and on the back of that door there's that checklist that says this bathroom was checked at 11 o'clock by Bob. And presumably that's how the manager knows that somebody actually checked the bathroom.
Is there anything like that so we would know, for instance, nail falls off of pallet on this particular area?
A No.
Q No way to know whether anyone went down that area, is there?
A There is no way -- there is no chart that we check off that says this was completed at

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this time, no.

Q So if you had on any given day some of your less-motivated employees, that might not get done every hour, hour and a half?

A Or I can have extra-motivated employees that get it done every 30 minutes.

Q And there's no way to really know.

A Not for sure, no.

Q And even with regularly motivated employees, something could be on the floor for an hour, hour and a half before that sweep actually happens?

A There's always a possibility. You know, we can't control everything that takes place in the building with the amount of customers that we have coming in and out of the building on a daily basis.

We do our very best to maintain a clean environment, but we can't guarantee that a customer is not going to bring something in themselves and drop it on the floor.

Q Customer ever bring a wooden pallet in the store?

A Can't say that I've ever seen a wooden pallet brought in the store, but I see plenty of

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times customers come in the store and spill their drink on the floor and walk right away from it.

Q I've seen that too.

As to the outside vendors -- let me go back to an earlier question. As to the outside vendors that do bring merchandise into the store, that dozen or whatever it is, are you aware of any of them that would bring in merchandise on -- using wooden pallets back in April, May, June of 2015?

A I'm not aware that I could specifically say this vendor uses wooden pallets to bring merchandise into the facility. To the best of my knowledge even five years ago the majority of the vendors were using the plastic mold pallets.

Q So if merchandise was transported into the store to be unloaded using a wooden pallet, that would have been a Walmart employee that used that wooden pallet, unloaded the merchandise and then took the wooden pallet back out?

A Say that one more time.

Q So if the vendors didn't use wooden pallets to bring stuff into the store, if a wooden pallet came into the store with the merchandise on it to be unloaded on the shelves --

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A There are vendors that will use -- they will bring the stuff in on hand trucks themselves into the store. And they sometimes will use a wooden pallet to then transfer their merchandise to transport it.

Q Okay. So some combination, if the wooden pallets back in April, May, June of 2015 were in your store, that could have been Walmart employees bringing them or it could have been outside vendors bringing them in?

A Yes, they could have come to the floor with pallets, yes.

Q And you just don't remember any particular vendors who would have done that with wooden pallets?

A No.

Q Any sort of safety instruction or anything you'd give to those outside vendors, say, hey, you need to watch out for this, especially if you're bringing wood pallets into our store, you need to do X, Y and Z to make sure you leave the place as safe as you found it?

A For me, all vendors know that there's to be no pallets on the floor.

Q Left on the floor?

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A On the floor.
Q Oh, okay.
A After 8 o'clock in the morning. They have until 8 o'clock in the morning. If they need to use a pallet to take merchandise to the sales floor, whether it's a wooden pallet or a plastic pallet, doesn't matter, they need to be off the floor by 8 o'clock.
Q By 8 o'clock.
Is that a written policy or something you just tell them?
A That's something I share with them.
Q Okay. And is that -- what motivates your desire to have all those gone by 8 o'clock?
A For the convenience of the customers not to have -- we have enough stuff on the floor between displays and people and everything else, we don't need to add to the disruption of the traffic flow by having additional things on the floor.
Q What about Walmart employees, do you have the same instruction for them, if you bring something in on a pallet, you got to have it gone by 8:00, or can they do that kind of throughout the day?

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A We try to keep that to a very bare minimum especially with pallets. That's the reason we try to use carts to move merchandise around the store.

Not saying that we don't ever roll a pallet to a floor, but generally if something is -- needs to go onto a pallet to go to the sales floor, it's something that someone will stay with and quickly stock the merchandise off the pallet.

Usually, you know, it shouldn't take more than ten or 15 minutes to remove the stuff from the pallet to its final destination, I guess would be the best way to put it.

Q Right.

A And then it's taken off the floor immediately.

Q Okay. And if a Walmart employee did that and took the pallet off the floor and on the way out a nail from the pallet comes out 'cause it's just loose, it could be spotted immediately but it might be hour, an hour and a half before the regular safety sweep goes by?

MS. BOYD: Object to form.

BY MR. JEFFERIES:

Q Is that right?

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A I mean, I guess anything would be possible. I mean, we generally ask people especially with a pallet, that if they bring a pallet out to the floor, to inspect the area and clean it up.

Q Is that some sort of written policy or is that just something you tell people when you see them?

A That's just, you know, something we share with them.

Q When you say share, you mean share like orally, just tell them?

A Yes.

Q Okay. Anything else about this video clip number two that you think is important to tell me?

A No. I mean, that's what we refer to it as is grocery action alley.

Q All right. This is video number three, video clip number three. Again, same date. Do you recognize that area of the store?

A That is the grocery side self checkout.

Q And where would that be in relation to the grocery action alley that we just looked at?

A It's about ten feet before you go into it, slightly to the right.

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Q Oh, okay. So as you enter the store you pass by this area before you kind of got into the action alley?

A Yes.

Q Anything else about this clip number three that you think is important with respect to what we're talking about being here, the injury to Miss Jones?

A No, sir.

Q Clip number four. Again, same date, June 26, 2015. What is that we're looking at?

A Produce department.

Q Where is that in relation to the grocery action alley in clip number two?

A That would be immediately prior to going in the grocery action alley on the left-hand side as you would enter the building.

Q And as we look at this beginning frame, we're not going to watch the video unless you want to, but as we look at this beginning frame we see like a long shelf full of appears to be fruits and vegetables kind of in the center.

Off to the left there appear to be like lower displays, do you see where I'm pointing to, lower displays of some kind of fruit or

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vegetables, maybe watermelons or something? What would those be? Are those permanent displays?

A Those are tables.

Q Those are tables? Okay.

And so they have like some kind of skirting around them or something?

A Those are sides hanging. Those are leg tables.

Q Okay. Same thing like here, this?

A That is a refrigerated case. That's a metal open refrigerated case.

Q And that's things like --

A That's like strawberries or something like that that would be in it.

Q Strawberries, those are fresh things that need to stay cold?

A Yes.

Q And that's right there underneath that sign that says produce? That's where we see --

A Yes.

Q Further up here, I know this is hard to see, I don't know what that is toward the top center. Can you tell what kind of display that would be?

A Those are probably watermelon bins.

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Q And would they be on tables, refrigerated cases? How would they be?

A Those are heavy cardboard bins that are on pallets that have melons on them.

Q And we can't see well enough to tell anything I don't think about the pallets in here, but would those be plastic pallets, wooden pallets or any way to know?

A They could be either actually.

Q If a pallet were to remain in the store, I know you say you don't generally like that, but if it were to remain in the store, is that why, like if you'd get a ton of watermelons in on a pallet, is that probably the --

A I mean, if a watermelon bin comes in and it's on a pallet, yes, it's going to stay on the pallet.

Q Because it weighs a flipping ton.

A Yes. It's made to ship that way.

Q All right. I think that's self-explanatory, video clip number five looks like the parking lot.

A Yes.

Q Anything special about this parking lot I should know?

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A No.

Q Okay. Clip number six, again, June 26, 2015, the label says deli. Is that -- tell me where that is in relation to --

A That's the grocery entrance, the self checkout we identified earlier, that's part of it on the left-hand side. The produce department is there to the right-hand side. You can actually see some tables there with what appears to be watermelons.

Q How can we tell, just for my education, how can we tell that these are tables versus those heavy cardboard boxes?

A I just recognize that's a table. That's a faux wood panel --

Q Okay.

A -- on that. And you can actually see at the bottom, the darkness is a gap, those are on legs.

Q Those are on legs. Okay. So these are in video clip number six. Those are tables with watermelons.

And video number four?

A As far as that one was in the back -- it possibly could be those tables too, I can't tell.

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The front one appears to be a table. The one with that sign, with that red sign, right there where your cursor is, that would appear to be a table.

Q And the others could be tables or they could be those heavy cardboard boxes?

A Yes.

Q And it wouldn't surprise you if they were those heavy cardboard boxes?

A No.

Q And there's no way to tell, I think you said and I agree that there's no way to tell if those are heavy cardboard boxes, whether they're sitting on plastic pallets, sitting on wooden pallets?

A My eyes aren't that good.

MR. JEFFERIES: I don't have a video clip number seven.

MS. BOYD: Or one.

MR. JEFFERIES: Is that the smoking gun? Is that the one you don't want me to see?

MS. BOYD: No. I don't have a one or a seven either.

MR. JEFFERIES: Jan, please put in the record that I'm smiling when I say

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that, not implying that Miss Boyd is hiding anything from us.

BY MR. JEFFERIES:

Q Customer entrance overhead, June 26, 2015, is there anything special about that video?

A No, sir.

Q Okay. Clip number nine, action alley register overview, it says June 26, 2015. Where does this fall in relation to the earlier clips we were looking at?

A This is the same self checkout. You can tell by the --

Q Just from a different angle?

A Yes, different angle, just encompasses more of that front main aisle that runs across the front part of the store.

Q And where in relation to this frame of clip number nine, where would the grocery action alley be?

A It's going to be back off to the left.

Q Off to the left? Out of view?

A Out of view, yes.

Q Okay.

A So this is that same view from the opposite end.

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Q Okay. Clip number ten is the same view looking kind of down the other way?

A This is from the GM side. Where everything we looked at previously has been on the grocery side, this is on the GM side.

Q When you say GM you mean general merchandise?

A The general merchandise side which some people call it the pharmacy entrance and things like that because the pharmacy is right there. But this just looks again across the front of the store.

Q All right. Is clip number 11 different from ten at all or is that the same view?

A That's actually the same view.

Q Same angle looking from that general merchandise side?

A Yes.

Q Clip number 12, what are we looking at there in clip number 12?

A That is the back side of the grocery action alley with the -- and the reason I can identify it is 'cause that's the infant department on the left-hand side.

Q On the left, okay.

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A I recognize the sign for the counters that were over there.

Q So we're at the back of the store now looking out toward the front?

A Yes.

Q And in the top right corner, it's a very light area, would that be like the doors going outside?

A Yes. Yes.

Q Through the middle of this pathway that leads up to those doors, looks like there's a number of displays. The first one has something stacked up, 5.98.

A Chips. Is that Frito-Lay?

Q Chips. Excellent. Glad I didn't see that. One something something. These displays, are they, can you tell, are they on tables? Are they on pallets? What are they?

A I can tell you the one that's in that white box-looking thing, the dollar whatever, that one with your cursor?

Q Right.

A That actually is what we refer to as a half PDQ. It's a two-by-four, but you can actually see the wooden pallet is up on top of a

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plastic stack base.

Q So this one, it's kind of in the middle of the frame towards the top, white, it's really the second display up from the bottom, right?

A Yes.

Q Okay. And what you're saying there is that's --

A You can see that wood. Move your cursor up.

Q Down here at the bottom?

A See that light color right there where your cursor is?

Q Yes.

A That's wood. That's a pallet. But then you see there's a gap between that and the floor.

Q Right.

A And that is sitting on a plastic stack base.

Q Okay. So stack base goes on the floor, then that wooden pallet with the merchandise goes on top of that?

A (No audible response.)

Q And can you tell, is that bottled water, is that what that is?

A I have no clue.

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Q I got you. It is what it is.
A Chips I can recognize. Much beyond that, I can tell that that's probably gallon water on the left-hand side on the other end cap but that's --
Q Got you. And this is video clip number 12, June 26th, 2015, 11:31. So as you said, that's wooden pallets sitting on the plastic stack base. Do you have any way of knowing whether the nail in Miss Jones' foot did or did not come out of that wooden pallet in the store?
A I have no way of knowing anything like that. But I can tell you in order for us to put that pallet on that stack base, it had to be done in the back room.
Q It would be -- tell me what you mean by that. It was like put onto the stack base in the back room?
A (No audible response.)
Q Okay.
A Because for us, you're not going to manually lift one of those things.
Q A pallet full of water that weighs a ton?
A Right. So we have a piece of equipment in the back that would be able -- it's like a

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forklift.

Q Right.

A But you can lift it up, and then you can set it on top of that stack base.

Q Okay.

A But you can't bring it out -- you don't bring it out to the floor to do it, you do it all in the back room.

Q How did it get out to the floor then?

A Then you put a pallet jack underneath the plastic stack base --

Q -- jack it up --

A -- and roll it out.

Q That way you get the whole thing out?

A (No audible response.)

Q Is there a reason you would do that versus just putting that pallet full of, let's say it's water, pallet full of water straight on the floor?

A Again, they're ugly and they cause trash and other things.

Q Okay. So you put it on that stack base and then you take it out there?

A And it's just easier for us to move, to be quite honest with you.

Q Yeah.

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A I can move it around a whole lot easier.
Q When you say it causes trash and other things, what do you mean by that?
A Wood is going to splinter.
Q Okay. 'Cause it's wood.
A It's going to splinter.
Q All right. So that's video clip number 12.
Now we're going to 13. Same date. That's just the entrance?
A We refer to it as a vestibule. That's the grocery side vestibule.
Q So if somebody passed through this grocery side vestibule, come in from the outside from the right, they cross over, they exit through those doors on the left?
A The right side is coming in from the parking lot.
Q Okay.
A The left side is going into the store.
Q Going into the store.
That would put them headed toward that action alley?
A Right.
Q Okay. And just to make sure I'm matching

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this up with number 12 right, on 13, they come in from the parking lot on the right, they pass through, they go through the doors on the left. Would that put them entering this video clip number 12 up here kind of toward the top?

A All the way at the top.

Q All the way at the top. All right. So they come through those doors at 13 and now they're headed down here from the top right of 12 toward kind of the center of the screen, past what we talked about, that pallet of water or whatever it is, wood pallet on the stack base?

MS. BOYD: Object to form.

A That's right at frozen food.

BY MR. JEFFERIES:

Q So you would have to get all the way to the back of the store by the time you got there?

A Yes.

Q Can you tell if any of these others in video clip number 12 are the same way or can you tell at all?

A They all from what I can see, that black footprint are all black stack bases.

Q Okay. Can you tell what's on top of the stack bases heading back up here, whether it's

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wooden pallets, plastic pallets or what?

A I can't from that.

Q Could be either potentially?

A (No audible response.)

Q Okay. All right. We're almost through with these videos. This is number 14. I'm not going to show you number 14. It's a top down view of a register. I can't imagine that it is going to be interesting to us.

16 is a view of the parking lot once again.

17. 17, again June 26, 2015. What are we looking at there?

A Again, that's the grocery action alley that we have been looking at. It's just a different view from near the beginning of it toward the back.

Q Okay. So when we were looking at -- this one is number 17. We're looking from toward the front of the store toward the back of the store?

A Yes. The doors, the black square at the very back there, that is the doors that goes back into our back room, so that's looking toward the back of the store.

Q Are there other doors like that into the

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back room?

A Yes.

Q So depending on where you're going in the store you might come out of one set of doors or another from that back room?

A Yes.

Q Okay.

A There's two sets of doors that are that size.

Q Got you. And so this merchandise that's all through the center of this action alley that we're looking at, I know you probably can't say for certain which set of doors it came out, but odds are it would have come out of this set of doors here at the frame versus the other set that's way down in the store somewhere?

A I'd say that's probably a high probability of that, yes.

Q All right. And to tie this one back into video clip number 12, 12 would have been shot looking -- shot from the top of this scene looking back towards this camera in 17?

A Correct.

Q Can you tell in any of this merchandise here that's in the center of the action alley in

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video clip number 17, I think you said it looks like it's all sitting on stack bases, can you tell if there are any pallets on top of those stack bases?

A Doesn't appear to be.

Q Doesn't appear to be. Okay.

Is there any way to know that back on June 26, 2015 or in the weeks, couple months leading up to that, how many other displays there would be where there were wooden pallets sitting on stack bases?

A There's no way.

Q No way to know.

So there's at least one 'cause we saw it but there could be others, or maybe not others?

A True.

Q Okay. But at least that one?

A True.

Q I'm going to ask you some other questions you may or may not know the answer to. If you don't know, it's fine to say you don't know, but if you do know, just tell me what the answer is.

Who is the best person to talk to about Walmart's policies and procedures that relate to employees' responsibilities for the

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store's grounds, the actual sales floor?

A I don't know. That would be corporate.

Q Who would be the best person to talk to about Walmart's policies and procedures for employees handling products, equipment, hardware, pallet jacks, anything like that?

A All of that would be in the training, the CBLs.

Q Do you know anything about that yourself?

A Sure.

Q Tell me, kind of give me an overview of what you know.

A As far as what specifically?

Q I'm thinking as it would relate to safety, and specifically customer safety, not so much employee safety, since customer safety is the issue here.

A Again, could you be a little more specific? You've mentioned multiple things.

Q Yeah. So we'll kind of break it apart.

Walmart has policies and procedures that relate to employees using pieces of equipment, is that right?

A Yes, 'cause you have electric equipment and you have manual equipment. The manual pallet

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jacks I guess is what you're referring to?

Q Any kind of pallet jack.

A The manual pallet jacks, the ones that we manually have to pump up and use our own arms and legs to pull?

Q Right.

A Okay, the use of these is that you have to move at a pace that you can stop quickly. You're supposed to keep your hand on the, it's like a handle that, if I pulled it, it would trigger to drop immediately to keep you from running over someone, something or anything else.

Q Right.

A Electric pallet jacks generally are not taken to the sales floor. If they are, they have to have someone operating it in a yellow vest and a spotter in a yellow vest. And they're equipped with horns and everything else.

Q Right. And the concern there is you don't want to run over somebody or into somebody?

A Yes.

Q And other policies and procedures that relate to that would be something we could get from somebody at corporate?

A Yes.

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Q Okay. Are you personally aware of Walmart's policies and procedures for determining which of your employees are best suited to make sure that the store is safe?

MS. BOYD: Object to the form.

BY MR. JEFFERIES:

Q So what I mean is you mentioned that there were certain hourly employees that would be on that safety team with a salaried manager managing them. How does Walmart determine that? What are the policies and procedures for determining who's best to be on the safety team?

A The safety team is actually volunteer for people who show an interest. And then they come to us, they say, I'm interested in being on the safety team. And then we decide whether or not we feel like that that would be a good match based off of work history, performance. And then we make a decision whether or not to -- you know, they would take part in the safety team.

Q What about other -- are there any other factors you all consider in determining whether that's the best person for the safety team?

A Well, everyone goes through the same training. So the training is, you know, pretty

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much the same for every associate that's in the building 'cause everyone goes through the same basic understanding of safety training.

Mostly what we look for, we look for people that are motivated, that are willing to step up and address situations, that have a demeanor to step in when needed. Wouldn't want someone who would rather put their head in the sand than address the situation.

Q So it's primarily about motivation. You get to take volunteers.

A Right.

Q Any particular -- I know you said everybody goes through the same kind of safety training. After these volunteers volunteer and you say, okay, yeah, we'll put you on the safety team, is there any additional training that those safety team members go through?

A Yeah, we will give people different responsibilities. So I'll give you an example of one associate. She had received special training on maintaining our spill stations. We have a large amount of spill stations. I don't want to throw a number out there. We have a large amount of spill stations throughout our store that

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require certain elements to be present at those.

Q Right.

A And she went through special training and she -- that is her responsibility to go through once a week to review the supply needs and things of that nature of what needs to be ordered through supplies to maintain those.

The people that are on the safety team actually do -- we do sales floor tours with them with a sponsor and other member of management. As we walk the sales floor we focus on potential safety opportunities, whether it be spill station needs to be addressed, whether it be -- you know, whatever may be out there that we teach them to recognize opportunities.

Q And do you have a sort of a list of the three, five, ten or whatever most common things that you make sure you always address or do you really just, it depends on what's out there?

A It's very much a focus as to what's out there. We don't set up any hidden scenario-type situations or anything like that. It's dealing realtime 'cause that's what we deal with every day.

Q So an unusual problem -- rain is something

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that probably everybody gets trained on 'cause it rains all the time.

A Sure.

Q Snow, probably not so much.

A Right.

Q Okay.

A But we also try to teach them to recognize that if there's a piece of equipment that is on the floor that could pose an issue to an associate or customer, to recognize it and to deal with that, you know, the importance of making sure that any trash or debris on the floor is dealt with. Yeah. Just along those lines.

Q And is there any -- that training, is that formalized anywhere in writing, like this is what you do and --

A It's referred to as store tours, safety tours.

Q Okay. Do you participate in those yourself?

A Yes, I do from time to time.

Q What about the store manager before you, do you know anything about that person?

A I know who it was. I have no idea whether they participated in them or not.

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Q So you can vouch for the quality of training that you did from the time you arrived but you can't really say what happened before you got there?

A I would be able to say that the -- everyone still was required to go through all the same basic training. As far as how that particular store manager presented or participated, I can't speak to.

Q Okay. We were talking, Miss Boyd and I, just when we were off the record, about a schematic that shows the coverage areas of the cameras. I'm going to ask her to get me one. Something she'd get from corporate?

A Sure.

Q No objection --

A No.

Q -- to her doing that. Okay.

To your knowledge have you had any, at this store, any other incidents, whether you call them accidents, injuries, problems, whatever issues, reports of issues that have taken place at the store where your customers have not slipped on a liquid but have injured themselves in some other way with an object, whether it's stepping on a nail or

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catching a toe on a corner of a display or whatever that involves some kind of object?

A I'm trying to think because it all becomes somewhat of a blur, to be quite honest with you, especially over that time period, and I'm thinking about two different stores.

I know there has been situations to where someone has bumped up against a table and, you know, scratched their leg. I know there's been situations where someone's caught their foot. Especially living in the south with flip-flops and sandals, we have a lot of people who will bump their foot up against something.

As far as stepping on top of something, that doesn't ring a bell, no, sir.

Q Do you know who would be the best person to ask about that who might know more?

A There would be a log of any incidents or accidents that we enter into our computer system.

Q Okay.

A That would be able to give you any of that type of information.

Q Do you know who keeps that log?

A That's all digital.

Q Okay.

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A That's all digitally kept.

Q So that's something, again, we could get from Miss Boyd from corporate?

A Yes.

Q Knowing that we are in the south and, as you pointed out, people do often wear flip-flops and other relatively minuscule items of footwear, are there any special precautions that you all take that you wouldn't take, say, in Maine where people are wearing heavy boots?

A No, sir. That's, you know, that's customer choice what they wear. As much as I'd like to say don't wear flip-flops on a rainy day when you come inside the store, I can't say that.

Q And there's nothing special you do to prepare the store for the fact that we have more folks coming in in flip-flops than they would in Alberta, Canada?

A No, sir.

MR. JEFFERIES: Off the record.

(The deposition went off the record.)

MR. JEFFERIES: Let's go back on the record and wrap up.

BY MR. JEFFERIES:

Q In your view, what is the obligation of

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Walmart employees with respect to assisting injured customers who get injured on the premises?

A We want to offer them assistance within our means. We offer to -- well, we pose a question to them if they're able to respond, do you need medical attention? Do we need to call an ambulance? Many times we'll say, do we need to call a family member?

You know, we do everything in our power to provide them comfort, and if minor first aid is something that will help with the situation, we'll do that.

I've done everything from bandage something for a customer to offer them a bottle of water to getting candy off the shelf to give it to someone who's having a diabetic episode. I mean, we try to take care of any minor type of assistance we can provide them.

Q Do your employees at the store share that same view that you just described?

A Yes.

Q How do you know that?

A Well, whenever we have an incident or an accident we have what is referred to as a Code White which notifies all of management that will

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come across a radio and identify we have a Code White at X location.

And management is required to go to that location to see the circumstances. And when we go to that location, while someone, I'm not going to say the first person on site because I may be two aisles over from it and go over, but someone else will respond with paperwork, and within that, the paperwork actually calls out each of those different steps.

Q Was there a Code White with respect to Miss Jones on June 26th of 2015?

A Again, I was not in the store to hear it called. I know that I have seen the accident forms from that day that were filled out that would accompany that.

Q And is there anyone besides Kevin Lane and Ayesha Cook who would know more about that?

A Again, without knowing who was scheduled in the store that day, I wouldn't be able -- those are the only two that I have documentation on.

Q And we could get other personnel records from Miss Boyd from the corporate somehow?

A Yes.

Q Any of what you just described about minor

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first aid, you know, getting a piece of candy for a diabetic, et cetera, is any of that embodied in written policies and procedures or is it kind of an oral tradition as you talking to your staff about it?

A There's actual training because we have first aid kits throughout the store. People go through training, you know, I mean, basic training of a Band-Aid and antibiotic ointment. It's not real in-depth. But we do even go into bloodborne pathogen training and things like that with our associates.

Q And that would be contained in manuals or something that we can get?

A Again, it's all digital in that CBL.

Q Any particular training with respect to -- I know you mentioned like wooden pallets and wood coming off and that sort of thing. Any particular safety training with respect to handling of wooden pallets that come into the store?

A Nothing specifically, no.

Q They're handled the same way you handle a plastic pallet?

A Pretty much, yeah.

Q Any differences you can think of?

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A Nothing I can think of, no.
Q Is there anything, is there somebody else who might know more about that, might know more about a policy that says handle wood pallets this way, handle plastic pallets that way?
A Not that I'm aware of.
Q And you haven't seen any kind of written policy?
A No, sir. The only thing that you'll see around pallets is if you -- when you stack pallets, when you literally have to lift them by hand and stack them on top of each other, and the fact that they're supposed to use a team lift, you know what I'm saying, doesn't have anything to do with anything on the sales floor really.
Q Okay. And that's really related mostly to the safety of the employees who are lifting the things?
A Yes.
Q Okay. Nothing in particular as to safety of customers and employees in terms of looking for pieces of wood falling off, nails falling off, that sort of thing?
A Nothing specific to that, no.
Q Are people allowed to come in your store

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barefoot?

A They are not supposed to. If we see them come in we will ask them to please go out and put on shoes.

If we come across them in the store, we will ask them to do that as well. But there again, you don't get to see every person that walks in the front door when they first come into the store.

Q Right. Have you ever managed a store outside of South Carolina?

A No, sir.

Q Okay. I'm just wondering if you see a higher number of people in bare feet, flip-flops, that sort of thing, than other stores in Michigan or somewhere else where it's colder?

A Well, I think that the probability of people wearing flip-flops is much higher in South Carolina than in Michigan.

Q I tend to agree.

MR. JEFFERIES: Let's go off the record for a moment, Jan, I just want to look at my notes real quick, and I think we're done.

(The deposition went off the record.)

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MR. JEFFERIES: Jan, let's go back on the record real quick and look at 15.

BY MR. JEFFERIES:

Q Mr. Ringer, we're looking at video clip number 15. Can you tell us where in the store that is?

A Yeah, that is the aisle with side counters with the, looks like laundry detergent and household cleaners.

Q And where is that in relation to the grocery action alley that we were looking at earlier?

A That would be directly connected to the grocery action alley.

Q Okay.

A Probably somewhere between halfway down to three-quarters down that aisle.

Q So in terms of feet roughly, if I were in the grocery action alley nearest here and then wanted to walk into this video, how many feet away would that be?

A They're connected.

Q Pardon me?

A They literally touch each other.

Q So just a step or two?

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A Literally turn left, yeah.

Q Oh, okay. So there would be nothing unusual -- you weren't there that day, so I understand. There would be nothing unusual if a customer such as Miss Jones did step on something in the action alley, ending up in this video clip number 15, looking at their foot, it's only feet away potentially, it's not like she'd have to walk half a mile to get there?

A No. It's literally connected.

Q Literally connected, so right there.

So absent a video camera pointing right at the spot in the action alley, the next best video camera would be one of these that are right nearby, like number 15?

A Yeah, I mean, they give an overview of the area.

Q Okay. Did you see any pallets or stack bases in that video 15 or is it off that fixed shelving?

A Should be off the fixed shelving.

Q Okay. I believe you're correct.

MS. BOYD: Did you show video three?

MR. JEFFERIES: Let's take a look.

Oh, yeah, video three is the --

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MS. BOYD: Yeah, your video three and my video three are different.

MR. JEFFERIES: Oh, okay.

MS. BOYD: This is the one I knew we were missing.

MR. JEFFERIES: That's interesting.

MS. BOYD: Yes.

BY MR. JEFFERIES:

Q Well, let's look at what Miss Boyd has provided that says video three, and mine and hers are apparently different. Hers says customer service overview, June 26th, 2015.

Can you tell us what part of the store we're looking at there?

A That's the service desk.

Q And where would that be in relation to the grocery action alley?

A That is actually on the GM side, right as you would come in the GM entrance.

Q Okay.

A It's immediately right there, immediately to your left as you would walk in the door.

Q Okay. To recap, in the videos that we looked at, you identified at least one wooden pallet

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in the store on the date of June 26, 2015, is that correct?

A One pallet that was on top of a stack base, yes.

Q Right. Can't say whether there were any others 'cause you can't see in the video?

A I didn't -- I couldn't say 100 percent no but it appeared most of it was stack bases.

Q Stack bases. Okay.

Mr. Ringer, I think that's it for me now. Miss Boyd might have some questions for you. If she does, there's a chance I'll have a few follow-up questions. But otherwise, that's it for me.

A Okay.

EXAMINATION

BY MS. BOYD:

Q I just have one and it's about that video that I showed -- well, I have identified as video three that Mr. Lane did not have -- I mean, not Mr. Lane, that Lane did not have.

MS. BOYD: Sorry.

MR. JEFFERIES: That's all right.

BY MS. BOYD:

Q I'm going to show a little snippet of that

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video.

MR. JEFFERIES: Yeah. Please.

BY MS. BOYD:

Q Can you see that? I know mine is much smaller than what was previously provided. I apologize for that. Can you see that okay?

A Sure. Yes, ma'am.

Q Can you identify the person at the top of the screen with the blue shirt and black pants on?

A That looks like my co-manager, Kevin Lane.

Q Now, what does it appear that he's doing in the video?

A He's bent over in front of somebody sitting in a chair. It looks like he's got something in his hand, whether it's -- looks like he's wiping something. Looks like he has, you know, something in his hand, looks like he's wiping something.

Q Okay. Is this person sitting on the bench an employee of Walmart?

A I would say not because they don't have any -- they don't have like a vest or -- you know what I'm saying?

Q Okay.

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A And not to mention that they would be way out of dress code.

Q In your opinion, does it look like he is giving her some kind of first aid?

A Yeah, it looks like he's doing, he's giving her a lot of attention. Looks like he's giving her some -- yeah. I can't imagine any other reason he'd be bent down in front of somebody basically eye level with her knees.

Q Okay. And Mr. Ringer, are you familiar with the type of pallet that Walmart sends to the store from its distribution center?

A The majority of them are, we refer to them as CHEP pallets. They're blue pallets.

Q Okay. And are those different from just a normal pallet?

A They're much heavier.

Q Okay.

A They're built to sustain -- I assume they are built to sustain much heavier weight 'cause they're much heavier when you pick them up.

Q Okay. And do you have any knowledge about what they're constructed with?

A Wood and nails.

Q Okay. Wood and nails?

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A Yes.
Q Do you know what size the nails are?
A I can tell you from my own personal experience, because my son and I actually do woodwork and we actually use pallets to build things out of, most of those nails, because we pull those pallets apart, most of those nails will be at least two and a half to three inches long that hold those pallets together.
Q Okay. And I'm going to show you a photograph.

MS. BOYD: I'd like to mark that Defendant's Exhibit 1.

(Marked for identification was Defendant's Exhibit 1.)

BY MS. BOYD:
Q And I represent to you that this is the nail that we measured and photographed at plaintiff's counsel's office as the nail in question for this incident. What size does that nail appear to be from the photo?
A Barely an inch long.
Q Are these the type of nails that you're used to seeing in the pallets?
A No, ma'am.

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Q Have you ever seen these types of nails in the pallets delivered to Walmart?

A No, ma'am.

Q All right.

MS. BOYD: I have no other questions.

EXAMINATION

BY MR. JEFFERIES:

Q I just have a quick follow-up. You mentioned that the blue pallets are much heavier pallets and those would come from the Walmart Distribution Center?

A Yes.

Q Okay. Why do you call them blue pallets?

A 'Cause they're literally painted with blue paint to identify them so that we can make sure we send those back to the distribution center for reuse.

Q Who do they belong to?

A That I don't know.

Q But you send -- you receive them, you receive the blue pallets from the Walmart Distribution Center and you send the blue pallets back to the Walmart Distribution Center?

A Yes.

Q And they're built of wood and nails and

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they're painted blue?

A They're not fully blue but, like, the big wooden blocks are generally painted blue.

Q Okay. In the corners of these pallets where the nails are driven in, when you see one of these that's brand-new just the way it's built, how many nails would you see in there typically?

A You can see anywhere from four to six nails easily.

Q Okay. And these nails, when you've taken certain pallets apart, you've observed two- to three-inch long nails?

A Yeah.

Q How many pallets do you think you've taken apart?

A Hundreds.

Q Back at the Walmart Distribution Center, do you have any knowledge of what goes on there?

A No, sir.

Q When you get these blue pallets in, are they all brand-new or do they use them over and over?

A Pallets are reused.

Q They're reused.

They ever feel, for lack of a

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better term, loose like they're getting -- they're aging, wood chipping off?

A Sure.

Q Do you know what happens with those pallets?

A We ship them back.

Q You ship them back?

A (No audible response.)

Q Do you know what the distribution center does with them?

A No, sir.

Q Do you know what a pallet costs to buy new?

A No, sir.

Q Walmart ever tell you that they just, if they get loose, they just throw them away?

A No, sir.

Q Tell me about the pallets you've gotten personally, how do you get those?

A I buy them.

Q You buy them?

A (No audible response.)

Q And they're, what, used, former -- are they blue pallets are or are they just pallets?

A They're just pallets.

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Q Okay. So the pallets that you're talking about having pulled nails out of are not the blue pallets that Walmart uses?

A No, but -- no, they're not the blue pallets that Walmart uses.

Q Okay. Have you ever taken apart one of the blue pallets that Walmart uses?

A I've seen them taken apart, yeah.

Q Where did you see that?

A I've seen them where the wood will split on them and they will come apart and I've seen the nails that are in them.

Q Did you measure those nails?

A Not with a ruler, but I can tell you it was much longer than an inch.

Q The nails you saw?

A Yes.

Q Okay. Any way to say how long the other nails were in there? Any way to know there wasn't a one-inch-long nail in the pallet?

A There's no way to say beyond a shadow of a doubt there would never be a one-inch nail in there, no, but if you look at the width of a pallet board which is going to be probably minimally a half-inch to three-quarters inch

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thick, right, in order to hold that on there, you would want something more than an inch going down to secure those boards.

Q When you initially construct that thing, yeah.

A (No audible response.)

Q What about repairs, any idea of how the repairs happen at the Walmart Distribution Center?

A No, sir, I have no knowledge of that.

Q So you could have a blue pallet that starts off life great, starts getting a little loosey-goosey, distribution center knocks a few more nails into it to hold it together, back into service it goes?

A I have no knowledge.

Q You wouldn't know either way?

A No, sir.

Q I'll show you a picture.

MS. BOYD: I have that printed if you want it.

MR. JEFFERIES: Yeah, let's put it in as an exhibit.

BY MR. JEFFERIES:

Q We're looking at this on the screen. Is this the sort of blue paint that you're talking

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about?
A Yes.
Q Okay. Does this look like a blue pallet to you?
A Yes, sir.
Q Is that the -- the brown floor here, is that the same color floor as in the Walmart there?
A Yes.
Q Okay. Does this look like a brand-new blue pallet to you?
A No.
Q And why do you say that?
A Obviously has some wear and tear on it.
Q Pieces of wood chipped off, that sort of thing?
A (No audible response.)
Q You see some nails in this blue pallet, maybe one, two, three, four, five, maybe six, there might be more, I can't really tell. Do they look like they're in any sort of geometrical pattern?
A No. They look kind of random.
Q They look kind of random.
Is that how one of these blue pallets looks when it's brand-new and you see it, the nails are just kind of nailed in randomly on the

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end, or are they more craftsmanlike put in?

A No, I don't think there's anything craftsmanlike about a pallet.

Q So as you look at this blue pallet sitting here on that Walmart brown floor, can you tell how long any of those nails are?

A From that view, no. They're long enough that they would have gone through that board on top.

Q That little, that one that's, what, three-eighths, half an inch maybe?

A Half-inch board.

Q Half-inch board.

Can you tell whether those are all the original nails put in when the pallet was built?

A No.

Q Some of them could have been added later?

A Could have been.

Q With respect to the one pallet that we saw in the video earlier on June 26, 2015, do you have any idea how long the nails were that were in that blue pallet?

A Those I would say again were probably, again, I don't -- I didn't take that pallet

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apart --

Q So you don't know?

A -- but I deal with those type -- those type of pallets are what I deal with and those are generally two- to three-inch nails.

Q The ones you've seen?

A (No audible response.)

Q What about the other blue pallets that could have been in the store that day, measure any of those nails?

A No. I've said I've never taken any of those apart purposefully.

Q What we've been talking about here is this photograph that we're going to label Exhibit Number, what are we up to? 3?

A I think 2.

MS. BOYD: I think that's yours. Oh, mine is Exhibit 1. I guess since you're plaintiff --

MR. JEFFERIES: Yeah, call it Plaintiff's 1. I think that's all we're going to have. Plaintiff's 1, picture of the nails in the blue pallet.

(Marked for identification was Plaintiff's Exhibit 1.)

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BY MR. JEFFERIES:

Q Mr. Ringer, do you have any idea who I should speak to to learn what sort of rehabilitation, if any, happens to these blue pallets when they go back to the distribution center?

A I have no idea.

Q Walmart corporate could tell us that?

A Walmart corporate would be the one to contact, yes.

Q All right. In looking at this nail in Defendant's Exhibit Number 1, is there any way that you can say that that nail didn't come out of a blue pallet in your store?

A I can't say that it did or it didn't.

Q You just don't know?

A No idea.

MR. JEFFERIES: That's it for you?

MS. BOYD: I'm good.

MR. JEFFERIES: I'm good too. We're done.

(Signature waived, and the deposition was concluded at 12:16 p.m.)

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STATE OF SOUTH CAROLINA)
: CERTIFICATE
COUNTY OF DORCHESTER)

I, Janice D. Hayward, Registered Merit Reporter and Notary Public, certify that I was authorized to and did stenographically report the foregoing deposition, and that the transcript is a true record of the testimony given by the witness.

I further certify that the witness was duly sworn and cautioned by me to tell the truth, the whole truth and nothing but the truth. I certify that the same was reduced to typewritten form from my original stenograph notes by computer-aided transcription.

I further certify that I am not of counsel or kin to any of the parties to this cause of action nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF I have hereunto set my hand and seal this the 10th day of April 2019.

_____
Janice D. Hayward, RMR
Notary Public, South Carolina
My Comm. Expires 10-10-22

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IN THE STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS FOR THE 12TH JUDICIAL CIRCUIT
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; 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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I N D E X

WITNESS:

MARSHALL S. WHITE, PH.D., PAGE

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Examination by Mr. Willey.....139
Examination by Ms. Bagley.....139

E X H I B I T S

(Attached to the Transcript)

Exhibit 1.....111
Color copy of photo showing stacks of pallets
Exhibit 2.....112
Color copy of photo showing white wood GMA style pallet, partial four-way
Exhibit 3.....114
Color copy of photo showing stacks of pallets
Exhibit 4.....115
Color copy of photo showing three pallets
Exhibit 5.....114
Color copy of photo showing a pallet
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)

Exhibit 8.....116
Color copy of photo showing a pallet
Exhibit 9.....116
Color copy of photo showing a pallet
Exhibit 10.....117
Color copy of photo showing a pallet
Exhibit 11.....117
Color copy of photo showing a pallet
Exhibit 12.....121
Color copy of photo showing pallet display of Algaecide Clarifier
Exhibit 13.....121
Color copy of photo showing display-ready corrugated shelf rack sitting on a half pallet
Exhibit 14.....no reference
Color copy of photo showing pallet display of Algaecide Clarifier
Exhibit 15.....122
Color copy of photo showing a kite display on a pallet
Exhibit 16.....122
Color copy of photo showing a kite display on a pallet

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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.