

FILED

JAN 08 2024

CHARLES I. ... III
KNOX COUNTY
CIRCUIT COURT CLERK

IN THE CIRCUIT COURT FOR KNOX COUNTY
SIXTH JUDICIAL DISTRICT AT KNOXVILLE

STATE OF TENNESSEE,
ex rel. JONATHAN SKRMETTI,
ATTORNEY GENERAL AND REPORTER,
Plaintiff,

v.

CVS HEALTH CORPORATION; CVS
PHARMACY, INC.; and WALMART, INC.,
Defendants.

Case No. 1-365-23

FINAL CONSENT JUDGMENT AND DISMISSAL WITH PREJUDICE

The State of Tennessee ("State") and Walmart Inc. ("Walmart") (together with the State, the "Parties," and each a "Party") have entered into a consensual resolution of the above-captioned litigation (the "Action") pursuant to a settlement agreement dated as of November 14, 2022 (as subsequently updated) (the "Agreement"), a copy of which is attached hereto as Exhibit A. The Agreement shall become effective by its terms upon the entry of this Final Consent Judgment (the "Consent Judgment") by the Court without trial or adjudication of any contested issue of fact or law, and without finding or admission of wrongdoing or liability of any kind.

RECITALS:

1. Each Party warrants and represents that it engaged in arm's-length negotiations in good faith. In hereby executing the Agreement, the Parties intend to effect a good-faith settlement.
2. The State, acting through its Attorney General, has determined that the Agreement is in the public interest.

3. Walmart is entering into this Consent Judgment solely for the purpose of settlement, and nothing contained herein may be taken as or construed to be an admission or concession of any violation of law, rule, regulation, or ordinance, or of any other matter of fact or law, or of any fault, liability, or wrongdoing, all of which Walmart denies. Walmart denies the allegations against it and denies that it has any liability whatsoever to the State, its Subdivisions, and/or (a) any of the State's or its Subdivisions' departments, agencies, divisions, boards, commissions, Subdivisions, districts, instrumentalities of any kind and attorneys, including its Attorney General, and any person in his or her official capacity whether elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, (b) any public entities, public instrumentalities, public educational institutions, unincorporated districts, fire districts, irrigation districts, water districts, law enforcement districts, emergency services districts, school districts, hospital districts and other Special Districts in the State, and (c) any person or entity acting in a *parens patriae*, sovereign, quasi-sovereign, private attorney general, *qui tam*, taxpayer, or other capacity seeking relief on behalf of or generally applicable to the general public, and (d) any other person or entity alleging harm or damages related to prescription opioids.

4. The Parties recognize that the outcome of the Action is uncertain and a final resolution through the adversarial process likely will require protracted litigation.

5. The Parties agree to the entry of the injunctive relief terms attached as Exhibit P to the Agreement.

6. Therefore, without any admission of liability or wrongdoing by Walmart or any other Released Entities (as defined in the Agreement), and without this Consent Judgment constituting evidence against or admission by anyone with respect to any issue of fact or law, the

Parties now mutually consent to the entry of this Consent Judgment and agree to dismissal of the claims with prejudice pursuant to the terms of the Agreement to avoid the delay, expense, inconvenience, and uncertainty of protracted litigation.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

In consideration of the mutual promises, terms, and conditions set forth in the Agreement, the adequacy of which is hereby acknowledged by all Parties, it is agreed by and between Walmart and the State, and adjudicated by the Court, as follows:

1. The foregoing Recitals are incorporated herein and constitute an express term of this Consent Judgment.
2. The Parties have entered into a full and final settlement of all Released Claims of Releasors (as defined in the Agreement) against Walmart and the Released Entities pursuant to the terms and conditions set forth in the Agreement. This Consent Judgment summarizes and gives effect to those terms. In the event of a conflict between the terms of the Agreement (including its exhibits) and language in this Consent Judgment, the terms of the Agreement shall govern. Nothing in this Consent Judgment shall have the effect of expanding, diminishing, explaining, or otherwise modifying any term of the Agreement.
3. The "Definitions" set forth in Section I of the Agreement are incorporated by reference into this Consent Judgment. The State is a "Settling State" within the meaning of the Agreement. Unless otherwise defined herein, capitalized terms in this Consent Judgment shall have the same meaning given to them in the Agreement.
4. The Parties agree that the Court has jurisdiction over the subject matter of the Action and over the Parties with respect to the Action and this Consent Judgment. This Consent Judgment shall not constitute and shall not be construed or used as a waiver of any jurisdictional defense Walmart or any other Released Entity may raise in any other proceeding.

5. The Court finds that the Agreement was entered into in good faith.

6. The Court finds that entry of this Judgment is in the public interest and reflects a negotiated settlement agreed to by the Parties. The State's claims against Walmart are hereby **DISMISSED WITH PREJUDICE**, subject to a retention of jurisdiction by the Court as provided herein and in the Agreement.

7. By this Judgment, the Agreement is hereby approved by the Court, and the Court hereby adopts the Agreement's terms as its own determination of this matter and the Parties' respective rights and obligations.

8. The Court shall have authority to resolve disputes identified in Section VI.F.2 of the Agreement, governed by the rules and procedures of the Court.

9. The Tennessee State-Subdivision Opioid Abatement Agreement as amended in 2023, a copy of which is attached hereto as Exhibit B and as incorporated into the Agreement pursuant to Exhibit O of the Agreement, has been approved by the State and its local governments so that it is effective pursuant to the Agreement. By this Judgment, the Tennessee State-Subdivision Opioid Abatement Agreement as amended in 2023 is hereby approved by the Court as the means by which relevant funds paid pursuant to the Agreement will be divided within the state, subject to the full acceptance by any Subdivision receiving such funds of the terms of the Agreement, including the releases provided therein.

10. The Parties have satisfied the Condition to Effectiveness of Agreement set forth in Section II.C of the Agreement and the Release set forth in Sections X.A and G of the Agreement, as follows:

- a. The Attorney General of the State exercised the fullest extent of his powers to release Walmart and all other Released Entities from all Released Claims pursuant to the release attached hereto as Exhibit C (the "Release").

- b. The State Participation Threshold was met by the State Participation Date, and the Subdivision Participation Thresholds were met by the Threshold Subdivision Participation Date.
- c. The Subdivision Participation Form for each Participating Subdivision in the State that has joined to date has been made available to Walmart. As stated in the Subdivision Participation Form, and for the avoidance of doubt, nothing in the Subdivision Participation Form executed by the Participating Subdivisions is intended to modify in any way the terms of the Agreement to which the Participating Subdivisions agree. As stated in the Subdivision Participation Form, to the extent the terms of the executed version of the Subdivision Participation Form differ from the terms of the Agreement in any respect, the terms of the Agreement controls.
- d. Pursuant to Section II.D of the Agreement and Paragraph 2 of the Subdivision Participation Form, each Litigating Subdivision in the State that has become a Participating Subdivision is dismissing with prejudice any Released Claims that it has filed against Walmart or any of the Released Entities.

11. Release. The Parties acknowledge that the release provisions in Section X of the Agreement and the Release, which are incorporated by reference herein, are an integral part of this Consent Judgment. Pursuant to the Agreement and the Release and without limitation and to the maximum extent of the power of the State's Attorney General, Walmart and the other Released Entities are, as of the Effective Date, hereby released from any and all Released Claims of (a) the State and its Participating Subdivisions and any of their departments, agencies, divisions, boards, commissions, Subdivisions, districts, instrumentalities of any kind and attorneys, including the State's Attorney General, and any person in his or her official capacity whether elected or appointed to serve any of the foregoing, and any agency, person, or other entity claiming by or through any of the foregoing, (b) any public entities, public instrumentalities, public educational institutions, unincorporated districts, fire districts, irrigation districts, water districts, law

enforcement districts, emergency services districts, school districts, hospital districts, and other Special Districts in the State, and (c) any person or entity acting in a *parens patriae*, sovereign, quasi-sovereign, private attorney general, *qui tam*, taxpayer, or other capacity seeking relief on behalf of or generally applicable to the general public with respect to the State or any Subdivision in the State, whether or not any of them participate in the Agreement. Pursuant to the Agreement and the Release and to the maximum extent of the State's power, Walmart and the other Released Entities are, as of the Threshold Subdivision Participation Date, hereby released from any and all Released Claims of (1) the State, (2) all past and present executive departments, state agencies, divisions, boards, commissions and instrumentalities with the regulatory authority to enforce state and federal controlled substances acts, and (3) any of the State's past and present executive departments, agencies, divisions, boards, commissions and instrumentalities that have the authority to bring Claims related to Alleged Harms and/or Covered Conduct seeking money (including abatement and/or remediation) or revocation of a pharmaceutical distribution or dispensing license. For the purposes of clause (3) above, executive departments, agencies, divisions, boards, commissions, and instrumentalities are those that are under the executive authority or direct control of the State's Governor. Further, the provisions set forth in Section X of the Agreement are incorporated by reference into this Consent Judgment as if fully set forth herein. The Parties acknowledge, and the Court finds, that those provisions are an integral part of the Agreement and this Consent Judgment and shall govern the rights and obligations of all participants in the settlement, including without limitation the State, Walmart, and the Released Entities.

12. Release of Unknown Claims. The State (for itself and its Releasers) expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by

any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

General Release; extent. A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

13. The State may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but the State (for itself and its Releasers) expressly waives and fully, finally, and forever settles, releases and discharges, through the Agreement and Release, any and all Released Claims that may exist as of the Threshold Subdivision Participation Date but which the State does not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would have materially affected the State's decision to enter into the Agreement.

14. The Court finds that the releases are given in good faith and are effective as to all Releasers and Released Entities.

15. Statutory Release. The Attorney General and Reporter, with written approval of the Governor and Comptroller of the Treasury, has issued a Declaration of a Statewide Opioid Settlement Agreement Release and Release of Claims Regarding Opioids Pursuant to Tenn. Code Ann. § 20-13-203, which releases any Released Claims of governmental entities against Walmart and Walmart's affiliates, subsidiaries, and other related entities for activities related to the manufacture, marketing, distribution, dispensing, or sale of opioids, or related activities. The Declaration of a Statewide Opioid Settlement Agreement Release and Release of Claims Regarding Opioids Pursuant to Tenn. Code Ann. § 20-13-203 is attached hereto as Exhibit D.

16. Costs and Fees. The Parties will bear their own costs and attorneys' fees except as otherwise provided in the Agreement.

17. No Admission of Liability. Walmart is consenting to this Consent Judgment solely for the purpose of effectuating the Agreement, and nothing contained herein may be taken as or construed to be an admission or concession of any violation of law, rule, or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, all of which Walmart expressly denies. Neither Walmart nor any other Released Entity admits that it caused or contributed to any public nuisance, and neither Walmart nor any other Released Entity admits any wrongdoing that was or could have been alleged by the State, its Participating Subdivisions, or any other person or entity. No part of this Consent Judgment shall constitute evidence of any liability, fault, or wrongdoing by Walmart or any other Released Entity. The Parties acknowledge that payments made under the Agreement are not a fine, penalty, or payment in lieu thereof and are properly characterized as described in Section V.F of the Agreement.

18. No Waiver. This Consent Judgment is entered based on the Agreement without trial or adjudication of any contested issue of fact or law or finding of liability of any kind. This Consent Judgment shall not be construed or used as a waiver of Walmart's right, or any other Released Entity's right, to defend itself from, or make any arguments in, any other regulatory, governmental, private individual, private entity, or class claims or suits relating to the subject matter or terms of this Consent Judgment. Notwithstanding the foregoing, the State may enforce the terms of this Consent Judgment as expressly provided in the Agreement.

19. No Private Right of Action. This Consent Judgment is not for use by any third party for any purpose, including submission to any court for any purpose, except Participating Subdivisions for the limited purposes set forth in Section VI.A of the Agreement. Except as

expressly provided in the Agreement, no portion of the Agreement or this Consent Judgment shall provide any rights to, or be enforceable by, any person or entity that is not a Settling State or Released Entity. The State shall allow Participating Subdivisions in the State to notify it of any perceived violations of the Agreement or this Consent Judgment. No Settling State, including the State, may assign or otherwise convey any right to enforce any provision of the Agreement.

20. Admissibility. This Consent Judgment shall not be admissible in any other case against Walmart or any other Released Entity. This Consent Judgment shall not be binding on Walmart or any other Released Entity in any respect other than in connection with the enforcement of this Consent Judgment or the Agreement in the State. For the avoidance of doubt, nothing herein shall prohibit Walmart or any other Released Entity from entering this Consent Judgment or the Agreement into evidence in any litigation or arbitration concerning (1) Walmart's right to coverage under an insurance contract or (2) the enforcement of the releases provided for by the Agreement and this Consent Judgment.

21. Preservation of Privilege. Nothing contained in the Agreement or this Consent Judgment, and no act required to be performed pursuant to the Agreement or this Consent Judgment, is intended to constitute, cause, or effect any waiver (in whole or in part) of any attorney-client privilege, work product protection, patient-safety work product protection, or common interest/joint defense privilege, and each Party agrees that it shall not make or cause to be made in any forum any assertion to the contrary.

22. Mutual Interpretation. The Parties agree and stipulate that the Agreement was negotiated on an arm's-length basis between parties of equal bargaining power and was drafted jointly by counsel for each Party. Accordingly, the Agreement is incorporated herein by reference and shall be mutually interpreted and not construed in favor of or against any Party.

23. Retention of Jurisdiction. The Court shall retain jurisdiction over the Parties for the limited purpose of the resolution of disputes identified in Section VI.F.2 of the Agreement. The Court shall have jurisdiction over Participating Subdivisions in the State for the limited purposes identified in the Agreement.

24. Successors and Assigns. This Consent Judgment is binding on Walmart's successors and assigns.

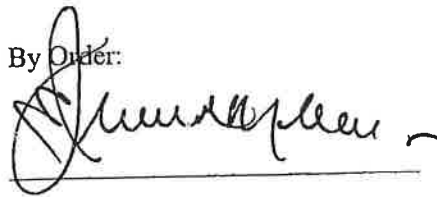
25. Modification. This Consent Judgment shall not be modified (by the Court, by any other court, or by any other means) without the consent of the State and Walmart. Modification of the Agreement shall be governed by Section XII.W of the Agreement.

26. This Judgment is certified as a final judgment pursuant to Tennessee Rule of Civil Procedure 54 and adjudicates all matters at issue in this case as to Walmart. Pursuant to Tenn. Code Ann. § 47-18-116, no costs shall be taxed against the Attorney General. Court costs are taxed against Defendants, with one-half assessed to Walmart and one-half assessed to the CVS Defendants, for which execution may issue if necessary.

So ORDERED this 3rd day of January, 2023. ~~2023~~ 2024.

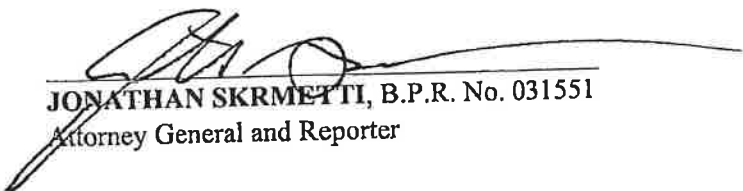
Enter:

By Order:



APPROVED, AGREED TO AND PRESENTED BY:

FOR STATE OF TENNESSEE:



JONATHAN SKRMETTI, B.P.R. No. 031551
Attorney General and Reporter



MICHAEL B. LEFTWICH, B.P.R. No. 017454

Senior Deputy Attorney General

HAMILTON MILLWEE, B.P.R. No. 038795

Assistant Attorney General

Office of the Attorney General

Consumer Protection Division

UBS Building, 20th Floor

315 Deaderick Street

Nashville, Tennessee 37243

Phone: (615) 532-7801

Fax: (615) 532-2910

State of Tennessee v. CVS Health Corporation et al., Walmart Final Consent Judgment and Dismissal with Prejudice

APPROVED, AGREED TO, AND PRESENTED BY:

For Walmart:



JOSHUA L. BURGNER, B.P.R. No. 29077

Dickinson Wright PLLC
424 Church Street, Suite 800
Nashville, TN 37219-2395
(615) 244-6538

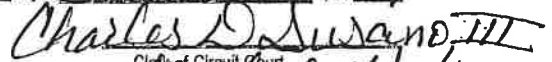
jburgener@dickinsonwright.com

Attorneys for Walmart, Inc.

State of Tennessee v. CVS Health Corporation et al., Walmart Final Consent Judgment and Dismissal with Prejudice

CERTIFICATE

I, Charles D. Susano III hereby certify that I have mailed a true and accurate copy of the foregoing ORDER, to all parties or their attorney of record who have not approved same by placing same in the U. S. Mail, postage prepaid this 2nd day of JANUARY, 2024



Clerk of Circuit Court

By 
Deputy Clerk