

IN THE CIRCUIT COURT OF LONOKE COUNTY
THIRD DIVISION

Case No.CV-2010-534

KATHY CANAMORE, on Behalf of)
Herself and All Others Similarly Situated,)

Plaintiff)

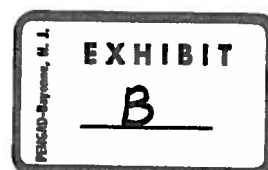
vs.)

WAL-MART STORES, INC. and BCBG)
MAX AZRIA GROUP, INC.)

Defendants)

FIRST AMENDED
CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL



Plaintiff Kathy Canamore (“Plaintiff”) brings this action on behalf of herself and as a representative of a class of consumers who purchased the “Miley Cyrus” line of children’s jewelry from Wal-Mart Stores, Inc. manufactured and supplied by BCBG Max Azria Group, Inc. (“Defendants”) and for her First Amended Class Action Complaint, amending her Complaint (herein the “Complaint”) originally filed on July 2, 2010, states:

JURISDICTION AND VENUE

1. Jurisdiction is proper in this Court under Ark. Code Ann. § 16-13-201.
2. Defendants are subject to personal jurisdiction in this Court because they transact business in this State, have engaged in actionable conduct within this State, and their acts and omissions giving rise to Plaintiff’s and the class claims occurred in this State and caused damages in this State.
3. Venue is proper in this Court in that the wrongful, deceptive, and unconscionable acts complained of occurred within this county.
4. Plaintiff disclaims any cause of action arising under the Constitution, treaties or other laws of the United States, including any act or omission by any officer of the United States, or any agent or person acting on behalf of such individual. No claim under admiralty or maritime law is alleged. To the extent this paragraph conflicts with any other allegations contained herein, this paragraph controls.

NATURE OF THE ACTION

5. Plaintiff, on behalf of herself and the putative class, seeks legal remedies for herself and the Class for Defendants’ violations of the Arkansas Deceptive Trade Practices Act (“ADTPA”) and other comparable consumer protection and deceptive trade practices laws of other states.

6. As alleged more fully below, Defendants wrongfully distributed, marketed, and sold the “Miley Cyrus” line of jewelry containing cadmium (the “Miley Cyrus Products”), a substance that is (among other things) widely recognized as a human carcinogen.

7. As a result of Defendants’ conduct, Plaintiff and members of the Class purchased one or more of the Miley Cyrus Products and unwittingly exposed their children to the carcinogen.

8. At all relevant times, Defendants were in a superior position relative to that of Plaintiff and members of the Class to know that their Miley Cyrus Products contained cadmium.

PARTIES

9. At all relevant times to this matter, Plaintiff Kathy Canamore was a resident of Lonoke County, Arkansas. During the class period, Plaintiff purchased Miley Cyrus jewelry for her daughter from Wal-Mart Stores, Inc.’s store located in Lonoke, Arkansas. Had Plaintiff known that the jewelry contained cadmium, she would not have purchased it or exposed her child to the substance.

10. Defendant Wal-Mart Stores, Inc. (“Wal-Mart”) is organized and existing under the laws of the State of Delaware with its principal place of business located in 702 S.W. 8th Street, Bentonville, Arkansas. Wal-Mart operates retail stores in various formats around the world. Its mission is to “save people money so they can live better.” Its operations comprise three business segments: Walmart U.S., International, and Sam’s Club. Wal-Mart’s business segments reported combined net sales of over \$400 billion during the fiscal year ended January 31, 2010. Wal-Mart is the largest retailer of jewelry in the world¹ and states that during 2008 it

¹ (http://walmartstores.com/sites/sustainabilityreport/2009/en_sp_Clothing.html)(accessed May 30, 2010).

implemented a pilot project (“Love, Earth®”) that Wal-Mart explains: “Wal-Mart and Responsible Jewelry...Wal-Mart has developed a responsible sourcing strategy with a vision to provide Wal-Mart and Sam’s Club customers with affordable, quality products that have a net positive effect on the environment and human health and well being.”² During October 2008, Wal-Mart convened its China Sustainability Summit at which it announced initiatives that included Wal-Mart supplier audits’ focus on management of toxic substances and on responsible sourcing.

11. Defendant BCBG Max Azria Group, Inc., is a California corporation that may be served with this Complaint through its counsel Erica Alterwitz, BCBG Max Azria Group, Inc., 2761 Fruitland Avenue, Vernon, California 90058.

FACTUAL ALLEGATIONS

A. Children Are More Susceptible To Chemical Toxicity Than Adults.

12. The fact that children are more susceptible to chemical toxicity than adults is widely recognized.

13. The National Academy of Sciences published a report in 1993 entitled “Pesticides in the Diets of Infants and Children” (“NAS Report”) explaining that children are not little adults with respect to potential chemical toxicities:

A fundamental maxim of pediatric medicine is that *children are not “little adults.”* Profound differences exist between children and adults. Infants and children are growing and developing. Their metabolic rates are more rapid than those of adults. There are differences in their ability to activate, detoxify, and excrete xenobiotic compounds. All these *differences can affect the toxicity of*

² (http://www.loveearthinfo.com/About_Responsible_Jewelry.htm)(accessed May 30, 2010).

pesticides in infants and children, and for these reasons the toxicity of pesticides is frequently different in children and adults....³

14. The Natural Resources Defense Council (“NRDC”) issued a report in 1997 entitled “Our Children At Risk; The 5 Worst Environmental Threats To Their Health,” explaining that children are relatively more susceptible than are adults to potential chemical toxicities:

Pound for pound, children breathe more air, drink more water, and consume more food than adults. This higher rate of intake means that *children will receive higher doses* of whatever contaminants are present in the air, water, or food. In addition, *infants have a relatively greater surface area of skin than adults, thereby increasing their potential dermal absorption of certain compounds....* A typical newborn weighs one-twentieth of the weight of an adult male, but the infant’s surface area is one-eighth as great. Therefore, the total area of skin that could be exposed to a chemical...is two and a half times as great per unit of body weight in the infant as in the adult.⁴

15. The United States Environmental Protection Agency (“EPA”) issued its “Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens,” (“EPA Supplemental Guidance”) in early 2005, recognizing that toxicokinetic and toxicodynamic differences between children and adults are greatest during the first two years of life.⁵

16. EPA’s Supplemental Guidance observes:

Children, in general, are expected to have some exposures that differ from those of adults (either higher or lower), due to differences in size, physiology, and behavior. For example, children are generally assumed to eat more food and drink more water relative to their body weight than adults. Children’s normal activities, such as putting their hands into their mouths or playing on the ground,

³ (NAS Report, at 3-4)(emphasis added).

⁴ (NRDC Report, Ch. 2).

⁵ U.S. EPA Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens. U.S. Environmental Protection Agency, Washington, DC, EPA/630/R-03/003F, 32 (2005).

can result in exposures to contaminants that adults do not encounter. Moreover, children and adults exposed to the same concentration of an agent in food, water, or air may receive different (higher or lower) internal doses due to differences, for example, in intake, metabolism, or absorption rates.⁶

17. EPA then applied adjustments to reflect the potential for early-life exposure to carcinogens to make a greater contribution to cancers appearing later in life:

The 10-fold adjustment represents an approximation of the weighted geometric mean tumor incidence ratio from juvenile or adult exposures in the repeated dosing studies ... This adjustment is applied for the first 2 years of life, when toxicokinetic and toxicodynamic differences between children and adults are greatest ... The 3-fold adjustment represents an intermediate level of adjustment that is applied after 2 years of age through <16 years of age.⁷

18. Later in 2005, the Intergovernmental Forum on Chemical Safety's ("IFCS") Children and Chemical Safety Working Group published a report entitled "Chemical Safety and Children's Health; Protecting the world's children from harmful chemical exposures: a global guide to resources" ("2005 IFCS Report").

19. In its 2005 IFCS Report, IFCS concluded that children are uniquely prone to harmful chemical exposures and their adverse health effects because:

- *Children's exposure begins at conception*, as chemicals in a pregnant woman's body cross the placenta and affect the embryo or fetus during critical periods of development. Some chemicals also accumulate in breast milk, compromising (though not negating) the benefits of this important food for infants.
- Even after birth, children's bodies remain immature, with *underdeveloped detoxification mechanisms* to protect them from chemicals.
- Their brains and other organ systems are constantly developing, undergoing periods of particular sensitivity to damage or disruption.
- Compared with adults, children breathe faster and eat and drink more in proportion to their bodyweight, resulting in greater exposure to chemicals in air, food, and water.

⁶ *Id.* at 30.

⁷ *Id.* at 32.

- Children spend more time outdoors, and often play on the ground or the floor, where chemicals such as pesticides and heavy metals are present. In addition, young children frequently place their hands or other objects in their mouths, making ingestion of chemicals more likely.
- Pregnant women and *young children are often at higher risk* of inhaling or coming into contact with chemicals used indoors, such as cleaning solutions, paints, cosmetics, and other household and consumer products.
- Children are less aware of potential chemical risks around them, and are therefore *less likely to avoid harmful exposures*.⁸

20. Environmental Working Group (“EWG”), a nonprofit environmental research organization whose goals include to “protect the most vulnerable segments of the human population -- children, babies, and infants in the womb -- from health problems attributed to a wide array of toxic contaminants,” also explains that children are more susceptible to effects from chemical toxins than are adults:

Consider the skin. Studies confirm what any parent knows: an infant’s skin is soft and delicate (Fluhr 2000; Giusti 2001). Infant skin is also considerably thinner than adult skin; in fact, the thickness of children’s skin increases linearly with age, typically reaching a maximum at age 20 (Tan 1982). The skin of a newborn may well be more permeable to specific chemicals than the skin of an adult. Compounding this fact, the surface area of a child’s skin relative to body weight is greater than adults, such that the potential dose of a chemical following dermal exposure is likely to be about 3 times greater in infants than in adults (West 1981; Clewell 2002).⁹

21. As a result of all these reports, Defendants reasonably should have known of the necessity to avoid distributing, marketing, and/or selling products intended for use by children of any age that contain hazardous substances, including any known carcinogen.

⁸ (2005 IFCS Report, at 3 (emphasis in original)(footnote omitted)).

⁹ (<http://www.cosmeticsdatabase.com/special/parentsguide/children.php>)(accessed May 30, 2010).

B. Cadmium and Why it is Harmful.

22. Cadmium is a high production volume chemical according to EPA.

23. Cadmium's primary use has been in paint pigments, batteries, alloys, electroplating and coating, and stabilizers for plastics.

24. "There's nothing positive that you can say about this metal. It's a poison," said Bruce A. Fowler, a toxicologist at the U.S. Centers for Disease Control and Prevention.¹⁰ The United States Agency for Toxic Substances & Disease Registry ("ATSDR") 2007 priority list of 275 hazardous substances ranks cadmium as number 7.¹¹

25. The National Toxicology Program ("NTP") *Report On Carcinogens, Eleventh Edition*, states in part: "Cadmium and cadmium compounds are *known to be human carcinogens* based on sufficient evidence of carcinogenicity in humans, including epidemiological and mechanistic information that indicate a causal relationship between exposure to cadmium and cadmium compounds and human cancer."¹²

26. Similarly, the International Agency for Research on Cancer ("IARC") states "Cadmium and cadmium compounds are carcinogenic to *humans* (Group 1)."¹³

27. The EPA determined that cadmium as a probable human carcinogen.¹⁴

¹⁰

(http://www.boston.com/business/articles/2010/01/11/ap_report_cadmium_found_in_some_chinese_made_childrens_jewelry?mode=PF)(accessed May 30, 2010).

¹¹ (<http://www.atsdr.cdc.gov/cercla/07list.html>).

¹² (ntp.niehs.nih.gov/ntp/roc/eleventh/profiles/s028cadm.pdf).

¹³ (<http://www.inchem.org/documents/iarc/vol58/mono58-2.html>).

¹⁴ (<http://www.epa.gov/ttn/atw/hlthef/cadmium.html>).

28. Although the Arkansas Public Employees' Chemical Right To Know Act does not apply to labeling of consumer products, the Act manifests this State's policy that public employees must be protected from hazardous chemicals – namely, any chemical which is a physical hazard or a health hazard including (in part) chemicals which are carcinogens, toxic or highly toxic agents, reproductive toxins, or neurotoxins.¹⁵

29. Other States also recognize the dangers associated with cadmium. For example, California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") lists cadmium among the chemicals known to the State to be a carcinogen, a developmental toxicant, and a reproductive toxicant.

30. Humans are exposed to cadmium by consumption of food and drinking water, inhalation of cadmium-containing particles from ambient air or cigarette smoke, or ingestion of contaminated soil and dust.¹⁶ Another route of exposure is through the skin.¹⁷

C. Wal-Mart's Knowledge That Certain Products Supplied To It By China-Based Manufacturers May Contain Hazardous Substances.

31. At all relevant times, Defendants were in a superior position (relative to Plaintiff and members of the Class) to know that its Miley Cyrus Products could and, here, did contain a hazardous substance.

¹⁵ See Ark. Code Ann. § 8-7-1001, *et seq.*

¹⁶ See, e.g., ntp.niehs.nih.gov/ntp/roc/eleventh/profiles/s028cadm.pdf.

¹⁷ See e.g., Godt, *et al.*, "The toxicity of cadmium and resulting hazards for human health", *Journal of Occupational Medicine and Toxicology* 2006, 1:22.

32. Below is a list of incidents involving Wal-Mart's sale of products manufactured in China that contained hazardous substances:

a. In May 2007, Wal-Mart reportedly pulled sets of baby bibs from its stores nationwide after the bibs tested positive for high levels of lead¹⁸;

b. In September 2007, Wal-Mart announced a recall of its Sand-N-Sun flip flops after reports that consumers were suffering chemical burns on their feet¹⁹;

c. In October 2007, Wal-Mart reportedly issued a recall of lead-tainted toys²⁰; and

d. In April and June 2008, the Consumer Product Safety Commission issued an announcement concerning Wal-Mart's recall of charm key chains manufactured in China that contained lead.²¹

33. In addition, during 2009 Wal-Mart reportedly implemented (pursuant to its Global Responsible Sourcing Initiative) a plan to keep close track of the factories, including those in China, from which its products originate for adherence to stricter ethical and environmental standards and higher standards of product and safety, among other requirements for suppliers who want to do business with Wal-Mart.²²

¹⁸ (<http://www.nytimes.com/2007/05/03/business/worldbusiness/03iht-bibs.1.5546069.html>).

¹⁹ (<http://urbanlegends.about.com/gi/dynamic/offsite.htm?site=http://www.foxnews.com/story/0%2C2933%2C296589%2C00.html>).

²⁰ (<http://www.newsinferno.com/archives/1940>).

²¹ (<http://www.cpsc.gov/cpscpub/prerel/prhtml08/08307.html>).

²² See e.g., October 22, 2008 Press Release entitled "Walmart Announces Global Responsible Sourcing Initiative at China Summit" and (<http://www.nytimes.com/2008/10/22/business/22walmart.html?pagewanted=print>).

34. In January 2010, Wal-Mart was informed of testing that revealed high levels of cadmium in certain of its bracelet charms.

D. Defendants' Wrongful Conduct.

35. Defendants negligently or intentionally sourced, marketed, advertised, promoted, sold and/or distributed pieces of the Miley Cyrus Products that were unreasonably dangerous in normal use.

36. Indeed, Wal-Mart has since as early as April 2008 known that certain of its China-based suppliers of children's jewelry used hazardous substances to manufacture those items.

37. Confronted with drastically reduced permissible limits on lead use in children's products since 2009, some Chinese jewelry manufacturers reportedly substituted the more dangerous heavy metal cadmium in sparkling charm bracelets and shiny pendants they make and that are sold by retailers (including Wal-Mart) throughout the United States. Defendants knew or should have known of the manufacturers' shift to using cadmium, in part because of Wal-Mart's responsible sourcing initiative.

38. During January 2010, The Associated Press ("AP") reported in an article entitled "Toxic Cadmium Found in Chinese Toys; Lead Banned from Children's Bracelets and Trinkets, But Manufacturers Turn to Another Carcinogen," that independent lab testing conducted on children's jewelry detected high levels of cadmium in over 10% of the samples tested, including samples purchased from Defendant.²³

39. AP organized lab testing of 103 items bought in New York, Ohio, Texas and California. According to the test results, three flip flop bracelet charms sold at Wal-Mart

²³ (<http://www.csnews.com/stories/2010/01/11/health/main6080353.shtml>).

contained between 84 and 86 percent cadmium. The charms fared the worst of any item on the stomach acid test; one shed more cadmium in 24 hours than what World Health Organization guidelines deem a safe exposure over 60 weeks for a 33-pound child. The bracelet was reportedly purchased in August 2008.

40. AP also reported that Xu Hongli, a cadmium specialist with the Beijing office of Asian Metal Ltd., a market research and consultancy firm, said test results showing high cadmium levels in some Chinese-made metal jewelry did not surprise her. Xu reportedly said using cadmium alloys has been “a relatively common practice” among manufacturers in the eastern cities of Yiwu and Qingdao and the southern province of Sichuan.

41. In response, and with the intent that consumers rely on its assurances, on January 11, 2010 Wal-Mart issued a statement:

We know our customers are concerned about product safety, particularly as it relates to children’s products, and so are we. We will immediately remove from sale those items identified in recent media reports regarding cadmium while our own investigation is being completed, and until more is known.

The findings in this report are troubling and as the world’s largest retailer we have a responsibility to take swift action and we’re doing so. Nothing is more important to us than the safety of our customers and associates. We will actively participate in the Consumer Product Safety Commission’s investigation, along with suppliers and industry associations, to provide any assistance as they determine what the standards should be.²⁴

42. On January 12, 2010, Chairman of the Consumer Product Safety Commission (“CPSC”), Inez Tenenbaum, delivered a speech to regulators at the APEC Toy Safety Initiative/Dialogue in Hong Kong warning against the use of heavy metals, “especially cadmium,” in children’s products.²⁵

²⁴ (<http://walmartstores.com/pressroom/news/9593.aspx>).

²⁵ (<http://www.cpsc.gov/onsafety/page/3/>).

43. In response to the news, in late January 2010, one supplier of two cadmium children's jewelry products to Wal-Mart issued a product recall and the CPSC also issued a recall report related to those items.²⁶

44. On January 29, 2010, Wal-Mart reportedly removed two jewelry items from its shelves, including the two that were subject to the recall reports.²⁷

45. However, Wal-Mart knew no later than February 2010 that its Miley Cyrus jewelry contained cadmium and yet it continued selling those items. In an article published on May 19, 2010, the Associated Press reported:

Wal-Mart said Wednesday it is pulling an entire line of Miley Cyrus-brand necklaces and bracelets from its shelves after tests performed for The Associated Press found the jewelry contained high levels of the toxic metal cadmium.

In a statement issued three hours after AP's initial report of its findings, Wal-Mart said it would remove the jewelry, made exclusively for the world's largest retailer, while it investigates. The company issued the statement along with Cyrus and Max Azria, the designer who developed the jewelry for the 17-year old "Hannah Montana" star.

Wal-Mart Stores Inc. had learned of cadmium in the Miley Cyrus jewelry, as well as in an unrelated line of bracelet charms, back in February, based on an earlier round of testing conducted at AP's request, but had continued selling the items. It said as recently as last month that it would be too difficult to test products already on its shelves.

In its statement, Wal-Mart did not say whether it would also remove the bracelet charms.

Exactly how many of the items have been sold was unclear. The charms – also available exclusively at Walmart stores – were sold under the name "Fashion Accessories," though Wal-Mart has not said when they began appearing on shelves. **The Miley Cyrus jewelry hit stores in December.**

* * *

Cadmium in children's jewelry became a public concern in January when the AP published the results of an investigation that showed items at Walmarts and other large chains were as much as 91 percent of the toxic metal by weight.

That testing was conducted by chemistry professor Jeff Weidenhamer of Ashland University in Ohio. **In February, Weidenhamer was asked to provide to Wal-**

²⁶ (<http://www.cpsc.gov/CPSCPUB/PREREL/prhtml10/10127.html>).

²⁷ *Id.*

Mart headquarters detailed results of tests on items he bought at Walmarts as part of testing he had done for AP. Those items included 10 of the charms and three from the Cyrus line.

To judge the continued availability of pieces that Wal-Mart has known were contaminated, AP dispatched reporters throughout the country last month to buy any of the 13 items they could find. The packaging said they were made in China; all were bought for \$6 or less.

All but one of the 13 were on store shelves in the eight states where AP reporters looked. Contrary to Wal-Mart's statement Wednesday, which said the Miley Cyrus Jewelry was sold in the women's apparel section, AP reporters found the items either in the jewelry section or discount bins.

The items were then tested by Weidenhamer. Of 61 samples, 59 contained at least 5 percent cadmium by weight, with 53 of those measuring 10 percent or higher.

* * *

For reasons that are not fully understood, girls ages 6 to 11 – an age range that includes many fans of Cyrus' "Hannah Montana" TV show, movies and CDs – appear to be more at risk from cadmium. Data from a major national study found that girls of that age absorb more cadmium than other children or adults, according to Bruce A. Fowler, a toxicologist with the Centers for Disease Control and Prevention.

* * *

Federal regulators' own research says that kids start becoming interested in making their own jewelry around ages 6 to 8. **As for products featuring Cyrus, her fans include teenagers, tweens, even kindergartners.**²⁸

46. It is not yet clear how many other jewelry items sold by Wal-Mart also secretly contain cadmium.

47. At all relevant times, Defendants omitted any warning that its Miley Cyrus Products contained cadmium.

48. Defendants have known of, at the least, environmental concerns over the use of cadmium in consumer products. Over two years ago, in the context of press coverage related to Wal-Mart's removal of toys containing lead from its shelves, Wal-Mart's spokesperson

²⁸ "Wal-Mart pulls toxic Miley Cyrus trinkets," (http://www.msnbc.msn.com/id/37235693/ns/health-kids_and_parenting)(emphasis added, (accessed May 29, 2010)).

reportedly informed MSNBC that the company had no announcement on the issue raised concerning eliminating nickel-cadmium batteries in its children's toys.²⁹

49. Plaintiff is conscientious about her child's jewelry and fully intended to purchase Wal-Mart's children's jewelry that was safe. She purchased the Miley Cyrus Products at one or more of Wal-Mart's stores in Arkansas and her child has worn those items.

50. As a result of Defendants' deceptive labeling and marketing scheme and Plaintiff's reliance on Defendants' reputation for selling quality products at competitive prices, Plaintiff was misled into purchasing the Miley Cyrus Products that she would not have purchased had she known that it contained a hazardous substance.

51. Defendants utterly failed to adequately warn purchasers of the unreasonably dangerous characteristics associated with their Miley Cyrus Products.

52. Defendants have not initiated a refund program for the Miley Cyrus Products, nor has it offered to repair the Miley Cyrus Products.

53. Defendants owed a legal duty to Plaintiff and members of the Class to design, manufacture, market, advertise, promote, distribute and sell the Miley Cyrus jewelry without hidden and concealed defects.

54. Defendants breached such duty and proximately caused Plaintiff's and class members' damages.

CLASS ACTION ALLEGATIONS

55. Plaintiff brings this lawsuit on behalf of herself and the proposed Class members under Rule 23 of the Arkansas Rules of Civil Procedure. The proposed Class consists of:

All persons who purchased Miley Cyrus-branded jewelry Products at Wal-Mart retail stores in the United States within the past five years immediately preceding

²⁹ (<http://www.msnbc.msn.com/id/23184537/>).

the date of the filing of the Complaint through and including the date of the final approval of the Settlement in the Litigation. Excluded from the class are Defendants Wal-Mart and BCBG, their present and former directors, officers and employees, the judge presiding over this action and their immediate family members, and any member who timely files exclusion with the Court. Also excluded are any members who previously received refunds from Wal-Mart for Miley Cyrus-branded jewelry Products.

56. Subject to additional information obtained through further investigation and discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or an amended complaint.

57. **Numerosity.** The members of the Class are so numerous that their individual joinder is impracticable. Plaintiff is informed and believes, and on that basis alleges, that the proposed Class contains many thousands of members throughout the United States. The precise number of Class members is unknown to Plaintiff, but it is known that the children's jewelry is sold in Walmart's stores throughout the United States.

58. **Existence and Predominance of Common Questions of Law and Fact.** Common questions of law and fact exist as to all members of the Class and predominate over questions affecting only individual Class members. Those common legal and factual questions include, but are not limited to, the following:

- a. Whether the claims discussed above are true, or are misleading, or reasonably likely to deceive the objective and reasonable consumer;
- b. Whether Defendants' common course of conduct of selling the Miley Cyrus Products violates public policy;
- c. Whether the alleged common course of conduct of selling the Miley Cyrus Products constitutes violations of the ADTPA and comparable deceptive trade practices laws of other states asserted herein;

- d. Whether Defendants engaged in false or misleading advertising;
- e. Whether Defendants omitted material facts concerning the Miley Cyrus Products sold; and,
- f. Whether Plaintiff and Class members have sustained monetary loss and the measure of that loss.

59. **Typicality.** Plaintiff's claims are typical of the claims of the members of the Class in that they purchased Defendants' Miley Cyrus Products as a result of Defendants' deceptive and unconscionable business practices.

60. **Adequacy of Representation.** Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff has retained counsel highly experienced in complex consumer class action litigation, and Plaintiff intends to prosecute this action vigorously. Plaintiff has no adverse or antagonistic interests to those of the Class.

61. **Superiority.** A class action is superior to all other available means for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by individual Class members is relatively small compared to the burden and expense that would be required by individual litigation of their claims against the Defendants. It would thus be virtually impossible for the Class, on an individual basis, to obtain effective redress for the wrongs done to them. Furthermore, even if Class members could afford such individualized litigation, the Arkansas court system could not. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and the court system from the issues raised by this action. By contrast, the class action device provides the benefits of adjudication of these issues in a single proceeding, economies of scale, and comprehensive

supervision by a single court, and presents no unusual management difficulties under the circumstances here.

62. The claims asserted herein are applicable to all customers throughout the United States who purchased the Miley Cyrus Products.

63. Adequate notice can be given to Class members through publication and/or other measures.

64. Damages may be calculated, in part, from the sales information maintained in Defendants' records, so that the cost of administering a recovery for the Class can be minimized.

COUNT I

**For Violations of the Arkansas Deceptive Trade Practices Act,
Arkansas Code Ann. § 4-88-101 *et seq.*, and State Consumer Protection and Deceptive
Trade Practices Statutes On Behalf of Plaintiff and the Class**

65. Plaintiff realleges and incorporates by reference the allegations contained in the paragraphs above as if fully set forth here.

66. This cause of action is brought pursuant to the Arkansas Deceptive Trade Practices Act, Ark. Code Ann. §4-88-101 *et seq.* (the "ADTPA") and comparable state consumer protection and deceptive trade practices statutes.

67. Under the ADTPA, all unconscionable, false, or deceptive acts or practices, as well as those specifically listed, are unlawful and prohibited.

68. The jewelry at issue is a "good" and the parties are "persons" within the meaning of the ADTPA.

69. Defendants' wrongful actions relating to distribution, marketing, and sale of cadmium-containing Miley Cyrus jewelry violate Ark. Code Ann. §§ 4-88-107(a)(1), (3), (8), and (10), and 4-88-108(1) and (2).

70. Defendants have violated the Act by engaging in the unconscionable and deceptive practices as described herein which offend public policies and were intentionally false and substantially injurious to consumers. Defendants knowingly misrepresented the standard and quality of its Miley Cyrus Products with the intent that consumers purchase them in their defective state and not as advertised. Defendants knew that the jewelry was defective at the time of sale, beginning in at least February 2010, and that the presence of cadmium was a material defect, but failed to disclose the defect to consumers or pull the products from the shelves for months after the discovery. And, at all relevant times, Defendants were in a superior position relative to Plaintiff and members of the Class to know the components of the jewelry Defendants distributed, marketed, and sold.

71. Plaintiff and the Class have been aggrieved by Defendants' deceptive practices in that they purchased Miley Cyrus Products from Defendants and exposed their children to cadmium when they would not have done so if they had known the truth about the Miley Cyrus Products.

72. Defendants furthermore engaged in this unfair competition or unfair, unconscionable, deceptive or fraudulent acts or practices in violation of the state consumer protection and deceptive trade practices statutes, causing damages to the Class, and listed as follows:

- Ala. Code § 8-19-1, *et seq.*
- Alaska Stat. § 45.50.471, *et seq.*
- Ariz. Rev. Stat. § 44-1521, *et seq.*
- Ark. Code Ann. § 4-88-101, *et seq.*
- Cal. Bus. & Prof. Code § 17200, *et seq.*, Cal. Civ. Code § 1750, *et seq.*
- Colo. Rev. Stat. § 6-1-105, *et seq.*
- Conn. Gen. Stat. § 42-110a, *et seq.*
- 6 Del. Code § 2511, 2580-2584 *et seq.*
- D.C. Code § 28-3901, *et seq.*
- Fla. Stat. § 501.201, *et seq.*

- Ga. Code § 10-1-370, *et seq.*, § 10-1-390, *et seq.*
- Haw. Rev. Stat. § 480-1, *et seq.*, Haw. Rev. Stat. § 481A-1, *et seq.*
- Idaho Code § 48-601, *et seq.*
- 815 ILCS §505/1, *et seq.*, § 510/1, *et seq.*
- Ind. Code Ann. § 24-5-0.5-1, *et seq.*
- Iowa Code § 714.1 b, *et seq.*
- Kan. Stat. § 50-623, *et seq.*
- Ky. Rev. Stat. § 367.110, *et seq.*
- La. Rev. Stat. § 51:1401, *et seq.*
- Maine Rev. Stat. Ann. tit. 5, §§ 205A, *et seq.*, titl 10, §§ 1211, *et seq.*
- Mass. Gen. L. Ch. 93 A, *et seq.* and Ch. 266 § 91, *et seq.*
- Md. Com, Law Code § 13-101, *et seq.*
- Mich. Stat. § 445.901, *et seq.*
- Minn. Stat. §8.31, *et seq.*, §325D.43, *et seq.*, §325F.68, *et seq.*
- Miss. Code Ann. §§ 75-24-1, *et seq.*
- Vernon's Missouri Stat. § 406.010, *et seq.*
- Mont. Code § 30-14-101, *et seq.*
- Neb. Rev. Stat. § 59-1601, *et seq.*, § 87-301, *et seq.*, § 598.0903, *et seq.*
- N.H. Rev. Stat. § 358-A:1, *et seq.*
- N.J. Rev. Stat. § 56:8-1, *et seq.*
- N.M. Stat. § 57-12-1, *et seq.*
- N.C. Gen. Stat. § 75-1.1., *et seq.*
- N.D. Cent. Code § 51-15-01, *et seq.*
- N.Y. Gen. Bus. Law § 349, *et seq.*, N.Y. Exec. Law § 63(12)
- Ohio Rev. Stat. § 1345.01, *et seq.*, §§ 4165.01, *et seq.*
- Okla Stat. 15 § 751, *et seq.*, 78 § 51, *et seq.*
- Or. Rev. Stat. § 646.605, *et seq.*
- 73 Pa. Stat. § 201-1, *et seq.*
- R.I. Gen. Laws §6-13.1-1, *et seq.*
- S.C. Code Laws § 39-5-10, *et seq.*
- S.D. Code Laws § 37-24-1, *et seq.*
- Tenn. Code § 47-18-101, *et seq.*
- Tex. Bus. & Com. Code § 17.41, *et seq.*
- Utah Code § 13-2-1, *et seq.*, § 13-5-1, *et seq.*, § 13-11-1, *et seq.*, § 13.11a-1, *et seq.*
- 9 Vt. §2451, *et seq.*
- Va. Code § 59.1-196, *et seq.*
- Wash. Rev. Code § 19.86.010, *et seq.*
- West Virginia Code § 46A-6-101, *et seq.*
- Wis. Stat. § 100.18, *et seq.*, § 100.20, *et seq.*
- Wyo. Stat. Ann. § 40-12-101, *et seq.*

73. The damages suffered by Plaintiff and the Class were directly and proximately caused by the deceptive, misleading and unconscionable practices of Defendants, as described herein.

74. WHEREFORE, Plaintiff, on behalf of herself and the Class, prays for relief as set forth below.

PRAAYER FOR RELIEF

Wherefore, Plaintiff prays for a judgment:

- i. Certifying the Class as requested herein;
- ii. Awarding Plaintiff and the proposed Class members damages in the amount of the purchase price collected by Defendants for the products at issue;
- iii. Awarding declaratory judgment in favor of Plaintiff and the Class;
- iv. Awarding attorneys' fees and costs; and
- v. Providing such further relief as may be just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

DATED: November ____, 2013

EMERSON POYNTER LLP

Scott E. Poynter, AR Bar No. 90077
scott@emersonpoynter.com
Christopher D. Jennings, AR Bar No. 2006306
cjennings@emersonpoynter.com
Will T. Crowder, AR Bar No. 2003138
wcrowder@emersonpoynter.com
1301 Scott Street
Little Rock, AR 72202
Phone: (501) 907-2555
Fax: (501) 907-2556

John G. Emerson, TX Bar No. 06602600
jemerson@emersonpoynter.com
830 Apollo Lane
Houston, TX 77058
Phone: (281) 488-8854
Fax: (281) 488-8867

BRANSTETTER STRANCH & JENNINGS PLLC

J. Gerard Stranch, IV
gerards@branstetterlaw.com

227 Second Avenue North, Fourth Floor
Nashville, TN 37201-1631
Phone: (615) 254-8801
Fax: (615) 250-3937

JIGARJIAN LAW OFFICE

Robert A. Jigarjian
jigarjianlaw@gmail.com
101 Lucas Valley Rd., Ste. 120
San Anselmo, CA 95903
Phone: (415) 341-6660

CERTIFICATE OF SERVICE

On this ____ day of November, 2013, a true and correct copy of the foregoing was served upon the Defendants by electronic mail and by mailing a copy of the same by First Class U.S. Mail to the following attorneys:

WILLIAMS & ANDERSON PLC

Jess Askew, III
Teresa M. Wineland
Jamie Fugitt
111 Center Street, 22nd Floor
Little Rock, AR 72201

BCBG MAX AZRIA GROUP, INC.

Erica Alterwitz
2761 Fruitland Avenue
Vernon, California 90058

Scott E. Poynter

**IN THE CIRCUIT COURT OF LONOKE COUNTY
THIRD DIVISION**

**KATHY CANAMORE, on Behalf of
Herself and All Others Similarly Situated,**

PLAINTIFF

vs.

Case No. CV-2010-534

**WAL-MART STORES, INC. and
BCBG MAX AZRIA GROUP, INC.**

DEFENDANTS

PRELIMINARY APPROVAL ORDER

WHEREAS Plaintiff Kathy Canamore ("Plaintiff"), on behalf of herself and on behalf of the Class, and Wal-Mart Stores, Inc. and BCBG Max Azria Group, Inc. ("Defendants"), all acting by and through their respective counsel, have agreed, subject to Court approval, to settle this Litigation upon the terms and conditions stated in the Stipulation of Settlement signed on _____, 2013 and filed with the Court on _____, 2013 (the "Settlement");

NOW, THEREFORE, based upon the Settlement and other papers on file in this action, statements of counsel, testimony presented and all other proceedings herein, it appears to the Court that a hearing should be held to determine whether the proposed settlement described in the Settlement is fair, reasonable, and adequate;

IT IS HEREBY ORDERED THAT:

The Settlement is hereby incorporated by reference in this Order and all terms defined in the Settlement will have the same meanings in this Order.



For purposes of determining whether the terms of the proposed settlement should be finally approved as fair, reasonable and adequate, the following Class is conditionally certified for settlement purposes only:

All persons who purchased Miley Cyrus-branded jewelry Products at Wal-Mart retail stores in the United States within the past five years immediately preceding the date of the filing of the Complaint through and including the date of the final approval of the Settlement in the Litigation. Excluded from the class are Defendants Wal-Mart and BCBG, their present and former directors, officers and employees, the judge presiding over this action and their immediate family members, and any member who timely files exclusion with the Court. Also excluded are any members who previously received refunds from Wal-Mart for Miley Cyrus-branded jewelry Products.

Plaintiff is preliminarily appointed as representative of the Class ("Class Representative"), and the following attorneys for Plaintiff are preliminarily appointed as counsel for the Settlement Class ("Class Counsel"):

Scott E. Poynter
Emerson Poynter LLP
The Rozelle-Murphy House
1301 Scott Street
Little Rock, AR 72202

J. Gerard Stranch, IV
Branstetter Stranch & Jennings, PLLC
227 Second Avenue North, Fourth Floor
Nashville, TN 37201

Robert A. Jigarjian
Jigarjian Law Office
101 Lucas Valley Rd., Ste. 120
San Rafael, CA 95903
Tel: (415) 341-6660

If final approval of the proposed settlement is not granted by this Court or following any appeal, this Order, including the above description of the Settlement Class and the preliminary appointment of the Class Representative and Class Counsel, shall be automatically vacated, and this Order and the conditional class certification shall be null and void and shall be withdrawn and set aside in its entirety. If the Settlement is terminated or is disapproved, or this Order is vacated, in whole or in part by this Court, any appellate court and/or any other court of review,

the Settlement and the fact that it was entered into shall not be offered, received or construed as an admission or as evidence for any purpose, including the “certifiability” of any class, and neither this Order, the Settlement, nor any terms, conditions, contents or provisions hereof or exhibits hereto, nor any negotiations, correspondence or communications leading up to the execution of this Order or the Settlement, shall constitute a precedent or be admissible for any purpose in any pending or future litigation (in any jurisdiction or forum) involving any of the Parties and/or Released Parties or considered for any other purpose, including purposes of waiver or estoppel or the existence, certification or maintenance of any proposed or existing class or the amenability of these or similar claims to class treatment.

4. Garden City Group, Inc. (“Claims Administrator”) is preliminarily appointed as Claims Administrator, and Claims Administrator’s reasonable costs and fees shall be paid in accordance with the terms of the Settlement.

5. The Parties have prepared the Class Notice which has been provided to the Court. These materials, in conjunction with the remainder of the Class Notice plan as set forth in Paragraph 41 of the Settlement, comprise the notice campaign submitted to the Court. As set forth herein, the Court has reviewed and hereby approves the notice campaign, specifically the Class Notice, Publication Notice, and Banner Advertisement.

6. No later than seven (7) calendar days after the entry of this Order, the Claims Administrator shall provide the Class with notice of the proposed settlement, through (a) a published summary notice of the Settlement in a 1/6 page ad in the national edition of *USA Today*, to run once on a day between Monday and Thursday, (b) a banner advertisement, with a link to the project-dedicated settlement website, on a commercial website targeted at the purchasers of the Products which shall remain posted for an appropriate period consistent with

the period for Settlement Class Members' submission of claims; and (c) an Internet website with a copy of the Settlement Class Action Complaint and Class Notice on the settlement website. Upon entry of the Preliminary Approval Order, Settlement Class Counsel shall publish on its websites a summary notice of the Settlement and shall issue a press release, in a form agreed between the Parties, to PR Newswire and other major media outlets announcing the Settlement and settlement website. All such actions shall be taken as described in the Settlement.

7. Prior to the Final Approval Hearing provided for in paragraph 10, below, the Claims Administrator shall file with the Court a declaration confirming compliance with the notice campaign in accordance with the terms of this Order, describing the efforts undertaken to implement the notice campaign on or before the Final Approval Hearing, and certifying that such efforts are consistent with other similar court approved notice programs.

8. The costs of providing and confirming the dissemination of Class Notice as required by paragraphs 5-6, above, shall be borne by Defendants as agreed in the Settlement.

9. The Court preliminarily finds that the notice campaign is reasonable, constitutes the best notice practicable under the circumstances, is reasonably calculated to apprise Class Members of the pendency of the Settlement, is due, adequate, and sufficient notice for all purposes to all persons entitled to such notice, and fully satisfies the requirements of the Arkansas Rules of Civil Procedure and the requirements of due process under the Arkansas and United States Constitutions.

10. The Court will hold a Final Approval Hearing to consider the fairness, reasonableness, and adequacy of the proposed settlement at ____:____ .m., on _____, 201____, in the Third Division Circuit Courtroom, Lonoke County Courthouse, Lonoke, Arkansas. During the Final Approval Hearing, the Court will consider whether the proposed

settlement described in the Settlement, including the proposed award of attorneys' fees, costs and expenses to Class Counsel and a reasonable incentive award to the Class Representative, should be approved as fair, reasonable, and adequate, and whether the Court should enter the proposed Final Judgment approving the proposed settlement and dismissing this Action on the merits, with prejudice, and without leave to amend. Upon a showing of good cause, the Final Approval Hearing may be postponed, adjourned or rescheduled by order of the Court without further notice to the members of the Settlement Class.

11. Any Class Member who wants to exclude himself or herself from the Class and not be bound by this Agreement must do so by filing with the Court and serving upon the following a written notice to opt out of the Settlement by fourteen (14) days before the date set for the Final Approval Hearing:

Scott E. Poynter
Emerson Poynter LLP
The Rozelle-Murphy House
1301 Scott Street
Little Rock, AR 72202

Jess Askew III
Williams & Anderson PLC
Twenty-Second Floor
111 Center Street
Little Rock, AR 72201

Erica Alterwitz
BCBG Max Azria Group, Inc.
2761 Fruitland Avenue
Vernon, California 90058

12. Class Members who submit timely and valid requests for exclusion in the manner set forth in the notice and the Settlement shall be excluded from the Settlement Class. Such persons shall have no rights under the proposed settlement, shall not share in any distribution of funds under the proposed settlement, and shall not be bound by the proposed settlement or by any Final Judgment approving the proposed settlement. Such persons shall retain the right to pursue a separate and independent remedy against Defendants. Any potential Class Member who does

not submit a timely, written request for exclusion will be bound by all proceedings, orders, and judgments in this Action, including the terms of the proposed settlement, if approved.

13. All members of the Settlement Class, unless and until they have timely excluded themselves from the Settlement Class pursuant to the terms established under paragraph 11, above, are enjoined from filing, commencing, prosecuting, intervening in, or participating in any other lawsuit or administrative, regulatory, arbitration or other proceeding in any jurisdiction based on, relating to or arising out of the claims and causes of action, or the facts and circumstances relating thereto, in the Action and/or the Released Claims; and all members of the Settlement Class are enjoined from filing, commencing, or prosecuting a lawsuit or administrative, regulatory, arbitration or other proceeding as a class action on behalf of any members of the Settlement Class who have not timely excluded themselves (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), based on, relating to or arising out of the claims and causes of action, or the facts and circumstances relating thereto, in the Action and/or the Released Claims.

14. Class Members who do not request exclusion from the Settlement Class may object to the proposed settlement. Class Members who choose to object to the proposed settlement ("Objectors") must file objections with the Court, with copies to Settlement Class Counsel and Defendant's undersigned counsel no later than fourteen (14) days before the Final Approval Hearing. The objections must include (a) a notice of intention to appear; (b) a sworn statement by the Class Member attesting to his/her membership in the Settlement Class and the specific grounds for the objections and any reasons why the Settlement Class Member desires to appear and be heard, (c) all copies of documents that the Settlement Class Member desires the Court to consider, (d) the identity of the Class Member's counsel representing the objector and/or

who will appear at the Final Approval Hearing, (e) a list of all persons who will be called to testify by the objector at the Final Approval Hearing in support of the objection; and (f) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing. Class Members who fail to make objections in this manner will be deemed to have waived any objections and will be foreclosed from making any objections to this Agreement. Unless otherwise ordered by the Court, the Settlement Class members shall not be permitted to speak at the Final Approval Hearing unless they have submitted a timely objection. While the declaration described in (b) above is *prima facie* evidence that the objector is a member of the Settlement Class, Plaintiff and Defendants or both may take discovery regarding the matter, subject to Court Approval. Any Class Member complying with the foregoing may appear at the Final Approval Hearing, in person or by counsel, and be heard to the extent allowed by the Court, applying applicable Arkansas law, in opposition to the fairness, reasonableness and adequacy of the proposed settlement, and on the application for an award of attorneys' fees and costs. The right to object to the proposed settlement must be exercised individually by an individual Class Member, not as a member of a group or subclass and, except in the case of a deceased, minor or incapacitated Class Member, not by the act of another person acting or purporting to act in a representative capacity. If the Objector is represented by an attorney, such attorney must comply with all applicable Arkansas laws and rules for filing pleadings and documents in Arkansas Courts.

15. Class Counsel and the Parties shall have the right to respond to any objection no later than seven (7) days prior to the Final Approval Hearing. The Party so responding shall file a copy of the response with the Court, and shall serve a copy, by regular mail, hand or overnight delivery, to the objector (or counsel for the objector) and to counsel for the Parties.

16. Any Class Member who does not file a timely notice of intent to object in accordance with the above paragraphs and the Settlement shall waive the right to object or to be heard at the Final Approval Hearing and shall be forever barred from making any objection to the proposed settlement. Class Members who object to the proposed settlement shall remain Class Members, and have voluntarily waived their right to pursue an independent remedy against Defendants. If their objections to the proposed settlement are overruled in whole or in part, they will be forever bound by the Judgment of the Court. Class Members can avoid being bound by any judgment of the Court by complying with the exclusion provisions set forth in paragraph 11 above and in the Settlement.

17. The proposed settlement and terms of the Settlement are hereby preliminarily approved as sufficiently fair, reasonable, adequate, and in the best interest of the Class Members to warrant sending notice to the Settlement Class. However, the proposed settlement is not to be deemed an admission of liability or fault by Defendants or by any other person, or a finding of the validity of any claims asserted in the litigation of any wrongdoing or of any violation of law by Defendants, or an admission by Defendants that the Action is or should be certified as a class. The proposed settlement and any documents, attachments or other materials submitted to the Court in furtherance of said proposed settlement, shall not be offered or received in evidence in any action or proceeding in any court, administrative panel or proceeding, or other tribunal, or as an admission or concession of liability or wrongdoing of any nature on the part of either Defendant. In the event the proposed settlement is not finally approved for any reason, Defendants shall retain the right to object to the maintenance of the Action and/or any other case as a class action under Rule 23 of the Arkansas Rules of Civil Procedure or any other rule, law or

provision applicable in any state or federal court and to contest and defend the Action and/or any other case as provided in the Settlement.

19. Upon a showing of good cause, the Court may extend any of the deadlines set forth in this Order without further notice to the Settlement Class.

20. It is hereby ordered that the Litigation shall be stayed pending further proceedings in connection with the effectuation of the proposed settlement

IT IS SO ORDERED.

Date: _____, 2013

Hon. Sandy Huckabee
Circuit Judge

**IN THE CIRCUIT COURT OF LONOKE COUNTY, ARKANSAS
THIRD DIVISION**

**KATHY CANAMORE, on Behalf of
Herself and All Others Similarly Situated**

PLAINTIFF

vs.

Case No. CV-2010-534

**WAL-MART STORES, INC. and
BCBG MAX AZRIA GROUP, INC.**

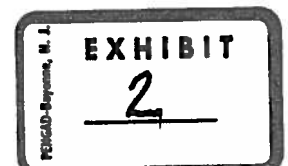
DEFENDANTS

FINAL JUDGMENT AND ORDER

This matter came before the Court for hearing on _____ on the application of the parties for approval of the settlement set forth in the Stipulation of Settlement dated _____, 2013 (the "Settlement"). The parties hereby agree that this case has been settled and that all issues and controversies have been resolved to their mutual satisfaction.

Due and adequate notice having been given to the Settlement Class as required in this Court's Orders, and the Court having considered all papers filed and proceedings had herein, and otherwise being fully informed in the premises and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. This Judgment incorporates by reference the definitions in the Settlement, and all terms used herein will have the same meaning as set forth in the Settlement.
2. This Court has jurisdiction over the subject matter of the Litigation and over all parties to this litigation, including all Settlement Class Members.
3. Pursuant to Arkansas Rule of Civil Procedure 23, this Court hereby approves the Settlement and finds that the Settlement is, in all respects, fair, just, reasonable, and adequate to the Settlement Class.



4. The Court hereby dismisses all claims raised by the Plaintiff and the Settlement Class in the Litigation, and the dismissal is on the merits and with prejudice. The Plaintiff and the Settlement Class Members are barred from relitigating any claims raised in the Litigation or any claims released by means of the Settlement.

5. Upon the Effective Date hereof, the Plaintiff and each of the Settlement Class Members will be deemed to have, and by operation of this Judgment will have, fully, finally, and forever released, relinquished, and discharged all Released Claims (including unknown claims) against the Defendants. Accordingly, the Plaintiff and each of the Settlement Class Members are permanently barred and enjoined from instituting, commencing or prosecuting, either directly, representatively, derivatively, or in any capacity, any and all of the Released Claims against the Defendants, whether by a complaint, counterclaim, defense, or otherwise, in any local, state, or federal court, or in any agency or other authority, tribunal, or forum wherever located, provided, however, that nothing herein is meant to bar any claims relating to performance or enforcement of the Settlement.

6. Upon the Effective Date hereof, the Plaintiffs and each of the Settlement Class Members, and the heirs, executors, administrators, successors and assigns of any of them, will also be deemed to have, and by operation of this Judgment shall have fully, finally, and forever released, relinquished and discharged Defendants and their counsel from all claims (including unknown claims), arising out of the defense, conduct, settlement or resolution of the Litigation or the Released Claims, provided, however, that nothing herein is meant to bar any claims relating to performance or enforcement of the Settlement.

7. "Settlement Class" means:

All persons who purchased Miley Cyrus-branded jewelry Products at Wal-Mart retail stores in the United States within the past five years immediately preceding the date of

the filing of the Complaint through and including the date of the final approval of the Settlement in the Litigation. Excluded from the class are Defendants Wal-Mart and BCBG, their present and former directors, officers and employees, the judge presiding over this action and their immediate family members, and any member who timely files exclusion with the Court. Also excluded are any members who previously received refunds from Wal-Mart for Miley Cyrus-branded jewelry Products.

Kathy Canamore is the Class Representative. Those persons who timely and validly requested exclusion from the Settlement Class pursuant to the "Notice of Proposed Settlement" sent to potential Settlement Class Members are excluded from the Settlement Class.

8. With respect to the Settlement Class, this Court finds and concludes that: (a) the Members of the Settlement Class are so numerous that joinder of all Settlement Class Members in the Litigation is impracticable; (b) questions of law and fact common to the Settlement Class predominate over any individual questions; (c) Class Representative Kathy Canamore's claims are typical of the claims of the Settlement Class; (d) the Class Representative and her counsel have fairly and adequately represented and protected the interests of all Settlement Class Members; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy, considering: (i) the interests of the Members of the Settlement Class in individually controlling the prosecution of the separate actions; (ii) the extent and nature of any litigation concerning the controversy already commenced by Members of the Settlement Class; (iii) the desirability or undesirability of continuing the litigation of these claims in this particular forum; and (iv) the difficulties likely to be encountered in the management of the class action.

9. Settlement Class Counsel has petitioned the Court for approval of a payment of \$175,000.00 in attorneys' fees and reimbursement of costs related to the Settlement. Defendants do not oppose the petition. Based upon the factors found in *Chrisco v. Sun Indus., Inc.*, 305 Ark. 227, 800 S.W.2d 717 (1990), the Court finds and awards Settlement Class Counsel the total

sum of \$_____ in attorneys' fees, costs and expenses. Such fees and expenses are fair, reasonable and adequate pursuant to the *Chrisco* factors. Defendants shall pay such approved fees and expenses to Settlement Class Counsel in accordance with the Settlement.

10. The request by Settlement Class Counsel for a Class Representative incentive award of \$2,000 to Kathy Canamore is fair and reasonable and is hereby approved.

11. The Class Notice provided to the Settlement Class constituted the best notice practicable under the circumstances of these proceedings and of the matters set forth therein, including the proposed settlement set forth in the Settlement, to all persons entitled to such notice, and said Notice fully satisfied the requirements of Arkansas Rule of Civil Procedure 23 and the requirements of due process.

12. Neither this Judgment nor the Settlement constitutes an admission of liability, fault or wrongdoing. Neither the Settlement, nor any proceedings taken pursuant thereto, nor any act performed or document executed pursuant thereto or in furtherance thereof is or may be deemed to be or may be used as an admission of, or offered or received as evidence of, a presumption, concession, or admission of liability or of any misrepresentation or omission in any statement or written document approved or made by Defendants or any of the Released Parties or of the suitability of these or similar claims to class treatment in active litigation and trial; provided, however, that reference may be made to the Settlement in such proceedings as may be necessary to effectuate the Settlement. The Defendants may file the Settlement and/or this Judgment in any other action that may be brought against it or them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or similar defense or counterclaim.

13. The Court finds that during the course of the Litigation, the Settling Parties and their respective counsel at all times complied with the requirements of Arkansas Rule of Civil Procedure 11.

14. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over the Litigation, the Parties and all Settlement Class Members to determine all matters relating in any way to the Final Judgment and Order, the Preliminary Approval Order, or the Settlement, including but not limited to their administration, implementation, interpretation or enforcement.

15. Following payment to the Claims Administrator, the Defendants and their counsel will have no responsibility for, interest in, or liability whatsoever with respect to any act, omission or determination of the Claims Administrator or Plaintiffs' Counsel or any agent or designee thereof in connection with the administration of the settlement.

HONORABLE SANDY HUCKABEE
LONOKE COUNTY CIRCUIT JUDGE

Date: _____

EXHIBIT B

**SUMMARY NOTICE
TO BE PUBLISHED IN USA TODAY**

ATTENTION
IF YOU PURCHASED MILEY CYRUS-BRANDED JEWELRY AT WAL-MART

YOU COULD GET A PAYMENT FROM A CLASS ACTION SETTLEMENT

There is a Settlement with BCBG Max Azria Group, Inc. and Wal-Mart Stores, Inc. involving claims asserted with respect to Miley Cyrus-branded jewelry manufactured by BCBG and sold at Wal-Mart stores.

What is the lawsuit about?

The lawsuit alleges the Miley Cyrus-branded jewelry contained cadmium, which the Plaintiffs claim posed a danger to its wearers and would not have been purchased by them if they knew such information. Defendants have denied and continue to deny any and all allegations of wrongdoing and liability. The Court has not decided which side is right.

Am I included?

You are a Settlement Class Member if you purchased Miley Cyrus-branded jewelry from a Wal-Mart retail store after July 1, 2005.

What does the Settlement provide?

In summary, the proposed settlement provides for:

- A refund to each Settlement Class Member filing a claim at the highest retail price – ranging from \$2.00 to \$6.00, depending on the item – that Wal-Mart received at its retail stores.
- A refund of mailing costs associated with the mailing of Miley Cyrus-branded jewelry bought from a Wal-Mart retail store by any Settlement Class Member to the Claims Administrator from a separate \$25,000 fund established by Defendants.
- Wal-Mart will collect all products returned to the Claims Administrator, destroy them, and then certify the destruction to Class Counsel.
- Defendants will pay all costs associated with notice to the Settlement Class and claims administration.
- Subject to approval by the Court, Defendants will pay \$2,000 to the Class Representative. This payment compensates the Class Representative for the time, effort, and the risk she undertook to serve as class representative in pursuing this class action.
- In exchange for the benefits under the settlement, the Settlement Class will release Defendants from any and all liability with respect to all claims arising out of or relating to the purchase of Miley Cyrus-branded jewelry from a Wal-Mart store, except personal injury claims.
- Plaintiff's counsel will ask the court to approve an award of attorneys' fees in an amount not to exceed \$175,000 to be paid by Defendants.

The Settlement Agreement, available at the website www._____.com, contains more details about the Settlement.

How to get a payment?

You need to submit a Claim Form to get a payment. You can get a Claim Form online or by calling the toll-free number. The deadline to file a Claim Form is **Month 00, 2014**. You can file a claim by mail or online or in person at the office of the Claims Administrator, at [INSERT ADDRESS].

What are my other rights?

- **Remain in the Settlement:** If you remain in the Settlement, you will be bound by the terms of the Settlement and will give up your right to sue the Defendants. If you do not submit a Claim Form, you will **not** receive a payment from the Settlement.
- **Get out of the Settlement:** If you wish to keep your right to sue the Defendants, you must exclude yourself from the Class. Exclusion requests must be received by **December 00, 2013**. The requirements for filing a valid exclusion are contained in the full Class Notice and Preliminary Approval Order, available at the website www._____.com.
- **Remain in the Settlement and Object:** If you stay in the Settlement, you can object to it. Objections must be received by **December 00, 2013**. The requirements for filing a valid objection are contained in the full Class Notice and Preliminary Approval Order, available at the website www._____.com.

• **Appear and Speak at the Final Fairness Hearing:** You or your own lawyer may ask to appear and speak at the hearing at your own cost. The requirements for filing a valid request to appeal and speak at the hearing are contained in the full Class Notice and Preliminary Approval Order, available at the website www._____.com.

The Court will hold a hearing in the case, known as Civil Action No. CV-2010-534, *Canamore v. Wal-Mart Stores, Inc.*, in the Circuit Court of Lonoke County, Arkansas, on **December 00, 2013**, to consider whether to approve the Settlement and a request by Class Counsel for attorneys' fees, expenses, and incentive award.

The foregoing is only a summary of the Settlement and Court's Preliminary Approval Order.

For More Information: 1-800-000-0000 www._____.com