

**CLASS SETTLEMENT AGREEMENT**

***Pearlstone v. Wal-Mart Stores, Inc., No. 4:17-cv-02856-HEA (E.D. Mo.)***

**1. PREAMBLE**

**1.1** This Settlement Agreement is entered into as of the dates of execution set forth below by and between Walmart Inc. f/k/a Wal-Mart Stores, Inc. (“Walmart”) and Plaintiff Scott Pearlstone, both individually and as putative class representative on behalf of the Settlement Class Members (collectively, the “Parties”) in the action *Scott Pearlstone v. Wal-Mart Stores, Inc.*, Case No. 4:17-cv-02856-HEA (United States District Court, Eastern District of Missouri).

**2. DEFINITIONS**

**2.1** “**Agreement**” or “**Settlement Agreement**” means this Settlement Agreement together with its attendant Exhibits and any attachments.

**2.2** “**Attorneys’ Fees and Litigation Expenses**” means any award of attorneys’ fees, costs, and reimbursable litigation expenses to be requested by Plaintiff and paid out of the Class Settlement Amount, subject to Court approval.

**2.3** “**Claim**” means a request submitted by a Settlement Class Member to receive an individual payment out of the Class Settlement Amount in accordance with the procedures set forth in this Agreement.

**2.4** “**Claims Deadline**” means the date by which all Claim Forms must be submitted or postmarked to be considered timely and eligible for payment. The Parties will request that the Claims Deadline be set fourteen (14) days after the close of the Notice Period, or such other date ordered by the Court. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order as well as in the class notices and the Claim Form.

**2.5** “**Claim Form**” means a form substantially in the form of Exhibit 2 attached to this Agreement which Settlement Class Members shall use to submit Claims to the Settlement Administrator, either by mail or online via the Settlement Website.

**2.6** “**Claimant**” means any Settlement Class Member who submits a Claim.

**2.7** “**Class Settlement Amount**” means five million dollars (\$5,000,000.00), which shall be the maximum amount of money that Walmart will be obligated to pay under this Settlement, as provided for in this Agreement. Under no circumstances shall Walmart be obligated to pay more than the Class Settlement Amount in connection with this Settlement.

**2.8** “**Complaint**” means Plaintiff’s First Amended Class Action Complaint, filed in the Litigation on February 22, 2018. (Dkt. 22).

**2.9** “**Counsel**” means both Settlement Class Counsel and Walmart’s Counsel, as defined in Paragraphs 2.32 and 2.40.

**2.10** “**Court**” means the District Court presiding over approval of the Settlement and any

appellate court which may review any orders entered by the District Court related to this Settlement or this Litigation.

**2.11 “Days”** as used to calculate dates for events provided herein (unless the date is expressed in terms of “business days”) has the same meaning as used when calculating days under the Federal Rules of Civil Procedure.

**2.12 “Final Approval Order”** means an order approving the settlement as fair, reasonable, and adequate and dismissing the Litigation with prejudice as against Walmart, substantially in the form of the proposed order attached hereto as Exhibit 5, which this Agreement contemplates will be approved and entered by the Court.

**2.13 “Incentive Award”** means the amount that may be requested and awarded to the Settlement Class Representative as an incentive award, subject to Court approval.

**2.14 “Litigation”** means the lawsuit captioned *Scott Pearlstone v. Wal-Mart Stores, Inc.*, Case No. 4:17-cv-02856-HEA (United States District Court, Eastern District of Missouri.).

**2.15 “Long Form Notice”** means the notice, substantially in the form of Exhibit 3, which shall be used for purposes of giving notice to the Settlement Class Members as further described in the Notice Plan.

**2.16 “Net Settlement Amount”** means the amount of monies remaining after subtracting from the Class Settlement Amount the amounts approved by the Court for (1) Notice and Administration Costs, (2) Attorneys’ Fees and Litigation Expenses, and (3) an Incentive Award.

**2.17 “Notice and Administration Costs”** means the costs to be paid from the Class Settlement Amount to the Settlement Administrator for the purposes of sending Notice, administering the Claims process, and performing other settlement administration functions in accordance with this Agreement.

**2.18 “Notice”** means the documents substantially similar to the documents attached hereto as Group Exhibit 1 and Exhibit 3, which have been agreed to by the Parties subject to Court approval and which shall be used for purposes of giving notice to the Settlement Class Members.

**2.19 “Notice Period”** means the minimum amount of time during which Notice will be promulgated as approved by the Court, which the Parties will propose to be ninety (90) Days. The Notice Period shall begin on the date that Notice is first provided or initiated by the Settlement Administrator.

**2.20 “Notice Plan”** means the document, attached hereto as Group Exhibit 1, describing the various methods by which Notice will be provided to Settlement Class Members.

**2.21 “Objection Deadline”** means the last day on which a Settlement Class Member may file an objection to the Settlement, including Plaintiff’s request for Attorneys’ Fees and Litigation Expenses and an Incentive Award. The Parties will request that the Objection Deadline be set

fourteen (14) days after the close of the Notice Period, or such other date ordered by the Court. The Objection Deadline shall be clearly set forth in the Preliminary Approval Order as well as in the class notices.

**2.22 “Opt-Out Deadline”** means the last day on which a Settlement Class Member may submit an Opt-Out Request. The Parties will request that the Opt-Out Deadline be set fourteen (14) days after the close of the Notice Period, or such other date ordered by the Court. The Opt-Out Deadline shall be clearly set forth in the Preliminary Approval Order as well as in the class notices.

**2.23 “Opt-Out Request”** means a written request from a Settlement Class Member for exclusion from the Settlement Class in accordance with the procedures set forth in this Agreement.

**2.24 “Parties”** means the Settlement Class Representative and Walmart.

**2.25 “Preliminary Approval Order”** means an order substantially in the form of the proposed order attached hereto as Exhibit 4, which is entered by the Court and certifies the Settlement Class, directs that notice be distributed, and preliminarily approves the Settlement.

**2.26 “Publication Notice”** means the document, substantially in the form attached hereto as Group Exhibit 1, displaying the various forms of notice that will appear as advertisements pursuant to the Notice Plan.

**2.27 “QSF”** means the Qualified Settlement Fund to be established in accordance with this Agreement.

**2.28 “Releasing Settlement Class Members”** means the Settlement Class Representative and all Settlement Class Members, other than those who submit Opt-Out requests.

**2.29 “Settlement”** means the compromise and settlement of the Litigation as contemplated by this Agreement.

**2.30 “Settlement Administrator”** means, subject to Court approval, Epiq Class Actions & Claims Solutions, a third-party settlement administrator and the entity who shall perform certain notice and claims administration functions in accordance with this Agreement, subject to Class Counsel’s supervision.

**2.31 “Settlement Class”** means all individuals who, during the Settlement Class Period, returned an item purchased from a Walmart store, Sam’s Club store, or online from Walmart.com or Samsclub.com for pickup or delivery within the United States, and to whom Walmart or Sam’s Club (hereafter, collectively “Walmart”) gave a refund or credit, but where the amount of sales tax refunded or credited was less than the full amount of sales tax paid at the time the item was purchased.

**2.32 “Settlement Class Counsel” or “Class Counsel”** means Myles McGuire, Paul T. Geske, and Brendan Duffner of McGuire Law, P.C.

**2.33 “Settlement Class Member Released Claims”** means the claims, rights, penalties, demands, damages, debts, accounts, duties, costs and expenses (other than those costs and expenses required to be paid pursuant to this Settlement Agreement), liens, charges, complaints, causes of action, obligations, or liabilities that are released, acquitted, and discharged by the Settlement Class Members pursuant to this Agreement.

**2.34 “Settlement Class Members”** means the Settlement Class Representative and all members of the Settlement Class except those who timely Opt-Out in accordance with this Agreement.

**2.35 “Settlement Class Period”** means the period of time from July 17, 2015 through and including the date the District Court grants preliminary approval to this Settlement.

**2.36 “Settlement Class Representative” or “Plaintiff”** means Plaintiff Scott Pearlstone.

**2.37 “Settlement Effective Date”** means the first Day following the last of the following occurrences:

**2.37.1.** The date the time to appeal or seek permission to appeal or seek other judicial review of the entry of the Final Approval Order approving the Settlement and dismissing this Litigation with prejudice as to Walmart has expired with no appeal or other judicial review having been taken or sought; or

**2.37.2.** If an appeal or other judicial review has been taken or sought, the latest of: (i) the date the Final Approval Order is finally affirmed by an appellate court with no possibility of subsequent appeal or other judicial review therefrom; or (ii) the date the appeal(s) or other judicial review therefrom are finally dismissed with no possibility of subsequent appeal or other judicial review; or (iii) if remanded to the District Court or to a lower appellate court following an appeal or other review, the date the Final Approval Order is entered by the District Court after remand and the time to appeal or seek permission to appeal or seek other judicial review of the entry of that Final Approval Order has expired with no further appeal or other judicial review having been taken or sought. If further appeal is sought after a remand, the time periods in this Sub-Section shall apply.

**2.37.3.** The provisions and deadlines set forth in this Section apply even if there are no objections to the Settlement.

**2.38 “Settlement Website”** means the website created and managed by the Settlement Administrator which will provide Settlement Class Members with access to relevant case documents, the online Claim Form and claims submission module, and other information regarding the Settlement.

**2.39 “Walmart”** means Walmart Inc. (f/k/a Wal-Mart Stores, Inc.), Wal-Mart Stores East, LLC, Sam’s West, Inc., Walmart.com USA LLC, and each of their current or former parents, subsidiaries, affiliates, divisions, predecessors, insurers, agents, employees, successors, assigns,

officers, officials, directors, partners, employers, attorneys, personal representatives, executors, and shareholders.

**2.40** “Walmart’s Counsel” means Naomi Beer and Francis Citera of Greenberg Traurig LLP and Matthew Turner of Armstrong Teasdale LLP.

### **3. RECITALS**

**3.1** **WHEREAS**, on December 11, 2017, Plaintiff filed a putative class action lawsuit against Walmart in the United States District Court for the Eastern District of Missouri, captioned *Scott Pearlstone v. Wal-Mart Stores, Inc.*, No. 4:17-cv-02856 (E.D. Mo.) (the “Litigation”). The Litigation was assigned to the Honorable Henry Edward Autrey.

**3.2** **WHEREAS**, Plaintiff’s Complaint filed in the Litigation asserts claims against Walmart under three counts for: (I) breach of contract, (II) unjust enrichment, and (III) violation of the Missouri Merchandising Practices Act (“MMPA”), Mo. Ann. Stat. 407.010 *et seq.*

**3.3** **WHEREAS**, Plaintiff’s Complaint alleges, among other things, that Walmart breached its contracts with its customers as it relates to the return of purchased products within a set time frame for a full refund on the amount paid as set forth in Walmart’s nationwide written return policy. Plaintiff alleges that Walmart breached the terms of these contracts with Plaintiff and other customers nationwide, and also violated the MMPA with respect to Plaintiff and other Missouri customers, by failing to provide a complete refund to certain customers who made returns pursuant to the return policy—namely, that Walmart underfunded the sales taxes that some customers originally paid for items they later returned. Walmart denies Plaintiff’s allegations as set forth in its Answer to Plaintiff’s Complaint in the Litigation.

**3.4** **WHEREAS**, in the Litigation, the Parties engaged in lengthy motion practice, including a Rule 12(b)(6) motion to dismiss and strike filed by Walmart, which sought dismissal of the Complaint in its entirety and, in the alternative, entry of an order striking the Complaint’s class allegations.

**3.5** **WHEREAS**, on November 16, 2018, the Court entered an order denying Walmart’s motion to dismiss and strike in its entirety. (Dkt. 32).

**3.6** **WHEREAS**, following the denial of Walmart’s motion to dismiss and strike, the Parties engaged in months of extensive discovery, including the exchange of multiple rounds of written discovery requests, review and production of hundreds of pages of documents, thorough analysis of Walmart’s customer transaction data, preparation for a Federal Rule 30(b)(6) deposition of Walmart, and expert discovery.

**3.7** **WHEREAS**, on February 27, 2019, the Court referred the Litigation to alternative dispute resolution, and the Parties elected to participate in a private mediation. (Dkt. 44). Pursuant to the Local Rules of the U.S. District Court of the Eastern District of Missouri, and following a proposal from the Parties, the Court appointed the Honorable James F. Holderman (ret.) of JAMS Chicago,

former Chief Judge of the U.S. District Court for the Northern District of Illinois, to serve as the designated neutral for the Parties' mediation. (Dkt. 49-50).

**3.8 WHEREAS**, on October 8, 2019, the Parties attended a full-day mediation before Judge Holderman at the JAMS Chicago offices. However, the Parties were unable to reach an agreement to resolve the claims at issue in the Litigation. The Court's ADR referral subsequently terminated, and the Parties returned to engaging in discovery.

**3.9 WHEREAS**, as the Parties were nearing completion of class discovery, and while Plaintiff was preparing to file his motion for class certification, the Parties decided to discuss whether there was any remaining possibility of reaching a resolution prior to class certification proceedings. Following those discussions, the Parties agreed to attend a second mediation before Judge Holderman.

**3.10 WHEREAS**, on July 29, 2020, the Parties attended a second, full-day mediation session before Judge Holderman. The Parties attended this mediation session remotely and by videoconference due to the COVID-19 public health crisis. Although the second mediation session was productive, the Parties were again unable to reach a resolution.

**3.11 WHEREAS**, the Parties' progress made during the second mediation session gave them confidence that a resolution was still possible. Accordingly, the Parties scheduled a third follow-up mediation session with Judge Holderman for August 11, 2020.

**3.12 WHEREAS**, following the third mediation session, the Parties reached an agreement in principle by which to resolve the claims in the Litigation on a class basis. The Parties' negotiations concerning the contours and specifics of the settlement terms continued over the course of several weeks, ultimately culminating in this Settlement Agreement.

**3.13 WHEREAS**, Plaintiff and Settlement Class Counsel have conducted a thorough investigation into the facts of this case, and have diligently pursued the Settlement Class Members' claims against Walmart, including but not limited to: preparing and filing the Complaint and amendments thereto; briefing Walmart's motion to dismiss and strike; reviewing relevant documents and discovery; researching applicable law and potential defenses; propounding discovery on Walmart and responding to Walmart's discovery requests; hiring and consulting with an expert; developing the arguments for class certification; advocating for the rights of the putative class members; and preparing for class certification and trial. Based on the foregoing, Plaintiff and Settlement Class Counsel have concluded that a settlement according to the terms set forth below is fair, reasonable, adequate, and beneficial to and in the best interests of Plaintiff and the Settlement Class Members in light of (1) the existence of multiple complex and contested issues of law and fact; (2) the risks inherent in litigation, including any trial or appeal; (3) the likelihood that future proceedings will be unduly protracted and expensive if the Litigation is not settled by voluntary agreement; (4) the magnitude of the benefits derived from the Settlement in light of both the maximum potential and likely range of recovery to be obtained through further litigation and the expense thereof, as well as the potential of no recovery whatsoever; and (5) Plaintiff's determination that the settlement is fair, reasonable, adequate, and substantially beneficial to the Settlement Class Members.

**3.14 WHEREAS**, Walmart denies any liability or wrongdoing of any kind associated with the claims alleged and contends that this Litigation is not appropriate for adversarial class certification pursuant to Rule 23 of the Federal Rules of Civil Procedure or any other federal or state rule, statute, law, or provision. Walmart further asserts that it has complied with all applicable provisions of federal or state statutory and common law. Walmart further states that despite its good faith belief that it is not liable for any of the claims asserted, and despite its good faith belief that adversarial certification is not appropriate, Walmart will not oppose the District Court's certification of the Settlement Class contemplated by this Agreement solely for purposes of effectuating this Settlement. Other than for purposes of this Settlement, Walmart does not waive its objections to certification of the Settlement Class, or any other class, in this Litigation as a litigation class.

**3.15 WHEREAS**, the Parties now seek to enter into this Settlement Agreement. In consideration of the covenants, agreements, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and among the undersigned that the Litigation be settled and compromised, and that the Releasing Settlement Class Members release Walmart of the Settlement Class Member Released Claims, without an award of costs to Walmart, Plaintiff, Settlement Class Counsel, or the Settlement Class, except as explicitly provided for in this Agreement, subject to the approval of the Court, on the following terms and conditions.

**3.16 WHEREAS**, the entry of final judgment in this Litigation shall dismiss with prejudice all claims that were or could have been alleged in the Litigation against Walmart, with the exception of any claims that might be retained by Settlement Class Members who exclude themselves from the Settlement, if any, in accordance with the Opt-Out process described in this Agreement. Walmart shall retain any existing defenses to such excluded claims.

**3.17 WHEREAS**, the Parties shall use their best efforts to effectuate this Agreement, including but not limited to cooperating in promptly seeking court approval of this Agreement, certification of the Settlement Class, and release of the Settlement Class Member Released Claims.

**3.18** Each of these Recitals is incorporated into this Agreement as if fully set forth herein.

#### **4. CERTIFICATION OF THE SETTLEMENT CLASS**

**4.1** Subject to Court approval, the Parties shall request that the Court enter an order conditionally certifying the Settlement Class for purposes of settlement. As set forth above, the Settlement Class includes:

All individuals who, during the Class Period, returned an item purchased from a Walmart store, Sam's Club store, or online from Walmart.com or Samsclub.com for pickup or delivery within the United States, and to whom Walmart or Sam's Club (hereafter, collectively "Walmart") gave a refund or credit, but where the amount of sales tax refunded or credited was less than the full amount of sales tax



paid at the time the item was purchased.

**4.2** The Parties may request that the Court certify additional settlement subclasses as agreed, if appropriate.

**4.3** Plaintiff shall file a motion requesting that the District Court enter an order conditionally certifying the Settlement Class for settlement purposes and covering all claims and individuals released by this Settlement. The form of any settlement certification orders shall, subject to Court approval, expressly state that the Parties and Settlement Class Counsel agree that certification of the Settlement Class is a conditional certification for settlement purposes only, and that Walmart retains its right to object to certification of this Litigation, or any other class action, under Federal Rule 23 or any other applicable rule, statute, law, or provision.

**4.4** Any certification of the Settlement Class is for settlement purposes only, and if for any reason the District Court does not grant final approval of the Settlement, or if final approval is not granted following the appeal of any order by the District Court, or if for any reason the Settlement Effective Date does not occur, the certification of the Settlement Class for settlement purposes shall be deemed null and void, and each Party shall retain all of their respective rights as they existed prior to execution of this Settlement Agreement, and neither this Settlement Agreement, nor any of its accompanying Exhibits or any orders entered by the Court in connection with this Settlement Agreement, shall be admissible or used for any purpose in this Litigation.

**4.5** Any certification of the Settlement Class for settlement purposes is in no way an admission by Walmart that class certification is proper in this Litigation or any other litigation against Walmart. Moreover, Walmart continues to assert that adversarial class certification in this Litigation would fail to meet the prerequisites necessary for class action treatment under applicable law. The Parties and Settlement Class Counsel further agree that, other than to effectuate the Settlement of this Litigation in this jurisdiction, the certification of the Settlement Class for settlement purposes and all documents related thereto, including this Agreement and all accompanying Exhibits and all orders entered by the Court in connection with this Agreement, are only intended to be used under the specific facts and circumstances of this case and are not intended to be used in any other judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or other proceeding against Walmart.

**4.6** This Settlement is conditioned on the Court's certifying the Settlement Class for settlement purposes.

## **5. MONETARY RELIEF TO THE SETTLEMENT CLASS**

**5.1** Subject to the terms and conditions of this Agreement, and subject to Court approval, Walmart agrees to pay the Class Settlement Amount of five million dollars (\$5,000,000). The monies shall be paid into a QSF to be administered by the Settlement Administrator. The Class Settlement Amount shall be used to pay (i) Claims that are valid, timely, and approved for payment by the Settlement Administrator; (ii) Notice and Administration Costs; (iii) any Incentive Award to the Settlement Class Representative approved by the Court; and (iv) any award of Attorneys'

Fees and Litigation Expenses to Settlement Class Counsel approved by the Court. Under no circumstances shall Walmart be obligated to pay more than the Class Settlement Amount in connection with this Settlement.

## **5.2 Payments to Settlement Class Members.**

- 5.2.1** Each Settlement Class Member who timely files a valid and approved Claim shall be entitled to receive an equal *pro rata* share of the Net Settlement Amount, as defined in Section 2.16.
- 5.2.2** Each Settlement Class Member may only submit one Claim and receive one individual payment no matter how many returns the individual Settlement Class Member may have made during the Class Period.
- 5.2.3** Each payment issued pursuant to this Settlement, whether by check or electronic transfer, will be addressed to the respective Claimant. Checks that are issued but not redeemed within 120 Days are void. Any remaining amounts due to uncashed checks shall be distributed to recipient(s) to be chosen by the Parties and approved by the Court.
- 5.2.4** Subject to the audit rights set forth in Section 7.7, the Settlement Administrator shall distribute payments to Settlement Class Members within a reasonable time following the Settlement Effective Date. Such payments shall be distributed via U.S. mail or other means of electronic transfer, per preference specified by the Claimant when submitting the Claim Form, to the address or other contact information provided on each Settlement Class Member's approved Claim Form.
- 5.2.5** The Settlement Class Members shall be solely responsible for paying all tax obligations, if any, arising from payments to them in accordance with applicable law. Walmart, Walmart's Counsel, Plaintiff, and Settlement Class Counsel shall have no responsibility or liability to any Settlement Class Member or other party for determining, withholding, or paying any taxes, if any, incurred in connection with this Settlement Agreement.
- 5.2.6** The Court may order changes to the method or allocation of payments to Settlement Class Members without invalidating this Settlement Agreement, provided that the other material terms of the Settlement Agreement are not altered.

## **5.3 Attorneys' Fees and Litigation Expenses.**

- 5.3.1** Plaintiff may apply to the Court for an award of reasonable Attorneys' Fees and Litigation Expenses for Settlement Class Counsel that, subject to Court approval and applicable law, will be paid from the Class Settlement Amount by the Settlement Administrator to an account designated by Settlement Class Counsel.
- 5.3.2** With no consideration given or received, Plaintiff has agreed to limit the request

for an award of reasonable Attorneys' Fees and Litigation Expenses to no more than 35% of the Class Settlement Amount, plus reimbursement of reasonable litigation costs and expenses. Walmart may elect to contest Class Counsel's request but otherwise Walmart takes no position on the amount to be sought by Plaintiff and does not object to a reasonable award of Attorneys' Fees and Litigation Expenses as determined by the Court and sought in accordance with this Agreement and applicable law.

**5.3.3** In the event that the Court does not approve the requested award of Attorneys' Fees and Litigation Expenses, or the Court awards Attorneys' Fees and Litigation Expenses in an amount less than that requested, such decision shall not affect the validity and enforceability of the Settlement and shall not be a basis for rendering the entire Settlement null, void, or unenforceable. Plaintiff retains the right to appeal any decision by the Court regarding its award of Attorneys' Fees and Litigation Expenses.

#### **5.4 Settlement Class Representative Incentive Award.**

**5.4.1** Plaintiff may apply to the Court for a reasonable Incentive Award that, subject to Court approval and applicable law, will be paid from the Class Settlement Amount by the Settlement Administrator to an address provided by Class Counsel.

**5.4.2** With no consideration given or received, Plaintiff has agreed to limit the amount sought for an Incentive Award to no more than \$10,000. Walmart may elect to contest the request for an Incentive Award but otherwise Walmart takes no position on the amount to be sought for an Incentive Award and does not object to a reasonable Incentive Award as determined by the Court and sought in accordance with this Agreement and applicable law.

**5.4.3** The denial by the Court of any application for an Incentive Award shall not affect the validity and enforceability of the Settlement and shall not be a basis for anyone to seek to void the Settlement.

#### **5.5 Notice and Administration Costs.**

**5.5.1** Notice and Administration Costs shall be paid to the Settlement Administrator from the Class Settlement Amount. It is anticipated that Notice and Administration Costs shall be approximately \$750,000 - \$850,000.

### **6. PROSPECTIVE RELIEF**

**6.1** Subject to the other terms and conditions of this Agreement, and subject to Court approval, Walmart agrees to the following prospective relief: Walmart is implementing an electronic solution at its Stores and Clubs designed to ensure that customers who return items to a Store or Club with a receipt receive complete refunds of any sales taxes paid whether the items were

purchased at a Store or Club or online.

## **7. CLAIMS SUBMISSION**

**7.1** All Claims must be submitted through a completed Claim Form, which shall be substantially similar to the form attached as Exhibit 2 to this Agreement. The Claim Form will require each Claimant to provide his or her full name, mailing address, email address, contact telephone number, and an attestation that he or she is a Settlement Class Member. Any Claim Form that lacks the requisite information will be deemed to be incomplete and ineligible for payment, provided, however, that the Settlement Administrator may, with the approval of Settlement Class Counsel and Walmart's Counsel, approve Claim Forms with missing information if the information is not necessary to the administration of the Claim.

**7.2** Claims shall be made by mailing or submitting via the Settlement Website a fully completed and signed Claim Form to the Settlement Administrator.

**7.3** Claim Forms must be submitted on or before the Claims Deadline.

**7.4** A Claim Form shall be approved if it is complete, timely, and valid, as determined by the Settlement Administrator.

**7.5** Unless the Parties agree otherwise, a Settlement Class Member is not entitled to monetary benefits if he or she submits a Claim Form after the Claims Deadline; if the Claim Form is incomplete; or if the Claim Form is fraudulent or contains false information.

**7.6** Subject to the audit rights set forth in Section 7.7, the Settlement Administrator shall have authority for determining if Claim Forms are complete, valid, and timely, in which case they will be accepted as approved.

**7.7** Audit rights: Within fourteen (14) days of the Claims Deadline, the Settlement Administrator shall provide counsel for the Parties with a report that summarizes the information provided in the Claim Forms and its determination whether each Claim should be approved or denied, and whether any Claims should be denied as fraudulent or reasonably suspected to be fraudulent and the basis for the determination. Original Claim Forms will also be made available to Counsel upon request. Within thirty (30) days of having received the report of proposed approved and denied Claims from the Settlement Administrator, Settlement Class Counsel and Walmart's Counsel shall meet and confer regarding any issues that either Settlement Class Counsel or Walmart believes need to be raised with the Settlement Administrator regarding the Claims. Settlement Class Counsel and Walmart's Counsel agree to use their best efforts to resolve any disputes. If necessary, the Parties may request that the Settlement Administrator conduct reasonable follow up with particular Claimants in the event of questions regarding the information provided by any Claimant or take other reasonable steps as agreed to by the Parties.

**7.8** To the extent the Settlement Administrator determines a claim is deficient in whole or part, within a reasonable time of making such a determination, but not more than fifteen (15) days after

said determination, the Settlement Administrator shall notify the Settlement Class Member of the deficiency and give the Settlement Class Member twenty-one (21) days to cure the deficiency. Such notifications shall be sent via e-mail, unless the claimant did not provide an e-mail address, in which case such notifications shall be sent via U.S. mail. If the Settlement Class Member attempts to cure the deficiencies, but, at the sole discretion and authority of the Settlement Administrator, fails to do so, the Settlement Administrator shall notify the Settlement Class Member of that determination within ten (10) days. The Settlement Administrator may consult with Settlement Class Counsel and Walmart's Counsel in making such determinations.

## **8. NOTICE TO THE CLASS**

**8.1** The Settlement Administrator shall provide notice of the Settlement to Settlement Class Members in accordance with the Notice Plan as approved by the Court. Given the difficulties in ascertaining individual Settlement Class Members, the Parties agree that publication notice (including through the internet) is the best practicable notice of this Settlement.

**8.2** The Parties shall confer regarding the Notice Plan prior to its submission to the Court. The Parties have the right to approve the proposed Notice Plan prior to its submission to the Court, which approval they shall not unreasonably withhold. Subject to Court approval, Notice to be provided to the Settlement Class shall be in substantially the form of Group Exhibit 1 and Exhibit 3 attached hereto, together with the Settlement Website. The Notice shall provide all relevant information, including important dates and deadlines, the Class Settlement Amount, and how to submit a Claim, opt-out, or object.

**8.3** Settlement Class Members shall also be notified of the Settlement via the establishment of a Settlement Website. The Settlement Website shall be established by the Settlement Administrator and shall contain information about the Settlement, including electronic copies of this Agreement as well as the Exhibits, including a long form Notice of the Settlement substantially in the form attached hereto. The URL of the Settlement Website shall be agreed upon by Settlement Class Counsel and Walmart's Counsel prior to the beginning of the Notice Period.

**8.4** Due to the practical difficulties in ascertaining contact information for individual Settlement Class Members, Walmart may, in its sole discretion, terminate this Settlement if the Court requires individual, direct notice to Settlement Class Members. If Walmart exercises its option to terminate due to the Court's requiring individual, direct notice, it shall provide Settlement Class Counsel with written notice of its election, at which point the Agreement is void in accordance with Section 19.

**8.5** Within thirty (30) days of Preliminary Approval of the Settlement Agreement, the Settlement Administrator shall establish the Settlement Website and begin effectuating notice to the Settlement Class Members as described in this Section. Unless otherwise agreed to by the Parties, the Settlement Website shall be maintained until sixty (60) days after the Settlement Effective Date and then taken down.

**8.6** The Notice Period shall begin approximately thirty (30) days after the Preliminary

Approval Order, on whatever date the Court orders for Notice to be issued by the Settlement Administrator, provided however that the Parties may agree to begin the Notice Period at a later date if needed for scheduling and logistical considerations. The Notice Period shall last for ninety (90) Days thereafter.

**8.7** The Parties agree that distribution of Notice in the manners described above constitutes the best notice practicable under the circumstances to members of the Settlement Class Members, and complies fully with any and all substantive and procedural due process rights guaranteed by the United States Constitution and any other applicable law. The Parties further agree that the Notice sufficiently notifies the Settlement Class of the terms of the proposed Settlement, their right to object to the Settlement or to opt-out of the Settlement, and the deadlines and procedures to object, opt-out or submit a Claim Form in connection with this Settlement.

## **9. CAFA NOTICE**

**9.1** Walmart shall provide notice to the appropriate governmental authorities in accordance with the federal Class Action Fairness Act. *See generally* 28 U.S.C. § 1715.

## **10. OPT-OUT PROCEDURE**

**10.1** Any potential Settlement Class Member who wishes to be excluded from the Settlement must Opt-Out by submitting an Opt-Out Request to the Settlement Administrator.

**10.2** For an Opt-Out Request to be accepted it must be timely and valid. To be timely, it must be submitted by the Opt-Out Deadline. To be valid, the Opt-Out must (a) contain a statement that the Settlement Class Member requests to be excluded from the Settlement Class (b) be personally signed by the Settlement Class Member and dated in accordance with the instructions in the Notice; and (c) provide the Settlement Class Member's full name, mailing address, email, and telephone number. An Opt-Out must be mailed to the address for the Settlement Administrator provided in the Notice. The Opt-Out request must be postmarked before the Opt-Out Deadline and received within five (5) business days after the Opt-Out Deadline. Mass-generated Opt-Out Requests are invalid and may be denied by the Settlement Administrator.

**10.3** Settlement Class Members who Opt-Out will be excluded from the Settlement Class and thus may not submit a Claim Form and may not object. If a Settlement Class Member submits an Opt-Out Request and a Claim Form or objection, the Claim Form will govern and the Opt-Out Request will be considered invalid.

**10.4** The Settlement Administrator shall maintain a list of persons who have submitted Opt-Out requests and shall provide such list to the Parties on a weekly basis during the Notice Period. Within seven (7) business days after the Opt-Out Deadline, the Settlement Administrator shall provide Counsel a list reflecting all timely and valid Opt-Outs from the Settlement Class.

## **11. OBJECTION PROCEDURE**

**11.1** A Settlement Class Member who wishes to object to the Settlement must notify the Parties and the District Court of his or her objection, in writing, on or before the Objection Deadline.

**11.2** To be considered, an objection must be in writing, include the objector's full name and the case name and case number(s) of the Litigation; the objector's current address, email, and phone number; the reasons why the objector objects to the Settlement along with any supporting legal authority; documentation demonstrating that the objector has standing to object, such as legible copies of receipts demonstrating the objector is a member of the Settlement Class as defined herein; and the objector's signature. In addition, the objecting Settlement Class Member must identify any previously filed objections filed by the Settlement Class Member and his or her counsel in any state or federal court. This listing must contain (i) the name of the case; (ii) the case number; (iii) the court in which the objection was filed; and (iv) the outcome of the objection. The objection must also indicate whether or not the objector intends to appear at the hearing on the motion for final approval of the Settlement.

**11.3** Any objection must be filed with the Court on or before the objection deadline, and a copy must be served on the Settlement Administrator, Settlement Class Counsel, and on Walmart's Counsel. The Parties will request that the Court order that failure to comply timely and fully with these procedures shall result in the invalidity and rejection of an objection. The Parties will request that the Court order that no Settlement Class Member shall be entitled to appear at the Final Approval Hearing (whether individually or through the objector's counsel) to object to the Settlement, or to object to certification of the Settlement Class or to the Settlement Agreement, and no written objections or briefs submitted by any Settlement Class Member shall be received or considered by the Court at the Final Approval Hearing, unless written notice of the Settlement Class Member's objection and any brief in support of the objection have been filed with the Court and served upon Settlement Class Counsel and Walmart's Counsel on or before the Objection Deadline.

**11.4** Any Settlement Class Member who objects to the Settlement and wishes to appear and speak at the Final Approval Hearing must include in his or her written objection a statement expressing intention to appear and speak at the Final Approval Hearing, or send a "Notice of Intent to Appear" at the Final Approval Hearing to the Clerk of the Court and to Settlement Class Counsel and Walmart's Counsel, postmarked on or before the Objection Deadline. The Notice of Intent to Appear must include the case name and case number of the lawsuit; the Settlement Class Member's full name, address, email address, and phone number; a statement clearly indicating the intention to appear at the Final Approval Hearing and the reasons for seeking to appear; copies of any papers or information to be presented to the Court, if any; and the Settlement Class Member's signature.

**11.5** Settlement Class Members who do not file and serve timely written objections in accordance with the procedures set forth in this Agreement have waived any objections to the Settlement and are forever foreclosed from making any objection (whether by appeal or otherwise) to the Settlement, or any aspect of the Settlement, including, without limitation, the fairness, reasonableness, or adequacy of the proposed Settlement, or any award of attorneys' fees or reimbursement of costs and expenses. The Parties will request that the Court order that Settlement

Class Members who fail to file and serve written objections in accordance with this Section shall be deemed to have waived any objections and shall be foreclosed from making any objection to the certification of the Settlement Class or to the Settlement Agreement.

**11.6** In the event the Parties determine that an objection is frivolous or otherwise without merit, the Parties shall request that the Court, within its discretion, overrule the objection and award appropriate costs and fees to the Parties in opposing such objection(s).

## **12. FUNDING THE CLASS SETTLEMENT AMOUNT**

**12.1** The Class Settlement Amount shall be funded through a QSF in accordance with this Agreement. The timing of the payments by Walmart to the QSF are as follows:

**12.1.1** Within 14 business days following the date on which the District Court enters an order approving the QSF (including if the Court's order granting preliminary approval approves the establishment of a QSF), or within 14 business days of the date that the Settlement Administrator provides to Walmart the information necessary to complete a wire transfer of funds to the QSF, whichever is later, Walmart shall transfer the initial Notice and Administration Costs to the QSF. In the event that the Settlement Effective Date does not occur, any amounts actually used by the Settlement Administrator for notice and administration shall not be refundable to Walmart. If, however, Walmart has paid into the QSF monies for Notice and Administration Costs which have not been used by the Settlement Administrator, those amounts not used by the Settlement Administrator shall be returned to Walmart.

**12.1.2** Subject to Section 12.1.3, within 10 business days following the Settlement Effective Date, Walmart shall transfer to the QSF amounts sufficient to cover the remainder of the Class Settlement Amount (or such lesser amount as awarded by the Court), to include the individual payments to Settlement Class Members, Attorneys' Fees and Litigation Expenses awarded by the Court, and the Settlement Class Representative Incentive Award awarded by the Court. Settlement Class Counsel shall provide the Settlement Administrator with the information as to whom the Attorneys' Fees and Litigation Expenses and Settlement Class Representative Incentive Award should be distributed.

**12.1.3** Within 14 days following the Settlement Effective Date, the Settlement Administrator shall effectuate payment of any Court-awarded Attorneys' Fees and Litigation Expenses for Class Counsel to an account designated by Class Counsel, as well as payment of any Court-awarded Incentive Award mailed to an address provided by Class Counsel. As set forth above, both such payments shall be paid from the Class Settlement Amount.



**13. QUALIFIED SETTLEMENT FUND**

**13.1** As required under this Agreement, Walmart shall transfer the required portions of the Class Settlement Amount to a Qualified Settlement Fund (“QSF”), to be held as a separate trust as described in Treasury Regulation §1.468B-1, 26 C.F.R. §1.468B-1. Settlement Class Counsel and Walmart jointly shall take such steps as shall be necessary to qualify the QSF under §468B of the Internal Revenue Code, 26 U.S.C. §468B, and the regulations promulgated pursuant thereto. Walmart shall be considered the “transferor” within the meaning of Treasury Regulation §1.468B-1(d)(1). The Settlement Administrator shall be the “administrator” within the meaning of Treasury Regulation §1.468B-2(k)(3). The Parties shall cooperate in securing an order of the Court to establish the QSF in accordance with the terms hereof in conjunction with its preliminary approval of the Settlement and Notice as described in the Agreement. The Court shall retain jurisdiction over the administration of the QSF. Walmart shall supply to the Settlement Administrator and to the Internal Revenue Service the statement described in Treasury Regulation §1.468B-3(e)(2) no later than February 15th of the year following each calendar year in which Walmart makes a transfer to the QSF. It is intended that the transfers to the QSF will satisfy the “all events test” and the “economic performance” requirement of §461(h)(1) of the Internal Revenue Code, and Treasury Regulation §1.461-1(a)(2). Accordingly, Walmart shall not include the income of the QSF in its income. Rather, the QSF shall be taxed on its modified gross income, excluding the sums transferred to it, and shall make payment of resulting taxes from its own funds. In computing the QSF’s modified gross income, deductions shall be allowed for its administrative costs and other deductible expenses incurred in connection with the operation of the QSF, including, without limitation, state and local taxes and legal, accounting, and other fees relating to the operation of the QSF.

**13.2** Upon establishment of the QSF, the Settlement Administrator shall apply for an employer identification number for the QSF utilizing Internal Revenue Service Form SS-4 and in accordance with Treasury Regulation §1.468B-2(k)(4).

**13.3** If requested by either Walmart or the Settlement Administrator, the Settlement Administrator and Walmart shall fully cooperate in filing a relation-back election under Treasury Regulation §1.468B-1(j)(2) to treat the QSF as coming into existence as a settlement fund as of the earliest possible date.

**13.4** Following its deposits as described in this Agreement, Walmart shall have no responsibility, financial obligation, or liability whatsoever with respect to the notifications to the Class required hereunder, the processing of Claims and Opt-Out requests, the allowance or disallowance of claims by Claimants, payments to Settlement Class Counsel, investment of QSF funds, payment of federal, state, and local income, employment, unemployment, excise, and other taxes imposed on the QSF or its disbursements, or payment of the administrative, legal, accounting, or other costs occasioned by the use or administration of the QSF, since it is agreed that such deposits shall fully discharge Walmart’s obligations to Claimants and Settlement Class Counsel and for expenses of administration in respect to the disposition of the Class Settlement Amount hereunder. Rather, the Settlement Administrator shall have sole authority and responsibility for the administration of such funds and income thereon, disbursement to Claimants and Settlement Class Counsel, and payment of taxes and administrative costs in accordance with

the provisions hereof, subject only to the rights of Walmart or Settlement Class Counsel to seek redress for any breach of the terms hereof.

**13.5** The Settlement Administrator shall cause to be filed, on behalf of the QSF, all required federal, state, and local tax returns, information returns and tax withholdings statements in accordance with the provisions of Treasury Regulation §1.468B-2(k)(1) and Treasury Regulation §1.468B-2(l)(2)(ii). The Settlement Administrator may, at the expense of the QSF, retain legal counsel and an independent, certified public accountant to consult with and advise the Settlement Administrator or the Settlement Administrator with respect to the preparation and filing of such materials and the federal, state and local tax compliance of the QSF. Either Walmart or the Settlement Administrator, independently or jointly, may, but are not required to, apply to the Internal Revenue Service and/or any applicable state taxing authority for an advance ruling as to any issue pertinent to the qualification of the QSF under Internal Revenue Code §468B and Treasury Regulations promulgated thereunder, its tax status under applicable state law, and/or its tax payment, reporting and withholding duties, so long as Walmart and the remaining Parties are reasonably satisfied that such application and ruling will not compromise the confidentiality of settlement evidenced herein as required by this Agreement. Subject to any contrary holdings in any such ruling, Settlement Class Members shall be responsible for payment of appropriate federal, state, and local income taxes on any claim paid out pursuant to this Agreement. The Parties agree that no portion of any distributions from the QSF to the Settlement Class Members is made in satisfaction of any excluded liability as described in Treasury Regulation § 1.468B- 1(g), related to Qualified Settlement Funds.

**13.6** The taxable year of the QSF shall be the calendar year in accordance with Treasury Regulation §1.468B-2(j). The QSF shall utilize the accrual method of accounting within the meaning of § 446(c) of the Internal Revenue Code.

**13.7** Based on the Settlement Administrator's recommendation and approval by the Parties, the QSF may be invested in United States Treasury bills, money market funds primarily invested in the same, or certificates of deposit (CDs), provided that such portions of the QSF as may reasonably be required to pay current QSF administrative expenses, taxes or disbursements to Claimants or Settlement Class Counsel may be deposited in bank accounts which are federally insured to the greatest extent practicable. All federal, state, and local taxes imposed with respect to income earned by, or property of, the QSF, shall be paid from the QSF.

**13.8** The Settlement Administrator may amend, either in whole or in part, any administrative provision of this Section to maintain the qualification of the QSF pursuant to the above-described authorities provided that the rights and liabilities of the Parties hereto and the Settlement Class are not altered thereby in any material respect.

#### **14. COMPREHENSIVE WAIVER, RELEASE, AND DISMISSAL**

##### **14.1 Settlement Class Members Released Claims:**

**14.1.1.** Subject to final approval by the Court of the Settlement, and for good and valuable

consideration set forth herein, the receipt and sufficiency of which is hereby acknowledged, all Releasing Settlement Class Members irrevocably release, acquit, and forever discharge Walmart of and from any and all claims, rights, causes of action, penalties, demands, damages, debts, accounts, duties, costs and expenses (other than those costs and expenses required to be paid pursuant to this Agreement), liens, charges, complaints, causes of action, obligations, or liability of any and every kind that were asserted in the Litigation, or that could have been asserted but were not asserted in the Litigation, or in any other court or forum, whether known or unknown, on the basis of, connected with, arising out of, or related in whole or in part to any or all of the alleged acts, omissions, facts, matters, transactions, circumstances, and occurrences that were directly or indirectly alleged, asserted, described, set forth, or referred to in the Litigation, whether such allegations were or could have been based on common law or equity, or on any statute, rule, regulation, order, or law, whether federal, state, or local. The Settlement Class Member Released Claims also include a release of all claims for Attorneys' Fees and Costs incurred by Releasing Settlement Class Members or by Class Counsel or any other attorney in connection with the Litigation, and this Settlement, and all claims related to conduct in discovery in the Litigation.

**14.1.2.** Releasing Settlement Class Members understand and agree that the release of the Settlement Class Member Released Claims is a full and final general release applying to both those Claims that are currently known, anticipated, or disclosed to Releasing Settlement Class Members and to all those that are presently unknown, unanticipated, or undisclosed to any Releasing Settlement Class Members arising out of the alleged facts, circumstances, and occurrences underlying the claims set forth in the Litigation. Releasing Settlement Class Members acknowledge that the facts could be different than they now know or suspect to be the case, but they are nonetheless releasing all such unknown claims. In exchange for the good and valuable consideration set forth herein, all Releasing Settlement Class Members further waive any and all rights or benefits that they as individuals or the classes may now have as a result of the alleged facts, circumstances, and occurrences underlying the claims set forth in the Litigation. In exchange for the good and valuable consideration set forth herein, all Releasing Settlement Class Members further waive any and all rights or benefits that they as individuals or as Releasing Settlement Class Members may now have as a result of the alleged facts, circumstances, and occurrences underlying the claims set forth in the Litigation under the terms of Section 1542 (a) of the California Civil Code (or similar statute in effect in any other jurisdiction), which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH DEBTOR.

**14.2 Individual General Release by Settlement Class Representative:**

**14.2.1.** Subject to the Court's final approval of the Settlement, and for good and valuable consideration set forth herein, the receipt and sufficiency of which is hereby acknowledged, and in addition to the release given by the Settlement Class Representative and all Releasing Settlement Class Members pursuant to Sections 14.1 of this Agreement, the Settlement Class Representative on behalf of himself and any and all spouses, representatives, heirs, successors, assigns, devisees, and executors (excluding the Releasing Settlement Class Members he seeks to represent), releases, acquits, and forever discharges Walmart from any and all allegations, claims, causes of action, demands, obligations, or liability, of whatever kind or nature, whether for injunctive relief, damages, penalties, or any other form of recovery, in this court or in any other court or forum, whether known or unknown, suspected or unsuspected, that the Settlement Class Representative may now have, has ever had, or hereafter may have, through the date of the execution of this Agreement, whether relating to the subject matter of this litigation or otherwise, and whether such allegations were or could have been based on common law or equity, or on any statute, rule, regulation, order, or law, whether federal, state, or local.

**14.3** The Parties acknowledge that this Settlement, including the releases provided in this Section, reflects a compromise of disputed claims.

**14.4** The Final Approval Order shall dismiss the Litigation with prejudice and shall incorporate the terms of the releases provided in this Section.

**15. DUTIES OF THE PARTIES REGARDING PRELIMINARY COURT APPROVAL**

**15.1** Plaintiff and Settlement Class Counsel shall apply to the District Court for the entry of an order granting preliminary approval of the Settlement, substantially in the form attached hereto as Exhibit 4 requesting that the District Court enter an order:

**15.1.1** Preliminarily approving the Settlement;

**15.1.2** Conditionally certifying the Settlement Class for settlement purposes in accordance with applicable legal standards and this Agreement;

**15.1.3** Approving as to form and content the proposed Notice Plan, including the form and content of the Internet Publication Notice and proposed Long Form Notice;

**15.1.4** Scheduling a fairness hearing on the question of whether the proposed Settlement should be finally approved as fair, reasonable, and adequate as to the Settlement Class;

**15.1.5** Approving Myles McGuire, Paul T. Geske, and Brendan Duffner of McGuire

Law, P.C. as Settlement Class Counsel;

**15.1.6** Approving Scott Pearlstone as Settlement Class Representative;

**15.1.7** Approving Epiq Class Actions and Claims Solutions as Settlement Administrator; and

**15.1.8** Approving the establishment of the QSF.

**15.2** Walmart shall cooperate with Settlement Class Counsel to obtain preliminary approval.

**15.3** The Parties shall continue to take any steps necessary to stay any pending proceedings so as to preserve the status quo until either the Settlement Effective Date occurs, or the Settlement Agreement is voided.

**16. DUTIES OF THE PARTIES REGARDING FINAL COURT APPROVAL**

**16.1** The Parties will jointly request that the Court hold a Final Approval Hearing.

**16.2** At the Final Approval Hearing, the Parties will request that the Court: (1) resolve any properly filed objections to the Settlement Agreement; (2) find that the Settlement Agreement is fair, reasonable, and adequate, was entered into in good faith and without collusion, and should be approved; (3) provide findings in connection therewith; and (4) enter the Final Approval Order, including final approval of conditional certification of the Settlement Class and the Settlement Agreement, an award of Attorneys' Fees and Litigation Expenses and an award of a Settlement Class Representative Incentive Award.

**16.3** In their submission to the District Court for the entry of final approval of the Settlement, Plaintiff and Settlement Class Counsel will submit a proposed Final Approval Order substantially in the form attached hereto as Exhibit 5. The proposed Final Approval Order shall:

**16.3.1.** Approve the Settlement, adjudging the terms thereof to be fair, reasonable, and adequate and directing consummation of its terms and provisions;

**16.3.2.** Certify the Settlement Class for settlement purposes in accordance with applicable legal standards and this Agreement;

**16.3.3.** Approve payment of the Class Settlement Amount pursuant to this Agreement;

**16.3.4.** Approve Settlement Class Counsel's application for an award of Attorneys' Fees and Litigation Expenses pursuant to this Agreement;

**16.3.5.** Approve the Settlement Class Representative Incentive Award; and

**16.3.6.** Dismiss this Litigation as between the Settlement Class Representative and the Settlement Class Members on the one hand, and Walmart on the other hand, on the merits and with prejudice and permanently bar the Settlement Class Representative and all Settlement Class Members (other than those who timely filed valid Opt-Out Requests) from further prosecuting any of the Settlement Class Member Released Claims against Walmart.

**16.4** The Final Approval Order shall not be considered final until the occurrence of the Settlement Effective Date.

**17. MUTUAL FULL COOPERATION**

**17.1** The Parties agree to cooperate fully with each other to accomplish the terms of this Settlement, including but not limited to execution of all necessary documents, and to take such other action as may reasonably be necessary to implement the terms of this Settlement. The Parties shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court or otherwise, to effectuate the terms of this Settlement. As soon as practicable after execution of this Settlement, Settlement Class Counsel shall, with the assistance and cooperation of Walmart and its counsel, take all necessary steps to secure the Court's approval of the Settlement.

**18. STATEMENT OF NO ADMISSION**

**18.1** Nothing contained in this Agreement shall be construed or deemed an admission of liability, culpability, or wrongdoing on the part of Walmart, and Walmart denies liability for any alleged wrongdoing. Walmart expressly denies liability for the claims asserted and specifically denies and does not admit any of the pleaded facts not admitted in its pleadings in the Litigation. Nor shall this Agreement constitute an admission by Walmart as to any interpretation of laws or as to the merits, validity, or accuracy of any claims made against it in the Litigation. Likewise, nothing in this agreement shall be construed or deemed an admission by Plaintiff or the Settlement Class with regards to the validity of any of Walmart's defenses or affirmative defenses. Each of the Parties has entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

**18.2** This Agreement, and all related documents, including the Settlement Agreement, the certification for settlement purposes entered pursuant to this Agreement, and any Claims, Requests to Opt-Out, Objections or other materials submitted by Settlement Class Members and all other actions taken in implementation of the Settlement, including any statements, discussions, or communications, and any materials prepared, exchanged, issued, or used during the course of the negotiations leading to this Agreement are settlement documents and shall be inadmissible in evidence and shall not be used for any purpose in this Litigation or in any other judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or proceeding, or any other litigation against Walmart, for any purpose, except in an action or proceeding to approve, interpret, or enforce the terms of this Agreement.

**18.3** The Claim Forms, requests to Opt-Out, Objections, and any other evidence produced or created by any Settlement Class Member in connection with the claims resolutions procedures pursuant to this Settlement, and any actions taken by Walmart in response to such materials do not constitute, are not intended to constitute, and will not be deemed to constitute an admission by Walmart of any violation of any federal, state, or local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or in equity.

**18.4** Any certification of the Settlement Class in accordance with the terms of this Agreement is for settlement purposes only. Nothing in this Agreement will be construed as an admission or acknowledgement of any kind that any class should be certified in this Litigation or in any other action or proceeding. Further, neither this Agreement, nor the Court's actions with regard to this Agreement, will be deemed admissible in this Litigation and are not intended to be admissible (and Plaintiff and Settlement Class Counsel shall not seek their admission), in any other judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or proceeding, or in any other litigation, regarding the propriety of class certification or collective treatment. In the event that this Agreement is not approved by the District Court or any appellate court, or otherwise fails to become effective and enforceable, or is terminated, or the Settlement Effective Date does not occur for any reason, Walmart will not be deemed to have waived, limited, or affected in any way any of its objections or defenses in the Litigation. Such objections and defenses include, but are not limited to, Walmart's objections and defenses to any class-wide treatment and nothing in this Agreement or any document related to this Agreement shall be construed as a waiver by Walmart of its contention that class certification is not appropriate and is contrary to law in this Litigation or any other case or proceeding.

## **19. VOIDING THE AGREEMENT**

**19.1** In the event that this Settlement is not approved, or if for any reason the Effective Date does not occur, the Parties may elect to deem the Settlement Agreement null, void, and unenforceable, and it shall not be used nor shall it be admissible in any subsequent proceedings either in this Court or in any other judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or other proceeding, or other litigation against Walmart, and the Parties shall return to their respective positions prior to engaging in settlement negotiations.

## **20. SIGNATORIES' AUTHORITY**

**20.1** The respective signatories to this Agreement each represent that they are fully authorized to enter into this Settlement on behalf of the respective Parties for submission to the Court for preliminary and final approval.

## **21. NO PRIOR ASSIGNMENTS**

**21.1** The Parties represent, covenant, and warrant that they have not directly or indirectly,

assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.

## **22. NOTICES AND COMMUNICATIONS**

**22.1** Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given: (i) on the date given, if given by hand delivery; (ii) within one (1) business day, if sent by overnight delivery services such as Federal Express or similar courier; (iii) on the third business day after mailing by United States registered or certified mail, return receipt requested, or (iv) on the day received for delivery by e-mail. All notices given under this Agreement shall be addressed as follows:

To Plaintiff and Settlement Class Counsel:

Paul T. Geske  
MCGUIRE LAW, P.C.  
55 West Wacker Dr. 9th Floor  
Chicago, Illinois 60601  
Tel: (312) 893-7002  
Fax: (312) 275-7895  
Email: pgeske@mcgpc.com

To Walmart:

Naomi G. Beer  
Francis A. Citera  
GREENBERG TRAURIG, LLP  
1144 15th Street, Suite 3300  
Denver, Colorado 80202  
Tel: (303) 572-6500  
Fax: (303) 572-6540  
Email: BeerN@gtlaw.com  
CiteraF@gtlaw.com

## **23. CONFIDENTIALITY**

**23.1** The negotiations related to this Agreement (including the negotiations regarding the Term Sheet, negotiations related to the drafting of this Agreement, and any negotiations prior to preliminary approval or between the time of preliminary and final approval) will remain strictly confidential and shall not be discussed with anyone other than the Settlement Class Representative and Walmart, their retained attorneys, their accountants and financial or tax advisers, their retained consultants, the Court, and the mediator Hon. James Holderman (Ret.) and his staff, unless



otherwise agreed to by Settlement Class Counsel and Walmart or unless otherwise ordered by the Court. Notwithstanding the other provisions of this Section, Walmart may, if necessary, disclose the Settlement in filings that Walmart Inc. is required to make with the Securities and Exchange Commission, including 10-Q and 10-K filings, or in other disclosures to investors.

**24. PRESS RELEASE**

**24.1** No Party, nor their Counsel, shall initiate any statements to the media regarding the Settlement. The Parties shall agree on a statement to be used in the event of press inquiries regarding the settlement. The Parties shall not make any other statements to the media regarding this Settlement unless agreed upon by the Parties. This provision shall not prohibit notice by publication in accordance with the Notice Plan, including through an agreed release of the notice through PR Newswire.

**25. MISCELLANEOUS PROVISIONS**

**25.1 Construction.** The Parties agree that the terms and conditions of this Settlement are the result of lengthy, intensive arms-length negotiations between the Parties and that this Settlement shall not be construed in favor of or against any party by reason of the extent to which any party or her or his counsel participated in the drafting of this Settlement.

**25.2 Captions and Interpretations.** Paragraph titles or captions contained in this Agreement are a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision of this Agreement. Each term of this Agreement is contractual and not merely a recital.

**25.3 Documents and Discovery.** Settlement Class Counsel will maintain confidentiality of documents and data produced by Walmart in the Litigation pursuant to any protective order entered in the litigation, and within sixty (60) days following the Settlement Effective Date, shall either return such documents and data or certify that such documents and data have been destroyed.

**25.4 Modification.** This Agreement may not be changed, altered, or modified, except in a writing signed by the Parties and approved by the Court. Notwithstanding the foregoing, the Parties agree that any dates contained in this Agreement may be modified by agreement of the Parties without Court approval if the Parties agree and cause exists for such modification. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

**25.5 Integration Clause.** This Agreement, the Exhibits hereto, and any other documents delivered pursuant hereto contain the entire agreement between the Parties relating to the resolution of the Litigation, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged in this Agreement. No rights under this Settlement may be waived except in writing and signed by the Party against whom such waiver is to be enforced.

**25.6** Binding on Assigns. This Settlement shall be binding upon, and inure to the benefit of, the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.

**25.7** Settlement Class Counsel Signatories. It is agreed that because the Settlement Class Members are so numerous, it is impossible or impractical to have each Settlement Class Member execute this Settlement. The notice provided in accordance with the Notice Plan will provide all Settlement Class Members with a summary of the Settlement and will advise all Settlement Class Members of the binding nature of the release. Excepting only those Settlement Class Members who timely submit a valid Opt-Out request, such Notice shall have the same force and effect as if this Settlement were executed by each Settlement Class Member.

**25.8** Counterparts. This Agreement may be executed by facsimile signature and in any number of counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one and the same Agreement, which shall be binding upon and effective as to all Parties.

**25.9** Applicable Law. This Agreement shall be governed by Missouri law without regard to its choice of law or conflicts of law principles or provisions.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement by and through their duly authorized representatives and counsel on the dates stated below.

**FOR PLAINTIFF AND THE PROPOSED SETTLEMENT CLASS**

By: 

Print Name: Scott Pearlstone

Date: NOVEMBER 24, 2020

By: Paul Geske

Print Name: Paul T. Geske, MCGUIRE LAW, P.C.

Date: November 24, 2020

**FOR DEFENDANT WALMART INC.**

By: \_\_\_\_\_

Print Name: Naomi Beer, GREENBERG TRAUIG, LLP

Date: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Parties have executed this Settlement Agreement by and through their duly authorized representatives and counsel on the dates stated below.

**FOR PLAINTIFF AND THE PROPOSED SETTLEMENT CLASS**

By: \_\_\_\_\_

Print Name: Scott Pearlstone


Date: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: Paul T. Geske, MCGUIRE LAW, P.C.

Date: \_\_\_\_\_

**FOR DEFENDANT WALMART INC.**

By:  \_\_\_\_\_

Print Name: Naomi Beer, GREENBERG TRAUERIG, LLP

Date: November 24, 2020