

CLASS ACTION SETTLEMENT AGREEMENT

1. PREAMBLE

1.1 This Class Action Settlement Agreement is made and entered into as of the dates of Execution set forth below, individually and on behalf of the Settlement Class Representative, Settlement Class Members, and Walmart Inc. (“Walmart”).

2. DEFINITIONS

2.1 **“Agreement”** means this Class Action Settlement Agreement.

2.2 **“Approved Claimant”** means any Claimant whose Claim is approved by the Claims Administrator.

2.3 **“Attorneys’ Fees and Litigation Expenses”** means the attorneys’ fees and litigation expenses to be requested by Class Counsel, subject to Court approval in accordance with this Agreement.

2.4 **“Claim”** means a claim submitted by a Settlement Class Member by way of a Claim Form to receive a payment in accordance with the procedures set forth in this Agreement.

2.5 **“Claim Filing Deadline”** means the date by which Settlement Class Members must submit a Claim Form to the Claims Administrator in accordance with this Agreement in order to be eligible to receive a payment in accordance with this Agreement.

2.6 **“Claim Form”** means a form substantially in the form agreed and attached to the Agreement as Schedule 6.4.5, which Settlement Class Members shall use to submit Claims to the Claims Administrator.

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

2.8 **“Claims Administration Costs”** means the costs which Class Counsel has agreed to pay to the Claims Administrator for the purposes of administering the Claims process and performing other settlement notice and administration functions in accordance with this Agreement, subject to Court approval.

2.9 **“Claims Administrator”** means, subject to Court approval, Angeion Group, the entity which shall perform certain notice and claims administration functions in accordance with this Agreement.

2.10 “**Class Counsel**” means D. Greg Blankinship and Todd S. Garber of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP and Randall K. Pulliam of Carney Bates & Pulliam, PLLC.

2.11 “**Class Settlement Amount**” means the maximum amount of money that Walmart will be obligated to pay under this Settlement, namely \$1,100,000.00, 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.

2.12 “**Court**” means the United States District Court, Western District of Arkansas, Fayetteville Division, and any appellate court that may review any orders entered by the United States District Court, Western District of Arkansas, Fayetteville Division, related to this Settlement.

2.13 “**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.

2.14 “**Execution**” means the signing of this Agreement by all signatories hereto.

2.15 “**Final Judgment and Order of Dismissal**” means the Final Judgment and Order of Dismissal approving the Settlement and dismissing the Litigation with prejudice as against Walmart, substantially in the form of the proposed Final Judgment and Order of Dismissal attached hereto as Schedule 2.15, which this Agreement contemplates will be entered and approved by the Court.

2.16 “**Litigation**” means the case of *Michael Hester, individually and on behalf of others similarly situated v. Walmart, Inc.*, United States District Court, Western District of Arkansas, Fayetteville Division, which was assigned Case No. 5:18-cv-05225-TLB.

2.17 “**Notice**” means the document substantially in the form of the document attached hereto as Schedule 2.17, which has 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.

2.18 “**Notice Period**” means the minimum period of time during which Notice will be made as approved by the Court.

2.19 “**Notice Plan**” means the document describing the various methods by which notice will be provided to Settlement Class Members. Subject to consultation with the Claims Administrator, the Notice Plan will be substantially in the form attached as Schedule 2.19. The Notice Plan will be implemented no later than forty-five (45) days after the Court has

granted preliminary approval.

2.20 **“Opt Out Letter”** means a request by a Settlement Class Member to be excluded from this Settlement using the procedures set forth in this Agreement.

2.21 **“Parties”** means the Settlement Class Members and Walmart.

2.22 **“Person”** means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assigns.

2.23 **“Product”** means an Onn brand power bank, including but not limited to the following models: 1400 mAh; 1800 mAh; 2000 mAh; 2200 mAh; 3350 mAh; 4000 mAh; 4400 mAh; and, 6700 mAh.

2.24 **“Programmatic Relief”** means the packaging change described in Section 6.3.

2.25 **“QSF”** means the Qualified Settlement Fund to be set up in accordance with this Agreement.

2.26 **“Releasing Settlement Class Members”** means the Settlement Class Members, other than those who submit Opt-Out Letters.

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

2.28 **“Settlement Class”** means the following: all Persons who purchased any Product during the Settlement Class Period. Excluded from the Settlement Class are Walmart, including any parent, subsidiary, affiliate or controlled person of Walmart; Walmart’s officers, directors, agents, employees, and their immediate family members, as well as the judicial officers assigned to the Litigation and members of their staffs and immediate families.

2.29 **“Settlement Class Member Payment Amount”** means the portion of the Class Settlement Amount which shall be used to make payments to Approved Claimants in accordance with this Agreement.

2.30 **“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 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.

2.31 **“Settlement Class Members”** means the Settlement Class Representative and all members of the Settlement Class.

2.32 **“Settlement Class Period”** means the period of time from January 1, 2013 to the date on which the Court grants preliminary approval.

2.33 **“Settlement Class Representative”** means Dr. Michael Hester.

2.34 **“Settlement Class Representative Service Payment”** means the amount Class Counsel shall request be paid to the Settlement Class Representative in accordance with this Agreement.

2.35 **“Settlement Effective Date”** means the first day after the last of the following occurrences:

2.35.1. The date that the time to appeal or seek permission to appeal of the entry of the Final Judgment and Order of Dismissal approving the Settlement and dismissing this Litigation with prejudice as to Walmart has expired with no appeal having been taken or sought; or

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

2.35.3. The provisions and deadlines in this Section apply even if there are no objections to the Settlement.

2.36 **“Settlement Website”** means the website created and managed by the Claims Administrator which will provide Settlement Class Members with access to the Notice, the online Claim Form, and other information regarding the Settlement.

2.37 **“Walmart Released Parties”** and **“Walmart”** mean Walmart Inc., and each of its current and former parents, subsidiaries, affiliates, predecessors, insurers, agents, employees, successors, assigns, officers, officials, directors, partners, suppliers, contractors, attorneys,

representatives, and shareholders.

3. RECITALS

3.1 On November 14, 2018, Plaintiff Michael Hester brought a putative class action against Walmart in the United States District Court, Western District of Arkansas, Fayetteville Division, which was assigned Case No. 5:18-cv-05225-TLB. On May 16, 2019, Plaintiff filed a First Amended Complaint in the Litigation. In the First Amended Complaint, Plaintiff alleged that Walmart engaged in unjust, unfair, and deceptive practices in misrepresenting the capacity of the Products. Plaintiff alleged Walmart is liable for breach of express warranty, violation of states' deceptive trade practices acts and unfair business practices acts, violation of states' consumer protection statutes, and unjust enrichment, and alleged Walmart should be required to accurately label the Products and pay restitution to Plaintiff and putative class members relating to the sale of the Products, all as more particularly set forth in the First Amended Complaint. Walmart denies all of Plaintiff's allegations, as set forth in its Answer in the Litigation as well as in other Motions and Briefs filed in the Litigation. On January 28, 2020, the putative Plaintiff moved to certify classes of consumer residents of Georgia and residents of multiple states who purchased from Walmart the Products.

3.2 On March 13, 2020, counsel for the Parties participated in a mediation with Frank Hamlin acting as mediator, and, as a consequence of the mediation, agreed to settle all claims in the Litigation, including, but not limited to, a settlement of the claims related to Walmart's sale of the Products on a national class-wide basis.

3.3 The Settlement Class Representative believes this Litigation is meritorious. Class Counsel represents that they have conducted a thorough investigation, over more than 2 years, into the facts of this case, and have diligently pursued an investigation of the Settlement Class Members' claims against Walmart, including but not limited to: (i) reviewing relevant documents; (ii) researching the applicable law and the potential defenses; (iii) conducting a Fed. R. Civ. P. 30(b)(6) deposition; (iv) hiring and consulting with experts; (v) developing the argument for class certification; (vi) advocating for the rights of the Settlement Class; and, (vii) defending against a motion to dismiss. Based on their own independent investigation and evaluation, Class Counsel are of the opinion that the Settlement is fair, reasonable, adequate, and in the best interest of the Settlement Class Members in light of all known facts and circumstances, including the risk of significant delay, the defenses asserted by Walmart, trial risk, and appellate risk.

3.4 Walmart denies any liability or wrongdoing of any kind associated with the claims alleged and contends that this Litigation is not appropriate for class action treatment (outside of this proposed Settlement) pursuant to the Federal Rules of Civil Procedure or any other federal or state rule, statute, law, or provision. Walmart asserts that the Litigation fails to meet the prerequisites necessary for class action treatment under applicable law, especially, but not solely, with respect to predominance and manageability because it

contends that the need to determine individualized issues makes the Litigation unmanageable consistent with due process. Walmart further asserts that it has complied with all applicable provisions of federal and state statutory law 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 certification is not appropriate, Walmart will not oppose the 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.

3.5 As of the Settlement Effective Date, the entry of Final Judgment in this Litigation shall dismiss with prejudice all claims which were or which could have been alleged in the Litigation against Walmart, with the exception of any claims which 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. The Parties agree to cooperate and take all steps necessary and appropriate to obtain preliminary and final approval of this Settlement, to effectuate its terms, and, to the extent of the obligations set forth herein, to dismiss this Litigation against Walmart with prejudice.

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

4. CERTIFICATION OF THE SETTLEMENT CLASS

4.1 Class Counsel shall request that the Court enter an order regarding conditional settlement class certification in this Litigation to cover the Settlement Class Period and all claims and individuals covered by this Settlement. The form of class certification order shall, subject to Court approval, expressly state that the Parties and 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 Rules of Civil Procedure Rule 23 or any other applicable rule, statute, law, or provision.

4.2 Any certification of the Settlement Class is a conditional certification for settlement purposes only, and if for any reason the Court does not grant final approval of the Settlement, or if final approval is not granted following the appeal of any order by the 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 Agreement, and neither this Agreement, nor any of its accompanying exhibits or any orders entered by the Court in connection with this Agreement, shall be admissible or used for any purpose in this Litigation.

4.3 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 this Litigation fails to meet the prerequisites necessary for class action treatment under applicable law, especially, but not solely, with respect to predominance and manageability because the need to determine individualized issues makes the case unmanageable consistent with due process. The Parties and 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.

5. SETTLEMENT CLASS

5.1 The Parties shall request that the Court enter a certification order and certify for settlement purposes only the Settlement Class as defined in this Agreement.

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

5.3 Walmart and Class Counsel may request that the Court certify additional settlement subclasses if appropriate.

6. TERMS OF SETTLEMENT

6.1 Subject to the other terms and conditions of this Agreement, and subject to Court approval, Walmart agrees to pay a Class Settlement Amount of \$1,100,000.00. Under no circumstances shall Walmart be obligated to pay more than the Class Settlement Amount in connection with this Settlement.

6.2 The Class Settlement Amount shall be paid out as follows:

6.2.1 Reasonable Attorneys' Fees and Litigation Expenses. Class Counsel shall apply to the Court for an award of reasonable Attorneys' Fees and Litigation Expenses. Walmart takes no position on the amounts to be sought by Class Counsel for an award of Attorneys' Fees and Litigation Expenses, but does not object to a reasonable award of Attorneys' Fees and Litigation Expenses sought in accordance with this Agreement.

6.2.2 Reasonable Class Representative Service Payment. Class Counsel shall apply to the Court for a reasonable Settlement Class Representative Service Payment for the Settlement Class Representative. Walmart takes no position on the amount to be sought by Class Counsel for the Settlement Class Representative Service Payment, but does not object to a reasonable award of a Settlement Class Representative Service Payment sought in accordance with this Agreement. The denial by the Court of any such application by Class Counsel shall not affect the validity and enforceability of the settlement and shall not

be a basis for anyone to seek to void the Settlement.

6.2.3 Costs of Notice and also Claims Administration Costs incurred in accordance with this Agreement.

6.2.4 Payments to Settlement Class Members shall consist of the amount remaining up to the Class Settlement Amount, which shall be allocated as follows:

6.2.4.1. The amount of each Settlement Class Member Payment Amount will be determined by: 1) deducting from the Class Settlement Amount the sum of the Attorneys' Fees and Litigation Expenses and Class Representative Service Payment and costs of Notice and Claims Administration Costs to arrive as the "Remaining Class Settlement Amount"; 2) assigning a claim value ("Claim Value") to each Settlement Class Member who makes a claim, such Claim Value to be calculated by adding 1 point for each 1400 or 1800 mAh Product the Settlement Class member purchased, 2 points for each 2000, 2200, or 3350 mAh Product the Settlement Class Member purchased, and 3 points for each 4000, 4400, or 6700 mAh Product the Settlement Class Member purchased; 3) the Remaining Class Settlement Amount will be divided by the total number of points assigned to all Claim Values to arrive at the "Award Point Value"; and 4) Settlement Class Member will receive an award equal to their Claim Value multiplied by the Award Point Value, which will constitute the Settlement Class Member Payment Amount for Approved Claimants.

Walmart takes no position as to the allocation formula. Further, payment of any Settlement Class Member Payment Amount shall not be construed or deemed an admission of liability, culpability, or wrongdoing on the part of Walmart. Walmart denies liability for any alleged wrongdoing.

6.3 After the Litigation was commenced changes were implemented to the packaging of the Products including displaying the "rated capacity" and "actual capacity" of the Product. This or other similar language demonstrating a difference between the mAh of the internal capacity and the output of the Product will be incorporated into future packaging of the Product. It is Plaintiff's position that these changes provide ongoing benefits to the Settlement Class Members. This Agreement does not prohibit Walmart selling any remaining inventory of the Product with the prior packaging, and the Parties contemplate and expressly agreed that all remaining inventory of the Product with the prior packaging can be sold by Walmart pursuant to this Agreement. If Class Counsel or any Settlement Class Member believes at any point in time that Walmart's packaging of the Product does not comply with this Section 6.3, they shall provide Walmart with written notice of the specific facts and circumstances of any alleged non-compliance; Walmart will thereafter have 90 days after notice to bring its practices in compliance with this Section 6.3 and will not be deemed to be in breach of this Agreement if it does so within that 90-day period.

6.4 The Claims Administrator will manage the claims process in cooperation with Class Counsel and Walmart's counsel, and in accordance with the following parameters:

6.4.1 An Approved Claimant shall be entitled to receive the individual Settlement Class Member Payment Amount in accordance with the allocation as set forth in this Agreement. Payment of any Settlement Class Member Payment Amount shall not be construed or deemed an admission of liability, culpability, or wrongdoing on the part of Walmart. Walmart denies liability for any alleged wrongdoing.

6.4.2 Claims shall be made by submitting a Claim Form online through the Settlement Website, provided, however, that the Claims Administrator will make an alternative Claim submission process available upon request by a Claimant as reasonably practicable, such as by way of a mailed Claim submission. Settlement Class Members who submit a claim for more than 5 Products must submit adequate written proof of purchase for any claimed Products in excess of 5.

6.4.3 A Claim Form shall be approved if timely and valid.

6.4.4 To be timely, a Claim Form must be submitted to the Claims Administrator by the Claim Filing Deadline set forth in the Notice.

6.4.5 The Claim Form shall be substantially similar to the form attached as Schedule 6.4.5 to this Agreement.

6.4.6 To be valid, the Claim Form must be completed in full and be signed under penalty of perjury. Such a signature may be submitted electronically in a manner determined by the Claims Administrator that is consistent with general claims administration practice.

6.4.7 Audit rights: Within fourteen (14) days of the Claims Filing Deadline, the Claims Administrator shall provide counsel for the Parties with a report that contains the information provided in the Claim Forms and its determination whether or not each Claim should be approved or denied. Original Claim Forms will also be made available to counsel for the parties upon request. Within thirty (30) days of having received the report of proposed approved and denied Claims from the Claims Administrator, Class Counsel and Walmart's counsel shall meet and confer regarding any issues that either Class Counsel or Walmart believes need to be raised with the Claims Administrator regarding the Claims. Class Counsel and Walmart's counsel agree to use their best efforts to resolve any disputes. If necessary, the Parties may request that the Claims 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.

6.4.8 Subject to the audit rights set forth in Section 6.4.8, the Claims Administrator shall distribute Settlement Class Member Payment Amounts to Approved Claimants within a reasonable time after the Settlement Effective Date. The Claims Administrator shall cooperate with the Parties to ensure any funding or account structure is in place prior to distribution.

7. NOTICE TO THE CLASS

7.1 The Claims Administrator shall provide notice of the Settlement to Settlement Class Members in accordance with the Notice Plan, including the content of advertisements and social media units, to be agreed upon by the Parties (such agreement not to be unreasonably withheld) and as approved by the Court.

7.2 Subject to Court approval, the Notice to be provided shall be in substantially the form of the attached Schedules 2.17 and 2.19.

7.3 The Notice Period, subject to Court approval, is 60 days.

7.4 Walmart may 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 Class Counsel with written notice of its election, at which point the Agreement is void in accordance with Section 18.

8. CAFA NOTICE

8.1 Walmart shall provide notice to the appropriate governmental authorities in accordance with CAFA.

9. OPT-OUT PROCESS

9.1 A Settlement Class Member who wishes to be excluded from this Settlement, and from the release of claims pursuant to this Settlement, shall submit an Opt-Out Letter. For an Opt-Out Letter to be accepted it must be timely and valid. To be timely it must be submitted by the Claim Filing Deadline. To be valid, the Opt-Out Letter shall contain a statement that the Settlement Class Member requests to be excluded from the Class and must also be signed by the Settlement Class Member and dated in accordance with the instructions in the Notice. The Claims Administrator may invalidate mass-generated opt outs.

9.2 Settlement Class Members may not submit both an Opt-Out Letter and a Claim Form. If a Settlement Class Member submits both an Opt-Out Letter and a Claim Form, the Claim Form will govern and the Opt-Out Letter will be considered invalid.

9.3 The Claims Administrator shall maintain a list of persons who have submitted Opt-Out Letters and shall provide such list to the Parties on a weekly basis.

9.4 Walmart shall have the right to terminate the Settlement in the event that the number of valid and timely Opt-Outs from the Settlement exceeds 750, provided that election is made, in writing, within 10 days of being advised by the Class Administrator that the number of valid and timely Opt-Outs exceeds 750. In the event that the Settlement is terminated in accordance with this subsection, the provisions of Section 18 of this Agreement apply.

10. OBJECTION PROCESS

10.1 A Settlement Class Member who has not submitted an Opt-Out Letter by the Claim Filing Deadline, but who wishes to object to the Settlement must notify the Court of the objection, in writing, as set forth in Section 10.2 below.

10.2 The Parties will request that the Court enter an order requiring any Settlement Class Member who wishes to be heard orally at the final approval hearing, or who wishes for any objection to be considered, to file a written notice of objection with the Court by the objection date contained in the Notice, as well as any notice of intention to appear at the final approval hearing. The objection must also be served on counsel of record by the objection date. To state a valid objection to the Settlement, an objecting Settlement Class Member must personally sign the objection and provide the following information in connection with and as part of any objection: (i) full name, current address, and current telephone number; (ii) documentation sufficient to establish membership in the Settlement Class; (iii) a statement of the position the objector wishes to assert, including the factual and legal grounds for the position and objection; and (iv) copies of any other documents that the objector wishes to submit in support of his/her/its position. In addition, the objecting Settlement Class Member must identify any previously filed objections to class action settlements filed by the Settlement Class Member and his/her/its 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. Subject to approval of the Court, any objecting Settlement Class Member may appear in person or by counsel at the final approval hearing held by the Court to show cause why the proposed Settlement should not be approved as fair, reasonable, and adequate, or to object to any petitions for attorneys' fees, service awards, and reimbursement of reasonable litigation costs and expenses. To appear at the final approval hearing held by the Court, the objecting Settlement Class Member must file with the clerk of the Court, and serve on all counsel designated in the Notice, a notice of intention to appear by the objection deadline or on such other date that may be set forth in the Notice. The notice of intention to appear must include copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member (or his/her/its counsel) will present to the Court in connection with the final approval hearing. Any Settlement Class Member who does not provide a notice of intention to appear in complete accordance with the deadlines and other specifications set out in the Notice, and who has not filed an objection in complete accordance with the deadlines and other specifications set forth in this Settlement and the Notice, subject to the approval of the Court, will be deemed to have waived any objections to the Settlement and can be barred from speaking or otherwise presenting any views at the Final Approval Hearing.

10.3 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 or service awards.

11. DISTRIBUTION PROCESS

11.1 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 is:

11.1.1 Within ten (10) business days following the date on which the Court enters an order granting preliminary approval of the Settlement, or within ten (10) business days of the date on which Walmart received the information needed to transfer funds to the QSF, whichever is later, Walmart shall transfer the Claims Administration Costs to the QSF, which shall distribute that amount to the Claims Administrator. In the event that the Settlement Effective Date does not occur, any amounts actually used by the Claims Administrator for notice and administration shall not be refundable to Walmart. If, however, Walmart has paid monies into the QSF for Notice and Administration Costs that have not been used by the Claims Administrator, and the Settlement Effective Date does not occur, those amounts not used by the Claims Administrator shall be refundable to Walmart.

11.1.2 Within fourteen (14) business days following the Settlement Effective Date, Walmart shall transfer to the QSF the amount of the balance of the Class Settlement Amount, as reduced by the Claims Administration Costs. The QSF shall distribute these amounts as awarded by the Court. Class Counsel shall provide the QSF with the information regarding to whom the Attorneys' Fees and Litigation Expenses and Class Representative Service Payments should be distributed.

12. QUALIFIED SETTLEMENT FUND

12.1 As required under this Agreement, Walmart shall transfer the required portions of the Class Settlement Amount to a bank account set up and administered by the Claims Administrator as a Qualified Settlement Fund as described in Treasury Regulation § 1.468B-1, 26 C.F.R. § 1.468B-1. The Parties jointly shall, and shall cause the Claims Administrator to, 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 Claims 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 Claims 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-l(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.

12.2 Upon establishment of the QSF, the Claims 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).

12.3 If requested by either Walmart or the Claims Administrator, the Claims 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.

12.4 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 Letters, the allowance or disallowance of claims by Claimants, payments to 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, because it is agreed that such deposits shall fully discharge Walmart’s obligations to Settlement Class Members and Class Counsel and for expenses of administration in respect to the disposition of the Class Settlement Amount hereunder. Rather, the Claims Administrator shall have sole authority and responsibility for the administration of such funds and income thereon, disbursement to Claimants and Class Counsel, and payment of taxes and administrative costs in accordance with the provisions hereof, subject only to the rights of Walmart or Class Counsel to seek redress for any breach of the terms hereof.

12.5 The Claims 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(1)(2)(ii). The Claims Administrator may, at the expense of the QSF,

retain legal counsel and an independent, certified public accountant to consult with and advise the Claims 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 Claims 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 the 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.

12.6 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.

12.7 Based on the Claims 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, provided that such portions of the QSF as may reasonably be required to pay current QSF administrative expenses, taxes or disbursements to Claimants or 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.

12.8 The Claims Administrator may amend, either in whole or in part, any administrative provision of this Section or the trust instrument through which the QSF is established 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 Class are not altered thereby in any material respect.

13. COMPREHENSIVE WAIVER, RELEASE, AND DISMISSAL

13.1 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, upon the Settlement Effective Date, all Releasing Settlement Class Members irrevocably release, acquit, and forever discharge the Walmart Released Parties 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 any or all of the alleged acts, omissions, transactions, events, 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.

13.2 The Settlement Class Member Released Claims also includes a release of all approved claims for Attorneys' Fees and Litigation Expenses incurred by Releasing Settlement Class Members or by Class Counsel or any other attorney in connection with the Litigation, this Settlement, and all claims related to conduct in discovery in the Litigation.

13.3 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 Settlement Class Member Released Claims that are currently known, anticipated, or disclosed to Releasing Settlement Class Members and to all those Settlement Class Member Released Claims that are presently unknown, unanticipated, or undisclosed to any Releasing Settlement Class Members on the basis of the alleged acts, omissions, transactions, events, 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 Settlement Class may now have as a result of the alleged facts, circumstances, and occurrences underlying the claims set forth in the Litigation.

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

13.5 The Final Judgment and Order of Dismissal shall dismiss the Litigation with prejudice and shall incorporate the terms of this release.

14. DUTIES OF THE PARTIES WITH RESPECT TO OBTAINING PRELIMINARY COURT APPROVAL

14.1 Class Counsel shall apply to the Court for the entry of an order granting preliminary approval of the Settlement substantially in the following form:

14.1.1 Preliminarily approving the Settlement and the establishment of the QSF;

14.1.2 Approving as to form and content the proposed Notice Plan, including the proposed Notice;

14.1.3 Scheduling a Final Fairness Hearing on the question of whether the proposed Settlement should be finally approved as fair, reasonable, and adequate as to the Settlement Class; and,

14.1.4 Approving Angeion Group as Claims Administrator.

14.2 Walmart shall cooperate with Class Counsel to obtain preliminary approval.

14.3 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.

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

15.1 Following preliminary approval by the Court of the Settlement, Class Counsel will submit, prior to the Final Fairness Hearing, a proposed Final Judgment and Order of Dismissal substantially in the form attached hereto as Schedule 2.15. The proposed Final Judgment and Order of Dismissal shall:

15.1.1. Approve the Settlement, adjudging the terms thereof to be fair, reasonable, and adequate and directing effectuation of its terms and provisions;

15.1.2. Approve Payment of the Class Settlement Amount pursuant to this Agreement;

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

15.1.4. Approve the Settlement Class Representative Service Payment; and,

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

15.2 Walmart shall cooperate with Class Counsel to obtain final approval and the dismissal of the Litigation as to Walmart.

15.3 The Final Judgment and Order of Dismissal shall not be considered final until the occurrence of the Settlement Effective Date.

16. MUTUAL FULL COOPERATION

16.1 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, to seek additional certifications if required by the Court, or 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 reasonably necessary by order of the Court or otherwise, to effectuate the terms of this Settlement. As soon as practicable after execution of this Settlement, Class Counsel, with the assistance and cooperation of Walmart and its counsel, shall take all necessary steps to secure the Court's Final Judgment and Order of Dismissal.

17. STATEMENT OF NO ADMISSION

17.1 Nothing contained in this Agreement shall be construed or deemed an admission of liability, culpability, or wrongdoing on the part of Walmart. 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 previously admitted in its pleadings in the Litigation. Nor shall this Agreement constitute an admission by any Party as to any interpretation of laws or as to the merits, validity, or accuracy of any claims made against them in the Litigation. Likewise, nothing in this Agreement shall be construed or deemed an admission by the Class with regard 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.

17.2 This Agreement, and all related documents, including any Claims, Opt-Out Letters, 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.

17.3 The Claims Forms, Opt-Out Letters, Objections, and any other evidence produced or created by any Settlement Class Member in connection with the claims resolution procedures pursuant to this Settlement, will be kept confidential by the Parties and the Claims Administrator, except as otherwise required by law or by the Court. 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. Notwithstanding, Class Counsel may disclose

Objections and Opt-Out Letters in public Court filings to the extent they deem it necessary to do so in connection with seeking final approval of the Settlement by the Court.

17.4 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 Settlement Class and 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 against or involving Walmart. In the event that this Agreement is not approved by the 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, neither the Settlement Class or Walmart will be deemed to have waived, limited, or affected in any way any of their claims or objections or defenses in the Litigation by virtue of this Agreement.

18. VOIDING THE AGREEMENT

18.1 In the event that (i) this Settlement is not approved, or (ii) if for any reason the Settlement Effective Date does not occur as a result of actions beyond the control of the Parties, or (iii) if Walmart exercises its option to void the Settlement in accordance with Section 9.4, and unless otherwise agreed in writing by the Parties, this Agreement shall be deemed null, void, and unenforceable and 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. The Parties shall return to their respective positions prior to the Court's entry of the order dated April 29, 2020.

19. SIGNATORIES' AUTHORITY

19.1 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.

20. NO PRIOR ASSIGNMENTS

20.1 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.

21. NOTICES

21.1 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 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:

21.1.1 To the Class:

D. Greg Blankinship, Esquire
Finkelstein, Blankinship, Frei-Person &
Garber, LLP
445 Hamilton Avenue, Suite 605
White Plains, New York 10601
gblankinship@fbfglaw.com

21.1.2 To Walmart:

Vincent Chadick, Esquire
Quattlebaum, Grooms & Tull PLLC
4100 Corporate Center Drive, Suite 310
Springdale, Arkansas 72762
vchadick@qgtlaw.com

22. CONFIDENTIALITY

22.1 The negotiations related to this Agreement (including the 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 its staff, and the mediator Frank Hamlin and his staff, unless otherwise agreed to by 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 Stores, Inc., is required to make with the Securities and Exchange Commission, including 10-Q and 10-K filings, or in other disclosures to its investors.

23. PRESS AND MEDIA

23.1 The Parties shall not make any proactive statement to the media regarding this Settlement and if contacted by the media for a comment shall only say, "We are pleased that we were able to work with [opposing party] to reach an amicable resolution," or words substantially to that effect. Notwithstanding, Class Counsel may include accurate information regarding

the Settlement as reflected in court filings on their respective firm websites. This Paragraph does not preclude appropriate notice by publication as set forth in the Notice Plan.

24. DOCUMENTS AND DISCOVERY

24.1 Class Counsel will continue to maintain confidentiality of documents and data produced by Walmart in the Litigation pursuant to any protective order entered in the case.

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 either Party by reason of the extent to which any Party or her/his/its 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.

25.3 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 (other than in the Notice, once approved by the Court) may be modified by agreement of the Parties without Court approval if the Parties agree. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

25.4 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. 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 into 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.

25.5 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, attorneys, and assigns.

25.6 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 Agreement. 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. Except for those Settlement Class Members who timely submit a valid Opt-Out Letter, such Notice shall have the same force and effect as if this Agreement were executed by each Settlement Class Member.


25.7 Counterparts. This Agreement may be executed by facsimile signature or PDF, and in any number of counterparts. 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.

25.8 Applicable Law. This Agreement shall be governed by the laws of the State of Arkansas, without regard to its choice of law or conflicts of law principles or provisions.

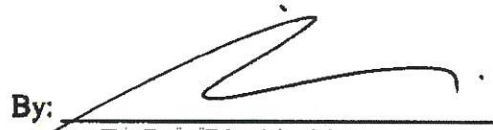
For Michael Hester, on behalf of himself and all others similarly situated:


Michael Hester


For WALMART INC.:

By: 
Name: Mehrdad Akbar
Title: Vice President, DMM

FINKELSTEIN, BLANKINSHIP, FREI-PERSON & GARBER, LLP

By: 
D. Greg Blankinship
Class Counsel

QUATTLEBAUM, GROOM & TULL PLLC

By: 
Vincent Chadick
Counsel for Walmart