

## SETTLEMENT AGREEMENT

### 1. PREAMBLE

1.1 This Settlement Agreement is made and entered into as of the date of Execution, by and between Plaintiff Vassilios Kukorinis, individually and on behalf of the Settlement Class Members, and Walmart, Inc. (collectively the “Parties”), in the action *Vassilios Kukorinis, et al. v. Walmart Inc., et al.*, Case No. 1:19-cv-20592-JEM (United States District Court for the Southern District of Florida).

### 2. DEFINITIONS

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

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

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

2.4 “**Ceiling**” means the maximum possible payment of nine million five hundred thousand dollars (\$9,500,000.00) to be made by Walmart under this Agreement.

2.5 “**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.

2.6 “**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, which shall be 40 days after Notice Period

2.7 “**Claim Form**” means a form substantially similar to the form attached hereto as Exhibit C which Settlement Class Members shall use to submit Claims to the Claims Administrator.

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

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

2.10 “**Class Settlement Amount**” means up to nine million five hundred thousand dollars (\$9,500,000.00), 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.

2.11 “**Court**” means the United States District Court for the Southern District of Florida and any appellate court which may review any orders entered by the United States District Court for the Southern District of Florida related to this Settlement.

2.12 “**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.

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

2.14 “**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 similar to the form of the proposed Final Judgment and Order of Dismissal, attached hereto as Exhibit E, which this Agreement contemplates will be entered and approved by the Court.

2.15 “**Floor**” means the minimum payment of four million five hundred thousand dollars (\$4,500,000.00) to be made by Walmart under this Agreement.

2.16 “**Litigation**” means the case of *Vassilios Kukorinis, et al. v. Walmart Inc., et al.*, Case No. 1:19-cv-20592-JEM (United States District Court for the Southern District of Florida).

2.17 “**Notice and Administration Costs**” means the costs which Walmart has agreed to pay to the Claims 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 Exhibits A and B, 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 made as approved by the Court, which the Parties propose to be 60 days.

2.20 “**Notice Plan**” means the document describing the various methods by which notice will be provided to Settlement Class Members.

2.21 “**Notice Deadline**” means the last day by which Notice must issue to the Settlement Class Members, and will be 30 days after entry of the Preliminary Approval Order.

2.22 “**Objection Deadline**” means the last day on which a Settlement Class Member may file an objection to the Settlement, including Settlement Class Counsel’s request for Attorneys’ Fees, Costs, and Expenses and a Service Award, which will be 40 days after the Notice Period.

2.23 “**Opt-Out Deadline**” means the last day on which a Settlement Class Member may file an Opt-Out Request to be excluded from the Settlement Class, which will be 40 days after the Notice Deadline.

2.24 “**Opt-Out Request**” means a request by a Settlement Class Member to exclude himself or herself from the Settlement Class using the procedures set forth in this Agreement.

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

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

2.27 “**Releasing Settlement Class Members**” means the Settlement Class Representative and all Settlement Class Members, excluding any Settlement Class Member who submits an Opt-Out Request.

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

2.29 “**Settlement Class**” means all persons who purchased Weighted Goods from Walmart in the United States from February 13, 2015 to the date of publication of notice of settlement whose Weighted Goods’ unit sale price was not accurately reflected in the final sale price. Excluded from the Settlement Class are: (1) the judges presiding over this Litigation and members of their direct families; (2) Walmart; and (3) Settlement Class Members who submit a valid and timely Opt-Out Request prior to the Opt-Out Deadline.

2.30 “**Settlement Class Counsel**” means John A. Yanchunis, Esq. and Ryan J. McGee, Esq.

2.31 “**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.

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

2.33 “**Settlement Class Period**” means the period beginning February 13, 2015 through the date of publication of notice of settlement, or some other reasonable date agreed to by the parties.

2.34 “**Settlement Class Representative**” or “**Plaintiff**” means Vassilios Kukorinis, the named Plaintiff in the Litigation, who is a member of the Settlement Class.

2.35 “**Service Award**” means the compensation requested by Settlement Class Counsel and awarded by the Court to the Settlement Class Representative in recognition for his role in this Litigation, which, in accordance with this Agreement, will be counted against the Floor.

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

2.36.1. The date the time to appeal or seek permission to appeal or seek other judicial review 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 or other judicial review having been taken or sought; or

2.36.2. If an appeal or other judicial review has been taken or sought, the latest of: (i) the date the Final Judgment and Order of Dismissal 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 Judgment and Order of Dismissal 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 Judgment and Order of Dismissal 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.

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

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

2.38 “**Summary Notice**” means a short form of notice, substantially similar to the form attached hereto as Exhibit A, 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 as further described in the Notice Plan.

2.39 “**Walmart**” means Walmart Inc. (f/k/a Wal-Mart Stores, Inc.) and its agents, directors, officers, attorneys, employees, affiliates, parents, subsidiaries, divisions, suppliers, successors, and assigns.

2.40 “**Weighted Goods**” means beef, pork, poultry, fish and other types of goods marked with unit pricing and sold accordingly thereto.

### 3. RECITALS

3.1 On February 13, 2019, Plaintiff Vassilios Kukorinis brought a putative class action against Walmart in the United States District Court for the Southern District of Florida, Case No. 1:19-cv-20592-JEM. Plaintiff alleges that Walmart improperly labels Weighted Goods when it reduces the price of those goods as they near their expiration dates. Based on this allegation, Plaintiff has alleged claims under Florida’s Deceptive and Unfair Trade Practices Act, Florida Statute Section 501.201, *et seq.* (“FDUTPA”) on behalf of himself and a putative class of “persons who purchased Weighted Goods from Walmart in Florida from February 13, 2015 to present, whose Weighted Goods’ unit sale price was not accurately reflected in the final sale price.” Plaintiff has since amended his Complaint to plead a nationwide class.

3.2 On April 8, 2019, Walmart moved to dismiss Plaintiff’s Complaint. In response, Plaintiff amended his Complaint on April 22, 2019. On May 17, 2019, Walmart filed a motion to dismiss

the claims alleged in the Amended Complaint. On June 1, 2020, the Court denied Walmart's motion to dismiss.

3.3 Plaintiff and Walmart participated in a private mediation with Ms. Michelle Yoshida of Phillips ADR Enterprises P.C. As a result of mediation, and as a result of other mediator-facilitated, arms-length negotiations that followed the mediation, the Parties reached an agreement to settle the Litigation as set forth in this Agreement.

3.4 The Settlement Class Representative believes this Litigation is meritorious. Settlement Class Counsel represent that they have conducted a thorough investigation 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) hiring and consulting with experts; (iv) developing the argument for class certification; (v) advocating for the rights of the putative class; and (vi) preparing for trial. Based on their own independent investigation and evaluation, Settlement Class Counsel are of the opinion that the Settlement is fair, reasonable, and adequate, and is 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, class certification risk, trial risk, and appellate risk.

3.5 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 pursuant to Rule 23 of the Federal Rules of Civil Procedure or any other federal or state rule, statute, law, or provision. Walmart continues to assert 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 the need to determine individualized issues make the Litigation unmanageable and inconsistent with due process. 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 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.

3.6 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 Request 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.

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

#### 4. CERTIFICATION OF THE SETTLEMENT CLASS

4.1 If necessary to implement the Settlement, Settlement 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 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.

4.2 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 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.

4.3 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 make the case unmanageable and inconsistent with due process. 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.

#### 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 Settlement Class Counsel may jointly 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, on a claims made basis, a minimum Floor amount of \$4,500,000.00 up to

a maximum Ceiling amount of \$9,500,000.00. The monies shall be paid into a QSF to be administered by the Claims Administrator. Amounts approved by the Court for payment of Notice and Administration Costs, a Service Award, the payment of Attorneys' Fees, Costs, and Expenses to Settlement Class Counsel and for Claims by Settlement Class Members shall all count against the Floor. In no event will the total payments by Walmart pursuant to this settlement exceed the Ceiling of \$9,500,000.00.

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

6.2.1. Reasonable Attorneys' Fees, Costs, and Expenses. Settlement Class Counsel shall apply to the Court for an award of reasonable Attorneys' Fees, Costs, and Expenses that shall count against the Floor. Walmart takes no position on the amounts to be sought by Settlement Class Counsel for an award of Attorneys' Fees, Costs, and Expenses, but does not object to a reasonable award of Attorneys' Fees, Costs, and Expenses sought in accordance with this Agreement. In the event that the Court does not approve the award of Attorneys' Fees, Costs, and Expenses requested by Settlement Class Counsel, or the Court awards Attorneys' Fees, Costs, and Expenses in an amount less than that requested by Settlement Class Counsel, 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. Settlement Class Counsel retains their right to appeal any decision by the Court regarding its award of Attorneys' Fees, Costs, and Expenses.

6.2.2. Reasonable Service Award. Settlement Class Counsel shall apply to the Court for a Service Award that shall count against the Floor. Walmart takes no position on the amount to be sought by Settlement Class Counsel for a Service Award, but does not object to a reasonable Service Award sought in accordance with this Agreement. The denial by the Court of any such application 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. Notice and Administration Costs. The actual Notice and Administration Costs incurred in accordance with Sections 6 and 7 of this Agreement shall count against the Floor. It is anticipated that Notice and Administration Costs shall not exceed \$600,000.

6.2.4. Settlement Class Members who submit approved claims shall receive a proportionate individual Settlement Class Member Payment that shall be paid from the settlement funds remaining up to the Class Settlement Amount, which shall be allocated as follows:

6.2.4.1. In the event that the combined total of the amounts approved by the Court for Attorneys' Fees, Costs and Expenses, Service Award, and Notice and Administration Costs, plus the aggregate of the approved Claims submitted by all Settlement Class Members, is less than the Floor, the value of approved individual Settlement Class Member Payment to be paid to each claiming Settlement Class Member shall be increased on a pro-rata basis so that the combined total of the Attorneys' Fees, Costs, and Expenses, Service

Award, Notice and Administration Costs, and aggregate total of approved Claims submitted by all Settlement Class Members equals the Floor.

6.2.4.2. In the event that the combined total of amounts approved by the Court for Attorneys' Fees, Costs, and Expenses, Service Award, and Notice and Administration Costs, plus the aggregate of the approved Claims submitted by all Settlement Class Members, exceeds the Floor but is less than the Class Settlement Amount, there shall not be any pro-rata increase to individual Settlement Class Member Payments and the difference remaining below the Ceiling shall remain with Walmart.

6.2.4.3. In the event that the combined total of amounts approved by the Court for Attorneys' Fees, Costs, and Expenses, Service Award, and Notice and Administration Costs, plus the aggregate of the approved Claims submitted by all Settlement Class Members, exceeds the Class Settlement Amount, there shall be a pro rata decrease of the value of approved individual Settlement Class Member Payments to be paid to each claiming Settlement Class Member so that the combined total equals the Class Settlement Amount. Under no circumstances shall Walmart pay more than the \$9,500,000.00 Class Settlement Amount.

6.3 The Claims Administrator will manage the claims process in cooperation with Settlement Class Counsel and Walmart and in accordance with the following parameters:

6.3.1. An Approved Claimant shall be entitled to receive only one of the following individual Settlement Class Member Payment Amounts in accordance with the allocation described below in §§ 6.3.1.1–6.3.1.3, subject to a potential pro rata increase or decrease as set forth at Section 6.2.4. 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.

6.3.1.1. If the Approved Claimant does not have receipts, proof of purchase, or other documentation, but attests to purchasing the Weighted Goods on sale during the Class Period, that Approved Claimant will be entitled to \$1.67 per purchase, capped at 6 purchases (*i.e.*, \$10.00);

6.3.1.2. If the Approved Claimant has receipts, proof of purchase, and other documentation to substantiate the number of Weighted Goods purchased on sale, but lacks proof to substantiate the actual amount overcharged, that Approved Claimant will be entitled to \$1.67 per purchase, capped at 24 purchases (*i.e.*, \$40.00);



6.3.1.3. If the Approved Claimant has receipts, proof of purchase, and other documentation to substantiate the number of Weighted Goods purchased on sale, and also has the packaging to demonstrate the actual amount overcharged, that Approved Claimant will be entitled to recover the actual amounts overpaid, without any cap.

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

6.3.3. A Claim Form shall be approved if it is timely and valid.

6.3.4. To be timely, a Claim Form must be submitted to the Claims Administrator via the Settlement Website or postmarked on or before the Claim Filing Deadline, as approved by the Court. The Parties will propose to the Court that the Claim Filing Deadline be 40 days after close of the Notice Period.

6.3.5. To be valid, a Claim Form must be completed in full and be signed under penalty of perjury.

6.3.6. The Claim Form shall be substantially similar to the form attached hereto as Exhibit B and shall include a statement by the Claimant verifying that he or she is a Settlement Class Member.

6.3.7. 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, 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 Claims 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 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.

6.3.8. Subject to the Audit Rights set forth in Section 6.3.7, the Claims Administrator shall distribute settlement payments 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.

6.3.9. 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 deficiencies and give the Settlement Class Member twenty-one (21) days to cure the deficiencies. 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 Class Counsel and Defense Counsel in making such determinations.

## 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 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.

7.2 The Parties shall confer regarding the Notice Plan prior to its submission to the Court and Walmart has the right to approve the proposed Notice Plan prior to its submission to the Court, which approval Walmart shall not unreasonably withhold. Subject to Court approval, the Notice and Summary Notice to be provided shall be substantially similar to the forms attached hereto as Exhibits A and B. The Notice shall provide information regarding how to submit a Claim, and regarding the opt-out and objection processes.

7.3 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 18.

7.4 The Notice Period, subject to Court approval, is **sixty (60)** days.

## 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 exclude himself or herself from this Settlement, and from the release of claims pursuant to this Settlement, shall submit an Opt-Out Request. 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 Request shall contain a statement that the Settlement Class Member requests to be excluded from the Settlement 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-Out Requests.

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

9.3 The Claims 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.

## 10. OBJECTION PROCESS

10.1 A Settlement Class Member who wishes to object to the Settlement must notify the Court of his or her objection, in writing, on or before the Claim Filing Deadline.

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 Objection Deadline. 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 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, reimbursement of reasonable litigation costs and expenses, and service awards. In this respect, 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.

10.2.1. The Settlement Administrator shall promptly post all objections to the Settlement Website so that Settlement Class Members will have the opportunity to present their views on the Attorneys' Fees, Costs, and Expenses, Service Award, and any other aspect of the Settlement.

10.3 Settlement Class Members who do not file and serve timely written objections in accordance with the procedures set forth in this Agreement will be deemed to 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, 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 14 business days following the date on which the Court enters an order granting preliminary approval of the Settlement, or within 14 business days of the date on which the District Court enters an order approving the QSF, whichever is later, Walmart shall transfer the estimated amount of Notice and Administration Costs to the QSF, who 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 into the QSF monies for Notice and Administration Costs which have not been used by the Claims Administrator, those amounts not used by the Claims Administrator shall be refunded to Walmart.

11.1.2. Within 14 business days following the Settlement Effective Date, Walmart shall transfer to the QSF amounts sufficient to cover the remainder of the Class Settlement Amount, to include the Settlement Class Member Payments (subject to any pro rata increase or decrease pursuant to Section 6.2.4), Attorneys' Fees, Costs, and Expenses awarded by the Court, and Service Award awarded by the Court. The QSF shall distribute these amounts as awarded by the Court. Settlement Class Counsel shall provide the QSF with the information as to whom the Attorneys' Fees, Costs, and Expenses and the Settlement Class Representative Award 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 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 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 §1.461-1(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.

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 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 Claims 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.

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(l)(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 or the Trustee 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 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.

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 (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.

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, 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.

13.1.1. Releasing Parties agree that the provisions of this Agreement and any claim thereunder constitute a good faith settlement under California Code of Civil Procedure §§ 877 and 877.6, Hawaii Revised Statutes 663-15.5, and comparable laws in other states, that Class Counsel and Releasing Parties shall cooperate fully in any effort of Released Parties to establish such good faith settlement before any court (including without limitation, by joining in any motion or other procedure and providing declarations and other evidence to establish such good faith settlement where requested by any Released Party) and that all payments made under this Agreement relate to claims arising out of or related 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.

13.1.2. In the event that any Releasing Party seeks to invoke California Civil Code § 1542, which provides that:

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

(or any other like provision or principle of law of any jurisdiction) in connection with 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 Releasing Parties and each of them now expressly waive the provision of California Civil Code § 1542 (or any other like provision or principle of law of any jurisdiction) to the full extent that these provisions may be applicable to this release. Each of the Releasing Parties hereby does consider, and shall be deemed to have considered, the possibility that the number or magnitude of all claims may not currently be known; nevertheless, each of the Releasing Parties assumes the risk that claims and facts additional, different, or contrary to the claims and facts that each believes or understands to exist, may now exist, or may be discovered after this Agreement becomes effective. Each of the Releasing Parties agrees that any such additional, different, or contrary claims and facts shall in no way limit, waive, or reduce the foregoing release, which shall remain in full force and effect.

13.2 The Settlement Class Member Released Claims also includes a release of all claims for Attorneys' Fees, Costs, and Expenses incurred by Releasing Settlement Class Members or by Settlement 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.

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 arising out of or related to 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.

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 Settlement Class Counsel shall apply to the Court for the entry of an order granting preliminary approval of the Settlement substantially in the following form (and substantially similar to the form of the Preliminary Approval Order attached hereto as Exhibit D):

14.1.1. Preliminarily approving the Settlement;

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

14.1.3. Approving as to form and content the proposed Notice Plan, including the proposed Notice and Summary Notice;

14.1.4. Scheduling a fairness hearing to determine whether the proposed Settlement should be finally approved as fair, reasonable, and adequate as to the Settlement Class;

14.1.5. Appointing John A. Yanchunis, Esq. and Ryan J. McGee, Esq. as Settlement Class Counsel;

14.1.6. Approving Vassilios Kukorinis as Settlement Class Representative;

14.1.7. Approving Epiq Class Action and Claims Solutions, Inc., as Claims Administrator; and

14.1.8. Approving the establishment of a Qualified Settlement Fund.

14.2 Walmart shall cooperate in good faith with Settlement 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 finally voided.

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

15.1 Following preliminary approval by the Court of the Settlement, and no later than the filing of the motion for final approval, Settlement Class Counsel will submit a proposed Final Judgment and Order of Dismissal substantially similar to the form of the Final Judgment and Order of Dismissal attached hereto as Exhibit E. 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 consummation of its terms and provisions;

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

15.1.3. Approve payment of the Class Settlement Amount pursuant to this Agreement.

15.1.4. Approve Settlement Class Counsel's application for an award of Attorneys' Fees, Costs, and Expenses pursuant to this Agreement;

15.1.5. Approve the Service Award;

15.1.6. Dismiss the 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.

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

15.3 Settlement Class Counsel shall use best efforts to obtain the issuance by the Court of a good faith settlement bar order, in accordance with this Agreement.

15.4 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, 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 Final Judgment.

#### 17. STATEMENT OF NO ADMISSION

17.1 Nothing contained in this Agreement shall be construed against Walmart 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 Plaintiffs 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.

17.2 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.

17.3 The Claims 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.

17.4 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 Plaintiffs 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.

## 18. VOIDING THE AGREEMENT

18.1 In the event that this Settlement is not approved, or if for any reason the Settlement Effective Date does not occur, the Settlement 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, and the Parties shall return to their respective positions prior to the Court's consideration of this Settlement.

18.2 In the event that the Court does not approve the Attorneys' Fees, Costs, and Expenses in the amount requested by Settlement Class Counsel, or in the event that the Attorneys' Fees, Costs, and Expenses requested by Settlement Class Counsel is reduced, that finding shall not be a basis for rendering the entire Settlement Agreement null, void, or unenforceable. Settlement Class Counsel retains their right to appeal any decision by the Court regarding the Attorneys' Fees, Costs, and Expenses.

## 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 (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:

21.1.1. To the Class:

John A. Yanchunis, Esq.  
MORGAN & MORGAN

201 N. Franklin St., 7<sup>th</sup> Floor  
Tampa, FL 33602  
Tele: (813) 223-5505  
Fax: (813) 222-2434  
E-mail: [JYanchunis@forthepeople.com](mailto:JYanchunis@forthepeople.com)

21.1.2. To Walmart:

Naomi G. Beer  
GREENBERG TRAUIG, LLP  
1144 15<sup>th</sup> Street, Suite 3300  
Denver, Colorado 80202  
Tele: (303) 572-6500  
Fax: (303) 572-6540  
Email: [BeerN@gtlaw.com](mailto:BeerN@gtlaw.com)

Mark A. Salky  
GREENBERG TRAUIG, LLP  
333 S.E. 2<sup>nd</sup> Avenue  
Miami, Florida 33131  
Tele: (305) 579-0816  
Fax: (305) 579-0717  
Email: [SalkyM@gtlaw.com](mailto:SalkyM@gtlaw.com)

## 22. CONFIDENTIALITY

22.1 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 Representatives and Walmart, their retained attorneys, their accountants and financial or tax advisers, their retained consultants, the Court, and the mediator Ms. Michelle Yoshida and her 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 Wal-Mart Stores, Inc., is required to make with the Securities and Exchange Commission, including 10-Q and 10-K filings, or in other disclosures to investors.

## 23. PRESS RELEASE

23.1 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.

## 24. DOCUMENTS AND DISCOVERY

24.1 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 days following the Settlement Effective Date, shall either return such documents and data or certify that such documents and data have been destroyed.

## 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 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.

25.4 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, 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.

25.5 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, and assigns.

25.6 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.


25.7 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.

25.8 Mediation. The Parties agree to mediation with Ms. Michelle Yoshida to resolve any disagreements over the implementation of the terms of the Settlement, this Agreement, or any other documents necessary to effectuate the Settlement. Unless otherwise ordered by Ms. Yoshida, the Parties will split the costs of any such mediation and all Parties will bear their own attorneys' fees. If any such mediation is unsuccessful, the dispute shall be decided by the Court.

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

ON BEHALF OF PLAINTIFF AND SETTLING CLASS MEMBERS:

  
\_\_\_\_\_  
John A. Yanchunis  
MORGAN & MORGAN

August 7,  
\_\_\_\_\_  
Date

ON BEHALF OF WALMART:

  
\_\_\_\_\_  
Brian L. Duffy  
GREENBERG TRAURIG, LLP

August 7, 2020  
\_\_\_\_\_  
Date