

SETTLEMENT AGREEMENT

1. PREAMBLE

- 1.1 This Settlement Agreement is made and entered into this 22nd day of April, 2009, individually and on behalf of the Named Plaintiffs, the Class Representatives, and the Class Members, all as further defined below, and on behalf of Wal-Mart, as further defined below.

2. DEFINITIONS

- 2.1 The term “**Agreement**” as used herein means this Settlement Agreement.
- 2.2 The term “**Approved Claims**” as used herein means those Claims which are approved by the Claims Administrator for payment after the deadline for audits allowable under Section 7 has expired, or, if an audit or objection is made, after all audits or objections have been resolved in accordance with Section 7 of this Agreement.
- 2.3 “**Approved Claimants**” as used herein means those Claimants who have submitted Approved Claims.
- 2.4 The term “**Claim**” as used herein means Claims submitted by way of Claim Form A, Claim Form B, or Claim Form C.
- 2.5 The terms “**Claim Form A**,” “**Claim Form B**,” and “**Claim Form C**” as used herein mean the claim forms attached hereto as Exhibits 1, 2, and 3, respectively, which have been agreed to by the Parties subject to Court approval as the three methods by which Claimants may submit Claims. Claim Form A, Claim Form B, and Claim Form C may be referred to herein collectively as the “**Claim Forms**.” Each Claim Form shall be accompanied by an optional tax information election. Only those Class Members who submit one of the three Claim Forms are eligible to recover a share of the Settlement proceeds.
- 2.6 The term “**Claimant**” as used herein means any Class Member who submits Claim Form A, Claim Form B, or Claim Form C.
- 2.7 The term “**Claims Administrator**” as used herein means Rust Consulting, Inc., the entity agreed to by the Parties subject to Court approval which will perform the duties of, among other things: (i) mailing the Notice, Claim Forms, and Exclusion Letters to Class Members; (ii) tracking returned Claim Forms and Exclusion Letters; (iii) notifying the Parties of determinations regarding submitted Claim Forms and Exclusion Letters consistent with this Agreement; (iv) calculating the amounts due to each Claimant who submits an approved Claim; (v) issuing any required tax forms to Claimants; and (vi) with the approval of Wal-Mart and Class Counsel, selecting, engaging, supervising, compensating, removing, and replacing the Trustee of the QSF.
- 2.8 The terms “**Class**” or “**Class Members**” as used herein means the Named Plaintiffs, Class Representatives, and all current or former hourly associates who work or worked at a

Wal-Mart store, Supercenter, Sam's Club or Distribution Center in the State of Washington during the Settlement Class Period, regardless of whether such individuals previously opted-out of the *Barnett* Litigation.

- 2.9 The term “*Class Counsel*” as used herein means the following counsel who appeared on behalf of the Named Plaintiffs or any Class Member in the Litigation:

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- 2.10 The term “*Class Representatives*” or “*Named Plaintiffs*” as used herein means Debra Barnett, Georgie Knoles (formerly Hartwig), and Bella Blaubergs, all of whom Class Counsel request be appointed by the Superior Court as class representatives for purposes of the Settlement Class.

- 2.11 The term “**Class Settlement Amount**” as used herein means up to Thirty-Five Million Dollars (\$35,000,000) to be paid by Wal-Mart pursuant to this Settlement as described in Section 5.1 of this Agreement.
- 2.12 The term “**Court**” as used herein means the King County, Washington Superior Court and any appellate court which may review any orders entered by the King County, Washington Superior Court related to this Settlement.
- 2.13 The term “**Exclusion Letter**” as used herein refers to the request to be excluded from the Settlement to be sent by any Class Member not interested in remaining a member of the Settlement Class.
- 2.14 The term “**Execution**” as used herein refers to the signing of this Agreement by all signatories hereto.
- 2.15 The term “**Final Judgment**” as used herein refers to the final judgment approving the Settlement and dismissing the Litigation with prejudice which this Settlement contemplates will be entered and approved by the Court.
- 2.16 The term “**Litigation**” as used herein means the lawsuit filed on September 10, 2001 in King County Superior Court entitled *Debra Barnett, et al. v. Wal-Mart Stores, Inc., et al.*, Case No. 01-2-24553-8 SEA.
- 2.17 The term “**Parties**” as used herein means the Named Plaintiffs, the Class Representatives, the Class Members, and Wal-Mart.
- 2.18 The term “**Notice**” as used herein means the notice to be sent to Class Members attached hereto as Exhibit 4 which has been agreed to by the Parties subject to Court approval and which the Claims Administrator will mail to each Class Member explaining the terms of the Settlement and the claims process.
- 2.19 The term “**Notice and Administration Costs**” as used herein means the costs to provide notice as described in Section 6 and to administer the Settlement as described in Section 7.
- 2.20 The terms “**Qualified Settlement Fund**” or “**QSF**” as used herein means the Qualified Settlement Fund to be set up in accordance with Section 8 of this Agreement.
- 2.21 The term “**Released Claims**” as used herein 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 pursuant to Section 9 of this Agreement.
- 2.22 The term “**Settlement**” as used herein means the compromise and settlement of the Litigation as contemplated by this Agreement.

- 2.23 The term “**Settlement Class**” as used herein means the Class to be certified for settlement purposes in accordance with this Agreement.
- 2.24 The term “**Settlement Class Period**” as used herein means the period of time from September 10, 1997, through and including February 3, 2009.
- 2.25 The term “**Settlement Effective Date**” as used herein means the first day following the last of the following occurrences:
- 2.25.1. The date the time to appeal or seek permission to appeal or seek other judicial review of the entry of a Final Judgment approving the Settlement has expired with no appeal or other judicial review having been taken or sought; or
- 2.25.2. If an appeal or other judicial review has been taken or sought: (i) the date the Final Judgment 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 Superior Court or to a lower appellate court following an appeal or other review, the date the Final Judgment is entered by the Superior 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 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 Subsection shall apply.
- 2.26 The term “**Summary Notice**” as used herein means the summary notice attached hereto as Exhibit 5 which has been agreed to by the Parties subject to Court approval and which shall be used for publication purposes.
- 2.27 The term “**Superior Court**” as used herein means the King County, Washington Superior Court.
- 2.28 The term “**Wal-Mart**” as used herein means Wal-Mart Stores, Inc., Sam’s East, Inc., Sam’s West, Inc., Wal-Mart Stores East, Inc., Wal-Mart Stores East, LP, Wal-Mart Associates, Inc. and any of their current or former subsidiaries, affiliates, predecessors, insurers, agents, employees, successors, assigns, officers, officials, directors, partners, employers, attorneys, personal representatives, executors, and shareholders, including their respective pension, profit sharing, savings, health, and other employee benefit plans of any nature, and those plans’ respective trustees, administrators, and fiduciaries.

3. RECITALS

- 3.1 On September 10, 2001, plaintiffs commenced this Litigation against Wal-Mart in the Superior Court for the State of Washington, in King County, Washington. The Complaint and subsequently amended complaints, including the First Amended Complaint dated April 15, 2002, the Second Amended Complaint dated June 18, 2002, the Third Amended Complaint dated November 1, 2002, and the Fourth Amended Complaint dated January 26, 2009, (collectively, “Complaints”), alleged various common

law and statutory claims relating to wage and hour issues, including missed and short rest breaks and meal periods, off-the-clock work, and failing to pay associates for all the time they worked.

- 3.2 On November 29, 2004, the trial court (Terry Lukens, J.) ruled on plaintiffs' motion for class certification, granting class certification on the Washington state statutory claims, and denying certification on the breach of contract claims. The trial court certified a class consisting of "All current and former hourly employees of Wal-Mart Stores, Inc. (including Wal-Mart Stores, Supercenters, and Sam's Clubs, but excluding distribution centers) in the state of Washington who worked off the clock and/or worked through any part of a rest or meal break from September 10, 1997 through the date judgment is entered in this action and who have not held a salaried management position with Wal-Mart at any time during that period" (the "**Litigation Class**"). On March 23, 2005, the Washington Court of Appeals granted discretionary review, but only on the issue of the trial court's definition of the class. The Court of Appeals affirmed the trial court's class definition. Wal-Mart filed a petition for review with the Washington Supreme Court. On May 1, 2007, the Washington Supreme Court denied Wal-Mart's petition for review regarding the class definition.
- 3.3 On December 10, 2008, the Parties participated in a full-day private mediation with the Honorable Layn R. Phillips. The Parties had previously participated in bilateral settlement discussions, including but not limited to an all-day settlement meeting on October 5, 2008. As a result of the settlement discussions and mediation, the Parties reached an agreement to settle the Litigation in accordance with the terms set forth in the Term Sheet dated December 10, 2008. The Term Sheet is superseded and replaced by this Settlement Agreement.
- 3.4 The Named Plaintiffs, the Class Representatives, and Class Counsel believe this Litigation is meritorious based on alleged violations of Washington wage and hour laws and common law. Class Counsel represents that they have conducted a thorough investigation into the facts of this case, and have diligently pursued an investigation of the Named Plaintiffs and the Class Members' claims against Wal-Mart, including: (i) deposing scores of witnesses, including high-level corporate representatives, Wal-Mart managers, Wal-Mart declarants, current and former employees and other witnesses; (ii) interviewing Class Members and analyzing the results of Class Member interviews; (iii) reviewing hundreds of thousands of relevant documents; (iv) researching numerous legal issues including those related to their successful Motion for Class Certification and defense against Wal-Mart's appeals; (v) briefing and arguing the Motion for Class Certification, the appeal, discovery motions and other types of motion practice during the Litigation; (vi) taking and defending many depositions both in connection with class certification and in preparation for trial; (vii) extensive work with expert witnesses in preparation for trial and in support of class certification; and (viii) substantial trial preparation, including trial-related discovery and witness preparation. Based on their own independent investigation and evaluation, Class Counsel are of the opinion that the Settlement is fair, reasonable, and adequate and is in the best interest of the Class Members in light of all known facts and circumstances, including the risk of significant delay, and the defenses asserted by Wal-Mart.

- 3.5 Wal-Mart denies any liability or wrongdoing of any kind associated with the claims alleged and contends that this Litigation is not appropriate for class or collective action treatment pursuant to Rule 23 of the Washington Rules of Civil Procedure or any other state or federal rule, statute, law, or provision. Wal-Mart continues to assert that the Litigation fails to meet the prerequisites necessary for class or collective 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 consistent with due process. Wal-Mart also preserves and does not waive other objections, including without limitation whether Wal-Mart's time-clock records and other evidence as alleged by Plaintiffs are sufficient to allow a fact finder to draw inferences regarding whether rest or meal breaks were missed or interrupted. Wal-Mart further states that it has complied with all applicable provisions of Washington statutory and common law. Wal-Mart 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 neither certification nor collective action treatment are appropriate for litigation purposes, Wal-Mart will not oppose the Superior 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, Wal-Mart does not waive its objections to certification of the Settlement Class, or any other class, in this Litigation, or in any other wage and hour or other class actions, 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 Complaints. 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 dismiss this Litigation with prejudice.

4. CERTIFICATION OF SETTLEMENT CLASS

- 4.1 Class Counsel shall request that the Superior Court amend its prior orders regarding class certification in this Litigation to expand the Litigation Class to add in certain employees not previously included, such as for example hourly employees who were promoted to salaried positions during the Class Period and Distribution Center employees, solely for the purpose of implementing the terms of this Settlement. The form of amended class certification order shall 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 Wal-Mart retains its right to object to certification of this Litigation, or any other wage and hour class action, or any other class action, under Washington Rule 23 or any other applicable rule, statute, law, or provision. A form of amended class certification order for settlement purposes only, subject to Court approval, is attached as Exhibit 6.
- 4.2 The Parties and Class Counsel agree that, if approved, certification of the Settlement Class is a conditional certification for settlement purposes only, and if for any reason the Superior Court does not grant final approval of the Settlement, or if final approval is not given following the appeal of any order by the Superior 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 without further action by the Court or any of the Parties, 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 The Parties and Class Counsel agree that, if approved, certification of the Settlement Class for settlement purposes is in no way an admission by Wal-Mart that class certification is proper in this Litigation, any other wage and hour litigation, or any other litigation, against Wal-Mart. Moreover, Wal-Mart continues to assert that this Litigation fails to meet the prerequisites necessary for class or collective action treatment under applicable law, especially with respect to predominance and manageability because the need to determine individualized issues make 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 not intended to be admissible in any judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or other proceeding, including without limitation any wage and hour litigation, or any other litigation, against Wal-Mart.

5. TERMS OF SETTLEMENT

- 5.1 Subject to the other terms and conditions of this Agreement, and subject to Court approval, Wal-Mart agrees that the Class Settlement Amount shall be subject to a minimum floor of Seventeen Million Five Hundred Thousand Dollars (\$17,500,000) (the “**Floor**”) and a maximum cap of Thirty-Five Million Dollars (\$35,000,000) (the “**Cap**”), to be paid to the Class on a claims-made basis as follows:
- 5.1.1. With the exception of the Class Representative Incentive Awards, only those Class Members who submit a timely and valid claim by submitting a Claim Form in accordance with Section 7 of this Agreement will be eligible to recover their respective portion of the Class Settlement Amount.
- 5.1.2. In addition to their right to submit a Claim Form, each person appointed by the Court as a Class Representative may also be paid reasonable incentive compensation out of the Floor (the “**Class Representative Incentive Award**”), of up to Ten Thousand Dollars (\$10,000), subject to Court approval. Wal-Mart will not oppose the payment of such Class Representative Incentive Awards.
- 5.1.3. Class Counsel shall apply to the Superior Court for an award of attorneys’ fees plus costs (“**Attorneys’ Fees and Costs**”) which shall be paid from the Class Settlement Amount and which shall be counted against the Floor. Wal-Mart will not oppose Class Counsel’s application for a reasonable award of Attorneys’ Fees and Costs. In addition, on request of Class Counsel, Judge Layn R. Phillips, who

mediated the settlement of the Litigation, will support Class Counsel's application for a reasonable award of Attorneys' Fees and Costs.

- 5.1.4. Wal-Mart agrees to pay the costs of notice and administration ("**Notice and Administration Costs**"), which shall be counted against the Floor and the Cap. The costs of notice and administration shall include the costs of any auditing, regardless of which party requests the audit.
- 5.1.5. If the aggregate amount of Approved Claims, plus any Class Representative Incentive Awards, plus Attorneys' Fees and Costs awarded by the Court plus the Notice and Administration Costs is less than the Floor, the unused funds up to the Floor shall be distributed to Approved Claimants on a pro-rata basis. By way of example, if the aggregate amount of Approved Claims, plus any Class Representative Incentive Award, plus Attorneys' Fees and Costs awarded by the Court is less than Seventeen Million Five Hundred Thousand Dollars (\$17,500,000), then the funds up to Seventeen Million Five Hundred Thousand Dollars (\$17,500,000) shall be distributed to Approved Claimants on a pro-rata basis.
- 5.1.6. If the aggregate amount of Approved Claims, plus any Class Representative Incentive Award, plus Attorneys' Fees and Costs awarded by the Court, plus the Notice and Administration Costs exceeds the Floor but is less than the Cap, the unused funds above Floor and below the Cap shall remain with Wal-Mart. By way of example, if the aggregate dollar amount of Approved Claims, plus any Class Representative Incentive Award, plus Attorneys' Fees and Costs awarded by the Court, plus Notice and Administration Costs is greater than Seventeen Million Five Hundred Thousand Dollars (\$17,500,000) but less than Thirty-Five Million Dollars (\$35,000,000), any unused funds above Seventeen Million Five Hundred Thousand Dollars (\$17,500,000) shall remain with Wal-Mart.
- 5.1.7. If the aggregate amount of Approved Claims, plus any Class Representative Incentive Awards, plus Attorneys' Fees and Costs awarded by the Court, plus the Notice and Administration Costs exceed the Cap, there shall be a pro-rata reduction of all Approved Claims so that the aggregate amount to be paid by Wal-Mart equals the Cap. By way of example, if the aggregate dollar amount of Approved Claims, plus any Class Representative Incentive Award, plus Attorneys' Fees and Costs awarded by the Court, plus Notice and Administration Costs exceed Thirty-Five Million Dollars (\$35,000,000), then each Approved Claimant's share shall be decreased in a proportional amount to the extent necessary so that the aggregate amount paid by Wal-Mart does not exceed Thirty-Five Million Dollars (\$35,000,000).
- 5.1.8. The Parties agree that the amounts paid to Class Members shall be allocated such that sixty-five Percent (65%) constitutes wages subject to the withholding of all applicable local, state, and federal taxes and withholdings, and thirty-five Percent (35%) constitutes remuneration for damages separate and distinct from lost

wages. Wal-Mart agrees to transfer to the QSF funds sufficient to pay the employer's share of any applicable taxes.

- 5.2 The Class Settlement Amount shall be funded through a QSF in accordance with Section 8 of this Agreement. The timing of the payment to the QSF shall be as follows:
- 5.2.1. Within three (3) calendar days following preliminary approval of the Settlement, or within three (3) calendar days following the Court's approval of the QSF, whichever is later, Wal-Mart shall transfer to the QSF the Notice and Administration Costs as determined in accordance with Section 5.1.4.
 - 5.2.2. Within ten (10) calendar days following the Settlement Effective Date, Wal-Mart shall transfer to the QSF amounts sufficient to cover: (i) the Attorneys' Fees and Costs Amount; and (ii) any Class Representative Incentive Awards.
 - 5.2.3. Within ten (10) calendar days following the conclusion of the challenge and audit process in accordance with Section 7, Wal-Mart shall transfer to the QSF amounts sufficient to cover distributions of the Class Settlement Amount up to the Floor, or up to the Cap, as necessary.
 - 5.2.4. Within fifteen (15) calendar days after all Approved Claims have been paid pursuant to Section 7, any unused Class Settlement Amount funds below the Floor shall be distributed to Approved Claimants on a pro-rata basis, subject to Court approval, and any unused funds above the Floor but below the Cap shall be returned to Wal-Mart.
 - 5.2.5. Distributions from the QSF shall be made in accordance with Section 7.10.
- 5.3 Wal-Mart implemented a clockout/lockout program in response to litigation that locks associates out of electronic devices, including CBL terminals and cash registers, if they are not clocked in for work on Wal-Mart's time clock. Plaintiffs' efforts in litigation served as a catalyst for the implementation of this compliance technology. Subject to Court approval and to the other terms and conditions of this Agreement, for a three (3) year period in the State of Washington beginning from the Settlement Effective Date, Wal-Mart agrees as follows:
- 5.3.1. Wal-Mart shall continue to use reasonably feasible technology that aids hourly associates and management in ensuring that an hourly associate is on the clock before he or she can use any in-store electronic device that requires an associate log-on and can be linked to associate user-id and timestamp combinations, such as a Computer Based Learning ("CBL") or My Learning Center ("MLC") module, a cash register, or a telxon device.
 - 5.3.2. Wal-Mart shall continue to use reasonably feasible technology that aids hourly associates and management in providing associates with the opportunity to eat a meal if they earn a meal period in accordance with applicable state law.

- 5.3.3. Wal-Mart shall continue to use reasonably feasible technology to help prevent management inserted one-minute shifts that are not approved by the hourly associate.
- 5.3.4. Wal-Mart shall continue to use reasonably feasible technology that aids hourly associates and management in assuring compliance with applicable law governing the treatment of break time as hours worked, except that nothing herein shall require Wal-Mart to reinstate use of its time-clock to record rest breaks.
- 5.3.5. Wal-Mart shall continue to make reasonable efforts to verify that hourly associates are being provided the opportunity to take legally required meal and rest breaks, and are not being permitted to work off the clock. Absent other technological means that Wal-Mart reasonably considers superior for doing the above, Wal-Mart will include on CORT, CSA or similar surveys conducted in the three (3) year period following exhaustion of all objections to or appeals from Final Approval (but no sooner than six (6) months after exhaustion of any objections or appeals from approval) questions that are designed to elicit information from hourly associates regarding their experiences with meal and rest breaks, and off-the-clock work.
- 5.3.6. Wal-Mart shall continue to make its Ethics (or similar) Hotline available to hourly associates to report missed rest breaks, missed meal breaks or off-the-clock work. Wal-Mart shall also post a notice in the break room of each store or club informing associates of the availability of the Ethics (or similar) Hotline to report missing rest breaks, missing meal periods, or off-the-clock work.
- 5.3.7. Wal-Mart shall continue to take appropriate action in response to reports to the Ethics (or similar) hotlines consistent with the intent of this Term Sheet.
- 5.3.8. Following the expiration of the three (3) year period, Wal-Mart agrees to follow the spirit and intent of these provisions thereafter.

6. NOTICE TO CLASS

- 6.1 On or about April 17, 2009, Wal-Mart shall provide to the Claims Administrator a listing of all Class Members, including Social Security numbers and last known addresses and telephone numbers, during the Settlement Class Period (the "***Class List***"). The Class List shall be based on the data kept in the ordinary course of business in Wal-Mart's payroll and associate databases. The Class List shall be provided in Excel, Access or other similar format as reasonably requested by the Claims Administrator. Class Counsel shall provide to the Claims Administrator any updated contact information for Class Members. The Parties agree that the contents of the Class List are confidential and shall not be shared with third parties other than the Claims Administrator, who shall also agree to maintain the confidentiality of the Class List
- 6.2 A Notice in the form attached as Exhibit 4 and approved by the Superior Court shall be sent by the Claims Administrator to all Class Members, by first class mail, within fifteen (15) days following the Superior Court's preliminary approval of the Settlement. The

Claim Forms shall be included with the Notice. The Notice and Claim Forms shall be referred to collectively as the “**Notice Documents**.” The Notice shall describe the claims process and the exclusion process, and shall advise Class Members of their right to object to the Settlement and the process by which such objections must be made.

- 6.3 Prior to mailing the Notice Documents, the Claims Administrator shall use the National Change of Address database maintained by the United States Postal Service (“USPS”) to update each Class Member’s address. It shall be conclusively presumed that if an envelope is not returned as undeliverable, the Class Member received the Notice Documents. With respect to Notice Documents that are returned as undeliverable: (A) If forwarding addresses are included with the returned mail, the Claims Administrator shall re-mail the Notice Documents to the forwarding address immediately. If, after such re-mailing, the Notice Documents are again returned with another return address, the Claims Administrator shall re-mail the Notice Documents to the new forwarding address immediately; (B) If undeliverable Notice Documents are returned *without* a forwarding address, the Claims Administrator shall use standard skip tracing devices based on LexisNexis or similar databases to obtain updated address information and re-mail the Notice Documents to those Class Members once the skip-tracing process is complete to make the process as accurate as possible. If Notice Documents are returned without forwarding addresses after skip tracing has been performed, it shall be presumed that the Class Member cannot be located by mail.
- 6.4 The Notice Documents shall include language that assures Class Members that they will not be retaliated against for participating in the Settlement. The language shall be substantially similar to what was included in the Litigation Class Notice.
- 6.5 The Notice Documents and other materials as agreed to by the Parties and approved by the Superior Court shall also be available at the following website: www.walmartwageswa.com. The website address will be included in the mailed Notice.
- 6.6 Notice shall also be made by way of publication of the Notice in the following newspapers: Seattle Times, Tacoma News Tribune, Spokane Spokesman Review, Vancouver Columbian, Kennewick Tri-City Herald, Yakima Herald Republic, Wenatchee World, Centralia Chronicle, Walla Walla Union Tribune, Aberdeen Daily World, and Bellingham Herald. The publication notice shall provide Class Members with contact information for the Claims Administrator and with the website address. A Summary Notice in the form attached as Exhibit 5 and approved by the Superior Court shall be used for publication purposes.

7. CLAIMS, EXCLUSION, AND OBJECTION PROCESS

- 7.1 The Notice Documents shall state that Class Members must submit their completed Claim Forms no later than thirty (30) days after the date set by the Court for the final approval hearing (the “**Form Submission Deadline**”). Subject to any rights to cure as provided in Section 7.4, no Claim Forms will be honored if postmarked after the Form Submission Deadline. All original Claim Forms shall be sent to the Claims Administrator. The Notice shall further provide that Exclusion Letters and Objections

must be postmarked no later than thirty days after the date on which the Notice Documents are mailed.

- 7.2 In order to be eligible to receive a portion of the Class Member Payment Amount, a Class Member must return one of three alternative Claim Forms, Claim Form A, Claim Form B, or Claim Form C, in accordance with Sections 7.6, 7.7 and 7.8 below. The form of Claim Form A, Claim Form B, and Claim Form C as agreed to by the Parties subject to Court approval are attached hereto as Exhibits 1, 2, and 3 respectively.
- 7.3 Each Class Member may only submit one Claim Form. If a Class Member submits more than one valid Claim Form, the Class Member's submission will be treated as if the Class Member submitted the valid Claim Form which yields the highest monetary value for that Class Member.
- 7.4 Submission of an incomplete Claim Form may render the Class Member's submission invalid if not fixed. A Claim Form will be considered incomplete if the Class Member failed to provide information regarding their name, address, or Social Security number or if the Class Member answered "yes" to Question 5 on Claim Form B but did not answer subpart (b) of such question, or "yes" to Questions 5-10 on Claim Form C, but did not answer subparts (a) of such questions. In such circumstances, the Claims Administrator shall send a letter to the Class Member explaining the reason why the submitted Claim Form is incomplete and giving the Class Member thirty (30) days to cure the omission. If the Class Member does not cure, Class Counsel reserve the right to follow-up with the Class Member to try and assist him or her in completing the information. The cure must occur within 45 days total, *i.e.*, Class Counsel have 15 days to work with the Class Member. The Claims Administrator shall only send a cure letter once pursuant to this Section to any Class Member. Failure to provide name, address or Social Security information after given the opportunity to cure as provided in this Section shall render the Class Member's submission invalid. If after being given the opportunity to cure as provided in this subsection the Class Member fails to provide the information required by subpart (a) or (b), the Claims Administrator shall disregard the "yes" response in calculating potential payment under Claim Form B or C.
- 7.5 On or before twenty (20) days before the Form Submission Deadline, Wal-Mart shall provide the Claims Administrator with information sufficient to determine the amount of time each Claimant worked at Wal-Mart in Washington on an hourly basis during the Settlement Class Period. The Parties agree that the information provided pursuant to this subsection is confidential and shall not be shared with third parties other than the Claims Administrator. Unless otherwise agreed by the Parties, the time of employment shall be determined based on regular, fourteen-day Wal-Mart pay periods ("**Pay Periods**"). If a Class Member worked for only a portion of a Pay Period, that Class Member shall be treated as if he or she worked for the full Pay Period and the full Pay Period shall be counted towards the amount of time the Class Member worked on an hourly basis at Wal-Mart in Washington. Special benefit hours used during a Pay Period, including vacation, sick, personal, holiday, bereavement, jury duty, and severance pay, if applicable, shall be counted towards the amount of time the Class Member worked at Wal-Mart in Washington. If a Claimant is on leave of absence and the Claimant's time records do not

show any time worked for two or more consecutive Pay Periods, the Pay Periods during which the Claimant is on leave shall not be counted towards the amount of time the Claimant worked on an hourly basis at Wal-Mart in Washington.

7.6 Claim Form A.

7.6.1. Claim Form A shall allow for an automatic, fixed payment based on the length of the Claimant's employment as an hourly associate at Wal-Mart in Washington during the Settlement Class Period. Payment under Claim Form A shall be determined as follows, subject to applicable taxes and withholdings as set forth in Section 5.1.8:

7.6.1.1. Fifty Dollars (\$50) for a Claimant who worked at Wal-Mart in Washington during the Settlement Class Period for less than twelve (12) pay periods;

7.6.1.2. One Hundred Dollars (\$100) for a Claimant who worked at Wal-Mart in Washington during the Settlement Class Period for twelve (12) pay periods up through twenty-six (26) pay periods; and

7.6.1.3. One Hundred and Fifty Dollars (\$150) for a Claimant who worked at Wal-Mart in Washington during the Settlement Class Period for twenty-seven (27) pay periods or more.

7.6.2. The Parties and Class Counsel agree that any dollar values allocated to claims submitted under Claim Form A and the terminology used in Claim Form A are for purposes of this Settlement only and are not admissible as evidence, as an admission by Wal-Mart, or for any other purpose in this Litigation or in any other judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or other proceeding, including any wage and hour litigation, or other litigation, against Wal-Mart.

7.6.3. For a Claimant to be eligible to recover by way of Claim Form A, the Claim Form must be timely and valid. To be timely it must be postmarked by the Form Submission Deadline. To be valid it must be completed in full and signed under penalty of perjury.

7.6.4. The Claims Administrator shall determine the amount proposed to be paid to each Claimant who submits a timely and valid Claim Form A based on employment information provided by Wal-Mart. The final amount payable to each Approved Claimant shall be subject to applicable tax deductions, in accordance with Section 5.1.8, as well as pro-rata increases or decreases if necessary in accordance with Sections 5.1.5 and 5.1.7.

7.6.5. Within thirty (30) days after the Form Submission Deadline, the Claims Administrator shall provide a spreadsheet to Class Counsel and to Wal-Mart that contains the following information: (i) identifying information for each Claimant who submits a Claim Form A, including name, address, and last four digits of

their Social Security number; (ii) the date each Claim Form A was postmarked; (iii) whether or not the Claim Form A was complete or incomplete (and if incomplete, what information was missing); (v) which Claims the Claims Administrator proposes to treat as Approved Claims; (vi) the amount proposed to be paid to each Approved Claimant; and (vii) which Claim Form As the Claims Administrator has denied and the reasons for the denial. The Claims Administrator shall a supplemental spreadsheets if needed within fourteen (14) days after any deadlines to cure in accordance with Section 7.4 have expired. The Claims Administrator shall retain the originals of all Claim Form As (including the envelopes with the postmarks) received from Claimants, and shall make copies or the originals available to Wal-Mart or Class Counsel within one (1) business day upon request.

- 7.6.6. Class Counsel and Wal-Mart shall each have the right challenge a Claimant's eligibility to recover under Claim Form A where there exists a good faith belief that a Claimant's submission may be invalid, such as where there is a discrepancy between Wal-Mart's employment records and information provided by the Class Member on Claim Form A, such as mismatching Social Security numbers or other identifying information.

7.7 Claim Form B.

- 7.7.1. Claim Form B shall allow for variable payments, up to the caps set forth in this Section, depending on the length of the Claimant's employment as an hourly associate at Wal-Mart in Washington during the Settlement Class Period, with the specific payment amount to be determined according to the injury claimed by the Claimant based on his or her answers to the questions regarding his or her work experience as set forth on Claim Form B, and subject to applicable taxes and withholdings as set forth in Section 5.1.8. Payments under Claim Form B are subject to the following caps:

7.7.1.1. Up to One Hundred Fifty Dollars (\$150) for a Claimant who worked at Wal-Mart in Washington during the Settlement Class Period for twenty-six (26) pay periods or less;

7.7.1.2. Up to Three Hundred Dollars (\$300) for a Claimant who worked at Wal-Mart in Washington during the Settlement Class Period for twenty-seven (27) pay periods up through fifty-two (52) pay periods;

7.7.1.3. Up to Five Hundred Dollars (\$500) for a Claimant who worked at Wal-Mart in Washington during the Settlement Class Period for fifty-three (53) pay periods up through two hundred and eight (208) pay periods; and

7.7.1.4. Up to Seven Hundred Fifty Dollars (\$750) for a Claimant who worked at Wal-Mart in Washington during the Settlement Class Period for two hundred and nine (209) pay periods or more.

- 7.7.2. For a Claimant to be eligible to recover by way of Claim Form B, the Claim Form must be timely and valid. To be timely it must be postmarked by the Form Submission Deadline. To be valid it must be completed in full and signed under penalty of perjury.
- 7.7.3. For each Claimant who submits a timely and valid Claim Form B, the Claims Administrator shall calculate potential payment by applying the following formula to the Claimants' answers to the questions on Claim Form B:
- 7.7.3.1. Two Dollars (\$2) for each claimed missed or interrupted rest break.
- 7.7.3.2. The Parties and Class Counsel agree that the dollar values allocated to claims submitted by way of Claim Form B and the terminology used in Claim Form B are for purposes of this Settlement only and are not admissible as evidence, as an admission by Wal-Mart, or for any other purpose in this Litigation or in any other judicial, arbitral, administrative, investigative or other court, tribunal, forum or other proceeding, including any wage and hour litigation, or other litigation, against Wal-Mart.
- 7.7.4. Once the Claims Administrator has calculated the potential payment to each Claimant as set forth in Section 7.7.3, the Claims Administrator shall determine whether the amount claimed by each Claimant exceeds the maximum recovery as set forth in Section 7.7.1, based on the employment information provided by Wal-Mart. The final amount payable to each Approved Claimant shall be subject to applicable tax deductions, in accordance with Section 5.1.8, as well as pro-rata increases or decreases if necessary in accordance with Sections 5.1.5 and 5.1.7.
- 7.7.5. Within thirty (30) days after the Form Submission Deadline, the Claims Administrator shall provide a spreadsheet to Class Counsel and to Wal-Mart that contains the following information: (i) identifying information for each Claimant who submits a Claim Form B, including name and Social Security number; (ii) the answers provided by each Claimant to each of the questions on Claim Form B; (iii) the date each Claim Form B was postmarked; (iv) whether or not the Claim Form B was complete or incomplete (and if incomplete, what information was missing); (v) which Claims the Claims Administrator proposes to treat as Approved Claims; (vi) the amount proposed to be paid to each Approved Claimant; and (vii) which Claim Form Bs the Claims Administrator has denied and the reasons for the denial. The Claims Administrator shall a supplemental spreadsheets if needed within fourteen (14) days after any deadlines to cure in accordance with Section 7.4 have expired. The Claims Administrator shall retain the originals of all Claim Form Bs (including the envelopes with the postmarks) received from Claimants and shall make copies or the originals available to Wal-Mart or Class Counsel within one (1) business day upon request.
- 7.7.6. Class Counsel and Wal-Mart shall each have the right to challenge a Claimant's eligibility to recover under Claim Form B where there exists a good faith belief

that a Claimant's submission may be invalid, such as where there is a discrepancy between Wal-Mart's employment records and information provided by the Class Member on Claim Form B, such as mismatching Social Security numbers or other identifying information. Class Counsel and Wal-Mart shall also each have the right to audit the information provided by the Claimant regarding his or her work experience. Audits in the latter category will go directly to Judge Phillips. Class Counsel and Wal-Mart shall also each have the right to challenge the Claims Administrator's determinations regarding approval or denial of each Claim Form B and the amount the Claims Administrator proposes to pay to each Claimant. No monies shall be paid to any Claimants until after the audit process has concluded.

7.8 Claim Form C.

7.8.1. Claim Form C shall allow for variable payments, up to the caps set forth in this Section, depending on the length of the Claimant's employment as an hourly associate at Wal-Mart in Washington during the Settlement Class Period, with the specific payment amount to be determined according to the injury claimed by the Claimant based on his or her answers to the questions regarding his or her work experience as set forth on Claim Form C, and subject to applicable taxes and withholdings as set forth in Section 5.1.8. Payments under Claim Form C are subject to the following caps:

7.8.1.1. Up to Two Hundred Dollars (\$200) for a Claimant who worked at Wal-Mart in Washington during the Settlement Class Period for up through twenty-six (26) pay periods;

7.8.1.2. Up to Four Hundred Dollars (\$400) for a Claimant who worked at Wal-Mart in Washington during the Settlement Class Period for twenty-seven (27) pay periods up through fifty-two (52) pay periods;

7.8.1.3. Up to Seven Hundred Fifty Dollars (\$750) for a Claimant who worked at Wal-Mart in Washington during the Settlement Class Period for fifty-three (53) pay periods up through two hundred and eight (208) pay periods;

7.8.1.4. Up to Nine Hundred Fifty Dollars (\$950) for a Claimant who worked at Wal-Mart in Washington during the Settlement Class Period for two hundred and nine (209) pay periods or more.

7.8.2. For a Claimant to be eligible to recover by way of Claim Form C, the Claim Form must be timely and valid. To be timely it must be postmarked by the Form Submission Deadline. To be valid it must be completed in full and signed under penalty of perjury.

7.8.3. For each Claimant who submits a timely and valid Claim Form C, the Claims Administrator shall calculate potential payment by applying the following formula to the Claimants' answers to the questions on Claim Form C:

- 7.8.3.1. Two Dollars (\$2) for each claimed missed or interrupted rest break.
 - 7.8.3.2. Ten Dollars (\$10) per hour of claimed off-the-clock work.
 - 7.8.3.3. Twenty-Five Dollars (\$25) for each claimed One or Two Minute Punch event.
 - 7.8.3.4. Five Dollars (\$5) for each claimed inserted meal period.
 - 7.8.3.5. Four Dollars (\$4) for each claimed lock-in event.
 - 7.8.3.6. Four Dollars (\$4) for each claimed interrupted meal period.
 - 7.8.3.7. The Parties and Class Counsel agree that the dollar values allocated to claims submitted by way of Claim Form C and the terminology used in Claim Form C are for purposes of this Settlement only and are not admissible as evidence, as an admission by Wal-Mart, or for any other purpose in this Litigation or in any other judicial, arbitral, administrative, investigative or other court, tribunal, forum or other proceeding, including any wage and hour litigation, or other litigation, against Wal-Mart.
- 7.8.4. Once the Claims Administrator has calculated the potential payment to each Claimant as set forth in Section 7.8.3, the Claims Administrator shall determine whether the amount claimed by each Claimant exceeds the maximum recovery as set forth in Section 7.8.1, based on the employment information provided by Wal-Mart. The final amount payable to each Approved Claimant shall be subject to applicable tax deductions, in accordance with Section 5.1.8, as well as pro-rata increases or decreases if necessary in accordance with Sections 5.1.5 and 5.1.7.
- 7.8.5. Within thirty (30) days after the Form Submission Deadline, the Claims Administrator shall provide a spreadsheet to Class Counsel and to Wal-Mart that contains the following information: (i) identifying information for each Claimant who submits a Claim Form C, including name and Social Security number; (ii) the answers provided by each Claimant to each of the questions on Claim Form C; (iii) the date each Claim Form C was postmarked; (iv) whether or not the Claim Form C was complete or incomplete (and if incomplete, what information was missing); (v) which Claims the Claims Administrator proposes to treat as Approved Claims; (vi) the amount proposed to be paid to each Approved Claimant; and (vii) which Claim Form Cs the Claims Administrator has denied and the reasons for the denial. The Claims Administrator shall a supplemental spreadsheets if needed within fourteen (14) days after any deadlines to cure in accordance with Section 7.4 have expired. The Claims Administrator shall retain the originals of all Claim Form Cs (including the envelopes with the postmarks) received from Claimants and shall make copies or the originals available to Wal-Mart or Class Counsel within one (1) business day upon request.

7.8.6. Class Counsel and Wal-Mart shall each have the right to challenge a Claimant's eligibility to recover under Claim Form C where there exists a good faith belief that a Claimant's submission may be invalid, such as where there is a discrepancy between Wal-Mart's employment records and information provided by the Class Member on Claim Form C, such as mismatching Social Security numbers or other identifying information. Class Counsel and Wal-Mart shall also each have the right to audit the information provided by the Claimant regarding his or her work experience. Audits in the latter category will go directly to Judge Phillips. Class Counsel and Wal-Mart shall also each have the right to challenge the Claims Administrator's determinations regarding approval or denial of each Claim Form C and the amount the Claims Administrator proposes to pay to each Claimant. No monies shall be paid to any Claimants until after the audit process has concluded.

7.9 Procedures Regarding Challenges to Eligibility and Audits.

7.9.1. The Parties agree that Class Counsel and Wal-Mart each have the right to challenge a Claimant's eligibility to recover under Claim Form A, B or C, and to audit the information provided by the Claimant on Claim Form B or C regarding his or her work experience, along the procedures addressed above.

7.9.2. Within fourteen (14) days of having received all Claim Form A, Claim Form B, and Claim Form C Spreadsheets from the Claims Administrator, Class Counsel and Wal-Mart's counsel shall meet and confer regarding any eligibility or audit issues. Class Counsel and Wal-Mart's counsel agree to use their best efforts to resolve any disputes. If Class Counsel and Wal-Mart cannot resolve these issues within twenty-eight (28) days of having received all Claim Form A, Claim Form B, and Claim Form C Spreadsheets from the Claims Administrator, then Class Counsel or Wal-Mart may provide written notice of their intent to challenge a Claimant's eligibility (with respect to all three forms) or audit a Claimant's response (with respect to Forms B and C). If a Class Member does not wish to be audited at the close of the meet and confer process in connection with work experience issues, he or she may elect to revert to the recovery for which he or she is entitled under Claim Form A.

7.9.3. Within 14 days of the conclusion of the meet-and-confer process, either Class Counsel or Wal-Mart may invoke their rights under this Subsection by providing written notice to each other and to Judge Layn R. Phillips of their intent to challenge a Claimant's eligibility or to audit a Claimant's reported work experience. The notice shall identify the Claim or Claims that are the subject of the audit, and may be accompanied by supporting papers of no more than two (2) pages (excluding exhibits) for each Claim being audited. All decisions by Judge Layn R. Phillips regarding challenges to eligibility or audits are binding, final decisions which shall not be subject to appeal.

- 7.9.4. Within fourteen (14) days of receipt of the notice and supporting papers, the non-challenging or non-auditing party may submit a written response of no more than two (2) pages (excluding exhibits) for each Claim being audited.
 - 7.9.5. Wal-Mart shall have the right to request cross examination of any Claimant whose Claim is submitted to Judge Layn R. Phillips for decision.
 - 7.9.6. The Claims Administrator and Judge Layn R. Phillips shall each decide any audits presented to them within thirty (30) days of final submission.
 - 7.9.7. Wal-Mart's share of any of the Claims Administrator's and/or Judge Layn R. Phillips' fees and expenses relating to the audit shall be treated the same as the Notice and Administration Costs.
 - 7.9.8. The time periods and page limits set forth in this Subsection may be extended by agreement of the Parties, or by Judge Layn R. Phillips, for good cause shown.
 - 7.9.9. Notice of audits, any paperwork submitted in support of, or in response to, any audit, and the decisions by the Claims Administrator or Judge Layn R. Phillips shall be served by email and United States Mail.
- 7.10 Disbursement of Funds from the QSF.
- 7.10.1. Funds transferred to the QSF for purposes of Notice and Administration Costs shall be paid to the Claims Administrator within three (3) business days of receipt of such funds by the QSF.
 - 7.10.2. No funds transferred to the QSF for purposes of Attorneys' Fees and Costs shall be transferred out of the QSF until the Court has approved a distribution plan to be submitted by Class Counsel with respect to how the Attorneys' Fees and Costs awarded by the Court shall be distributed from the QSF to Class Counsel. To this end, Class Counsel will request that the Court approve disbursement from the QSF to the law firm of Leiff Cabraser Heimann & Bernstein, LLP as part of the Order approving the award of attorneys' fees. Funds transferred to the QSF for purposes of Attorneys' Fees and Costs shall be distributed in accordance with the Order contemplated by this section within three (3) business days of the entry of such Order by the Court, or the Settlement Effective Date, whichever is later.
 - 7.10.3. Within fourteen (14) days after all audits initiated pursuant to Section 7.9 have been resolved, the Claims Administrator shall calculate the final amounts due to each Approved Claimant less applicable taxes and withholdings, and including any further allocations required by Sections 7.6, 7.7 and 7.8. At that same time, the Claims Administrator shall provide an accounting to Class Counsel, Wal-Mart, and the QSF itemizing the monies to be distributed to each Approved Claimant.

- 7.10.4. The QSF shall start distributing payment to Approved Claimants within ten (10) days after the Settlement Effective Date, or within ten (10) days of receipt of the itemization described in Section 7.10.3, whichever is later.
- 7.10.5. If any monies distributed to Approved Claimants pursuant to Section 7 remain unclaimed with the QSF after one (1) year from the date the check was mailed to the Claimant's address on file with the Claims Administrator, those monies shall be distributed to a charity agreed to by the Parties subject to Court approval.
- 7.11 Exclusion Letters.
- 7.11.1. A Class Member who previously excluded himself or herself from the class certified by the Court on November 29, 2004 will be deemed to have withdrawn his or her prior request for exclusion. If that Class Member wants to be excluded from the Settlement Class, he or she will need to follow the procedures set forth below.
- 7.11.2. A 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 Exclusion Letter to the Claims Administrator. For an Exclusion Letter to be accepted, it must be timely and valid. To be timely, it must be postmarked by the date indicated in the Notice. To be valid, the Exclusion Letter must include the Class Member's name, address, and Social Security number, must indicate the Class Member intends to be excluded, and must be signed by the Class Member.
- 7.11.3. A Class Member who submits an Exclusion Letter is not eligible to recover a share of the Class Settlement Amount. For Class Members who submit both Claim Forms and Exclusion Letters, Class Counsel will be advised of how many Class Members submit both a Claim Form and an Exclusion Letter. If the number is 50 or less, Class Counsel will attempt to contact each individual to determine whether he or she wishes for the Exclusion or the Claim Form to govern. If the number is 50 or more, the Claims Administration will send letters to those individuals and follow-up as necessary. Class Members will have twenty-one (21) days from the date of the letter to notify the Claims Administrator of whether the Letter or the Claim Form governs. If the Class Member does not make his or her election, the Claim Form will govern.
- 7.11.4. The Claims Administrator shall maintain a list of persons who have excluded themselves and shall provide such list to the Parties upon request. The Claims Administrator shall retain the originals of all Exclusion Letters (including the envelopes with the postmarks) received from Claimants, and shall make copies or the originals available to Wal-Mart or Class Counsel within one (1) business day upon request.
- 7.12 A Class Member who wishes to object to the Settlement must notify the Superior Court of their objection, in writing, no later than thirty (30) days from the date on which the

Notice Documents are mailed. No objections postmarked after this date will be considered. The Notice shall provide instructions regarding how to make objections.

8. QUALIFIED SETTLEMENT FUND

- 8.1 At the times required by Section 5.2 of this Agreement, Wal-Mart shall transfer the required portions of the Class Action Settlement Amount to a trustee selected jointly by Class Counsel and Wal-Mart (the “*Trustee*”) to be held as a separate trust constituting a QSF as described in Treasury Regulation §1.468B-1, 26 C.F.R. §1.468B-1. Class Counsel and Wal-Mart jointly shall, and shall cause the Trustee 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. Wal-Mart 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 Section 10.1. The Court shall retain jurisdiction over the administration of the QSF. Wal-Mart 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 Wal-Mart 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, Wal-Mart 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.
- 8.2 Upon establishment of the QSF, the Trustee 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).
- 8.3 If requested by either Wal-Mart or the Claims Administrator, the Claims Administrator, the Trustee and Wal-Mart 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.
- 8.4 Following its deposits as described in Section 8.1 of this Agreement, Wal-Mart shall have no responsibility, financial obligation or liability whatsoever with respect to the notifications to the Class required hereunder, the processing of Claim and Exclusion 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, 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 Wal-Mart's obligation to Claimants, Class Counsel and expenses of administration in respect to the disposition of the Class Action 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 Wal-Mart or Class Counsel to audit determinations of the Claims Administrator in accordance with Section 7.9 of this Agreement or to seek redress for any breach of the terms hereof.

- 8.5 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. 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 Wal-Mart 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 Wal-Mart and the remaining Parties are reasonably satisfied that such application and ruling will not compromise the confidentiality of settlement evidenced herein as required by Section 18 of this Agreement. Subject to any contrary holdings in any such ruling:
- 8.5.1. A portion of the distributions from the QSF to the Class Members shall be treated as "*wages*" or "*compensation*" paid by the QSF during the calendar year of payment. Claimants may file with the QSF a Tax Declaration. Any Claimant who does not file a Tax Declaration with the QSF shall have taxes withheld at the rate for a single person claiming no withholding exemptions. Class Members shall be responsible for payment of appropriate federal, state, and local income taxes on any claim paid out pursuant to this Agreement, except that Wal-Mart shall transfer to the QSF funds sufficient to pay any appropriate employer-associated taxes. The Parties agree that no portion of any distributions from the QSF to the Class Members is made in satisfaction of any excluded liability as described in Treasury Regulation § 1.468B-1(g), related to Qualified Settlement Funds.
- 8.5.2. All federal, state, and local withholding, employment, unemployment, excise, or similar taxes that may be imposed with respect to distributions from the QSF (including, but not limited to, FICA, FUTA, Medicare taxes, and all state and local taxes and, in each instance, both the Claimants' and QSF's share of all taxes), shall be paid from the QSF.

- 8.5.3. Federal, state and local income tax and other payroll tax withholding rates on all distributions from the QSF will be as determined by applicable law. The Claims Administrator's good faith determination as to withholding rates shall be final.
- 8.6 It is agreed that any amounts paid under this Agreement do not represent a modification of the paid Claimants' previously credited hours of service or compensation to be taken into account under any employee benefit plan sponsored by, or contributed to, Wal-Mart or any jointly-trusted benefit plans. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under, Wal-Mart sponsored or jointly-trusted benefit plans.
- 8.6.1. Wal-Mart retains the right to modify the language of its Benefit Plans, to seek to have modified the language of any jointly trusted Benefit Plans, and to make clear that any amounts paid pursuant to this Agreement are not for "hours of service" (or any similar term) and are not "compensation" (or any similar term) as defined by the applicable benefit plans and that additional contributions or benefits are not required by this Agreement.
- 8.6.2. This Agreement and any distributions made pursuant to it will have no effect on Benefit Plan eligibility, vesting, contributions, or benefits of or on behalf of current or former employees covered by this Agreement.
- 8.6.3. For purposes of this Agreement, "**benefit plan**" means each and every "employee benefit plan" as defined in 29 U.S.C. § 1002(3), and each and every other plan, fund, program, or arrangement that relates to bonus, pension, stock option, stock purchase, stock appreciation, welfare, profit-sharing, retirement, disability, vacation, severance, hospitalization, insurance, compensation, deferred compensation, or any other similar benefit for one or more current or former employees or their beneficiaries.
- 8.7 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.
- 8.8 The QSF shall be invested in United States Treasury bills or money market funds primarily invested in the same, 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.
- 8.9 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.

9. COMPREHENSIVE WAIVER, RELEASE, AND DISMISSAL

9.1 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 Named Plaintiffs and all Class Members, other than those who submit Exclusion Letters (“**Releasing Class Members**”), do hereby irrevocably release, acquit, and forever discharge Wal-Mart of and from any and all 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 liability that were asserted in the Litigation or that could have been asserted but were not asserted in the Litigation, whether known or unknown, on the basis of, connected with, arising out of, or related in whole or in part to any or all of the alleged acts, omissions, facts, matters, transactions, circumstances, and occurrences that were directly or indirectly alleged, asserted, described, set forth or referred to in the Litigation, whether such allegations were or could have been based on common law or equity, or on any statute, rule, regulation, order, or law, whether federal, state, or local. The Releasing Class Members further covenant to obtain any necessary Court approval with respect to the Released Claims as they apply to any minor Class Members. The Released Claims include the common law and equitable claims, state statutory claims, and federal statutory claims listed in Sections 9.1.1 through 9.1.3 below related to alleged: (i) off-the-clock work (including lock-in claims), which includes claims relating to the non-payment of wages because work was performed off the clock and any record keeping violations that are a result of work being performed off the clock and, therefore, not being recorded; (ii) meal periods that were not provided or meal periods that were interrupted; (iii) rest breaks that were not provided or rest breaks that were interrupted; (iv) inaccurate creation, retention, and preservation of time records; (v) the alteration of time records and hours worked without proper authorization, including claims relating to one (1) and two (2) minute shifts, inserted breaks, and time editing; (vi) claims that Wal-Mart failed to pay overtime hours or other wages, including claims related to how overtime is calculated, as a result of any of the claims covered by this release; (vii) claims for penalties or other damages arising from a claim for late payment of wages or benefits under any applicable state or federal law as a result of any of the claims covered by this release; and (viii) any claim for contribution to any Wal-Mart profit-sharing or other employee benefit plan as a result of any of the claims covered by this release:

9.1.1. Common Law and/or Equitable Claims: Breach of express or implied contract; breach of duty to pay wages; breach of duty; breach of the (implied) covenant of good faith and fair dealing; breach of fiduciary duty; civil conspiracy; concealed fraud; concealment of material fact(s); conduct in discovery, including requests for discovery sanctions under Rule 37 or any other similar rule of civil procedure; conspiracy; constructive fraud; conversion; destruction of evidence; estoppel; false imprisonment; false representations; fraud; fraudulent concealment; fraudulent misrepresentation; intentional infliction of emotional distress; intentional interference with contract; intentional misrepresentation; interference with contractual rights; malice; misrepresentation; negligence; negligent infliction of emotional distress; negligent misrepresentation; oppression; promissory estoppel; public policy tort/wrongful discharge; quantum meruit; quasi contract restitution; receipt of bonuses/financial compensation for reduction of store

expenses; spoliation of evidence; tortious interference with contractual relations; unjust enrichment; unjust enrichment/quantum meruit; unjust enrichment/restitution; unjust enrichment/tort; unfair business practices; and claims for declaratory relief; an accounting; injunctive relief; punitive damages; and attorneys' fees.

- 9.1.2. State Statutory Claims: Any and all claims arising under any of the statutes alleged in the Complaints, including, without limitation, Revised Code of Washington (RCW) 49.46.130, RCW 49.48.010, RCW 49.46.090, RCW 49.12.010, RCW 49.52.050, the Washington Consumer Protection Act (CPA), RCW 19.86 et seq, WAC 296-126-023, WAC 296-126-092, and WAC 296-125-0287.
- 9.1.3. Federal Statutory Claims: Any and all claims arising under the Fair Labor Standards Act, 29 U.S.C. § 201 et seq., including, without limitation, §§ 206, 207(a), 211(c), 215, and 216(b); 29 C.F.R. § 516.2(7) and 516.5(a); and any and all claims arising under the Employee Retirement Income Security Act, 29 U.S.C. § 1001 et seq., including, without limitation, §§ 1132 and 1140.
- 9.1.4. This release also includes a release of all claims for attorneys' fees and costs incurred by Releasing Class Members or by Class Counsel in connection with the Litigation and the Settlement of the Litigation.
- 9.1.5. Plaintiffs and Releasing Class Members understand and agree that this release is a full and final release applying to both those Released Claims that are currently known, anticipated, or disclosed to any and all Plaintiffs and to all those Released Claims that are presently unknown, unanticipated, and undisclosed to any and all Plaintiffs arising out of the alleged facts, circumstances, and occurrences underlying: (i) the claims set forth in the Litigation; and (ii) Wal-Mart's conduct with respect to the Litigation. To the extent permissible by law, Named Plaintiffs and Releasing Class Members understand and agree that this release is a full and final release applying to both those Released Claims that are currently known, anticipated, or disclosed to Named Plaintiffs and to all those Released Claims that are presently unknown, unanticipated, and undisclosed to any and all Named Plaintiffs and Releasing Class Members arising out of the alleged facts, circumstances, and occurrences underlying: (i) the claims set forth in the Litigation; and (ii) Wal-Mart's conduct with respect to the Litigation. Provided, however, that nothing in this release shall release any claims arising in the *Dukes v. Wal-Mart Stores, Inc.* (N.D. Cal. C01-2252) gender discrimination class action. In exchange for the good and valuable consideration set forth herein, Named Plaintiffs, for themselves and the Settlement Class, 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 under the terms of Section 1542 (a) of the California Civil Code (or similar statute in effect in any other jurisdiction), which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH

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

10. DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

- 10.1 Upon the Execution of this Agreement Class Counsel shall apply to the Superior Court for the entry of an order granting preliminary approval of the Settlement and Notice substantially in the following form:
- 10.1.1. Scheduling a fairness hearing on the question of whether the proposed Settlement should be finally approved as fair, reasonable, and adequate as to the Class;
 - 10.1.2. Approving as to form and content the proposed Notice;
 - 10.1.3. Approving as to form and content the proposed Claim Forms;
 - 10.1.4. Directing the mailing of the Notice and the Claim Forms by first class mail to the Class Members;
 - 10.1.5. Preliminarily approving the Settlement;
 - 10.1.6. Preliminarily amending the Superior Court's prior certification orders for purposes of Settlement in accordance with Section 4; and
 - 10.1.7. Approving Beth E. Terrell and Rachel Geman as Class Counsel; Debra Barnett, Georgie Knoles and Bella Blaubergs as Class Representatives; and Rust Consulting, Inc. as Claims Administrator.
- 10.2 Wal-Mart shall cooperate with Class Counsel as necessary to obtain preliminary approval.

11. DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL

- 11.1 Following preliminary approval by the Court of the Settlement, Class Counsel will submit a proposed Final Judgment and Order of Dismissal substantially in the form attached hereto as Exhibit 7. The proposed Final Judgment and Order of Dismissal shall:
- 11.1.1. Approve the Settlement, adjudging the terms thereof to be fair, reasonable, and adequate and directing consummation of its terms and provisions;
 - 11.1.2. Approve Class Counsel's application for an award of attorneys' fees and reimbursement of costs;
 - 11.1.3. Approve the Class Representative Incentive Awards;
 - 11.1.4. Certify the Class for Settlement purposes in accordance with Section 4 and Exhibit 6 to this Agreement;

- 11.1.5. Dismiss this Litigation on the merits and with prejudice and permanently barring the Named Plaintiffs, the Class Representatives, and all Class Members (other than those who timely filed valid Exclusion Letters) from further prosecuting any of the Class Member Released Claims against Wal-Mart.
- 11.2 Wal-Mart shall cooperate with Class Counsel as necessary to obtain final approval and the dismissal of the Litigation.

12. MUTUAL FULL COOPERATION

- 12.1 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, Class Counsel shall, with the assistance and cooperation of Wal-Mart and its counsel, take all necessary steps to secure the Court's Final Judgment.
- 12.2 Wal-Mart agrees that it will not discuss the terms of the Settlement with Class Members or putative Class Members prior to the Form Submission Deadline. Wal-Mart will provide instructions to its managerial employees in its Washington stores that they may not discuss the Settlement with Class Members or putative Class Members.

13. STATEMENT OF NO ADMISSION

- 13.1 Nothing contained in this Agreement shall be construed or deemed an admission of liability, culpability, or wrongdoing on the part of Wal-Mart, and Wal-Mart denies liability therefor. Nor shall this Agreement constitute an admission by Wal-Mart as to any interpretation of laws or as to the merits, validity, or accuracy of any claims made against it in the Litigation. Each of the Parties has entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses.
- 13.2 This Agreement, and all related documents, including the Settlement Agreement, the certification for settlement purposes entered pursuant to this Agreement, and any Claim Forms and Exclusion Letters submitted by 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 any judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or proceeding, including any wage and hour or other litigation against Wal-Mart, for any purpose, except in an action or proceeding to approve, interpret, or enforce the terms of this Agreement.
- 13.3 The Claim Forms or Exclusion Letters, or other evidence produced or created by any Class Member in connection with the claims resolutions procedures pursuant to this Settlement, and any actions taken by Wal-Mart in response to such Claim Forms,

Exclusion Letters, or other evidence, do not constitute, are not intended to constitute, and will not be deemed to constitute an admission by Wal-Mart 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.

- 13.4 The Parties and Class Counsel agree that 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 any judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or proceeding regarding the propriety of class certification or collective treatment. In the event that this Agreement is not approved by the Superior Court, any appellate court, or otherwise fails to become effective and enforceable, or is terminated, Wal-Mart 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, Wal-Mart's objections and defenses to any class certification and FLSA collective action treatment.

14. VOIDING THE AGREEMENT

- 14.1 Subject to Subsection 4.2, in the event that this Settlement is not approved, or if for any reason the Settlement Effective Date does not occur, the Settlement shall be deemed null, void and unenforceable and shall not be used nor shall it be admissible in any subsequent proceedings either the Court or in any other judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or other proceeding, including without limitation any wage and hour, or other litigation against Wal-Mart.
- 14.2 In the event that the Court does not approve the Attorneys' Fees and Costs in the amount requested by Class Counsel, or in the event that the Attorneys' Fees and Costs requested by Class Counsel is reduced, that finding shall not be a basis for rendering the entire Settlement Agreement null, void, or unenforceable. Class Counsel retains their right to appeal any decision by the Court regarding the Attorneys' Fees and Costs.

15. PARTIES' AUTHORITY

- 15.1 The respective signatories to this Agreement each represent that they are fully authorized to enter into this Settlement and bind the respective Parties to its terms and conditions.

16. NO PRIOR ASSIGNMENTS

- 16.1 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.

17. NOTICES

17.1 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 as of: (i) 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; or (iii) the third business day after mailing by United States registered or certified mail, return receipt requested. All notices given under this Agreement shall be addressed as follows:

17.1.1. To the Class:

Beth E. Terrell
TERRELL MARSHALL & DAUDT, PLLC
3600 Fremont Avenue N.
Seattle, Washington 98103
Tele: (206) 816-6603
Fax: (206) 350-3528
Email: bterrell@tmdlegal.com

Rachel Geman
LIEFF, CABRASER, HEIMANN &
BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, New York 10013-1413
Tele: (212) 355-9500
Fax: (212) 355-9592
Email: rgeman@lchb.com

17.1.2. To Wal-Mart:

Brian L. Duffy
Naomi G. Beer
GREENBERG TRAUIG, LLP
1200 17th Street, Suite 2400
Denver, Colorado 80202-5835
Tele: (303) 572-6500
Fax: (303) 572-6540
Email: DuffyB@gtlaw.com
BeerN@gtlaw.com

B. Michael Bennett
WAL-MART STORES, INC.
702 SW Eighth Street
Bentonville, Arkansas 72716-0215

Neal S. Manne
SUSMAN GODFREY, LLP
1000 Louisiana, Suite 5100
Houston, Texas 77002-5096
Tele: (713) 651-9366
Fax: (713) 654-6666
Email: NManne@susmangodfrey.com

Kathryn P. Hoek
SUSMAN GODFREY, LLP
1901 Avenue of the Stars, Suite 950
Los Angeles, California 90067-6029
Tele: (310) 789-1000
Fax: (310) 789-3150
Email: KHoek@susmangodfrey.com

18. CONFIDENTIALITY

18.1 The negotiations, terms and existence of this Settlement will remain strictly confidential and shall not be discussed with anyone other than the Parties of record, their accountants and financial advisors, counsel of record, their retained consultants, National Coordinating Counsel for Wal-Mart, and the mediator Judge Layn Phillips. Notwithstanding the provisions of this subsection, Class Counsel may issue a joint press

release to the public disclosing the existence of the Settlement as described in Section 19 below, and Wal-Mart may disclose the Settlement in filings that it is required to make with the Securities and Exchange Commission, including 10-Q and 10-K filings.

- 18.2 Any confidentiality associated with the terms of this Settlement shall expire upon the filing of the motion for preliminary approval of the proposed Settlement with the Superior Court, except that the negotiations and discussions preceding submission of the Settlement to the Court for preliminary approval, and any negotiations and discussions between the time of preliminary approval and final approval shall remain strictly confidential (unless otherwise ordered by the Court).

19. JOINT PRESS RELEASE

- 19.1 The Parties have agreed to issue three joint press releases, the first to be released to the public at the time of Board approval of the Settlement, the second to be released to the public at the time of preliminary approval of the Settlement, and the third to be released to the public at the time of final approval of the Settlement. The Parties and their counsel may respond to media inquiries regarding the Settlement so long as the responses do not disparage any party, their counsel, or the Settlement. This Section does not preclude appropriate notice by publication or announcement of the Settlement on counsel's website.

20. DOCUMENTS AND DISCOVERY

- 20.1 Within sixty (60) days after the Settlement Effective Date, each of Class Counsel shall take steps necessary to destroy or erase all documents and data produced by Wal-Mart to Class Counsel in connection with this Litigation and which are currently in Class Counsel's possession, custody or control. Class Counsel shall certify to Wal-Mart their good faith efforts to comply with this provision. Class Counsel may treat this process of destruction/erasure as a case cost. Further, Class Counsel may and will keep their own work product and filed briefs and pleadings that may refer to, quote, or incorporate documents and data.

21. MISCELLANEOUS PROVISIONS

- 21.1 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 its counsel participated in the drafting of this Settlement.
- 21.2 Captions and Interpretations. Paragraph titles or captions contained in this Settlement 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. Each term of this Settlement is contractual and not merely a recital.
- 21.3 Modification. This Settlement may not be changed, altered, or modified, except in a writing signed by the Parties, and approved by the Superior Court. Notwithstanding the forgoing, 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.

- 21.4 Integration Clause. This Agreement, the attached Exhibits and any other documents delivered pursuant to this Agreement contain the entire agreement between the Parties relating to the resolution of the Litigation, and no Party or their legal counsel are relying on any understandings, representations, warranties, or statements, whether oral or written, not contained in this Settlement Agreement, the attached Exhibits, or any other documents delivered pursuant to 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.
- 21.5 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.
- 21.6 Class Counsel Signatories. It is agreed that because the Class Members are so numerous, it is impossible or impractical to have each Class Member execute this Settlement. The Notice will provide all Class Members with a summary of the Settlement, and will advise all Class Members of the binding nature of the release. Excepting only those Class Members who timely submit an Exclusion Letter, the Notice shall have the same force and effect as if this Settlement were executed by each Class Member.
- 21.7 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.
- 21.8 Arbitration. The Parties agree to meet and confer in good faith to resolve any disagreements over the implementation of the terms of this Agreement or any other documents necessary to effectuate the Settlement. If the meet and confer is not successful, the Parties agree to binding, non-appealable arbitration before the Honorable Layn R. Phillips to resolve any disagreements over the implementation of the terms of this Agreement or any other documents necessary to effectuate the Settlement. Unless otherwise ordered by Judge Phillips, the prevailing Party will be awarded the costs of the arbitration and their attorneys' fees.
- 21.9 Applicable Law. This Agreement shall be governed by Washington law without regard to its choice of law or conflicts of law principles or provisions.
- 21.10 Enforcement Actions. In the event that one or more of the Parties institutes any legal action, arbitration, or other proceeding against any other party or parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful party or parties shall be entitled to recover from the unsuccessful party or

parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

Dated: _____, 2009

On Behalf of The Class:

LIEFF CABRASER HEIMANN & BERNSTEIN,
LLP

By: _____
Rachel Geman

Dated: _____, 2009

TERRELL MARSHALL & DAUDT, PLLC

By: _____
Beth E. Terrell

Individually and on behalf of the Class:

Dated: _____, 2009

Debra Barnett

Dated: _____, 2009

Georgie Knoles

Dated: _____, 2009

Bella Blaubergs

On Behalf of Wal-Mart:

Dated: _____, 2009

WAL-MART

By: _____
B. Michael Bennett, Vice President

Dated: _____, 2009

GREENBERG TRAURIG, LLP

By: _____
Brian L. Duffy

Dated: _____, 2009

SUSMAN GODFREY, LLP

By: _____
Neal S. Manne