

CONFIDENTIAL SETTLEMENT AND RELEASE OF ALL CLAIMS AGREEMENT

This Confidential Settlement and Release of all Claims Agreement (the “Agreement”) is entered into as of the date indicated on the signature blocks below.

RECITALS

A. On or around March 2, 2020, Ta Miaya Fitzgerald (“Fitzgerald”) filed a complaint entitled *Ta Miaya Fitzgerald v. Walmart Inc.*, Case No. 20STCV08203 (the “Action”) in the Superior Court of the State of California for the County of Los Angeles (the “Court”). In the Action, Fitzgerald asserted causes of action for: (1) failure to provide lawful meal periods or compensation in lieu thereof, (2) failure to provide lawful rest periods or compensation in lieu thereof, (3) failure to pay timely wages, (4) knowing and intentional failure to comply with itemized employee wage statement provisions, and (5) violations of the unfair competition law against Defendant Walmart Inc. (“Defendant”) (for purposes of this Agreement, Fitzgerald and Defendant are collectively referred to as the “Parties”). Thereafter, Fitzgerald filed an amended complaint, in which she added a cause of action against Defendant under the California Labor Code Private Attorneys General Act (“PAGA”) based on various alleged Labor Code violations. Fitzgerald’s operative complaint is brought as a putative class and representative action, asserting claims on Fitzgerald’s behalf individually and on behalf of similarly situated current and former cashiers (or employees in “similar positions”) who work or worked for Defendant in the state of California.

B. Defendant denied and continues to deny all allegations asserted by Fitzgerald, and asserted numerous affirmative defenses in the Action. Defendant maintains that, at all times relevant to the Action, Defendant complied with California laws pertaining to meal periods and rest breaks, payment of wages, wage statements, and suitable seating requirements. Defendant further maintains that neither Fitzgerald nor those she seeks to represent suffered any of the violations asserted in her complaint or any injuries whatsoever.

C. Given the uncertainty of civil litigation, and in the interest of conserving the resources of the Court and the Parties, the Parties desire to settle their differences without incurring additional attorneys’ fees, without any admission of liability, and have agreed to resolve any and all claims against Defendant that Fitzgerald asserted or could have asserted in the Action, as well as any and all other claims, whether known or unknown, present or contingent, that Fitzgerald may have against Defendant relating to any matter whatsoever arising on or before the date Fitzgerald signs this Agreement, in full and final resolution of all disputes between the Parties.

AGREEMENT

In consideration of the recitals listed above, and the promises contained in this Agreement, and for good and valuable consideration, the adequacy of which are acknowledged, the Parties agree as follows:

1. Responsibilities.

On the condition that the Parties comply with the terms of this Agreement, the Parties agree to undertake the following obligations:

(a) IRS W-4 and IRS W-9 Forms. Promptly after signing this Agreement, Fitzgerald and her counsel shall provide Defendant's counsel with Fitzgerald's IRS Form W-4 and Fitzgerald's counsel's IRS Form W-9.

(b) Settlement Payment. After the Court's entry of an order and judgment dismissing Fitzgerald's individual claims (including individual PAGA claims) with prejudice, and the putative class members' class claims and potentially aggrieved employees' representative PAGA claims without prejudice, and on the condition that the requirement set forth in Section 1(a) has been satisfied, Defendant shall pay to Fitzgerald the total gross amount of twenty-five-thousand dollars (\$25,000.00) (the "Settlement Payment"). The Settlement Payment shall be allocated and subject to withholdings as detailed in Section 1(c).

(c) Allocation of Settlement Payment. Defendant shall deliver checks to Fitzgerald's counsel, James Hawkins APLC, 9880 Research Drive, Suite 200, Irvine, California 92618, Attn: Lance Dacre, Esq., via mail, as follows:

(1) a check payable to "Ta Miaya Fitzgerald" in the gross amount of Nine Thousand Four Hundred Thirty-One Dollars and Fifteen Cents (\$9,431.15), less required withholdings and deductions (with respect to which Defendant shall issue a corresponding IRS Form W-2 to Fitzgerald); and

(2) a check payable to "James Hawkins APLC" in the gross amount of Fifteen Thousand Five Hundred Sixty-Eight Dollars and Eighty-Five Cents (\$15,568.85) for attorneys' fees and costs (with respect to which Defendant shall issue a corresponding IRS Form 1099 to James Hawkins APLC).

The total amount payable under this Agreement is in full, final, and complete settlement of any and all existing claims or causes of action by or on behalf of Fitzgerald against Defendant and/or the Released Parties defined in Section 2(a). Fitzgerald acknowledges and agrees that in exchange for the consideration set forth in this Agreement she will not claim that Defendant owes her any further compensation or wages, and that she will not claim any further payment for hours worked or expenses incurred during the course of her employment with Defendant. Fitzgerald further agrees and acknowledges that in exchange for the consideration set forth in this Agreement she will not claim any items of compensation or benefits not specifically described in this Section 1(c). Fitzgerald also agrees and acknowledges that absent execution of this Agreement Defendant has no obligation to make the above payments to her. Finally, payments made pursuant to this Section 1(c) are contingent upon Court approval of the Request for Dismissal (defined below) and entry of an order and judgment dismissing Fitzgerald's individual claims with prejudice and the putative class members' and aggrieved employees' claims without prejudice and without notice to putative class members. If these conditions are not met, then this Agreement shall be of no force or effect and the Parties shall return to their

respective positions in all material respects as they existed before the Parties entered into this Agreement.

Fitzgerald and James Hawkins APLC accept full responsibility for paying any and all income taxes that are or may be due as a result of any income derived by them pursuant to their receipt of any payment under this Agreement and will indemnify and hold harmless Defendant and others released in Section 2(a) of this Agreement if any government authority seeks payment of taxes, penalties, interest, or withholding, from Fitzgerald or James Hawkins APLC in connection with any payment Fitzgerald or James Hawkins APLC receive pursuant to Section 1(c). Fitzgerald and James Hawkins APLC further agree not to seek or make any claim against Defendant or others released in Section 2(a) of this Agreement for compensation, recompense, damages, costs, interest, fees, assessments, withholding, penalties or other losses, if a claim or determination is made by any government authority that Fitzgerald or James Hawkins APLC did not pay or remit appropriate taxes on any payment Fitzgerald or James Hawkins APLC received pursuant to Section 1(c). In addition, Fitzgerald and James Hawkins APLC understand and agree that Defendant and others released in Section 2(a) of this Agreement have no duty to defend Fitzgerald or James Hawkins APLC against any claim or assertion that Fitzgerald or James Hawkins APLC did not pay appropriate taxes based on receipt of any payment made pursuant to Section 1(c). Fitzgerald represents and warrants that none of the claims released under this Agreement have been or will be assigned, pledged, or otherwise in any manner whatsoever sold or transferred, either by written instrument or otherwise, to any attorney, agent, or other person or entity, except to her attorneys, James Hawkins APLC, whose claims (if any) shall be fully and finally satisfied by this Agreement, once the Settlement Payment is paid in full. Fitzgerald and James Hawkins APLC further represent and warrant that they are not aware of any attorneys, other than James Hawkins APLC, who have any attorney's fee lien on or claim to any proceeds arising out of, by virtue of, or in connection with the Action, and that the terms of this Agreement shall fully satisfy any and all claims by any attorney for Fitzgerald arising out of or by virtue of or in connection with the Action.

(d) Fitzgerald acknowledges that payment of the Settlement Payment, together with the promises contained in this Agreement, shall fully compensate Fitzgerald for any claims she has, or has ever had, against Defendant and the Released Parties (defined below) arising from facts occurring up to the date she signs this Agreement. Unless otherwise specified below, the Parties shall bear their own attorneys' fees and costs.

(e) Agreed Order of Dismissal. Fitzgerald acknowledges and confirms that in exchange for the consideration set forth above in Section 1(c) that it is Fitzgerald's intent that the Court shall dismiss all of Fitzgerald's individual claims in the Action with prejudice (including but not limited to her individual PAGA claim), and all of her putative class and representative PAGA claims without prejudice. In furtherance of this intent, Fitzgerald shall request that the Court dismiss her individual claims with prejudice and that all of her putative representative PAGA claims and class claims be dismissed without prejudice and without notice to absent class members. To effectuate dismissal, within 10 business days of execution of this Agreement, Fitzgerald shall file a Request for Dismissal of Plaintiff's Individual Claims with Prejudice and Class and Representative PAGA Claims Without Prejudice ("Request for Dismissal"), along with a declaration as is required by California Rules of Court, Rule 3.770 ("Declaration") and a proposed order and judgment. The Request for Dismissal shall also request that the Court

approve the terms of the dismissal of the PAGA claim in the Action pursuant to Labor Code § 2699(1)(2). Fitzgerald and her counsel shall confer with Defendant and its attorneys (Jones Day) regarding the content and formatting of the Request for Dismissal, Declaration, and proposed order of dismissal and judgment, and Fitzgerald and Defendant shall agree upon the content of the Request for Dismissal, Declaration, and proposed order of dismissal and judgment before they are filed. Further, before the Request for Dismissal is filed, Fitzgerald shall provide a copy of the Request for Dismissal to the Labor and Workforce Development Agency (“LWDA”) in compliance with Labor Code § 2699(1)(2). In seeking Court approval of this Agreement and dismissal of the Action, Fitzgerald shall make every effort to maintain the confidentiality of the terms of the settlement and this Agreement and disclose only such information as is required to secure Court approval. If the Court requires the submission of this Agreement as part of the Request for Dismissal, then Fitzgerald agrees to request that the Agreement be either submitted for in camera review by the Court without being filed as part of the public record in the Action, or request to file the Agreement under seal, or if neither is permitted by the Court, then Fitzgerald agrees to request the Court allow this Agreement to be filed with redactions on settlement monies paid and other terms, as agreed upon by the Parties. Defendant and Fitzgerald’s counsel shall cooperate in good faith to draft any additional papers that the Court may require for approval of the Request for Dismissal. If, after submitting the Request for Dismissal for consideration by the Court, Fitzgerald and Defendant receive a notice of tentative disapproval by the Court, then they shall jointly submit a request for hearing on the Request for Dismissal within 15 calendar days of service of the notice of tentative disapproval, as required by Rule 3.770 of the California Rules of Court. Within a reasonable period of time not to exceed 20 calendar days after the Court enters an order of dismissal and judgment in the Action, Fitzgerald shall submit a copy of the Court’s Order to the LWDA in compliance with Labor Code § 2699(1)(3).

2. Release and Covenant Not to Sue.

(a) Fitzgerald, for herself, and on behalf of her heirs, assignees, beneficiaries, trustees, executors, administrators, agents, attorneys, representatives and successors, past and present, fully and without limitation releases and forever discharges Defendant and its assignees, parent corporations, subsidiaries, divisions, affiliated corporations, affiliated partnerships, trustees, executors, administrators, directors, officers, employees, shareholders, partners, agents, attorneys, consultants, insurance carriers, plan administrators, assignees, executors, administrators, predecessors and successors, past and present (collectively, the “Released Parties”) from any rights, claims, demands, liabilities, actions, causes of action, and grievances whether in law or in equity, suits, damages, losses, attorneys’ fees, costs, and expenses, of whatever nature whatsoever, known or unknown, fixed or contingent, suspected or unsuspected (“Claims”) that Fitzgerald now has, or may ever have had, against the Released Parties that arise out of, or are in any way related to: (i) the facts, claims, contentions, and allegations asserted in the Action; (ii) Fitzgerald’s employment with Defendant, including the termination of her employment; and (iii) any acts or omissions by Defendant or any of the Released Parties occurring on or before the date Fitzgerald signs this Agreement. Fitzgerald also agrees that she shall not participate in, including to receive any form of payment or to voluntarily act as a witness in connection with any class or representative action against Defendant in relation to the Claims released by this Agreement. This Section shall not affect any duties Fitzgerald may have pursuant to law, subpoena or other compulsory process. Moreover, this Section shall not prohibit

Fitzgerald from cooperating with the Equal Employment Opportunity Commission or comparable state agency.

(b) Without limiting the foregoing, Fitzgerald agrees that the foregoing release provisions waive Claims she may have under any federal or state employment discrimination law, including without limitation any Claims she may have under the California Fair Employment and Housing Act; the California Family Rights Act; the Family and Medical Leave Act; Title VII of the Civil Rights Act of 1964; the Americans with Disabilities Act; the Age Discrimination in Employment Act (“ADEA”), the Employee Retirement Income Security Act and the California Business and Professions Code, as well as Claims arising out of or related to violations of any other state or federal law, rule, or regulation including the California Labor Code (including without limitation, California Labor Code §§ 98.6, 201-203, 204, 226, 226.2, 226.7, 500, 510, 512, 558, 1102.5, 1194, 1198, 1198.5, 2802, and 2699, *et seq.*) and California’s Wage Orders. The release of Claims also releases and waives Claims based on contract and any common law claims, including claims for common law retaliation or wrongful termination, or for intentional or negligent infliction of emotional distress, assault, battery or any other tort or unfair competition claim regardless of its nature.

(c) Fitzgerald further understands that by signing this Agreement and agreeing to the release of Claims, she is not waiving any right or claim that cannot be waived as a matter of law. Nothing in this Agreement is intended to interfere with Fitzgerald’s right to file a charge or participate in an investigation or proceeding conducted by the Equal Employment Opportunity Commission, the National Labor Relations Board, or other governmental or administrative agency; provided however, that Fitzgerald agrees she cannot recover personally any monetary amounts related to such proceedings. Notwithstanding the foregoing, nothing in this Agreement prohibits Fitzgerald from seeking and obtaining a whistleblower award from the Securities and Exchange Commission pursuant to Section 21F of the Exchange Act.

(d) Notwithstanding the generality of the provisions of this Section 2, the Parties agree that neither the provisions of this Section, nor this Agreement waives or limits their respective rights to enforce the terms of this Agreement or to pursue remedies for any breach of this Agreement’s provisions.

(e) Neither Fitzgerald nor any person, organization, or other entity acting on Fitzgerald’s behalf will in the future file any lawsuit, arbitration, or other legal proceeding, in either an individual or a representative capacity, asserting any claim that is waived under this Section 2. For the avoidance of any doubt, among other claims, pursuant to this provision Fitzgerald expressly agrees that she will not commence any representative PAGA claim and further waives any right to initiate a PAGA claim against Defendant or any of the Released Parties in an individual or representative capacity based on any alleged violation of the Labor Code arising through the date Fitzgerald executes this Agreement. If Fitzgerald breaks this promise and files a lawsuit, arbitration, or other legal proceeding asserting any claim waived in this Agreement, Fitzgerald will pay for all costs, including reasonable attorneys’ fees, incurred by the opposing party in defending against any such claim. The Parties agree that any breach of this Section shall be deemed a material breach and will entitle Defendant to recover the damages arising from such breach, up to the amount of the Settlement Sum paid to Fitzgerald pursuant to Section 1.

3. Waiver of California Civil Code Section 1542 Protections.

Fitzgerald acknowledges she is aware of and familiar with the provisions of California Civil Code § 1542, which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Fitzgerald waives any rights and benefits she may have under California Civil Code § 1542, or the law of any other state or jurisdiction, or common law principle, to the same or similar effect.

4. Confirmation of Payment of Wages.

Fitzgerald agrees and acknowledges that she has been paid all wages due and owing to her for services provided to Defendant or any of the Released Parties, including without limitation, any accrued but unused vacation or bonuses, if any, and that she is owed no further wages, overtime wages, or penalties, other than as set forth and agreed to herein.

5. Admissibility of this Agreement.

This Agreement constitutes a compromise of disputed claims and shall not be treated as an admission of liability by Defendant or any of the Released Parties, at any time or for any reason. This Agreement shall not be admissible in any legal or administrative proceeding, including proceedings between Fitzgerald, Defendant and any of the Released Parties. Notwithstanding the generality of the foregoing, the Parties agree that once it is signed by the Parties, this Agreement shall be fully binding and admissible in any judicial or administrative proceeding: (a) to secure a dismissal of the Action with prejudice as to Fitzgerald's individual claims as set forth in Section 1; (b) to enforce the terms of this Agreement; and (c) for breach of this Agreement's provisions.

6. Non-Disclosure and Non-Disparagement.

(a) Fitzgerald shall maintain in confidence and, to the full extent permitted by law, shall not knowingly, without first obtaining the express written consent of Defendant, which may be withheld in the complete and unfettered discretion of Defendant, disclose or communicate to any person any of the facts relating to the existence of this Agreement, the negotiations leading to the execution of this Agreement, or the terms of this Agreement, including the fact or amount of the Settlement Payment. If asked by any person or entity about the existence, substance, or nature of this Agreement, Fitzgerald shall state only: "The matter has been resolved." Notwithstanding the foregoing, Fitzgerald may disclose that this Agreement exists to the extent necessary to effectuate the terms of the Agreement and may disclose the terms of this Agreement to her spouse, those persons to whom disclosure is necessary for the preparation of tax returns and other financial reports, the obtaining of legal or financial/tax advice, to persons to whom disclosure is ordered by a court of competent jurisdiction, to the Internal Revenue Service or state or local taxing authorities, and to federal, state or local

authorities. Fitzgerald and her attorneys shall not publicize the existence of this Agreement, the negotiations leading to the execution of this Agreement, or the terms of this Agreement, including the fact or amount of the Settlement Payment on any website, marketing or other advertising material. However, the Parties acknowledge that references to the Agreement may be indirectly published by the Court on the Court's publicly available website as a result of the Parties' filings to effectuate the terms of the Agreement.

(b) The Parties agree that the confidentiality obligations set forth in Section 6(a) of this Agreement are essential to their decisions to settle this matter and that a breach of those provisions shall be deemed a material breach of this Agreement.

(c) Fitzgerald shall not take any action or make any untrue statement that actually or potentially defames Defendant or any of Defendant's employees, who Fitzgerald knows to be Defendant's employee or former employee. This Section 6(c) applies equally to statements made by Fitzgerald under any other identifier she may use for electronic/web-based communications and postings (e.g., Facebook, blogs, etc.). This Section does not prohibit Fitzgerald from making truthful statements generally, including while cooperating with a governmental investigation or communicating with a government agency, or testifying under oath. Fitzgerald acknowledges that she shall generally make efforts to keep her claims against Defendant, and the facts associated with those claims, confidential and shall not volunteer them absent inquiry.

(d) The Parties agree that nothing in this Agreement is intended to interfere with or discourage Fitzgerald's good faith disclosure to any governmental entity (Federal, State, local) related to a suspected violation of the law. The Parties further understand that nothing in this Agreement prohibits her from testifying in an administrative, legislative, or judicial proceeding when she has been required to attend the proceeding by court order, subpoena, or written request from any governmental entity. In addition, nothing in this Agreement prohibits the disclosure of factual information regarding acts of sexual assault, sexual harassment, sex discrimination, failure to prevent workplace harassment or discrimination based on sex, and/or retaliation for reporting harassment or discrimination based on sex.

7. Warranties and Representations.

(a) Fitzgerald represents and warrants that she has not assigned or transferred any interest in any Claim at issue in this Agreement.

(b) Fitzgerald represents that she is not aware of any person or entity that has any grounds to assert any lien with respect to the Settlement Payment, and that Fitzgerald has no reason to believe nor believes there is any foreseeable cause that Defendant shall under any circumstances be obligated to make the Settlement Payment, or any portion thereof, to any other person, firm, or entity other than as provided in this Agreement.

8. Successors and Assignees.

This Agreement shall be binding upon and shall inure to the benefit of the heirs, assignees, executors, administrators, successors, subsidiaries, divisions, and affiliated

corporations and partnerships, past and present, and trustees, directors, officers, shareholders, partners, agents, and employees, past and present of Defendant and Fitzgerald.

9. Ambiguities.

This Agreement has been reviewed by Fitzgerald and Defendant, and their respective attorneys. Fitzgerald and Defendant have had a full opportunity to negotiate the terms and conditions of this Agreement. Accordingly, Fitzgerald and Defendant expressly waive any common law or statutory rule of construction that ambiguities should be construed against the drafter of this Agreement. Fitzgerald and Defendant agree that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

10. Choice of Law

This Agreement is made and entered into in the State of California and shall in all respects be interpreted and enforced pursuant to the laws of the State of California, without regard to, or application of, any of California's conflict-of-laws rules.

11. Integration, Waiver, and Modification.

(a) This Agreement constitutes a single, integrated written contract expressing the entire agreement of Fitzgerald and Defendant. There are no other agreements, written or oral, express or implied, between Fitzgerald and Defendant, with respect to the subject matter hereof.

(b) No waiver of any provision of this Agreement shall be deemed a waiver of any other provision, whether or not similar. No such waiver shall constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party charged with the waiver. The headings in this Agreement are used solely for the reader's convenience and in no way define or limit the scope of this Agreement.

(c) This Agreement may not be modified orally or by implication. This Agreement may only be modified pursuant to the terms of a written instrument that is signed by Fitzgerald and Defendant, and that expresses Fitzgerald and Defendant's intent to modify this Agreement.

12. Severability.

Fitzgerald and Defendant agree that each and every provision of this Agreement shall be deemed to be contractual, and that they shall not be treated as mere recitals at any time or for any purpose. Therefore, Fitzgerald and Defendant further agree that each and every provision of this Agreement shall be considered severable, except for the release provisions of this Agreement. If a court of competent jurisdiction finds the release provisions in Sections 2 and 3 of this Agreement to be unenforceable or invalid, then this Agreement shall become null and void, and Fitzgerald shall return the full Settlement Payment to Defendant within 10 calendar days of any such determination. Under this circumstance, the Parties shall return to their respective positions in all material respects as they existed before the Parties entered into their agreement to settle the Action. If a court of competent jurisdiction finds any provision other than the release provisions of this Agreement to be invalid or unenforceable for any reason, that

provision, or part thereof, shall remain in force and effect to the extent allowed by law, and all of the remaining provisions of this Agreement shall remain in full force and effect and enforceable.

13. Execution in Counterparts.

This Agreement may be executed in counterparts and, if so executed and delivered, all of the counterparts together shall constitute one and the same Agreement. Fitzgerald agrees that Defendant shall maintain the original executed Agreement. In the event this Agreement is executed in counterparts, any counterpart transmitted by facsimile or email shall be binding as if it were an original.

14. Enforcement.

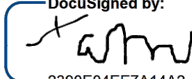
(a) The Court shall retain jurisdiction over the Parties to enforce the terms and conditions of the Parties' Confidential Settlement and Release of All Claims pursuant to Code of Civil Procedure section 664.6.

(b) In any action to enforce the terms of this Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and costs.

IN WITNESS WHEREOF, the undersigned have executed this Agreement, knowingly and voluntarily, and without coercion, on the dates set forth below.

PLEASE READ CAREFULLY BEFORE SIGNING. THIS DOCUMENT INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

Dated: 8/22/2023

DocuSigned by:

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TA MIAYA FITZGERALD

Dated: 08/22/2023

By: 
James Hawkins APLC
AS TO SECTIONS 1 AND 6(a)

Dated: August 29, 2023 | 07:55 CDT

Chad W. Pekron

WALMART INC.
By: Chad W. Pekron
Title: Vice President, Complex Commercial
Litigation