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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

AMADO HARO and ROCHELLE
ORTEGA, on Behalf of Themselves
and All Others Similarly Situated,

Plaintiff,

v.

WALMART INC.,

Defendant.

Case No. 1:21-CV-00239-ABA-SKO

District Judge: Hon. Ana De Alba
Magistrate Judge: Sheila K. Oberto

**JOINT STIPULATION OF CLASS
ACTION AND FAIR LABOR
STANDARDS ACT SETTLEMENT AND
RELEASE**

EXHIBIT "1"

**JOINT STIPULATION OF CLASS ACTION AND FAIR LABOR STANDARDS
ACT SETTLEMENT AGREEMENT AND RELEASE**

This Joint Stipulation of Class Action and Fair Labor Standards Act Settlement Agreement and Release (“Settlement” or “Settlement Agreement”) is entered into between plaintiffs Amado Haro and Rochelle Ortega (“Plaintiffs”) and defendant Walmart Inc. (“Walmart”). Plaintiffs and Walmart are jointly referred to as “the Parties.”

BACKGROUND

This Settlement resolves two related lawsuits against Walmart. In this action, *Haro, et al. v. Walmart Inc.*, E.D. Cal. Case No. 1:21-CV-00239-ABA-SKO (the “Action”), Plaintiffs assert claims against Walmart on behalf of two putative classes. On behalf of all current and former nonexempt employees who went through a COVID-19 screening at least once in California, Plaintiffs allege Walmart violated California law because it failed to pay all minimum and overtime wages due under state law for the time spent in COVID-19 screening and related activities. Accordingly, they assert claims for failure to pay minimum and overtime wages, failure to provide accurate wage statements, failure to timely pay final wages, and unfair competition. On behalf of nonexempt employees who went through a COVID-19 screening at least once, Plaintiffs allege Walmart violated the Fair Labor Standards Act (“FLSA”) because it failed to pay all overtime wages due under the FLSA for the time spent in COVID-19 screening and related activities.

In *Haro v. Walmart Inc.*, Alameda County Super. Ct. Case No. 22CV008823 (the “State Court Action”), Haro asserts claims for civil penalties under the Private Attorneys General Act (“PAGA”) against Walmart based on the same alleged violations as in this Action and seeks civil penalties on behalf of all nonexempt employees who went through at least one COVID-19 screening in California since January 17, 2021.

The Parties participated in a substantial amount of discovery in this Action and the State Court Action including written discovery, voluminous productions of

documents and data, and thirty depositions. Collectively, the Parties also produced six expert reports in this Action. The Parties also engaged in significant motion practice, including motions to exclude expert evidence, a motion for summary judgment, a motion for class certification, and a motion for conditional FLSA collective certification in this Action. On February 27, 2023, the Magistrate Judge issued findings and recommendations that FLSA collective certification be conditionally granted, to which Walmart filed objections. At the Parties' joint request, the Court stayed the Action on May 18, 2023 to allow the Parties to focus on mediation and settlement.

The Parties participated in a global mediation of this Action and the State Court Action on September 11, 2023 before Antonio Piazza, and reached an agreement to settle both lawsuits. As a result of the arm's-length negotiations, the Parties have agreed to the terms memorialized in this Settlement Agreement.

DEFINITIONS

The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective.

1. "California Class" or "California Class Members" means and includes every California Putative Class Member who does not submit a valid Request for Exclusion from the California Class.

2. "California Putative Class Members" means and includes all individuals who worked at a Walmart retail store in California as a nonexempt store employee at any point between April 10, 2020 and February 6, 2023.

3. "Class Counsel" means Hodges & Foty, LLP and Parmet PC.

4. "Class Members" or "Settlement Class" means (i) all California Putative Class Members, and (ii) all Prior FLSA Opt-Ins.

5. "Class Period" means (i) for California Putative Class Members, the period from April 10, 2020 through February 6, 2023, and (ii) for Prior FLSA Opt-Ins who are not California Putative Class Members, the period from April 10, 2020 through March 23, 2022.

6. “Court” means the United States District Court for the Eastern District of California.

7. “Effective Date” means: (i) if no appeals or motions for reconsideration or review are filed, then 31 days after the Court’s Final Approval order; or (ii) if any timely appeals or motions for reconsideration or review are filed, then the date of final resolution of that appeal or motion (including any requests for rehearing and/or petitions for *certiorari*), resulting in final judicial approval of the Settlement. In this regard, it is the intention of the Parties that the Effective Date of the Settlement shall not be a date before the Court’s order approving the Settlement has become completely final and there is no timely recourse by any person who seeks to object or otherwise contest the Settlement.

8. “Employer’s Payroll Taxes” means the employer’s share of payroll taxes due on settlement funds treated as wages for tax purposes. Participating Class Members will be responsible for the employee’s share of any payroll taxes due on settlement funds treated as wages for tax purposes.

9. “Final Approval” means the Court order granting Final Approval of the Settlement.

10. “FLSA Class” or “FLSA Class Members” means and includes (i) every Class Member who submits a valid FLSA Opt-In Form, and (ii) every Prior FLSA Opt-In who does not submit a valid Request for Exclusion from the FLSA Class. The FLSA Class will not include any employee who worked solely outside of California who is not a Prior FLSA Opt-In.

11. “FLSA Opt-In Form” means the form, attached as Exhibit B, that Class Members must submit by the Response Deadline to join the FLSA Class if they did not opt in to the Action prior to September 10, 2023.

12. “Gross Settlement Amount” is the amount of Five Million, Two Hundred Thousand Dollars (\$5,200,000), which is the amount to be paid by Walmart pursuant to this Settlement Agreement. The Gross Settlement Amount includes: (a) all Individual

1 Settlement Payments to Participating Class Members; (b) PAGA penalties; (c) General
2 Release Payments; (d) Attorneys' Fees and Costs to Class Counsel; and (e) Settlement
3 Administration Costs to the Settlement Administrator. The Parties agree that with the
4 exception of Employer's Payroll Taxes, Walmart will have no obligation to pay any
5 amount in connection with this Settlement Agreement apart from the Gross Settlement
6 Amount. No part of the Gross Settlement Amount will revert to Walmart.

7 13. "Individual Settlement Payment" means a Participating Class Member's
8 share of the Net Settlement Amount.

9 14. "Net Settlement Amount" means the Gross Settlement Amount less
10 deductions for PAGA penalties, General Release Payments, Attorneys' Fees and Costs,
11 and Settlement Administration Costs.

12 15. "Notice of Class Action and FLSA Settlement" means the notice of
13 settlement, attached as Exhibit A, to be mailed or emailed to all Class Members upon
14 Preliminary Approval.

15 16. "Participating Class Members" means all California Class Members and
16 FLSA Class Members.

17 17. "Pay Periods" means (i) for California Putative Class Members, the
18 number of biweekly pay periods during which the California Putative Class Member
19 worked at a Walmart retail store in California as a nonexempt store employee during the
20 Class Period, as measured by Walmart's pay records and rounded up to the nearest
21 whole number; and (ii) for Prior FLSA Opt-Ins, the number of biweekly pay periods
22 during which the Prior FLSA Opt-In worked for Walmart in the United States as a
23 nonexempt employee during the Class Period, as measured by Walmart's pay records
24 and rounded up to the nearest whole number.

25 18. "Preliminary Approval" means the Court order granting preliminary
26 approval of the Settlement.

27 19. "Prior FLSA Opt-Ins" means and includes all individuals who submitted
28 FLSA opt-in forms in this Action on or before September 10, 2023 (Dkt. Nos. 15, 49).

20. “Released Parties” means Walmart Inc., Wal-Mart Associates, Inc., and all of their present and former parents, subsidiaries, affiliates, and joint ventures, and all of their shareholders, members, managers, officers, officials, directors, employees, agents, servants, registered representatives, attorneys, insurers, successors, and assigns, and any other persons acting by, through, under, or in concert with any of them.

21. “Response Deadline” means the deadline by which Class Members must (i) electronically submit or postmark FLSA Opt-In Forms, (ii) email or postmark to the Settlement Administrator Requests for Exclusion, or (iii) postmark Objections to the Settlement. The Response Deadline will be sixty (60) calendar days from the initial mailing of the Notice of Class Action Settlement by the Settlement Administrator, unless the 60th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open.

22. “Settlement Administrator” means the third-party class action settlement administrator appointed by the Court and approved by the Parties for the purpose of administering this Settlement. The Parties have agreed to Rust Consulting as the Settlement Administrator to present to the Court for approval. The Parties each represent that they do not have a financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest. If for any reason Rust Consulting does not become the Settlement Administrator, then all references to the Settlement Administrator in this Agreement shall be deemed to refer to the Settlement Administrator actually appointed. If any Court-appointed Settlement Administrator becomes unable to perform as Settlement Administrator, then the Parties will meet and confer in good faith to agree upon and present another Settlement Administrator to the Court for approval.

23. “Walmart’s Counsel” means Proskauer Rose LLP.

TERMS OF THE AGREEMENT

Plaintiffs, on behalf of themselves and the Settlement Class, and Walmart agree as follows:

24. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement after arm's-length negotiations with the use of a mediator and in the context of adversarial litigation, considering all relevant factors, present and potential. The Parties further acknowledge they are each represented by competent counsel and have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement. The Parties also engaged an experienced and highly respected mediator, Antonio Piazza, to facilitate a possible resolution. At mediation, and upon evaluating the Parties' submissions and arguments, the Parties were able to reach an agreement. The Parties agree the mediator may execute a declaration supporting the reasonableness of the Settlement and the Court may, in its discretion, contact the mediator to discuss the Settlement and whether it is fair and reasonable.

25. Non-Admission of Liability. The Parties enter into this Settlement to resolve the dispute that has arisen between them and to avoid the burden, expense and risk of continued litigation. In entering into this Settlement, Walmart does not admit, and specifically denies, that it violated any federal, state, or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal requirements; or engaged in any other unlawful conduct with respect to the Class Members. Walmart is agreeing to this Settlement solely to eliminate the substantial burden, expense, and uncertainty of further litigation and the concomitant distraction of resources and efforts from its business. Neither this Settlement, nor any of its terms or provisions, nor any of the negotiations connected with it, will be construed as an admission or concession by Walmart of any such violations or failures to comply with any applicable law, or as a finding that Walmart has violated any provision of any applicable law, including the California Labor Code, IWC Wage Orders, or FLSA.

Except as necessary in a proceeding to enforce the terms of the Settlement, this Settlement Agreement and its terms and provisions will not be offered or received as

evidence in any action or proceeding to establish any liability or admission on the part of Walmart or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local or other applicable law. This Agreement may be filed and used in other proceedings, where relevant, to demonstrate the fact of its existence and of this Settlement, including, but not limited to, Released Parties filing the Agreement and/or the Final Approval Order and Judgment in any other action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, waiver, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim. This Agreement may be filed and used in other proceedings to enforce the terms of this Agreement.

26. Stay of State Court Action. The Parties agree to file a stipulation to stay the State Court Action pending Final Approval of the Settlement. Class Counsel will be responsible for drafting the stipulation.

27. Amendment of Complaint. The Parties agree to the filing of a First Amended Complaint in this Action pursuant to Rule 15(a)(2) (which allows for a party to amend its pleading with the opposing party's written consent) for the purposes of bringing the claims at issue in the State Court Action before the Court and to conform the definition of the FLSA Class to the definition in this Agreement. The First Amended Complaint will be substantially identical to the Complaint in this Action (Dkt. No. 1), except that it will (i) add the PAGA claims alleged in the State Court Action, together with any facts necessary to state those claims that are not already pled in the Complaint in this Action, and (ii) withdraw the FLSA claims to the extent they allege violations on behalf of any employees who worked solely outside of California, except for the Prior FLSA Opt-Ins. If necessary to effectuate the withdrawal of the FLSA claims mentioned above, the Parties also agree to stipulate to the dismissal of the withdrawn FLSA claims without prejudice. Class Counsel will be responsible for drafting the First Amended Complaint and all documents necessary to obtain dismissal of the withdrawn FLSA

1 claims without prejudice. Class Counsel will provide Walmart the opportunity to review
2 and comment on the First Amended Complaint and any documents seeking dismissal of
3 FLSA claims before filing. The Parties will work in good faith to resolve any
4 disagreements regarding the proposed First Amended Complaint and any documents
5 requesting dismissal of FLSA claims.

6 This Settlement is conditional on the Parties obtaining Final Approval in Court of
7 a global settlement of the claims at issue in this Action and the State Court Action. If
8 the Parties determine that the Court's concerns cannot be addressed consistent with this
9 Settlement Agreement, the Parties will file any stipulations necessary in this Action and
10 the State Court Action to revert *nunc pro tunc* to their respective status as of the date and
11 time immediately before the execution of this Settlement Agreement.

12 28. Release of Class Claims. Plaintiffs and all California Class Members,
13 including their agents, affiliates, spouses, domestic partners, representatives, guardians
14 ad litem, heirs, executors, administrators, successors, attorneys, and assigns, past,
15 present and future, shall, for the period April 10, 2020 through the date the Court grants
16 Final Approval of the Settlement, fully and finally waive, release, and forever discharge
17 the Released Parties from any and all actual or potential claims based on the facts that
18 (i) were asserted in this Action under California law on behalf of the California Class,
19 including in the Complaint filed on February 23, 2021, or (ii) arising from, reasonably
20 related to, or derivative of, the factual allegations asserted in this Action regarding
21 Walmart's alleged failure to pay minimum and overtime wages, provide accurate wage
22 statements, or timely pay final wages in violation of California Labor Code §§ 201, 202,
23 203, 204, 226, 510, 558, 1194, 1194.2, 1197, 1197.1, or 1198 ("Released Class
24 Claims").

25 29. Release of FLSA Claims. Plaintiffs and all FLSA Class Members,
26 including their agents, affiliates, spouses, domestic partners, representatives, guardians
27 ad litem, heirs, executors, administrators, successors, attorneys, and assigns, past,
28 present and future, shall, for the period April 10, 2020 through the date the Court grants

1 Final Approval of the Settlement, fully and finally waive, release, and forever discharge
2 the Released Parties from any and all claims (i) asserted in this Action under the FLSA
3 on behalf of the FLSA Class, including in the Complaint filed on February 23, 2021, or
4 (ii) arising from, or derivative of, the claims or factual allegations asserted in this Action
5 regarding Walmart's alleged failure to pay minimum and overtime wages under the
6 FLSA ("Released FLSA Claims").

7 30. Release of PAGA Claims. In consideration of the terms and conditions set
8 forth herein, Plaintiffs and the State of California, shall for the period January 17, 2021
9 through the date the Court grants Final Approval of the Settlement, fully and finally
10 waive, release, and forever discharge the Released Parties from any and all actual or
11 potential claims, rights, or causes of action for civil penalties (and for all resulting
12 penalties, attorneys' fees, litigation costs, interest, and any other relief) under California
13 Labor Code Sections 2698 *et seq.*, (i) asserted in this Action or the State Court Action or
14 (ii) arising from, reasonably related to, or derivative of, the claims or factual allegations
15 asserted in this Action or the State Court Action regarding Walmart's alleged failure to:
16 pay minimum and overtime wages, provide accurate wage statements, or timely pay
17 final wages in violation of California Labor Code §§ 201, 202, 203, 204, 226, 510, 558,
18 1194, 1194.2, 1197, 1197.1, or 1198 ("Released PAGA Claims").

19 31. Effect of Class and PAGA Releases. The waivers and releases in Sections
20 28 through 30 will be final and binding on the Effective Date and will have every
21 preclusive effect permitted by law. Plaintiffs and Participating Class Members will not
22 file and will not request any other party or entity to file on their behalf, any claim,
23 complaint, charge or request for damages or any other relief released above, including
24 with any local, state, or federal governmental or quasi-governmental agency or any
25 state, administrative, or federal court, or any licensing or accreditation organization,
26 against the Released Parties.

27 32. Release of Additional Claims and Rights by Plaintiffs. As of the Effective
28 Date, and as a condition of receiving any portion of their respective General Release

1 Payments, Plaintiffs agree to the additional following General Release: In consideration
2 of Walmart's promises and agreements as set forth herein, each Plaintiff hereby fully
3 releases the Released Parties from any and all Released Class Claims, Released FLSA
4 Claims, and Released PAGA Claims, and also generally releases and discharges the
5 Released Parties, and all of their present and former parents, subsidiaries, affiliates, and
6 joint ventures, shareholders, members, managers, officers, officials, directors,
7 employees, agents, servants, registered representatives, attorneys, insurers, successors,
8 and assigns, from any and all claims, demands, obligations, causes of action, rights, or
9 liabilities of any kind which have been or could have been asserted against them
10 through the date that this Agreement is fully executed. This general release includes,
11 but is not limited to, claims arising out of or relating to Plaintiffs' employment by
12 Walmart and/or the termination of their employment with Walmart, including but not
13 limited to any and all claims for violation of any section of the California Labor Code
14 and/or IWC Wage Orders; violation of the FLSA; failure to pay wages, benefits,
15 vacation pay, severance pay, final pay, or other compensation of any sort; fraud;
16 intentional or negligent misrepresentation; breach of contract; promissory estoppel;
17 wrongful termination; retaliation; violation of public policy; breach of implied covenant
18 of good faith and fair dealing; defamation; unlawful effort to prevent employment;
19 sexual harassment; discrimination on the basis of race, color, sex, national origin,
20 ancestry, religion, age, disability, handicap, medical condition, marital status or any
21 other protected class; any claim under the Fair Credit Reporting Act, California
22 Consumer Credit Reporting Agencies Act, California Investigative Consumer Reporting
23 Agencies Act, or other laws regarding background checks; any claim under Title VII of
24 the Civil Rights Act of 1964 (Title VII, as amended), 42 U.S.C. §§ 2000, *et seq.*; the
25 Americans with Disabilities Act ("ADA"), the Age Discrimination in Employment Act
26 ("ADEA"), the California Fair Employment and Housing Act ("FEHA"), or California
27 Government Code §§ 12940 *et seq.*; violation of the Consolidated Omnibus Budget
28 Reconciliation Act of 1985 ("COBRA"); violation of the Occupational Safety and

1 Health Act (“OSHA”) or any other health and/or safety laws, statutes or regulations;
2 violation of the Employment Retirement Income Security Act of 1974 (“ERISA”);
3 violation of the Internal Revenue Code; any other claim arising from employment or
4 termination of employment; or other common law or tort matters and all other claims
5 under federal, state or local law. This release specifically includes any and all claims,
6 demands, obligations and/or causes of action for damages, restitution, penalties,
7 injunctive or equitable relief, interest, and attorneys’ fees and costs (except provided by
8 the Settlement Agreement) relating to or in any way connected with the matters referred
9 to in this section, whether or not known or suspected to exist, and whether or not
10 specifically or particularly described herein. Specifically, Plaintiffs waive all rights and
11 benefits afforded by California Civil Code Section 1542, which provides:

12 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
13 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
14 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
15 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR OR RELEASED PARTY.

16 33. Calculation of Individual Settlement Payments. Individual Settlement
17 Payments will be calculated and apportioned from the Net Settlement Amount to
18 Participating Class Members based on Pay Period Units, which are assigned as follows:

- 19 (i) Each Participating Class Member who is both a California Class Member
20 and an FLSA Class Member will be assigned 1.00 Pay Period Unit for
21 each Pay Period, as consideration for their release of the Released Class
22 Claims and Released FLSA Claims;
- 23 (ii) Each Participating Class Member who is a California Class Member but
24 not an FLSA Class Member will be assigned 0.75 Pay Period Units for
25 each Pay Period, as consideration for their release of the Released Class
26 Claims; and
- 27 (iii) Each Participating Class Member who is an FLSA Class Member but not
28 a California Class Member will be assigned 0.50 Pay Period Units for

1 each Pay Period, as consideration for their release of the Released FLSA
2 Claims.

3 The Settlement Administrator will calculate the number of Pay Period Units for
4 each Participating Class Member, and the aggregate number of Pay Period Units for all
5 Participating Class Members. To determine each Participating Class Member's
6 Individual Settlement Payment, the Settlement Administrator will use the following
7 formula: The Net Settlement Amount will be divided by the aggregate total number of
8 Pay Period Units, resulting in the "Pay Period Unit Value." Each Participating Class
9 Member's "Individual Settlement Payment" will be calculated by: multiplying the Pay
10 Period Unit Value by the Participating Class Member's total number of Pay Period
11 Units. The Individual Settlement Payments will be reduced by appropriate tax
12 withholdings or deductions. The Parties agree that the formula described herein is
13 reasonable and that the payments are designed to provide a fair settlement to each
14 Participating Class Member in light of the uncertainties regarding the compensation
15 alleged to be owed and the calculation of such amounts. In particular, the Parties agree
16 that assigning a greater Pay Period Unit value to the Released Class Claims than the
17 Released FLSA Claims is fair and reasonable, because the Released Class Claims seek
18 recovery that is not available under the FLSA (e.g., statutory penalties).

19 34. Attorneys' Fees and Costs. Class Counsel will seek an award of Attorneys'
20 Fees and Costs of not more than Thirty-Three and Thirty-Three Hundredths percent
21 (33.33%) of the Gross Settlement Amount, or One Million, Seven Hundred Thirty-Three
22 Thousand, One Hundred Sixty Dollars (\$1,733,160) in attorneys' fees, plus reasonable
23 litigation costs not to exceed Two Hundred Sixty One Thousand Seven Hundred and
24 Fifty One Dollars and Eighty Seven Cents Dollars (\$261,751.87). These amounts
25 include, without limitation, all time expended by Class Counsel in defending and
26 preparing the Settlement Agreement and securing Court approval (including any appeals
27 therein), and there will be no additional charge of any kind either to the Settlement Class
28 or Walmart for such work. All Attorneys' Fees and Costs will be paid from the Gross

1 Settlement Amount. Plaintiffs and Class Counsel will not have the right to revoke this
2 Settlement in the event that the Court does not approve the amount of Attorneys' Fees
3 and Costs sought by Class Counsel. If the Court reduces the requested Attorneys' Fees
4 and Costs, any such reduction will be applied to the Net Settlement Amount.

5 35. General Release Payments. Plaintiffs will apply to the Court for General
6 Release Payments of not more than Ten Thousand Dollars (\$10,000) for each Plaintiff,
7 as consideration for their releases of additional claims. Walmart agrees not to oppose
8 such application. As a condition of receiving their General Release Payments, Plaintiffs
9 must agree to the releases in Section 32. The General Release Payments, which will be
10 paid from the Gross Settlement Amount, will be in addition to Plaintiffs' right to
11 Individual Settlement Payments. Plaintiffs will be solely and legally responsible to pay
12 any and all applicable taxes on the payments made pursuant to this section and will hold
13 Walmart harmless from any claim or liability for taxes, penalties, or interest arising as a
14 result of the payments. Plaintiffs will not have the right to revoke this Settlement in the
15 event that the Court does not approve the amounts sought as General Release Payments.

16 36. Labor and Workforce Development Agency Payment. Subject to Court
17 approval, the Parties agree that the amount of Fifty Thousand Dollars (\$50,000) from
18 the Gross Settlement Amount will be paid in settlement of all individual and
19 representative claims brought in the Action or the State Court Action by or on behalf of
20 allegedly aggrieved employees under PAGA. Pursuant to PAGA, Seventy-Five Percent
21 (75%), or Thirty-Seven Thousand, Five Hundred Dollars (\$37,500), of this sum will be
22 paid to the Labor and Workforce Development Agency ("LWDA") and Twenty-Five
23 Percent (25%), or Twelve Thousand, Five Hundred Dollars (\$12,500), will remain in the
24 Net Settlement Amount.

25 37. Settlement Administration Costs. Subject to Court approval, the Settlement
26 Administrator will be paid for the reasonable costs of administration of the Settlement
27 and calculation and distribution of payments, which barring unusual or unforeseen
28 circumstances, is not estimated to exceed \$432,522.00. These costs, including any costs

1 that exceed the estimate, will be paid from the Gross Settlement Amount, and will
2 include, inter alia, the required tax reporting on the Individual Settlement Payments, the
3 issuing of 1099 and W-2 Forms, preparing, distributing, and tracking Notices of Class
4 Action and FLSA Settlement, confirming and auditing claims for payments for
5 compliance with the Settlement, calculating and distributing all payments to be made
6 pursuant to the Settlement, calculating and at Walmart's option making the payments
7 with respect to the Employer's Payroll Taxes, providing notice of this Settlement to the
8 Office of the Attorneys General of the United States and of all states where Class
9 Members currently reside, and providing reports and declarations.

10 38. Preliminary Approval Hearing. Plaintiffs will obtain a hearing before the
11 Court to request the Preliminary Approval of the Settlement and a date for a Final
12 Approval/Settlement Fairness Hearing. The Preliminary Approval Order will provide
13 for the Notice of Class Action and FLSA Settlement to be sent to all Class Members as
14 specified herein. Class Counsel will be responsible for drafting all documents necessary
15 to obtain Preliminary Approval. Class Counsel will provide Walmart the opportunity to
16 review and comment on any motion to be filed at least two business days prior to its
17 filing. In conjunction with the Preliminary Approval hearing, Plaintiffs will submit this
18 Settlement Agreement, which sets forth the terms of the Settlement, and will include the
19 proposed Notice of Class Action Settlement. Upon Preliminary Approval, Class
20 Counsel will also notify the LWDA of the Settlement, pursuant to Labor Code Section
21 2699(I)(2).

22 39. Certification of Settlement Classes. As part of their motion for Preliminary
23 Approval, Plaintiffs will request that the Court (i) certify the California Class under
24 Federal Rule of Civil Procedure 23, and (ii) certify the FLSA Class under 29 U.S.C.
25 § 216. For purposes of settlement only, Walmart agrees not to contest the certification
26 of the California Class or the FLSA Class. Walmart does not waive any argument it has
27 against class or collective certification under Rule 23 or the FLSA, should the
28 Settlement not become final, for any reason.

1 40. Delivery of the Class List. “Class List” means a complete list of all Class
2 Members that Walmart will diligently and in good faith compile from its records. The
3 Class List will include the following information from Walmart’s records: each Class
4 Member’s full name; most recent mailing address and telephone number; Social
5 Security number; personal email address (where available); and number of Pay Periods,
6 or the relevant dates from which the Settlement Administrator can separately calculate
7 the number of Pay Periods. Within thirty (30) days of Preliminary Approval, Walmart
8 will provide the Class List to the Settlement Administrator. The Class List and all
9 information therein must be kept confidential. Class Counsel will not receive a copy of
10 the list, and the Settlement Administrator shall not use the Class List or any information
11 contained therein for any purpose other than to administer the Settlement in accordance
12 with this Agreement. Upon completion of the administration of the Settlement, the
13 Settlement Administrator shall destroy the Class List and any information contained
14 therein or return it and all copies to Walmart.

15 41. Notices of Class Action and FLSA Settlement. Within thirty (30) calendar
16 days after receiving the Class List from Walmart, the Settlement Administrator will
17 (i) email a Notice of Class Action and FLSA Settlement to all Class Members for whom
18 a personal email address is identified in the Class List, and (ii) mail a Notice of Class
19 Action and FLSA Settlement to all Class Members for whom a personal email address is
20 not identified in the Class List. The purpose of this provision is to provide notice via
21 email to the extent practicable, thereby reducing Administration Costs and preserving
22 settlement funds for Participating Class Members. The Notice of Class Action and
23 FLSA Settlement will be in the form attached as Exhibit A, or as provided by Court
24 order, and will include, but not be limited to, information regarding the nature of the
25 Action; the definition of the California Class and FLSA Class; a summary of the
26 substance of the Settlement, including Walmart’s denial of liability; the Class Member’s
27 dates of employment and total number of Pay Periods; the aggregate number of Pay
28 Periods worked by all Class Members during the Class Period; the formula for

1 calculating the Class Member's Individual Settlement Payment; the estimated ranges for
2 the Class Member's Individual Settlement Payment if the Class Member (i) does and (ii)
3 does not opt into the FLSA Class (based on the range of possible opt-in rates to the
4 FLSA Class); an FLSA Opt-In Form (for notice by U.S. Mail) or a link to an FLSA Opt-
5 In Form (for notice by email); the procedure and time period for objecting to the
6 Settlement and participating in the Final Approval hearing; a statement that the Court
7 has preliminarily approved the Settlement; a statement that California Putative Class
8 Members will release the Released Class Claims unless they opt out of the California
9 Class; a statement that Prior FLSA Opt-Ins will release the Released FLSA Claims
10 unless they opt out of the FLSA Class; and information regarding the opt-out procedure.
11 Pursuant to the Class Action Fairness Act, the Settlement Administrator will also
12 provide notice of this Settlement to the Office of the Attorneys General of the United
13 States and of all states where Class Members currently reside.

14 42. Confirmation of Contact Information. Prior to mailing, the Settlement
15 Administrator will perform a search based on the National Change of Address Database
16 for information to update and correct for any known or identifiable address changes.
17 Any Notices of Class Action Settlement returned to the Settlement Administrator as
18 undeliverable (either by email or U.S. Mail) on or before the Response Deadline will be
19 sent promptly via regular First-Class U.S. Mail to (i) the mailing address in the Class
20 List (if returned by email) or (ii) the forwarding address affixed to the mailing (if
21 returned by U.S. Mail), and the Settlement Administrator will indicate the date of such
22 re-mailing on the Notice of Class Action Settlement. If no forwarding address is
23 provided, the Settlement Administrator will promptly attempt to determine the correct
24 address using a skip-trace, and will then perform a single re-mailing. With regard to any
25 Class Member whose Notice of Class Action Settlement is returned as undeliverable,
26 and for whom the Settlement Administrator is unable to determine a reliable address
27 using reasonable and customary methods, their Individual Settlement Payment will be
28 treated as unclaimed funds pursuant to Section 57.

1 43. Requests for Exclusion. Any California Putative Class Member who does
2 not affirmatively opt out of the California Class by submitting a timely and valid
3 Request for Exclusion will be bound by all of the Settlement Agreement's terms with
4 respect to the Released Class Claims, as well as any Judgment that may be entered by
5 the Court if it grants final approval of the Settlement.

6 Any Prior FLSA Opt-In who does not affirmatively opt out of the FLSA Class by
7 submitting a timely and valid Request for Exclusion will be bound by all of the
8 Settlement Agreement's terms with respect to the Released FLSA Claims, as well as any
9 Judgment that may be entered by the Court if it grants final approval of the Settlement.

10 Any Class Member wishing to submit a Request for Exclusion must send in an
11 email to the Settlement Administrator or sign and postmark a written "Request for
12 Exclusion" to the Settlement Administrator on or before the Response Deadline. The
13 Request for Exclusion must: (i) set forth the Class Member's name, mailing address,
14 telephone number, email address, and Walmart identification number (WIN) or last four
15 digits of the Class Member's Social Security Number; (ii) be signed by the Class
16 Member (if sent via a written request) and reference the Action by name, case number,
17 or other information sufficient to unambiguously identify the Action; (iii) clearly state
18 that the Class Member does not wish to be included in the California Class; (iv) be
19 returned to the Settlement Administrator; and (v) be received or postmarked on or
20 before the Response Deadline. The email or postmark date will be the exclusive means
21 to determine whether a Request for Exclusion has been timely submitted.

22 Plaintiffs, Class Counsel, Walmart, and Walmart's Counsel shall not solicit or
23 encourage any Class Member, directly or indirectly, to opt out of the California Class or
24 FLSA Class. Any such action or attempt to do so will be deemed a material breach of
25 the Agreement. No person shall purport to exercise any exclusion rights for any other
26 person, or purport to exclude any other Class Member as part of a group, aggregate or
27 class involving more than one Class Member. Any such purported exclusion shall be
28 void. The Settlement Administrator shall deliver to Class Counsel and Walmart's

Counsel copies of all Requests for Exclusion received by the Settlement Administrator, together with copies of all written revocations of Requests for Exclusion received, no later than eight (8) days after the Response Deadline, or at such other time as the Parties may mutually agree in writing.

44. Defective Submissions. If a Class Member's Request for Exclusion is defective as to the requirements listed herein, that Class Member will be given an opportunity to cure the defect(s). The Settlement Administrator will attempt to contact the Class Member by telephone and send the Class Member a cure letter by mail and email within three (3) business days of receiving the defective submission to advise the Class Member that his or her submission is defective and that the defect must be cured to render the Request for Exclusion valid. The Class Member will have until (i) the Response Deadline or (ii) fifteen (15) calendar days from the date of the cure letter, whichever date is later, to postmark a revised Request for Exclusion. If the revised Request for Exclusion is not received or postmarked within that period, it will be deemed untimely.

45. Objection Procedures. To object to the Settlement ("Objection"), a Class Member must sign and file a written Objection to the Settlement by either (a) sending it to the Court with a postmark on or before the Response Deadline, or (b) filing it with the Court on or before the Response Deadline. In order for the Objection to be valid, the Objection must: (a) include the objector's full name, address, email address, and telephone number; (b) be signed by the Class Member; (c) reference the Action by name, case number, or other information sufficient to unambiguously identify the Action; (d) state all grounds for the Objection, including without limitation, demonstrating standing to object (i.e. membership in the Settlement Class); state whether the Class Member or their lawyer intends to appear at the Final Approval Hearing; and include any written material on which their objection is based or on which they intend to rely; (e) either be mailed to the Court with a postmark on or before the Response Deadline or filed with the Court on or before the Response Deadline; and (f)

1 be sent to the Settlement Administrator with a postmark on or before the Response
2 Deadline. The postmark or filing date of the Objection, whichever is earlier, will be
3 deemed the exclusive means for determining that the Objection is timely. The Parties
4 have the right to conduct reasonable discovery as to the basis of any Objection on an
5 expedited basis.

6 Class Members who fail to object in the manner specified above will be deemed
7 to have waived all objections to the Settlement and will be foreclosed from making any
8 objections, whether by appeal or otherwise, to the Settlement Agreement. Only Class
9 Members who submit timely Objections as specified above will have a right to appear at
10 the Final Approval Hearing in order to have their concerns heard by the Court but a
11 Class Member who files a timely Objection as described above need not appear to have
12 their Objection considered by the Court. At no time will the Plaintiffs, Class Counsel,
13 Walmart, or Walmart's Counsel seek to solicit or otherwise encourage Class Members to
14 submit Objections to the Settlement Agreement or appeal from the Order and Judgment.
15 Any such action or attempt to do so will be deemed a material breach of the Agreement.
16 Class Counsel will not represent any Class Members with respect to any such
17 Objections to this Settlement.

18 46. Settlement Administration. The Settlement Administrator shall administer
19 the Settlement subject to the supervision of Class Counsel, Walmart's Counsel, and the
20 Court as circumstances may require. The Parties and their Counsel shall have no
21 responsibility for, interest in, or liability whatsoever, with respect to: (a) any act,
22 omission, or determination of the Settlement Administrator, the opposing Counsel, or
23 designees or agents of the Settlement Administrator or opposing Counsel; (b) any act,
24 omission, or determination of the opposing Counsel or their designees or agents in
25 connection with the administration of the Settlement; (c) the management, investment,
26 or distribution of the Gross Settlement Amount or Net Settlement Amount; or (d) the
27 determination, administration, calculation, or payment of any claims asserted against the
28 Gross Settlement Amount or Net Settlement Amount. The Settlement Administrator

1 shall provide such information as may be reasonably requested by Plaintiffs or Walmart
2 relating to administration of this Agreement.

3 47. Reports Regarding Settlement Administration. The Settlement
4 Administrator will provide Class Counsel and Walmart's Counsel a weekly report that
5 certifies (i) the number of Class Members who have submitted valid Requests for
6 Exclusion, (ii) the number of Class Members who have submitted valid Objections, and
7 (iii) the number of Class Members who have submitted valid FLSA Opt-In Forms.
8 Additionally, the Settlement Administrator will provide to counsel for both Parties any
9 updated reports regarding the administration of the Settlement Agreement as needed or
10 requested and will immediately forward to the Parties any objections mailed to the
11 Claims Administrator.

12 48. Rights of Termination. Except as set forth above, if the Court or, in the
13 event of an appeal, any appellate court refuses to approve, or modifies, any material
14 aspect of this Agreement or the proposed Preliminary Approval Order or Final Approval
15 Order and Judgment, including but not limited to any judicial findings included therein,
16 Plaintiffs or Walmart may terminate this Agreement and the Settlement as set forth
17 below. However, prior to termination of this Agreement, the Parties shall work together
18 in good faith to try to structure an agreement that will meet Court approval. The Parties
19 acknowledge and agree that any modification to the terms of this Agreement relating to
20 Walmart's financial obligations, shall be deemed a material modification constituting
21 grounds for cancellation or termination of the Agreement and the Settlement.

22 Within fifteen (15) days of the Settlement Administrator receiving notice from
23 any Party of such termination, (i) the Settlement Administrator shall return the balance
24 of the settlement fund, including any interest, to Walmart, and (ii) the Settlement
25 Administrator shall provide the Parties with a report of all Administration Costs
26 incurred. The Party terminating the Agreement will be responsible for paying any
27 Administration Costs. If the Parties mutually terminate the Agreement, Plaintiffs and
28

Walmart each will be responsible for paying fifty percent (50%) of any Administration Costs.

49. Walmart's Limited Right to Cancel. If ten percent (10%) or more of the California Class Members submit valid and timely Requests for Exclusion of the Settlement, Walmart shall have the absolute right, in its sole discretion, and notwithstanding any other provisions of the Settlement Agreement, to withdraw from, and cancel, without penalty whatsoever, the Settlement Agreement in its entirety, whereupon the Settlement Agreement will be null and void for all purposes, and may not be used or introduced in further litigation. The right can be exercised only by a writing stating clearly that Walmart is canceling, and withdrawing from, the Settlement Agreement, which is sent by counsel for Walmart to Class Counsel by mail or email no later than five (5) business days after the Response Deadline. In the event Walmart exercises its right to cancel the Settlement under this section, it shall be solely responsible for all fees and costs incurred by the Settlement Administrator. If the right provided in this section is not so exercised, it shall be waived and cannot later be exercised.

50. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the deadlines to submit FLSA Opt-In Forms, Requests for Exclusion, or Objections to the Settlement Agreement, and with the Court's permission, a Final Approval/Settlement Fairness Hearing will be conducted to determine the Final Approval of the Settlement Agreement along with the amounts properly payable for: (i) Individual Settlement Payments; (ii) PAGA penalties; (iii) General Release Payments; (iv) Attorneys' Fees and Costs; and (v) all Settlement Administration Costs. The Final Approval/Settlement Fairness Hearing will not be held earlier than fourteen (14) days after the Response Deadline. Class Counsel will be responsible for drafting all documents necessary to obtain Final Approval. Class Counsel will also be responsible for drafting the attorneys' fees and costs application. Class Counsel will provide

1 Walmart the opportunity to review and comment on the motion for final approval to be
2 filed at least two business days prior to its filing.

3 51. All Terms Subject to Final Court Approval. All amounts and procedures
4 described in this Settlement Agreement herein will be subject to Final Approval by the
5 Court.

6 52. Effect of Final Approval. Upon Final Approval, the Court will dismiss this
7 Action with prejudice; and the Parties will request dismissal of the State Court Action
8 without prejudice and file any documents or take any other actions necessary to obtain
9 such dismissal. Class Counsel will be responsible for drafting all documents necessary
10 to obtain such dismissals and will provide Walmart the opportunity to review and
11 comment on any such documents before filing. The Parties will work in good faith to
12 resolve any disagreements relating to such dismissals.

13 53. Invalidity of Any Provision. Before declaring any provision of this
14 Settlement Agreement invalid, the Court will first attempt to construe the provision as
15 valid to the fullest extent possible consistent with applicable precedents so as to define
16 all provisions of this Settlement Agreement as valid and enforceable.

17 54. Judgment and Continued Jurisdiction. Contemporaneous with Plaintiffs
18 filing the motion for Final Approval of the Settlement, the Parties will present an agreed
19 form of the Proposed Judgment to the Court for its consideration. The Court, in its
20 discretion, may enter a Judgment approved by it. After entry of the Judgment, the Court
21 will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation
22 and enforcement of the terms of the Settlement, (ii) Settlement administration matters,
23 and (iii) such post-Judgment matters as may be appropriate under Court rules or as set
24 forth in this Settlement Agreement.

25 55. Funding of the Gross Settlement Amount. Within ten (10) business days
26 after the Effective Date, Walmart will deposit the Gross Settlement Amount into a
27 settlement fund to be established by the Settlement Administrator by either: check,
28 Automated Clearing House (ACH) transfer, or wire transfer.

1 56. Distribution and Timing of Payments. Within five (5) business days of
2 Walmart's depositing the Gross Settlement Amount into the settlement fund, the
3 Settlement Administrator will issue payments to: (i) Participating Class Members;
4 (ii) the LWDA; (iii) Plaintiffs for General Release Payments; (iv) Class Counsel for
5 Attorneys' Fees and Costs; and (v) the Settlement Administrator.

6 57. Unclaimed Funds. If any settlement check to a Participating Class Member
7 is returned as undeliverable, the Settlement Administrator will use reasonable skip-trace
8 methods to locate a new address. The Settlement Administrator will not re-send checks
9 to any Participating Class Members for whom the Settlement Administrator is unable to
10 determine a reliable address using reasonable skip-trace methods. Checks will remain
11 negotiable for 120 calendar days. (The 120th calendar day after issuance is defined as
12 the "Check Cashing Deadline."). If any Participating Class Member does not cash his
13 or her check by the Check Cashing Deadline, the check will be void.

14 Any funds remaining after the Check Cashing Deadline (including the value of
15 uncashed checks) will be redistributed, using the same calculation formula as the initial
16 distribution, pro rata to Participating Class Members who cashed their initial checks,
17 with any additional Settlement Administration Costs resulting from this second
18 distribution paid from the value of uncashed checks remaining in the settlement fund.
19 However, if after the deductions for the additional administration costs, the average new
20 payment to be redistributed to each Participating Class Member pursuant to this
21 paragraph would be less than \$2.00, then no second distribution will occur. Checks
22 from the second distribution will remain negotiable for 120 days. Any funds remaining
23 after the second distribution (or if there is no second distribution, the first distribution)
24 will be tendered to the California State Controller's Office as unclaimed property, in the
25 name of the Participating Class Member.

26 58. Certification of Completion. Upon completion of administration of the
27 Settlement, the Settlement Administrator will provide a written declaration under oath to
28 certify such completion to the Court and counsel for all Parties.

1 59. No Credit Towards Benefit Plans. The Individual Settlement Payments
2 made to Participating Class Members under this Settlement, as well as any other
3 payments made pursuant to this Settlement, will not be utilized to calculate any
4 additional benefits under any benefit plans for which any Class Members may be
5 eligible, including, but not limited to: (i) profit-sharing plans, (ii) bonus plans,
6 (iii) 401(k) plans, (iv) stock purchase plans, (v) vacation plans, (vi) sick leave plans,
7 (vii) PTO plans, and (viii) any other benefit plan. Rather, it is the Parties' intention that
8 this Settlement Agreement will not affect any rights, contributions, or amounts to which
9 any Class Members may be entitled under any benefit plans.

10 60. Tax Treatment of Individual Settlement Payments. All Individual
11 Settlement Payments will be allocated as follows: Fifty percent (50%) will be allocated
12 to alleged wages for which IRS Forms W-2 will be issued, and fifty percent (50%) will
13 be allocated to alleged penalties and interest for which IRS Form 1099-MISC will be
14 issued. The Settlement Administrator will issue all W-2 and 1099-MISC forms. In the
15 event the Court is not willing to approve the Settlement with the tax allocation proposed
16 by the Parties, this shall not be a basis for any Party to cancel or withdraw from the
17 Settlement; rather, the parties will work in good faith to propose another tax allocation
18 that might be acceptable to the Court.

19 61. Administration of Taxes by the Settlement Administrator. The Settlement
20 Administrator will be responsible for issuing to Plaintiffs, Participating Class Members,
21 and Class Counsel any W-2, 1099, and/or other tax forms as may be required by law for
22 all amounts paid pursuant to this Settlement. The Settlement Administrator will also be
23 responsible for forwarding the employee's share of all payroll taxes and penalties to the
24 appropriate government authorities.

25 62. Tax Liability. Plaintiffs and Participating Class Members will be solely
26 responsible for the payment of any and all taxes and penalties assessed to them on the
27 payments described herein, including the employee's share of payroll taxes to the extent
28 the payments are treated as wages for tax purposes. Walmart is solely responsible for

1 the employer's share of payroll taxes. Walmart and Plaintiffs' Counsel make no
2 representation as to the tax treatment or legal effect of the payments called for
3 hereunder, and Plaintiffs and Participating Class Members should not rely on any
4 statement, representation, or calculation by Walmart, Plaintiffs' Counsel, or by the
5 Settlement Administrator in this regard.

6 63. Confidentiality. The Parties and their respective counsel will not publicly
7 disclose the same (including electronically, by way of any web page, blog, tweet, post,
8 thread, social media, or other electronic means) except for the specific exceptions stated
9 herein. This shall not apply to or limit the public filing of motions or other case
10 materials in this Action related to seeking and obtaining Court approval of the
11 Settlement, Attorneys' Fees and Costs of Class Counsel, General Release Payments, and
12 the other relief set forth in this Settlement.

13 The Parties understand and agree that there may be media coverage of the
14 Settlement not initiated by Plaintiffs or Walmart directly or indirectly, as a result of the
15 public filings. The Parties will agree to a joint statement to be provided in response to
16 any media inquiries about the Settlement, which shall acknowledge Walmart's position
17 that all Class Members were properly paid. If no joint statement is reached, the Parties
18 shall simply state that the case was settled to the mutual satisfaction of both sides or
19 other similar statements. Both before and following the execution of this Settlement
20 Agreement by the Parties and their respective counsel, Plaintiffs, Walmart, and their
21 respective counsel agree that no Party shall issue any press release to the news media,
22 nor shall any Party post, tweet, publish, or otherwise disseminate any media coverage of
23 the Settlement, nor shall any Party communicate in any way with news media
24 concerning the Settlement or this Action except in response to specific questions, which
25 responses shall be limited to providing the Parties' joint statement. If Class Counsel
26 describes or lists this Settlement on their website or other online media, they may not
27 mention Walmart by name, but may refer to Walmart only as a "major retailer." Class
28

1 Counsel may also refer to this Settlement, after the filing of the motion for approval, in
2 other court filings.

3 Nothing in this section shall prevent Walmart from disclosing and discussing
4 information concerning the Settlement, the settlement amounts, or the circumstances
5 surrounding or giving rise to the Settlement, either internally among company
6 management or to the extent otherwise required by law. Nothing in this section shall
7 restrict Walmart from communicating with its current employees about their pay
8 practices or any changes thereto. Nothing in this section shall restrict Class Counsel
9 from communicating with Class Members about the Settlement in their role as Class
10 Counsel after Court approval, or limit the right of Walmart to disclose the terms and
11 circumstances of the settlement to employees who have responsibility for overseeing or
12 managing Walmart's litigation, law firms, accounting firms, and/or insurers that
13 represent Walmart, or persons who have an obligation to be informed about Walmart's
14 litigation. For purposes of this section, media includes all print and digital media,
15 including but not limited to newspapers, newsletters, magazines, articles, radio, blogs,
16 websites, podcasts, and social media sites or apps.

17 64. Confidential Documents. Each Party shall return, or confirm the
18 destruction of, any documents or information that another Party designated as
19 confidential pursuant to an applicable agreement or protective order with 14 days of a
20 request following the conclusion of this matter.

21 65. No Prior Assignments. The Parties and their counsel represent, covenant,
22 and warrant that they have not directly or indirectly assigned, transferred, encumbered,
23 or purported to assign, transfer, or encumber to any person or entity any portion of any
24 liability, claim, demand, action, cause of action or right herein released and discharged.

25 66. Warranties and Representations. Plaintiffs and Class Counsel warrant and
26 represent that (a) they do not currently know of or represent any persons who have
27 expressed any interest in pursuing litigation or seeking any recovery against Walmart;
28 and (b) they will not disclose or use any confidential information obtained in this Action

1 or the State Court Action for any purpose other than the representation of Plaintiffs, the
2 Settlement Class, and the LWDA in this Action. The Parties acknowledge, understand,
3 and agree that the representations and warranties described in this section are essential
4 to the Settlement Agreement and that Walmart would not enter into this Settlement were
5 it not for these representations and warranties. This section does not prohibit
6 discussions between Class Counsel and Plaintiffs regarding this Action, the State Court
7 Action, this Settlement, or the claims therein. Further, nothing in this provision is
8 intended to violate California Rule of Professional Conduct 5.6(a)(2).

9 67. Revocation. Neither Party will have the right to revoke the settlement
10 agreement for any reason not expressly provided for herein. In particular, Plaintiffs and
11 Class Counsel will not have the right to revoke this Settlement in the event that the
12 Court does not approve the amount of Attorneys' Fees and Costs or General Release
13 Payments sought by Plaintiffs and Class Counsel. However, if the Court does not
14 approve the amount of Attorneys' Fees and Costs or General Release Payments sought
15 by Plaintiffs and Class Counsel, Plaintiffs will have the right to appeal the order
16 reducing the Attorneys' Fees and Costs or General Release Payments.

17 68. Nullification of Settlement Agreement. In the event that: (i) the Court does
18 not approve the Settlement as provided herein; (ii) the California Superior Court refuses
19 to dismiss the State Court Action; or (iii) the Settlement does not become final for any
20 other reason, then this Settlement Agreement, and any documents generated to bring it
21 into effect, will be null and void. However, the Parties shall work together to try to
22 structure an agreement that meets the Court's approval. In the event they are unable to
23 do so, this Agreement shall be void. Any order or judgment entered by the Court in
24 furtherance of this Settlement Agreement (including any order permitting leave to file
25 an amended complaint or certifying a class for settlement purposes) will likewise be
26 treated as void from the beginning. In the event that the Settlement is terminated or
27 cancelled or fails to become effective, the Parties shall be deemed to have reverted *nunc*
28 *pro tunc* to their respective status as of the date and time immediately before the

1 execution of this Agreement and they shall proceed in all respects as if this Agreement
2 had not been executed, and without prejudice in any way from the negotiation, fact, or
3 terms of this Settlement.

4 69. Entire Agreement. This Settlement Agreement constitutes the entirety of
5 the Parties' settlement terms. No other prior or contemporaneous written or oral
6 agreements may be deemed binding on the Parties.

7 70. Amendment or Modification. This Settlement Agreement may be amended
8 or modified only by a written instrument signed by all Parties and their counsel or their
9 successors-in-interest.

10 71. Binding on Successors and Assigns. This Settlement Agreement will be
11 binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto,
12 as previously defined.

13 72. California Law Governs. All terms of this Settlement Agreement and
14 Exhibits hereto will be governed by and interpreted according to the laws of the State of
15 California.

16 73. Execution and Counterparts. This Settlement Agreement is subject only to
17 the execution of all Parties. However, the Settlement may be executed in one or more
18 counterparts. All executed counterparts and each of them, including facsimile and PDF
19 or other scanned copies of the signature page, will be deemed to be one and the same
20 instrument for all purposes in effectuating and enforcing this Settlement Agreement.

21 74. Waiver of Certain Appeals. Either Party may appeal any court order that
22 materially alters the Settlement Agreement's terms, including, without limitation, the
23 amount of Attorneys' Fees and Costs to Class Counsel. In all other respects, the Parties
24 agree to waive appeals.

25 75. Waiver. No waiver of any condition or covenant contained in this
26 Settlement or failure to exercise a right or remedy by any of the Parties hereto will be
27 considered to imply or constitute a further waiver by such Party of the same or any other
28 condition, covenant, right or remedy.

1 76. Mutual Preparation. The Parties have had a full opportunity to negotiate
2 the terms and conditions of the Settlement. Accordingly, this Settlement Agreement will
3 not be construed more strictly against one Party than another merely by virtue of the fact
4 that it may have been prepared by counsel for one of the Parties, it being recognized
5 that, because of the arm's-length negotiations between the Parties, all Parties have
6 contributed to the preparation of this Settlement.

7 77. Representation by Counsel. The Parties acknowledge that they have been
8 represented by counsel throughout all negotiations that preceded the execution of this
9 Settlement, and that this Settlement has been executed with the consent and advice of
10 counsel. Further, Plaintiffs and Class Counsel warrant and represent that there are no
11 liens on the Settlement Agreement.

12 78. Cooperation and Execution of Necessary Documents. All Parties agree to
13 cooperate in the administration of the Settlement and to make all reasonable efforts to
14 control and minimize the costs and expenses incurred in administration of the
15 Settlement, and will cooperate in good faith and execute all documents to the extent
16 reasonably necessary to effectuate the terms of the Settlement. If the Parties are unable
17 to reach agreement on the form or content of any document needed to implement the
18 Settlement, or on any supplemental provisions that may become necessary to effectuate
19 the terms of this Settlement, the Parties may seek the assistance of the Court or mediator
20 to resolve such disagreement.

21 79. Authorization to Enter Into Settlement Agreement. Counsel for all Parties
22 warrant and represent they are expressly authorized by the Parties whom they represent
23 to negotiate this Settlement Agreement, to take all appropriate action required or
24 permitted to be taken by such Parties pursuant to this Settlement Agreement to
25 effectuate its terms, and to execute any other documents required to effectuate the terms
26 of this Settlement Agreement.

27 80. Binding Agreement. The Parties warrant that they understand and have full
28 authority to enter into this Settlement Agreement, and further intend that this Settlement

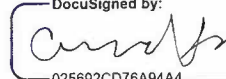
1 Agreement will be fully enforceable and binding on all Parties, and agree that it will be
2 admissible and subject to disclosure in any proceeding to enforce its terms,
3 notwithstanding any mediation confidentiality provisions that otherwise might apply
4 under federal or state law.

SIGNATURES

READ CAREFULLY BEFORE SIGNING

PLAINTIFFS

12/8/2023
Dated: December __, 2023

DocuSigned by:

025682CD76A84A4
By _____
Amado Haro

12/8/2023
Dated: December __, 2023

DocuSigned by:

F6F5B815E1CE4E0
By _____
Rochelle Ortega

WALMART INC.

Dated: December __, 2023

By _____
Rachel Brand
Executive Vice President of Global
Governance, Chief Legal Officer, and
Corporate Secretary

APPROVED AS TO FORM

PROSKAUER ROSE LLP

Dated: December __, 2023

By _____
Gregory W. Knopp
Attorneys for Defendant
Walmart Inc.

HODGES & FOTY, LLP

14
Dated: December __, 2023

By  _____
Don J. Foty
Attorneys for Plaintiffs

SIGNATURES

READ CAREFULLY BEFORE SIGNING

PLAINTIFFS

Dated: December __, 2023

By _____
Amado Haro

Dated: December __, 2023

By _____
Rochelle Ortega

WALMART INC.

Dated: December __, 2023
December 9, 2023 | 11:24 PST

By _____
Rachel Brand
Executive Vice President of Global
Governance, Chief Legal Officer, and
Corporate Secretary

APPROVED AS TO FORM

PROSKAUER ROSE LLP

Dated: December __, 2023
12 December 2023

By _____
DocuSigned by:
Greg Knopp
Gregory W. Knopp
Attorneys for Defendant
Walmart Inc.

HODGES & FOTY, LLP

Dated: December __, 2023

By _____
Don J. Foty
Attorneys for Plaintiffs

EXHIBIT “A”

NOTICE OF CLASS ACTION AND FAIR LABOR STANDARDS ACT SETTLEMENT

Amado Haro and Rochelle Ortega, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

Walmart Inc.,

Defendant.

Eastern District of California,
Case No. 1:21-CVS-0239-NODJ-SKO

*****ELIGIBLE CLASS MEMBERS ARE HEREBY NOTIFIED AS FOLLOWS*****

A proposed settlement (the “Settlement”) has been reached in the above-referenced class action and collective action lawsuit currently pending in the United States District Court for the Eastern District of California, Case No. 1:21-CV-0239-NODJ-SKO (the “Action”). Because your rights may be affected by this Settlement, it is important that you read this Notice carefully.

As explained in further detail below, a lawsuit was filed against Walmart alleging that Walmart failed to pay its hourly employees for all time spent during COVID-19 screenings. A Settlement has now been reached for this Action. You are eligible to participate in the Settlement.

A. PURPOSE OF THIS NOTICE

The Court assigned to this Action has certified the following classes:

CALIFORNIA CLASS: all individuals who worked at a Walmart retail store in California as a nonexempt store employee at any point between April 10, 2020 and February 6, 2023.

FLSA CLASS: all individuals who worked at a Walmart retail store in California as a nonexempt store employee at any point between April 10, 2020 and February 6, 2023 and all individuals who submitted FLSA opt-in forms in this Action on or before September 10, 2023.

You are getting this notice because Walmart’s records indicate that you fall within a member of the California Class and/or FLSA Class. This Notice is intended to inform you of the class action and collective action Settlement and your options: (1) participate in the Settlement, (2) request to be excluded from the Settlement, or (3) object to the Settlement.

B. DESCRIPTION OF THE ACTION

In February 2021, Plaintiffs filed a class action and collective action lawsuit against Walmart alleging that Walmart failed to pay for all time spent by hourly employees completing COVID

screenings prior to the start of their shifts. Although Walmart paid each of its hourly employees 5 minutes per shift for the COVID screenings, Plaintiffs alleged that the amount of time spent on average was greater than 5 minutes. Plaintiffs alleged that Walmart violated California law because it failed to pay all minimum and overtime wages due under state law for the time spent off the clock as a result of the COVID screenings. They asserted claims for failure to pay minimum and overtime wages, failure to provide accurate wage statements, failure to timely pay final wages, and unfair competition. Plaintiffs also sought unpaid overtime wages under the Fair Labor Standards Act (“FLSA”), and civil penalties on behalf of the State of California under the Private Attorneys General Act (“PAGA”). Walmart denies the allegations. Walmart contends the time spent in the screening was, in most cases, much less than 5 minutes, and that in the infrequent event that screening took longer, associates were required to (and did) submit electronic time adjustments so that Walmart could pay for that time. Accordingly, Walmart believes it complied with the law and that its associates were properly paid for their time.

The parties have agreed to this Settlement to avoid the costs and risks of further litigation. The Settlement is the result of good-faith and arm’s-length negotiations between the Plaintiffs and Walmart. Each side agrees that given the risks and expense associated with continued litigation, this Settlement is fair and appropriate under the circumstances, and Plaintiffs believe it is in the best interests of all Class Members.

On [date of preliminary approval] the Court granted preliminary approval of this proposed Settlement finding it to be fair and reasonable. You now have the right to: (1) participate in the Settlement, (2) request to be excluded from the Settlement, or (3) object to the Settlement. The Court will decide whether to give final approval to the proposed Settlement at a hearing scheduled for [INSERT DATE] (“Final Approval Hearing”).

C. ATTORNEYS FOR THE PARTIES

The attorneys for the California Class and FLSA Class (“Class Counsel”) are:

Don Foty (dfoty@hftrialfirm.com)
David Hodges (dhodges@hftrialfirm.com)
HODGES & FOTY, LLP
2 Greenway Plaza, Suite 250
Houston, Texas 77046
Phone: (713) 523-0001; Fax: (713) 523-1116

The attorneys for Walmart are:

Gregory W. Knopp (gknopp@proskauer.com)
Jonathan P. Slowik (jslowik@proskauer.com)
Laura L. Vaughn (lvaughn@proskauer.com)
PROSKAUER ROSE LLP
2029 Century Park East, Suite 2400
Los Angeles, California 90067
Telephone: (310) 557-2900; Fax: (310) 557-2193

D. SUMMARY OF TERMS OF THE PROPOSED SETTLEMENT

Subject to the Court's final approval, the terms of the Settlement are as follows:

1. The Settlement amount is \$5,200,000 (the "Settlement Amount") from which Walmart will pay: (a) settlement payments to the participating Class Members; (b) \$37,500 to the Labor and Workforce Development Agency pursuant to the Private Attorneys General Act, (c) incentive payments to the Class Representatives of \$10,000 each that must be approved by the Court; (d) costs to a third party Administrator for administering the Settlement, (e) attorneys' fees to be approved by the Court of up to one-third the Settlement Amount, and (f) litigation expenses to be approved by the Court of up to \$261,751.87. Each of these sums will be paid from the Settlement Amount. After deducting from the Settlement Amount the sums allocated to items (b) through (f) above, the remaining amount is referred to as the "Net Settlement Amount."

2. The Net Settlement Amount will be allocated among Class Members based upon certain calculations that were made using Walmart's records. Individual Settlement Payments will be calculated and apportioned from the Net Settlement Amount to Participating Class Members based on Pay Period Units, which are assigned as follows:

- a. Each Participating Class Member who is both a California Class Member and an FLSA Class Member will be assigned 1.00 Pay Period Unit for each Pay Period, as consideration for their release of the Released Class Claims and Released FLSA Claims;
- b. Each Participating Class Member who is a California Class Member but not an FLSA Class Member will be assigned 0.75 Pay Period Units for each Pay Period, as consideration for their release of the Released Class Claims; and
- c. Each Participating Class Member who is an FLSA Class Member but not a California Class Member will be assigned 0.50 Pay Period Units for each Pay Period, as consideration for their release of the Released FLSA Claims.

The Settlement Administrator will calculate the number of Pay Period Units for each Participating Class Member, and the aggregate number of Pay Period Units for all Participating Class Members. To determine each Participating Class Member's Individual Settlement Payment, the Settlement Administrator will use the following formula: The Net Settlement Amount will be divided by the aggregate total number of Pay Period Units, resulting in the "Pay Period Unit Value." Each Participating Class Member's "Individual Settlement Payment" will be calculated by: multiplying the Pay Period Unit Value by the Participating Class Member's total number of Pay Period Units. The Individual Settlement Payments will be reduced by appropriate tax withholdings or deductions.

E. TO PARTICIPATE IN THE CLASS ACTION SETTLEMENT

To participate in the California Class Settlement, you do not need to take any further action. Upon final approval from the Court, you will receive a check calculated as described in paragraph D, above.

F. TO PARTICIPATE IN THE FLSA SETTLEMENT

To also participate in the FLSA Settlement, you need to affirmatively complete the attached Opt-In Form and submit it to the Settlement Administrator at the following address: c/o [Administrator], P.O. Box *****, *****, CA ***** or by email at [redacted] by the deadline of [redacted]. If you have previously submitted an FLSA Opt-In Form and wish to participate in the FLSA Settlement, you do not need to take any further action.

G. TO REQUEST EXCLUSION FROM THE SETTLEMENT

If you do not want to participate in the Settlement, you must affirmatively opt out by submitting a timely and valid Request for Exclusion. Any Class Member wishing to submit a Request for Exclusion must send in an email to the Settlement Administrator or sign and postmark a written "Request for Exclusion" to the Settlement Administrator on or before the deadline of [redacted]. The address is address: c/o [Administrator], P.O. Box *****, *****, CA ***** by the deadline of [redacted] and the email address is [redacted]. The Request for Exclusion must: (i) set forth the Class Member's name, mailing address, telephone number, email address, and Walmart identification number (WIN) or last four digits of the Class Member's Social Security Number; (ii) be signed by the Class Member (if sent via a written request) and reference the Action by name, case number, or other information sufficient to unambiguously identify the Action; (iii) clearly state that the Class Member does not wish to be included in the California Class or FLSA Class; (iv) be returned to the Settlement Administrator; and (v) be received or postmarked on or before the deadline of [redacted]. The email or postmark date will be the exclusive means to determine whether a Request for Exclusion has been timely submitted. If you properly submit a timely "Request for Exclusion," you will not be eligible to receive any of the benefits under the Settlement. You will, however, retain whatever legal rights you may have against Walmart with regard to the claims set forth in the Release below.

H. TO OBJECT TO THE SETTLEMENT

If you do not request exclusion from the Settlement but believe the proposed Settlement is unfair or inadequate in any respect, you may object to the Settlement. To object to the Settlement ("Objection"), a Class Member must sign and file a written Objection to the Settlement by either (a) sending it to the Court with a postmark on or before the deadline of [redacted], or (b) filing it with the Court on or before the deadline of [redacted]. In order for the Objection to be valid, the Objection must: (a) include the objector's full name, address, email address, and telephone number; (b) be signed by the Class Member; (c) reference the Action by name, case number, or other information sufficient to unambiguously identify the Action; (d) state all grounds for the Objection, including without limitation, demonstrating standing to object (i.e. membership in the Settlement Class); state whether the Class Member or their lawyer intends to appear at the Final

Approval Hearing; and include any written material on which their objection is based or on which they intend to rely; (e) either be mailed to the Court with a postmark on or before the Response Deadline or filed with the Court on or before the Response Deadline; and (f) be sent to the Settlement Administrator with a postmark on or before the Response Deadline. The postmark or filing date of the Objection, whichever is earlier, will be deemed the exclusive means for determining that the Objection is timely. The Parties have the right to conduct reasonable discovery as to the basis of any Objection on an expedited basis.

Class Members who fail to object in the manner specified above will be deemed to have waived all objections to the Settlement and will be foreclosed from making any objections, whether by appeal or otherwise, to the Settlement Agreement. Only Class Members who submit timely Objections as specified above will have a right to appear at the Final Approval Hearing in order to have their concerns heard by the Court but a Class Member who files a timely Objection as described above need not appear to have their Objection considered by the Court.

You cannot ask the Court to order a larger amount; the Court can only approve or deny approval of the Settlement. If the Court denies approval, no payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

I. RELEASE OF CLAIMS

Each individual participating in the California Class Settlement and each of their agents, affiliates, spouses, domestic partners, representatives, guardians ad litem, heirs, executors, administrators, successors, attorneys, and assigns, past, present and future, for the period April 10, 2020 through the date the Court grants Final Approval of the Settlement, shall fully and finally waive, release, and forever discharge the Released Parties from any and all actual or potential claims based on the facts that (i) were asserted in this Action under California law on behalf of the California Class, including in the Complaint filed on February 23, 2021, or (ii) arising from, reasonably related to, or derivative of, the factual allegations asserted in this Action regarding Walmart's alleged failure to pay minimum and overtime wages, provide accurate wage statements, or timely pay final wages in violation of California Labor Code §§ 201, 202, 203, 204, 226, 510, 558, 1194, 1194.2, 1197, 1197.1, or 1198. ("Released Parties" means Walmart Inc., Wal-Mart Associates, Inc., and all of their present and former parents, subsidiaries, affiliates, and joint ventures, and all of their shareholders, members, managers, officers, officials, directors, employees, agents, servants, registered representatives, attorneys, insurers, successors, and assigns, and any other persons acting by, through, under, or in concert with any of them.")

Each individual participating in the FLSA Settlement and each their agents, affiliates, spouses, domestic partners, representatives, guardians ad litem, heirs, executors, administrators, successors, attorneys, and assigns, past, present and future, shall, for the period April 10, 2020 through the date the Court grants Final Approval of the Settlement, fully and finally waive, release, and forever discharge the Released Parties from any and all claims (i) asserted in this Action under the FLSA on behalf of the FLSA Class, including in the Complaint filed on February 23, 2021, or (ii) arising from, or derivative of, the claims or factual allegations asserted in this Action regarding Walmart's alleged failure to pay minimum and overtime wages under the FLSA.

Additionally, the Plaintiffs and the State of California, shall for the period January 17, 2021 through the date the Court grants Final Approval of the Settlement, fully and finally waive, release, and forever discharge the Released Parties from any and all actual or potential claims, rights, or causes of action for civil penalties (and for all resulting penalties, attorneys' fees, litigation costs, interest, and any other relief) under California Labor Code Sections 2698 *et seq.*, (i) asserted in this Action or the State Court Action or (ii) arising from, reasonably related to, or derivative of, the claims or factual allegations asserted in this Action or the State Court Action regarding Walmart's alleged failure to: pay minimum and overtime wages, provide accurate wage statements, or timely pay final wages in violation of California Labor Code §§ 201, 202, 203, 204, 226, 510, 558, 1194, 1194.2, 1197, 1197.1, or 1198.

J. TAXES

All Individual Settlement Payments will be allocated as follows: Fifty percent (50%) will be allocated to alleged wages for which IRS Forms W-2 will be issued, and fifty percent (50%) will be allocated to alleged penalties and interest for which IRS Form 1099-MISC will be issued. The Settlement Administrator will issue all W-2 and 1099-MISC forms. If you have any questions regarding the tax treatment of any payments pursuant to the Settlement, you should consult your own tax advisor. Class Counsel, Walmart's Counsel, the Settlement Administrator, and the Court cannot provide tax advice.

K. FINAL APPROVAL HEARING ON PROPOSED SETTLEMENT

The Court will hold a Final Approval Hearing on the fairness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel's request for attorneys' fees and costs, the administrative costs, and the incentive awards to the Class Representatives on **INSERT DATE AND TIME** in Courtroom 7 of the United States District Court, located at 2500 Tulare Street, Fresno, CA 93721.

L. ADDITIONAL INFORMATION

This Notice only summarizes the Action, the Settlement, and other related matters. Please do not contact the Court or the Court Clerk about this notice. For additional information, you may access the publicly available information regarding this lawsuit. That information is available online at www.pacer.gov, or at the office of the clerk of the United States District Court, Eastern District of California, 2500 Tulare Street, Fresno, CA 93721. You may also contact the Settlement Administrator at:

**CLASS ADMINISTRATOR
TOLL-FREE PHONE NUMBER
E-MAIL ADDRESS**

**PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE.
THIS NOTICE IS NOT A RECOMMENDATION BY THE COURT AS TO ANY ACTION
YOU SHOULD OR SHOULD NOT TAKE.**

*****THIS IS NOT AN ADVERTISEMENT FROM A LAWYER*****

EXHIBIT “B”

Amado Haro and Rochelle Ortega, on behalf of themselves and all others similarly situated,
Plaintiffs,
v.
Walmart Inc.,
Defendant.

Eastern District of California,
Case No. 1:21-CVS-0239-NODJ-SKO

DEADLINE _____

MAIL OR EMAIL TO:

INSERT SETTLEMENT ADMINISTRATOR CONTACT INFORMATION

OPT-IN FORM

If your address changes, send the Claims Administrator your new address. It is your responsibility to keep your address on file with the Claims Administrator so that you can be sure to receive your settlement award.

By signing, I consent and agree to join Case No. 1:21-CVS-0239-NODJ-SKO, and I hereby opt in to become a plaintiff in this lawsuit and consent to be bound by the collective action settlement of all Fair Labor Standards Act Claims as set forth in the Notice of Class Action and Fair Labor Standards Act Settlement.

Name: _____

Signature: _____ Date: _____