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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JUAN GARCIA, on behalf of himself and all others similarly situated and the general public, Plaintiff, v. WAL-MART STORES, INC., a Delaware corporation; and DOES 1 to 100, inclusive, Defendants.	Case No.: 5:16-cv-01645 TJH (RAOx) Hon. Terry J. Hatter Courtroom: 9C, 9th Floor CLASS ACTION **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** Under Submission Courtroom 9B, 9th Fl. Action Filed: May 17, 2016 Removal Date: July 28, 2016 Trial Date: May 30, 2023

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MEMORANDUM OF POINTS AND AUTHORITIES

This Memorandum is submitted in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement. The proposed settlement before this Court will dispose of the action as to Defendant Walmart Stores, Inc. k/n/a Walmart Inc. (hereinafter "Defendant") and the Released Parties (as defined in the Settlement Agreement), except as to any Settlement Class Members who elect to exclude themselves ("opt-out") from the Settlement Class.

Although the proposed settlement also resolves the PAGA claim, that portion of the settlement is not the subject of this motion because there is no right or procedure to opt out of a PAGA settlement—notice of which goes to the California Labor and Workforce Development Agency and not to the collective action group of employees. Accordingly, consistent with Federal Rule of Civil Procedure 23(e), this Motion seeks preliminary approval only of a class settlement. After preliminary approval of the class settlement and notice to the class members, final approval of the class settlement would follow, along with this Court's consideration at that time of approval for the PAGA settlement.

INTRODUCTION[1]

As detailed in the Settlement Agreement, Plaintiff filed his initial putative class action complaint on May 17, 2016, alleging various wage and hour theories. Following various motion practice, Plaintiff amended his complaint multiple time, culminating in a Fourth Amended Complaint (FAC) filed June 13, 2022, which complaint also included a claim under the Private Attorney General Act

[1] Walmart does not concede the Plaintiff's allegations, nor does it concede all of the factual statements or characterizations of legal positions set forth herein. For purposes of this Settlement, however, Walmart does not oppose the filing of this Motion or the granting of preliminary approval.

("PAGA"). The specific claims alleged in the initial Complaint and various Amended Complaints are summarized in the Settlement Agreement. (Declaration of Janelle Carney (hereinafter "**Decl. Carney"**), Ex. 1 at ¶¶ 3.1 – 3.7.)

On February 14, 2019, the parties attended a mediation with Hon. Carl West, an experienced mediator and retired judge. The matter did not settle. On August 17, 2021, the Parties participated in a Mandatory Settlement Conference before Magistrate Judge Rozella A. Oliver. Again, the case did not settle. Then, on the eve of trial that was set to start on May 30, 2023, the parties attended a second private mediation with Hon. Carl West. The settlement discussions were conducted at arm's length, as this case has been hotly litigated since its inception. The Settlement is the result of an informed and detailed analysis of the risks facing all Parties in trying this case, including but not limited to, careful consideration of the legal and factual obstacles to Plaintiff's prospects of prevailing on the merits at the trial, and Defendant's defenses, as well as Defendant's potential exposure and the additional costs of litigating the Action. The settlement represents a fair and reasonable recovery as set forth in the Declaration of Janelle Carney, ¶ 7 (hereinafter "**Decl. Carney**").

I. <u>THE CLASS REPRESENTED</u>

The settlement proposes the following Settlement Class:

All current and former hourly non-exempt employees who work or worked for Defendant at Defendant's Apple Valley Distribution Center facility from May 17, 2012, through September 28, 2018 ("Settlement Class Period").

II. <u>THE TWO-STEP APPROVAL PROCESS</u>

Any settlement of class litigation must be reviewed and approved by the

Court.[2] This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice has been distributed to the Class Members for their comment or objections. The Manual for Complex Litigation Second states at §30.44 (1985),

> A two-step process is followed when considering class settlements … if the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to Class Representatives or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the Class Members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement.

Thus, the preliminary approval of the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. As Professor Newberg comments, "The strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may find that the settlement proposal contains some merit, is within the range of reasonableness required for a

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[2] Unlike class actions where claims belong to individual class members that necessitates classwide notice, PAGA settlements do not require a two-part approval process, as there is no need to notify aggrieved employees of pending PAGA settlements because those aggrieved employees cannot opt out of or object to the PAGA settlement. *See, e.g., Robinson v. S. Ctys. Oil Co.*, *supra*, 53 Cal. App. 5th at 483 (aggrieved employees bound by PAGA settlement because they do not have the right to opt out). Those rights instead lie only with the State of California, which is provided with a copy of proposed PAGA settlements so that it can assess their sufficiency. Cal. Labor Code § 2699(l)(2). Thus, the PAGA portion of the settlement is not part of this motion for preliminary approval. Later, the PAGA portion of the settlement will be considered for approval when the Court holds the eventual Final Approval hearing on the class portion of the settlement.

settlement offer, or is presumptively valid subject only to any objections that may be raised at a final hearing." *Newberg on Class Actions*, 3rd Ed., 11.26.

The procedures for submission of a proposed settlement for preliminary approval are discussed at *Newberg on Class Actions*, 3rd Ed., §11.24 – 11.26. *Newberg* observes at §11.24:

When the Parties to an action reach a monetary settlement, they will usually prepare and execute a joint stipulation of settlement, which is submitted to the court for preliminary approval. The stipulation should set forth the central terms of the agreement, including but not limited to, the amount of the settlement, form of payment, manner of determining the effective date of settlement, and any recapture clause.

The details of the recovery for each Class Member are set forth in the proposed Class and PAGA Settlement Agreement filed with the Declaration of Janelle Carney in Support of Preliminary Approval, ¶7, Exhibit 1. The settlement for each Participating Class Member is fair, reasonable and adequate, given the inherent risk of litigation, the risk relative to trial and the costs of litigation (*See* **Decl. Carney ¶7**).

To prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action requires court approval. In order to protect those class members, including the named Plaintiff, whose rights may not have been given due attention by the negotiating parties, the court must determine whether the settlement is fair, adequate and reasonable. *(Dunk v. Ford Motor Co.* (1996) 48 C.A.4th 1794) See also: *Hanlon v. Chrysler Corp.,* 150 F.3d 1011, 1026 (9th Cir. 1998), *Staton v. Boeing Co.,* 327 F.3d 938, 959-60 (9th Cir. 2003) (Rule 23); *In re Heritage Bond Litig. v. U.S. Trust Corp.,* 546 F.3d 667, 673-674

The Court must look to the admissible evidence regarding the following factors specified in *Dunk*, *supra*, at 1800-1801:

A. Strength of Plaintiff's case;

B. The risk, expense, complexity and likely duration of further litigation;

C. The risk of maintaining class action status through trial;

D. With respect to the amount of the settlement, the number of "cents on the dollar" or percentage of total damages the settlement represents; and

E. Presence (or lack thereof) of a governmental participant.

Further, the Court must take into consideration the Dunk factors and the additional *Kullar* factor which is "the most important factor is the strength of the case for the Plaintiff on the merits, balanced against the amount offered in settlement." (*Kullar v. Footlocker Retail Inc.* (2008) 168 Cal.App.4th 116, 118), (*See* **Decl. Carney ¶10**). The settlement represents a fair and reasonable value of all claims (*See* **Decl. Carney ¶ 7, 10**). There is no claim form required so all class members will be paid unless they opt out and there is no reversion to Defendant. Finally, the only governmental involvement in this case is the existence of a PAGA claim and the Plaintiff has notified the Labor and Workforce Development Agency ("LWDA") of this settlement (*See* **Decl. Carney, ¶11**) The settlement amount balanced against the merits of the Plaintiff's case is reasonable as set forth in detail in the Declaration of Janelle Carney filed concurrently herewith (*See* **Decl. Carney ¶ 10**).

III. THE PRESUMPTION OF FAIRNESS

Courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence to the contrary is offered. In short, there is a presumption that the negotiations were conducted in good faith. *Newberg*, §11.51; *In re Chicken Antitrust Litigation*, 560 F.Supp 957, 962 (N.D. Ga. 1980); *Priddy* *v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars Steel Corp. v. Continental Illinois National Bank and Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987). Courts do not substitute their judgment for that of the proponents, particularly where, as here, settlement has been reached with the participation of experienced counsel familiar with the litigation. *Hammon v. Barry,* 752 F.Supp 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F.Supp. 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust Litigation*, 472 F.Supp 1357 (N.D. Ga. 1979), aff'd in part, rev'd in part in 645 F.2d 488 (5th Cir. 1981); *Sommers v. Abraham Lincoln Federal Savings & Loan Association*, 79 F.R.D. 571 (E.D. Pa. 1978). This is especially true where, as here, a very experienced, highly regarded neutral mediator, one very familiar with this type of action in its substance and procedure, presided over the mediation session.

While the recommendations of counsel proposing the settlement are not conclusive, the Court can properly take them into account, particularly where, as here, they have been involved in litigation for over six years, appear to be competent, have experience with this type of litigation, and have obtained substantial evidence from the opposing party. (*See Newberg*, §11.47.) Here, the Plaintiff's firms involved in the case have a great deal of experience in wage and hour class action litigation. The five (5) firms advanced as Class Counsel have substantial experience in wage and hour class action cases and have been approved as Class Counsel in numerous other wage and hour class actions (*See* **Decl. Carney ¶¶ 3-5; Declaration of Joseph Antonelli ¶¶ 2-4; Declaration of Kevin Barnes ¶¶ 2-7; Declaration of Anna Salusky ¶¶ 2-6**)

Plaintiff's attorneys and the Class Representative have vigorously litigated this matter for over seven (7) years, and the settlement was reached after extensive factual and legal research, formal discovery including propounding and responding to written interrogatories, and the production of documents and numerous filings including class certification, motions for partial summary, motion to dismiss, motion for judgment on the pleadings, and motions in limine. Further, the parties were prepared to try the case on May 30, 2023.

On February 14, 2019, the parties attended a mediation with Hon. Carl West, an experienced mediator and retired judge, but the case did not settle. On August 17, 2021, the Parties participated in a Mandatory Settlement Conference before Magistrate Judge Rozella A. Oliver. The settlement conference did not result in a settlement, so the Parties continued to litigate the Lawsuit. On May 10, 2023, the Parties participated in a second private mediation session before Judge West. As a result of those negotiations, the Parties reached an agreement to resolve the Lawsuit.

The Parties in this matter have agreed to the settlement amount of Two Million, Two Hundred Fifty-Thousand Dollars ($2,250,000.00) on a class wide basis with no claim form requirement and with no residual to revert to the Defendant. The settlement represents a fair and reasonable recovery as set forth in the Declaration of Janelle Carney filed concurrently herewith (*See* **Decl. Carney ¶ ¶ 7, 10**).

IV. PROPOSED SHARE PER CLASS MEMBER

1) Settlement payments to individual Settlement Class Members shall be determined based on his or her proportionate share of the Net Settlement Amount minus the portion of the PAGA Penalties allocated to the Aggrieved Employees, based on the total number of Applicable Workweeks worked by each Settlement Class Member during the Settlement Class Period (with the exception of the Settlement Class Members who worked at least 1 workday from May 17, 2012 to May 16, 2013 at the Apple Valley facility and did not work beyond May 16, 2013

at the Apple Valley facility, who will receive a flat rate of $50.00 for the one-year period during which they worked). For purposes of the individual class member amounts to be set forth in the notice, the estimated Net Settlement Amount distributable to the Settlement Class shall be determined by deducting the maximum potential attorneys' fees, the estimated costs, the class administrator costs, LWDA payment, and the maximum potential enhancement from the Class Settlement Amount; the amount remaining is the estimated Net Settlement Amount. Following final approval, the actual Net Settlement Amount shall be determined by deducting the actual attorneys' fees awarded by the court, the actual costs, the actual class administrator costs, the LWDA payment, and the actual enhancement awarded by the court from the Class Settlement Amount.

2)	Attorneys' Fees and Costs:	Attorneys' Fees: $33.333% of $2,250,000.00 (i.e. $750,000.00), subject to court approval. Costs: Litigation costs of approximately $260,000 subject to court approval, exclusive of Settlement Administration costs. Rust Consulting, Inc.'s Settlement Administration costs are estimated at $27,110.00.
3)	Class Representative Enhancement:	$20,000.00 to Plaintiff, subject to court approval;
4)	PAGA payment:	$100,000.00 ($75,000.00 to the LWDA).

V. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

Plaintiff is filing all settlement and notice documents with this Motion for Preliminary Approval of Class Action Settlement: **(1)** Class and PAGA Settlement Agreement (**Decl. Carney, Exhibit 1**); **(2)** Notice of Class Action Settlement (**Decl. Carney, Exhibit 1 to the Settlement Agreement**); Likewise, a [Proposed] Order Granting Preliminarily Approval of Settlement is also being filed concurrently herewith. The Parties respectfully request that this Court approve the Notice to be disseminated to the Settlement Class consistent with the manner and timing as set forth in this Memorandum.

The Parties have agreed on Rust Consulting, Inc. ("Rust") as the Settlement Administrator and respectfully request that this court appoint Rust to handle the notice procedures and distribution of the Settlement. (See **Decl. Carney, Exhibits 4-5** for Rust's qualifications and estimate).

VI. THE SETTLEMENT IS FAIR AND REASONABLE BASED UPON OBJECTIVE EVIDENCE

The settlement is fair, reasonable and adequate for the reasons stated in accompanying Declaration of Janelle Carney filed in support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement (*See* **Decl. Carney ¶¶ 7, 10**). The settlement that has been reached, subject to this Court's approval, is the product of tremendous effort, and a great deal of expense by the Parties and their counsel. The settlement was reached after extensive factual and legal research, formal discovery including propounding and responding to written interrogatories, extensive law and motion, an appeal, and the production of documents.

The settlement amount is, of course, a compromise figure. Plaintiff took into account the risks of trial and the strengths and weaknesses of Defendant's other defenses. Furthermore, Plaintiff also took into consideration the time delay and financial repercussions of trial and the possibility of an appeal by Defendant. (*See* **Decl. Carney, ¶¶ 7,10**).

VII. CONDITIONAL CERTIFICATION OF THE CLASS

A. Class Certification Is Appropriate in this Case[3]

The proposed settlement seeks conditional certification of the class. The certification of the class is essential to the settlement. Class Certification Is Appropriate Here Under Rule 23. FRCP Rule 23(a) authorizes certification when the Class prerequisites are met, i.e., (1) the class is so numerous that joinder of all members is impracticable.

Additionally, to maintain the class action, FRCP Rule 23(b)(1) or (3) requires that the Plaintiff establish either that: (1) there is risk of inconsistent or unfair adjudication; or (2) common questions of law or fact predominate and class resolution is superior to other available methods for fair and efficient adjudication of the controversy. Although Plaintiff need only meet the requirements of one of the conditions under FRCP Rule 23(b), both of these tests are satisfied under the circumstances of this action.

B. The Proposed Class is Ascertainable and Numerous

For a class to exist, the class description must be sufficiently definite so that it is administratively feasible for the court to determine whether a particular

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[3] Walmart does not concede that class certification is appropriate in this action but Walmart does not oppose certification of a Settlement Class for settlement purposes consistent with the Parties Settlement Agreement. (**Decl. Carney,** Ex. 1, Settlement Agreement ¶¶ 3.14, 4.1, 16.1.)

individual is a member of the proposed class by reference to objective criteria. The class definition is sufficiently specific to enable potential class members, and the court, to readily determine the parameters of the class. (See, *Clothesrigger, Inc. V. GTE Corp.* (1987) 191 Cal.App.3d 605, 617.)

There are up to 1,715 class members, all of which have been identified by Defendant's employment and payroll records (*See* **Decl. Carney, ¶2**). This is sufficient to satisfy numerosity requirements. As a general matter, courts have found that numerosity is satisfied when class size exceeds 40 members, but not satisfied when membership dips below 21. See *Ansari v. New York Univ.*, 179 F.R.D. 112, 114 (S.D.N.Y. 1998) (citing a thorough review of cases in 5 MOORE'S FEDERAL PRACTICE §23.22[3][a] (Matthew Bender 3d ed. 1999)). The Ninth Circuit has not offered a precise numerical standard; other District Courts have, however, enacted presumptions that the numerosity requirement is satisfied by a showing of 25-30 members. See, e.g., *In re Kirschner Med. Corp. Sec. Litig.*, 139 F.R.D. 74, 78 (D. Md. 1991); [**20]; *EEOC v. Printing Indus., Inc.*, 92 F.R.D. 51, 53 (D.D.C. 1981), *Slaven v. BP America, Inc.*, 190 F.R.D. 649, 654 (C.D. Cal. 2000).

C. <u>Common Issues of Law or Fact Predominate</u>

FRCP Rule 23(a)(2) requires that common questions of law or fact exist among class members. The Ninth Circuit construes the commonality requirement under this rule "permissively," having noted that the requirement under Rule 23(a)(2) is less rigorous than that under Rule 23(b)(3). (*Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998); *compare* Rule 23(b)(3) [requiring that common questions of law or fact "predominate" in class actions maintained under this subsection] *with* Rule 23(a)(2) [not including "predominate" or similar language in describing the general commonality requirement].) It is sufficient for putative class members to have shared legal issues but divergent facts or, similarly, to share a common core of facts, but base their claims for relief on different legal theories. *Hanlon*, *supra*, 150 F.3d at 1019. Indeed, the Ninth Circuit considers the requirements for finding commonality under Rule 23(a)(2) to be "minimal" (*Id*. at 1020.)

The threshold for commonality is not high, particularly in a case such as this where Plaintiff alleges uniform payroll practices at Defendant's Apple Valley Distribution Center. "[Taking] the substantive allegations of the complaint as true" (*Blackie*, *supra*, 524 F.2d at 901 n.17), the operative Complaint here details common questions of law and fact amenable to class treatment. Although Plaintiff need only make a "minimal" showing of common issues of law and/or fact, there exist numerous common questions, as identified in the Fourth Amended Complaint.

Here, the predominant common questions of law and facts are as follows:

a.) Whether Defendant violated the applicable *Labor Code* provisions including §§ 510 and 1194 by requiring substantial overtime work and not paying for said work according to the overtime laws of the State of California by implementing invalid AWS schedules;

b.) Whether Defendant failed to pay the appropriate premium overtime compensation to the WDC non-exempt hourly AWS employees (excluding dispatcher and truck shop employees) of the Apple Valley – No. 7033 Distribution Center for shifts in excess of 8 hours in a day;

c.) Whether Defendant fails to provide compliant second meal periods to hourly employees who worked in excess of 10 hours in a shift;

d.) Whether Defendant's meal period waivers are valid to excuse Defendant from providing a second meal period on shifts in excess of 10 hours;

e.) Whether Defendant provided Plaintiff and the class with compliant pay stubs; and

f.) Whether Defendant timely paid all wages to hourly employees at the time their employment with Defendant ended.

Resolving these common questions are the dominant issues in the case. Moreover, the issue of whether Defendant is liable for damages, penalties, restitution and/or injunctive relief, pursuant to *LC* §§201-203, 226, 226.7, 512, 1174 and/or 1194, *B&PC* §17200, *et seq*., are also significant issues which can be resolved on a class-wide basis. (See, e.g., *Alba v. Papa John's USA, Inc.*, 2007 U.S. Dist. LEXIS 28079, 19-21 (Cal CD 2007); *Vizcaino v. United States District Court*, 173 F.3d 713, 722 (9th Cir. 1999)) Undoubtedly, the vast number of common issues presented here are more than adequate to meet the Ninth Circuit's "minimal" commonality threshold.

D. <u>Plaintiff's Claims Are Typical of the Class Claims</u>

Typicality simply means that the representative's claims be similar to those of class members. The interests of the class representative need not be identical to those of other class members; the class representative must simply be similarly situated. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347; *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46. Here, Plaintiff Garcia is a member of the putative classes he seeks to represent and possesses the same interests, suffered the same injury, and alleges identical violations as those of all putative class members. Mr. Garcia was an hourly AWS employee during the class period, was not paid any daily overtime premium on his scheduled ten (10) hour shifts, was not paid overtime premium on short shifts, worked over 10 hours without a second meal period, was provided wage statements from

Defendant and is a former employee. (**Decl. Garcia ¶¶ 2-4**) The typicality requirement is met. (*See* **Declaration of Juan Garcia** filed concurrently herewith)

E. <u>Adequacy of Representation</u>

Adequacy of representation depends on whether Plaintiff's class representatives and Plaintiff's attorneys are qualified to conduct the proposed litigation and whether the representative Plaintiff's interests are antagonistic to those of the class. In this case, the representative Plaintiff has the same injuries and damages similar to those of the class they seek to represent. Plaintiff has no claims that are antagonistic to the class. (**Decl. Garcia, ¶¶4-8**) Plaintiff's counsel are also very experienced and qualified. (*See* **Decl. Carney ¶ 2-5)**

VIII. THE COURT SHOULD APPROVE THE ESTABLISHMENT OF A QUALIFIED SETTLEMENT FUND

Under the Settlement, Walmart has agreed to transfer the required portions of the Class Settlement Amount into a Qualified Settlement Fund as described in Treasury Regulation § 1.468B-1, 26 C.F.R. § 1.468B-1, in full settlement and discharge of the Settlement Class Members' claims against Walmart that are included under the Settlement. The Parties determined that establishing a Qualified Settlement Fund to receive and hold the settlement funds, and to distribute the funds according to the terms of the Settlement Agreement and under the administration of the Settlement Administrator would serve the Parties' best interests, and request that the Court approve the establishment of a Qualified Settlement Fund.[4]

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[4] The Qualified Settlement Fund will be administered by the Settlement Administrator, who, along with the Qualified Settlement Fund, will remain subject to the continuing jurisdiction of this Court. The Qualified Settlement Fund will be a segregated bank account opened at a financial institution mutually agreed by the

Court approval of the establishment of the Qualified Settlement Fund serves the Settlement Class Members' interests by assuring that the Class Settlement Amount is transferred by Walmart following approval of this Motion, and benefits Walmart by assuring finality to the claims against it in this case that are the subject of the Settlement.[5]

IX. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS

The Parties propose the following schedule for the fairness hearing and final proceedings:

1. Defendant to provide Class List to Settlement Administrator	(Within 30 days after Preliminary Approval Order is signed)
2. First Mailing of Notice, etc., to the Class:	(20 calendar days after the Class List is received)
3. Deadline to postmark objections, Opt-Out and pay periods dispute:	(45 calendar days after mailing by Settlement

Parties. The Qualified Settlement Fund account will receive the Class Settlement Amount from Walmart and will hold that sum, and the earnings thereon, until the Settlement Administrator has completed all administration of such funds and income thereon, as well as disbursements to Settlement Class Members and Class Counsel, and payment of taxes and administrative costs, as more fully set forth in Section 11 of the Settlement Agreement and subject to further approval of this Court, if required.

[5] With the Court's approval, the parties intend for the establishment of a Qualified Settlement Fund to satisfy the requirements of Treasury Regulation § 1.468B-1(c), C.F.R. § 1.468B-1(c), by (a) being established under this Court's approval, (b) resolving and satisfying claims against Walmart for alleged violations of law, and (c) constituting a segregated account, as required by those regulations.

	Administrator)
4. Filing date for Final Approval Motion:	(28 calendar days before the Final Approval hearing. (No later than December 2023)).
5. Final Approval Hearing:	(28 days after Final Approval Motion filed)[6]

X. ACTION REQUESTED AS PART OF THE MOTION FOR PRELIMINARY APPROVAL

The Parties request this Court, as part of the preliminary approval process, to do the following:

1. Review the proposed Settlement Agreement;

2. Confirm Janelle Carney of Janelle Carney - Attorney at Law, APC, Joseph Antonelli of the Law Office of Joseph Antonelli, Kevin T. Barnes and Gregg Lander of the Law Offices of Kevin T. Barnes, and Anna Salusky of Salusky Law Group, APC, as Class Counsel and Juan Garcia as the Class Representative;

4. Approve an Order granting Preliminary Approval of the proposed settlement on a class basis, direct notice to be given to the Class, and setting a hearing for final review of the proposed settlement at a time convenient to the Court; and

5. Approve Rust Consulting as Claims Administrator to handle the notice and claims procedures as set forth in its proposal.

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[6] The parties propose December 2023 or January 2024 for the Final Approval Hearing, to allow for administration of the notice procedures, including notice required under the Class Action Fairness Act.

6. Approve the creation of the Qualified Settlement Fund.

XI. CONCLUSION

Based upon the foregoing, Counsel respectfully requests that the Court grant this motion for Preliminary Approval and enter the proposed Order.

Dated: August 3, 2023

LAW OFFICE OF JOSEPH ANTONELLI
JANELLE CARNEY-ATTORNEY AT LAW
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SALUSKY LAW GROUP, APC

By: Janelle Carney

Janelle Carney, Attorney for Plaintiff