

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

NICKOLAS TSUI, on behalf of himself and  
all others similarly situated,

Plaintiff,

v.

WALMART INC.,

Defendant.

Civil Action No. \_\_\_\_

**SETTLEMENT AGREEMENT**

**1. PREAMBLE**

1.1 Plaintiff Nickolas Tsui (“Plaintiff” or “Tsui”) intends to file a class action Complaint in the United States District Court for the District of Massachusetts, alleging that Walmart Inc. violated the Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA”), 38 U.S.C. § 4301 *et seq.* by failing to pay Plaintiff and other similarly situated current and former Walmart employees their normal pay when they took short-term military leave from Walmart since October 2004. Walmart denies all of Plaintiff’s allegations alleged in the Complaint. In the interest of resolving this dispute between the Parties without the significant expense, delay, and inconvenience of further litigation of the collective and individual issues raised in this Case, and in reliance upon the representations, mutual promises, covenants, and obligations set out in this Settlement Agreement, and for good and valuable consideration also set out in this Settlement Agreement, the Parties, through their undersigned counsel of record, hereby stipulate and agree as follows. This Settlement Agreement is made and entered into as of the dates of Execution set forth below, between the Settlement Class Representative, Nickolas Tsui, on behalf of himself and the Settlement Class Members, and Walmart, as further defined below.

**2. DEFINITIONS**

2.1 “Agreement” or “Settlement Agreement” means this Settlement Agreement between the Parties.

2.2 “Approved Claim Form” means a timely and valid Claim Form that is submitted by a Settlement Class Member and approved by the Claims Administrator.

2.3 “Attorneys’ Fees and Litigation Expenses” means the Attorneys’ Fees and Litigation Expenses to be requested by Class Counsel, subject to Court approval in accordance with Section 5.5 of this Agreement.

2.4 “Ceiling” means the maximum amount of Fourteen Million Dollars (\$14,000,000) that Walmart is obligated to pay pursuant to this Settlement as more fully described in Section 5 of this Agreement.

2.5 “CAFA Notice” means the notice to be made in accordance with the Class Action Fairness Act, 28 U.S.C. § 1715.

2.6 “Class Settlement Amount” means the amount of money that Walmart is obligated to pay pursuant to this Settlement, which shall, depending on the number of YMLs identified in the Approved Claim Forms submitted by Qualified Claimants, consist of a minimum payment of Ten Million Dollar (\$10,000,000.00) (i.e., the Floor) and a maximum payment of up to Fourteen Million Dollars (\$14,000,000.00)(i.e., the Ceiling) as described more fully in Section 5 of this Agreement.

2.7 “Claim Form” means the forms for submission of a claim for unpaid Short-Term Military Leave (as described in Section 5.4 and its subparts) attached hereto as **Exhibit A-1 and A-2**, that Settlement Class Members must submit in order to be considered for eligibility to receive a payment under this Settlement.

2.8 “Claims Administrator” means the entity that, subject to Court approval, shall perform the duties of, among other things: (i) establishing a QSF and determining and finalizing the calculations of settlement payments and tax withholding amounts for the Qualified Claimants, as applicable; (ii) preparing, printing and disseminating to the Settlement Class Members the Notice Packet and return envelope in accordance with the Notice Plan; (iii) receiving and reviewing the Claim Forms submitted by Settlement Class Members to determine initial eligibility based on dates of employment and military service; (iv) tracking returned Notices and Requests to Opt Out; (v) ascertaining current address and addressee information for each Notice Packet returned as undeliverable, and re-disseminating the Notice Packet and return envelope to Settlement Class Members whose Notice Packet was returned as undeliverable; (vi) notifying Walmart’s Counsel and Co-Lead Class Counsel regarding submitted Requests to Opt Out, consistent with this Agreement; (vii) determining the final Settlement Payment for each Qualified Claimant in accordance with this Agreement; (viii) mailing the settlement checks to Qualified Claimants; (ix) referring to Class Counsel and, where appropriate, also to Walmart’s Counsel, all inquiries by Settlement Class Members that the Claims Administrator cannot resolve and/or that involve matters not within the Claim Administrator’s duties specified herein; (xi) responding to inquiries of Class Counsel or Walmart’s Counsel; (xii) promptly apprising Walmart’s Counsel and Co-Lead Class Counsel of the activities of the Claims Administrator; (xiii) sending notices to Self-Identifiers; (xiv) establishing a web site to provide Settlement Class Members with information about this Agreement and to permit Settlement Class Members to submit Claim Forms; (xv) providing publication notice to the Settlement Class Members; and (xvi) other notice and administration duties in accordance with this Agreement and the District Court’s orders.

2.9 “Class Counsel” means the following counsel: Outten & Golden LLP, Block & Leviton LLP, Gupta Wessler PLLC, the Law Office of Thomas G. Jarrard, PLLC, and Crotty & Son Law Firm, PLLC.

2.10 “Co-Lead Class Counsel” means Outten & Golden LLP and Block & Leviton LLP.

2.11 “Complaint” means the class action complaint that Plaintiff will file in the District Court consistent with this Agreement. A copy of the Complaint is attached hereto as **Exhibit B**.

2.12 “Court” means the District Court and any appellate court that may review any orders entered by the District Court related to this Settlement.

2.13 “Defendant” means Walmart Inc.

2.14 “District Court” means the United States District Court for the District of Massachusetts.

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

2.16 “Employer’s Share of Taxes” means the payments that Walmart shall make for any applicable federal, state, or local employer payroll taxes owed by the employer with respect to wage payments that Qualified Claimants receive under the Settlement Agreement. Walmart shall make such payments in addition to and separate from the Class Settlement Amount.

2.17 “Final Judgment and Final Approval Order” refers to the Final Judgment and Final Approval Order approving the Settlement and dismissing the Litigation with prejudice as against Defendant, substantially in the form attached hereto as **Exhibit C**, which this Settlement contemplates will be entered and approved by the Court.

2.18 “Floor” means the minimum payment of Ten Million Dollars (\$10,000,000) that Walmart is obligated to pay pursuant to this Settlement as more fully described in Section 5 of this Agreement.

2.19 “Litigation” or “Case” means the case encompassed by the Complaint that Plaintiff Nickolas Tsui will file in the District Court in accordance with this Agreement.

2.20 “Net Settlement Amount” means that portion of the Class Settlement Amount remaining after the subtraction of: (a) Attorneys’ Fees and Litigation Expenses approved and awarded by the Court; (b) the Service Payment approved and awarded by the Court; (c) Notice and Administration Costs; and (d) any taxes attributable to interest earned by the QSF.

2.21 “Notice” means the Court-approved Notice of Proposed Settlement of Class Action Lawsuit and the Notice Process set forth in Section 7 of this Agreement.

2.22 “Notice and Administration Costs” means the costs approved by the Court for the Claims Administrator to send Notice, administer the Settlement, and for the Claims Administrator to perform all other reasonable duties contemplated by this Agreement and as approved or directed by the Court.

2.23 “Notice Date” means the date on which the Notice Packet is first mailed to Previously Identified Settlement Class Members.

2.24 “Notice Packet” means the Notice attached hereto as **Exhibit D** and the accompanying Claim Forms..

2.25 “Notice Period” means the period of time in which a Settlement Class Member may submit a Claim Form, or a Request to Opt Out or object to the Settlement.

- 2.26 “Parties” means the Settlement Class Representative and Walmart.
- 2.27 “Plaintiff” means Nickolas Tsui.
- 2.28 “Plan of Allocation and Claims Process” means the method by which the Net Settlement Amount shall be allocated among Qualified Claimants, as set forth in Section 5 of this Agreement.
- 2.29 “Previously Identified Settlement Class Member” means any person identified on the Settlement Class List.
- 2.30 “Preliminary Approval Order” means the District Court’s order granting preliminary approval of this Settlement.
- 2.31 “Programmatic Relief” means the programmatic, non-monetary relief agreed to by the Settlement Class Representative on behalf of the Releasing Settlement Class Members and Walmart, in accordance with Section 6 of this Agreement.
- 2.32 “QSF” means the Qualified Settlement Fund to be established by the Claims Administrator in accordance with this Agreement.
- 2.33 “Qualified Claimant” means any Settlement Class Member who submits a timely and valid Claim Form that is approved by the Claims Administrator to receive a Settlement Payment under this Agreement.
- 2.34 “Released Claims” means the claims, rights, demands, charges, complaints, causes of action, obligations, damages, penalties, debts, costs and expenses (other than those costs and expenses required to be paid pursuant to this Settlement Agreement), liens, or liabilities of any and every kind that are released, acquitted, and forever discharged pursuant to Section 13 of this Agreement.
- 2.35 “Releasees” means Walmart Inc. and each of its current and former subsidiaries, parent corporations, affiliates, predecessors, insurers, agents, employees, successors, assigns, officers, officials, directors, employers, attorneys, personal representatives, executors, and shareholders, including their respective pension, profit sharing, savings, health, and other employee benefit plans of any nature, the successors of such plans, and those plans’ respective current or former trustees and administrators, agents, employees, and fiduciaries, as well as the personal representatives or executors of any such persons.
- 2.36 “Releasing Settlement Class Members” means the Settlement Class Representative and all Settlement Class Members, other than those who submit timely and valid Requests to Opt Out.
- 2.37 “Request to Opt Out” means the request to opt out of this Settlement that may be sent by any Settlement Class Member who does not wish to remain in the Settlement Class, in accordance with Section 9 of this Agreement.
- 2.38 “Self-Identifier” means a person who is not on the Settlement Class List but who believes that he or she may be a Settlement Class Member and submits a Claim Form in accordance with the procedures set forth in Section 5.4.4.6.

2.39 “Servicemember” means a person serving in the active or reserve components of the Armed Forces, Army National Guard, Air National Guard, the commissioned corps of the Public Health Service, or any other person covered by USERRA, 38 U.S.C. § 4303(16).

2.40 “Service Payment” means the amount of the service payment that the Court shall approve for the Settlement Class Representative, after the recommendation of Co-Lead Class Counsel, in accordance with Section 5.6 of this Agreement.

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

2.42 “Settlement Class” means the settlement class to be certified for settlement purposes in accordance with Section 4 of this Agreement. The Settlement Class consists of (A) all current and former employees who work or worked for Walmart at a location in a jurisdiction covered by USERRA (i.e., the United States and its territories) during the Settlement Class Period; (B) who took Short-Term Military Leave (i.e., 30 days or less) in one or more years during their employment with Walmart during the Settlement Class Period, (C) and during such period of Short-Term Military Leave did not receive the regular wages or salary that they would have earned had they continued to work their ordinary work schedules. Excluded from the class are the Judge assigned to the case and any of his or her relatives.

2.43 “Settlement Class List” means the listing of Previously Identified Settlement Class Members to be provided by Walmart in accordance with Section 7.1 of this Agreement and to whom the Notice Packet shall be mailed on the Notice Date in accordance with this Agreement.

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

2.45 “Settlement Class Period” means the period of time from October 10, 2004 through December 31, 2020, or some other later end date to be agreed to by the Parties.

2.46 “Settlement Class Representative” means Nickolas Tsui, the named plaintiff in the Litigation and the person Co-Lead Class Counsel shall request be appointed by the District Court as the Settlement Class Representative for purposes of the Settlement Class. Nickolas Tsui is also a member of the Settlement Class.

2.47 “Settlement Effective Date” means the first day following the later of the occurrences identified in Section 2.47.1 and 2.47.2:

2.47.1 The date on which the time to appeal or seek permission to appeal or seek other judicial review of the entry of the Final Judgment and Final Approval Order approving the Settlement and dismissing this Litigation with prejudice as to Defendant has expired with no appeal or without other judicial review having been taken or sought; or

2.47.2 If an appeal or other judicial review has been taken or sought from the entry of the Final Judgment and Order of Dismissal, the latest of:

(i) the date the Final Judgment and Final Approval Order is finally affirmed by an appellate court with no possibility of subsequent appeal or other judicial review therefrom;

(ii) the date the appeal(s) or other judicial review therefrom are finally dismissed with no possibility of subsequent appeal or other judicial review; or

(iii) if remanded to the District Court or to a lower appellate court following an appeal or other review, the date, after the Final Judgment and Final Approval Order has been entered by the District Court after remand, upon which the time to appeal or seek permission to appeal or seek other judicial review of the entry of that Final Judgment and Final Approval Order has expired with no further appeal or other judicial review having been taken or sought. If further appeal is sought after a remand, the time periods in this Sub-Section shall apply.

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

2.48 “Settlement Payment” or “Final Payment” means the final payment that a Qualified Claimant is entitled to receive under this Agreement after submitting an Approved Claim Form and pursuant to the calculations to be made under Section 5 of this Agreement.

2.49 “Short-Term Military Leave” means a military leave of thirty (30) consecutive days or fewer during a calendar year.

2.50 “Walmart” means Defendant Walmart Inc.

2.51 “Walmart’s Counsel” means Naomi Beer and Terry McCourt of Greenberg Traurig, LLP.

2.52 “YML” means Short-Term Military Leave taken during a calendar year in which a Settlement Class Member worked at Walmart and that may be claimed by a Settlement Class Member as described in Section 5 of this Agreement.

### **3. RECITALS**

3.1 On March 12, 2019, counsel for Plaintiff Nickolas Tsui sent a letter to Walmart along with a draft class action complaint that Plaintiff intended to file alleging that Walmart’s policy of failing to provide paid leave for employees to take short-term military leave, while providing paid leave to employees for other comparable forms of non-military leave, such as jury duty or bereavement leave, violated USERRA, 38 U.S.C. § 4316(b), and seeking damages and injunctive relief.

3.2 Since Walmart received Plaintiff’s March 12, 2019 letter, the Parties have engaged in lengthy, pre-litigation discussions regarding Plaintiff’s claims. Prior to exchanging settlement proposals, Walmart produced voluminous information about its policies and anonymized personnel data on employees who had taken short-term military leave from Walmart, and the Parties separately analyzed that personnel data to understand Walmart’s potential liability in this Case. The Parties then exchanged mediation statements and analysis of the personnel data and on February 19, 2020, the Parties participated in a private mediation session with Michelle Yoshida, a private mediator with

substantial experience in employment cases. Although the Parties did not obtain a resolution at mediation, following mediation the Parties continued to discuss settlement of the claims of the Settlement Class Members and exchange settlement proposals on monetary and programmatic settlement terms. As a result of mediation and the additional arms-length negotiations, the Parties reached an agreement by which Plaintiff would file a Complaint and the Parties would resolve the Litigation in accordance with the terms of this Agreement. All prior written documents exchanged between the Parties are superseded and replaced by this Agreement.

3.3 The Settlement Class Representative and Class Counsel believe that the claims of the Settlement Class Members are meritorious. Class Counsel represent that they have conducted a thorough investigation into the facts of this case and have diligently pursued an investigation of the Plaintiff and the Settlement Class Members' claims against the Defendant, including, but not limited to: (i) reviewing and analyzing relevant documents, including policy documents and databases produced by Walmart and documents provided to Class Counsel by Plaintiff; (ii) researching the applicable substantive and procedural law and Walmart's potential defenses; (iii) developing and preparing factual and legal arguments for expected substantive motions in the Case; (iv) advocating for the rights of the Settlement Class Members; and (v) preparing for and engaging in mediation with Walmart and Walmart's counsel and numerous calls and communications with Walmart's counsel. Based on their own independent investigation and evaluation, Class Counsel are of the opinion that the Settlement is fair, reasonable, and adequate and that the Settlement is in the best interests of the Settlement Class Members in light of all known facts and circumstances, including the risk of dismissal for failure to state a claim, the risk that class certification would be denied, the risk of significant delay, the defenses asserted by the Defendant, trial risk, and appellate risk.

3.4 Walmart denies liability or wrongdoing of any kind associated with the claims alleged and further contends that this Litigation is not appropriate for class action treatment pursuant to Rule 23 of the Federal Rules of Civil Procedure or any other federal or state rule, statute, law, or provision. Walmart further asserts that it has complied with all applicable provisions of federal or state statutory and common law. Walmart further states that despite its good-faith belief that it is not liable for any of the claims asserted, and despite its good-faith belief that class certification is not appropriate in this case, Walmart agrees that it will not oppose the District Court's certification of the Settlement Class contemplated by this Agreement solely for purposes of effectuating this Settlement. Other than for purposes of this Settlement, Walmart does not waive its objections to certification of the Settlement Class, or any other class, in this Litigation for any other purpose.

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

#### **4. CLASS ACTION COMPLAINT AND SETTLEMENT CLASS**

4.1 In order to implement the Settlement, Co-Lead Class Counsel shall: (a) file the Complaint on behalf of Plaintiff Tsui and the Settlement Class, a copy of which is attached as **Exhibit B**; and (b) request that the District Court certify the Settlement Class described in Section 2.42 for settlement purposes pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure. Walmart does not oppose certification of the Settlement Class for settlement purposes.

4.2 With respect to determining which individuals qualify as the Settlement Class Members, the Claims Administrator will make such determinations based on the data or information provided by

Walmart and, where applicable, persons who submit Claim Forms to the Claims Administrator. If there is a conflict between employment data in Walmart's records and the years of employment identified by a Settlement Class Member, the data in Walmart's employment records shall control to the extent possible. The Parties shall work cooperatively to resolve any potential disputes relating to class member membership.

4.3 The Parties agree that certification of the Settlement Class is for settlement purposes only and Walmart's non-objection to this certification is in no way an admission by Walmart that class certification is proper in this or any other Litigation for any other purpose. Walmart further incorporates by reference Section 3.4.

4.4 The Parties further agree that if for any reason the District Court does not grant final approval of the Settlement, or if final approval is not granted following the appeal of any order by the District Court, or if for any reason the Settlement Effective Date does not occur, the certification of the Settlement Class for settlement purposes shall be deemed null, void, and unenforceable, and the provisions of Section 18 shall apply.

## **5. MONETARY TERMS OF SETTLEMENT**

5.1 Subject to the other terms and conditions of this Agreement, and subject to Court approval, Walmart agrees to pay, on a claims made basis, a Class Settlement Amount that shall consist of a minimum Floor of Ten Million Dollars (\$10,000,000.00) and a maximum Ceiling of Fourteen Million Dollars (\$14,000,000.00), dependent upon Settlement Class Members' participation in the Settlement. The actual Class Settlement Amount to be paid by Walmart shall be determined based on the number of Approved Claim Forms that are filed and the number of calendar years in which the Settlement Class Member took Short Term Military Leave from Walmart, as identified in those Approved Claim Forms and as verified and approved by the Claims Administrator in accordance with this Agreement. Each such calendar year is a YML. For each YML identified by the Approved Claim Forms and as verified and approved by the Claims Administrator in accordance with this Agreement, \$1,200 shall be included in the Class Settlement Amount. Thus, for example, if Ten Thousand (10,000) aggregate YMLs are identified on Approved Claim Forms and approved by the Claims Administrator, then the Class Settlement Amount would be Twelve Million Dollars (\$12,000,000), based on 10,000 YML times \$1,200 per YML. If the aggregate number of YMLs verified and approved by the Claims Administrator is Eleven Thousand Six Hundred and Sixty-Seven (11,667) or more such that the number of YMLs times \$1,200 would exceed Fourteen Million Dollars (\$14,000,000.00), then there shall be a pro rata reduction of the \$1,200 YML amount such that the Class Settlement Amount shall not exceed Fourteen Million Dollars (\$14,000,000.00). If the aggregate number of YMLs verified and approved by the Claims Administrator is Eight Thousand Three Hundred and Thirty-Three (8,333) or less such that the number of YMLs times \$1,200 is less than Ten Million Dollars (\$10,000,000.00), there shall be a pro rata increase of the \$1,200 YML amount so that the Class Settlement Amount shall be Ten Million Dollars (\$10,000,000.00). The Claims Administrator shall advise Class Counsel and Walmart's Counsel of the actual Class Settlement Amount based on the number of YMLs verified and approved by the Claims Administrator across all Approved Claim Forms as provided in Section 5.4.4.8.

5.2 All payments to Settlement Class Members, all Attorneys' Fees and Litigation Expenses awarded by the Court to Class Counsel, any Service Payment awarded by the Court to the Settlement



Class Representative, all Notice and Administration Costs approved by the Court and all taxes on any income earned on the QSF (or any expenses incurred related to the preparation of such tax filings or payments) shall be paid from the Class Settlement Amount. Stated another way, all amounts identified in this Section 5.2 are included in the \$1,200 YML amount described in Section 5.1. It is anticipated that once the amounts identified in this Section 5.2 are subtracted from the Class Settlement Amount, the YML amount to be distributed to Qualified Claimants prior to any pro rata increase or pro rata decrease will be approximately \$775 per YML.

5.3 Other than the costs incurred by Walmart to prepare and send the CAFA Notice, the cost to implement the Programmatic Relief, and amounts required to be paid for the Employer's Share of Taxes in accordance with Section 5.8, all of which shall be paid separate from the Class Settlement Amount, the Ceiling of Fourteen Million Dollars (\$14,000,000.00) shall be the maximum amount of money that Walmart shall pay under this Settlement.

#### 5.4 Payments to Settlement Class Members

5.4.1 The Net Settlement Amount shall be the amount remaining from the Class Settlement Amount after subtracting the Attorneys' Fees and Litigation Expenses awarded by the Court, any Service Payment awarded to the Settlement Class Representative by the Court, all Notice and Administration Costs approved by the Court, and any taxes attributable to interest earned by the QSF.

5.4.2 Settlement Class Members who do not timely serve a valid Request to Opt Out of the Settlement and who also submit a timely Claim Form shall be eligible to recover a share of the Net Settlement Amount in accordance with the Plan of Allocation and Claims Process described in this Section 5. Settlement Class Members who do not submit a timely Claim Form or who serve a timely and valid Request to Opt Out of the Settlement shall not be eligible to recover a share of the Net Settlement Amount. A Claim Form that is timely must meet all other criteria of the Plan of Allocation and Claims Process in order to be valid and approved by the Claims Administrator. The Plan of Allocation and Claims Process described in Sections 5.4.3 through 5.4.5 (**including all of their subsections**) shall be subject to approval by the Court and is subject to modification by the Court.

5.4.3 Each Settlement Class Member who submits a timely Claim Form – either via a paper claim form or an online submission – shall be eligible to receive a pro rata share of the Net Settlement Amount based on the number of YMLs identified on that Settlement Class Member's Approved Claim Form, as verified and approved by the Claims Administrator, compared to the aggregate number of YML identified on all Approved Claim Forms submitted by all Settlement Class Members, as verified and approved by the Claims Administrator. The Claims Administrator shall make the final determination as to whether a Claim Form, including the number of YML claimed, shall be approved. This pro rata share is the "Final Payment" that each Qualified Claimant shall receive under the Settlement. For example, if a Qualified Claimant is credited with 10 YML and 10,000 YML have been credited for all Qualified Claimants who filed Approved Claim Forms then that Qualified Claimant would receive 1/1000 of the Net Settlement Amount (*i.e.*, 10 divided by 10,000).

5.4.4 In order for a Settlement Class Member to be credited for a YML and receive a Final Payment based on his or her number of approved YML, the Settlement Class Member must submit an Approved Claim Form within 90 days after the Notice Date that identifies (i) the years that the person was employed by Walmart, (ii) the years that the person took Short-Term Military Leave during his or her employment with Walmart, and (iii) personal identifying information such as name, address, phone, email, and social security number. If available in Walmart's records, the Claim Form shall include information on the number of YML for that Settlement Class Member for the time periods in which such YML are available. In addition, if a Previously Identified Settlement Class Member seeks to claim a YML for a time period not identified on his or her Claim Form, and for all Self-Identifiers, the Claims Administrator will verify that Settlement Class Member's employment at Walmart during those additional claimed YMLs. The Claims Administrator will also confirm, that the Settlement Class Member was a Servicemember when he or she took Short-Term Military Leave from Walmart during any such additional YML. All Self-Identifiers must submit evidence to the Claims Administrator to show that they were a Servicemember during any YML that they claim on a Claim Form, and, to the extent any Self-Identifier worked for Walmart for less than thirty (30) days in any given YML, the Self-Identifier must also provide evidence of military service during the time in that calendar year that the Self-Identifier worked for Walmart. Previously Identified Settlement Class Members will not be required to affirmatively submit evidence of their military service during any additional years in which they took Short-Term Military Leave from their employment with Walmart in addition to the years identified on the Claim Form; provided however, that if the Claims Administrator has good cause to believe that there may have been fraud in connection with the Claim Form or if the Previously Identified Settlement Class Member worked for Walmart for less than 30 days in an additional YML claimed by the Previously Identified Settlement Class Member, the Claims Administrator may request that the Previously Identified Settlement Class Member submit evidence of military service for any additional YML claimed beyond the YML in Walmart's data. Associates who are required to provide evidence that they were a Servicemember when they took Short-Term Military Leave from Walmart may provide such evidence (including a DD-214, military pay statements, drill schedules, rosters, attendance records, or any other record from the military or federal government) that shows the year(s) the person was a Servicemember.

5.4.4.1 Walmart maintains records of certain military leaves taken by hourly associates since 2013 and salaried associates since 2016. Those Settlement Class Members whom Walmart has identified as having potentially taken Short-Term Military Leave based on such records are referred to herein as Previously Identified Settlement Class Members and are included on the Settlement Class List to be provided by Walmart in accordance with Section 7.1. The Previously Identified Settlement Class Members shall receive a Claim Form in their Notice Packet that identifies the years during which Walmart's records show that that each such Settlement Class Member potentially took Short-Term Military Leave from Walmart. The form of Claim Form for Previously Identified Settlement Class Members is attached as **Exhibit A-1**. When Previously Identified Settlement Class Members submit a Claim Form, they may identify additional years in which they took Short-Term Military Leave from their employment with Walmart in addition to the years identified on the Claim Form. The Claims Administrator shall verify any such additional YML in accordance with the procedures set forth in Section 5.4.4.4

5.4.4.2 Settlement Class Members whom Walmart has not identified as having taken Short-Term Military Leave from their employment with Walmart are not included on the Settlement Class List to be provided by Walmart in accordance with Section 7.1 and will not be mailed a Claim Form at the time that the Notice Packet is initially mailed. If a person not on the Settlement Class List believes that he or she is a Settlement Class Member, such a person – referred to as a Self-Identifier – may submit a Claim Form in accordance with the procedures set forth in Section 5.4.4.6. The form of Claim Form for Self-Identifiers is attached as **Exhibit A-2**. If a Self-Identifier submits a Claim Form, the Self-Identifier must identify on the Claim Form the years in which the Self-Identifier took Short-Term Military Leave from his or her employment with Walmart and provide proof of military service as provided in Section 5.4.4. The Claims Administrator shall verify all Claim Forms submitted by Self-Identifiers in accordance with the procedures set forth in Section 5.4.4.4.

5.4.4.3 For each timely Claim Form the Claims Administrator receives, the Claims Administrator shall determine the number of calendar years during which the Settlement Class Member took Short-Term Military Leave during his or her employment with Walmart. The Claims Administrator will make this determination based its review and verification of (i) the years that the person worked for Walmart, according to Walmart's records, (ii) the years that Walmart's records show the Settlement Class Member took Short-Term Military Leave from Walmart, if any and (iii) any additional years of Short-Term Military Leave that the Settlement Class Member identifies on his or her Claim Form as having taken Short-Term Military Leave from Walmart, along with any evidence submitted by a Settlement Class Member.

5.4.4.4 The Claims Administrator shall verify the information in the Claim Forms as follows. Years of employment and years of Short-Term Military Leave identified on a Claim Form as mailed to a Previously Identified Settlement Class Member shall be presumptively valid. With respect to additional years of employment identified by a Previously Identified Settlement Class Member, and with respect to all years of employment identified by a Self-Identifier, the Claims Administrator shall verify actual dates of employment at Walmart based on information contained in Walmart's records. The Claims Administrator shall make requests to verify such information to Walmart on a rolling basis as Claims Forms are submitted. The Claims Administrator shall provide to Walmart its final list of claimants requiring employment verification no later than ten (10) days after the close of the Notice Period, unless additional time is reasonably required to complete this assignment. Walmart shall review its records and provide the Claims Administrator with actual dates of employment as reflected in its records on a rolling basis as such requests are received from the Claims Administrator, and shall provide its final response to the Claims Administrator no later than forty-five (45) days after receipt of the final list from the Claims Administrator. If there is a conflict between Walmart's records and the years of employment claimed by the Settlement Class Member, Walmart's records shall control. As to verification of the years in which a person was in military service, (i) all Self-Identifiers must provide proof of military service for the years in which they claim they took Short-Term Military Leave from their employment with Walmart; and (ii) at the Claims Administrator's discretion, a Previously Identified Settlement Class Member may be required to submit proof of their dates of military service for any year that they claim they took Short-Term Military Leave from their employment with Walmart in addition to what is identified on the Claim Form as sent to the Previously Identified Settlement Class Member. If proof of military service is required, it must be

provided by the Settlement Class Member to the Claims Administrator as set forth in Section 5.4.4. Subject to the rights of appeal set forth in Section 5.4.4.7, the Claims Administrator's verification and approval of each Claim Form shall be a final and non-appealable determination. The Claims Administrator shall make these determinations with 30 days of receiving each Claim Form.

5.4.4.5 In the event that a Settlement Class Member is required to submit proof of military service (*e.g.*, DD-214 Form or other information as set forth in Section 5.4.4) along with their Claim Form but fails to do so during the Notice Period, the Claims Administrator will notify Class Counsel so that Class Counsel may contact the Settlement Class Member to advise the Settlement Class Member that failure to submit supporting evidence results in failure to receive final payment.

5.4.4.6 In the event that a Self-Identifier contacts the Claims Administrator or Class Counsel or Walmart's Counsel, such Self-Identifier shall be directed to a website maintained by the Claims Administrator where they may download the Notice Packet or request that one be mailed to them. Any such request must be made before the close of the Notice Period. Any Self-Identifier who wishes to submit a Claim Form (including those who download Claim Forms from the website) must do so during the Notice Period. The Claims Administrator shall inform all Self-Identifiers who contact it of this deadline, and this deadline shall also be prominently reflected on the settlement website. The Claims Administrator shall maintain a list of all Self-Identifiers, including the date on which each Self-Identifier first contacted the Claims Administrator, and shall provide it to Walmart's Counsel and Class Counsel on a rolling basis during the Notice Period, and shall provide the final list to Walmart's Counsel and Class Counsel no later than ten (10) days after the close of the Notice Period.

5.4.4.7 If the Claims Administrator rejects any portion of a Claim Form, including based upon a determination that the person who submitted the Claim Form is not a Settlement Class Member for some or all of the time period for which that person has submitted a Claim Form or because that the person's dates of employment at Walmart are different than those identified by the Settlement Class Member, the person may request reconsideration of the Claims Administrator's determination regarding the Claim Form by mailing to the Claims Administrator, within fourteen (14) days of receiving the determination, a statement and any supporting documentation explaining why the Claims Administrator's determination is incorrect. After receiving any such statement and supporting documentation, the Claims Administrator shall make a final, binding decision regarding the person's membership in the Class, the person's dates of employment, and the number of years in which the Settlement Class Member took short-term military leave during his or her employment with Walmart. In the event of a discrepancy between the Settlement Class Member's claimed dates of employment and the dates of employment shown in Walmart's records, Walmart's records shall control. The decision of the Claims Administrator shall be final and not subject to appeal or any other review.

5.4.4.8 After the Claims Administrator has made all of its determinations required by this Section, including any final determinations that are made following a person's request for reconsideration, the Claims Administrator shall make a final determination for each Settlement Class Member on the number of YML applicable to each Settlement Class Member

and identify the total number of YMLs for all Settlement Class Members who filed Approved Claim Forms. The Claims Administrator shall then determine each Settlement Class Member's pro rata share of the Net Settlement Amount, which shall be the Settlement Class Member's Final Payment under the Settlement. At the conclusion of the claims process, the Claims Administrator shall provide Walmart's Counsel and Co-Lead Class Counsel with a listing of all Settlement Class Members whose claims have been verified, the number of YML each Settlement Class Member has been credited, and the amount of such Final Payments for each Settlement Class Member.

5.4.4.9 All Claim Forms submitted by Settlement Class Members must be signed under penalty of perjury. The Claim Form shall also include a place for Settlement Class Members to confirm and update their current addresses and other contact information. Self-Identifiers must also provide their full Social Security Numbers for purposes of confirming their employment at Walmart and also so that the wage portions of settlement checks can be processed. Previously Identified Settlement Class Members need only provide the last four digits of their Social Security Number. All Social Security Numbers provided will be kept in a secure and confidential manner.

5.4.5 Class Counsel has determined that, subject to Court approval, the Plan of Allocation and Claims Process is an appropriate method to distribute the Net Settlement Amount to the Qualified Claimants. The Parties further agree that the terms of the Plan of Allocation and Claims Process, including any dollar values assigned to any particular Settlement Class Member or claim, are for purposes of this Settlement only and shall not be construed as an admission by any Party, nor shall they be admissible for any purpose (other than for the purpose of effectuating this Settlement), in this Litigation or any other judicial, arbitral, administrative, or investigative tribunal, forum, or other proceeding. Walmart shall not have any duty under this Agreement to provide further payments or benefits to Releasing Settlement Class Members for the Settlement Class Period.

## 5.5 Attorneys' Fees and Litigation Expenses

5.5.1 Co-Lead Class Counsel will be entitled to request that, subject to Court approval, Class Counsel be paid Attorneys' Fees not to exceed one-third of the Ceiling of Fourteen Million Dollars (\$14,000,000.00), plus reasonable Litigation Expenses, all to be paid from the Class Settlement Amount. Walmart takes no position on the amounts to be sought by Class Counsel for an award of Attorneys' Fees and Litigation Expenses, but does not object to a reasonable award for Attorneys' Fees and Litigation Expenses by the Court consistent with this Agreement. This Settlement is not contingent on the award of Attorneys' Fees and Litigation Expenses, and in the event that the Court does not approve the Attorneys' Fees and Litigation Expenses in the amount requested by Class Counsel, or in the event that the Court awards Attorneys' Fees and Litigation Expenses in an amount that is less than the amount requested by Class Counsel, any amounts not approved shall become part of the Net Settlement Amount for distribution to Qualified Claimants. Nothing in this Section or Agreement limits the rights of Co-Lead Class Counsel to appeal any decision by the Court regarding Attorneys' Fees and Litigation Expenses.

## 5.6 Service Payment

5.6.1 Co-Lead Class Counsel will be entitled to request that, subject to Court approval, the Settlement Class Representative, Nickolas Tsui, be paid a Service Payment to compensate him for his services as a class representative and to be paid from the Class Settlement Amount. The Service Payment shall be in addition to any Claim that the Settlement Class Representative might make and receive under the Settlement. Walmart takes no position on the amount sought by Co-Lead Class Counsel as a Service Payment for the Settlement Class Representative, but will not object to a Service Payment of up to \$10,000.00 consistent with this Agreement if approved by the Court. This Settlement is not contingent on the approval of the Service Payment, and in the event that the Court does not approve the requested Service Payment, or in the event that the Court awards a Service Payment in an amount that is less than the amount requested by Class Counsel, any amount not approved shall become part of the Net Settlement Amount for distribution to Qualified Claimants.

## 5.7 Notice and Administration Costs.

5.7.1 The Claims Administrator shall provide Notice to the Settlement Class as described in Section 7. All amounts for Notice and Administration Costs payable under this Settlement shall be paid from the Class Settlement Amount. The Claims Administrator shall provide an estimate for the Notice and Administration costs, which shall be submitted for Court approval as part of the Motion for Preliminary Approval. The Parties agree that the actual Notice and Administration Cost shall not exceed that Court-approved figure unless the Court approves a request for additional Notice and Administration Costs. In the event that the actual Notice and Administration Costs are less than this estimate, any remaining Notice and Administration Costs shall be redistributed to Qualified Claimants, or if doing so is not feasible, Class Counsel and Walmart Counsel shall meet and confer as to options for the balance and shall submit a proposal for approval by the Court (though none of these remaining funds shall revert to Walmart).

5.8 Each recipient of any monies paid in accordance with this Agreement is responsible for any taxes associated with the monies received by that recipient, provided however that Walmart agrees to pay 100% of the employer's share of any applicable payroll taxes associated with payments made to Qualified Claimants in addition to and separate from the Class Settlement Amount. The Settlement Class Representative, on behalf of himself and the Settlement Class Members, acknowledges and agrees that he has not relied upon any advice from Walmart or Class Counsel as to the taxability of the payments received pursuant to this Settlement Agreement. 65% of the amounts paid in connection with Claim Forms submitted by Qualified Claimants shall be treated as wages for the purposes of withholding all applicable local, state and federal taxes, and 35% shall be treated as remuneration for damages separate and distinct from lost wages, including but not limited to liquidated damages.

5.9 By giving such direction to the Claims Administrator regarding tax withholdings on the final payments of Settlement Class Members, the Parties and their counsel are not providing Settlement Class Members, the Claims Administrator, or anyone else with legal or tax advice about the applicable taxes that must be paid under federal, state, or local law. The QSF shall be responsible for issuing appropriate tax forms to Settlement Class Members, consistent with this Agreement.

## **6. PROGRAMMATIC RELIEF**

6.1 Prior to the Final Approval Date, Walmart will revise its military leave policy applicable to Walmart associates in the United States to provide, subject to any modifications required by state law, associates with 30 days of fully paid military leave each calendar year and to further provide that after an associate has received his or her 30 days of fully paid military leave in a calendar year, if an associate takes an additional amount of military leave in that calendar year and that associate's pay as provided by the military is less than his or her Walmart pay, Walmart will, assuming all other conditions and requirements are met, pay the difference between the associate's Walmart pay and the pay provided by the military for that additional period of military leave, not to exceed 12 months in a single continuous assignment. Class Counsel agrees that the revised military leave policy is consistent with USERRA.

6.2 Nothing in this Agreement prohibits Walmart from further modifying its military leave policy to the extent Walmart, in its sole discretion, determines that modifications are appropriate for business, legal or other reasons. Provided, however, that in the event that prior to December 31, 2022, Walmart implements a change to its military leave policy to decrease the number of days in a calendar year during which associates are eligible to receive full pay for military leave, Walmart will advise Class Counsel of such changes at least 14 days before such changes are implemented.

## **7. NOTICE TO THE SETTLEMENT CLASS MEMBERS**

7.1 The Claims Administrator shall provide notice of the Settlement to Settlement Class Members as follows:

7.1.1 Within thirty (30) days of the date on which the District Court enters an order granting preliminary approval of the Settlement, or on another date set by the Court, Walmart shall provide the Claims Administrator and Class Counsel with the Settlement Class List in the form of an Excel chart listing the names, last known addresses and telephone numbers for the Previously Identified Settlement Class Members, as that information exists in Walmart's records. On request of the Claims Administrator, Walmart will separately provide Social Security Numbers to the Claims Administrator only to the extent needed for purposes of notice and administration, such as to locate updated addresses for Notice Packets that are returned as undeliverable, to confirm information provided in a Claim Form and to process settlement payments for Approved Claims.

7.1.2 Within twenty (20) business days of the date on which the Claims Administrator receives the Settlement Class List from Walmart, or on another date set by the Court (the "Notice Date"), using the data provided by Walmart in the Settlement Class List (as supplemented by any more current information on any Previously Identified Settlement Class Member that may be available from Class Counsel), the Claims Administrator will send the Notice Packet by first class mail (including a postage-paid return envelope) to each Previously Identified Settlement Class Member. The Claims Administrator will send a reminder postcard by first class mail half-way through the Notice period. Prior to the mailing of the Notice Packet to the Previously Identified Settlement Class Members, the Claims Administrator shall attempt to confirm the accuracy of the addresses through the United States Post Office's

National Change of Address database, and shall mail the Notice Packet to any updated address obtained therefrom.

7.1.3 Except as provided in Sections 7.1.4 and 7.1.5 below, the Notice Period for all Settlement Class Members shall be ninety days from the Notice Date.

7.1.4 If any Notice Packet is returned as undeliverable for a Previously Identified Settlement Class Member, the Claims Administrator shall promptly attempt to locate such Settlement Class Member through an electronic search using the Social Security number and/or former address of that person, and shall promptly mail an additional Notice Packet to each such person. The Claims Administrator will attempt up to two re-mailings per Settlement Class Member.

7.1.5 The Notice Packet will contain a URL to a web site to be established and maintained by the Claims Administrator that will provide information regarding the Settlement including copies of the Notice Packet and directions as to how Settlement Class Members may submit their Claim Forms electronically and in a secure manner and how Self-Identifiers may obtain a Notice and Claim Form.

7.1.6 The Notice will also be published in the following manners: through advertisements on various social media platforms to servicemembers and veterans, with an emphasis on those who have a current or former affiliation with Walmart, and through advertisements in military service-oriented publications such as the Military Times and Stars and Stripes. As part of the Preliminary Approval Motion, Plaintiff shall submit a proposed plan for publication notice and a declaration from the Claims Administrator describing how it will execute that plan. Walmart and Class Counsel shall have the right to review, comment on and approve the proposed publication notice plan, including the content, text and placement of any banner or other social media advertising.

## **8. CLASS ACTION FAIRNESS ACT NOTICE**

8.1 Walmart shall provide CAFA Notice to the appropriate governmental authorities, including the Department of Justice, Department of Labor and the Attorneys General and Departments of Labor of all states in which any of the Class Members reside in accordance with the Class Action Fairness Act (“CAFA”). Walmart shall pay for the cost of providing the CAFA Notice separate from and in addition to the Class Settlement Amount.

8.2 Walmart will provide Co-Lead Class Counsel with a copy of the as-sent CAFA Notice.

## **9. OPT-OUT PROCESS**

9.1 A Settlement Class Member who wishes to exclude herself or himself from this Settlement and from the release of claims pursuant to this Settlement shall submit a timely and valid Request to Opt Out. To be timely, the Parties will propose to the District Court that the Request to Opt Out must be filed with the Claims Administrator within ninety (90) days after the Notice Date. To be valid, the Parties will propose to the District Court that the Request to Opt Out shall (1) contain the words “I wish to be excluded from the Settlement Class in the Walmart Unpaid Military Leave Settlement” or similar language; (2) contain the Settlement Class Member’s name and other information to confirm



employment at Walmart and other requirements for membership in the Settlement Class and (3) be signed and dated.

9.2 A Settlement Class Member who submits a timely Request to Opt Out is not eligible to recover a share of the Net Settlement Amount. The Claims Administrator shall maintain a list of persons who have sent Requests to Opt Out and shall provide such list to Walmart's Counsel and Co-Lead Class Counsel upon request. The Claims Administrator shall retain the originals of all Requests to Opt Out (including the envelopes with the postmarks) received from Settlement Class Members, and shall provide copies of all Requests to Opt Out to Walmart's Counsel and Co-Lead Class Counsel within three (3) business days of receipt. Walmart retains the right to assert any and all defenses to the claims of persons who opt out from this Settlement. Class Counsel shall file the Requests to Opt Out with the Court in advance of or in conjunction with Plaintiff's motion for final approval of the Settlement (or at another date set by the District Court), with any sensitive personal information redacted.

## **10. OBJECTION PROCESS**

10.1 A Settlement Class Member who wishes to object to the Settlement must timely submit to the Claims Administrator or the Court a valid objection, in writing, on or before ninety (90) days after the Notice Date (or by the date set by the District Court, if different). To be considered timely, the objection must be postmarked or otherwise received by the Claims Administrator or the Court on or before the deadline. To be considered valid, the Parties will propose to the District Court that an objection must (1) be from a Settlement Class Member, (2) be in writing and contain the words "I object to the Walmart Unpaid Military Leave Settlement," or similar language (3) include the objector's name, address, and other information necessary to confirm employment at Walmart (such as Social Security Number) and other requirements for membership in the Settlement Class (such as proof of military service), and (4) be signed and dated. The Parties will propose to the District Court that the objection must state the basis for the objection, including why the objector believes the Settlement is not in the best interests of the Settlement Class Members, along with any and all documents that support the objection. The objection must also state whether or not the objector intends to appear at the final approval hearing. Additional instructions regarding how to object to the Settlement shall be contained in the Notice. A Settlement Class Member who submits a Request to Opt Out is not eligible to object to the Settlement.

10.2 The Claims Administrator shall maintain a list of persons who have filed objections and shall provide such list to Walmart's Counsel and/or Co-Lead Class Counsel upon request. To the extent that Objections are sent to the Claims Administrator, the Claims Administrator shall retain the originals of all objections (including the envelopes with the postmarks) received from Settlement Class Members, and shall provide copies of all objections to Walmart's Counsel and Co-Lead Class Counsel within three (3) business days of receipt. Co-Lead Class Counsel shall file the Objections with the Court in advance of or in conjunction with the motion for final approval of the Settlement (or at another date set by the District Court), with any sensitive personal information redacted.

10.3 Subject to the approval of the Court, Settlement Class Members who do not file and serve timely and valid written objections in accordance with the procedures set forth in this Agreement and the Notice shall be deemed to have waived any objections to the Settlement and shall forever be foreclosed from making any objection (whether by appeal or otherwise) to any aspect of the

Settlement, including, without limitation, the fairness, reasonableness, or adequacy of the proposed Settlement or the Court's award of Attorneys' Fees and Litigation Expenses and a Service Payment.

## **11. FUNDING AND DISTRIBUTION PROCESS**

11.1 The Class Settlement Amount shall be funded through a QSF in accordance with this Agreement. The timing of the payments by Walmart to the QSF are as follows:

11.1.1 Within ten (10) business days following the District Court's grant of preliminary approval, or within ten (10) business days following receipt by Walmart of the information needed to transfer funds to the QSF (including wire transfer instructions and W9 for the QSF), whichever is later, Walmart shall transfer the estimated Notice and Administration Costs to the QSF. In the event that the Settlement Effective Date does not occur, any amounts not actually used by the Claims Administrator for Notice and Administration Costs shall be refunded to Walmart.

11.1.2 If as of the Settlement Effective Date the Claims Administrator has made its final determination of the Class Settlement Amount in accordance with Section 5.4.4.8, Walmart shall transfer the balance of the Class Settlement Amount to the QSF within ten (10) business days following the Settlement Effective Date or within ten (10) business days following Walmart's receipt of the final calculation from the Claims Administrator, whichever is later. However, if as of the Settlement Effective Date, the Claims Administrator has not yet made its final determination of the Class Settlement Amount in accordance with Section 5.4.4.8, Walmart shall initially transfer the balance up to the Floor and then do a second transfer of the additional balance up to the Class Settlement Amount. Any additional amounts to be transferred by Walmart for the employer's share of taxes shall be transferred by Walmart directly to the Claims Administrator and not to the QSF.

11.2 The Claims Administrator will distribute the money in the QSF by making the following payments:

11.2.1 Paying the amount awarded by the Court for Attorneys' Fees and Litigation Expenses within three (3) business days after the receipt of funds transferred to the QSF by Walmart pursuant to Section 11.1.2. If additional time is needed to determine the final amount of the Attorneys' Fees to be paid, the minimum Attorneys' Fees and Litigation Expenses shall be paid to Class Counsel within three (3) business days after the final amount of Attorneys' Fees is determined.

11.2.2 Paying the amount awarded by the Court for the Service Payment to the Settlement Class Representative within three (3) business days after the receipt of funds transferred to the QSF by Walmart pursuant to Section 11.1.2.

11.2.3 Paying Qualified Claimants their final payments from the Net Settlement Amount within thirty (30) days of the receipt of the Class Settlement Amount, unless additional time is needed to process Claims and determine the Final Payments, in which event the Parties shall meet and confer regarding a reasonable date for distribution.

11.3 Qualified Claimants will have one-hundred and eighty (180) days from the date the settlement checks are mailed to cash their settlement checks. Twenty (20) days before the close of the one-hundred and eighty (180) day period for Qualified Claimants to redeem their final payments, the Claims Administrator will provide Class Counsel with the names and contact information, including (1) last known addresses, (2) last known telephone numbers, and (3) if readily available, last known email addresses, for all Qualified Claimants who did not cash their settlement checks. Class Counsel may then either contact those Qualified Claimants to encourage them to cash their checks or instruct the Claims Administrator to contact those Qualified Claimants.

11.4 At the expiration of the period for redeeming final payments as set forth in Section 11.3, the Claims Administrator shall advise Walmart's Counsel and Co-Lead Class Counsel what amount, if any, remains in the QSF. If it is economically feasible to do so, any such remaining funds will be redistributed to those Settlement Class Members who cashed their settlement checks consistent with each Settlement Class Member's pro rata share of the Net Settlement Amount. If the remaining funds are not economically feasible to redistribute, Class Counsel and Walmart Counsel shall meet and confer as to options for the balance and shall submit a proposal for approval by the Court.

## **12. QUALIFIED SETTLEMENT FUND**

12.1 As required under this Agreement, Walmart shall transfer the required portions of the Class Settlement Amount to a fund, account or trust constituting a Qualified Settlement Fund ("QSF"), to be held as a separate trust as described in Treasury Regulation § 1.468B-1, 26 C.F.R. § 1.468B-1. The Claims Administrator, in coordination with Class Counsel and Walmart, shall take such steps as shall be necessary to create and qualify the QSF under §468B of the Internal Revenue Code, 26 U.S.C. §468B, and the regulations promulgated pursuant thereto. Walmart shall be considered the "transferor" within the meaning of Treasury Regulation § 1.468B-1(d)(1). The Claims Administrator shall be the "administrator" within the meaning of Treasury Regulation § 1.468B-2(k)(3). The Parties shall cooperate in securing an order of the Court to establish the QSF in accordance with the terms hereof in conjunction with its preliminary approval of the Settlement and Notice as described in this Agreement. The Court shall retain jurisdiction over the administration of the QSF. Walmart shall supply to the Claims Administrator and to the Internal Revenue Service the statement described in Treasury Regulation § 1.468B-3(e)(2) no later than February 15th of the year following each calendar year in which Walmart makes a transfer to the QSF. It is intended that the transfers to the QSF will satisfy the "all events test" and the "economic performance" requirement of § 461(h)(1) of the Internal Revenue Code, and Treasury Regulation § 1.461-l(a)(2). Accordingly, Walmart shall not include the income of the QSF in its income. Rather, the QSF shall be taxed on its modified gross income, excluding the sums transferred to it, and shall make payment of resulting taxes from its own funds. In computing the QSF's modified gross income, deductions shall be allowed for its administrative costs and other deductible expenses incurred in connection with the operation of the QSF, including, without limitation, state and local taxes and legal, accounting, and other fees relating to the operation of the QSF.

12.2 Upon establishment of the QSF, the Claims Administrator shall apply for an employer identification number for the QSF utilizing Internal Revenue Service Form SS-4 and in accordance with Treasury Regulation § 1.468B-2(k)(4).

12.3 If requested by either Walmart or the Claims Administrator, the Claims Administrator, the QSF, and Walmart shall fully cooperate in filing a relation-back election under Treasury Regulation § 1.468B-1(U)(2) to treat the QSF as coming into existence as a settlement fund as of the earliest possible date.

12.4 Following its deposits as described in Section 11 of this Agreement, and other than as specifically set forth herein, Walmart shall have no financial obligation or liability whatsoever with respect to the notifications to the Class required hereunder, the processing of Claims and Opt-Out Letters, the allowance or disallowance of claims by Claimants, payments to Class Counsel, investment of QSF funds, payment of federal, state, and local income, employment, unemployment, excise, and other taxes imposed on the QSF or its disbursements, or payment of the administrative, legal, accounting, or other costs occasioned by the use or administration of the QSF, since it is agreed that such deposits shall fully discharge Walmart's obligations to Claimants and Class Counsel and for expenses of administration in respect to the disposition of the Class Settlement Amount hereunder. Rather, the Claims Administrator, with oversight by Co-Lead Counsel, shall have sole authority and responsibility for the administration of such funds and income thereon, disbursement to Claimants and Class Counsel, and payment of taxes and administrative costs in accordance with the provisions hereof, subject only to the rights of Walmart or Class Counsel to seek redress for any breach of the terms hereof.

12.5 The Claims Administrator shall cause to be filed, on behalf of the QSF, all required federal, state, and local tax returns, information returns and tax withholdings statements in accordance with the provisions of Treasury Regulation § 1.468B-2(k)(1) and Treasury Regulation § 1.468B-2(1)(2)(ii). The Claims Administrator may, at the expense of the QSF, and with the approval of Co-Lead Class Counsel, retain legal counsel and an independent, certified public accountant to consult with and advise the Claims Administrator or the QSF with respect to the preparation and filing of such materials and the federal, state and local tax compliance of the QSF. Either Walmart independently or the Claims Administrator (with the approval of Co-Lead Class Counsel), independently or jointly, may, but are not required to, apply to the Internal Revenue Service and/or any applicable state taxing authority for an advance ruling as to any issue pertinent to the qualification of the QSF under Internal Revenue Code § 468B and Treasury Regulations promulgated thereunder, its tax status under applicable state law, and/or its tax payment, reporting, and withholding duties, so long as Walmart and the remaining Parties are reasonably satisfied that such application and ruling will not compromise the confidentiality of settlement evidenced herein as required by this Agreement. Subject to any contrary holdings in any such ruling, Settlement Class Members shall be responsible for payment of appropriate federal, state, and local income taxes on any claim paid out pursuant to this Agreement. The Parties agree that no portion of any distributions from the QSF to the Settlement Class Members is made in satisfaction of any excluded liability as described in Treasury Regulation § 1.468B-1(g) related to Qualified Settlement Funds.

12.6 The taxable year of the QSF shall be the calendar year in accordance with Treasury Regulation § 1.468B-2(i). The QSF shall utilize the accrual method of accounting within the meaning of § 446(c) of the Internal Revenue Code.

12.7 Based on the Claims Administrator's recommendation and with the approval by Walmart and Co-Lead Class Counsel, the QSF may be invested in United States Treasury bills, money market funds primarily invested in the same, or certificates of deposit (CDs), provided that such portions of

the QSF as may reasonably be required to pay current QSF administrative expenses, taxes or disbursements to Claimants or Class Counsel may be deposited in bank accounts which are federally insured to the greatest extent practicable. All federal, state, and local taxes imposed with respect to income earned by, or property of, the QSF, shall be paid from the QSF.

12.8 With the approval of Walmart and Co-Lead Class Counsel, the Claims Administrator may amend, either in whole or in part, any administrative provision of this Section or the trust instrument through which the QSF is established to maintain the qualification of the QSF pursuant to the above-described authorities provided that the rights and liabilities of the Parties hereto and the Class are not altered thereby in any material respect.

### **13. COMPREHENSIVE WAIVER, RELEASE, AND DISMISSAL**

13.1 Subject to final approval by the Court of the Settlement, and for good and valuable consideration set forth herein, the receipt and sufficiency of which is hereby acknowledged, all Releasing Settlement Class Members do hereby irrevocably release, acquit, and forever discharge all of the Releasees of and from any and all rights, demands, charges, complaints, causes of action, obligations, damages, penalties, debts, costs and expenses (other than those payments, costs, and expenses required to be paid pursuant to this Agreement), liens, or liabilities of any and every kind, that were asserted in the Litigation, or that could have been asserted but were not asserted in the Litigation, that arise out of the facts pled in the Complaint in which Plaintiff alleges that Walmart should have provided paid leave for employees who took short-term military leave since October 10, 2004 (attached hereto as **Exhibit B**), in any court or forum, whether known or unknown, whether such allegations were or could have been based on common law or equity, or on any statute, rule, regulation, order, or law, whether federal, state, or local and whether for damages or injunctive or any other kind of relief, under the facts pled in the Complaint (“the Released Claims”). The Released Claims include, but are not limited to, claims for violations of USERRA, 38 U.S.C. § 4316(b).

13.2 On behalf of the Releasing Settlement Class Members, the Settlement Class Representative and Class Counsel understand and agree that the release of the Released Claims is a full and final release applying to both those Released Claims that are currently known, anticipated, or disclosed to the Releasing Settlement Class Members and all those Released Claims that are presently unknown, unanticipated, or undisclosed to any Releasing Settlement Class Member arising out of the facts alleged in the Complaint. In exchange for the good and valuable consideration set forth herein, all Releasing Settlement Class Members further waive any and all rights or benefits that they as individuals or as a class may now have as a result of the alleged facts, circumstances, and occurrences underlying the claims set forth in the Litigation under the terms of Section 1542 (a) of the California Civil Code (or similar statute in effect in any other jurisdiction), which provides as follows:

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

13.3 The Parties acknowledge that this Settlement, including the releases provided in this Section, reflects a compromise of disputed claims.

13.4 Notwithstanding anything to the contrary in this Agreement, the releases herein do not prohibit the Releasing Settlement Class Members from filing a charge or complaint with any state or federal governmental agency, from cooperating in good faith with an investigation by a state or federal governmental agency, or from communicating in good faith with any state or federal governmental agency, provided however, that the Releasing Settlement Class Members do release and relinquish any right to receive any award of back pay, front pay, compensatory damages, or punitive damages that results from such charge, investigation, or communication as to any claims released by this Agreement.

13.5 As part of the motion for final approval, Co-Lead Class Counsel shall request that the Court enter Final Judgment and Final Approval Order, which shall dismiss the Litigation with prejudice, and release the Released Claims as described above, with the exception of any claims that might be retained by Settlement Class Members who exclude themselves from the Settlement, if any. Walmart shall retain any existing defenses to such excluded claims. The Parties agree to cooperate and take all steps necessary and appropriate to obtain preliminary and final approval of this Settlement, to effectuate its terms, and, to the extent of the obligations set forth in this Agreement, to dismiss this Litigation with prejudice. The form of Final Judgment and Final Approval Order agreed to by the Parties, subject to Court approval, is attached as **Exhibit C**.

#### **14. DUTIES OF THE PARTIES WITH RESPECT TO OBTAINING PRELIMINARY COURT APPROVAL OF THE SETTLEMENT**

14.1 Within 14 days after the full Execution of this Agreement, Class Counsel shall file the Complaint attached as **Exhibit B** in the District Court and shall also file this Agreement with the District Court, and as soon as reasonably possible thereafter apply to the District Court for the entry of an order granting preliminary approval of the Settlement Agreement substantially in the following form:

14.1.1 Granting preliminary approval to the Settlement Agreement;

14.1.2 Approving as to form and content the proposed Notices and Notice Plan;

14.1.3 Scheduling a final fairness hearing on the question of whether the proposed Settlement should be finally approved as fair, reasonable, and adequate as to the Settlement Class Members, to be held no sooner than 180 days after the date of the Preliminary Approval Order;

14.1.4 Appointing Outten & Golden LLP and Block & Leviton LLP as Co-Lead Class Counsel and appointing Gupta Wessler PLLC, the Law Office of Thomas G. Jarrard, PLLC, and Crotty & Son Law Firm, PLLC as additional Class Counsel;

14.1.5 Approving Nickolas Tsui as the Settlement Class Representative; and

14.1.6 Approving the entity proposed by the Parties as the Claims Administrator.

14.1.7 Set dates for each of the following: (a) a deadline by which Settlement Class Members must object to the Settlement; (b) a deadline by which Settlement Class Members must Request to Opt Out of the Settlement; (c) a deadline to file motion for final approval of the Settlement, Class Counsel's motion for an award of Attorneys' Fees and Litigation Expenses

and any Service Payment Plaintiff, (d) a deadline for Defendant to provide the Settlement Class List to the Claims Administrator; and (e) a date for the final fairness hearing.

14.2 Walmart shall cooperate with Class Counsel as necessary to obtain preliminary approval.

14.3 The Parties shall continue to take any steps necessary to stay any pending proceedings so as to preserve the status quo in the event that the Settlement Effective Date does not occur. The Parties further agree that while it is expressly recognized that Walmart denies the allegations in the Complaint, Walmart need not file an answer to the Complaint and the Parties will take those steps necessary to ensure that any deadline to answer or otherwise respond to the Complaint is stayed by the Court.

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

15.1 Following preliminary approval by the District Court of the Settlement, and no later than 14 calendar days prior to the final fairness hearing or on another date set by the Court, Class Counsel will submit a motion for final approval, which shall include a proposed Final Judgment and Final Approval Order substantially in the form attached hereto as **Exhibit C**. The proposed Final Judgment and Final Approval Order shall:

15.1.1 Grant final approval to the Settlement, adjudging the terms thereof to be fair, reasonable, and adequate, and directing consummation of its terms and provisions;

15.1.2 Determine Class Counsel's application for Attorneys' Fees and Litigation Expenses;

15.1.3 Decide any Service Payment to the Settlement Class Representative;

15.1.4 Dismiss this Litigation as between the Releasing Settlement Class Members on the one hand, and Walmart on the other hand, with prejudice, and permanently bar the Releasing Settlement Class Members from further prosecuting any of the Released Claims, subject to the Court's continuing jurisdiction described in Section 15.2.

15.1.5 Provide that the District Court shall retain continuing jurisdiction over this action with regard to (a) implementation of this Settlement Agreement, (b) disposition of the QSF, and (c) enforcement and administration of this Settlement Agreement.

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

## **16. MUTUAL FULL COOPERATION**

16.1 The Parties agree to cooperate fully with each other to accomplish the terms of this Settlement, including but not limited to execution of all necessary documents, and to take such other action as may reasonably be necessary to implement the terms of this Settlement. The Parties shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court or otherwise, to effectuate the terms of this Settlement. As soon as practicable after execution of this Settlement, Class Counsel shall, with the assistance and

cooperation of Walmart and its counsel, take all necessary steps to secure the Court's Final Judgment.

## **17. STATEMENT OF NO ADMISSION**

17.1 Nothing contained in this Agreement shall be construed or deemed an admission of liability, culpability, or wrongdoing on the part of Walmart. Walmart further denies liability for any alleged wrongdoing, expressly denies liability for the claims asserted, and denies and does not admit any of the pleaded facts not admitted in the Litigation. Walmart further disagrees that a class in this Litigation is appropriate or authorized under law, other than for purposes of effectuating this Settlement. Nor shall this Agreement constitute an admission by Walmart as to any interpretation of laws or as to the merits, validity, or accuracy of any claims made against it in the Litigation. Likewise, nothing in this Agreement shall be construed or deemed an admission by Plaintiff or the Settlement Class with regards to the validity of any of Walmart's defenses or affirmative defenses. Each of the Parties has entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

17.2 The Parties further agree that this Agreement and all of its Exhibits, any Opt Out Requests or Objections, the Court's actions (including Court orders) related to this Settlement, and all other statements, discussions, negotiations, actions, documents or items (including argument of counsel) undertaken by anyone relating to this Settlement are settlement communications or documents and, as such, they: (a) do not constitute, are not intended to constitute, and will not be deemed to constitute an admission by Defendant as to any violation of any federal, state, or local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or in equity; and (b) shall not be admissible in evidence and shall not be used for any purpose in this Litigation or in any other judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or proceeding, or any other litigation against Defendant for any purpose, including as evidence of any admission by Defendant of any liability with respect to any claim for damages or other relief, or of the appropriateness of class certification or any element thereof, except in an action or proceeding to approve, interpret, or enforce the terms of this Agreement, including the Release.

## **18. VOIDING THE AGREEMENT**

18.1 Except with respect to the provisions of Section 18.2, in the event that this Settlement is not finally approved, or if for any reason the Settlement Effective Date does not occur, the Settlement and this Agreement shall be deemed null, void, and unenforceable and each Party shall retain all of its respective rights as they existed as of the date notice of the Settlement was first provided to the Court, and neither this Agreement, nor any of its accompanying Exhibits or any orders entered by the Court in connection with this Agreement, shall be admissible or used for any purpose in any subsequent proceedings in this Litigation or in any other judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or other proceeding, including any workers' compensation action. Provided, however, Walmart shall not be reimbursed for any monies reasonably spent by the Claims Administrator, or reasonably owed to the Claims Administrator but not yet paid, for Notice and Administration Costs.

18.2 In the event that the Court does not approve the Attorneys' Fees and Litigation Expenses or the Service Payment in the amount requested by Class Counsel, or in the event that the Attorneys'



Fees and Litigation Expenses or Service Payment requested by Class Counsel is reduced, or the Plan of Allocation and Claims Process is modified or the Court modifies any of the deadlines or other dates set forth in this Agreement, such findings or orders shall not be a basis for rendering the entire Settlement Agreement null, void, or unenforceable. Class Counsel retain their right to appeal any decision or order by the Court regarding the Attorneys' Fees and Litigation Expenses.

## **19. SIGNATORIES' AUTHORITY**

19.1 The respective signatories to this Agreement each represent that they are fully authorized to enter into this Settlement on behalf of the respective Parties for submission to the Court for preliminary and final approval.

## **20. NO PRIOR ASSIGNMENTS**

20.1 The Parties represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.

## **21. NOTICES**

21.1 Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given: (i) on the date given, if given by hand delivery; (ii) within one (1) business day, if sent by overnight delivery services such as Federal Express or similar courier; (iii) on the third business day after mailing by United States registered or certified mail, return receipt requested, or (iv) on the day received for delivery by e-mail. All notices given under this Agreement shall be addressed as follows:

### **21.1.1 To the Class:**

Adam T. Klein  
Michael J. Scimone  
Nina T. Martinez  
OUTTEN & GOLDEN LLP  
685 Third Avenue, 25th Floor  
New York, New York 10017  
Telephone: (212) 245-1000  
Fax: (646) 509-2060  
Email: [atk@outtengolden.com](mailto:atk@outtengolden.com); [mscimone@outtengolden.com](mailto:mscimone@outtengolden.com); [nmartinez@outtengolden.com](mailto:nmartinez@outtengolden.com)

R. Joseph Barton  
BLOCK & LEVITON LLP  
1735 20th Street N.W.  
Washington, DC 20009  
Telephone: (202) 734-5458  
Email: [jbarton@blockleviton.com](mailto:jbarton@blockleviton.com)

Peter Romer-Friedman  
GUPTA WESSLER PLLC  
1900 L Street, NW, Suite 312  
Washington, DC 20036  
Telephone: (202) 888-1741  
Email: [peter@guptawessler.com](mailto:peter@guptawessler.com)

Thomas G. Jarrard  
LAW OFFICE OF THOMAS G. JARRARD, PLLC  
1020 N Washington Street  
Spokane, WA 99201  
Telephone: (425) 239-7290  
Email: [tjarrard@att.net](mailto:tjarrard@att.net)

Matthew Crotty  
CROTTY & SON LAW FIRM, PLLC  
905 W. Riverside Ave. Ste. 404  
Spokane, WA 99201  
Telephone: (509) 850-7011  
Email: [matt@crottyandson.com](mailto:matt@crottyandson.com)

21.1.2 To Walmart:

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

## **22. CONFIDENTIALITY**

22.1 Subject to the provisions of Section 23, the negotiations related to this Agreement (including negotiations related to the drafting of this Agreement and any negotiations prior to preliminary approval or between the time of preliminary and final approval) will remain strictly confidential and shall not be discussed with anyone other than the Settlement Class Representative and Walmart, their immediate family, their retained attorneys, their accountants and financial institutions or tax advisers, their retained consultants, and the Court, unless otherwise agreed to by Co-Lead Class Counsel and Walmart or unless otherwise ordered by the Court. Notwithstanding the other provisions of this Section, Walmart may disclose the Settlement in filings that it is required to make with the Securities and Exchange Commission, including 10-Q and 10-K filings, or in other disclosures to investors.

## **23. COMMUNICATIONS**

23.1 Plaintiff, Class Counsel, and Walmart will cooperate with each other in making positive statements to the media about the Settlement Agreement and Walmart's changes to its military leave policy, including but not limited to issuing a joint press release announcing the Settlement Agreement

when the Complaint and Motion for Preliminary Approval are filed. The Parties agree that the press release will be issued through a newswire service in advance of such filings and may be further disseminated by the Parties after the press release is issued through the newswire service. If the Parties or their counsel are contacted by the media about the Complaint, the Settlement, or other pleadings or actions in the case, they may provide factual and legal information about the case and offer comments that are consistent with the statements in the press release. Nothing in this Section shall override the obligations of counsel for the Parties under any applicable professional rules of conduct.

## **24. DOCUMENTS AND DISCOVERY**

24.1 The destruction or return of documents and discovery shall be governed by the Confidentiality Agreement that the Parties entered into by the Parties on September 23, 2019, except that Class Counsel will be entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials would otherwise be required to be destroyed under the Confidentiality Agreement.

## **25. MISCELLANEOUS PROVISIONS**

25.1 Construction. The Parties agree that the terms and conditions of this Settlement are the result of lengthy, intensive arms-length negotiations between the Parties and their counsel and that this Settlement shall not be construed in favor of or against any Party by reason of the extent to which any Party or her or his counsel participated in the drafting of this Settlement.

25.2 Captions and Interpretations. Paragraph titles or captions contained in this Agreement are a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision of this Agreement. Each term of this Agreement is contractual and not merely a recital.

25.3 Dates. All dates for events provided in this Agreement based on a number of calendar days, unless the date is expressed in terms of “business days,” which in the case of business days shall be calculated using the same approach as calculating days under Rule 6 of the Federal Rules of Civil Procedure.

25.4 Modification. This Agreement may not be changed, altered, or modified, except in a writing signed by Walmart and Co-Lead Class Counsel and will not be effective unless approved by the Court. Notwithstanding the foregoing, the Parties agree that any dates contained in this Agreement may be modified by agreement of Walmart and Co-Lead Class Counsel without Court approval except to the extent that the Court has established a specific date. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Walmart and Co-Lead Class Counsel.

25.5 Integration Clause. This Agreement, the Exhibits hereto, and any other documents delivered pursuant hereto contain the entire agreement between the Parties relating to the resolution of the Litigation, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party’s legal counsel, are merged

in this Agreement. No rights under this Settlement may be waived except in writing and signed by the Party against whom such waiver is to be enforced (and in the case of Plaintiff or the Class, by Co-Lead Class Counsel).

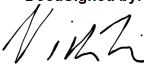
25.6 Binding on Assigns. This Settlement shall be binding upon, and inure to the benefit of, the Releasing Settlement Class Members and Walmart and their respective heirs, trustees, executors, administrators, successors, and assigns.

25.7 Counterparts. This Agreement may be executed by facsimile signature and in any number of counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one and the same Agreement, which shall be binding upon and effective as to all Parties.

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

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

For Plaintiff:

DocuSigned by:  
  
0795234C1F28446...

NICKOLAS TSUI  
PLAINTIFF

12/31/2020

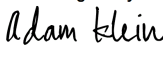
DATE



R. JOSEPH BARTON  
CLASS COUNSEL AND COUNSEL FOR PLAINTIFF

12/31/2020

DATE

DocuSigned by:  
  
D568A44610A0448...

ADAM KLEIN  
CLASS COUNSEL AND COUNSEL FOR PLAINTIFF

12/31/2020

DATE

For Walmart:



NAOMI BEER  
COUNSEL FOR DEFENDANT

12/31/2020

DATE

# **EXHIBIT A-1**

**CLAIM FORM**

**THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

NICKOLAS TSUI, on behalf of himself and  
all others similarly situated,

Plaintiff,

v.

WALMART INC.,

Defendant.

Civil Action No. \_\_\_\_

**You may be eligible to receive benefits or payments from a  
court-approved settlement if you took Short-Term Military Leave from  
Walmart between October 10, 2004 and December 31, 2020**

**Please read this Claim Form carefully.**

**To be eligible for such benefits or payments you must submit a Claim  
Form online at [www.WalmartUSERRASettlement.com](http://www.WalmartUSERRASettlement.com) to be received by the  
Settlement Administrator no later than **XX**, 2021.**

**[FIRST NAME] [LAST NAME]**

**[ADDRESS]**

**[CITY] [STATE] [ZIP]**

**Claim ID: [CLAIM ID]**

**Password: [INITIALS AND GENERATED NUMBER CODE]**

Walmart's records indicate that you were a Walmart employee who may have also served in the military sometime between October 10, 2004 and December 31, 2020 and that you may have taken Short-Term Military Leave (less than 30 consecutive days) from your employment with Walmart during that time.

Walmart maintains records of such leaves for hourly associates since 2013 and for salaried associates since 2016. The years that Walmart has identified during which you worked at Walmart and may have also taken Short-Term Military Leave are the following:

**[INSERT EACH YEAR FROM WALMART'S RECORDS].**

There may be additional years during which you worked at Walmart and took Short-Term Military Leave. Below you will be asked to identify all years that you took Short-Term Military Leave from Walmart between October 10, 2004 and December 31, 2020.

More information, including copies of the Notice sent to you by mail, is available at [www.WalmartUSERRASettlement.com](http://www.WalmartUSERRASettlement.com). Please read the Notice carefully before completing this Claim Form.

**TO MAKE A CLAIM FOLLOW THESE INSTRUCTIONS:**

It is important to read and follow these instructions carefully. Failure to follow these instructions may result in your losing eligibility for benefits to which you might otherwise be entitled.

You must complete each part and sign and date the Claim Form. You must truthfully respond to the questions in the Claim Form. The information that you provide regarding years of employment at Walmart and military service will be verified by the Claims Administrator.

**This Claim Form must be submitted online at [www.WalmartUSERRASettlement.com](http://www.WalmartUSERRASettlement.com) or mailed to the Claims Administrator at XXXX, XXXX, XXXXX no later than XX, 2021.**

Claim Forms that are deemed late by the Claims Administrator will not be accepted. Failure to submit a complete and timely Claim Form will result in your ineligibility to receive a payment from this Settlement.

To submit a Claim Form online, log on to the case website and enter your Claim ID [INSERT CLAIM ID] and password [INITIALS AND GENERATED NUMBER CODE]. Alternatively, complete and mail this Claim Form to the Claims Administrator at XXXXX.

Each Settlement Class Member may only submit one Claim Form, and each eligible Settlement Class Member whose claim is approved may receive only one payment under the Settlement. However, although you may receive only one payment under the Settlement, your Settlement Payment will include compensation for each calendar year during which you took Short-Term Military Leave while working at Walmart from October 10, 2004 to December 31, 2020, as verified by the Claims Administrator.

**PART 1: PERSONAL INFORMATION (Required)**

\_\_\_\_\_  
Name (First, Middle, Last)

\_\_\_\_\_  
Email

\_\_\_\_\_  
Mobile or Home Phone



Street Address Apartment Number

City State Zip Code

Walmart Identification Number (WIN Number) (if known)

Date of Birth

Last four digits of Social Security Number

Please note that it is your responsibility to keep updated contact information including a current address on file with the Claims Administrator in case the Claims Administrator needs to contact you with questions about your Claim Form. This is also the address that will be used to mail any payment and any applicable tax forms. Please make sure to notify the Claims Administrator of any changes.

## **PART 2: EMPLOYMENT AT WALMART**

Please check the boxes below to identify each year in which you worked at Walmart for some period of time between October 10, 2004 and December 31, 2020.

2004		2013	
2005		2014	
2006		2015	
2007		2016	
2008		2017	
2009		2018	
2010		2019	
2011		2020	
2012			

## **PART 3: SHORT-TERM MILITARY LEAVE (Required):**

For any year that you identified in Part 2 above as having worked at Walmart, please check the boxes below for each year between October 10, 2004 and December 31, 2020 in which you took Short Term Military Leave (less than 30 consecutive days) to serve in the military reserve or national guard.

If Walmart has a record of you taking Short-Term Military Leave from Walmart, then the years Walmart has identified for you taking such leave are listed on the first page of this

Claim Form. Those years will automatically be counted as part of your Claim Form. **Please make sure to identify below any additional years in which you took Short Term Military Leave from Walmart, even if not identified on the first page of this Claim Form.**

2004		2013	
2005		2014	
2006		2015	
2007		2016	
2008		2017	
2009		2018	
2010		2019	
2011		2020	
2012			

**PART 4: Evidence of Military Service (Required for Some Settlement Class Members)**

Hourly associates who took military leave between 2013 and 2020 and salaried associates who have taken military leave from between 2016 and 2020 have been identified by Walmart as having been in the military during their employment with Walmart.

If you received this Claim Form and it identifies one or more year that you took Short-Term Military Leave from Walmart (see page one of this form), then you are **not** required to submit evidence of your military service at this time. However, if the Claims Administrator asks you to submit this evidence in the future, you must do so.

If you are required in the future to provide evidence of your military service when you were employed by Walmart, you may provide such evidence by submitting a DD-214, military pay statements, drill schedules, rosters, attendance records, or any other record from the military or federal government that shows the year(s) that you served in the military.

**PART 5: YOUR SIGNATURE (Required)**

In order to submit a valid claim and be eligible for benefits or payments related to any Short-Term Military Leave you took from Walmart between October 10, 2004 and December 31, 2020, you must sign and date this Claim Form.

I, (print your name) \_\_\_\_\_, declare,

under penalty of perjury, that the information I have provided on this form and any supplemental pages submitted with this form is true and correct to the best of my knowledge, and, if called upon to testify under oath, I would testify that the information I have provided is true. I understand that intentionally submitting false information on this form is a violation of the law.

Dated: \_\_\_\_\_ Signature: \_\_\_\_\_

## **PART 6: QUESTIONS?**

If you have any questions, please visit [www.WalmartUSERRASettlement.com](http://www.WalmartUSERRASettlement.com), or write or call the Settlement Administrator at [ADDRESS]; Toll-Free XX.

If you have questions about the proposed Settlement, you can contact Class Counsel:

<i>Lead Class Counsel</i>	<i>Additional Class Counsel</i>
<p>Adam T. Klein  OUTTEN &amp; GOLDEN LLP  685 Third Avenue, 25th Floor  New York, New York 10017  Telephone: (212) 245-1000  Fax: (646) 509-2060  Email: <a href="mailto:atk@outtengolden.com">atk@outtengolden.com</a></p> <p>R. Joseph Barton  BLOCK &amp; LEVITON LLP  1735 20th Street N.W.  Washington, DC 20009  Telephone: (202) 734-5458  Email: <a href="mailto:WalmartUSERRA@blockleviton.com">WalmartUSERRA@blockleviton.com</a></p>	<p>Peter Romer-Friedman  GUPTA WESSLER PLLC  1900 L Street, NW, Suite 312  Washington, DC 20036  Telephone: (202) 888-1741  Email: <a href="mailto:peter@guptawessler.com">peter@guptawessler.com</a></p> <p>Thomas G. Jarrard  LAW OFFICE OF THOMAS G.  JARRARD, PLLC  1020 N Washington Street  Spokane, WA 99201  Telephone: (425) 239-7290  Email: <a href="mailto:tjarrard@att.net">tjarrard@att.net</a></p> <p>Matthew Z. Crotty, Esq.  CROTTY &amp; SON LAW FIRM, PLLC  905 W. Riverside Ave., Suite 404  Spokane, WA 99201  Telephone: (509) 850-7011  <a href="mailto:matt@crottyandson.com">matt@crottyandson.com</a></p>

# **EXHIBIT A-2**

## **CLAIM FORM**

### **THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS**

NICKOLAS TSUI, on behalf of himself and  
all others similarly situated,

Plaintiff,

v.

WALMART INC.,

Defendant.

Civil Action No. \_\_\_\_

**You may be eligible to receive benefits or payments from a court-approved settlement if you took Short-Term Military Leave from Walmart between October 10, 2004 and December 31, 2020**

**Please read this Claim Form carefully.**

**To be eligible for such benefits or payments you must submit a Claim Form online at [www.WalmartUSERRASettlement.com](http://www.WalmartUSERRASettlement.com) to be received by the Settlement Administrator no later than XX, 2021.**

More information, including copies of the Notice sent to you by mail and e-mail, is available at [www.WalmartUSERRASettlement.com](http://www.WalmartUSERRASettlement.com). Please read the Notice carefully before completing this Claim Form.

#### **TO MAKE A CLAIM FOLLOW THESE INSTRUCTIONS:**

It is important to read and follow these instructions carefully. Failure to follow these instructions may result in your losing eligibility for benefits to which you might otherwise be entitled.

You must complete each part and sign and date the Claim Form. You must truthfully respond to the questions in the Claim Form. The information that you provide regarding years of employment at Walmart and military service will be verified by the Claims Administrator.

**This Claim Form must be submitted online at [www.WalmartUSERRASettlement.com](http://www.WalmartUSERRASettlement.com) or mailed to the Claims Administrator at XXXX, XXXX, XXXXX no later than XXXX XX, 2021.**

Claim Forms that are deemed late by the Claims Administrator will not be accepted. Failure to submit a complete and timely Claim Form will result in your ineligibility to receive a payment from this Settlement.

Each Settlement Class Member may only submit one Claim Form, and each eligible Settlement Class Member whose claim is approved may receive only one payment under the Settlement. However, although you may receive only one payment under the Settlement, your Settlement Payment will include compensation for each calendar year during which you took Short-Term Military Leave while working at Walmart from October 10, 2004 to December 31, 2020, as verified by the Claims Administrator.

**PART 1: PERSONAL INFORMATION (Required)**

\_\_\_\_\_  
Name (First, Middle, Last)

\_\_\_\_\_  
Email

\_\_\_\_\_  
Mobile or Home Phone

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Apartment Number

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

\_\_\_\_\_  
Walmart Identification Number (WIN Number) (if known)

\_\_\_\_\_  
Date of Birth

\_\_\_\_\_  
Your full Social Security Number

Please note that it is your responsibility to keep updated contact information including a current address on file with the Claims Administrator in case the Claims Administrator needs to contact you with questions about your Claim Form. This is also the address that will be used to mail any payment and any applicable tax forms. Please make sure to notify the Claims Administrator of any changes.

**PART 2: EMPLOYMENT AT WALMART**

Please check the boxes below to identify each year in which you worked at Walmart for some period of time between October 10, 2004 and December 31, 2020.

2004		2013	
2005		2014	
2006		2015	
2007		2016	
2008		2017	
2009		2018	
2010		2019	
2011		2020	
2012			

**PART 3: SHORT-TERM MILITARY LEAVE (Required):**

For any year that you identified in Part 2 above as having worked at Walmart, please check the boxes below for each year between October 10, 2004 and December 31, 2020 in which you also took Short Term Military Leave (less than 30 consecutive days) to serve in the military reserve or national guard.

2004		2013	
2005		2014	
2006		2015	
2007		2016	
2008		2017	
2009		2018	
2010		2019	
2011		2020	
2012			

**PART 4: Evidence of Military Service (Required for Some Settlement Class Members)**

If you did not receive the Notice Packet and Claim Form in the mail from the Claims Administrator, you are required to submit evidence of the years that you engaged in military service for the years that you identified in response to Part 3 above. You may provide such evidence by submitting a DD-214, military pay statements, drill schedules, rosters, attendance records, or any other record from the military or federal government

that shows the year(s) that you served in the military. **PLEASE SUBMIT THOSE RECORDS WITH THIS CLAIM FORM. If you need additional time to obtain those records, you can first submit the Claim Form and then submit your military records separately.**

#### **PART 5: YOUR SIGNATURE (Required)**

In order to submit a valid claim and be eligible for benefits or payments related to any Short-Term Military Leave you took from Walmart between October 10, 2004 and December 31, 2020, you must sign and date this Claim Form.

I, (print your name) \_\_\_\_\_, declare, under penalty of perjury, that the information I have provided on this form and any supplemental pages submitted with this form is true and correct to the best of my knowledge, and, if called upon to testify under oath, I would testify that the information I have provided is true. I understand that intentionally submitting false information on this form is a violation of the law.

Dated: \_\_\_\_\_ Signature: \_\_\_\_\_

#### **PART 6: QUESTIONS?**

If you have any questions, please visit [www.WalmartUSERRASettlement.com](http://www.WalmartUSERRASettlement.com), or write or call the Settlement Administrator at [ADDRESS]; Toll-Free XX.

If you have questions about the proposed Settlement, you can contact Class Counsel:

<i>Lead Class Counsel</i>	<i>Additional Class Counsel</i>
<p>Adam T. Klein OUTTEN &amp; GOLDEN LLP 685 Third Avenue, 25th Floor New York, New York 10017 Telephone: (212) 245-1000 Fax: (646) 509-2060 Email: <a href="mailto:atk@outtengolden.com">atk@outtengolden.com</a></p> <p>R. Joseph Barton BLOCK &amp; LEVITON LLP 1735 20th Street N.W. Washington, DC 20009 Telephone: (202) 734-5458 Email: <a href="mailto:WalmartUSERRA@blockleviton.com">WalmartUSERRA@blockleviton.com</a></p>	<p>Peter Romer-Friedman GUPTA WESSLER PLLC 1900 L Street, NW, Suite 312 Washington, DC 20036 Telephone: (202) 888-1741 Email: <a href="mailto:peter@guptawessler.com">peter@guptawessler.com</a></p> <p>Thomas G. Jarrard LAW OFFICE OF THOMAS G. JARRARD, PLLC 1020 N Washington Street Spokane, WA 99201 Telephone: (425) 239-7290 Email: <a href="mailto:tjarrard@att.net">tjarrard@att.net</a></p> <p>Matthew Z. Crotty, Esq. CROTTY &amp; SON LAW FIRM, PLLC 905 W. Riverside Ave., Suite 404 Spokane, WA 99201 Telephone: (509) 850-7011 Email: <a href="mailto:matt@crottyandson.com">matt@crottyandson.com</a></p>



# EXHIBIT B

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION**

NICKOLAS TSUI, on behalf of himself and  
all others similarly situated,

Plaintiff,

v.

WALMART INC.

Defendant.

Civil Action No. \_\_\_\_

**CLASS ACTION COMPLAINT  
JURY TRIAL DEMANDED**

**EXEMPT FROM FILING FEES  
UNDER 38 U.S.C. § 4323(h)(1)**

Plaintiff Nickolas Tsui, on behalf of himself and other similarly situated individuals, by and through his attorneys, alleges as follows:

**INTRODUCTION**

1. This is a class action under the Uniformed Services Employment and Reemployment Rights Act (“USERRA”), 38 U.S.C. § 4301 *et seq.*, on behalf of current and former Associates<sup>1</sup> of Walmart Inc. (“Walmart”) who took short-term military leave from their employment with Walmart but did not receive fully paid leave from Walmart during such periods of short-term military leave

2. Since at least October 10, 2004, Defendant Walmart had a policy and practice of providing fully paid leave to Associates when they take certain short-term leaves-of-absence from their employment with Walmart, but not providing Associates fully paid leave when they take short-term military leave (*i.e.*, military leave that lasts 30 consecutive days or fewer). For example, Walmart has provided fully paid leave to Associates when they take

---

<sup>1</sup> Walmart refers to all persons employed by Walmart as “Associates,” including both hourly and salaried employees. Plaintiff refers to Associates and employees interchangeably in this Complaint.

jury duty leave or bereavement leave (*i.e.*, paid leave at their normal wages or salaries), but has never provided any wages or salaries to Associates who have taken short-term military leave of three days or less. Since 2017, for most types of military leave of four days or more Walmart has paid Associates the difference between their pay at Walmart and their military compensation (“differential pay”). But before 2017, Walmart did not provide such differential pay for most types of military leave of four days or more.

3. By continuing to fully pay Associates during periods of jury duty, bereavement leave, and other comparable forms of short-term leave, while failing to provide fully paid leave for Associates during short-term military leave, Walmart has violated USERRA, 38 U.S.C. § 4316(b).

4. USERRA requires military leave to be treated no less favorably than any other forms of comparable leave that an employer provides to its employees. By providing fully paid leave to Associates who take jury duty leave, bereavement leave, and other comparable forms of leave, Walmart was obligated by USERRA § 4316(b) to do the same for its Associates who take short-term military leave. By failing to do so, Walmart violated USERRA’s mandate to treat military leave no less favorably than other comparable forms of non-military leave.

5. This action seeks a declaration that Walmart violated USERRA § 4316(b) by failing to provide fully paid leave to Plaintiff and members of the proposed Class during periods of short-term military leave, an order requiring Walmart to fully pay its Associates during short-term military leave in the future, so long as Walmart continues to fully pay Associates when they take other forms of comparable leave, and an order requiring Walmart to provide Plaintiff and members of the Class the full pay they should have earned during their periods of short-term military leave, consistent with the requirements of USERRA.

## **JURISDICTION AND VENUE**

6. The Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331, because this action arises under USERRA, a federal law. This Court also has subject matter jurisdiction over the USERRA claim pursuant to 38 U.S.C. § 4323(b)(3), which provides the district courts of the United States with jurisdiction over any USERRA action brought against a private employer. Walmart is a private employer within the meaning of 38 U.S.C. § 4303(4)(A), because it “pays salary or wages for work performed or [] has control over employment opportunities.”

7. Venue is proper in this District under 38 U.S.C. § 4323(c)(2), because Walmart, “the private employer of the person” who has filed this action, “maintains a place of business” in over 30 locations in this District, employing at least hundreds of workers in this District. Venue is also proper in this District pursuant to 28 U.S.C. § 1391(b)(2), as a substantial part of the events giving rise to the claims in this action occurred in this District.

## **INTRA-DISTRICT ASSIGNMENT**

8. Assignment of this case to the Eastern Division of this District is proper because Plaintiff, the only party residing in this District, resides in Dracut, Massachusetts, in Middlesex County, which is located in the Eastern Division of this District. L.R. 40.1(d)(1)(C).

## **PARTIES**

9. Plaintiff Nickolas Tsui is and has been employed by Walmart since May 2009. Tsui is currently employed at a Sam’s Club store operated by Walmart in Hudson, New Hampshire. Tsui joined the Army Reserve in April 2014. Since that time, Tsui has routinely taken short-term military leave to serve in the Army Reserve. Tsui resides in Dracut, Massachusetts. Plaintiff has not received any paid leave when he took short-term military leave from Walmart since 2014.

10. Walmart Inc. is a publicly traded company and, according to Walmart's most recent annual report, as of March 30, 2020, Walmart served 265 million customers per week through its over 11,500 retail stores. Its United States division operates retail stores in all 50 states, Washington D.C., and Puerto Rico. Walmart currently employs more than 1.5 million people in the United States. Walmart is an employer within the meaning of USERRA, as it "pays salary or wages for work performed" and "has control over employment opportunities" for Plaintiff and the proposed Class Members. 38 U.S.C. § 4303(4)(A),

### **CLASS ACTION ALLEGATIONS**

11. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following Class:

- (A) all current and former employees who work or worked for Walmart at a location in a jurisdiction covered by USERRA (i.e., the United States and its territories) from October 10, 2004 to the present; (B) who took Short-Term Military Leave (i.e., 30 days or less) in one or more years during their employment with Walmart from October 10, 2004 to the present, (C) and during such period of Short-Term Military Leave did not receive the regular wages or salary that they would have earned had they continued to work their ordinary work schedules. Excluded from the class are the Judge assigned to the case and any of his or her relatives.

### **Impracticability of Joinder**

12. The Class is so numerous that joinder of all members is impracticable. According to Walmart's most recent annual report, Walmart had 1.5 million U.S. employees. According to Walmart's, Walmart has hired over 320,000 veterans and military spouses since 2013. Walmart Careers, <https://walmartcareerswithamission.com>. Upon information and belief, there are more

than 10,000 former and current Walmart employees who are members of the proposed Class.

13. Walmart currently operates retail locations in all 50 of the United States, Washington D.C., and Puerto Rico. Accordingly, the members of the Class are geographically dispersed across the country.

**Commonality**

14. The central question in this case, which will generate a common answer, is whether Walmart's policy or practice of failing to provide fully paid leave to Associates during periods of military leave, while providing fully paid leave for other comparable forms of non-military leave, violates USERRA, 38 U.S.C. § 4316(b).

15. Plaintiff's claims raise subsidiary common questions, including the following:

- (a) whether Walmart maintains a policy or practice of failing to fully pay its Associates when they take short-term military leave;
- (b) whether Walmart maintains a policy or practice of providing fully paid leave to Associates when they take other forms of non-military leave, such as jury duty, bereavement leave, and sick leave;
- (c) whether under USERRA § 4316(b) short-term military leave is comparable to jury duty, bereavement leave, sick leave, and any other forms of non-military leave for which Walmart has provided normal wages or salaries to its Associates;
- (d) what relief should be awarded, including what types of injunctive and monetary relief; and
- (e) whether Walmart's violations of USERRA were willful, such that it should be required to pay liquidated damages to Plaintiff and the Class Members.

16. Because Walmart adopted and applied a uniform policy or practice of not providing fully paid leave to Associates when they take short-term military leave, these questions will produce common answers for all members of the proposed Class.

17. As Walmart acted in a uniform, systematic manner with respect to the Class, all members of the Class suffered the same type of injury based on a single policy or practice, and resolving the claims of the Class will be based on common legal and factual questions.

18. Because Walmart's policy or practice of failing to provide fully paid leave to Associates when they take short-term military leave, while providing fully paid leave to Associates when they take other comparable forms of leave, was applied uniformly to the Class, the issues relating to the relief that Class Members should receive are also common. To the extent that the policy or practice is found to have violated USERRA, the determination of the amounts to be paid to members of the Class will be formulaic and can be readily calculated.

#### **Typicality**

19. Plaintiff's claims are typical of the other members of the Class, because the claims challenge a uniform policy or practice by which Walmart failed to provide fully paid leave to Associates when they take short-term military leave, while providing fully paid leave to Associates when they take other comparable forms of leave, and because all Class Members all were injured by the same uniform policy or practice.

#### **Adequacy**

20. Plaintiff will fairly and adequately protect the interests of other members of the Class.

21. Plaintiff does not have any conflict with any other member of the Class. Plaintiff understands his obligations as a class representative, has already undertaken steps to fulfill them,

including by negotiating a class action settlement Walmart, and is prepared to continue to fulfill his duties as class representative.

22. Walmart has no unique defenses against the Plaintiff that would interfere with Plaintiff's representation of the Class.

23. Plaintiff is represented by counsel with significant experience in prosecuting class action litigation, including class action litigation involving rights and benefits of servicemembers under USERRA.

**Rule 23(b)(3)**

24. This action can be maintained as a class action under Rule 23(b)(3) of the Federal Rules of Civil Procedure, because the questions of law and fact common to the members of the Class predominate over questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient resolution of this controversy.

25. The common questions of law and fact concern whether Walmart's policy of failing to provide fully paid leave to Associates when they take short-term military leave, while providing fully paid leave to Associates when they take other comparable forms of leave, violated USERRA. As the members of the Class were all Associates of Walmart who took short-term military leave and their compensation was affected by those violations, common questions related to Walmart's liability will necessarily predominate over any individual questions. As the calculation of Class Members' wages and/or salaries during periods of military leave can be readily calculated based on their wage and/or salary rates, and relief primarily consists of a declaration and an order requiring Walmart to pay the Class Members the wages or salaries they are owed consistent with USERRA, common questions as to remedies will likewise predominate over any individual issues.

26. A class action is superior to other available methods for the fair and efficient



resolution of this controversy. The common issues will be efficiently resolved in a single class proceeding rather than multiple proceedings. Class certification is a superior method of proceeding in this action, because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendant's obligations under USERRA and of the remedy that should be provided under USERRA.

27. The following additional factors set forth in Rule 23(b)(3) also support certification.

28. First, the members of the Class have a strong interest in a unitary adjudication of the issues presented in this action for the same reasons that this case should be certified under Rule 23(b)(1). Additionally, many members of the Class are unlikely to have sufficient damages to justify pursuing an individual action in federal court or to obtain counsel to pursue an individual action, but all Class Members would benefit from a class action that obtains relief for all members of the Class.

29. Second, no other litigation concerning Plaintiff's claim that Walmart should have provided paid leave to its Associates when they take short-term military leave has been filed by any other members of the Class.

30. Third, this is an appropriate forum for these claims because, among other reasons, jurisdiction and venue are proper, and Walmart operates over 30 retail locations in this District.

31. Fourth, there are no difficulties in managing this case as a class action.

### **FACTUAL ALLEGATIONS**

#### **Walmart's Policy and Practice Regarding Military Leave**

32. Currently, when a servicemember Associate of Walmart takes military leave of three days or less, Walmart does not provide any paid leave to the Associate. However, when an

Associate of Walmart is required to be absent from his or her employment at Walmart for a brief period of time for any one of a number of non-military reasons, including that the Associate is required to perform jury service or needs to address the death of a family member, Walmart continues to pay the Associate's normal wages or salary during his or her absence. Such wages or salary are provided indefinitely in the case of jury duty leave, and for up to three days in the case of bereavement leave. Upon information and belief, the current practices described in this paragraph have been Walmart's policies or practices since at least October 10, 2004.

33. Upon information and belief, from 2004 to 2008 Walmart did not provide any pay to Associates who took military leave that lasted four days or more; from 2008 through June 2017, Walmart provided differential pay to Associates who took limited types of military leave that lasted four days or more; and from June 2017 to the present Walmart has provided differential pay to Associates who have taken most types of military leave that lasted four days or more. In contrast, upon information and belief, since 2004 Walmart has provided fully paid leave to Associates who took jury duty leave, without offsetting the pay that such Associates received from the government for their jury service.

**USERRA Required Walmart to Provide the Same Rights and Benefits to Employees Who Took Military Leave as Employees Who Took Comparable Forms of Leave**

34. USERRA § 4316(b)(1) provides in relevant part that “a person who is absent from a position of employment by reason of service in the uniformed services shall be”

- (A) deemed to be on furlough or leave of absence while performing such service; and
- (B) entitled to such other rights and benefits not determined by seniority as are generally provided by the employer of the person to employees having similar seniority, status, and pay who are on furlough or leave of absence under a contract, agreement, policy, practice, or plan in effect at the commencement of such service or established while such person performs such service.

38 U.S.C. § 4316(b)(1).

35. Accordingly, if an employer provides non-seniority rights and benefits to similarly situated employees, including compensation, USERRA § 4316(b)(1) requires the employer to provide the same rights and benefits to employees during their military leave. *See id.*; 20 C.F.R. § 1002.150(a). As the Department of Labor’s implementing regulations state, the “most significant factor to compare” two types of leave to determine if they are a “comparable form of leave” under USERRA is “the duration of the leave.” 20 C.F.R. § 1002.150(b). In addition, “other factors such as the purpose of the leave and the ability of the employee to choose when to take the leave should also be considered.” *Id.*

**Walmart Violated USERRA Because it Failed to Provide Fully Paid Leave to Associates When They Took Military Leave, But Provided Fully Paid Leave to Associates When They Took Comparable Forms of Non-Military Leave**

36. Pursuant to Walmart’s policy or practice of failing to provide fully paid leave to Associates during periods of short-term military leave, Walmart failed to provide fully paid leave to Plaintiff and the thousands of members of the Class during each period in which they took short-term military leave since October 10, 2004.

37. Upon information and belief, since at least October 10, 2004, Walmart provided fully paid leave to Associates while they were on leave from their employment with Walmart because of jury duty, and paid up to three days of fully paid leave for Associates who took bereavement leave.

38. Jury duty and bereavement leave are comparable to military leave in terms of the duration of these forms of leave and the involuntary nature of the leave.

39. For Walmart Associates, the duration of jury duty leave or bereavement leave is comparable to the duration of military leave. Each of these types of leaves most commonly lasts several days, and usually does not last more than a couple of weeks.

40. In the case of jury duty, bereavement leave, and short-term military leave, the leave is ordinarily involuntary. Jury duty is required by federal, state, or local law. Bereavement leave occurs due to a death in the employee's family. And military leave occurs due to an employee's legal obligation to perform military service in the Armed Forces.

41. In addition, the purpose of jury duty is the same as the purpose of military leave: to perform service for our government and to engage in public service for the benefit of our society.

42. Walmart's policy or practice of failing to provide fully paid leave to Associates when they take short-term military leave, while providing fully paid leave to Associates when they take other comparable forms of non-military leave, violates USERRA § 4316, because Walmart denies its Associates a non-seniority right or benefit that it provides to similarly situated employees who are on furlough or leave of absence. 38 U.S.C. § 4316(b).

43. This policy has unlawfully denied Walmart's Associates the fully paid leave they should receive when they engage in short-term military leave when Walmart provides full paid leave to Associates when they take jury duty, bereavement leave, or other comparable forms of short-term non-military leave.

#### **Plaintiff's USERRA-Protected Military Leave**

44. Since joining the Army Reserve in 2014, Plaintiff routinely took short-term military leave that lasted between one and three days, or that lasted four days or more, and in doing so engaged in military service that qualified as service in the uniformed services within the meaning of USERRA, 38 U.S.C. § 4303(13).

45. During the time that Plaintiff took short-term military leave, Walmart did not pay Plaintiff the wages that he would have earned had he not taken such military leave.

**COUNT I**  
**VIOLATION OF USERRA, 38 U.S.C. § 4316(b)(1)**

46. Plaintiff hereby repeats and incorporates the allegations contained in the foregoing paragraphs as if fully set forth herein.

47. USERRA, 38 U.S.C. § 4316(b)(1), provides that “a person who is absent from a position of employment by reason of service in the uniformed services shall be (A) deemed to be on furlough or leave of absence while performing such service; and (B) entitled to such other rights and benefits not determined by seniority as are generally provided by the employer of the person to employees having similar seniority, status, and pay who are on furlough or leave of absence under a contract, agreement, policy, practice, or plan in effect at the commencement of such service or established while such person performs such service.”

48. The U.S. Department of Labor’s regulations that implement and interpret USERRA § 4316(b)(1) provide that “[i]f the non-seniority benefits to which employees on furlough or leave of absence are entitled vary according to the type of leave, the employee must be given the most favorable treatment accorded to any comparable form of leave when he or she performs service in the uniformed services.” 20 C.F.R. § 1002.150(b). The “duration of leave” “may be the most significant factor” to determine whether two forms of leave are comparable, and other relevant factors include “the purpose of the leave and the ability of the employee to choose when to take the leave.” *Id.*

49. As described above, Walmart has maintained a policy or practice of failing to provide fully paid leave to Associates when they take short-term military leave, while providing fully paid leave to Associates when they take other comparable forms of short-term non-military leave, such as jury duty or bereavement leave.

50. As described above, these forms of leave – jury duty and bereavement leave – are comparable to military leave in terms of the duration, purpose, and/or the ability of the employee to determine whether to take the leave.

51. By adopting and applying a uniform policy or practice of failing to provide fully paid leave to the Class Members when they take short-term military leave, Walmart has denied the Class Members the same rights and benefits, including compensation, that Walmart provided to Associates who took comparable forms of non-military leave, including jury duty leave and bereavement leave, and Walmart has failed to provide Class Members the most favorable treatment accorded to employees who take comparable forms of non-military leave. By doing so, Walmart violated and continues to violate USERRA § 4316(b)(1).

52. Due to Walmart's failure to comply with USERRA § 4316(b)(1), Plaintiff and other members of the Class received lower wages, salaries, and compensation than they would have received had Walmart complied with USERRA and the Department of Labor's implementing regulations.

53. Upon information and belief, Walmart's violation of USERRA § 4316(b)(1) was willful. Accordingly, Walmart should be required to pay liquidated damages pursuant to 38 U.S.C. § 4323(d)(1)(C).

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that judgment be entered against Walmart on all claims and respectfully requests that this Court award the following relief:

A. Declare that Walmart's policy or practice by which Walmart failed to provide fully paid leave to Associates during periods of short-term military leave, while providing fully paid leave to Associates when they took other comparable forms of non-military leave, violated the rights of Plaintiff and the Class Members under USERRA § 4316(b);

- B. Declare that Walmart's violations of USERRA were willful under 38 U.S.C. § 4323(d)(1)(C);
- C. Declare that Walmart must provide fully paid leave to Associates normal during periods of short-term military leave;
- D. Require Walmart to comply with USERRA § 4316(b) by providing Plaintiff and the Class Members fully paid leave during periods of short-term military leave in the future;
- E. Require Walmart to pay Plaintiff and the Class Members the wages, salaries, and/or compensation they should have received for periods of short-term military leave, in accordance with USERRA and the Court's declaration;
- F. Order Walmart to pay all members of the Class liquidated damages pursuant to 38 U.S.C. § 4323(d)(1)(C);
- G. Award pre-judgment and post-judgment interest on any monetary relief awarded or required by order of this Court;
- H. Require Walmart to pay attorneys' fees, expert witness fees, litigation expenses and costs pursuant to 38 U.S.C. § 4323(h) and/or order the payment of reasonable fees and expenses in this action to Plaintiff's Counsel based on the common benefit and/or common fund doctrine out of any money or benefit recovered for the Class in this Action; and
- I. Grant such other and further relief as the Court deems proper, just and/or equitable.

#### **JURY TRIAL DEMAND**

Pursuant to Federal Rule of Civil Procedure 38 or any similar rule or law, Plaintiff demands a trial by jury for all causes of action and issues for which trial by jury is available.

Dated: December 31, 2020

Respectfully submitted,

By: /s/ Nathaniel Sliver

Nathaniel Sliver  
BLOCK & LEVITON LLP  
260 Franklin Street, Suite 1860  
Tel: (617) 398-5600  
Fax: (617) 507-0620  
Email: [nsliver@blockleviton.com](mailto:nsliver@blockleviton.com)

R. Joseph Barton\*  
BLOCK & LEVITON LLP  
1735 20th Street NW  
Washington, DC 20009  
Tel: (202) 734-7046  
Fax: (617) 507-6020  
Email: [jbarton@blockleviton.com](mailto:jbarton@blockleviton.com)

Michael J. Scimone\*  
OUTTEN & GOLDEN LLP  
685 Third Avenue, 25th Floor  
New York, N.Y. 10017  
Telephone: (212) 245-1000  
Facsimile: (646) 509-2055  
Email: [mscimone@outtengolden.com](mailto:mscimone@outtengolden.com)

Peter Romer-Friedman\*  
GUPTA WESSLER PLLC  
1900 L Street, NW, Suite 312  
Washington, DC 20036  
Telephone (202) 888-1741  
Email: [peter@guptawessler.com](mailto:peter@guptawessler.com)

Thomas G. Jarrard\*  
LAW OFFICE OF THOMAS JARRARD PLLC  
1020 N. Washington St.  
Spokane, WA 99201  
Telephone: (425) 239-7290  
Email: [Tjarrard@att.net](mailto:Tjarrard@att.net)



Matthew Z. Crotty\*  
CROTTY & SON LAW FIRM, PLLC  
905 W. Riverside Ave, Suite 409  
Spokane, WA 99201  
Telephone: (509) 850-7011  
Email: [matt@crottyandson.com](mailto:matt@crottyandson.com)

*Attorneys for Plaintiff and the Proposed Class*

*\* Pro hac vice motion to be filed*

# EXHIBIT C

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

NICKOLAS TSUI, on behalf of himself and  
all others similarly situated,

Plaintiff,

v.

WALMART INC.,

Defendant.

Civil Action No. \_\_\_\_

**[PROPOSED] FINAL ORDER GRANTING  
FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

This matter came before the Court on Plaintiff's Motion for Final Approval of Settlement ("Final Approval Motion"), Plaintiff's Motion for an Award of Attorneys' Fees and Reimbursement of Expenses ("Motion for Fees and Expenses"), and Plaintiff's Motion for a Service Payment for the Class Representative ("Motion for a Service Payment").

WHEREAS, the above action, which was filed as a putative class action and which was previously certified as a class action for purposes of settlement, is pending before the Court (the "Litigation"); and

WHEREAS, the Court has received and reviewed the Settlement Agreement entered into between the Settlement Class Representative on behalf of the Settlement Class Members on the one hand, and the Defendant Walmart Inc. ("Walmart") on the other hand (the "Agreement"), and has considered the terms of the proposed settlement set forth therein (the "Settlement"); and

WHEREAS, all terms used herein shall have the same meanings as set forth in the Agreement, unless otherwise defined herein; and

WHEREAS, on \_\_\_\_\_, the Court entered its order preliminarily approving the Settlement, approving the form and method of notice, appointing a claims administrator, and setting a date and time for a final fairness hearing to consider whether the Settlement should be finally approved by the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure as fair, adequate, and reasonable (the “Preliminary Approval Order”); and

WHEREAS, the Preliminary Approval Order further directed that all Settlement Class Members be given notice of the Settlement and of the date for the final fairness hearing; and

WHEREAS, the Court has received declarations attesting to the provision of notice in substantial accordance with the Preliminary Approval Order; and

WHEREAS, as part of the Preliminary Approval Order, the Court certified the Settlement Class for settlement purposes only in accordance with the terms of the Agreement and pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, appointed Nickolas Tsui as the Class Representative, appointed Outten & Golden LLP and Block & Leviton LLP as Lead Class Counsel, appointed Gupta Wessler PLLC, the Law Office of Thomas Jarrard PLLC, and the Crotty & Son Law Firm PLLC as additional Class Counsel, and appointed \_\_\_\_\_ as the Claims Administrator; and

WHEREAS, the Court having considered all timely filed objections to the Settlement [or, if applicable, no timely objections to the Settlement were filed]; and

WHEREAS, the Court having conducted a Final Fairness Hearing on \_\_\_\_\_ (the “Settlement Approval Hearing”), and having considered the arguments presented, all papers filed, and all proceedings had therein,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The Court has jurisdiction over the subject matter of this action, this Settlement, the Settlement Class Members, and Defendant.

2. The Class that the Court previously certified by Order dated \_\_\_\_, ECF No. \_\_, is hereby finally certified for settlement purposes under Rule 23(a) and Rule 23(b)(3) of the Federal Rules of Civil Procedure on behalf of the following persons as to the single claim asserted in the Complaint:

All current and former employees (A) who work or worked for Walmart at a location in a jurisdiction covered by USERRA (i.e., the United States and its territories) from October 10, 2004 to the present; and (B) who took Short-Term Military Leave (i.e., 30 days or less) in one or more years during their employment with Walmart from October 10, 2004 to the present, and (C) during such period of Short-Term Military Leave did not receive the regular wages or salary that they would have earned had they continued to work their ordinary work schedules.

Excluded from the class are the Judge assigned to the case and any of his or her relatives.

3. Pursuant to Rule 23(a)(4) and 23(g) of the Federal Rules of Civil Procedure and after considering the requirements set forth therein, the prior appointment of Block & Leviton LLP and Outten Golden LLP as Co-Lead Class Counsel and Plaintiff Nicolas Tsui as Class Representative is confirmed. The Class Representative and Class Counsel have fully and adequately represented the interests of the Class for purposes of entering into and implementing the Settlement Agreement and has satisfied the requirements of Rule 23 of the Federal Rules of

Civil Procedure.

4. In accordance with Rule 23(c) and (e) of the Federal Rules of Civil Procedure and the requirements of due process, all members of the Settlement Class have been given proper and adequate notice of the Settlement. Based upon the evidence submitted by the Parties, their counsel and the Settlement Administrator, the Agreement, and all the files, records, and proceedings in this case, the Notice was distributed and provided to the Settlement Class in accordance with and consistent with the Agreement and the Court's Preliminary Approval Order and: (a) constituted the best practicable notice under the circumstances; (b) constituted notice that was reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the litigation, their right to object to the Settlement, and their right to appear at the Final Fairness Hearing; (c) were reasonable and constituted due, adequate and sufficient notice to all persons who are entitled to notice; and (d) met all applicable requirements of the Federal Rules of Civil Procedure (including Rules 23(c)(2) and (e)) and any other applicable law.

5. Defendants have caused to be served a notice of the Settlement on appropriate state and federal officials in accordance with the requirements under the Class Action Fairness Act ("CAFA"), 28 U.S.C § 1715(b), and have satisfied their obligations thereunder.

6. The Settlement in this action warrants final approval pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, because it resulted from extensive good-faith arm's length negotiations between the Parties and their counsel, and it is fair, adequate, and reasonable to those it affects, considering the following factors:

- (1) the complexity, expense, and likely duration of the litigation
- (2) the reaction of the class to the settlement

- (3) the stage of the proceedings and the amount of discovery completed
- (4) the risks of establishing liability
- (5) the risks of establishing damages
- (6) the risks of maintaining the class action through the trial
- (7) the ability of the defendants to withstand a greater judgment
- (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and
- (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

*Bezdek v. Vibram USA Inc.* 79 F. Supp. 3d 324, 343-44 (D. Mass. 2015), *aff'd*, 809 F.3d 78 (1st Cir. 2015) (internal citations and quotations omitted). Settlements that follow sufficient discovery and genuine arms-length negotiation are presumed to be fair and “within the range of reasonableness.” *Id.* at 343. Additionally, the Settlement is fair, reasonable and adequate after considering the following factors under Rule 23(e)(2) and finding that each of the following factors favor approval of the Settlement: (A) the class representatives and class counsel have adequately represented the class; (B) the proposed Settlement was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposed Settlement treats class members equitably relative to each other.

7. After considering the above factors, based on the submissions by the Parties and Class Counsel, the Final Approval Motion is hereby GRANTED, and the Settlement as set forth

in the Agreement is hereby APPROVED as fair, reasonable, adequate, and the terms of the Agreement are hereby determined to be fair, reasonable and adequate, and in the best interest of the Settlement Class Members and in compliance with the applicable requirements of the Federal Rules of Civil Procedure. Plaintiff, Class Counsel, Defendant and the Settlement Administrator are directed to consummate the Agreement in accordance with its terms.

8. The payment of the Class Settlement Amount in accordance with the terms of the Agreement is APPROVED.

9. The Motion for a Service Payment is GRANTED, and the Court APPROVES payment of a Service Payment to the Settlement Class Representative, Nickolas Tsui, in the amount of \$\_\_\_\_\_, to be paid from the Class Settlement Amount in accordance with the terms of the Agreement out of the Settlement Fund. The requested Service Payment, in recognition of the services he rendered on behalf of the Settlement Class Members, is reasonable.

10. Upon review of the submissions by Class Counsel, the Motion for Attorneys' Fees and Expenses is GRANTED, and the Court APPROVES payment of Attorneys' Fees to Class Counsel equal to \_\_\_% of the Settlement Fund payment of \$\_\_\_\_\_ in Litigation Expenses. Upon review of the affidavits and supporting materials provided by Class Counsel, the Court finds that the hourly rates of and hours expended by Class Counsel in this case are reasonable and the Attorneys' Fees requested by Class Counsel based on the percentage of the fund method are reasonable based upon the following factors:

- (1) the size of the fund and the number of persons benefitted;
- (2) the skill, experience, and efficiency of the attorneys involved;
- (3) the complexity and duration of the litigation;



- (4) the risks of the litigation;
- (5) the amount of time devoted to the case by counsel;
- (6) awards in similar cases; and
- (7) public policy considerations, if any.

*Hill v. State St. Corp.*, No. 09 Civ. 12146, 2015 WL 127728, at \*17 (D. Mass. Jan. 8, 2015).

The Court also finds that reimbursement of Litigation Expenses are reasonable. The Attorneys' Fees and Litigation Expenses will be paid from the Settlement Fund in accordance with the terms of the Agreement into an account(s) as directed by Co-Lead Class Counsel. The Attorneys' Fees and Litigation Expenses awarded by this Order and paid pursuant to the Settlement Agreement will be allocated among Class Counsel and Plaintiff's Counsel in accordance with the Co-Counsel Agreement. To the extent that there is any dispute among Class Counsel and/or Plaintiff's Counsel about the allocation of Attorneys' Fees or Litigation Expenses, this Court will retain jurisdiction with respect to any issue or dispute regarding the allocation of such attorneys' fees and expenses.

11. The Plan of Allocation and method of distribution of the Class Settlement Amount is hereby APPROVED as a fair, adequate, and reasonable method to allocate the Net Settlement Amount among members of the Settlement Class as set forth in the Settlement Agreement. The Net Class Settlement Amount shall be distributed in accordance with the terms of the Agreement. The Settlement Class shall not have any claim against the Settlement Administrator, Plaintiff, Defendant, or counsel to any of the foregoing, including any of the individuals involved in the distribution under the Plan of Allocation, based on any distributions of the Settlement Fund made substantially in accordance with the Settlement Agreement or as authorized by the Court.

12. The Litigation is hereby DISMISSED WITH PREJUDICE and without costs to any Party, other than as specified in the Agreement and this Order, including in Section 12 of this Order below.

13. In consideration of the Programmatic Relief and Class Settlement Amount provided for under the Agreement, and for other good and valuable consideration, each of the Releasing Settlement Class Members shall, by operation of this Order, have fully, finally, and forever released, relinquished, and discharged all Released Claims against the Releasees in accordance with Section 13 of the Agreement, the terms of which section are incorporated herein by reference, shall have covenanted not to sue the Releasees with respect to all such Released Claims, and shall be permanently barred and enjoined from instituting, commencing, prosecuting or asserting any such Released Claims against the Releasees.

14. This Order shall constitute the Final Judgment in the action as to all Settlement Class Members' Released Claims.

15. There is no just reason to delay entry of this Order and Final Judgment, and immediate entry by the Clerk of the Court is directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

16. Without affecting the finality of this Order in any way, this Court retains jurisdiction over: (a) the interpretation, implementation, and enforcement of the Settlement and the terms of the Agreement; (b) the distribution of the Class Settlement Amount, Service Payment to the Settlement Class Representative, and payment and allocation of the Attorneys' Fees and Litigation Expenses; and (c) all other proceedings related to the implementation, interpretation, administration, consummation, and enforcement of the terms of the Agreement and the Settlement, and the administration of Claims submitted by Settlement Class Members.

17. The parties shall abide by all terms of the Settlement Agreement. In the event that the Settlement Effective Date does not occur, this Order shall be rendered null and void and shall be vacated, *nunc pro tunc*, except insofar as expressly provided to the contrary in the Settlement Agreement, and without prejudice to the *status quo ante* rights of Plaintiff, the Settlement Class Members, and Walmart.

IT IS SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable \_\_\_\_\_  
United States District Court  
District of Massachusetts

# EXHIBIT D

**USERRA Short-Term Military Leave Litigation**  
**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

***Tsui v. Walmart Inc., No. [REDACTED] (D. Mass.)***

***A Federal Court authorized this Notice. This is not a solicitation from a lawyer.***

**If you were a Walmart employee who took Short-Term Military Leave (30 days or less) between October 10, 2004 and December 31, 2020, you could get money from this class action settlement.**

- Please read this Notice carefully and fully. This Notice explains the Lawsuit known as *Nickolas Tsui v. Walmart Inc.* Case No. \_\_\_\_\_ (D. Mass.), the Settlement, and your legal rights in this Lawsuit.
- A Walmart employee, Nickolas Tsui (the “Plaintiff”) has sued Walmart in a class action on behalf of himself and other similarly situated employees alleging that Walmart violated the Uniformed Services Employment & Reemployment Rights Act (“USERRA”) by failing to provide its employees fully paid leave when they took short-term military leave since October 2004. Walmart denies the claims and the Court has not decided that Walmart did anything wrong.
- The Parties have agreed to settle the claims alleged in the Lawsuit. This Notice describes the proposed class action Settlement, which, if approved by the Court, would mean that you may be eligible to receive compensation for Short-Term Military Leave that you took when you worked at Walmart between October 10, 2004 and December 31, 2020.
- If you received this Notice in the mail, Walmart has identified you as a potential Settlement Class Member.
- If you did not receive this Notice in the mail, Walmart did not identify you as a potential Settlement Class Member, but you may still be a Settlement Class Member if you took Short-Term Military Leave from Walmart between October 10, 2004 and December 31, 2020.
- **You must submit a Claim Form to be eligible to receive compensation.** For instructions on how to submit a claim please read this Notice and/or visit [www.WalmartUSERRAsettlement.com](http://www.WalmartUSERRAsettlement.com). If you received this Notice in the mail, you may return the accompanying Claim Form by mail, or you may enter your unique code, <XXXX>, and your password, <XXXX> on the website and submit a Claim Form on line.
- The Court has preliminarily approved the Settlement. For the Settlement to become final and any payments or benefits to be distributed, the Court will need to issue final approval after a final approval hearing, which is currently scheduled for XXXX, XX, 2021. This date is subject to change without further notice.
- Please check [www.WalmartUSERRAsettlement.com](http://www.WalmartUSERRAsettlement.com) for the latest updates on the case, or access

the court docket at [www.pacer.gov](http://www.pacer.gov) for the most up-to-date court information. **PLEASE DO NOT CONTACT THE COURT OR WALMART DIRECTLY. They may not be able to answer your questions.**

- If you have Questions CALL the Claims Administrator at 800 \_\_\_\_\_ OR VISIT [www.WalmartUSERRAsettlement.com](http://www.WalmartUSERRAsettlement.com).

**PLEASE READ THIS NOTICE CAREFULLY.**

**IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS, THIS SETTLEMENT WILL AFFECT YOUR RIGHTS.**

## SUMMARY OF YOUR LEGAL RIGHTS & OPTIONS

<b>OPTION #1: DO NOTHING</b>	<b>DO NOTHING.</b> If you do nothing, you will NOT receive money from this settlement and you will release your claims against Walmart.
<b>OPTION #2: SUBMIT A CLAIM FORM</b>	<p><b>SUBMIT A CLAIM FORM BY XXXX, XX, 2021 TO RECEIVE A SETTLEMENT PAYMENT.</b></p> <p>You <b><i>must</i></b> submit a Claim Form to be eligible to receive any money under the Settlement. You can submit the Claim Form online at <a href="http://www.WalmartUSERRAsettlement.com">www.WalmartUSERRAsettlement.com</a> or submit a hard copy via regular mail to XXXXXX.</p> <p>In the Claim Form, you must identify (i) the years you were employed by Walmart and (ii) the years that you took Short-Term Military Leave (30 days or less) from your employment at Walmart.</p> <p>If you did NOT receive this Notice and accompanying Claim Form in the mail, when you submit your claim you will also need to provide evidence of the years that you were in the military for every year that you claim you took Short-Term Military Leave from Walmart. You can provide that evidence by submitting a DD-214 or any other document from the military or federal government that shows the year(s) you served in the military.</p> <p>If you DID receive this Notice and accompanying Claim Form in the mail, you do not have to submit evidence of your military service unless the Claims Administrator asks you to do so.</p>
<b>OPTION #3: OBJECT OR COMMENT</b>	<b>OBJECT/COMMENT.</b> You may write to the Court and explain why you do not like one or more aspects of the proposed Settlement. You must do so by no later than <b>XXXX, XX, 2021</b> . You may also appear at the final approval hearing. If you object/comment, you may still submit a Claim Form and be eligible to receive a payment.
<b>OPTION #4: EXCLUDE YOURSELF</b>	<b>EXCLUDE YOURSELF.</b> You may exclude yourself or opt out of the Settlement by writing to the Court by <b>XXXX, XX, 2021</b> . If you exclude yourself or opt out of the Settlement, you may not submit a Claim Form or receive a payment under the Settlement.

**If you have any questions after you have read this Notice, contact Class Counsel or the Claims Administrator; PLEASE DO NOT CONTACT THE COURT OR WALMART as they may not be able to answer your questions.**





## BASIC INFORMATION

### 1. Why did I receive this Notice?

You received this Notice in the mail because the Court has ordered that it be sent to the persons that Walmart has identified as potential Settlement Class Members. Walmart's records show that you worked at Walmart and you may have taken Short-Term Military Leave (less than 30 days) from Walmart sometime between approximately 2013 and December 31, 2020 (if you worked as an hourly associate) or sometime between approximately 2016 and December 31, 2020 (if you worked as a salaried associate). This means that you are a potential Settlement Class Member. It is also possible that you took Short-Term Military Leave while working at Walmart during time periods earlier than 2013 (for hourly associates) or 2016 (for salaried associates) but Walmart does not have records of military leave from these earlier time periods.

If you did not receive this Notice in the mail, Walmart did not identify you as a potential Settlement Class Member. However, you may still be a Settlement Class Member if you took Short-Term Military Leave from Walmart between October 10, 2004 and December 31, 2020 even if Walmart does not have a record of you taking such leave.

If you do not know whether Walmart has identified you as a potential Settlement Class Member, please visit [www.WalmartUSERRAsettlement.com](http://www.WalmartUSERRAsettlement.com) and, if you have them, enter your unique code, <XXXX>, and your password, <XXXX>. If you do not have a unique code and password, additional information can be found on the Settlement website.

This Lawsuit is pending in the United States District Court for the District of Massachusetts, and is called *Tsui v. Walmart, No. XXXXXXXXXXXX (D. Mass.)*.

This Notice informs you of a proposed settlement (referred to as "Settlement" or "Settlement Agreement") of this class action Lawsuit consisting of, among other things, payment by Walmart a minimum of \$10 million and up to a maximum of \$14 million in cash (depending on the number of approved claims submitted) that will be used to pay eligible Settlement Class Members who took Short-Term Military Leave between October 10, 2004 and December 31, 2020, attorneys' fees, litigation expenses, a Service Payment to the named Settlement Class Representative, and other costs of the Settlement. This Notice describes your rights and options in connection with the Settlement.

### 2. What is this lawsuit about?

The Lawsuit is a putative class action brought under the Uniformed Services Employment & Reemployment Act ("USERRA"). The USERRA law provides servicemembers and veterans with a range of rights and benefits, including protections for reservists who take military leave from civilian employers like Walmart.

The Plaintiff who brought the lawsuit is a military reservist and Walmart employee who took Short-Term Military Leave while employed at Walmart. The Defendant is Walmart.

The Lawsuit claims that Walmart violated USERRA by failing to provide fully paid leave to employees when they took Short-Term Military Leave from October 10, 2004 to December 31, 2020, while providing fully paid leave to employees who took other types of short term leave from Walmart. The Court has not decided the merits of the Lawsuit. Walmart denies that it did anything wrong and no court has found that Walmart did anything wrong or that Walmart violated any law.

Additional information about the claims and a copy of the Complaint are available at [www.WalmartUSERRAsettlement.com](http://www.WalmartUSERRAsettlement.com)

### 3. What has happened so far in the lawsuit?

On March 12, 2019, counsel for the Plaintiff sent a letter to Walmart along with a draft class action complaint that Plaintiff intended to file alleging that Walmart's policy of failing to provide fully paid leave to employees when they took Short-Term Military Leave from October 10, 2004 to December 31, 2020, while providing fully paid leave to employees who took other types of short-term leave from Walmart, such as jury duty or bereavement leave, violated USERRA, 38 U.S.C. § 4316(b), and seeking damages and injunctive relief.

Since Walmart received Plaintiff's March 12, 2019 letter, the Parties have engaged in lengthy, pre-litigation discussions regarding Plaintiff's claims. Prior to exchanging settlement proposals, Walmart produced information about its policies and anonymized personnel data on the employees who have taken Short-Term Military Leave from Walmart, and the Parties separately analyzed that personnel data to understand Walmart's potential liability in this Case. The Parties then exchanged mediation statements and analysis of the personnel data. Then, on February 19, 2020, the Parties participated in a private mediation session with Michelle Yoshida, a private mediator with substantial experience in employment cases. Although the Parties did not obtain a resolution at mediation, following the mediation the Parties continued to discuss settlement of the claims of the Settlement Class Members and to exchange settlement proposals on monetary and programmatic settlement terms. As a result of the mediation and the additional arms-length negotiations, on December 30, 2020 the Parties reached an agreement to resolve the litigation. Under the Settlement Agreement, Walmart will pay between \$10 million and \$14 million in cash (depending on the number of approved claims submitted), and make important changes to Walmart's military leave policies so that eligible employees can receive 30 days of fully paid military leave each year.

On December XX, 2020, the Plaintiff filed this lawsuit in the U.S. District Court for the District of Massachusetts, *Tsui v. Walmart Inc.*, No. 20-cv- XXXXX (D. Mass.). Walmart denies the claims alleged. The Court has not ruled on the merits of any claims or defenses.

On XXXXXXX, 2021, the Court certified a Settlement Class for settlement purposes, appointed the Plaintiffs' counsel as Settlement Class Counsel, appointed Plaintiff as the Settlement Class Representative, preliminarily approved the Settlement, and scheduled a final hearing to evaluate the fairness and adequacy of the Settlement.

## THE SETTLEMENT CLASS

### 4. What is a Class Action?

A class action is a lawsuit in which the claims and rights of many people are decided in a single court proceeding. In a class action, one or more people, called Plaintiffs, file suit on behalf of others with similar claims, called the Class or Class Members. If a class is certified, the Court appoints a person, called the Class Representative, to represent and act on behalf of the class. In this case, the Court has certified a class for settlement purposes (the "Settlement Class") and approved the designation of the plaintiff, Nickolas Tsui, as the Settlement Class Representative.

### 5. Who is included in the Settlement Class?

The Court has certified for settlement purposes a Settlement Class consisting of (A) all current and former employees who work or worked for Walmart at a location in a jurisdiction covered by USERRA (i.e., the United States and its territories) during the Settlement Class Period; (B) who took Short-Term Military Leave (i.e., 30 days or less) in one or more years during their employment with Walmart during the Settlement Class Period, (C) and during such period of Short-Term Military Leave did not receive the regular wages or salary that they would have earned had they continued to work their ordinary work schedules.

Walmart has identified more than 7,000 of its former or current employees who may fall within the Settlement Class definition and are potential Settlement Class Members because Walmart's records show that they may have taken Short-Term Military Leave from Walmart between October 1, 2004 and December 31, 2020. (Walmart's records only cover the period of 2013 to 2020 for hourly associates and 2016 to 2020 for salaried associates).

QUESTIONS? CALL 800 \_\_\_\_\_ OR VISIT

WWW. \_\_\_\_\_

Even if Walmart has not identified you as a potential Settlement Class Member you may still be a Settlement Class Member if you meet the Settlement Class definition because you took Short-Term Military Leave from Walmart between October 1, 2004 and December 31, 2020.

You must file a Claim Form to receive a share of the Settlement, whether or not Walmart has identified you as a potential Settlement Class Member.

If you do not know whether you have been identified by Walmart as a potential Settlement Class Member, please visit [www.WalmartUSERRAsettlement.com](http://www.WalmartUSERRAsettlement.com) and, if you have them, enter your unique code, <XXXX>, and your password, <XXXX>. If you do not have a unique code and password, additional information can be found on the Settlement website.

If you are included in the above definition then you will be included in the Settlement Class unless you exclude yourself. If you are unsure about whether you are a Settlement Class Member, you can contact the lawyers representing the Settlement Class or the Claims Administrator.

Contact information for the lawyers for the Settlement Class is listed in the response to Question 19.

Contact information for the Claims Administrator is identified throughout this Notice.

## THE SETTLEMENT

### 6. What does the Settlement provide?

The Settlement provides monetary relief to Settlement Class Members who were allegedly denied pay for periods of Short-Term Military Leave from October 10, 2004 to December 31, 2020. In addition, Walmart has agreed to revise its military leave policy to provide eligible employees with fully paid military leave for 30 days each year, plus differential pay (meaning the difference between the associate's Walmart pay and the pay provided by the military if the Walmart pay is higher) for military assignments longer than 30 days in a calendar year, not to exceed 12 months in a single continuous assignment assuming that all other conditional and requirements for differential pay are met.

#### The Settlement Agreement provides the following monetary relief:

Under the Settlement, Walmart has agreed to pay the Class Settlement Amount of at least \$10 million ("Floor") and at most \$14 million ("Ceiling"), dependent upon Settlement Class Members' participation in the Settlement. No portion of the Class Settlement Amount shall revert to Walmart.

The amount of the Class Settlement Amount shall be determined based on the number of timely Claim Forms that are filed and the number of years in which Settlement Class Members took Short-Term Military Leave, as identified by the Claim Forms and approved by the Claims Administrator ("Year of Military Leave" or "YML").

For each Year of Military Leave identified by the timely Claim Forms, \$1,200 shall be included in the Class Settlement Amount. Thus, for example, if 10,000 aggregate years of military leave are identified on timely Claim Forms and approved by the Claims Administrator, then the Class Settlement Amount will be \$12 million, based on 10,000 times \$1,200 per year of military leave. If the aggregate figure is more than Fourteen Million Dollars (\$14,000,000.00), then the Class Settlement Amount shall be Fourteen Million Dollars (\$14,000,000.00). If that aggregate figure is less than Ten Million Dollars (\$10,000,000.00), then the Class Settlement Amount shall be Ten Million Dollars (\$10,000,000.00).

**The Settlement provides for the following future policy changes and benefits:**

Prior to the Final Approval Date, Walmart will revise its military leave policy applicable to Walmart associates in the United States to provide, subject to any modifications required by state law, associates with 30 days of fully paid military leave each calendar year and to further provide that after an associate has received his or her 30 days of fully paid military leave in a calendar year, if an associate takes an additional amount of military leave in that calendar year and that associate's pay as provided by the military is less than his or her Walmart pay, Walmart will, assuming all other conditions and requirements are met, pay the difference between the associate's Walmart pay and the pay provided by the military for that additional period of military leave, not to exceed 12 months in a single continuous assignment.

**7. How do I receive a payment under the Settlement?**

You **must** submit a claim form to be eligible to receive a payment under the Settlement.

You can submit the claim form online at [www.WalmartUSERRAsettlement.com](http://www.WalmartUSERRAsettlement.com) or submit a hard copy via regular mail to XXXXXX.

In the claim form, you must identify (i) the years you were employed by Walmart, (ii) the years that you took Short-Term Military Leave from your employment at Walmart, and (iii) your contact information and other information to confirm your employment with Walmart.

**If you did NOT receive this Claim Form in the mail (because Walmart has not identified you as a potential Settlement Class Member),** when you submit your claim form you will also need to provide evidence of the years that you were in the military for every year that you claim you took Short-Term Military Leave from Walmart. You can provide that evidence by submitting a DD-214 or any other document from the military or federal government that shows the year(s) you served in the military.

**If you DID receive this Claim Form in the mail because Walmart identified you as a potential Settlement Class Member,** you do not have to submit evidence of your military service unless the Claims Administrator asks you to do so.

**8. How much money will I receive if I submit a timely claim form?**

Each Settlement Class Member who files a timely claim form will receive an equal share of the Settlement payments that are distributed to the Settlement Class Members for each Year of Military Leave that the Settlement Class Member identifies on their Claim Form and is approved by the Claims Administrator. For example, if there are 10,000 Years of Military Leave approved for all Settlement Class Members and a Settlement Class Member is approved for 2 Years of Military Leave, the person will receive 2/10,000 of the payments that are distributed to all Settlement Class Members; but for a Settlement Class Member who is approved for 10 years of military leave, the person would receive 10/10,000 of the total payments.

**Each year of military leave under the Settlement shall have a baseline value of \$1,200, minus the amount of attorneys' fees and costs approved and awarded by the Court, the service payment to the Settlement Class Representative approved and awarded by the Court, the costs to administer the settlement and taxes applicable to the settlement fund. It is presently anticipated that once these amounts are subtracted, each Year of Military Leave will have a baseline value of approximately \$775.** However, the value could be reduced or increased on a pro rata basis depending on the number of approved Claim Forms submitted and the aggregate number of Years of Military Leave approved across all approved Claim Forms, such that the total Class Settlement Amount to be paid by Walmart shall be at least the Floor of \$10 million but will not exceed the maximum Ceiling of \$14 million.

Applicable taxes will also be withheld from claim payments in accordance with applicable law.

QUESTIONS? CALL 800 \_\_\_\_\_ OR VISIT  
WWW. \_\_\_\_\_

## 9. What do I give up as a result of the Settlement?

If the Court grants final approval to the Settlement, then all Settlement Class Members who do not exclude themselves from the Settlement Class will give up (or “release”) their right to sue Walmart and any other Released Parties in any court or forum, for all claims of any kind or nature, known or unknown, that arise from or relate to pay during periods of Short-Term Military Leave from October 1, 2004 through December 31, 2020, including, but not limited to, claims for violations of USERRA, 38 U.S.C. § 4316(b). This Release applies regardless of whether or not you submit a Claim unless you exclude yourself. The full details of the Release are contained in the Settlement Agreement between the parties.

## 10. Why is there a Settlement?

In deciding to settle the lawsuit, the Settlement Class Representative and Class Counsel considered, among other things (a) the factual record; (b) the potential monetary recovery and potential to change Walmart’s policies through litigation; (c) the strength of the Class’ claims based on a review of the law and the facts established in discovery and through investigation; (d) the expense and length of continued proceedings, including possible trial and post-trial proceedings and appeals, necessary to prosecute the lawsuit; (e) the risks arising from the existence of unresolved questions of law and fact; (f) the nature and strength of defenses asserted by and available to Walmart; and (g) the risks and uncertainties of continued USERRA class action litigation of this nature.

After a thorough review and investigation and after participating in mediation with Walmart, the Settlement Class Representative and Class Counsel believe that in light of the foregoing considerations, the proposed Settlement is fair, reasonable and adequate and in the best interests of the Class.

## 11. When would I receive a payment under the Settlement?

Settlement Class Members’ receipt of payment is conditioned on the Court’s approval of the Settlement and such approval becoming final and no longer subject to any appeals. If there is no pending appeal of the Court’s settlement approval, and depending on the amount of time it takes the Claims Administrator to complete the administrative process, it is anticipated the Claims Administrator will be able to issue checks to Settlement Class Members whose claims are approved approximately 90 days after the Court’s final approval of the settlement. When ready, the Claims Administrator will send a check to the address you provide in your claim form.

## EXCLUSION & OBJECTIONS

## 12. If I want to get out of the Settlement, what should I do?

If you are a Settlement Class Member and you wish to exclude yourself (or opt out) from the Settlement, you must send a letter to the Claims Administrator that includes the following:

- Your name, address, and telephone number;
- A statement that you want to be excluded from *Tsui v. Walmart Inc.*, No. 20-cv- XXXXX (D. Mass.);
- A statement describing how you are a member of the Settlement Class by describing the Short-Term Military Leave you took from Walmart between October 10, 2004 and December 31, 2020; and
- Your signature.

You must mail your exclusion request, postmarked no later than XXXXXX, XX, 2021:

Claims Administrator Address

**13. If I do not exclude myself, can I sue Defendant for the same thing later?**

No. Under the release in the Settlement Agreement, if you are a Settlement Class Member and you do not exclude yourself (or opt out) from the Settlement, you will irrevocably release, acquit, and forever discharge any and all claims, actions, demands, damages, rights, obligations, expenses, costs, causes of action, or liabilities of any and every kind, known or unknown, against Walmart, its subsidiaries, agents, employees, and other affiliated persons or entities that arise from or relate to pay during periods of Short-Term Military Leave from October 10, 2004 through December 31, 2020, whether arising under USERRA or otherwise. The full terms of the Release are set forth in the Settlement Agreement. If you have a pending lawsuit, speak to your lawyer in that lawsuit immediately.

**14. If I exclude myself, can I still get benefits from the Settlement?**

No. If you are a Settlement Class Member and you exclude yourself (or opt out) from the Settlement, you cannot also submit a Claim Form and you will not receive any payment under the Settlement.

**15. How do I tell the Court what I think about the Settlement?**

Any Settlement Class Member may object to any aspect of the Settlement or attorneys' fees or expenses by submitting a written objection to the Claims Administrator or filing a written objection with the Court. To object, you must send a letter or other written statement to the Claims Administrator or the Court stating the aspect of the Settlement that you object to. Include your name, address, telephone number, signature, the title of the case, *Tsui v. Walmart Inc.*, No. 20-cv-XXXXX (D. Mass.), a statement describing how you are a member of the Settlement Class by describing the Short-Term Military Leave you took from Walmart between October 10, 2004 and December 31, 2020, and an explanation of all reasons you object to the Settlement. Please be advised that failure to include these details may result in the Court refusing to consider your objection.

Your written objection must be filed or postmarked no later than XX, 2021, and mailed to the Claims Administrator at XXXX, XXX, XXXXX or filed with the Court.

Your objection should state the supporting bases and reasons for the objection, identify any and all witnesses, documents or other evidence you would like to present at the Final Approval Hearing, and describe the substance of any testimony provided by you or other witnesses.

**IF YOU DO NOT OBJECT IN THE MANNER DESCRIBED IN THIS NOTICE,  
THE COURT MAY CONCLUDE THAT YOU HAVE WAIVED ANY OBJECTION  
AND MAY NOT PERMIT YOU TO SPEAK AT THE FAIRNESS HEARING.**

**16. What's the difference between objecting and asking to be excluded?**

Objecting is simply telling the Court that you do not like or disagree with an aspect of the Settlement. You can object to the Settlement only if you are a Settlement Class Member and you do not exclude yourself from the Settlement. Excluding yourself from the Settlement is telling the Court that you do not want to be part of the Settlement. If you exclude yourself from the Settlement, you cannot object to the Settlement, because you will not be bound by the Settlement.

**THE FINAL APPROVAL HEARING**

**17. When and where will the Court hold the final approval hearing?**

The Final Approval Hearing (also called the Fairness Hearing) will take place before the Honorable \_\_\_\_\_ in Courtroom \_\_\_\_\_ of the United States District Court for the District of Massachusetts, located at 1 Courthouse Way, Boston, Massachusetts 02210 at 10 am, on XXXXXX, 2021. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check [www.WalmartUSERRAsettlement.com](http://www.WalmartUSERRAsettlement.com) for updates. At the hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate, how much to pay Class Counsel in fees, what to reimburse Class Counsel for their expenses, and whether to provide Plaintiff



with a service award because of his time and expense to bring this lawsuit. If there are objections or comments, the Court will consider them at the hearing. After the hearing, the Court will decide whether to approve the Settlement and enter Final Judgment. We do not know how long these decisions will take. Please be patient.

#### 18. Do I have to come to the Final Approval Hearing?

Your attendance is not required, even if you submit a written response. Class Counsel will answer questions the Court may have at the Final Approval Hearing, including any questions about objections. If you or your personal attorney wants to attend the hearing, you may attend at your own expense. As long as any objection or comment you filed was postmarked by the deadline, the Court will consider it even if you do not attend the Final Approval Hearing.

#### 19. May I speak at the Final Approval Hearing?

Yes. You may speak at the Final Approval Hearing, so long as you are a member of the Settlement Class and have properly and timely submitted a written response as set forth above and have stated in your response your intention to appear at the Final Approval Hearing.

#### 20. What happens if I do nothing at all?

If you do nothing and you are entitled to receive benefits from the Settlement, you will **NOT** receive those benefits. Again, to receive a payment under the Settlement you must submit a claim form.

### THE LAWYERS REPRESENTING YOU

#### 21. Do I have a lawyer in this case?

Yes. The Court has appointed the following law firms to serve as the attorneys for the Class:

<i>Lead Class Counsel</i>	<i>Additional Class Counsel</i>
Adam T. Klein Michael Scimone Nina Martinez OUTTEN & GOLDEN LLP 685 Third Avenue, 25th Floor New York, New York 10017 Telephone: (212) 245-1000 Fax: (646) 509-2060 Email: <a href="mailto:atk@outtengolden.com">atk@outtengolden.com</a>  R. Joseph Barton BLOCK & LEVITON LLP 1735 20th Street N.W. Washington, DC 20009 Telephone: (202) 734-5458 Email: <a href="mailto:WalmartUSERRA@blockleviton.com">WalmartUSERRA@blockleviton.com</a>	Peter Romer-Friedman GUPTA WESSLER PLLC 1900 L Street, NW, Suite 312 Washington, DC 20036 Telephone: (202) 888-1741 Email: <a href="mailto:peter@guptawessler.com">peter@guptawessler.com</a>  Thomas G. Jarrard LAW OFFICE OF THOMAS G. JARRARD, PLLC 1020 N Washington Street Spokane, WA 99201 Telephone: (425) 239-7290 Email: <a href="mailto:tjarrard@att.net">tjarrard@att.net</a>  Matthew Z. Crotty, Esq. CROTTY & SON LAW FIRM, PLLC 905 W. Riverside Ave., Suite 404 Spokane, WA 99201 Telephone: (509) 850-7011 <a href="mailto:matt@crottyandson.com">matt@crottyandson.com</a>

The Court has approved these law firms to serve as Class Counsel. You have the right to hire your own attorney (at your own expense), but if you are a member of and remain in the Settlement Class, you are not required to hire a separate attorney.

## **22. How will the lawyers for the Settlement Class be paid?**

Class Counsel undertook this matter more than two years ago on a wholly contingent basis. Subject to approval of the Court, Class Counsel is permitted to seek an award of attorneys' fees to be paid from the Class Settlement Amount, and reimbursement of expenses incurred during the litigation, also to be paid from the Class Settlement Amount. These attorneys' fees pay for work the attorneys have performed on behalf of the Settlement Class and for work yet to be done in helping to administer the Settlement. Before the Final Approval Hearing, Class Counsel will seek the Court's approval of an award of attorneys' fees in the amount not to exceed one third of the \$14 million maximum payment that Walmart could make under the Settlement, plus reimbursement for lawsuit costs and expenses. Whether the Settlement is approved or not, you will not be required to directly pay any attorneys' fees or other expenses or costs, which will be paid only from the Class Settlement Amount in the amount approved by the Court.

## **THE NAMED PLAINTIFF**

## **23. What May the Settlement Class Representative Receive Under the Settlement?**

The Settlement Class Representative may receive a payment like any other Settlement Class Member by filing a Claim Form. In addition, Class Counsel will ask the Court to award of Service Payment of \$10,000 to be paid from the Class Settlement Amount to the Settlement Class Representative in his capacity as Settlement Class Representative. The proposed Service Payment would recognize the service that the Settlement Class Representative provided here, including his participation in the prosecution and settlement of this case.

## **THE SETTLEMENT IS NOT YET FINAL**

## **24. Can the Settlement be terminated?**

If there is no final approval of the proposed Settlement in this case or if the Settlement is not consummated for any other reason, the Settlement Agreement will become null and void, and the parties will resume their former positions in the lawsuit.

## **GETTING MORE INFORMATION**

## **25. How do I get more information?**

This Notice contains only a summary of the proposed Settlement and your rights as a Settlement Class Member. Full details of the Settlement are set forth in the Settlement Agreement. The Settlement Agreement and certain other documents about the litigation are available on the Claims Administrator's website at [www.WalmartUSERRAsettlement.com](http://www.WalmartUSERRAsettlement.com). You may obtain additional information regarding the matters involved in this lawsuit by reviewing the papers on file in this litigation, which may be (a) inspected, during business hours, at the Office of the Clerk of Court, United States District Court for the District of Massachusetts, 1 Courthouse Way, Boston, Massachusetts 02210, or (b) accessed online for a fee by obtaining a password at [www.pacer.gov](http://www.pacer.gov).

**Please do not contact Walmart about this Settlement. It may not be able to give you additional information.**

## **26. How do I ensure that I receive any updates?**

If your contact information changes after you receive this Notice, you should contact Class Counsel and/or provide an update to the Claims Administrator. You may e-mail any updates to your contact information to Class Counsel whose e-mail addresses are provided below, or communicate any changes to the Claims Administrator at XXXX [settlement e-mail address] or XXXX [settlement phone number].

## **27. Whom do I call about questions?**

QUESTIONS? CALL 800 \_\_\_\_\_ OR VISIT  
[www.](http://www.) \_\_\_\_\_



If you have any questions about this Notice or the lawsuit, contact Class Counsel or the Claims Administrator listed below.

<i>Lead Class Counsel</i>	<i>Additional Class Counsel</i>
Adam T. Klein Michael Scimone Nina Martinez OUTTEN & GOLDEN LLP 685 Third Avenue, 25th Floor New York, New York 10017 Telephone: (212) 245-1000 Fax: (646) 509-2060 Email: <a href="mailto:atk@outtengolden.com">atk@outtengolden.com</a>  R. Joseph Barton BLOCK & LEVITON LLP 1735 20th Street N.W. Washington, DC 20009 Telephone: (202) 734-5458 Email: <a href="mailto:WalmartUSERRA@blockleviton.com">WalmartUSERRA@blockleviton.com</a>	Peter Romer-Friedman GUPTA WESSLER PLLC 1900 L Street, NW, Suite 312 Washington, DC 20036 Telephone: (202) 888-1741 Email: <a href="mailto:peter@guptawessler.com">peter@guptawessler.com</a>  Thomas G. Jarrard LAW OFFICE OF THOMAS G. JARRARD, PLLC 1020 N Washington Street Spokane, WA 99201 Telephone: (425) 239-7290 Email: <a href="mailto:tjarrard@att.net">tjarrard@att.net</a>  Matthew Z. Crotty, Esq. CROTTY & SON LAW FIRM, PLLC 905 W. Riverside Ave., Suite 404 Spokane, WA 99201 Telephone: (509) 850-7011 <a href="mailto:matt@crottyandson.com">matt@crottyandson.com</a>

**[INSERT CLAIMS ADMINISTRATOR CONTACT INFORMATION HERE]**

**PLEASE DO NOT CONTACT WALMART, THE COURT OR THE COURT CLERK'S OFFICE  
REGARDING THIS NOTICE, THE SETTLEMENT, OR THE CLAIMS PROCESS.**

Dated: **XX**, 2021

BY ORDER OF THE COURT

UNITED STATES DISTRICT  
COURT DISTRICT OF  
MASSACHUSETTS