

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION**

JEREMY BRADEN, individually and on behalf of ) all others similarly situated, ) <div style="text-align: right;">Plaintiff, )</div>		
v. )		Case No. 6:08-cv-3109-GAF
WAL-MART STORES, INC., et al., )		Hon. Gary A. Fenner
Defendants. )		CLASS ACTION

**NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT**

**TO: ALL PERSONS, EXCEPT DEFENDANTS, WHO ARE OR WERE PARTICIPANTS IN THE WAL-MART STORES, INC. PROFIT SHARING AND 401(K) PLAN (THE “PLAN”) OR THE PREDECESSORS OR SUCCESSORS THERETO, WHO HAVE HELD ASSETS IN THE PLAN INVESTMENT OPTIONS AT ANY TIME BETWEEN JULY 1, 1997 AND DECEMBER 2, 2011, INCLUSIVE, AS WELL AS THEIR BENEFICIARIES, ALTERNATE PAYEES, REPRESENTATIVES AND SUCCESSORS IN INTEREST.**

**PLEASE READ THIS NOTICE CAREFULLY.  
A FEDERAL COURT AUTHORIZED THIS NOTICE.  
THIS IS NOT A SOLICITATION FROM A LAWYER.  
YOU HAVE NOT BEEN SUED.**

The *Court* has preliminarily approved a proposed settlement (the “*Settlement*”) of a class action lawsuit brought under the Employee Retirement Income Security Act (“ERISA”) against Wal-Mart Stores, Inc. (“*Wal-Mart*”) and certain of its officers, directors, and employees with responsibilities related to the Wal-Mart Stores, Inc. Profit Sharing and 401(k) Plan (the “*Plan*”), and against Merrill Lynch, Pierce, Fenner & Smith Inc., Merrill Lynch Trust Company of America, and Merrill Lynch & Co. Inc. (“*Merrill Lynch*”), entities which provide services to the *Plan*, including recordkeeping and trustee services. This lawsuit alleges that certain fees and expenses charged to the *Plan* and to certain individual *Plan* accounts by mutual fund companies and collected by *Merrill Lynch* were excessive in light of the size of the *Plan* and that these excessive fees were charged without properly disclosing them to *Wal-Mart*, the *Plan*, or *Plan* participants. As described below, in accordance with the *Plan of Allocation* to be approved by the *Court*, the *Settlement* will provide for payment directly to the *Plan* to be used by the *Plan* to pay certain *Plan* expenses and administration fees, which will reduce the amount of fees that otherwise would be charged to individual *Plan* accounts in the future. In addition, for a two-year period, the *Settlement* provides for the *Retirement Plans Committee*’s continued offering of low-

cost investment options, as well as new information about fees and improvements to participant education about saving for retirement.

As described in Section 15 below, the *Court* has scheduled a hearing on the *Final* approval of the *Settlement* and for approval of the *Class Plaintiff's* petition for attorneys' fees and expenses and compensation to the *Class Plaintiff* for **Wednesday, March 7, 2012, at 9:00 a.m.**, before United States District Court Judge Gary A. Fenner. The hearing will be held at the Charles Evans Whittaker Courthouse, 400 East 9th Street, Courtroom 8A, Kansas City, Missouri 64106.

Any objections to the *Settlement*, or to the petition for attorneys' fees and expenses and/or any award to the *Class Plaintiff*, must be served in writing on *Class Counsel* and *Defendants' Counsel*, identified in Section 14 of this *Class Notice*. The procedure for objecting is described below.

This *Class Notice* contains summary information about the *Settlement*. The terms and conditions of the *Settlement* are fully set forth in the *Settlement Agreement* dated December 2, 2011. Capitalized and italicized terms used in this *Class Notice* but not defined in this *Class Notice* have the meanings assigned to them in the *Settlement Agreement*. Copies of the *Settlement Agreement* are available at [www.WalMartERISASettlement.com](http://www.WalMartERISASettlement.com), or from *Class Counsel*: Lynn Lincoln Sarko, Keller Rohrback L.L.P., 1201 Third Avenue, Suite 3200, Seattle, WA 98101. *Class Counsel* has established a toll-free number, (800) 233-8509, if you have questions or comments. *Class Counsel* may also be contacted via email at [WalMartERISASettlement@kellerrohrback.com](mailto:WalMartERISASettlement@kellerrohrback.com).

**Please do not contact the *Court*. Its personnel will not be able to answer your questions.**

**PLEASE READ THIS NOTICE CAREFULLY AND COMPLETELY. IF YOU ARE A MEMBER OF THE CLASS TO WHOM THIS NOTICE IS ADDRESSED, THE SETTLEMENT WILL AFFECT YOUR RIGHTS. YOU ARE NOT BEING SUED IN THIS MATTER. YOU DO NOT HAVE TO APPEAR IN COURT, AND YOU DO NOT HAVE TO HIRE AN ATTORNEY IN THIS CASE. IF YOU ARE IN FAVOR OF THE SETTLEMENT, YOU NEED NOT DO ANYTHING. IF YOU DISAPPROVE, YOU MAY OBJECT TO THE SETTLEMENT PURSUANT TO THE PROCEDURES DESCRIBED BELOW.**

YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT	
<b>YOU CAN DO NOTHING.</b>	If the <i>Settlement</i> is approved by the <i>Court</i> , and if you are a member of the <i>Settlement Class</i> and have a <i>Plan</i> account when the <i>Net Proceeds</i> of the <i>Settlement Fund</i> are used to pay <i>Plan</i> expenses or administration fees under the <i>Plan of Allocation</i> , the <i>Net Proceeds</i> will pay for certain <i>Plan</i> expenses or administration fees that otherwise would be charged to individual <i>Plan</i> accounts in the future. If you have a <i>Plan</i> account when the <i>Settlement</i> takes effect, you will also be eligible for other benefits provided to you under the <i>Settlement</i> without having to file a claim or take any other action.
<b>NO ACTION IS NECESSARY TO BE ENTITLED TO BENEFIT FROM THE PAYMENT OF CERTAIN PLAN EXPENSES OR ADMINISTRATION FEES THROUGH THE <i>PLAN OF ALLOCATION</i>.</b>	If you are a <i>Plan</i> participant, as set forth above, any reduction of certain <i>Plan</i> expenses or administration fees that otherwise would be chargeable to your account in the future will be paid out of the <i>Settlement Fund</i> (up to the value of the <i>Net Proceeds</i> of the <i>Settlement Fund</i> ) according to the <i>Plan of Allocation</i> . However, you are <u>not</u> entitled to any reduction in the amount of fees already charged to your individual <i>Plan</i> account. In addition, if you no longer have a <i>Plan</i> account on the date on which <i>Plan</i> expenses are paid using funds from the <i>Net Proceeds</i> of the <i>Settlement Fund</i> , you are <u>not</u> entitled to any reduction in the amount of fees already charged to your former individual <i>Plan</i> account.
<b>NO ACTION IS NECESSARY TO BE ENTITLED TO THE CHANGES TO THE <i>PLAN</i>, INCLUDING THE NEW WAYS <i>WAL-MART</i> WILL INFORM PARTICIPANTS ABOUT FEES AND PROVIDE RESOURCES TO HELP PARTICIPANTS PLAN FOR RETIREMENT SAVINGS.</b>	If the <i>Settlement</i> is approved by the <i>Court</i> and you are a member of the <i>Settlement Class</i> with a <i>Plan</i> account, you will be entitled to all of the “ <i>Non-Monetary Considerations</i> ” provided by the <i>Settlement</i> . That means that you will receive all of the benefits of the improvements the <i>Retirement Plans Committee</i> continues to make to the <i>Plan</i> so that low-cost investment options continue to be available. You will also receive new information about fees to help make them more understandable and you will benefit from improvements to participant education about saving for retirement. If you no longer have a <i>Plan</i> account on the <i>Effective Date of Settlement</i> , you will not receive these benefits.
<b>YOU CAN OBJECT (NO LATER THAN <u>FEBRUARY 17, 2012</u>).</b>	If you wish to object to any part of the <i>Settlement</i> , you may (as discussed below) write to the <i>Court</i> and counsel about why you object to the <i>Settlement</i> .
<b>YOU CAN GO TO A HEARING ON <u>MARCH 7, 2012</u>.</b>	If you submit a written objection to the <i>Settlement</i> to the <i>Court</i> and counsel before the <i>Court</i> -approved deadline, you may (but do not have to) attend the <b>March 7, 2012</b> hearing (“ <i>Fairness Hearing</i> ”) about the <i>Settlement</i> and present your objections to the <i>Court</i> . You may attend the hearing even if you do not file a written objection, but you may not be permitted to address the <i>Court</i> at the hearing if you do not notify the <i>Court</i> and counsel of your intention to appear at the hearing by <b>February 17, 2012</b> , as described below.

These rights and options—**and the deadlines to exercise them**—are explained in this *Class Notice*.

The *Court* in charge of this case still has to decide whether to approve the *Settlement*. The *Settlement* will be made *Final* only if the *Court* approves the *Settlement* and that approval is upheld in the event of any appeals. Information concerning how the *Settlement* will affect your *Plan* account is not available because that amount will be based on (a) the amount of *Plan* expenses or administration fees following the *Effective Date of Settlement*; (b) whether you have an individual *Plan* account at the time that *Plan* expenses or administration fees would otherwise be charged to individual *Plan* accounts but which will be paid by the *Net Proceeds* of the *Settlement Fund*; and (c) the *Plan of Allocation*.

Further information regarding the litigation, the *Settlement*, and this *Class Notice* can be obtained by contacting *Class Counsel*: Lynn Lincoln Sarko, Keller Rohrback L.L.P., 1201 Third Avenue, Suite 3200, Seattle, WA 98101. *Class Counsel* has established a toll-free number, (800) 233-8509, if you have questions or comments. *Class Counsel* may also be contacted via email at [WalMartERISASettlement@kellerrohrback.com](mailto:WalMartERISASettlement@kellerrohrback.com).

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## SUMMARY OF SETTLEMENT

In this litigation (the “*Action*”), *Class Plaintiff* alleges that the *Defendants* breached fiduciary duties owed to the participants in and beneficiaries of the *Plan* under the Employee Retirement Income Security Act of 1974 (“*ERISA*”). Copies of the *Action*’s operative *Complaint* and other documents filed in the *Action* are available at [www.WalMartERISASettlement.com](http://www.WalMartERISASettlement.com) or may be requested from *Class Counsel* by calling (800) 233-8509. During the course of the lawsuit, the *Retirement Plans Committee* continued to make significant changes to the *Plan*, including the selection of lower-cost investment options. A *Settlement Fund* has been created as a consequence of the *Settlement* of this *Action*. It will provide for payment directly to the *Plan* to be used by the *Plan* for payment of certain *Plan* expenses and administration fees, according to the *Plan of Allocation*. The *Settlement Fund* will be used to reduce the amount of fees that otherwise would be charged to individual *Plan* accounts in the future. The *Settlement* also provides for *Non-Monetary Considerations*. These include the *Retirement Plans Committee*’s continued improvements in the *Plan* so that low-cost investment options are—and continue to be—available, as well as new information about fees and continued improvements to participant education about saving for retirement.

### **What is the Amount of the *Settlement*?**

A *Settlement Fund* of \$13,500,000 is being established in the *Action*, contributed by *Merrill Lynch* and by *Wal-Mart* and/or its insurer. The *Net Proceeds* of the *Settlement Fund*—which shall be the *Settlement Fund* plus interest earned thereon minus any taxes, *Court*-approved attorneys’ fees and costs, *Class Plaintiff* compensation, notice, and other expenses—will be paid to the *Plan* and will be used by the *Plan* for payment of certain *Plan* expenses and administration fees, according to the *Plan of Allocation* to be approved by the *Court*. No portion of the *Net Proceeds* will be used to compensate former or current participants in the *Plan* for fees and expenses they may have paid in the past, because the effort to identify and provide payment to almost two million former participants, as well as the efforts to calculate amounts due to current participants, would be cost prohibitive and consume, at a minimum, a significant portion of the *Net Proceeds*.

## **STATEMENT OF ATTORNEYS’ FEES AND REIMBURSEMENT OF EXPENSES SOUGHT IN THE ACTION**

The attorneys’ fees of *Class Counsel*, the costs of litigating the *Action* and of certain aspects of the administration of the *Settlement*, and any award to the *Class Plaintiff* will be taken from the *Settlement Fund*. *Class Counsel* will ask the *Court* for an order awarding attorneys’ fees in an amount not to exceed 30% of the amount recovered in the *Settlement*, plus reimbursement of costs and expenses. The actual amount of attorneys’ fees, costs, expenses, and any award to the *Class Plaintiff* will be determined by the *Court*.

### **What Will the *Class Plaintiff* Get?**

The *Class Plaintiff* in the *Action* (defined below) will share in benefits from the payment of certain *Plan* expenses and administration fees that otherwise would be charged to individual *Plan* accounts, according to the *Plan of Allocation*, as well as the *Settlement*’s *Non-Monetary*

*Considerations*, on the same basis and to the same extent as all other members of the *Settlement Class*, except that, in addition, the *Class Plaintiff* may ask the *Court* for compensation of up to \$20,000 for his effort and work in bringing this case and representing the interests of the *Settlement Class*, plus reimbursement of the reasonable costs and expenses directly relating to his representation of the *Settlement Class* during the course of this *Action*. Any compensation awarded to any *Class Plaintiff* by the *Court* will be payable from the proceeds of the *Settlement*.

## **BASIC INFORMATION**

### **1. Why Should I Read This Class Notice?**

You or someone in your family may be, are, or may have been a participant in, beneficiary of, or alternate payee of, the *Plan* during the *Class Period*.

The *Court* caused this *Class Notice* to be distributed because, if you fall within that group, you have a right to know about the *Settlement* and about all of the options available to you regarding the *Settlement* before the *Court* decides whether to approve the *Settlement*. If the *Court* approves the *Settlement*, and after any objections and appeals are resolved, the *Net Proceeds* will be paid directly to the *Plan* to be used by the *Plan* to pay certain *Plan* expenses and administration fees according to the *Plan of Allocation*.

The *Court* in charge of this case is the United States District Court for the Western District of Missouri. The person who brought this suit is called the “*Class Plaintiff*,” and the people and entities he sued are called the “*Defendants*.” The *Class Plaintiff* in the *Action* is Jeremy Braden. The *Defendants* in the *Action* include Wal-Mart Stores, Inc., James W. Breyer, John A. Cooper, Jr., Stanley C. Gault, Frederick S. Humphries, Dawn G. Lepore, Elizabeth A. (Betsy) Sanders, Donald G. Soderquist, Jose H. Villarreal, Stephen R. Hunter, Debbie Davis Campbell, Jeff Amos, Bill Ayers, Terri Bertschy, Elizabeth Branigan-Evans, Fred Disch, Larry Duff, Sam Dunn, Don Etheredge, Robin Forbis, Sharon Garmon, Erin Gonzalez (misidentified and named in duplication as Erin Weitzel), Rob Hey, Greg Johnston, David McBride, Phyllis Morey, Cliff Parker, Arvetta Powell, Charles Rateliff, Dave Reiff, David Scogin, Donna Spradlin, J.P. Suarez, Jenifer Terrell, Kevin Turner, Jeremy Wilson, and Jimmy Wright (the “*Wal-Mart Defendants*”). Also named as *Defendants* are Merrill Lynch, Pierce, Fenner & Smith Incorporated, Merrill Lynch Trust Company of America, and Merrill Lynch & Co., Inc. (the “*Merrill Lynch Defendants*”).

The legal action that is the subject of this *Class Notice* and the *Settlement* is known as *Braden v. Wal-Mart Stores, Inc., et al.*, Case No. 6:08-cv-3109-GAF (W.D. Mo.) (the “*Action*”).

### **2. What Is The Action About?**

In the *Action*, *Class Plaintiff* claims that the *Defendants* were fiduciaries of the *Plan* who violated fiduciary duties under ERISA, and he asserts causes of action for the losses he alleged were suffered by the *Plan* as a result of the alleged breaches of fiduciary duty by the *Defendants*.

The *Complaint* alleges that all or some of the *Wal-Mart Defendants* violated ERISA by failing to prudently and loyally manage the assets of the Wal-Mart Stores, Inc. Profit Sharing and

401(k) Plan (“*Plan*”) by offering *Investment Options* that caused the *Plan* to incur excessive fees and expenses and that provided inferior returns; failing to properly monitor the *Plan*’s fiduciaries; failing to provide *Plan* participants with complete and accurate information regarding fees and expenses; breaching their duties and responsibilities as co-fiduciaries; and engaging in prohibited transactions with the *Plan* trustee and recordkeeper, the *Merrill Lynch Defendants*.

The *Complaint* also alleges that all or some of the *Merrill Lynch Defendants* violated ERISA by failing to prudently and loyally manage the assets of the *Plan* by offering *Investment Options* that caused the *Plan* to incur excessive fees and expenses and that provided inferior returns; engaging in prohibited transactions in violation of ERISA; failing to provide *Plan* participants with complete and accurate information regarding fees and expenses; and breaching their duties and responsibilities as co-fiduciaries. The *Complaint* further alleges that the *Merrill Lynch Defendants* collected fees from the mutual fund companies without disclosing them to the *Wal-Mart Defendants* or to the *Plan*. The *Complaint* also alleges that some or all of the *Merrill Lynch Defendants* engaged in conduct that unjustly enriched the *Merrill Lynch Defendants* and that the *Merrill Lynch Defendants* knowingly participated in fiduciary breaches by certain other *Defendants*.

*Defendants* deny the material allegations of the *Complaint*; deny any wrongdoing or liability whatsoever; believe that they acted at all times reasonably and prudently and in compliance with ERISA with respect to the *Plan*, its participants and beneficiaries, and the *Settlement Class*; have asserted defenses and would assert certain other defenses if this *Settlement* is not consummated; are not opposing the *Court*’s certification of the *Settlement Class* contemplated by the *Settlement Agreement* solely for purposes of effectuating the *Settlement*; and are entering into the *Settlement* solely to avoid the cost, disruption, and uncertainty of litigation.

*Class Counsel* have conducted an extensive investigation of the *Wal-Mart Defendants* and the *Merrill Lynch Defendants* and of the alleged losses suffered by the *Plan* as a result of the alleged breaches of fiduciary duty and other unlawful conduct alleged in the *Action*. In addition, through that investigation and through discovery of additional information in the *Action*, *Class Counsel* have obtained extensive documents, including *Plan* governing documents and materials, communications with *Plan* participants, internal *Company* documents regarding the *Plan*, SEC filings, press releases, public statements, news articles, and other publications and documents.

The *Settlement* is the product of extensive negotiations between the *Class Counsel* and *Defendants*’ *Counsel*. All of the parties to the *Settlement* have taken into account the uncertainty and risks inherent in any litigation, particularly in a complex case such as this, and have concluded that it is desirable that the *Action* be fully and finally settled on the terms and conditions set forth in the *Settlement Agreement*.



### **3. What Are The Damages Alleged In This Case?**

In this *Action*, *Class Plaintiff* claims damages due to alleged excessive fees associated with the *Plan Investment Options* and *Merrill Lynch*'s failure to disclose certain fees to *Wal-Mart*. *Class Plaintiff* claims that such fees caused relatively small reductions in each participant's retirement savings account on a year-to-year basis but that, over time, caused or could have caused large decreases in long-term retirement savings for participants. The *Defendants* dispute *Class Plaintiff*'s claims and that participants' retirement savings were or would have been adversely affected. Due to changes in the *Plan*, and the *Non-Monetary Considerations* described below, the fees associated with *Plan Investment Options* are and will continue to be lower than when this *Action* was filed. In addition, the *Net Proceeds* will be used to pay certain *Plan* expenses and administration fees that otherwise would be charged to individual *Plan* accounts.

### **4. Why Is This Case A Class Action?**

In a class action, one or more plaintiffs—here, the *Class Plaintiff*—sue on behalf of people who have similar claims—here, the *Settlement Class* members. One court resolves the issues for all class members. The *Court* has preliminarily decided that this case meets the criteria for class action treatment. U.S. District Judge Gary A. Fenner is presiding over this case.

### **5. Why Is There A Settlement?**

The *Court* has not reached any final decisions regarding *Class Plaintiff*'s claims against the *Defendants*. Instead, the *Class Plaintiff* and the *Defendants* have agreed to the *Settlement*. In reaching the *Settlement*, they have avoided the cost, time, and uncertainty of a trial. The *Class Plaintiff* and *Class Counsel* believe that the *Settlement* is best for all *Settlement Class* members.

### **6. How Do I Know Whether I Am Part Of The Settlement?**

The proceeds of the *Settlement* will be paid to the *Plan* to be used by the *Plan* to pay certain *Plan* expenses and administration fees that otherwise would be charged to individual *Plan* accounts, according to the *Plan of Allocation*. The *Settlement* also provides for *Non-Monetary Considerations*. These include the continued availability of low-cost investment options, as well as new information about fees and improvements to participant education about saving for retirement. You are a member of the *Settlement Class* if you fall within the following definition:

(a) all *Persons*, except *Defendants* who are or were participants in, or beneficiaries of, the Wal-Mart Stores, Inc. Profit Sharing and 401(k) Plan, or the predecessors or successors thereto, who have held assets in the *Plan Investment Options* at any time between July 1, 1997 to December 2, 2011, inclusive, and (b) as to each *Person* within the scope of subsection (a) of [Settlement Agreement] Section 1.44, his, her, or its beneficiaries, alternate payees, *Representatives* and *Successors in Interest*.

## THE SETTLEMENT BENEFITS

### 7. What Does The *Settlement* Provide?

A *Settlement Fund* of \$13,500,000 is being established in this *Action*, contributed by *Merrill Lynch* and by *Wal-Mart* and/or its insurer.

The amount of *Net Proceeds* remaining in the *Settlement Fund* will be paid directly to the *Plan* to be used by the *Plan* for payment of certain *Plan* expenses and administration fees, according to the *Plan of Allocation*. The *Settlement* will reduce expenses or fees that otherwise would be charged to individual *Plan* accounts existing at the time that the *Net Proceeds* in the *Settlement Fund* are applied to pay for certain *Plan* expenses or administrative fees. If you do not have a *Plan* account at that time, you will not benefit from the *Net Proceeds*.

The type of relief provided by the *Settlement*—reducing certain *Plan* expenses and administration fees that otherwise would be charged to individual *Plan* accounts, instead of distributing cash to each *Settlement Class* member—has been preliminarily approved by the *Court* based on certain factors present in this litigation. Specifically, because of the relatively small losses alleged to have been experienced by each *Settlement Class* member during the *Settlement Class Period*, and the number of persons who have participated in the *Plan*, it would be cost prohibitive to distribute the *Net Proceeds* directly to each *Settlement Class* member. Instead, it has been determined that the best use of the *Net Proceeds* is the payment of the *Settlement Fund* to the *Plan* to be used for certain *Plan* expenses and administration fees that otherwise would be charged to individual *Plan* accounts, according to the *Plan of Allocation*.

In addition, the *Settlement Agreement* requires *Defendants* to provide several *Non-Monetary Considerations* to the *Settlement Class*. The *Non-Monetary Considerations* are available to all *Settlement Class* members who have an individual *Plan* account on the *Effective Date of Settlement*. These benefits will be available for a two-year period beginning on the *Effective Date of Settlement*. The *Non-Monetary Considerations* include that the *Retirement Plans Committee* will continue to retain a consultant or independent advisor to provide independent advice and recommendations on selection and monitoring of *Investment Options*, enhance available web-based investment education resources, and continue its ongoing process to remove from the *Plan's Investment Options*—and not add as new *Investment Options*—funds that are retail mutual funds, funds that pay 12b-1 fees, and funds that provide revenue sharing, per-position, or per-participant sub-transfer agent fees, or other fees to any party in interest as defined in ERISA § 3(14)(A), including the *Plan's* trustee or recordkeeper. The *Retirement Plans Committee* will also continue to consider adding other low-cost, passively managed investment options to the *Plan's* investment lineup. In addition, the *Plan* will provide new disclosures about fees that are designed to be easier to understand and will provide resources to *Plan* participants to help them plan for retirement and understand the impact of fees on long-term savings. The *Non-Monetary Considerations* will only apply to those who have individual *Plan* accounts on the *Effective Date of Settlement* and are fully set forth in Section 10 below.

All *Settlement Class* members and anyone claiming through them are deemed to fully release the *Released Parties* from *Released Claims*. The *Released Parties* include the *Defendants* and their officers, directors, employees, attorneys, and agents. The *Released Claims*

include all claims which were or could have been asserted in the *Action*. This means that *Settlement Class* members will not have the right to sue the *Released Parties* for anything related to breaches of fiduciary duty described in the *Complaint*, or to other alleged misconduct during the Class Period, which is July 1, 1997 through December 2, 2011, inclusive, arising out of or relating to the allegations in the *Complaint*.

The above description of the operation of the *Settlement* is only a summary. The governing provisions are fully set forth in the *Settlement Agreement* (including its exhibits), copies of which may be obtained at [www.WalMartERISASettlement.com](http://www.WalMartERISASettlement.com) or by calling *Class Counsel* at (800) 233-8509 or emailing *Class Counsel* at [WalMartERISASettlement@kellerrohrback.com](mailto:WalMartERISASettlement@kellerrohrback.com).

#### **8. How Will The *Settlement* Reduce Fees Charged To My *Plan* Account?**

The *Net Proceeds* will be paid directly to the *Plan* and used by the *Plan* for payment of certain *Plan* expenses and administration fees that otherwise would be charged to individual *Plan* accounts, according to the *Plan of Allocation* to be approved by the Court. You do not need to file a claim. If you have questions regarding the *Settlement*, you can contact *Class Counsel* listed in Section 19 below.

#### **9. When Would The *Net Proceeds* Be Used By The *Plan* To Pay For *Plan* Expenses Or Fees That Otherwise Would Be Charged To My *Plan* Account?**

Use of the *Net Proceeds* by the *Plan* for payment of certain *Plan* expenses and administration fees that otherwise would be charged to individual *Plan* accounts is conditioned on several matters, including the Court's approval of the *Settlement* and the *Plan of Allocation* and such approval becoming *Final* and no longer subject to any appeals to any court. Any appeal of the *Final* approval may take several years. If the *Settlement* is approved by the Court, and there are no appeals from such *Final* approval, it is reasonably anticipated that the *Net Proceeds* will be paid directly to the *Plan* during calendar year 2012, with payments of certain *Plan* expenses or administration fees that reduce the amount of fees otherwise charged to then-existing individual *Plan* accounts reflected after that time.

If you have additional questions regarding the timing of payment of the *Net Proceeds* to the *Plan*, you can contact *Class Counsel* listed in Section 19 below. Information about the effect of payment of certain *Plan* expenses or administration fees on fees otherwise chargeable to individual *Plan* accounts is not available because those amounts will be based on (a) the amount of *Plan* expenses or administration fees following the *Effective Date of Settlement*; (b) whether you have an individual *Plan* account at the time that *Plan* expenses or administration fees would otherwise be charged to individual *Plan* accounts but which will be paid by the *Net Proceeds* of the *Settlement Fund*; and (c) the *Plan of Allocation*.

**There will be no reduction of fees or allocation to individual *Plan* accounts under the *Settlement* if the *Settlement Agreement* is terminated.**

The *Settlement Agreement* may be terminated on several grounds, including if (1) the Court does not approve or materially modifies the *Settlement* or (2) either as modified by the

*Court* or as a result of reversal or modification on appeal, the *Court's Final Order* in the case does not satisfy certain terms of the *Settlement*. Should the *Settlement Agreement* be terminated, the *Settlement* will be terminated and the *Action* will proceed as if the *Settlement Agreement* had not been entered into. If you have questions regarding the *Settlement*, you can contact *Class Counsel* listed in Section 19 below.

#### **10. When And How Will I Receive The Non-Monetary Considerations Of The Settlement?**

The *Settlement's Non-Monetary Considerations* are available to all *Settlement Class* members who have an individual *Plan* account existing on the *Effective Date of Settlement*. These benefits will be in place for a two-year period beginning on the *Effective Date of Settlement*. You do not need to file a claim to receive these benefits.

Many of the *Non-Monetary Considerations* will automatically benefit you if you are eligible to receive them:

- The *Retirement Plans Committee*, to further its goal to offer *Investment Options* with fees that are reasonable, shall: (a) continue to retain a consultant or independent advisor who is not otherwise affiliated with *Wal-Mart* and who has acknowledged in writing fiduciary status with the *Plan* within the meaning of ERISA § 3(21)(A), to provide independent advice and recommendations on selection and monitoring of *Plan Investment Options*; and (b) review the consultant or independent advisor for conflicts of interest on an annual basis.
- The *Retirement Plans Committee* shall continue its ongoing process to remove from the *Plan's Investment Options*, and shall not add as *Plan Investment Options*, funds that are retail mutual funds, funds that pay 12b-1 fees, and funds that provide revenue sharing, per-position or per-participant sub-transfer agent fees, or other fees to any party in interest as defined in ERISA § 3(14), including the *Plan's* trustee or recordkeeper.
- The *Plan* offers two index funds—the Barclays Russell 1000 Index Trust and the Barclays Russell 2000 Index Trust—on its core menu. The *Retirement Plans Committee* will consider, where and when appropriate, adding other low-cost, passively managed investment vehicles to the *Plan Investment Options*.

Other *Non-Monetary Considerations* will benefit you if you are eligible to receive them and you choose to use them when they become available. These benefits include:

- The *Retirement Plans Committee* shall continue to make available web-based investment education resources, including a retirement planning calculator, to participants of the *Plan* that are the same as, or comparable to, those provided to participants on [www.Walmartbenefits.com](http://www.Walmartbenefits.com) and [www.benefits.ml.com](http://www.benefits.ml.com), as of the date on which the *Settlement Agreement* is fully executed. Such resources shall continue to be made available to participants on [www.Walmartbenefits.com](http://www.Walmartbenefits.com) and on [www.benefits.ml.com](http://www.benefits.ml.com). *Merrill Lynch* agrees to make such resources available

on [www.benefits.ml.com](http://www.benefits.ml.com). The *Retirement Plans Committee* will continue to explore enhancements to its web-based participant investment education program, including enhancements intended to make Retirement Education and Tools more accessible on [www.Walmartbenefits.com](http://www.Walmartbenefits.com).

- The *Retirement Plans Committee* shall comply with the Fiduciary Requirements for Disclosure in Participant-Directed Individual Account Plans, Final Rule, 75 Fed. Reg. 64910 at 64939 (Oct. 20, 2010), which shall include posting information about the *Plan Investment Options* in the format set forth in the Model Comparative Chart, “Appendix to §2550.404a-5,” 75 Fed. Reg. at 64942, on [www.benefits.ml.com](http://www.benefits.ml.com) and shall (i) include posting an active link in the Comparative Chart to information about the impact of fees on retirement savings made available by the Department of Labor at [http://www.dol.gov/ebsa/publications/401k\\_employee.html](http://www.dol.gov/ebsa/publications/401k_employee.html) or (ii) if such link is not feasible, include posting an active link to [http://www.dol.gov/ebsa/publications/401k\\_employee.html](http://www.dol.gov/ebsa/publications/401k_employee.html) in proximity to the online version of the Comparative Chart on [www.benefits.ml.com](http://www.benefits.ml.com). *Merrill Lynch* agrees to the placements of such links on [www.benefits.ml.com](http://www.benefits.ml.com).
- To help participants calculate the impact of fees on their retirement savings, the *Retirement Plans Committee* shall include a link on [www.benefits.ml.com](http://www.benefits.ml.com) to the SEC Cost Calculator found at <http://www.sec.gov/investor/tools/mfcc/get-started.htm>, with such link located in proximity to the online version of the Comparative Chart and with guidance to participants on how to complete the SEC Cost Calculator for the *Plan Investment Options*. *Merrill Lynch* agrees to the placement of this link on [www.benefits.ml.com](http://www.benefits.ml.com).

## **11. Can I Get Out Of The Settlement?**

You do not have the right to exclude yourself from the *Settlement*. The *Action* was conditionally certified under Federal Rule of Civil Procedure 23(b)(1) as a non “opt-out” class action because the *Court* determined the requirements of that Rule were satisfied. Thus, it is not possible for any participants or beneficiaries to exclude themselves from the benefits of the *Settlement*. As a *Settlement Class* member, you will be bound by any judgments or orders that are entered in the *Action* for all claims that were or could have been asserted in the *Action* or are otherwise included in the release under the *Settlement*.

Although you cannot opt out of the *Settlement*, you can object to the *Settlement* and ask the *Court* not to approve it. See Sections 14 and 17 below.

## **THE LAWYERS REPRESENTING YOU**

## **12. Do I Have A Lawyer In The Case?**

The *Court* has appointed the law firm Keller Rohrback L.L.P. as *Lead Counsel* in the *Action*. Together with the law firm of Aleshire Robb, P.C. (*Liaison Counsel*), Keller Rohrback

L.L.P. is *Class Counsel*. If you want to be represented by your own lawyer, you may hire one at your own expense.

### **13. How Will The Lawyers Be Paid?**

*Class Counsel* will file a petition for the award of attorneys' fees and expenses. This petition will be considered at the *Fairness Hearing*. *Defendants* take no position regarding the amount of attorneys' fees, costs, and expenses that may be sought by *Class Counsel*. *Class Counsel* has agreed to limit application for an award of attorneys' fees to not more than 30% of the *Settlement Fund*.

In addition, the *Class Plaintiff* in the *Action* will share in the reduced amount of fees that otherwise would be charged to individual *Plan* accounts, according to the *Plan of Allocation*, on the same basis and to the same extent as all other members of the *Settlement Class*, except that, in addition, the *Class Plaintiff* may apply to the *Court* for compensation of up to \$20,000 for his effort and work in bringing this case and representing the interests of the *Settlement Class*. Any compensation awarded to the *Class Plaintiff* by the *Court* will be payable from the proceeds of the *Settlement*. *Defendants* take no position regarding the amount of compensation awarded to the *Class Plaintiff*.

#### 14. How Do I Tell The Court If I Don't Like The Settlement?

If you are a *Settlement Class* member, you can tell the *Court* that you do not agree with the *Settlement* or some part of it, including the attorneys' fees and expenses the attorneys intend to seek or the request for compensation to the *Class Plaintiff*. To object, you must send a letter or other written filing saying that you object to the *Settlement* in *Braden v. Wal-Mart Stores, Inc., et al.*, Case No. 6:08-cv-3109-GAF. Be sure to include your name, address, telephone number, signature, and a full explanation of all reasons you object to the *Settlement*. Your written objection must be filed with the *Court* by **February 17, 2012**. The *Court's* address to receive objections is Clerk of the Court, U.S. District Court, Western District of Missouri, 222 N. John Q. Hammons Parkway, Springfield, Missouri 65806. NOTE: **This is not the same address as the location of the *Fairness Hearing*.** Your written objection must also be mailed to all of the counsel listed below, and must be postmarked no later than **February 17, 2012**:

PLAINTIFF'S LEAD COUNSEL	DEFENDANTS' COUNSEL
<p>Keller Rohrback L.L.P.  Attn: Lynn Lincoln Sarko  1201 Third Avenue, Ste 3200  Seattle, Washington 98109</p> <p>Facsimile: (206) 623-3384</p> <p><i>Class Counsel</i></p>	<p>Steptoe &amp; Johnson LLP  Attn: Paul J. Ondrasik  1330 Connecticut Ave., NW  Washington, DC 20036</p> <p>Facsimile: (202) 429-3902</p> <p>and</p> <p>Ross Higman  WAL-MART STORES, INC.  702 S.W. Eighth Street  Bentonville, AR 72716-0215</p> <p>Facsimile: (479) 277-5991</p> <p><i>Counsel for the Walmart Defendants</i></p> <p>O'Melveny &amp; Myers LLP  Attn: Robert Eccles  1625 Eye Street, N.W.  Washington, D.C. 20006</p> <p>Facsimile: (202) 346-4444</p> <p><i>Counsel for the Merrill Lynch Defendants</i></p>

## THE COURT'S FAIRNESS HEARING

The *Court* will hold a *Fairness Hearing* to decide whether to approve the *Settlement* as fair, reasonable, and adequate. You may attend the *Fairness Hearing*, and you may ask to speak, but you do not have to attend.

### 15. When And Where Will The *Court* Decide Whether To Approve The *Settlement*?

The *Court* will hold a *Fairness Hearing* at **9:00 a.m. on Wednesday, March 7, 2012**, at the Charles Evans Whittaker Courthouse, 400 East 9th Street, Courtroom 8A, Kansas City, Missouri 64106 (Judge Gary A. Fenner).

IF YOU DO NOT WISH TO OBJECT TO THE PROPOSED *SETTLEMENT*, THE APPLICATION FOR ATTORNEYS' FEES AND EXPENSES, THE APPLICATION FOR *CLASS PLAINTIFF* AWARD, OR THE *PLAN OF ALLOCATION*, YOU NEED NOT ATTEND THE *FAIRNESS HEARING*.

At that hearing, the *Court* will consider whether the *Settlement* is fair, reasonable, and adequate. If there are objections, the *Court* will consider them. After the *Fairness Hearing*, the *Court* will decide whether to approve the *Settlement*. The *Court* will also rule on the petition for *Class Counsel*'s attorneys' fees, costs, expenses, and any case contribution award to the *Class Plaintiff*.

### 16. Do I Have To Come To The *Fairness Hearing*?

No. *Class Counsel* will answer questions the *Court* might have, but you are welcome to come at your own expense. If you send an objection, you do not have to come to *Court* to talk about it. As long as your objection is postmarked by **February 17, 2012**, it will be before the *Court* when the *Court* considers whether to approve the *Settlement* as fair, reasonable, and adequate. You also may pay your own lawyer to attend the *Fairness Hearing*, but such attendance is not necessary.

### 17. May I Speak At The *Fairness Hearing*?

If you are a *Settlement Class* member, you may ask the *Court* for permission to speak at the *Fairness Hearing*. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Fairness Hearing in *Braden v. Wal-Mart Stores, Inc., et al.*, Case No. 6:08-cv-3109-GAF." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be mailed to the attorneys and filed with the Clerk of the Court, at the addresses listed in Section 14, **and must be postmarked no later than February 17, 2012.**



## IF YOU DO NOTHING

### **18. What Happens If I Do Nothing At All?**

If you do nothing and you are a *Settlement Class* member, you will participate in the *Settlement of the Action* as described above in this *Class Notice* if the *Settlement* is approved.

## GETTING MORE INFORMATION

### **19. Are There More Details About The Settlement?**

This *Class Notice* summarizes the proposed *Settlement*. The complete *Settlement* is set forth in the *Settlement Agreement*. You may obtain a copy of the *Settlement Agreement* at [www.WalMartERISASettlement.com](http://www.WalMartERISASettlement.com), by calling *Class Counsel* at (800) 233-8509, by emailing *Class Counsel* at [WalMartERISASettlement@kellerrohrback.com](mailto:WalMartERISASettlement@kellerrohrback.com), or by writing to *Class Counsel* at Lynn Lincoln Sarko, Keller Rohrback L.L.P., 1201 Third Avenue, Suite 3200, Seattle, WA 98101.

### **20. How Do I Get More Information?**

If you have general questions regarding the *Settlement*, you can contact *Class Counsel* listed in Section 19 above or review the information contained at [www.WalMartERISASettlement.com](http://www.WalMartERISASettlement.com).