

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**COUNTY DEPARTMENT, CHANCERY DIVISION**

ETHAN ROACH, on behalf of
himself and all other persons similarly
situated, known and unknown,

Plaintiff,

v.

WALMART INC.

Defendant.

Case No. 2019CH01107

Judge: Honorable Pamela McLean
Meyerson

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Settlement” or “Settlement Agreement”) is made by Plaintiff Ethan Roach (“Plaintiff” or “Settlement Class Representative”), individually and on behalf of the Settlement Class Members he seeks to represent (“Settlement Class” or “Settlement Class Members,” as defined below), and Walmart Inc. (“Walmart”) (Plaintiff and Walmart are collectively referred to as the “Parties”), in the above-captioned action (“Action”).

I. PROCEDURAL HISTORY

On January 28, 2019, Plaintiff filed a Class Action Complaint in the Circuit Court of Cook County, Chancery Division, alleging that Walmart violated the Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.*, by requiring Plaintiff and other employees to use a biometric cash register system as part of their jobs. In particular, Plaintiff alleged that Walmart violated BIPA in two ways: (1) collecting Plaintiff’s and the potential class’s biometric identifiers and information without following BIPA’s informed written consent procedures; and (2) possessing Plaintiff’s and the potential class’s biometric identifiers and information without a publicly available data retention schedule and destruction policy.

On April 5, 2019, Walmart filed a Section 5/2-619.1 Motion to Dismiss Plaintiff's Class Action Complaint ("Motion to Dismiss"). In its Motion to Dismiss, Walmart argued that Plaintiff's claims must be dismissed in their entirety for two reasons. First, Walmart argued that Plaintiff lacked standing to pursue his claims under the Illinois Constitution because he failed to establish that he suffered an "injury in fact." Second, Walmart argued that Plaintiff's claims were untimely because a one-year statute of limitations for privacy claims in 735 ILCS 5/13-201 applies to BIPA claims. On May 20, 2019, Plaintiff filed a Response in opposition to the Motion to Dismiss. On June 10, 2019, Walmart filed its Reply in support of its Motion to Dismiss. On August 21, 2019, the Court heard oral argument on the Motion to Dismiss. On October 25, 2019, the Court released a written Order denying the Motion to Dismiss.

On November 22, 2019, Walmart filed its Answers and Defenses to Plaintiff's Complaint. Walmart denied the material allegations of Plaintiff's Complaint, denied violating BIPA, and asserted sixteen affirmative defenses. On December 13, 2019, Plaintiff filed his Reply to Walmart's Affirmative Defenses. On February 26, 2020, Walmart filed its First Amended Answers and Defenses to include a defense based on Workers' Compensation Act preemption, an issue then pending with the Illinois First District Appellate Court. Plaintiff filed its Reply to Walmart's First Amended Affirmative Defenses on March 4, 2020.

The Parties served and responded to interrogatories and requests for production, including producing responsive documents. In Walmart's interrogatory responses, Walmart stated that employees could access its cash recycler system with a palm scan *or* numerical pin code. Walmart also produced documents confirming this representation. Walmart also stated that it possessed no documents from which it could determine which employees accessed the cash recycler system

with a palm scan instead of a pin code. Counsel for the Parties conferred about alleged deficiencies in the Parties' discovery responses.

In April 2020, the Parties agreed to explore potential settlement of the Action. To that end, the Parties engaged former Chief Judge of the United States District Court for the Northern District of Illinois, James Holderman, an experienced BIPA mediator, to facilitate settlement discussions. In advance of mediation, Walmart provided Plaintiff's counsel with information on the number of individuals that used Walmart's cash recycler system. The Parties then exchanged mediation statements with the relevant legal and factual arguments for their respective positions in the case. After exchanging mediation statements, the Parties agreed to postpone mediation to analyze additional data obtained from Walmart's vendors relevant to the scope and definition of the potential settlement class.

Walmart shared its vendor data with Plaintiff's counsel and both Parties exchanged supplemental mediation statements analyzing the vendor data, as well as new BIPA court decisions released since the Parties exchanged initial mediation statements. On September 29, 2020, the Parties participated in a video conference mediation with Judge Holderman. The Parties exchanged offers and counteroffers but were unable to reach a settlement.

In the weeks after the mediation, the Parties re-started negotiations directly between counsel. These negotiations resulted in the Parties reaching a settlement in principle on November 4, 2020. The Parties now memorialize their settlement in this Agreement.

II. WALMART DENIES LIABILITY

Walmart denies liability for the claims asserted in this Action. Neither the Settlement documents nor any other item pertaining to the Settlement contemplated herein shall be offered in any other case or proceeding for any purpose, including as evidence of any admission by Walmart

of any liability with respect to any claim for damages or other relief, or of any admission by Plaintiff that he would not have prevailed on liability on any of his claims. Any stipulation or admission by Walmart or Plaintiff contained in any document pertaining to the Settlement is made for settlement purposes only. In the event this Settlement is not finally approved, nothing contained herein shall be construed as a waiver by Walmart of its contention that class certification is not appropriate or is contrary to law in this Action or any other case or proceeding, or by Plaintiff of his contention that class certification is appropriate in this case or any other case or proceeding.

III. CERTIFICATION OF THE SETTLEMENT CLASS

Settlement Class Counsel shall request that the Court enter a certification order and certify for settlement purposes only the Settlement Class, defined as:

All current and former associates who worked at a Walmart Store, Super Center, Neighborhood Market, or Sam's Club in Illinois and who without first providing written consent used a palm scanner to access the at-issue cash recycler system while a palm scanner was enabled at a Walmart or Sam's Club location in Illinois during the time period from January 28, 2014 and February 28, 2018 for a Walmart location and between January 28, 2014 and April 24, 2019 for a Sam's Club location ("Settlement Class" or "Settlement Class Members").

There are an estimated 21,677 Settlement Class Members. This Settlement is conditioned on the Court's certifying the Settlement Class for settlement purposes.

The form of class certification order shall, subject to Court approval, expressly state that the Parties agree that certification of the Settlement Class is a conditional certification for settlement purposes only, and that Walmart retains its right to object to certification of this Action, or any other class action, under any applicable rule, statute, law, or provision.

It is further expressly agreed that any certification of the Settlement Class is a conditional certification for settlement purposes only, and if for any reason the Court does not grant final approval of the Settlement, or if final approval is not granted following the appeal of any order by

the 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 and void, and each Party shall retain all of their respective rights as they existed prior to execution of this Settlement Agreement, and neither this Settlement Agreement, nor any of its accompanying attachments or any orders entered by the Court in connection with this Settlement Agreement, shall be admissible or used for any purpose in this Action. The Parties and Settlement Class Counsel further agree that, other than to effectuate the Settlement of this Action in this jurisdiction, the certification of the Settlement Class for settlement purposes and all documents related thereto, including this Agreement and all accompanying attachments and all orders entered by the Court in connection with this Agreement, are only intended to be used under the specific facts and circumstances of this case and are not intended to be used in any other judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or other proceeding against Walmart.

IV. SETTLEMENT TERMS

1. Final Approval; Waiver of Appeal; Settlement Effective Date

The term “Final Approval” means the date on which the Court enters an order granting final approval of the Settlement. Plaintiff, individually, and Walmart waive their right to appeal entry of Final Approval, except that Werman Salas P.C. (“Settlement Class Counsel”) retains the right to appeal the award of attorney fees and costs if the Court awards less than requested in accordance with this Settlement Agreement.

The Settlement Effective Date shall be the day after the date upon which Final Approval has been entered and: (a) any appeals of the orders granting final approval and dismissing the Action with prejudice have been resolved with no further rights to appeal; or (b) the time for any appeals from these orders has expired with no appeals having been taken. This Section shall apply even if there are no objections to the Settlement.

2. Gross Fund; Net Fund; and Allocation to Settlement Class Participants

The term “Gross Fund” means the \$10,000,000.00 that Walmart will pay to settle the claims of Settlement Class Members in the Action. The Gross Fund is the maximum amount that Walmart shall be obligated to pay under this Settlement, unless the number of the Settlement Class Members increases by more than 2% over 21,677, in which case the Gross Fund shall be increased on a pro rata basis. No amount of the Gross Fund shall revert back to Walmart.

The term “Net Fund” is the Gross Fund minus the following deductions, which are subject to Court approval: Settlement Class Counsel’s attorney fees and costs; the Settlement Administrator’s costs; and the Settlement Class Representative’s Incentive Award.

The Net Fund shall be distributed pro rata to Settlement Class Members who timely return valid claim forms (“Settlement Class Participants”). Because of this method of allocation to Settlement Class Participants, there will be no unclaimed funds in the Settlement.

3. Release of Claims

a. Definitions

The term “Released Parties” means Walmart, G4S Retail Solutions (USA), Inc., Revolution Retail Systems LLC and each of their respective current and former owners, affiliates, parents, subsidiaries, divisions, officers, directors, shareholders, agents, employees, attorneys, insurers, benefit plans, predecessors, and successors.

The term “Releasing Settlement Class Members” means the Settlement Class Representative and all Settlement Class Members, excluding any Settlement Class Member who submits a timely and valid request to be excluded from the Settlement Class.

b. Release for Settlement Class Members

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 irrevocably release the Released Parties from all claims arising out of allegations in the Class Action Complaint in this Action, or that could have been asserted but were not asserted in the Action arising out of the same nucleus of facts; whether known or unknown, including allegations that the Released Parties failed to adopt appropriate policies or improperly collected, stored, or used biometric identifiers and information that may have been obtained from Settlement Class Members, including but not limited to claims arising under the Illinois Biometric Information Privacy Act, and all other federal, state, and local law, including the common law as well as related claims for equitable or declaratory relief, liquidated damages, penalties, attorneys' fees and costs, expenses, and interest.

c. General Release for Settlement Class Representative

In exchange for his Incentive Award, the Settlement Class Representative will execute the General Release of Claims attached here as Attachment A.

4. Settlement Administration

The Parties have selected Analytics Consulting LLC ("Settlement Administrator") to issue Notice and administer this Settlement. The Settlement Administrator's costs, capped at \$100,000.00, shall be paid from the Gross Fund. The Parties agree to cooperate in the Settlement administration process and to make all reasonable efforts to control and minimize the costs and expenses incurred in the administration of the Settlement.

5. Timeline of Settlement Events

The Parties contemplate the following timeline for settlement events:

- a. Within fourteen (14) business days after the Court grants preliminary approval of the Settlement, or within some other reasonable time as agreed to by the parties, Walmart will provide the Settlement Administrator and Settlement Class Counsel with a "Class List" in Microsoft Excel spreadsheet format that shall contain

potential Settlement Class Members' contact information that is readily available from Walmart's human resources systems, including names, addresses, dates of employment, social security numbers, cell phone numbers (if available), and personal email addresses (if available). Walmart will provide confirmation regarding how the potential Settlement Class Members were identified and contact information was compiled. As used in this Section, "potential Settlement Class Members" means "all current and former associates who worked at a Walmart Store, Super Center, Neighborhood Market, or Sam's Club in Illinois and who without first providing written consent used the at-issue cash recycler system while a palm scanner was enabled at a Walmart location in Illinois during the time period from January 28, 2014 and February 28, 2018 for a Walmart location and between January 28, 2014 and April 24, 2019 for a Sam's Club location."

- b. Within fourteen (14) business days after the Court grants preliminary approval of the Settlement, or within fourteen business days after Walmart receives the information from the Settlement Administrator needed to transfer such funds to the Qualified Settlement Fund, whichever is later, Walmart shall fund the amounts agreed to for Notice and settlement administration to the Qualified Settlement Fund established by the Settlement Administrator.
- c. Within twenty-one (21) days after the Court grants preliminary approval of the Settlement, the Settlement Administrator shall establish a Settlement website. The website address will be www.WalmartPalmScanSettlement.com, or another website address agreed to by the Parties. The Settlement website shall include a brief description of the claims asserted in the Action, the Notice of Class Action

Settlement (“Notice”) and Claim Form, the Settlement Agreement, the Preliminary Approval Order, the Motion for Attorney Fees, Costs, and Settlement Class Representative’s Incentive Award (once available), the Motion for Final Approval (once available), and the Final Approval Order (once available). The Settlement website shall identify the contact information for Settlement Class Counsel and describe how Settlement Class Members may obtain more information about the Settlement and will include a mechanism to complete and submit an electronic Claim Form.

- d. The Settlement Administrator will mail a Notice and Claim Form to everyone on the Class List in accordance with Section IV.11(b)(1) of this Settlement Agreement within fourteen (14) days after receiving the Class List. The same day, the Settlement Administrator shall send the notice communication described in Section IV.11.(b)(3)-(4) to Settlement Class Members by email and text message (assuming those forms of contact information exist for Settlement Class Members). Also the same day, the Settlement Administrator shall place a Facebook advertisement directed to Settlement Class Members, as described in Section IV.11.(b)(5). The Facebook advertisement shall remain in place for a maximum of ninety (90) days from initial placement, after which point it shall be taken down.
- e. Sixty (60) days after initial distribution of Notice, the Settlement Administrator shall send a reminder email and text message notice communication described in Section IV.11.(b)(3)-(4) to Settlement Class Members who have not returned a Claim Form (assuming those forms of contact information exist for Settlement Class Members).

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- f. Settlement Class Counsel shall file a motion for attorney fees, litigation costs, settlement administration costs, and the Settlement Class Representative's Incentive Award within sixty (60) days from the date of the mailing of the Notice to Settlement Class Members. Settlement Class Counsel shall provide this motion to the Settlement Administrator to be posted on the Settlement website so that Settlement Class Members may obtain a copy during the objection/exclusion period as described in the Notice.
- g. All completed claim forms must be postmarked or returned to the Settlement Administrator within ninety (90) days from the date of the initial distribution of the Notice to Settlement Class Members.
- h. Audit rights: Within fourteen (14) days of the Claim filing deadline, the Settlement Administrator shall provide counsel for the Parties with a report that contains the information provided in the Claim Forms and its determination whether or not each Claim should be approved or denied. Original Claim Forms will also be made available to counsel for the parties upon request. Within seven (7) days of having received the report of proposed approved and denied Claims from the Settlement Administrator, Settlement Class Counsel and Walmart's counsel shall meet and confer regarding any issues that either Settlement Class Counsel or Walmart believes need to be raised with the Settlement Administrator regarding the Claims. Settlement Class Counsel and Walmart's counsel agree to use their best efforts to resolve any disputes. If necessary, the Parties may request that the Settlement Administrator conduct reasonable follow up with particular Settlement Class Participants in the event of questions regarding the information provided by

any Settlement Class Participant or take other reasonable steps as agreed to by the Parties.

- i. All requests for exclusion from the Settlement must be postmarked or returned to the Settlement Administrator within ninety (90) days from the date of the initial distribution of the Notice to Settlement Class Members. Within seven (7) days after the deadline to submit requests for exclusion, the Settlement Administrator shall provide all such requests received to the Parties' counsel. Settlement Class Counsel shall file the requests for exclusion with its motion for final approval of the Settlement.
- j. All objections to the Settlement must be postmarked or returned to the Settlement Administrator within ninety (90) days from the date of the initial distribution of the Notice to Settlement Class Members. Within three days of receiving an objection, the Settlement Administrator shall provide the objection, and any supporting materials, to counsel for the Parties. Within one business day of receiving an objection from the Settlement Administrator, Settlement Class Counsel shall file the objection with the Court.
- k. Settlement Class Counsel will file a motion for final approval of this Settlement within seven (7) days before the Final Approval Hearing or such other date as set by the Court.
- l. No later than fourteen (14) business days after the Settlement Effective Date, Walmart will transfer the remainder of the Gross Fund, less the amount already transferred for Settlement Administration (pursuant to Section IV.4 above), to the Qualified Settlement Fund account established by the Settlement Administrator.

- m. Within twenty-eight (28) days of the Settlement Effective Date, the Settlement Administrator will mail or deliver the following payments: (1) Settlement award payments to Settlement Class Participants; (2) the Settlement Class Representative's Incentive Award; and (3) Settlement Class Counsel's award of attorney fees and litigation costs (by wire transfer).
- n. The deadline for Settlement Class Participants to cash checks will be one hundred and fifty (150) days from the date the checks are issued by the Settlement Administrator.
- o. Within twenty-one (21) days of the deadline for Settlement Class Participants to cash checks, the Settlement Administrator shall deliver funds from any uncashed checks to the *cypres* recipient(s) agreed by the Parties and approved by the Court.

6. Tax Treatment of Settlement Awards

For income tax purposes, the Parties agree that, if required by law, Settlement Class Participant settlement awards shall be allocated as non-wage income and shall not be subject to required withholdings and deductions. The Settlement Class Representative's Incentive Award shall be allocated as non-wage income and shall not be subject to required withholdings and deductions and shall be reported as non-wage income as required by law. If required by IRS regulations, the Settlement Administrator shall issue to each Settlement Class Participant an IRS Form 1099. Other than the reporting requirements herein, Settlement Class Participants shall be solely responsible for the reporting and payment of their share of any federal, state and/or local income or other taxes on payments received pursuant to this Settlement Agreement.

7. Settlement Class Counsel's Attorney Fees and Costs

- a. Settlement Class Counsel may request that the Court award them up to one-third of the Gross Fund as attorney fees plus their litigation expenses.

b. The award of attorney fees and litigation expenses approved by the Court shall be paid to Settlement Class Counsel from the Gross Fund.

c. Walmart takes no position on the amounts to be sought by Settlement Class Counsel for an award of attorneys' fees and litigation expenses, but does not object to a reasonable award of attorneys' fees and litigation expenses sought in accordance with this Agreement. In the event that the Court does not approve the award of attorneys' fees and litigation expenses requested by Settlement Class Counsel, or the Court awards attorneys' fees and litigation expenses in an amount less than that requested by Settlement Class Counsel, such decision shall not affect the validity and enforceability of the Settlement and shall not be a basis for rendering the entire Settlement null, void, or unenforceable.

d. Settlement Class Counsel may appeal the award attorney fees and litigation expenses should the sum awarded by the Court fall below the amount requested by Settlement Class Counsel, provided that the request Settlement Class Counsel makes it consistent with the Settlement Agreement. If Settlement Class Counsel elects not to appeal or if the appeals court affirms the decision, only the reduced amounts will be deemed to be Settlement Class Counsel's attorney fees and litigation expenses for purposes of this Settlement Agreement. Any amounts for Settlement Class Counsel's attorney fees and litigation expenses not awarded shall be added to the Net Fund available for distribution to Settlement Class Participants as settlement awards.

e. The payment of the award of attorney fees and litigation expenses to Settlement Class Counsel shall constitute full satisfaction of the obligation to pay any amounts to any person, attorney or law firm for attorney fees or litigation expenses in the Action incurred by any attorney on behalf of the Settlement Class Representative and the Settlement Class Members, and shall relieve Walmart, the Released Parties, the Settlement Administrator, and Walmart's

Counsel of any other claims or liability to any other attorney or law firm for any attorney fees, expenses and/or costs to which any of them may claim to be entitled on behalf of the Settlement Class Representative and the Settlement Class Members. In exchange for such payment, Settlement Class Counsel will release and forever discharge any attorneys' lien on the Gross Fund.

8. Incentive Award

Settlement Class Counsel will apply for an "Incentive Award" of \$10,000 for the Settlement Class Representative, to be paid for his time and effort spent conferring with Settlement Class Counsel, filing and pursuing the Action in his own name, recovering compensation on behalf of all Settlement Class Members, and providing a general release of claims. Walmart agrees not to oppose such application, so long as it is consistent with the provisions of this Settlement Agreement. Subject to Court approval, the Incentive Award shall be paid from the Gross Fund, in addition to the Settlement Class Representative's settlement award. Any amount of the Incentive Award not awarded shall be added to the Net Fund available for distribution to Settlement Class Participants.

9. All Uncashed Checks to Cy Pres

Any checks that remain uncashed after one hundred and fifty (150) days from the date they are issued by the Settlement Administrator shall be deemed void. The Settlement Administrator will distribute funds from each of these uncashed checks to the Illinois Bar Foundation, the Associates in Critical Need Trust, a 501(c)(3) not for profit, and/or another *cy pres* recipient agreed to by the Parties and approved by the Court.

10. Responsibilities of the Parties

- a. The Parties shall perform all duties as stated in this Settlement Agreement.
- b. If Walmart intends to communicate with current employee Settlement Class Members regarding the Settlement, Walmart shall first provide its proposed communication to

Settlement Class Counsel and the Parties will work together to agree on the communication. The Parties agree that any communication must be consistent with the Notice approved by the Court. Except as provided above in this paragraph, Walmart shall refrain from initiating communications with Settlement Class Members regarding the Settlement. If any Settlement Class Members communicate with Walmart or its agents regarding the Settlement, Walmart shall direct these Settlement Class Members to contact Settlement Class Counsel or the Settlement Administrator.

11. Approval of Settlement; Notice; Settlement Implementation

As part of this Settlement, the Parties agree to the following procedures for obtaining preliminary Court approval of the Settlement, notifying Settlement Class Members, obtaining final Court approval of the Settlement, and processing the settlement awards:

a. Preliminary Approval Hearing. The Settlement Class Representative shall file a motion for preliminary approval of the Settlement on or before December 8, 2020, or such other date required by the Court. With the motion for preliminary approval, the Settlement Class Representative will submit this Agreement and accompanying attachments.

b. Notice to Settlement Class Members. Notice of the Settlement shall be provided to Settlement Class Members, and Settlement Class Members shall submit any objections to the Settlement, and/or requests for exclusion from the Class, using the following procedures:

(1) Mailed Notice to Settlement Class Members. On the timetable specified in Section IV.5 of this Settlement Agreement, the Settlement Administrator shall send a copy of the Notice and Claim Form, attached hereto as Attachment B, to Settlement Class Members via First Class regular U.S. mail. The Notice and Claim Form will be mailed using the most current mailing address information for Settlement Class Members, which the Settlement Administrator shall obtain by running each Class Member's name and address through the

National Change of Address (NCOA) database or comparable databases. The front of the envelopes containing the Notice will be marked with words identifying the contents as important documents authorized by the Court and time sensitive. The mailing shall include a pre-paid envelope for Settlement Class Members to return the Claim Form. For Settlement Class Members whose notices are returned as undeliverable without a forwarding address, the Settlement Administrator shall promptly run a search in Accurint or similar database search to locate an updated address and shall promptly mail the notice to the updated address. If after this second mailing, the Notice is again returned as undelivered, the notice mailing process shall end for that Class Member (except as provided in Section 11.b.(2), below)

(2) Updated Contact Information

Settlement Class Members should contact the Settlement Administrator to update their mailing addresses. Settlement Class Counsel will forward any updated contact information it receives from Settlement Class Members to the Settlement Administrator. The Settlement Administrator will reissue the Notice to any Settlement Class Members who provide updated contact information prior to the "Exclusion Deadline Date," as defined in Section IV.12.

(3) Text Notice

On the timetable specified in Section IV.5 of this Settlement Agreement, and only for Settlement Class Members for whom the Settlement Administrator is provided a cell phone number, the Settlement Administrator shall send text message notice as described in this Section. The text message notice shall state: "You may be entitled to payment in a class action settlement for Walmart and Sam's Club employees in Illinois. To learn more, click **here**." The link will take Settlement Class Members to the Settlement website.

Sixty days after sending the initial text notice, the Settlement Administrator shall send a reminder text message to Settlement Class Members who have not yet returned a Claim Form. This text message shall state: "You were sent notice of a lawsuit settlement for Illinois Walmart and Sam's Club employees. To request payment, you must complete a **Claim Form** by [insert date 30 days from text distribution]." The link will take Settlement Class Members to the portion of the Settlement website where they can complete and return an electronic Claim Form.

(4) Email Notice

On the timetable specified in Section IV.5 of this Settlement Agreement, and for Settlement Class Members for whom the Settlement Administrator is provided or obtains an email address, the Settlement Administrator shall email notice as described in this Section. The subject of this email shall state: "Legal Notice: Palm Scan Lawsuit Settlement." The body of the email shall state as follows:

"Walmart Inc. has settled a class action lawsuit that claims Walmart violated Illinois law by collecting palm scan data from Illinois employees through its cash recycler system without written notice and consent. The Settlement also includes Sam's Club employees who used a palm scanner in Illinois. To review the Notice of Class Action Settlement and submit a Claim Form to receive a settlement payment, please visit the settlement website: www.WalmartPalmScanSettlement.com."¹

Sixty days after sending the initial email notice, the Settlement Administrator shall send a reminder email to Settlement Class Members who have not yet returned a claim form. The subject of this email shall state: "Reminder: Deadline to Submit Claim in Palm Scan Lawsuit Settlement." The body of the email shall state:

¹ Or another website address agreed to by the Parties if this one is not available.

“You previously received an email about the settlement of a class action lawsuit that claims Walmart Inc. violated Illinois law by collecting palm scan data from Illinois employees through its cash recycler system without written notice and consent. The deadline for you to return a Claim Form and request a settlement payment is [insert date 30 days from email distribution]. You can return a Claim Form through the settlement website www.WalmartPalmScanSettlement.com.”²

(5) Facebook Notice

On the timetable specified in Section IV.5 of this Settlement Agreement, the Settlement Administrator shall run a Facebook advertisement targeted to Settlement Class Members. At a minimum, the Facebook advertisement shall be targeted to Facebook accounts linked to email addresses that the Settlement Administrator is provided or obtains for Settlement Class Members. After consulting with Counsel for the Parties and obtaining agreement, the Settlement Administrator may also target the advertisement to accounts Facebook identifies as similar to those linked to email addresses for Settlement Class Members. The Facebook advertisements will include the following language:

“Palm Scan Lawsuit Settlement for Illinois Walmart and Sam’s Club employees.”

“Walmart Inc. has settled a class action lawsuit that claims Walmart violated Illinois law by collecting palm scan data from Illinois employees through its cash recycler system without written notice and consent. The Settlement also includes Sam’s Club employees who used a palm scanner in Illinois. To learn more about the Settlement and submit a claim for payment, click **here**.” The link will take Settlement Class Members to the Settlement website.

² See Footnote 1.

12. Procedure for Returning Claim Forms, Objecting, or Requesting Exclusion from Class Action Settlement

a. Procedure for Claim Forms. The Notice and Claim Form shall explain that Settlement Class Members must return a Claim Form on or before 90 days from Notice distribution to receive a settlement payment. Settlement Class Members may return a Claim Form in a pre-paid return envelope or electronically through the case website. Settlement Class Counsel shall include data in its final approval motion about the number of Claim Forms that were returned.

b. Procedure for Objecting. The Notice shall provide that Settlement Class Members who wish to submit written objections to the Settlement must mail or email them to the Settlement Administrator on or before 90 days from Notice distribution. To state a valid objection to the Settlement, an objecting Settlement Class Member must personally sign the objection and provide: (i) full name, current address, current telephone number, and the last four digits of your Social Security Number; (ii) a statement of the position or objection the objector wishes to assert, including the grounds for the position and objection; and (iii) copies of any other documents that the objector wishes to submit in support of his/her/its position. No later than three (3) days after receiving an objection, the Settlement Administrator shall furnish Settlement Class Counsel and Walmart's Counsel a copy of the objection. No later than one business day after receiving an objection from the Settlement Administrator, Settlement Class Counsel shall file the objection with the Court. Subject to approval of the Court, any objecting Settlement Class Member may appear in person or by counsel at the final approval hearing held by the Court to show cause why the proposed Settlement should not be approved as fair, reasonable, and adequate, or to object to any petitions for attorneys' fees, reimbursement of reasonable litigation costs and expenses, and service awards.

c. Procedure for Requesting Exclusion. The Notice shall provide that

Settlement Class Members who wish to exclude themselves from the Class must submit a written statement requesting exclusion from the Class by mail or email to the Settlement Administrator on or before the 90 days from Notice distribution (“Exclusion Deadline Date”). Such written request for exclusion must contain the Class Member’s full name, address, telephone number, and the last four digits of his or her social security number, a statement that the Class Member wishes to be excluded from the Settlement, and must be personally signed by the Class Member. The date of the postmark on the return mailing envelope or the timestamp on the electronic submission shall be the exclusive means used to determine whether a request for exclusion has been timely submitted. Any Class Member who excludes himself or herself from the Settlement will not be entitled to any recovery under the Settlement and will not be bound by the Settlement. If a Settlement Class Member submits both an exclusion request and a Claim Form, the Settlement Administrator shall contact the Class Member to determine whether the Class Member intended to request exclusion. If the Settlement Administrator contacts the Class Member and is unable to communicate with him or her, the Claim Form will govern and the exclusion request will be considered invalid. No later than three (3) days after receiving a request for exclusion the Settlement Administrator shall furnish to Settlement Class Counsel and Walmart’s Counsel a copy of that request for exclusion. Settlement Class Counsel shall file the requests for exclusion with the motion for final approval of the settlement.

In the event five percent (5%) or more of the Settlement Class submits valid requests for exclusion from the Settlement, Walmart may elect to withdraw from and not be bound by the terms of this Agreement.

13. Qualified Settlement Fund

As required under this Agreement, Walmart shall transfer the required portions of the Gross Fund to 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. Settlement Class Counsel and Walmart jointly shall take such steps as shall be necessary to 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 Settlement 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 the Agreement. The Court shall retain jurisdiction over the administration of the QSF. Walmart shall supply to the Settlement 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 §1.461-1(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.

Upon establishment of the QSF, the Settlement 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).

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

Following its deposits as described in this Agreement, Walmart shall have no responsibility, financial obligation, or liability whatsoever with respect to the notifications to the Settlement Class required hereunder, the processing of Claims and exclusion requests, the allowance or disallowance of claims by Settlement Class Participants, payments to Settlement 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 Settlement Class Participants and Settlement Class Counsel and for expenses of administration in respect to the disposition of the Settlement funds hereunder. Rather, the Settlement Administrator shall have sole authority and responsibility for the administration of such funds and income thereon, disbursement to Settlement Class Participants and Settlement Class Counsel, and payment of taxes and administrative costs in accordance with the provisions hereof, subject only to the rights of Walmart or Settlement Class Counsel to seek redress for any breach of the terms hereof.

The Settlement 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(l)(2)(ii). The Settlement Administrator may, at the expense of the QSF, retain legal counsel and an independent, certified public accountant to consult with and advise the Settlement

Administrator with respect to the preparation and filing of such materials and the federal, state and local tax compliance of the QSF. Either Walmart or the Settlement Administrator, 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.

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

Based on the Settlement Administrator's recommendation and approval by the Parties, 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 Settlement Class Participants or Settlement 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.

The Settlement 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 Settlement Class are not altered thereby in any material respect.

14. No Solicitation of Settlement Objections or Exclusions

The Parties agree to use their best efforts to carry out the terms of this Settlement. At no time shall either Party or their counsel seek to solicit or otherwise encourage Settlement Class Members to submit written objections to the Settlement or requests for exclusion from the Class, or appeal from the Court's Final Judgment.

15. Final Settlement Approval Hearing

In its preliminary approval order or a related order, the Court shall schedule a final approval hearing to determine whether to grant final approval of the Settlement Agreement along with the amount payable for (i) an award to Settlement Class Counsel for attorney fees and litigation expenses; (ii) the Settlement Administrator's expenses; and (iii) the Settlement Class Representative's Incentive Award. Plaintiff shall present a Final Approval order to the Court for its approval. The Final Approval order the Plaintiff presents to the Court shall provide that the matter will be dismissed with prejudice seven (7) days after Plaintiff files a declaration with the Court from the Settlement Administrator confirming that Walmart has fully funded the Gross Fund.

16. Walmart's Representations Regarding Biometric Systems

Walmart represents that since March 1, 2018, Walmart has not used a cash recycler system in Illinois with a palm scanner enabled and has deleted or requested deletion of all palm scan data obtained from Walmart associates in Illinois. Walmart represents that since April 24, 2019, Sam's

Club has not used a cash recycler system in Illinois with a palm scanner enabled and has deleted or requested deletion of all palm scan data obtained from Sam's Club associates in Illinois.

17. Venue of Approval

The Parties will seek approval of this Settlement in the Circuit Court of Cook County, Chancery Division, with their assigned Judge in the Action, currently Pamela McLean Meyerson.

18. Walmart's Legal Fees

All of Walmart's own legal fees, costs and expenses incurred in this Action shall be borne by Walmart.

19. Certification of Distribution of Settlement Checks

The Settlement Administrator shall provide Settlement Class Counsel with an accounting of the proceeds disbursed, upon request by Settlement Class Counsel. Should Settlement Class Counsel request such an accounting, Settlement Class Counsel will provide a copy of the accounting to Walmart's counsel.

20. Attachments and Headings

The terms of this Settlement Agreement include the terms set forth in the attached Attachments, which are incorporated by this reference as though fully set forth herein. Any Attachments to this Settlement Agreement are an integral part of the Settlement. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Settlement Agreement.

21. Amendment or Modification

This Settlement Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors in interest. Notwithstanding the foregoing, the Parties agree that any dates contained in this Settlement Agreement may be modified by agreement of the Parties without Court approval if the Parties agree and cause exists for such modification.

22. Entire Agreement

This Settlement Agreement and any Attachments constitute the entire agreement among these Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its Attachments other than the representations, warranties and covenants contained and memorialized in such documents.

23. Mediation if Approval not Granted or if Parties Reach Impasse on Settlement Documents

If the Court does not grant preliminary or final approval of the Settlement, the Parties will work together in good faith to address the concerns raised in denying preliminary or final approval. If the Parties are unable to jointly agree on solutions to address the court's concerns, then the Parties shall request the assistance of Judge James Holderman, or another mediator agreed to by the Parties, unless the parties agree not to resort to a mediator. Similarly, if the parties are unable to reach agreement on the terms of the settlement documents, then the Parties shall request the assistance of Judge James Holderman, or another mediator agreed to by the Parties, unless the Parties agree not to resort to a mediator.

24. Authorization to Enter into Settlement Agreement

Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to affect the implementation of the Settlement.

25. Binding on Successors and Assigns

This Settlement Agreement shall be binding upon, and inure to the benefit of, the

successors or assigns of the Parties hereto, as previously defined.

26. Illinois Law Governs; Change in Law Will Not Invalidate Settlement

All terms of this Settlement Agreement and the Attachments hereto shall be governed by and interpreted according to the laws of the State of Illinois. An intervening change in law or court decision shall not invalidate this Settlement Agreement.

27. Confidentiality

The negotiations related to this Agreement (including the negotiations regarding the Term Sheet, 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 Representatives and Walmart, their retained attorneys, their accountants and financial or tax advisers, their retained consultants, the Court, and the mediator Judge James Holderman and his staff, unless otherwise agreed to by Settlement Class Counsel and Walmart or unless otherwise ordered by the Court. Notwithstanding the other provisions of this Section, Walmart may, if necessary, disclose the settlement in filings that Walmart Inc. is required to make with the Securities and Exchange Commission, including 10-Q and 10-K filings, or in other disclosures to investors.

28. Counterparts

This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Electronic signatures compliant with the ESIGN Act and signatures transmitted by fax or .pdf shall have the same effect as an original ink signature.

29. This Settlement is Fair, Adequate and Reasonable

The Parties warrant and represent they have conducted a thorough investigation of the facts and allegations in the Action. The Parties further represent and warrant that they believe this Settlement Agreement represents a fair, adequate and reasonable Settlement of this action and that they have arrived at this Settlement Agreement through extensive arms-length negotiations, taking into account all relevant factors, present and potential.

30. Media Statements

No Party, nor their counsel, shall make any affirmative statements to the media regarding this Settlement. The Parties shall agree as to a statement that can be made in the event of press or media inquiries.

31. Jurisdiction of the Court

The Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Settlement Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the Settlement embodied in this Settlement Agreement and all orders and judgments entered in connection therewith.

32. Cooperation and Drafting

Each of the Parties has cooperated in the drafting and preparation of this Settlement Agreement. Hence, in any construction made to this Settlement Agreement, the same shall not be construed against any of the Parties.

33. Invalidity of Any Provision

Before declaring any provision of this Settlement Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

34. Circular 230 Disclaimer

Each Party to this Settlement Agreement acknowledges and agrees that (1) no provision of this Settlement Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers regarding this Settlement Agreement, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) each Party (A) has relied exclusively upon his, her or its own, independent legal and tax advisers for advice (including tax advice) in connection with this Settlement Agreement, (B) has not entered into this Settlement Agreement based upon the recommendation of any Party or any attorney or advisor to any other Party, and (C) is not entitled to rely upon any communication or disclosure by any attorney or adviser to any other Party to avoid any tax penalty that may be imposed on that Party; and (3) no attorney or adviser to any other Party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Settlement Agreement.

DATED: December 7, 2020 .

Ethan Roach

DocuSigned by:

84E5FB60B47A485...
Settlement Class Representative

DATED: December 8, 2020 .

Walmart Inc.

By: 

Its: Counsel for Walmart, Inc.

FILED DATE: 12/8/2020 3:39 PM 2019CH01107