

1 AARON C. GUNDZIK (State Bar No. 132137)
2 REBECCA G. GUNDZIK (State Bar No. 138446)
3 GUNDZIK GUNDZIK HEEGER LLP
4 14011 Ventura Blvd., Suite 206E
5 Sherman Oaks, CA 91423
6 Telephone: (818) 290-7461
7 Facsimile: (818) 918-2316

8 MARSHALL A. CASKEY (State Bar No. 65410)
9 DANIEL M. HOLZMAN (State Bar No. 176663)
10 N. CORY BARARI (State Bar No. 295306)
11 CASKEY & HOLZMAN
12 24025 Park Sorrento, Ste. 400
13 Calabasas, CA 91302
14 Telephone: (818) 657-1070
15 Facsimile: (818) 297-1775

16 Attorneys for Plaintiff Justin Haskins, individually
17 and on behalf of all others similarly situated

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **FOR THE COUNTY OF SAN DIEGO**
20 **NORTH COUNTY DIVISION**

21 JUSTIN HASKINS, individually and on behalf
22 of all others similarly situated,
23
24 Plaintiff,
25
26 vs.
27
28 WALMART INC., a Delaware corporation;
WAL-MART ASSOCIATES, INC., a
Delaware corporation; and DOES 1 through
25,
Defendants.

Case No.:37-2019-00020149-CU-OE-NC
*Assigned to Hon. Earl H. Maas, III,
Dept. N-28*

**STIPULATION OF CLASS ACTION
SETTLEMENT**

Complaint Filed: April 18, 2019

I. INTRODUCTION AND SUMMARY OF SETTLEMENT TERMS

This stipulation sets forth the terms of the settlement of a class action filed on behalf of all former employees of Defendants Walmart Inc. and/or Wal-Mart Associates, Inc. (“Defendants” or “Walmart”) who worked as salaried associates for Defendants in California and who separated from their employment with Walmart during the Class Period, as defined below. The Complaint alleges causes of action against Defendants for: (1) failure to pay

1 vested vacation at time of separation; (2) failure to pay unpaid wages at time of separation;
2 and (3) violation of California Business and Professions Code §§ 17200 *et seq.*.

3 Under the terms of the Parties' Settlement and after final approval and entry of
4 judgment pursuant to California Rule of Court 3.769, Defendants will pay a gross settlement
5 amount of three million eight hundred seventy-five thousand dollars (\$3,875,000) (the "Gross
6 Settlement Amount"), plus the employer's share of payroll taxes on the portions of the Gross
7 Settlement Amount that are distributed to Class Members. The Settlement will be
8 administered by a third-party settlement administrator with experience administering class
9 action settlements of this type. This is an opt-out settlement, and Class Members (as defined
10 in Section II) will receive a settlement payment unless they timely submit a Request for
11 Exclusion. Settlement Class Members shall not be required to submit a claim form.

12 The Parties agree and propose that the following disbursements will be made from the
13 Gross Settlement Amount, subject to Court approval at the Final Fairness and Approval
14 Hearing:

15 A. Settlement Administration Costs, in an amount not to exceed Twenty Four
16 Thousand Dollars (\$24,000);

17 B. Class Counsel's Attorneys' Fees, to be approved by the Court, in an amount
18 not to exceed One Million Two Hundred Ninety One Thousand Six Hundred Sixty-Six Dollars
19 (\$1,291,666), which is one-third of the Gross Settlement Amount;

20 C. Class Counsel's Costs, as approved by the Court, in an amount not to exceed
21 Twenty Thousand Dollars (\$20,000);

22 D. A Service and Release Award to Plaintiff Justin Haskins in the amount of
23 Twenty Thousand Dollars (\$20,000) as payment for his time and efforts in pursuing this
24 Action, and for the broader release and other covenants that he, alone, will be providing to
25 Defendants;

26 E. The remainder of the Gross Settlement Amount (the "Net Settlement Amount")
27 will be distributed to Settlement Class Members based on the methodology discussed below.
28 It is estimated that the Net Settlement Amount will be approximately Two Million Five

1 Hundred Nineteen Thousand Three Hundred Thirty-Four Dollars (\$2,519,334) after
2 deductions for Class Counsel’s Attorneys’ Fees, Class Counsel’s Costs, Settlement
3 Administration Costs, and the Service and Release Award.

4 Defendants represent that the Class consisted of approximately 2,668 members as of
5 December 1, 2020.

6 **II. DEFINITIONS**

7 As used in this Stipulation, the following terms shall have the meanings set forth
8 below:

9 A. “Action” means this putative class and representative action pending in San
10 Diego County Superior Court titled *Haskins v Walmart Inc., et al.*, Case No. 37-2019-
11 00020149-CU-OE-NC.

12 B. “Agreement” or “Stipulation” means this Stipulation of Class Action
13 Settlement.

14 C. “Class” means those individuals who worked as salaried employees for
15 Defendants in California, whose employment terminated within the Class Period (as defined
16 below), and who, at the time of separation, were eligible for Paid Time Off (“PTO”) under
17 Defendants’ California Paid Time Off Policy that went into effect on March 1, 2016.

18 D. “Class Counsel” means Aaron C. Gundzik and Rebecca G. Gundzik of
19 Gundzik Gundzik Heeger LLP, 14011 Ventura Blvd., Suite 206E, Sherman Oaks, CA 91423,
20 (818) 290-7461, and Dan Holzman of Caskey & Holzman, 24025 Park Sorrento, Ste. 400,
21 Calabasas, CA 91302, (818) 657-1070.

22 E. “Class Counsel’s Attorneys’ Fees” means the amount to be awarded to Class
23 Counsel from the Gross Settlement Amount for their attorneys’ fees for their work in this
24 Action, subject to Court approval at the Final Fairness and Approval Hearing.

25 F. “Class Counsel’s Costs” means the amount to be awarded to Class Counsel
26 from the Gross Settlement Amount to reimburse Class Counsel for their reasonable costs and
27 expenses incurred in the Action, subject to Court approval at the Final Fairness and Approval
28 Hearing.

1 G. "Class Data" means each Class Member's full name, social security number,
2 last known physical mailing address and last known telephone number(s), along with the dates
3 that each Class Member's employment started and ended, as well as the bi-weekly salary
4 earned by the Class Member at the time of his or her termination of employment with
5 Defendants.

6 H. "Class Member" is a person who is a member of the Class.

7 I. "Class Period" means the period from March 1, 2016 through January 4, 2021.

8 J. "Complaint" means the Complaint on file in the Action.

9 K. "Court" means the Superior Court of the State of California, in and for the
10 County of San Diego, where the Action is pending.

11 L. "Defendants" means Defendants Walmart Inc. and/or Wal-Mart Associates,
12 Inc.

13 M. "Defendants' Counsel" means Jennifer A. Kearns and Aaron T. Winn of Duane
14 Morris LLP, 750 B Street, Suite 2900, San Diego, CA 92101-4681, (619) 744-2242.

15 N. "Effective Date" means the date of entry of the "Final Approval Order" if no
16 objection is filed. If a timely objection to the settlement is filed, the "Effective Date" will be
17 the later of (1) 65 days following entry of the Final Approval Order and (2) if an appeal,
18 review or writ is sought from the Final Approval Order, the date on which (i) the highest
19 reviewing court renders its decision denying the petition or writ challenging the Final
20 Approval Order or renders its decision affirming the Final Approval Order and (ii) the Final
21 Approval Order is no longer subject to further review.

22 O. "Employer's Withholding Share" means Defendants' share of all federal, state,
23 and local taxes and required withholdings, including without limitation, FICA, Medicare tax,
24 FUTA, and state unemployment taxes, payable upon the portion of each Class Member's
25 Settlement payment that is categorized as wages. The Employer's Withholding Share shall
26 be paid by Defendants to the Settlement Administrator as provided herein, and the Settlement
27 Administrator shall remit the Employer's Withholding Share to the appropriate taxing
28 authorities.

1 P. "Final Approval Order" means the Order Granting Final Approval of Class
2 Action Settlement and the Judgment entered by the Court.

3 Q. "Final Fairness and Approval Hearing" means the hearing on Plaintiff's
4 Motion for Final Approval of Class Action Settlement at which the Court will be asked to give
5 final approval to the settlement terms set forth herein and to enter judgment.

6 R. "Gross Settlement Amount" means the three million eight hundred seventy
7 five thousand dollars (\$3,875,000) which Defendants will pay under this Settlement.

8 S. "Net Settlement Amount" means the amount remaining from the Gross
9 Settlement Amount after payments of Court-approved Class Counsel's Attorney's Fees and
10 Class Counsel's Costs, a Service and Release Award to the Representative Plaintiff, and
11 Settlement Administration Costs. It is estimated that the Net Settlement Amount will be
12 approximately \$2,519,334.00.

13 T. "Notice of Settlement" means the "Notice of Proposed Class Action Settlement
14 and Final Approval Hearing," the form of which is attached hereto as Exhibit A.

15 U. "Notice of Objection" means any written objection to this Settlement sent by a
16 Settlement Class Member to the Settlement Administrator as specified herein and in the
17 Notice of Settlement.

18 V. "Parties" means the Representative Plaintiff on behalf of himself and all
19 Settlement Class Members and Defendants.

20 W. "Preliminary Approval Date" is the date that the Court grants preliminary
21 approval of this Settlement pursuant to California Rule of Court 3.769(c).

22 X. "Qualified Settlement Fund" or "QSF" means a federally insured bank account
23 to be established by the Settlement Administrator into which all payments from Defendants
24 related to this Settlement will be deposited and from which all payments authorized by the
25 Court will be made. The QSF will be established prior to Defendants' deposit of the Gross
26 Settlement Amount.

27 Y. "Released Claims" means all causes of action and factual or legal theories that
28 were alleged in the Complaint, reasonably could have been alleged in the Complaint, or arise

1 from facts, legal theories, Labor Code sections, and primary rights at issue in the Complaint,
2 including failure to pay all vested vacation or PTO pay at termination of employment, failure
3 to timely pay wages upon termination, and all damages, penalties, interest and other amounts
4 recoverable under said claims, causes of action or legal theories of relief pleaded in the
5 Complaint. The time period governing these Released Claims shall be the Class Period only.
6 Claims and damages that were not alleged in the Complaint and do not arise from the facts
7 alleged in the Complaint are specifically excluded from the release.

8 Z. “Released Parties” means Defendants and each of their respective past, present
9 and/or future officers, directors, members, managers, employees, agents, representatives,
10 attorneys, insurers, partners, investors, shareholders, administrators, parent companies,
11 subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers, but
12 only as to the Released Claims.

13 AA. “Representative Plaintiff” means Plaintiff Justin Haskins.

14 BB. “Request for Exclusion” means a written and signed request by a Class
15 Member to be excluded from the Settlement Class that is submitted in accordance with the
16 procedure set forth herein, also known as an “opt-out request.”

17 CC. “Response Deadline” means the date that is forty-five (45) calendar days after
18 the mailing of the Notices of Settlement; provided that, for Notices of Settlement that are re-
19 mailed to a different address, the Response Deadline will be the earlier of: (1) forty-five (45)
20 calendar days after re-mailing, and (2) ten (10) calendar days before the initial date set by the
21 Court for the Final Fairness and Approval Hearing.

22 DD. “Service and Release Award” means the payment to be made to the
23 Representative Plaintiff for his service to the Class and for the broader general release that he
24 is providing to Defendants, which is in addition to whatever payment he otherwise would be
25 entitled to receive as a Settlement Class Member. Plaintiff will request a service and Release
26 Award of no more than Twenty Thousand Dollars (\$20,000).

27 EE. “Settlement” means the disposition of the Action and all related claims
28 effectuated by this Agreement.

1 FF. "Settlement Administration Costs" means the fees and costs incurred or
2 charged by the Settlement Administrator in connection with the execution of its duties under
3 this Agreement including, but not limited to fees and costs associated with:(1) establishing
4 and maintaining the QSF; (2) preparing, issuing and/or monitoring reports, filings, and notices
5 (including the cost of printing and mailing all notices and other documents to the Class
6 Members and skip-tracing of Class Members, as reflected herein) required to be prepared in
7 the course of administering the Settlement; (3) computing the amount of the settlement
8 payments, taxes, and any other payments to be made under this Agreement; (4) calculating
9 and handling inquiries about the calculation of individual settlement payments; (5)
10 establishing and operating a settlement payment center website, address, and phone number
11 to receive Class Members' inquiries about the Settlement; (6) providing a due diligence
12 declaration for submission to the Court prior to the final approval hearing; (7) printing and
13 providing Settlement Class Members and the Plaintiff with W-2 and 1099 forms as required
14 under this Agreement and applicable law; (8) preparing, issuing, and filing any tax returns and
15 information returns and any other filings required by any governmental taxing authority or
16 other governmental agency; and (9) for such other tasks as the Parties mutually agree or the
17 Court orders the Settlement Administrator to perform. The Settlement Administration Costs
18 will not exceed Twenty Four Thousand Dollars (\$24,000). Settlement Administration Costs
19 will be paid out of the Gross Settlement Amount.

20 GG. "Settlement Administrator" refers to Phoenix Settlement Administrators.

21 HH. "Settlement Class" means all Class Members who have not submitted a timely
22 and complete Request for Exclusion.

23 II. "Settlement Class Member" is a person who is a member of the Settlement
24 Class.

25 **III. BACKGROUND**

26 During the Class Period, Defendants operated locations in California that employed
27 the Class Members. Plaintiff contends that during the Class Period, he and other salaried
28 associates who worked for Defendants in California and separated from Defendants were not

1 paid for all amounts due at separation and were not paid for all vested vacation pay at
2 termination.

3 The Parties have undertaken significant investigation and informal and formal
4 discovery during the prosecution of this Action. Such discovery and investigation includes
5 extensively interviewing the Representative Plaintiff and numerous Class Members,
6 Defendants' production and Plaintiff's counsel's review of personnel records, policies, as well
7 as records for a sample of the Class Members during the Class Period and other detailed
8 information relevant to the Class Members' claims. Counsel for the Parties have investigated
9 the law as applied to the facts discovered regarding the alleged claims of the Class and
10 potential defenses thereto, and the potential damages claimed by the Class.

11 The Parties' attorneys have engaged in extensive discussions about the strengths and
12 weaknesses of the claims and defenses in the Action. On November 4, 2020, the Parties
13 attended a mediation before an experienced and well-regarded mediator, Gig Kyriacou, after
14 which the Parties reached an agreement regarding the resolution of this Action which is
15 embodied in the terms of this Agreement.

16 Plaintiff and Class Counsel have concluded, after considering the sharply disputed
17 factual and legal issues involved in this Action, the risks attending further prosecution, and
18 the substantial benefits to be received pursuant to the compromise and settlement of the Action
19 as set forth in this Agreement, that this Settlement is in the best interests of the Representative
20 Plaintiff and the Settlement Class and is fair and reasonable.

21 This Settlement contemplates: (i) entry of an order preliminarily approving the
22 Settlement and approving certification of a provisional Class for settlement purposes only; (ii)
23 dissemination of a notice to Class Members about the settlement; (iii) entry of a Final
24 Approval Order granting final approval of the Settlement; and (iv) entry of a final judgment.

25 **IV. SETTLEMENT APPROVAL AND IMPLEMENTATION PROCEDURE**

26 **A. Preliminary Approval of Settlement**

27 Following the execution of this Stipulation by all Parties or at such other time specified
28 by the Court, Class Counsel will submit this Stipulation to the Court as part of Plaintiff's

1 motion for preliminary approval of the Settlement. Plaintiff's motion will include such
2 briefing and evidence as may be required for the Court to determine that this Agreement is
3 fair and reasonable, as required by California Code of Civil Procedure section 382 and
4 California Rule of Court 3.769. Class Counsel will provide Defendants' counsel with the
5 opportunity to review and comment on all drafts of all papers to be filed in connection with
6 the motion for preliminary approval (notice of motion, memorandum of points and authorities
7 and declarations) before filing such motion with the Court. Plaintiff's motion for preliminary
8 approval of the Settlement will also include a proposed order that is mutually agreed-upon by
9 the Parties. Defendants shall not oppose Plaintiff's motion for preliminary approval of the
10 Settlement to the extent it is consistent with the terms and conditions of this Agreement.
11 Defendants may, however, provide a written response to any characterization of the law or
12 facts contained in the motion for preliminary approval.

13 The Parties have agreed to the certification of the Class for the sole purposes of
14 effectuating this Settlement. Should the Settlement be terminated for any reason, or should
15 the Settlement not be approved by the Court or the judgment not become final, the fact that
16 the Parties were willing to stipulate to class certification as part of the Settlement will have no
17 bearing on, and will not be admissible in connection with, the issue of whether a class should
18 be certified in a non-settlement context in this Action, and in any of those events, Defendants
19 expressly reserve the right to oppose class certification. Additionally, if the Settlement does
20 not become final, this Agreement and all negotiations, court orders, and proceedings related
21 thereto shall be without prejudice to the rights of all Parties hereto, and evidence relating to
22 the Agreement and all negotiations shall not be admissible in the Action or otherwise. The
23 Parties further agree that if, for any reason, the Settlement is not approved, the certification
24 for purposes of this Settlement will have no force or effect and will be immediately revoked.

25 **B. Cooperation**

26 The Parties agree to fully cooperate with each other to accomplish the terms of this
27 Agreement, including but not limited to, execution of such documents and to take such other
28 reasonably necessary actions to implement the terms of this Agreement. No party, nor any of

1 its attorneys or agents, shall solicit or encourage any Class Member to opt out of or object to
2 the Settlement.

3 **C. Notice of Settlement**

4 Within thirty (30) calendar days following the Court's order granting preliminary
5 approval of the Settlement, Defendants will provide the Settlement Administrator with the
6 Class Data in an electronic format acceptable to the Settlement Administrator. At the same
7 time, Defendants will provide the Class Data, with Class Member names, contact information
8 and social security numbers redacted, to Class Counsel. This information will remain
9 confidential and will not be disclosed to anyone, except as required to applicable taxing
10 authorities, pursuant to Defendants' express written authorization, by order of the Court, or as
11 otherwise provided for in this Agreement.

12 Using the Class Data, the Settlement Administrator will: (1) confirm the number of
13 Class Members, hire and termination dates of each and the final bi-weekly pay rate of each,
14 (2) finalize and print the Notice of Settlement; (3) check all addresses against the National
15 Change of Address database; and (4) within ten (10) calendar days of receiving the Class Data,
16 send to each Class Member via First-Class United States mail an English language version of
17 the Notice of Settlement to the most recent address known for each Class Member.

18 **D. Re-Sending Class Notices**

19 In the event that Defendants' Counsel or Class Counsel becomes aware of new
20 addresses for any Class Member, prior to the filing of the motion for final approval, such
21 information must immediately be communicated to the Settlement Administrator. The
22 Settlement Administrator will then re-send a Notice of Settlement to the Class Member(s) at
23 the new address.

24 For any Notice of Settlement that is returned as undeliverable, the Settlement
25 Administrator will perform a utility database search or other skip trace. The returned Notices
26 of Settlement will be re-mailed to the new addresses obtained for such Class Members. Such
27 searching and re-mailing will be completed within ten (10) calendar days of the date that
28 Notices of Settlement were originally returned as undeliverable.

1 **E. Requests for Exclusion (Opt-Outs)**

2 Any Class Member who wishes to be excluded from the Settlement must notify the
3 Settlement Administrator in writing of his or her desire to be excluded by mailing his or her
4 own Request for Exclusion to the Settlement Administrator that clearly expresses such desire
5 and is signed by such Class Member. Any such Request for Exclusion shall include the Class
6 Member's name (and former names, if any), current address, telephone number, and last four
7 numbers of the Class Member's social security number. To be valid, the Request for
8 Exclusion must be postmarked by no later than the Response Deadline.

9 Any Class Member who submits a valid and timely Request for Exclusion shall be
10 barred from participating in this Settlement, shall be barred from objecting to this Settlement,
11 and shall receive no benefit from this Settlement.

12 Any Class Member who fails to submit a timely, complete, and valid Request for
13 Exclusion shall be barred from opting out of the Settlement. It shall be conclusively presumed
14 that, if a Request for Exclusion is not postmarked on or before the expiration of the period to
15 submit a Request for Exclusion, the Class Member did not make the request in a timely
16 manner. Under no circumstances shall the Settlement Administrator have the authority to
17 extend the deadline for Class Members to file a Request for Exclusion.

18 Unless a Class Member submits a timely, complete, and valid Request for Exclusion,
19 he or she shall be deemed a Settlement Class Member and shall be bound by the terms and
20 conditions of this Agreement. The releases provided for in this Agreement shall conclusively
21 preclude any Settlement Class Member from asserting any of the Released Claims against any
22 of the Released Parties in any judicial, administrative, or arbitral forum.

23 The Settlement Administrator shall promptly provide Class Counsel and Defendants'
24 Counsel with copies of all Requests for Exclusion that it receives.

25 **F. Declaration of Compliance**

26 At the time determined by Class Counsel, the Settlement Administrator shall provide
27 Class Counsel and Defendants' Counsel with a declaration attesting to completion of the
28 notice process set forth in this Section IV, including the number of notices sent and returned,

1 an explanation of efforts to resend undeliverable notices, and copies of all Requests for
2 Exclusion, which declaration shall be filed with the Court by Class Counsel along with their
3 papers requesting final approval of the Settlement.

4 **G. Sufficient Notice**

5 Compliance with the procedures described in this Section IV shall constitute due and
6 sufficient notice to Class Members of this Settlement and of the Final Fairness and Approval
7 Hearing, shall satisfy the requirements of due process, and nothing else shall be required of
8 the Representative Plaintiff, Class Counsel, Defendants, Defendants' Counsel, or the
9 Settlement Administrator to provide notice of the Settlement and the Final Fairness and
10 Approval Hearing.

11 **H. Objections to Settlement**

12 **1. Procedure and Deadline for Objections**

13 In order for any Class Member to object to the Settlement, he or she must send to the
14 Settlement Administrator, postmarked no later than the Response Deadline, a Notice of
15 Objection, signed by the objecting Class Member or his or her attorney, along with all
16 supporting papers (if any). The date the signed Notice of Objection was postmarked shall be
17 conclusively determined according to the records of the Settlement Administrator. The
18 Settlement Administrator shall send any Notices of Objections it receives to Defendants'
19 counsel and Class Counsel within three (3) business days of receipt. The Court retains final
20 authority with respect to the consideration and admissibility of any Notice of Objection.

21 A Class Member's Notice of Objection will not be valid if the Class Member also
22 submits a valid and timely Request for Exclusion. A Class Member who does not submit a
23 valid and timely Request for Exclusion and who objects to the Settlement will still be
24 considered a Settlement Class Member.

25 **2. Responses to Objections**

26 Class Counsel and Defendants' Counsel shall file any written objections from Class
27 Members submitted to the Settlement Administrator, and Class Counsel's and Defendants'

1 Counsel's responses to such objections, at least five (5) court days before the Final Fairness
2 and Approval Hearing.

3 **I. Pro-Rata Increase in Settlement Fund**

4 If, as reflected in the Class Data delivered to the Settlement Administrator, the total
5 number of Class Members exceeds 2,935 as of the date that the Class Data is due, the Net
6 Settlement Amount shall increase by the same percentage that the number of Class Members
7 exceeds 2,935. By way of example, if the total number of Class Members is 3,300, this would
8 represent a 12.43% increase in the number of Class Members and consequently the Net
9 Settlement Amount would be increased by 12.43%.

10 **J. Final Fairness and Approval Hearing**

11 On or before the date set by the Court, Class Counsel will file a motion for final
12 approval of this Settlement pursuant to California Rule of Court 3.769. Class Counsel will
13 provide Defendants' counsel with the opportunity to review and comment on drafts of all
14 papers to be filed in connection with the motion for final approval (notice of motion,
15 memorandum of points and authorities and declarations) before filing such motion with the
16 Court. Plaintiff's motion for final approval will also include a proposed order that is mutually
17 agreed-upon by the Parties. Defendants shall not oppose Class Counsel's motion for final
18 approval of the Settlement to the extent it is consistent with the terms and conditions of this
19 Agreement. Defendants may, however, provide a written response to any characterization of
20 the law or facts contained in the motion for final approval.

21 On the date set by the Court, the Final Fairness and Approval Hearing shall be held
22 before the Court in order to: (1) determine whether the Court should give this Settlement final
23 approval; (2) determine whether Class Counsel's application for attorneys' fees and costs and
24 request for the Service and Release Award to the Representative Plaintiff should be granted;
25 (3) determine whether the Court should approve the payment of fees to the Settlement
26 Administrator, and (4) consider any timely Objections to Settlement, including Class
27 Counsel's and Defendants' counsel's responses thereto. Upon final approval, the Court shall
28 enter a Final Approval Order (in a form submitted by Class Counsel and approved by

1 Defendants' counsel) which has the effect of adjudicating all claims set forth in the Complaint
2 and implementing the release of Released Claims, as set forth in this Agreement. The Final
3 Approval Order will be posted on the Settlement Administrator's website. The posting of the
4 Final Approval Order on the Settlement Administrator's website will constitute notice of entry
5 of the judgment, as required by California Rule of Court 3.771(b).

6 **K. Settlement Payments to Settlement Class Members**

7 **1. Calculation of Settlement Payments.**

8 The Net Settlement Amount shall be divided among and distributed to individual
9 Settlement Class Members based upon the number of years of service of each Settlement Class
10 Member and the final bi-weekly pay rate of each Settlement Class Member using the
11 following formula:

12 First, the Settlement Administrator will apportion the Net Settlement Amount as
13 follows:

- 14 • Sixteen percent (16%) of the Net Settlement Agreement will be allocated to
15 those Class Members who worked for Defendants for an uninterrupted period
16 of 2.99 years or less as of the date of termination.
- 17 • Eighteen percent (18%) of the Net Settlement Agreement will be allocated to
18 those Class Members who worked for Defendants for an uninterrupted period
19 of 3 to 5.99 years as of the date of termination.
- 20 • Twenty percent (20%) of the Net Settlement Agreement will be allocated to
21 those Class Members who worked for Defendants for an uninterrupted period
22 of 6 to 9.99 years as of the date of termination.
- 23 • Twenty-two percent (22%) of the Net Settlement Agreement will be allocated
24 to those Class Members who worked for Defendants for an uninterrupted
25 period of 10 to 14.99 years as of the date of termination.
- 26 • Twenty-four percent (24%) of the Net Settlement Agreement will be allocated
27 to those Class Members who worked for Defendants for an uninterrupted
28 period of 15 years or more as of the date of termination.

1 The Settlement Administrator will then apportion the total amount allocated to each
2 of the Settlement Class Members included in the above tranches based on the final bi-weekly
3 pay rate of each Settlement Class Member on the date of termination using the following
4 formula:

- 5 • For those who worked up to 2.99 years for Defendants:
6 (Individual Settlement Class Member's final bi-weekly pay ÷ (divided
7 by) the aggregate total of the final bi-weekly pay of all Settlement Class
8 Members within this group) x (multiplied by) 16% of the Net Settlement
9 Amount
- 10 • For those who worked 3 to 5.99 years for Defendants:
11 (Individual Settlement Class Member's final bi-weekly pay ÷ (divided
12 by) the aggregate total of the final bi-weekly pay of all Settlement Class
13 Members within this group) x (multiplied by) 18% of the Net Settlement
14 Amount
- 15 • For those who worked 6 to 9.99 years for Defendants:
16 (Individual Settlement Class Member's final bi-weekly pay ÷ (divided
17 by) the aggregate total of the final bi-weekly pay of all Settlement Class
18 Members within this group) x (multiplied by) 20% of the Net Settlement
19 Amount
- 20 • For those who worked 10 to 14.99 years for Defendants:
21 (Individual Settlement Class Member's final bi-weekly pay ÷ (divided
22 by) the aggregate total of the final bi-weekly pay of all Settlement Class
23 Members within this group) x (multiplied by) 22% of the Net Settlement
24 Amount
- 25 • For those who worked 15 or more years for Defendants:
26 (Individual Settlement Class Member's final bi-weekly pay ÷ (divided
27 by) the aggregate total of the final bi-weekly pay of all Settlement Class
28

1 Members within this group) x (multiplied by) 24% of the Net Settlement
2 Amount

3 The Settlement Administrator shall have the authority and obligation to make
4 payments, credits, and disbursements, including payments and credits in the manner set forth
5 herein, to Settlement Class Members calculated in accordance with the methodology set out
6 in this Agreement and orders of the Court.

7 The Parties acknowledge and agree that the formula used to calculate individual
8 settlement payments does not imply that all the elements of damages alleged in the Action are
9 not being considered. The above formula was devised as a practical and logistical tool to
10 simplify the settlement process.

11 **2. Inclusion of Qualifying Workweeks and Estimated Settlement**
12 **Payment Information in Notice of Settlement**

13 The Notice of Settlement sent to each Settlement Class Member shall state each
14 Settlement Class Member's dates of employment and her or his final bi-weekly pay rate on
15 the most recent date of termination, as reflected in the Class Data. Each Notice of Settlement
16 shall also include an estimate of the Class Member's settlement payment as a member of the
17 Settlement Class, as calculated by the Settlement Administrator. The estimated settlement
18 payment included in the Notice of Settlement will be calculated by assuming that no Class
19 Members will be excluded from the Settlement and shall so state in the Notice of Settlement.

20 **3. Eligibility**

21 Settlement Class Members will receive a settlement payment from the Net Settlement
22 Fund, distributed through the Settlement Administrator.

23 Should any question arise regarding the determination of eligibility for, or the amounts
24 of, any settlement payments under the terms of this Agreement, Class Counsel and
25 Defendants' counsel shall meet and confer in an attempt to reach agreement and, if they are
26 unable to do so, the issue shall be submitted to the Court for determination on an expedited
27 basis, through the submission of letter briefs of no more than three pages.

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4. Disputes about Dates of Employment and/or Final Pay Rate

If a Class Member disagrees with the dates of employment in a Class position and/or her or his final bi-weekly pay rate, as stated in his or her Notice of Settlement, he or she may dispute that data by informing the Settlement Administrator of the dates that he or she claims to have worked in a Class position during the Class Period and/or his or her final bi-weekly pay rate and provide any supporting documentation (such as, without limitation, payroll or time keeping records, and paycheck stubs) on or before the Response Deadline. If there is a dispute, the Settlement Administrator will consult with Class Counsel and Defendants' counsel to determine whether an adjustment is warranted. However, Defendants' records shall be presumed to be accurate and the Settlement Administrator shall have the sole discretion to determine any such disputes. The Settlement Administrator shall be obligated to resolve any disputes regarding the dates of employment in a Class position and final bi-weekly pay rate submitted by a Class Member within ten (10) calendar days.

5. Allocation of Settlement Payments

Payment to each Settlement Class Member shall be allocated as follows: one-half shall be attributed to wages, to be reported by the Settlement Administrator on a W-2 form; and one-half shall be reported as penalties and interest. The amount of penalties and interest will be reported by the Settlement Administrator on an IRS Form 1099.

6. Payment of Payroll Taxes

The amount paid to each Settlement Class Member attributable to wages shall be subject to all applicable taxes and other withholdings and shall be net of the Settlement Class Member's share of all federal, state, and local taxes and required withholdings, including without limitation, FICA, Medicare tax, FUTA, and state unemployment taxes. The Employer's Withholding Share shall be paid by Defendants separately and in addition to Defendants' payment of the Gross Settlement Amount.

For each Settlement Class Member, the Settlement Administrator shall determine the Employer's Withholding Share. Information related to the Employer's Withholding Share for each Settlement Class Member shall be provided to Defendants by the Settlement

1 Administrator. If Defendants disagree with the Settlement Administrator's determination of
2 the Employer's Withholding Share, they will communicate with and share information
3 reasonably necessary to reach a good faith determination of the correct Employer's
4 Withholding Share. The aggregate amount of Employer's Withholding Share shall be paid
5 by Defendants to the Settlement Administrator and the Settlement Administrator shall remit
6 the Employer's Withholding Share to the appropriate taxing authorities.

7 **7. Payments to Settlement Class Members**

8 Within ten (10) calendar days of Defendants' deposit of the Gross Settlement Amount
9 with the Settlement Administrator, the Settlement Administrator will make the settlement
10 payments to Settlement Class Members based on the payment formulas set forth herein.

11 **L. The Settlement Administrator**

12 The Settlement Administrator will perform the duties specified in this Agreement and
13 any other duties incidental to such obligations. The Settlement Administrator's duties shall
14 include, without limitation: establishing the QSF; preparing and distributing the Notice of
15 Settlement; calculating and directing the disbursement of payments to Settlement Class
16 Members, Class Counsel, and the Class Representative; calculating and timely paying any and
17 all payroll taxes from the wages portion of the Net Settlement Amount to the appropriate tax
18 authorities, as required under this Agreement and applicable law; handling inquiries about the
19 calculation of individual settlement payments; preparing and filing any tax returns and
20 information returns and any other filings required by any governmental taxing authority or
21 other governmental agency; providing weekly status reports to the Parties' counsel; advising
22 Defendants' counsel and Class Counsel of any Class Members who submit Notices of
23 Objections and/or Requests for Exclusion; providing a due diligence declaration for
24 submission to the Court prior to the final approval hearing; printing and providing Settlement
25 Class Members and the Representative Plaintiff with W-2 and 1099 forms as required under
26 this Agreement and applicable law; arranging for and remitting funds from any uncashed
27 settlement payment to the designated recipient, as determined by the Court; and for such other
28 tasks as the Parties mutually agree or the Court orders the Settlement Administrator to

1 perform.

2 The Settlement Administrator shall establish a settlement payment center address,
3 telephone number and email address to receive Class Members' inquiries about the Notice of
4 Settlement, requests to be excluded from the Settlement and settlement payments.

5 In addition, the Settlement Administrator shall establish a static website and, on the
6 website, post this stipulation, any preliminary approval order and the Final Approval Order
7 and Judgment. Posting of the Final Approval Order and Judgment on such website shall
8 constitute notice of judgment to the Settlement Class, as required by California Rule of Court
9 3.771(b).

10 The Parties confirm, and Class Counsel and Defendants' counsel confirm that they do
11 not have any financial interest in the Settlement Administrator or otherwise have a relationship
12 with the Settlement Administrator that could create a conflict of interest.

13 **M. Time for Payment by Defendants**

14 Within thirty (30) calendar days after the Effective Date, Defendants shall pay the
15 Gross Settlement Amount and Employer's Withholding Share to the QSF. Provided however,
16 if any appeal of the judgment or final approval order is pending at such time, the deadline for
17 Defendants' payment shall be twenty-five (25) calendar days following that date that such
18 appeal is finally resolved.

19 If, after the Court enters a Final Approval Order, Defendants fail to timely pay the
20 amount required to satisfy their payment obligation under this Stipulation, the Representative
21 Plaintiff, at his option, may either (1) declare the Settlement terminated, in which case, the
22 Parties agree that the Court will nullify the Final Approval Order and Judgment and Plaintiff
23 may continue to prosecute his claims against Defendants, or (2) seek to collect all amounts
24 owed under the Final Approval Order and Judgment against Defendants.

25 **N. Payments to Class Counsel, the Representative Plaintiff and the**
26 **Settlement Administrator**

27 Subject to Court approval, within ten (10) calendar days of Defendants' deposit of the
28 Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator

1 shall make payment from the QSF to: (1) Class Counsel, for Class Counsel's Attorneys' Fees
2 and Class Counsel's Costs, in the amounts approved by the Court; (2) the Representative
3 Plaintiff for the Service and Release Award, in the amount approved by the Court; and (3) to
4 the Settlement Administrator for the Settlement Administration Costs, as approved by the
5 Court. These payments will be reported on an IRS Form 1099.

6 **O. Un-cashed/Un-deposited Settlement Payment Checks**

7 If any Settlement Class Member's settlement payment check has not been cashed or
8 deposited within sixty (60) calendar days after disbursement, the Settlement Administrator
9 shall attempt to contact each individual to advise them to cash their checks, and to offer to
10 replace any checks reported as either lost or stolen. In attempting to contact such persons, the
11 Settlement Administrator will send notices (1) by mail to the individuals' last known
12 addresses (as provided by Defendants) after first checking those addresses against the NCOA
13 database and skip tracing and (2) by telephoning or emailing such persons, in the event that
14 Defendants provide telephone numbers and/or email addresses for such persons.

15 If a Settlement Class Member's check is not cashed within one hundred eighty (180)
16 calendar days, the check will be void and a stop payment order may be placed on the check.
17 In such event, the Settlement nevertheless will be binding upon the Settlement Class Member.
18 The funds represented by all uncashed settlement checks will be transmitted by the Settlement
19 Administrator to the California State Controller as unclaimed property in the name of the
20 individual Settlement Class Member.

21 **P. Class Counsel Attorneys' Fees and Costs**

22 Defendants will not oppose Class Counsel's application for an award of attorneys' fees
23 of up to \$1,291,666, which is one-third of the Gross Settlement Amount.

24 Defendants will not oppose Class Counsel's application for an award of their
25 reasonable litigation expenses and costs in an amount not to exceed \$20,000.

26 Class Counsel's Attorney's Fees and Class Counsel's Costs, as awarded by the Court,
27 shall be paid from the Gross Settlement Amount.

1 To the extent the Court does not approve any or the entire amount of Class Counsel's
2 Attorney's Fees or Class Counsel's Costs, it shall not affect the terms of the Parties' settlement
3 and any such unapproved amounts shall remain part of the Gross Settlement Amount and shall
4 be distributed in accordance with the provisions of this Stipulation. Approval of the
5 Settlement by the Court shall not be contingent on approval of the amounts of Class Counsel's
6 Attorney's Fees or Class Counsel's Costs requested by Class Counsel.

7 Upon the payment of the Court-approved amount of Class Counsel's Attorneys' Fees
8 and Class Counsel's Costs, and except as otherwise provided by this Stipulation, Class
9 Counsel waives any claim to costs and attorneys' fees and expenses against Defendants arising
10 from or related to the Action, including but not limited to claims based on the California Labor
11 Code, the California Code of Civil Procedure, or any other statute or law. Provided, however,
12 nothing in this Agreement shall prevent Class Counsel from seeking additional fees for
13 enforcing the terms of this Stipulation.

14 **Q. Service and Release Award to Representative Plaintiff**

15 The Representative Plaintiff's Service and Release Award as approved by the Court,
16 shall be paid from the Gross Settlement Amount and shall not exceed Twenty Thousand
17 Dollars (\$20,000).

18 The Representative Plaintiff shall be responsible for all portions of federal, state, and
19 local tax liabilities that may result from the payment of the Service and Release Award and
20 agrees that Defendants shall bear no responsibility for any such tax liabilities.

21 To the extent the Court does not approve any or all of the amount of the Service and
22 Release Award sought by the Representative Plaintiff, any amounts not awarded by the Court
23 will remain part of the Gross Settlement Amount and will be distributed in accordance with
24 the terms of this Stipulation and the Parties agree that the Settlement shall remain binding
25 with such modification(s) and its terms will otherwise be unchanged.

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R. Taxes

1. Withholding and Reporting Requirements

The Settlement Administrator shall be responsible for ensuring that all taxes required to be withheld from the wage portions of each Settlement Class Member’s individual settlement payment, along with the Employer’s Withholding Share, are timely withheld and paid to the appropriate tax authorities. The Settlement Administrator’s responsibilities in this regard will also include the following: (a) filing all Federal, state, and local employment tax returns, tax withholding returns, and any other tax returns associated with the taxes, (b) timely and proper filing of all required Federal, state, and local information returns (e.g., 1099s, W-2s, etc.) with the appropriate taxing authorities, and (c) completion of any other steps necessary for compliance with any tax obligations of the settlement fund under Federal, state and/or local law. To verify the Settlement Administrator’s compliance with the foregoing withholding and reporting requirements, as soon as administratively practicable, the Settlement Administrator shall furnish Class Counsel and Defendants’ counsel with copies of all filed tax returns and information returns (including all 1099 and W-2 information returns), and a final accounting adequate to demonstrate full compliance with all tax withholding, payment and reporting obligations.

2. Circular 230 Disclaimer

Each party to this Agreement (for purposes of this section, the “Acknowledging Party”; and each party to this Agreement other than the Acknowledging Party, and “Other Party”) acknowledges and agrees that: (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, 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) the Acknowledging 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 Agreement, (b) has not entered into this Agreement based upon the recommendation of any other party or any attorney or advisor to

1 any other party, and (c) is not entitled to rely upon any communication or disclosure by any
2 attorney or adviser to any other party to avoid any tax penalty that may be imposed on the
3 Acknowledging Party; and (3) no attorney or adviser to any other party has imposed any
4 limitation that protects the confidentiality of any such attorney's or adviser's tax strategies
5 (regardless of whether such limitation is legally binding) upon disclosure by the
6 Acknowledging Party of the tax treatment or tax structure of any transaction, including any
7 transaction contemplated by this Agreement.

8 **V. LIMITATIONS ON USE OF THIS SETTLEMENT**

9 **A. No Admission of Liability**

10 Neither the acceptance nor the performance by Defendants of the terms of this
11 Stipulation nor any of the related negotiations or proceedings is or shall be claimed to be,
12 construed as, or deemed a precedent or an admission by Defendants of the truth or merit of
13 any allegations in the Complaint, or that they have any liability to the Representative Plaintiff
14 or the Class Members on their claims. Defendants deny that they have engaged in any
15 unlawful activity, have failed to comply with the law in any respect, or have any liability to
16 anyone under the claims asserted in the Action. This Agreement is entered into solely for the
17 purpose of compromising highly disputed claims.

18 **B. Nullification**

19 In the event that the Court does not approve the Settlement in accordance with this
20 Stipulation, the Parties agree to negotiate in good faith to resolve any issues raised by the
21 Court and amend this Stipulation to obtain Court approval of the Settlement. However, if,
22 after a good faith effort to resolve any issues, the Court for any reason does not approve this
23 Settlement, this Stipulation shall be null and void and all Parties to this Settlement shall stand
24 in the same position, without prejudice, as if the Settlement had been neither entered into nor
25 filed with the Court.

26 **VI. RELEASE**

27 It is the desire of the Representative Plaintiff, Class Members (except those who
28 exclude themselves from the Settlement), and Defendants to fully, finally, and forever settle,

1 compromise, and discharge the Released Claims. Upon entry of the Final Approval Order
2 and Defendants' payment of the Gross Settlement Amount and Employer's Withholding
3 Share, and except as to such rights or claims as may be created by this Settlement Agreement,
4 the Settlement Class Members, on behalf of themselves, and each of their heirs,
5 representatives, successors, assigns, and attorneys, shall be deemed to have, and by operation
6 of the final judgment shall have, fully released and discharged the Released Parties from any
7 and all Released Claims that accrued during the Class Period.

8 **VII. RELEASES AND COVENANTS BY THE REPRESENTATIVE PLAINTIFF**

9 Upon entry of the Final Approval Order and Defendants' payment of the Gross
10 Settlement Amount and Employer's Withholding Share, and except as to such rights or claims
11 as may be created by this Settlement Agreement, the Representative Plaintiff fully releases
12 and forever discharges Defendants and the Released Parties, and its/their respective present
13 and former officers, directors, employees, shareholders, members, agents, trustees,
14 representatives, attorneys, insurers, parent companies, subsidiaries, divisions, affiliates,
15 predecessors, successors, assigns, and any individual or entity that could be jointly liable with
16 Defendants, from any and all claims, causes of action, damages, wages, benefits, expenses,
17 penalties, debts, liabilities, demands, obligations, attorney's fees, costs, and any other form of
18 relief or remedy in law, equity, or whatever kind or nature, whether known or unknown,
19 suspected or unsuspected, exclusive only of any workers compensation claims or any other
20 claims which cannot be released as a matter of law, including but not limited to (1) all
21 Released Claims, (2) the Action and any claims arising out of or related to the Action, (3) any
22 claims under federal, state or local law for or relating to wages, benefits, compensation,
23 vacation or other paid time off, and claims for liquidated damages, penalties, or costs and fees
24 associated therewith, (4) wrongful termination, discrimination, harassment, and/or retaliation,
25 (5) any act, omission, or occurrence or claim arising out of or related to the Action or
26 Plaintiff's employment or termination thereof with Defendants taking place on or before the
27 Effective Date of the Settlement, and (6) and any other form of relief or remedy of any kind,
28 nature, or description whatsoever, whether premised on statute, contract, tort, or other theory

1 of liability under state, federal, or local law. Provided, however, this release shall not include
2 any claims for workers' compensation benefits.

3 The Representative Plaintiff hereby agrees that, notwithstanding section 1542 of the
4 California Civil Code ("Section 1542"), all claims that the Representative Plaintiff may have,
5 known or unknown, suspected or unsuspected, are hereby released as of the Effective Date.
6 Section 1542 provides:

7 **"A general release does not extend to claims that the creditor or releasing**
8 **party does not know or suspect to exist in his or her favor at the time of**
9 **executing the release and that, if known by him or her, would have**
10 **materially affected his or her settlement with the debtor or released**
11 **party."**

12 The Representative Plaintiff expressly waives the provisions of Section 1542 with full
13 knowledge and with the specific intent to release all known or unknown, suspected or
14 unsuspected, claims arising on or before the Effective Date of the Settlement, and therefore
15 specifically waives the provisions of any statute, rule, decision, or other source of law of the
16 United States or of any state of the United States or any subdivision of a state which prevents
17 release of unknown claims.

18 **VIII. MISCELLANEOUS PROVISIONS**

19 **A. Amendments**

20 This Agreement may only be modified or changed by a writing signed by the Parties
21 hereto or by their counsel.

22 **B. Integrated Agreement**

23 After this Stipulation is signed and delivered by all Parties to the Action and their
24 counsel, this Stipulation and its exhibits will constitute the entire agreement between the
25 Parties to the Action relating to the Settlement, and it will then be deemed that no oral
26 representations, warranties, covenants, or inducements have been made to any Party
27 concerning this Stipulation or its exhibits other than the representations, warranties,
28 covenants, and inducements expressly stated in this Stipulation and its exhibits.

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C. No Inducements

The Parties acknowledge that they are entering into this Agreement as a free and voluntary act without duress or undue pressure or influence of any kind or nature whatsoever and that neither Plaintiff nor Defendants have relied on any promises, representations, or warranties regarding the subject matter hereof other than as set forth in this Stipulation.

D. No Prior Assignment

The Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or rights herein released and discharged except as set forth herein.

E. No Retaliation or Advice

Defendants agree not to retaliate against any Class Member, and Defendants will not induce or offer any advice to any current or former employee to opt out of, or object to, the Settlement.

F. Attorneys' Fees

To the extent that Plaintiff is required to take any action to enforce Defendants' payment obligations hereunder, the prevailing Party in connection with such action will be entitled to recover their reasonable attorneys' fees and costs from the other Party or Parties.

G. Applicable Law

All terms and conditions of this Stipulation and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.

H. No Credit Toward Benefit Plans

Payments to Class Members referenced herein will not be utilized to calculate any additional benefits under any benefit plans for which any Class Member may be eligible, including, but not limited to, profit-sharing plans, bonus plans, incentive plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, or any other benefit plan.

1 Rather, it is the Parties' intention that this Stipulation will not affect any rights, contributions,
2 or amounts to which any Class Member may be entitled under any benefit plans.

3 **I. Entry of Judgment Pursuant to Terms of Settlement**

4 The Parties agree that upon the Settlement of this case, the Court may enter judgment
5 pursuant to the terms of this Settlement and specifying the Gross Settlement Amount. The
6 Court will retain jurisdiction over the Parties to enforce the Settlement until performance in
7 full of the terms of the Settlement.

8 **J. Notices**

9 All notices, requests, demands and other communications required or permitted to be
10 given pursuant to this Agreement shall be in writing, and shall be delivered personally or by
11 first class mail to Class Counsel or Defendants' Counsel at their respective addresses as set
12 forth at the beginning of this Agreement or at any new address as to which counsel have
13 advised the Court and the other Parties.

14 **K. Binding on Successors**

15 This Agreement shall be binding and shall inure to the benefit of the Parties to the
16 Action and their respective successors, assigns, executors, administrators, heirs, and legal
17 representatives.

18 **L. Counterparts**

19 This Stipulation, and any amendments hereto, may be executed in any number of
20 counterparts, each of which when executed and delivered shall be deemed to be an original
21 and all of which taken together shall constitute the same instrument.

22 **M. Warranties and Representations**

23 With respect to themselves, each of the Parties to this Action and or their agent or
24 counsel represents, covenants, and warrants that they have full power and authority to enter
25 into and consummate all transactions contemplated by this Stipulation and have duly
26 authorized the execution, delivery, and performance of this Stipulation.

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1 **N. Representation by Counsel**


2 The Parties to this Action acknowledge that they have been represented by counsel
3 throughout all negotiations that preceded the execution of this Stipulation, and that this
4 Stipulation has been executed with the consent and advice of counsel.

5 **O. Signatories**

6 It is agreed that because the Class Members are so numerous, it is impossible or
7 impractical to have each Class Member execute this Stipulation. The Notice of Settlement
8 will advise all Class Members of the binding nature of the release, and the release shall have
9 the same force and effect as if this Stipulation was executed by each member of the Settlement
10 Class.

11 BY SIGNING BELOW, THE PARTIES AGREE TO THIS STIPULATION AND ITS
12 TERMS:

13 Dated: February 16, 2021



Plaintiff Justin Haskins

14 Dated: February __, 2021
15 2/18/2021 | 19:37 CST

16 WALMART INC.
17 By: Kerri Rutenberg

18 Its: SVP and Chief Counsel for Litigation

19 Dated: February __, 2021
20 2/18/2021 | 19:37 CST

21 WAL-MART ASSOCIATES, INC.
22 By: Kerri Rutenberg

23 Its: SVP and Chief Counsel for Litigation


24 [Signatures continued on next page]

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Approved as to form:

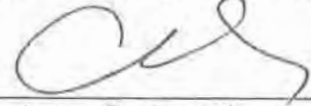
Dated: February 23, 2021

DUANE MORRIS LLP

By: 
Jennifer A. Kearns
Attorneys for Defendants Walmart Inc. and
Wal-Mart Associates, Inc.

Dated: February 16, 2021


GUNDZIK GUNDZIK HEEGER LLP



Aaron C. Gundzik
Attorneys for Plaintiff Justin Haskins,
individually and on behalf of all others
similarly situated

Dated: February 16, 2021

CASKEY & HOLZMAN



Daniel M. Holzman
Attorneys for Plaintiff Justin Haskins,
individually and on behalf of all others
similarly situated

Exhibit A

**If you worked for Walmart in California in a salaried position,
you may be entitled to receive money from a class action settlement.**

The San Diego County Superior Court authorized this notice.

This is not a solicitation from a lawyer.

THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ IT CAREFULLY.

You are receiving this Notice because the Court has preliminarily approved a proposed settlement in a class action filed on behalf of all individuals who worked as salaried employees for Defendants Walmart Inc. and/or Wal-Mart Associates, Inc. (“Defendants” or “Walmart”) in California, whose employment terminated within the Class Period (March 1, 2016 through January 4, 2021), and who, at the time of separation, were eligible for Paid Time Off (“PTO”) under Defendants’ California Paid Time Off Policy that went into effect on March 1, 2016. A hearing to determine whether the settlement should receive the Court’s final approval will be held on _____ at _____.m. in Department N-28 of the San Diego County Superior Court, which is located at 325 S. Melrose, Vista, CA 92081.

This Notice explains the proposed settlement and provides an estimate of how much money you will receive as a settlement payment if you do not exclude yourself from the settlement. If you do not want to be part of the settlement class, then you must submit a Request for Exclusion (described in section 9, below) no later than [45 calendar days from mailing] otherwise you will be bound by the terms of the settlement, including the release of certain claims that you may have against Walmart, as described in section 8 of this Notice.

1. PURPOSE OF THIS NOTICE

The Court has ordered that this Notice be sent to you because you have been identified as a member of the class by Defendants’ records. The purpose of this notice is to provide you with information about the lawsuit and the proposed settlement and to advise you of your options.

2. PERSON ELIGIBLE TO RECEIVE A SETTLEMENT PAYMENT

The people eligible to receive a settlement payment are every individual who worked as a salaried employee for Defendants in California, whose employment terminated between March 1, 2016 and January 4, 2021, and who, at the time of separation, were eligible for Paid Time Off (“PTO”) under Defendants’ California Paid Time Off Policy that went into effect on March 1, 2016. You are receiving this notice because, according to Walmart’s records, you are eligible to participate in the settlement.

3. DESCRIPTION OF THE ACTION

A former employee of Defendants, Plaintiff Justin Haskins (“Plaintiff”) filed a class action against Walmart in the San Diego Superior Court. The case is called *Haskins v Walmart Inc., et al.*, Case No. 37-2019-00020149-CU-OE-NC (the “Action”). The Action alleges that Plaintiff and other individuals who formerly worked as salaried associates of Walmart in California were not paid for all accrued vacation or PTO pay at termination. Based on these facts and others, Plaintiff’s Complaint alleges causes of action for: (1) failure to pay vested vacation at time of separation; (2) failure to pay unpaid wages at time of separation; and (3) violation of the Unfair Practices Act.

Defendants deny all of Plaintiff’s allegations and deny any wrongdoing. Among other things, Defendants contend that all former salaried employees in California have been properly compensated and that Defendants complied with all applicable California labor laws.

FOR MORE INFORMATION CALL 1-800-_____.

The Court has made no ruling on the merits of the alleged claims or the defenses asserted by Defendants. The Court has preliminarily approved the proposed settlement. The Court will decide whether to give final approval to the settlement at a hearing scheduled for _____, 20__ at _____.m. (the "Final Approval Hearing").

4. WHO ARE THE ATTORNEYS REPRESENTING THE PARTIES?

Attorneys representing Plaintiff and the class ("Class Counsel") are:

Aaron C. Gundzik Rebecca Gundzik Gundzik Gundzik Heeger LLP 14011 Ventura Blvd., Suite 206E Sherman Oaks, CA 91423 Telephone: (818) 290-7461 Facsimile: (818) 918-2316	Daniel M. Holzman Caskey & Holzman 24025 Park Sorrento, Ste. 400 Calabasas, CA 91302 Telephone: (818) 657-1070 Facsimile: (818) 297-1775
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Attorneys representing Defendants are:

Jennifer A. Kearns Aaron T. Winn Duane Morris LLP 750 B Street, Suite 2900 San Diego, CA 92101-4681 Telephone: (619) 744-2242 Facsimile: (619) 923-2834	
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5. THE TERMS OF THE PROPOSED SETTLEMENT

The following is a summary of the settlement. The specific and complete terms of the proposed Settlement are stated in the Stipulation of Class Action Settlement ("Settlement Agreement"), a copy of which is filed with the Court. You can obtain a copy of the Settlement Agreement from Class Counsel (see contact information in Section 4 above) or review it on the following website: www._____.

Defendants have agreed to pay \$3,875,000 to settle any and all obligations for the claims alleged in the lawsuit. This amount is called the Gross Settlement Amount. As discussed below, the Gross Settlement Amount will be used to cover all payments to the settlement class, settlement administration costs, attorneys' fees and costs, and a service and release award to the Plaintiff. All of these payments will be deducted from the Gross Settlement Amount. The remaining amount (called the Net Settlement Amount) will be distributed to class members who do not timely submit Requests for Exclusion, as discussed below.

(a) Attorneys' Fees and Costs: Class Counsel has worked on this matter without compensation and have advanced funds to pay for expenses necessary to prosecute the Action. Accordingly, under the settlement, Class Counsel may request attorney's fees not to exceed \$1,291,666 to compensate them for their work on the case, plus their reasonable costs and expenses incurred in the litigation not to exceed \$20,000. Subject to court approval, the attorneys' fees and costs will be deducted from the Gross Settlement Amount.

(b) Service and Release Awards: The Plaintiff is requesting a service and release award of \$20,000, in addition to the amounts he will receive as a member of the class, to compensate him for undergoing the burden and expense of prosecuting the action and for the broader release of claims he is required to provide to Defendants. Subject to court approval, the service and release award will be deducted from the Gross Settlement Amount.

(c) Settlement Administration Costs: The Settlement Administrator, Phoenix Settlement Administrators, has advised the parties that the settlement administration costs will not exceed \$24,000. Subject to court approval, the settlement administration costs will be deducted from the Gross Settlement Amount.

FOR MORE INFORMATION CALL 1-800-_____.

(d) **Payments to Settlement Class Members:** The remainder of the Gross Settlement Amount (called the Net Settlement Amount) will be distributed to class members who do not exclude themselves from the settlement (called Settlement Class Members). The amount of each Settlement Class Member's share of the Net Settlement Amount will be calculated based on the number of years that each Class Member worked for Defendants and the final bi-weekly pay rate of each Class Member.

The Net Settlement Amount will be allocated as follows:

- Sixteen percent (16%) of the Net Settlement Agreement will be allocated to those Class Members who worked for Defendants for an uninterrupted period of 2.99 years or less as of the date of termination.
- Eighteen percent (18%) of the Net Settlement Agreement will be allocated to those Class Members who worked for Defendants for an uninterrupted period of 3 to 5.99 years as of the date of termination.
- Twenty percent (20%) of the Net Settlement Agreement will be allocated to those Class Members who worked for Defendants for an uninterrupted period of 6 to 9.99 years as of the date of termination.
- Twenty-two percent (22%) of the Net Settlement Agreement will be allocated to those Class Members who worked for Defendants for an uninterrupted period of 10 to 14.99 years as of the date of termination.
- Twenty-four percent (24%) of the Net Settlement Agreement will be allocated to those Class Members who worked for Defendants for an uninterrupted period of 15 years or more as of the date of termination.

The amount allocated to each of the above groups will then be allocated among the Class Members in each group on a pro rata basis based on the final bi-weekly pay rate of each Class Member on the date of termination.

6. WHAT YOU WILL RECEIVE UNDER THE SETTLEMENT

According to Defendants' records, you worked an uninterrupted period of __ years for Defendants at the time of your termination and your final bi-weekly pay rate was \$_____ as of your date of termination. Under the settlement, you will receive approximately \$_____. This amount may increase or decrease based on various factors, including the number of class members who submit Requests for Exclusion, the amounts approved by the Court for attorneys' fees and costs, settlement administration costs, the service and release award to Plaintiff, and disputes by other class members regarding their dates of employment as salaried associates and their final bi-weekly pay rates. **To receive your settlement payment, you do not need to do anything. You will receive a settlement payment unless you exclude yourself from the settlement.**

7. PAYMENT SCHEDULE

The Settlement Administrator will send out settlement checks to class members after the settlement is finally approved by the Court. You will have 180 days after the Settlement Administrator mails your settlement check to cash it; otherwise it will be voided and the amount of your settlement payment will be sent to the California State Controller as unclaimed property in your name and you will need to contact that agency to obtain your funds. For tax purposes, one-half of your settlement payment shall be attributed to wages and reported on a W-2 form; the other half will be attributed to interest and penalties. The amount of interest and penalties will be reported on an IRS Form 1099. Nothing in this Notice should be construed as providing you with tax advice. You should consult with your tax advisor concerning the tax consequences of the payment you receive.

8. RELEASE OF CLAIMS

Unless you submit a valid Request for Exclusion (described below in section 9), you will release Defendants and each of their respective past, present and/or future officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers from all causes of action and factual or legal theories that were alleged in the Complaint, reasonably could have been alleged in the Complaint, or arise from facts, legal theories, Labor Code sections, and primary rights at issue in the Complaint, including failure to pay all vested vacation or PTO pay at termination of employment, failure to timely pay wages upon termination, and all damages, penalties, interest and other amounts recoverable under said claims, causes of action or legal theories of relief pleaded in the Complaint. The release only affects claims that arose at any time from March 1, 2016 through January 4, 2021. Claims and damages that were

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not alleged in the Complaint and do not arise from the facts alleged in the Complaint are specifically excluded from the release.

9. YOUR OPTIONS

As a member of the settlement class you have four options. Each option will affect your rights, which you should understand before making your decision. Your rights regarding each option, and the procedure you must follow to select each option, are explained below:

(a) You Can Do Nothing.

If you do nothing, you will remain a member of the settlement class and will receive a settlement payment. You will also be bound by the release of claims set forth in Section 8 above. The payment will remain valid and negotiable for one hundred eighty (180) calendar days from the date of the issuance. This deadline to cash the payment check shall not be extended for you absent Court Order.

(b) You Can Contest the Calculation of Your Settlement Payment as Stated in this Notice.

You can contest the number of number of years you worked for Defendants and/or the final bi-weekly pay rate attributed to you in Section 6 above. To do so, you must provide the Settlement Administrator with a written explanation of your position. The statement must also include your full name, current address and telephone number, and must identify this case (*Haskins v Walmart Inc., et al.*, Case No. 37-2019-00020149-CU-OE-NC). You must provide written documentation supporting the time period during which you worked for Defendants as a salaried associate and/or your final bi-weekly pay rate; otherwise, the information listed above will be presumed correct. You must postmark your written statement no later than **[45 calendar days from mailing]**. The Settlement Administrator will consider the documentation you submit and will communicate with you and the parties as necessary regarding the dispute to determine whether an adjustment is warranted before making a final determination regarding your settlement payment. The Settlement Administrator will mail you its final determination.

(c) You Can Exclude Yourself from the Settlement Class.

If you do not want to remain a member of the settlement class, you can request exclusion (i.e., opt out) by sending the Settlement Administrator a written Request for Exclusion at the address specified in Section 11 below. The deadline to postmark a Request for Exclusion is **[45 calendar days from mailing]**. A Request for Exclusion is a written statement that unambiguously requests exclusion from the settlement class. The Request for Exclusion must include the case number (*Haskins v Walmart Inc., et al.*, Case No. 37-2019-00020149-CU-OE-NC), your name, current address and telephone number, and the last four digits of your social security number (for verification purposes). You must also sign the Request for Exclusion. You should keep a copy of your Request for Exclusion. Moreover, to demonstrate receipt by the Settlement Administrator, you may elect to send your Request for Exclusion via certified mail. Requests for Exclusion that do not include all required information, or that are not postmarked on or before **[45 calendar days from mailing]**, will not be valid.

If you submit a valid and timely Request for Exclusion, you will not be bound by the settlement or the release of claims in Section 8 above; however, you will not receive any money under the settlement. You will also be barred from objecting to this settlement. By opting out of the settlement class, you will retain whatever rights or claims you may have against Defendant.

If you do not submit a timely and valid Request for Exclusion from the settlement class by the deadline specified above, then you will be bound by all terms and conditions of the settlement, including the Release of Claims, if it is approved by the Court and by the judgment, and you will receive a settlement payment.

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(d) You Can Object to the Settlement.

If you do not submit a Request for Exclusion from the settlement, you may object to the settlement by sending your written objections to the Settlement Administrator at the address specified in Section 11 below. The deadline to postmark your objections is **[45 calendar days from mailing]**. Only class members who have not requested exclusion may object to the settlement.

Your objection must state the basis of your objection and include any papers and briefs in support of your position. Your objection must be signed and must contain your current address and telephone number (or that of your attorney) and refer to this case (*Haskins v Walmart Inc., et al.*, Case No. 37-2019-00020149-CU-OE-NC).

If you object to the settlement and if the Court approves the settlement notwithstanding your objections, you will be bound by the terms of the settlement and be deemed to have released all of the Released Claims as set forth in Section 8 above, and you will not be permitted to file a Request for Exclusion.

10. FINAL APPROVAL HEARING ON PROPOSED SETTLEMENT

The Final Approval Hearing on the fairness and adequacy of the proposed settlement, the plan of distribution, the service and release awards to the Plaintiff, and Class Counsel's request for attorneys' fees and costs, and other issues will be held on _____, 20__ at __ __.m., in Department N-28 of the San Diego County Superior Court, which is located at 325 S. Melrose, Vista, CA 92081. The Final Approval Hearing may be continued to another date without further notice. If you plan to attend the Final Approval Hearing, it is recommended that you contact the Settlement Administrator to confirm the date and time.

11. NON-RETALIATION

Defendants will not retaliate or take any adverse action against a class member for participating in the settlement.

12. ADDITIONAL INFORMATION AND COURTHOUSE SOCIAL DISTANCING INFORMATION.

This Notice only summarizes the lawsuit and settlement. For more information, you may inspect the Court file at the San Diego County Superior Court, 325 S. Melrose, Vista, CA 92081, subject to the social distancing procedures in place at the Courthouse. You may also review the settlement agreement and other documents on-line at www.____ or you may contact the Settlement Administrator as follows:

Phoenix Settlement Administrators

Telephone: _____

Facsimile: _____

Email: _____

Website: _____

You may also contact Class Counsel at the address and telephone number provided in Section 4 above. If your address changes or is different from the address on the envelope enclosing this Notice, please promptly notify the settlement administrator.

The Superior Court of California, County of San Diego, is closely monitoring the COVID-19 pandemic and related governmental responses. The Court will continue to follow the guidance provided by local, state, and federal public health authorities, including, but not limited to, conducting temperature and symptom screenings, requiring face coverings, enforcing social distancing, implementing increased cleaning measures, and providing hand sanitizer kiosks.

Please do not come inside any courthouse if, within the last 14 days, you, or anyone you reside with or have had close contact with, have been diagnosed with COVID-19, experienced symptoms of COVID-19, or traveled from a country identified on the CDC Warning Level 2 or 3 Travel Advisory. Individuals seeking emergency services who fall into any of these categories will be assisted outside of the courthouse.

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PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE

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