

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

BORDERS et al.,)	
On behalf of themselves and all others)	
similarly situated,	)	Civil No. 3:17-cv-0506
)	
Plaintiffs,)	
)	
v.	)	CLASS ACTION
)	
WAL-MART, INC.,)	
Defendant.)	

PLAINTIFFS’ UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASSES, APPOINTMENT OF PLAINTIFFS AS CLASS REPRESENTATIVES, APPOINTMENT OF PLAINTIFFS’ COUNSEL AS CLASS COUNSEL, AND APPROVAL OF THE PROPOSED NOTICE OF SETTLEMENT AND CLASS ACTION SETTLEMENT PROCEDURE

Plaintiffs respectfully submit the following Unopposed Motion for Preliminary Approval of Class Action Settlement, Conditional Certification of the Settlement Class, Appointment of Plaintiffs’ Counsel as Class Counsel, and Approval of the Proposed Notice of Settlement and Class Action Settlement Procedure (“Motion”), and a Memorandum in Support. For the reasons set forth below, in the accompanying declarations and the exhibits attached hereto, and in all pleadings and documents on file in this action, Plaintiffs respectfully requests that the Court enter an Order:

- (1) granting preliminary approval of the \$14,000,000.00 settlement memorialized in the Settlement Agreement;
- (2) conditionally certifying the Settlement Classes defined in the Settlement Agreement pursuant to Federal Rule of Civil Procedure 23(e);
- (3) appointing Mehri & Skalet, PLLC, A Better Balance, and the National Women’s Law Center Class Counsel for the Settlement Classes;
- (4) appointing Talisa Borders and Otisha Woolbright the Class Representatives for the Non-ASC Settlement Class as defined in the

Settlement Agreement and appointing Stacy Lewis the Class Representative for the ASC Settlement Class as defined in the Settlement Agreement;

(5) approving the form and manner of distributing the proposed Notice and Claim Form; and

(5) requiring the establishment of a Qualified Settlement Fund as set forth in the Parties' Settlement Agreement.

Defendant does not oppose Plaintiffs' Motion for Preliminary Approval of Class Action Settlement Agreement or the findings and rulings set forth in the proposed order.

The parties respectfully request that the Court modify its October 8, 2019, order setting a pretrial conference on November 13, 2019, at 9:30 AM in the East St. Louis Courthouse by converting the pretrial conference to a hearing on the unopposed Motion for Preliminary Approval of Class Action Settlement Agreement.

Dated: October 15, 2019

Respectfully Submitted,

SEDEY HARPER WESTHOFF P.C.

Mary Ann Sedey
Donna Harper
2711 Clifton Avenue,
Saint Louis, MO 63139
Telephone: 314-773-3566
msedey@sedeyharper.com
dharper@sedeyharper.com

A BETTER BALANCE

Dina Bakst (*pro hac vice*)
Elizabeth Chen (*pro hac vice*)
80 Maiden Lane, Suite 606
New York, NY 10038
Telephone: 212-430-5982
dbakst@abetterbalance.org
echen@abetterbalance.org

Elizabeth Gedmark (*pro hac vice*)
2301 21st Ave S., Suite 355
Nashville, TN 37212
Telephone: 615-915-2417
egedmark@abetterbalance.org

/s/ Ellen Eardley

MEHRI & SKALET, PLLC

Ellen Eardley (*pro hac vice*)
Michael D. Lieder (*pro hac vice*)
Cyrus Mehri (*pro hac vice*)
Lauren Nussbaum (*pro hac vice*)
1250 Connecticut Avenue, NW, Suite 300
Washington, DC 20036
Telephone: 202-822-5100
eeardley@findjustice.com
mlieder@findjustice.com
cmehri@findjustice.com
lnussbaum@findjustice.com

NATIONAL WOMEN'S LAW CENTER

Emily Martin (*pro hac vice*)
Sunu P. Chandy (*pro hac vice*)
11 Dupont Cir NW, Suite 800
Washington, DC 20036
Telephone: 202-588-5180
emartin@nwlc.org
schandy@nwlc.org

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

TALISA BORDERS,)	
OTISHA WOOLBRIGHT, and)	
STACEY LEWIS,)	
On behalf of themselves and all others)	
similarly situated,	)	Civil No. 3:17-cv-0506
)	
Plaintiffs,)	
)	
v.	)	CLASS ACTION
)	
WAL-MART INC.,)	
Defendant.)	

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF PRELIMINARY APPROVAL OF
THE CLASS SETTLEMENT, CONDITIONAL CERTIFICATION OF THE
SETTLEMENT CLASSES, APPOINTMENT OF THE PLAINTIFFS AS CLASS
REPRESENTATIVES, APPOINTMENT OF PLAINTIFFS' COUNSEL AS CLASS
COUNSEL, AND APPROVAL OF THE PROPOSED NOTICE OF SETTLEMENT AND
CLASS ACTION SETTLEMENT PROCEDURE**

TABLE OF CONTENTS

I. INTRODUCTION 1

II. FACTUAL AND PROCEDURAL BACKGROUND 1

 A. Plaintiffs Thoroughly Investigated the Class Claims and Exhausted Administrative Remedies 1

 B. The Parties Engaged in Years of Adversarial Litigation of the Class Claims, Allowing Them to Better Assess the Strengths and Weakness of the Claims and Defenses 3

 C. The Parties Engaged in Arm’s-Length Negotiations of the Class Claims with the Assistance of a Well-Respected Mediator..... 5

III. SUMMARY OF THE SETTLEMENT AGREEMENT PROVISIONS 6

 A. Definition of the Settlement Classes 6

 B. Notice to Class Members and Final Fairness Hearing 7

 C. Settlement Fund and Claims Administrator 8

 D. Confidentiality of Claim Form..... 8

 E. Attorneys’ Fees and Expenses..... 9

IV. THE COURT SHOULD CONDITIONALLY CERTIFY THE CLASSES FOR SETTLEMENT PURPOSES AS PART OF ITS PRELIMINARY APPROVAL OF THE SETTLEMENT 9

 A. Standard for Conditional Certification of Settlement Classes.....9

 B. The Proposed Settlement Classes Satisfy Rule 23(a)..... 10

 1. The Settlement Classes Are So Numerous that Joinder Is Impracticable 10

 2. Questions of Law and Fact Are Common to the Settlement Classes 11

 3. Plaintiffs Lewis, Woolbright, and Borders’ Pregnancy Discrimination Claims are Typical of the Settlement Classes’ Claims 13

 4. The Named Plaintiffs and Class Counsel are Adequate Representatives 14

 C. The Proposed Settlement Classes Satisfy Rule 23(b) 15

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT 16

A. Standard for Preliminary and Final Approval of a Class Settlement 16

B. The Settlement is Within the Range of Possible Final Approval and Does Not Have Any Obvious Deficiencies..... 17

1. The Proposed Relief to the Settlement Classes is Adequate Considering the Risks of Continued Litigation, the Method for Distributing Relief, and the Proposed Attorneys’ Fee Award 17

2. The Settlement Treats Class Members Equitably and the Criteria for Processing Claims Is Set Forth in the Notice and Claim Form..... 19

3. The Settlement was Negotiated at Arm’s Length and Plaintiffs and Their Counsel Have Adequately Represented the Settlement Classes 19

C. The Notice Plan is Reasonable as Required by Rule 23(e)(1)(B)..... 20

VI. CONCLUSION..... 20

TABLE OF AUTHORITIES

Cases

Acik v. I.C. Sys., Inc., 251 F.R.D. 332 (N.D. Ill. 2008) 10

Arenson v. Whitehall Convalescent & Nursing Home, 164 F.R.D. 659 (N.D. Ill. 1996)..... 13

Armstrong v. Bd. of Sch. Dirs., 616 F.2d 305 (7th Cir. 1980) 16

Chi. Teachers Union, Local No. 1 v. Bd. of Educ. of Chi., 797 F.3d 426 (7th Cir. 2015)..... 10

City of Greenville v. Syngenta Crop Prot., Inc., 904 F. Supp. 2d 902 (S.D. Ill. 2012) 9

Coleman v. Sentry Ins., No. 15-CV-1411-SMY-SCW, 2016 U.S. Dist. LEXIS 149110
(S.D. Ill. Oct. 27, 2016) 17

Cook v. Applebee’s Servs., No. 13-cv-1289-SMY-SCW, 2015 U.S. Dist. LEXIS 130159
(S.D. Ill. Sept. 28, 2015) 15

Ellis v. Costco Wholesale Corp., 285 F.R.D. 492 (N.D. Cal. 2012)..... 12

Felzen v. Andreas, 134 F.3d 873 (7th Cir. 1988)..... 17

Fournigault v. Indep. One Mortg. Corp., 234 F.R.D. 641 (N.D. Ill. 2006)..... 14

Gammon v. GC Servs. Ltd. P’ship, 162 F.R.D. 313 (N.D. Ill. 1995) 14

Haroco, Inc. v. Am. Nat’l Bank & Tr. Co. Chi., 121 F.R.D. 664 (N.D. Ill. 1998)..... 13

Ingram v. Corp. Receivables, Inc., No. 02 C 6608, 2003 U.S. Dist. LEXIS 14389
(N.D. Ill. Aug. 19, 2003)..... 12

Kitson v. Bank of Edwardsville, No. 08-507-GPM, 2009 U.S. Dist. LEXIS 85444
(S.D. Ill. Sept. 18, 2009) 16

McReynolds v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 672 F.3d 482
(7th Cir. 2012)..... 10, 17

Merrill Lynch, Pierce, Fenner & Smith, Inc. v. McReynolds, 568 U.S. 887,
133 S. Ct. 338 (2012)..... 17

Rand v. Monsanto Co., 926 F.2d 596 (7th Cir. 1991) 14

Retired Chi. Police Ass’n v. City of Chicago, 7 F.3d 584 (7th Cir. 1993)..... 13, 14

Rosario v. Livaditis, 963 F.2d 1013 (7th Cir. 1992) 14

Scott v. Family Dollar Stores, Inc., 733 F.3d 105 (4th Cir. 2013)..... 12

Silverman v. Motorola Solutions, Inc., 739 F.3d 956 (7th Cir. 2013) 9

Stockwell v. City & Cty. of San Francisco, 749 F.3d 1107 (9th Cir. 2014)..... 12

Wagner v. Nutrasweet Co., 95 F.3d 527 (7th Cir. 1996) 13

Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338 (2011) 11, 17

Young v. United Parcel Serv., Inc., 135 S. Ct. 1338 (2015) 12

Statutes and Regulations

Class Action Fairness Act, 28 U.S.C. § 1715 8

Pregnancy Discrimination Act of 1978, 42 U.S.C. § 2000e(k) 1, 2

Treasury Regulation § 1.468B-1, 26 C.F.R. § 1.468B-1 8

Other Authorities

Manual for Complex Litigation (Fourth) § 21.632 (2004) 10, 17

Manual for Complex Litigation (Third) § 30.41 (1995) 17

W. Declerq et al, *Listening to Working Mothers III* (New York: Childbirth Connection, 2013) at Table 18 available at <https://transform.childbirthconnection.org/reports/listeningtomothers/>.
..... 11

Rules

Fed. R. Civ. P. 23(a) 10, 14

Fed. R. Civ. P. 23(b)(3)..... 10, 15

Fed. R. Civ. P. 23(e) 1, 7, 9, 16, 17, 20

Fed. R. Civ. P. 23(g) 14

Fed. R. Civ. P. 30(b)(6)..... 4

I. INTRODUCTION

Plaintiffs Talisa Borders, Otisha Woolbright, and Stacey Lewis have reached a proposed class action settlement agreement with Defendant Walmart Inc. (“Walmart”) resolving claims that Walmart maintained a discriminatory written policy until March 5, 2014 (“National Policy”), that denied pregnant workers the same benefits offered to other workers similar in their ability or inability to work, in violation of the Pregnancy Discrimination Act of 1978, 42 U.S.C. § 2000e(k).

Plaintiffs, three women who sought workplace accommodations from Walmart due to pregnancy, seek the Court’s preliminary approval of the class settlement agreement pursuant to Federal Rule of Civil Procedure 23(e), and in doing so ask the Court to conditionally certify two classes of workers for settlement purposes only, to appoint them class representatives, to appoint class counsel, to direct notice to the class, to set deadlines for opting out of or objecting to the settlement and for making a claim, and to schedule a date for a final fairness hearing.

II. FACTUAL AND PROCEDURAL BACKGROUND¹

A. Plaintiffs Thoroughly Investigated the Class Claims and Exhausted Administrative Remedies

In March 2013, Plaintiff Borders, who worked at a Walmart in O’Fallon, Illinois, gave her employer notice that she could not lift more than 25 pounds due to a pregnancy-related medical restriction, and she sought light duty. Walmart denied her request even though light duty was available to employees who were injured on the job and who were similar in their ability to work. Rather than provide light duty, Walmart supervisors told Ms. Borders that she was required to take an unpaid leave of absence pursuant to Walmart’s policy.

¹ Walmart does not concede the Plaintiffs’ allegations, nor does it concede all of the factual statements set forth herein. For purposes of this Settlement, however, Walmart does not object to the filing of this motion for Preliminary Approval.

Ms. Borders sought legal counsel from A Better Balance, the National Women’s Law Center, and Mehri & Skalet, PLLC (“Class Counsel”), and on January 11, 2014, Ms. Borders filed a charge of discrimination with the U.S. Equal Employment Opportunity Commission (“EEOC”). She alleged that Walmart engaged in sex and pregnancy discrimination against her and a class of pregnant workers by, among other things, maintaining a written Accommodation in Employment policy (the National Policy) that denied pregnant workers light duty, temporary alternative duty, and other accommodations available to other workers, not pregnant, similar in their ability or inability to work, in violation of the Pregnancy Discrimination Act (PDA).

Less than two months after Ms. Borders filed her charge of discrimination with the EEOC, on March 5, 2014, Walmart changed the national Accommodation in Employment policy at issue in this case, but Walmart did not resolve Ms. Borders’s claims at that time. Then, on April 24, 2014, Plaintiff Woolbright filed a charge of discrimination with the EEOC against Walmart pursuing claims similar to Ms. Borders’s claims. A Walmart in Florida had denied Ms. Woolbright’s requests for accommodation in the workplace due to pregnancy but granted similar accommodations when she was injured on the job. Ex. A (Eardley Decl.) at ¶¶ 8-9.

Class Counsel engaged in an investigation of Walmart’s conduct while both matters were pending before the EEOC. For example, Class Counsel spoke with pregnant workers who had concerns about their employment with Walmart and evaluated the procedural and substantive law. *Id.* at ¶¶ 6-10 Ms. Borders and Ms. Woolbright actively participated in the EEOC’s investigation, including providing documents and providing an interview. *Id.* at ¶ 10.

B. The Parties Engaged in Years of Adversarial Litigation of the Class Claims, Allowing Them to Better Assess the Strengths and Weakness of the Claims and Defenses

After three years of the EEOC process, on May 12, 2017, Plaintiffs Borders and Woolbright filed this action on behalf of a putative class of Walmart workers who alleged that they were denied requested accommodations because of pregnancy between March 19, 2013, and March 5, 2014, including class claims of intentional and disparate impact pregnancy discrimination in violation of the PDA and individual retaliation claims in violation of Title VII. Compl. ¶¶ 49, 58-76.

Plaintiffs' complaint described the discriminatory provisions of the National Policy under which pregnant workers were expressly ineligible for light duty even though light duty was available to workers injured on the job. It also alleged that the policy treated workers with disabilities more favorably than pregnant workers who were similar in their ability or inability to work. *Id.* at ¶¶ 34-41.

The Plaintiffs amended the complaint on January 29, 2019, to add another named Plaintiff, Stacey Lewis, to the action. Ms. Lewis alleged that she had experienced pregnancy discrimination while she was working at a Walmart store in Virginia in March 2013. She too had a medically-imposed lifting restriction due to pregnancy that Walmart refused to accommodate. Am. Compl. ¶¶ 31-59.

Plaintiffs' case was one of the first, if not the first, in the nation in which private plaintiffs brought claims of pregnancy discrimination on behalf of a class of women who were denied workplace accommodations because of pregnancy. All three Plaintiffs understood that there was a risk that a class would not be certified and remained steadfast throughout the litigation in their

desire to proceed on a class basis to try to help other women workers who had had similar experiences at Walmart. Eardley Decl. at ¶¶ 5, 6, 9, 11, 48.

The litigation has been hard fought. For example, Walmart moved to dismiss all of Plaintiffs Borders and Woolbright's claims for failure to state a claim upon which relief could be granted and moved to dismiss Ms. Woolbright's claims for lack of personal jurisdiction, which, after briefing, the Court denied. Dkt. 84. Walmart also sought to stay discovery while its motion to dismiss was pending, which Plaintiffs opposed. Eventually, the Court set several scheduling orders, which had to be modified several times to allow the parties to continue class-wide discovery. Dkt. 71, 83, 95, 98, 100, 119.

Throughout the litigation, Class Counsel sought information regarding Walmart's National Policy, as well as several state-wide policies pertaining to accommodation in the workplace from 2013-2014, and the impact of such policies on pregnant employees and employees similar in their ability to work. Plaintiffs began class-wide discovery in November 2017, serving requests for admissions, interrogatories, and requests for production of documents. Plaintiffs took several Rule 30(b)(6) depositions of Walmart, and Plaintiffs as well as fact and expert witnesses were deposed. There were 15 depositions total. Walmart produced thousands of pages of documents and detailed databases regarding its workforce. Two well-respected labor economists served as experts for Plaintiffs. Plaintiffs' expert reports analyzed Walmart's workforce data pertaining to the putative class and provided a methodology for calculating class damages. Walmart retained its own expert to review its workforce data. Discovery continued in earnest through March 2019. Eardley Decl. at ¶¶ 12-17.

On April 30, 2019, Plaintiffs had prepared and were ready to file a motion seeking certification of a class pursuant to Rule 23, but as discussed below, the parties opted to engage in

class-wide settlement negotiations. The Court granted the parties' request to modify the scheduling order to allow for such negotiations. Dkt. 119.

C. The Parties Engaged in Arm's-Length Negotiations of the Class Claims with the Assistance of a Well-Respected Mediator

The parties first explored settlement in November and December 2018. The parties retained a private mediator, Michelle Yoshida of Phillips ADR, who presided over a one-day, in-person mediation in December 2018. The parties exchanged confidential mediation briefs and discussed potential resolution of Plaintiffs' class claims. The parties were unable to reach an agreement and decided that negotiations should be suspended pending expert discovery. Eardley Decl. at ¶ 19.

From January through March 2019, the parties engaged in intensive expert discovery regarding the class claims. They exchanged expert reports, rebuttal reports, and a supplemental report regarding the class claims. All three experts were deposed. Plaintiffs prepared their motion for class certification, but the parties decided to resume settlement negotiations on the eve of the deadline for the motion. Ms. Yoshida presided over a second day of mediation on May 23, 2019. The parties made substantial progress toward resolving the class claims and continued the discussions telephonically with Ms. Yoshida. *Id.* at ¶¶ 15, 20. On June 12, 2019, the parties notified the Court that they had reached a settlement in principle. Dkt. 121. The parties executed a memorandum of understanding soon thereafter and spent several months negotiating the terms of the class settlement agreement, which they executed on October 14, 2019. Ex. B (Settlement Agreement or "S.A.").

III. SUMMARY OF THE SETTLEMENT AGREEMENT PROVISIONS

A. Definition of the Settlement Classes

Based on the information ascertained in discovery, including expert reports, Plaintiffs have identified two settlement classes consisting of Walmart workers who sought an accommodation between March 19, 2013, and March 5, 2014, because of pregnancy. Two classes are identified because some pregnant workers' requests for accommodation were processed by Walmart's centralized Accommodation Service Center ("ASC Settlement Class") and other requests were not ("Non-ASC Settlement Class"). Further, the ASC Settlement Class is limited to employees who worked in 39 states, but the Non-ASC Settlement Class is nationwide. Plaintiffs assert that the ASC followed Walmart's discriminatory National Policy in 39 states,² using the policy to deny accommodations to women who worked in these states. Plaintiffs' experts' analyses of Walmart's data suggest that the ASC followed state-specific policies in 11 states (the "Pregnancy Temporary Alternative Duty (TAD) states")³ and generally granted pregnant workers' requests for accommodation in these states, making light duty available to these employees. Thus, workers from these 11 states whose requests for accommodation were processed by Walmart's ASC are not part of either class. As such, the settlement classes are defined as follows:

The ASC Settlement Class consists of all women employed by Walmart at stores in the 39 National Policy States who were denied requested accommodations because of pregnancy by the ASC during the Time Period (between March 19, 2013 and March 5, 2014, inclusive).

² The National Policy states include: Alabama; Alaska; Arizona; Arkansas; Colorado; Delaware; Florida; Georgia; Idaho; Indiana; Iowa; Kansas; Maine; Maryland; Massachusetts; Michigan; Minnesota; Mississippi; Missouri; Nebraska; Nevada; New Hampshire; New Jersey; New York; New Mexico; North Carolina; North Dakota; Oregon; Pennsylvania; Rhode Island; South Carolina; South Dakota; Texas; Utah; Vermont; Virginia; Washington; Wisconsin; and Wyoming. S.A. § 2.20.

³ These states include: California, Connecticut, Hawaii, Illinois, Kentucky, Louisiana, Michigan, Montana, Ohio, Oklahoma, and Tennessee. Eardley Decl. ¶ 13.

The Non-ASC Settlement Class consists of all women employed by Walmart at stores nationwide who were denied requested accommodations because of pregnancy by store level management and/or store-level human resource personnel during the Time Period.

S.A. §§ 2.4, 2.22.

B. Notice to Class Members and Final Fairness Hearing

The parties propose a 60-day notice period with notice beginning soon after an order preliminarily approving the agreement. Walmart will provide class member and potential class member names⁴ and last-known contact information, including email addresses if available, to the claims administrator within 10 business days of the order. Notice by U.S. Mail, and email where available, will follow within 20 business days of the order. S.A. §§ 6.2-6.3.

After notice, class members will have 60 days to opt out, rescind their request to opt out, object to the settlement, submit a claim, or do nothing. After the claim deadline, the claims administrator will review all claims, calculate an estimated award for each class member claimant, and prepare an affidavit describing the claims review process, the range of awards to claimants, and the median and average awards. Class Counsel will submit the claims administrator's affidavit along with a memorandum in support of final approval of the class settlement pursuant to Rule 23(e)(2). S.A. § 5.3.2; Eardley Decl. at ¶ 31. The parties propose that the deadline for the motion for final approval be set no earlier than 60 days after the claim deadline and that the final fairness hearing be set approximately 15 days after the motion is filed.

⁴ Walmart retained records of accommodation requests processed by the ASC but did not consistently maintain records of requests handled elsewhere, such as by store-level managers. Thus, all members of the ASC Settlement Class have been identified, but the members of the Non-ASC Settlement Class will self-identify through the notice and claims process. Notice will be sent to all workers who were pregnant during the liability period as reflected in Walmart's records, including leave and short-term disability records. S.A. § 2.33. To submit a claim, these workers must attest that they requested an accommodation due to pregnancy and that it was denied. *Id.* at Ex. 1.

C. Settlement Fund and Claims Administrator

The settlement agreement contemplates a \$14-million common fund for awards to approved claimants, costs of notice and claims administration, and attorneys' fees and expenses. S.A. § 5. Additionally, Walmart will separately pay: (1) the employer's portion of taxes or contributions for any backpay awarded through the settlement; and (2) distribution of notice to the state attorneys general as required by the Class Action Fairness Act, 28 U.S.C. § 1715. *Id.* at § 7.1.

Plaintiffs propose AB Data as the claims administrator. AB Data is a claims administration company with experience managing qualified settlement funds and class employment discrimination and civil rights settlements. Eardley Decl. at ¶ 32. Walmart will transfer \$14 million into a Qualified Settlement Fund ("QSF") as described in Treasury Regulation § 1.468B-1, 26 C.F.R. § 1.468B-1. S.A. § 11. AB Data will administer the settlement fund. The QSF will be a segregated bank account that will receive the settlement funds and will hold that sum, and any earnings thereon, until distribution by AB Data as more fully set forth in Section 11 of the Settlement Agreement.

D. Confidentiality of Claim Form

Claim form responses will be kept confidential. The identities of the claimants will not be disclosed to anyone other than counsel for the parties, the claims administrator, and Walmart employees who have a strict business need to know. S.A. at Ex. 1, Ex. 3 § 9. The purpose of such confidentiality is to encourage claimants to be forthcoming on their claim forms without fear of reprisal and to protect confidential and personal health information related to the claimants' pregnancies.

E. Attorneys' Fees and Expenses

Class Counsel will seek no more than 33.33% of the common fund in attorneys' fees and no more than \$275,000 in legal costs. Eardley Decl. at ¶ 35. This approach is consistent with Seventh Circuit jurisprudence that awards class counsel attorneys' fees as a percentage of a common fund. *Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956 (7th Cir. 2013). A fee of no more than one-third of the common fund is typical in the Seventh Circuit: "Courts throughout the Seventh Circuit routinely consider the fee awards in other class actions and conclude that a one-third contingency fee is standard." *City of Greenville v. Syngenta Crop Prot., Inc.*, 904 F. Supp. 2d 902, 909 (S.D. Ill. 2012).

Class Counsel will file a motion seeking fees and costs, along with supporting documentation and offering a lodestar crosscheck, on or before 30 days before the deadline to submit claims and to object. S.A. § 14.1. This will provide class members sufficient information regarding Class Counsel's fees and costs prior to the final fairness hearing.

IV. THE COURT SHOULD CONDITIONALLY CERTIFY THE CLASSES FOR SETTLEMENT PURPOSES AS PART OF ITS PRELIMINARY APPROVAL OF THE SETTLEMENT⁵

A. Standard for Conditional Certification of Settlement Classes

In determining whether to preliminarily approve the settlement, the Court must utilize the standards developed pursuant to Rule 23, which allows courts to certify a class for settlement purposes only. Rule 23(e). Conditional settlement approval, class certification, and appointment of class counsel have practical purposes, including avoiding the costs of litigating class status while facilitating a global resolution, ensuring that all class members are notified of the terms of

⁵ Walmart reserves its objections to certification of the claims alleged as a litigation class, but does not oppose certification of the settlement classes, for settlement purposes only and in accordance with the terms of the Parties' Settlement Agreement.

the proposed settlement, and setting the date and time of the final approval hearing. At the preliminary stage, the Court engages in a threshold inquiry intended merely to reveal conspicuous defects. *Manual for Complex Litigation* (Fourth) § 21.632 (2004). The proposed Settlement Classes in this case do not suffer from any conspicuous defects. They readily satisfy Rule 23(a) and (b)(3).

B. The Proposed Settlement Classes Satisfy Rule 23(a)

Under Rule 23(a), a class may be certified when:

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class;
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). The Settlement Classes meet each of these requirements.

1. The Settlement Classes Are So Numerous that Joinder Is Impracticable

The ASC Settlement Class and Non-ASC Settlement Class both satisfy the numerosity requirement. While “there is no ‘magic number’ for numerosity, ‘permissive joinder is usually deemed impracticable where the class members number 40 or more.’” *Acik v. I.C. Sys., Inc.*, 251 F.R.D. 332, 335 (N.D. Ill. 2008) (citation omitted); *see also Chi. Teachers Union, Local No. 1 v. Bd. of Educ. of Chi.*, 797 F.3d 426, 431 (7th Cir. 2015) (213 class members); *McReynolds v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 672 F.3d 482, 491 (7th Cir. 2012) (700 class members).

Based on the records produced by Walmart in discovery and Plaintiffs’ expert analyses of that data, the ASC Settlement Class includes about 740 employees whose requests for accommodation due to pregnancy were denied by the ASC. A settlement class of 740 employees satisfies numerosity. The Non-ASC Settlement Class is also sufficiently large though its exact

size is unknown. Plaintiffs estimate the Non-ASC Settlement Class includes about 10,000 employees.⁶

2. Questions of Law and Fact Are Common to the Settlement Classes

Commonality requires that the claims in a case raise questions of law or fact common to the class, but does not require that every issue of law or fact be identical with respect to each class member. Not all questions need to be common to the class – “even a single common question will do.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011) (internal citation and quotation marks omitted). In general, the commonality requirement is satisfied where there is at least one issue which, if resolved, affects all or a significant number of class members.

Here, Walmart’s discriminatory National Policy provides “a common answer to the crucial question *why was I disfavored*” for the ASC Class and the Non-ASC Class. *Id.* at 352. The National Policy was a uniform corporate policy that discriminated against both putative classes. The National Policy, or a substantially similar state-specific policy, explicitly applied to women working in the 39 National Policy states. With regard to the ASC Settlement Class, the National Policy was implemented by the ASC; for the Non-ASC Settlement Class, the National Policy was implemented by store-level managers and HR personnel in both the 39 states where it applied and in the 11 Pregnancy Temporary Alternative Duty (TAD) states where local personnel mistakenly applied the National Policy due to Walmart’s flawed dissemination of state policies and misleading training.

⁶ The parties’ experts identified about 35,000 pregnant workers during the liability period, excluding workers who requested accommodation via Walmart’s ASC. According to Plaintiffs’ expert and based on a study of pregnant women nationwide, it is reasonable to assume that about 75% of pregnant workers request accommodations. This estimate assumes that 75% of the 35,000 pregnant workers at Walmart requested accommodations and that their requests were denied at the same rate requests were denied by the ASC according to Plaintiffs’ expert analysis of denials. W. Declerq et al, *Listening to Working Mothers III* (New York: Childbirth Connection, 2013) at Table 18 available at <https://transform.childbirthconnection.org/reports/listeningtomothers/>.

The National Policy is exactly the type of “uniform corporate polic[y]” that provides commonality. *See Scott v. Family Dollar Stores, Inc.*, 733 F.3d 105, 117 (4th Cir. 2013); *see also Chi. Teachers Union*, 797 F.3d at 437 (“[A] company-wide practice is appropriate for class challenge even where some decisions in the chain of acts challenged as discriminatory can be exercised by local managers with discretion—at least where the class at issue is affected in a common manner, such as where there is a uniform policy or process applied to all.”); *Stockwell v. City & Cty. of San Francisco*, 749 F.3d 1107, 1114, 1117 (9th Cir. 2014) (“a single, well-enunciated, uniform policy that, allegedly, generated all the disparate impact of which [plaintiffs] complain” provided commonality); *Ellis v. Costco Wholesale Corp.*, 285 F.R.D. 492, 520, 530 (N.D. Cal. 2012) (“common, companywide promotion system” provided commonality).

If litigation had continued, the Court would have had to resolve a common legal dispute, the answer to which would have applied to all class members; that is, did Walmart illegally discriminate against class members by treating their accommodation requests less favorably than requests from persons with disabilities and persons injured on the job who were similar in their ability to work. *Young v. United Parcel Serv., Inc.*, 135 S. Ct. 1338 (2015) (courts must evaluate the extent to which an employer’s policy treats pregnant workers less favorably than nonpregnant workers similar in their ability to work and determine whether there are legitimate, nondiscriminatory, nonpretextual reasons for this difference). The terms of the policies would not be in dispute; the interpretation of the PDA would be. Claims arising out of a common document giving rise primarily to legal rather than factual disputes are ideal for class certification. *See Ingram v. Corp. Receivables, Inc.*, No. 02 C 6608, 2003 U.S. Dist. LEXIS 14389, at *10 (N.D. Ill. Aug. 19, 2003) (“[C]laims arising out of standard documents present a ‘classic case for treatment as a class action.’” (quoting *Haroco, Inc. v. Am. Nat’l Bank & Tr. Co.*

Chi., 121 F.R.D. 664, 668 (N.D. Ill. 1998)); accord *Arenson v. Whitehall Convalescent & Nursing Home*, 164 F.R.D. 659, 664 (N.D. Ill. 1996). Accordingly, the commonality requirement is satisfied here.

3. Plaintiffs Lewis, Woolbright, and Borders' Pregnancy Discrimination Claims are Typical of the Settlement Classes' Claims

“[T]he typicality requirement primarily directs the district court to focus on whether the named representatives' claims have the same essential characteristics as the claims of the class at large.” *Retired Chi. Police Ass'n v. City of Chicago*, 7 F.3d 584, 596–97 (7th Cir. 1993). “A plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and his or her claims are based on the same legal theory.” *Id.* Typicality “should be determined with reference to the company's actions, not with respect to particularized defenses it might have against certain class members.” *Wagner v. Nutrasweet Co.*, 95 F.3d 527, 534 (7th Cir. 1996).

Plaintiffs' claims are typical because, as Walmart workers, each faced the same treatment as the class members: each was denied a request for a pregnancy-related accommodation pursuant to Walmart's National Policy. Ms. Lewis submitted a request for accommodation during her pregnancy to the ASC and was denied this accommodation via the standard denial form letter sent to all pregnant women requesting accommodations. This is typical of members of the ASC Settlement Class. Mes. Woolbright and Borders requested, and were denied, accommodations during their pregnancy by store-level managers and/or human resource personnel pursuant to the discriminatory National Policy. Their experiences are typical of the members of the Non-ASC Settlement Class.

4. The Named Plaintiffs and Class Counsel are Adequate Representatives

Rule 23(a)(4) requires class representatives and their counsel to “fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4); *Retired Chi. Police Ass’n*, 7 F.3d at 598. Class representatives must not have antagonistic or competing interests to those of the putative class members, *Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir. 1992), and must have a sufficient interest in the outcome of the case, *Gammon v. GC Servs. Ltd. P’ship*, 162 F.R.D. 313, 317 (N.D. Ill. 1995). This “low standard” requires only that each plaintiff “be a ‘conscientious representative plaintiff,’” meaning that she has general knowledge of the case and participates in the discovery process. *Fournigault v. Indep. One Mortg. Corp.*, 234 F.R.D. 641, 646 (N.D. Ill. 2006) (quoting *Rand v. Monsanto Co.*, 926 F.2d 596, 599 (7th Cir. 1991)). Plaintiffs do not have claims antagonistic to or conflicting with the class. They have fully participated in discovery, including document production and interrogatories, and sat for a full day of deposition. Each has expressed her desire to help all pregnant workers harmed by Walmart’s National Policy.

To satisfy Rule 23(a)(4), class counsel must be “competent, experienced, qualified, and generally able to conduct the proposed litigation vigorously.” *Gammon*, 162 F.R.D. at 317. Here, Mehri & Skalet, PLLC has significant experience representing plaintiffs in class actions, particularly employment discrimination class actions. Eardley Decl. at ¶¶ 40-46. A Better Balance and the National Women’s Law Center have particularized legal expertise combating pregnancy discrimination.⁷ Ex. C (Bakst Decl.) *passim*; Ex. D (Martin Decl.) *passim*. Class counsel have conducted this litigation competently and zealously.

⁷ Class Counsel’s declarations also establish that counsel meet the standards of Rule 23(g) setting forth the requirements for class counsel.

C. The Proposed Settlement Classes Satisfy Rule 23(b)

Rule 23(b)(3) allows an action for money damages to be maintained as a class if “the questions of law and fact common to class members predominate over any questions affecting only individual members,” and should be certified if “a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). Here, the central issue will be the legal one of whether Walmart’s National Policy, applicable to all members of both Settlement Classes, violated the PDA in requiring Walmart’s decisionmakers, whether they be in the ASC or in stores, to treat pregnant workers worse than workers with disabilities and workers injured on the job in not offering the pregnant workers accommodations or light duties that were offered to the others. *See Cook v. Applebee’s Servs.*, No. 13-cv-1289-SMY-SCW, 2015 U.S. Dist. LEXIS 130159, at *7 (S.D. Ill. Sept. 28, 2015) (Yandle, J.) (the predominance requirement was met because the “ultimate question” was the legality of the defendant’s vacation policy). Resolving these central issues is also far superior to allowing claims to proceed on an individual basis, which could lead to inconsistent judgments regarding the same Walmart policy.

Common issues also predominate regarding facts. Class members were all Walmart workers whose requests for pregnancy-related accommodations were denied and Walmart’s National Policy adversely impacted them. Each class member has the same claim of discrimination based on both disparate treatment and disparate impact. The same categories of evidence—including the National Policy and statistical evidence of disparate impact on class members—will be used by each class member to prove liability and damages. Accordingly, common legal and factual questions predominate here.

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

A. Standard for Preliminary and Final Approval of a Class Settlement

Rule 23(e) governs approval of a class action settlement. It provides, in relevant part, that:

The claims, issues, or defenses of a certified class—or a class proposed to be certified for purposes of settlement—may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

(1) *Notice to the Class...*

(B) *Grounds for a Decision to Give Notice.* The court must direct notice in a reasonable manner to all class members who would be bound by the proposal if giving notice is justified by the parties' showing that the court will likely be able to:

(i) approve the proposal under Rule 23(e)(2); and

(ii) certify the class for purposes of judgment on the proposal.

(2) *Approval of the Proposal.* If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether:

(A) the class representatives and class counsel have adequately represented the class;

(B) the proposal was negotiated at arm's length;

(C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e). At this preliminary stage, as this Court has recognized, the Court's duty is to "make a preliminary determination as to the reasonableness of the proposed class action settlement before making any final determination." *Kitson v. Bank of Edwardsville*, No. 08-507-GPM, 2009 U.S. Dist. LEXIS 85444, *5-6 (S.D. Ill. Sept. 18, 2009).

Historically, courts approved a settlement in two stages—preliminary and final. The preliminary stage was codified in Rule 23(e)(1) as a result of the 2018 amendments to the Rule. At the outset, the Court determines whether the proposed settlement is "within the range of possible approval." *Armstrong v. Bd. of Sch. Dirs.*, 616 F.2d 305, 314 (7th Cir. 1980) (internal

citations omitted), *overruled on other grounds by Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1988); *Coleman v. Sentry Ins.*, No. 15-CV-1411-SMY-SCW, 2016 U.S. Dist. LEXIS 149110, *4 (S.D. Ill. Oct. 27, 2016) (noting that at the preliminary stage the Court found that the settlement was “within the range of possible final approval”). Second, after notice, the Court determines whether the proposed settlement is “fair, reasonable, and adequate” as required by Rule 23(e)(2).

Unless the Court’s initial examination “disclose[s] grounds to doubt its fairness or other obvious deficiencies,” the Court should order notice to class members. *Manual* (Third) § 30.41 (1995). The Court should determine whether it is reasonable to believe that the agreement may be fair, reasonable and adequate, while deferring a final determination until after notice is sent and comments and objections may be considered. *Manual* (Fourth) § 21.632.

B. The Settlement is Within the Range of Possible Final Approval and Does Not Have Any Obvious Deficiencies

1. The Proposed Relief to the Settlement Classes is Adequate Considering the Risks of Continued Litigation, the Method for Distributing Relief, and the Proposed Attorneys’ Fee Award

The \$14 million settlement will provide excellent monetary relief to class members given the risks of continued litigation. All parties and their counsel recognize that, in the absence of an approved settlement, they would face continued protracted litigation, including a motion for class certification and *Daubert* motions related to class certification, merits discovery, motions for summary judgment, trial and potential appellate proceedings that would consume time and resources and present ongoing risks and uncertainties. S.A. §§ 1.1, 3.5. Plaintiffs would face additional uncertainty due to the evolving standards for class certification as courts wrestle with how to interpret *Dukes*. See, e.g., *Dukes*, 564 U.S. 338; *McReynolds v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 672 F.3d 482 (7th Cir.), *cert denied*, 568 U.S. 887 (2012).

Though the exact award per class member cannot be determined now, class members will receive approximately \$819 to \$2,049, if not more, after fees and costs. Eardley Decl. at ¶ 33. Assuming claims administration costs do not exceed \$200,000, that the Court grants counsel’s motion for fees of 33.33% of the common fund plus \$275,000 in expenses, and that there are about 11,000 settlement class members, then the average award per person will be about \$819.70 if all class members submit valid claims, about \$1,639.39 if half submit valid claims, and about \$2,049.24 if 40% submit valid claims. For comparison purposes, \$2,049.24 is roughly equivalent to 215.7 hours of backpay at the average hourly rate for a Walmart sales associate of \$9.50 per hour as estimated by Plaintiffs’ expert, or more than 7 weeks of work for those working less than 30 hours a week. *Id.* at ¶ 34. Of course, if the claims rate is lower, the average award will be between \$2,000 to \$3,000, if not higher. *Id.* at ¶ 33.

When compared with recent employment discrimination settlements involving classes with over 500 members and workers in retail chains or other entry-level or service jobs, the settlement fund here is more than adequate.

Case Name	Year	Settlement Amount	No. of Class Members	Amount per Class Member
<i>Rotondo v. JPMorgan Chase Bank, N.A.</i> , No. 1:19-cv-00408 (S.D. Ohio) (gender)	2019	\$5 million	About 5,000	~\$1,000
<i>EEOC v. Cintas Corp.</i> , No. 2:04-cv-40132 (E. D. Mich.) (gender)	2015	\$1.5 million	About 800	~\$1,875
<i>Parra v. Bashas' Inc.</i> , No. 2:02-cv-00591, (D. Az) (race)	2014	\$6.5 million	12,000	~\$541
<i>Cogdell v. The Wet Seal</i> , No. SACV 12-01138 (C.D. Ca.) (race)	2013	\$7.5 million	About 1,600	~\$4,600
<i>Duling v. Gristede's Operating Co.</i> , No. 06 Civ. 10197, 2012 U.S. Dist. LEXIS 164226 (S.D.N.Y.) (gender)	2012	\$1.45 million (excluding fees)	2,527	~\$574 (settlement amount includes gift cards)
<i>Stagi v. Nat'l R.R. Passenger Corp.</i> , Case No. 09-3512 (3d Cir.) (gender)	2012	\$2 million	5,383	~\$371
<i>Womack v. Dolgencorp Inc.</i> , No. 2:06-cv-00465 (N.D. Al.) (gender)	2011	\$18.75 million	2,000+	~\$9,300

2. The Settlement Treats Class Members Equitably and the Criteria for Processing Claims Is Set Forth in the Notice and Claim Form

The settlement allows class members to submit claims that will be reviewed by an experienced, neutral claims administrator who will objectively score the claims. The point system devised by the claims administrator will be based on the information provided on the claim forms regarding class members' damages, class members' contributions to the litigation, and whether the individual is releasing claims other than pregnancy discrimination, as the Named Plaintiffs are. S.A. § 5.3.2.

The claims administrator will consider that Named Plaintiffs devoted significant time and energy into the litigation, risked retaliation from Walmart, and that they are releasing Walmart from all claims, not just pregnancy discrimination claims. To ensure transparency, class members are apprised in the notice that Named Plaintiffs will be allocated additional points for their efforts, the retaliation that they faced, and the fact that the Settlement Agreement requires them to release broader claims against Walmart. S.A. at Ex. 3 § 8.

After notice and before the Court decides whether to finally approve the settlement, the claims administrator will submit a declaration to the Court describing the claims review process, the total number of points awarded, the range of the monetary value of claims, and the average amount of each claim. Such a process treats class members equitably and accounts for the unique circumstances and efforts of the Named Plaintiffs and any other class members who contributed to the investigation and litigation.

3. The Settlement was Negotiated at Arm's Length and Plaintiffs and Their Counsel Have Adequately Represented the Settlement Classes

The settlement was primarily negotiated in two in-person mediation sessions that were guided by an experienced mediator. *See supra* at 5. Meaningful class-related litigation ensued

between these two sessions, including whether statistically significant disparities existed between outcomes for pregnant workers who were denied accommodations and similarly situated comparators. The litigation ensured that the parties were well-informed and that their negotiations were at arm's length. Eardley Decl. at ¶¶ 4-20. Further, the Named Plaintiffs and their counsel have adequately represented the Settlement Classes throughout the investigation of the class claims, the administrative process before the EEOC, the litigation, and the settlement negotiations. *See infra* at 1-5.

C. The Notice Plan is Reasonable as Required by Rule 23(e)(1)(B)

The notice plan is reasonable and contemplates notice by U.S. Mail and email if available to all ASC Settlement class members and, for the Non-ASC Settlement Class, to all workers who were pregnant during the class period according to Walmart's records. S.A. § 6.2-6.3. Notice by mail is overinclusive to reach as many class members as possible. Additionally, the notice will be posted on websites and/or social networking sites for A Better Balance, the National Women's Law Center, and Mehri & Skalet, PLLC. S.A. § 6.7, 21.1.

VI. CONCLUSION

Because the Settlement Agreement is the product of arm's-length negotiations, within the range of possible judicial approval, and has no obvious deficiencies, the Court should grant preliminary approval and order that notice be given to the class, including notice of the final approval hearing, pursuant to Rule 23(e).

Dated: October 15, 2019

Respectfully Submitted,

SEDEY HARPER WESTHOFF P.C.
Mary Ann Sedey
Donna Harper
2711 Clifton Avenue,
Saint Louis, MO 63139

/s/ Ellen Eardley
MEHRI & SKALET, PLLC
Ellen Eardley (*pro hac vice*)
Michael D. Lieder (*pro hac vice*)
Cyrus Mehri (*pro hac vice*)
Lauren Nussbaum (*pro hac vice*)

Telephone: 314-773-3566
mseley@sedehyharper.com
dharper@sedehyharper.com

A BETTER BALANCE

Dina Bakst (*pro hac vice*)
Elizabeth Chen (*pro hac vice*)
80 Maiden Lane, Suite 606
New York, NY 10038
Telephone: 212-430-5982
dbakst@abetterbalance.org
echen@abetterbalance.org

Elizabeth Gedmark (*pro hac vice*)
2301 21st Ave S., Suite 355
Nashville, TN 37212
Telephone: 615-915-2417
egedmark@abetterbalance.org

1250 Connecticut Avenue, NW, Suite 300
Washington, DC 20036
Telephone: 202-822-5100
eeardley@findjustice.com
mlieder@findjustice.com
cmehri@findjustice.com
lnussbaum@findjustice.com

NATIONAL WOMEN'S LAW CENTER

Emily Martin (*pro hac vice*)
Sunu P. Chandy (*pro hac vice*)
11 Dupont Cir NW, Suite 800
Washington, DC 20036
Telephone: 202-588-5180
emartin@nwlc.org
schandy@nwlc.org

EXHIBIT A

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

BORDERS et al.,)	
On behalf of themselves and all others)	
similarly situated,	)	Civil No. 3:17-cv-0506
)	
Plaintiffs,)	
)	
v.	)	CLASS ACTION
)	
WAL-MART, INC.,)	
Defendant.)	

DECLARATION OF ELLEN L. EARDLEY

Pursuant to Title 28 USC Section 1746, I hereby declare and state as follows:

1. My name is Ellen Eardley, and I am a partner at the law firm of Mehri & Skalet, PLLC (hereinafter “M&S”). I serve on the firm’s management team.

2. I am submitting this declaration on behalf of myself and my co-counsel in support of Plaintiffs’ Unopposed Motion for Preliminary Approval of the Class Action Settlement Agreement, Conditional Certification of the Settlement Classes, Appointment of Plaintiffs’ Counsel as Class Counsel, and Approval of the Proposed Notice of the Settlement and Settlement Procedure.

3. My law firm, Mehri & Skalet, PLLC (“M&S”), and our co-counsel, A Better Balance (“ABB”) and the National Women’s Law Center (“NWLC”), seek to be appointed class counsel in this matter pursuant to Federal Rule of Civil Procedure 23(g). I am proposed co-lead class counsel. Mary Anne Sedey and Donna Harper of Sedey Harper Westhoff, P.C., nationally recognized employment discrimination attorneys with experience in class and pattern and practice cases, serve as local counsel.

History of the Case, the Risks of Litigation, and Settlement Negotiations

4. Our co-counsel at the non-profit organizations ABB and NWLC are national experts on pregnancy discrimination in the workplace. They approached M&S over five years ago to work together with them on a pregnancy discrimination case against Walmart after they were contacted by Plaintiff Talisa Borders. My firm, M&S, is a well-known civil rights firm that regularly handles complex litigation, and I had previously worked at the NWLC.

5. In 2013, Plaintiff Borders sought counsel to address pregnancy discrimination she experienced while working at a Walmart store in O’Fallon, Illinois in 2013. Plaintiff Borders wanted to address the pregnancy discrimination she endured and also wanted to help other women workers who had had similar experiences at Walmart.

6. Soon after connecting with Ms. Borders, ABB, NWLC, and M&S (collectively “Class Counsel”) began an investigation of her individual claims and potential class claims. At this time, we believed that there had been no other class cases alleging that an employer’s systemic failure to accommodate pregnant workers violated the PDA. We carefully assessed the related case law, including the risks associated with pursuing a gender-related class action against Walmart after *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011).

7. On January 11, 2014, Ms. Borders filed a charge of discrimination with the U.S. Equal Employment Opportunity Commission (“EEOC”) in the St. Louis, Missouri, District Office alleging that Walmart engaged in sex and pregnancy discrimination against her and a class of pregnant workers by, among other things, maintaining a written Accommodation in Employment policy that denied pregnant workers light duty, temporary alternative duty, and other accommodations available to other workers, not pregnant, similar in their ability or inability to work, in violation of Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy

Discrimination Act, 42 U.S.C. §§ 2000e *et seq.* Later in the litigation, Plaintiffs referred to this policy as the “National Policy” after Plaintiffs learned there were also several state policies.

8. Shortly after Ms. Borders filed her charge, on March 5, 2014, Walmart changed the National Policy at issue in this case. *See, e.g.,* Lydia DePillis, *Under Pressure, Wal-Mart Upgrades Its Policy for Helping Pregnant Workers*, Washington Post, Apr. 5, 2014, available at <https://www.washingtonpost.com/news/wonk/wp/2014/04/05/under-pressure-walmart-upgrades-its-policy-for-helping-pregnant-workers/> (last visited Oct. 2, 2019). But, Walmart did not resolve Ms. Borders’s claims at that time. My co-counsel and I remained concerned about the impact of Walmart’s National Policy and state policies on workers who were pregnant from March 19, 2013 through March 5, 2014.

9. Subsequently on April 24, 2014, Plaintiff Woolbright, who had retained Class Counsel, filed a charge of discrimination with the EEOC against Walmart pursuing claims similar to Ms. Borders’s claims. Like Plaintiff Borders, Plaintiff Woolbright wanted Walmart to pursue her own claims and help other employees who had been pregnant while working at Walmart.

10. While Plaintiffs’ EEOC charges were pending, Class Counsel continued to investigate their individual and class claims and continued to speak with Walmart workers. Plaintiffs and Class Counsel also worked with the EEOC, including providing documents and participating in interviews. Eventually, the EEOC issued the Notice of Right to Sue for Ms. Woolbright on February 14, 2017 and for Ms. Borders on May 17, 2017.

11. Plaintiffs Borders and Woolbright filed this litigation on behalf of themselves and a putative class of Walmart workers who were denied requested accommodations because of pregnancy between March 19, 2013, and March 5, 2014, alleging class claims of intentional and disparate impact pregnancy discrimination in violation of Title VII and individual retaliation

claims in violation of Title VII. On November 15, 2018, Plaintiffs sought to amend the complaint to add the individual and class claims of Plaintiff Stacey Lewis whose claims are similar to Plaintiffs Borders and Woolbright's claims. Plaintiff Lewis contacted Class Counsel after learning about a *New York Times* article regarding pregnancy discrimination by Walmart that discussed Plaintiff Woolbright's experiences. Natalie Kitroeff and Jessica Silver-Greenberg, *Pregnancy Discrimination is Rampant Inside America's Biggest Companies*, N.Y. Times, June 15, 2018 available at <https://www.nytimes.com/interactive/2018/06/15/business/pregnancy-discrimination.html> (last visited Oct. 2, 2019). Plaintiff Lewis also retained Class Counsel to pursue individual and class claims because she wanted to help other workers.

12. The litigation was hotly contested by the parties and zealously pursued by Class Counsel. Walmart filed a motion to dismiss and objected to discovery. Because a class pregnancy accommodation case has rarely been litigated under Rule 23, the case presented many novel issues.

13. Beginning in November 2017, Plaintiffs pursued class-wide discovery, serving requests for admissions, interrogatories, and requests for production of documents related to, among other things, the discriminatory National Policy. In addition to discovery regarding Walmart's National Policy, we also conducted discovery regarding Walmart's written state policies that provided some form of Temporary Alternative Duty (TAD or light duty) to pregnant workers during the liability period in 11 states, including California, Connecticut, Hawaii, Illinois, Kentucky, Louisiana, Michigan, Montana, Ohio, Oklahoma, and Tennessee. During the class discovery period, Plaintiffs took several Rule 30(b)(6) depositions of Walmart, and Plaintiffs as well as fact and expert witnesses were deposed, for a total of 15 depositions.

14. Counsel for the parties engaged in regular conferences pursuant to the Federal Rules over discovery disputes regarding Plaintiffs' requests for production of documents and interrogatories and Walmart's failure to respond. Eventually, Walmart produced thousands of pages of documents and detailed databases regarding its workforce.

15. To better understand the class-wide claims and to analyze the datasets Walmart produced, Plaintiffs retained two well-respected labor economists to serve as experts. Plaintiffs' experts reviewed Walmart's workforce data pertaining to the putative class and provided a methodology for calculating class-wide damages. Walmart retained its own expert to review its workforce data. The parties exchanged three initial expert reports and two rebuttal reports. Plaintiffs also submitted a supplemental expert report. The expert reports provided complex statistical analyses, including regression analyses, regarding pregnant workers' experiences.

16. Class Counsel, their expert, and their teams spent hundreds of hours deciphering Walmart workforce data, identifying holes in the data, engaging in data entry to simplify the data, and developing pioneering approaches for assessing the data.

17. Class and expert discovery continued through March 2019.

18. Class Counsel prepared Plaintiffs' motion for class certification and supporting papers, which were ready to file on April 30, 2019. Shortly before the deadline for Plaintiffs' class certification motion, the parties decided to revisit earlier discussions that they had had regarding the possibility of settlement.

19. The parties engaged in their first meaningful exploration of settlement negotiations in November and December 2018 with the assistance of Michelle Yoshida of Phillips ADR, who presided over a one-day, in-person mediation in December 2018. The parties exchanged confidential mediation briefs in November 2018 and discussed potential resolution of Plaintiffs'

class claims. Settlement counsel, rather than litigation counsel, represented Walmart at the mediation. The parties were unable to reach an agreement in December 2018 and decided that negotiations should be suspended pending further prosecution of the case including the exchange of expert reports regarding the class-wide claims and expert depositions.

20. After the exchange of expert reports and deposition of all three experts, the parties resumed mediation on May 23, 2019, with the assistance of Ms. Yoshida. On June 12, 2019, the parties notified the Court that they had reached a settlement in principle. The parties executed a memorandum of understanding shortly thereafter and spent several months negotiating the terms of the class action settlement agreement. The settlement was fully executed on October 14, 2019.

Benefits of the Settlement

21. The Settlement Agreement and Plaintiffs’ Memorandum in Support of the Motion for Preliminary Approval set forth the details of the \$14 million settlement.

22. In my judgment and in the judgment of all Class Counsel, the terms of this settlement are very beneficial to the settlement classes and easily meet the legal standard requiring a class settlement to be “fair, reasonable, and adequate” before a Court approves the settlement.

23. After completing extensive investigation of the claims, engaging in intensely disputed litigation, and working with expert labor economists, my colleagues and I fully understand the strengths and weaknesses of this case. Our judgment is informed by my firm’s experience bringing class action employment discrimination cases, *see infra* ¶¶ 40-45, our knowledge of relevant case law regarding pregnancy discrimination and class actions, and the legal landscape, *see, e.g.*, Arthur R. Miller, *Simplified Pleading, Meaningful Days in Court, and Trials on the Merits: Reflections on the Deformation of Federal Procedure*, 88 N.Y.U. L. Rev. 286, 314-22 (2013); Kevin M. Clermont and Stewart J. Schwab, *Employment Discrimination*

Plaintiffs in Federal Court: From Bad to Worse?, 3 Harv. L. Pol’y Rev. 103, 127-29 (2009) (an analysis of data from the Administrative Office of U.S. Courts revealed that employment discrimination plaintiffs win only 28.47% of trials while plaintiffs overall win 44.94% percent of trials; when employment discrimination plaintiffs win at trial, the judgment is reversed on appeal 41.10% of the time, but trial judgments for employment discrimination defendants are reversed on appeal only 8.72% of the time – a five to one disparity in favor of employers). This case has the additional risks of highly complex statistical analyses, dueling expert reports, and potential *Daubert* motions on both sides.

24. The obstacles facing civil rights litigants are daunting, and class cases face the added hurdle of satisfying the requirements of Rule 23. Bearing this in mind, my colleagues and I believe that this settlement provides the classes an outstanding result without the continued delay and substantial risks of ongoing litigation. We believe that the settlement fund equals or exceeds the amount that could be realistically recovered for the class if we continued to litigate.

25. It is possible that, even if the Plaintiffs had continued to litigate, a class or classes had been certified, and the Plaintiffs had survived an almost inevitable appellate challenge to certification, prevailed in a trial on the merits, and won a likely appeal, the class members would not have achieved the level of relief that is provided in this settlement. There is also genuine risk, in the absence of a settlement, that no class would be certified, only one of the classes would be certified, a smaller class or classes would be certified, or that a certified class or certified smaller class would achieve no relief at all.

Claims Process and Awards to Class Members

26. The settlement allows class members who were pregnant during the class period and who requested a workplace accommodation that Walmart allegedly denied because of pregnancy to receive meaningful monetary relief without the risk of continued litigation.

27. It is not possible to know the exact number of class members at this time because Walmart's electronic records did not track all employee requests for workplace accommodation based on pregnancy and whether such requests were granted or denied. Based on Walmart's available records as well as expert analysis, my co-counsel and I estimate that there are approximately 11,000 class members.

28. The common fund created by the settlement is \$14 million. In addition, Walmart must pay its share of the payroll taxes on the awards to class members. Thus, the overall value of the settlement exceeds \$14 million. Moreover, under the terms of the settlement, none of the \$14 million can ever revert back to Walmart.

29. Notice of the opportunity to file a claim for monetary relief from the common fund will be sent via U.S. Mail (and via email where available) to all Walmart workers between March 19, 2013 and March 5, 2014 who, according to Walmart's records: (a) requested a workplace accommodation due to pregnancy from Walmart's centralized Accommodation Service Center and that accommodation was denied; or (b) who were pregnant.

30. Class Counsel drafted the notice in consultation with the claims administrator to be clear and understandable to class members.

31. The allocation of monetary awards to class members from the settlement fund will be based on a scoring system developed by the claims administrator using the factors set forth in the Settlement Agreement. Each factor identified in the Settlement Agreement and each category

on the claim form will be assigned points. After all claims have been submitted, the total number of points assigned to valid claims will be divided by the total amount of settlement funds available and each point will be assigned a monetary value. Once these calculations are complete, upon the motion for final approval of the settlement, Class Counsel will inform the Court of the value of each point, the range of claimant awards, and the average award by submitting a declaration from the claim administrator, and will seek Court approval before distributing monetary awards to eligible claimants.

32. The claims administrator agreed to by the parties is A.B. Data, Ltd. Attorneys at my firm have worked with A.B. Data on the administration of several class action settlements, including *White v. Lynch*, EEOC No. 510-2012-00077X, Agency No. BOP-2011-00528, a class action sexual harassment settlement. In *Lynch*, my firm relied on A.B. Data to score the claim forms and develop a point system for the scoring similar to the process proposed in this settlement. It is my understanding that A.B. Data has also administered a class action settlement in which Walmart was a defendant. I feel confident that A.B. Data will efficiently administer the notice and claims process.

33. At this time, it is not possible to know exactly how much each class member who submits a claim will receive from the settlement, but relying on reasonable estimates, my colleagues and I believe that the award per class member will be a meaningful amount of money for most Walmart workers. Assuming that costs of claims administration do not exceed \$200,000, that the Court grants Plaintiffs' Counsel's motion for fees in the amount of 33.33% of the common fund plus approximately \$275,000 in expenses, and that there are 11,000 settlement class members, then the award per class member will be about \$819.70 if all 11,000 class members submit valid claims, about \$1,639.39 if half of the class members submit valid claims, and about

\$2,049.24 if 40% of the class members submit valid claims. It is possible that the claim rate may be lower than 40% of the class given the time that has elapsed. Based on our past experience, we expect that the average class member recovery will exceed \$2,000 and is likely to exceed \$3,000.

34. These estimated awards are certainly adequate given the risks of continued litigation. For comparison purposes, \$2,049.24 is roughly equivalent to 215.7 hours of backpay at the average hourly wage rate for a Walmart sales associate of \$9.50 per hour as estimated by Plaintiffs' expert, or more than 7 weeks for those working less than 30 hours. My co-counsel and I believe that many Walmart workers are regularly scheduled to work less than 30 hours per week.

35. The Settlement provides that Class Counsel will petition the Court for attorneys' fees plus reimbursement of out-of-pocket expenses from the common fund. Class Counsel will not seek more than 33.33% of the common fund plus \$275,000 in expenses.

36. My colleagues and I will provide further detail regarding our lodestar and expenses in their motion for fees and expenses that will be filed 30 days prior to the final fairness hearing and prior to the deadline to submit claims or opt out. In addition to the legal work that will have been performed at the time of such motion, I anticipate that we will perform substantial additional legal work and incur additional expenses in connection with the settlement, including preparing for and participating in the final approval hearing, providing assistance to class members, working with the claims administrator, and responding to inquiries.

Factors for the Court's Consideration Under Rule 23(g) in Appointing Class Counsel

37. In appointing class counsel, Rule 23(g) directs the Court to consider four factors. First, the Court should consider the "work counsel has done in identifying or investigating the potential claims." Fed. R. Civ. P. 23(g)(1)(A)(i). M&S, ABB, and NWLC have invested thousands of hours identifying, investigating and pursuing the potential class claims against Walmart,

including but not limited to preparing and filing EEOC charges alleging systemic discrimination, interviewing women seeking legal representation regarding their potential pregnancy discrimination claims, drafting the complaint and amended complaint, successfully opposing Walmart's motion to dismiss, taking numerous Rule 30(b)(6) depositions, engaging in voluminous discovery and document review, retaining and working with two expert witnesses to support class-wide claims of discrimination and class certification, analyzing Walmart's expert reports and statistical analyses, deposing Walmart's expert, preparing a motion and brief in support of class certification, and negotiating a class action settlement.

38. Second, under Rule 23(g)(1)(A)(ii), the Court considers counsel's experience handling class actions, other complex litigation, and the types of claims asserted in the action, and, third, under Rule 23(g)(1)(A)(iii), the Court considers counsel's knowledge of the applicable law. Collectively M&S, ABB, and NWLC have decades of experience representing women in employment discrimination class and collective actions and significant expertise in representing women in matters alleging pregnancy discrimination. Our unique experience and expertise more than satisfy Rule 23(g)(1)(A)(ii)-(iii) and are described below and in the declarations submitted by Dina Bakst, Co-Founder and Co-President of A Better Balance and by Emily Martin, Vice President for Education and Workplace Justice of the National Women's Law Center.

39. Finally, Rule 23(g)(1)(A)(iv) directs the Court to consider the resources that counsel will commit to representing the class. Together our organizations have invested thousands of hours of attorney time and thousands of dollars in legal costs in this matter, including retaining two expert witnesses. We commit to continuing to bring the resources necessary to bear to advance the interests of the settlement classes.

Mehri & Skalet's Class Action and Gender/Pregnancy Discrimination Experience

40. M&S represents plaintiffs in complex litigation. Lawyers in our firm have over 30 years of experience representing plaintiffs in dozens of class and collective actions in a variety of fields, including civil rights, employment discrimination, wage and hour, consumer fraud, and antitrust. Most significantly, my colleagues and I have had the privilege of representing people of color and women in employment discrimination and other civil rights class actions.

41. I have served as class counsel in several employee and plaintiff classes in civil rights matters, including several gender discrimination class actions on behalf of women workers under Title VII of the Civil Rights Act of 1964. *See Augst-Johnson v. Morgan Stanley & Co.*, No. 1:06-CV-01142 (D.D.C. Oct. 26, 2007) (\$46 million settlement and programmatic relief on behalf of female financial advisors); *Norflet v. John Hancock Life Insurance*, 3:04CV1099 (D. Conn. Aug. 21, 2009) (\$24.4 million settlement on behalf of African Americans denied equal opportunity in the sale of life insurance); *Carter v. Wells Fargo Advisors, LLC*, No. 1:09-CV-01752 (D.D.C. June 9, 2011) (\$32 million settlement and similar injunctive relief); *Brown v. Medicis Pharmaceutical Corp.*, No. 1:13-cv01345 (D.D.C. July 11, 2016) (\$7.15 million settlement in gender discrimination class action, including hostile work environment claims); *Howard v. Cook County Sheriff's Office*, No. 1:17-cv-08146 (N.D. Ill. Aug. 12, 2019)(certified sexual harassment class action on behalf of women who work at the Cook County Jail complex).

42. In addition to my class action civil rights experience, I began my career as a fellow and counsel at the National Women's Law Center, have represented individuals and small groups of employees and consumers in race, gender, and pregnancy discrimination matters in private practice, and served as the Assistant Vice Chancellor for Civil Rights & Title IX at the University of Missouri, where among other projects, I convened a working group to develop policies

regarding pregnancy accommodations for graduate and undergraduate students. I also volunteer with First Shift Justice Project, a non-profit organization in Washington, DC, that empowers low-income pregnant women and parents to safeguard the economic security and health of their families by asserting their workplace rights. In *Young v. United Parcel Serv., Inc.*, 135 S. Ct. 1338 (2015), I authored an amicus brief to the Supreme Court joined by 50 state and local legislators, in support of Peggy Young's challenge to UPS's refusal to accommodate her medical needs during pregnancy and interpreting the Pregnancy Discrimination Act. Several years ago, I represented an individual worker in her pregnancy discrimination claims against a large retailer before the District of Columbia Commission on Human Rights. Previously, I taught Sex-Based Discrimination at the American University Washington College of Law and Women and the Law at the University of Cincinnati. In addition to a law degree, I hold a master's degree in Women's Studies from the University of Cincinnati and an undergraduate minor in Women's Studies from Eastern Illinois University.

43. My colleague, Michael Lieder, joined M&S in 2012 and works primarily on employment discrimination class action and FLSA collective action matters. He has served as lead counsel or in another leading role in numerous major employment discrimination class actions, including *Medicis*, referenced above, as well as a systemic hostile work environment class action on behalf of women workers at a federal prison, *White v. Lynch*, EEOC No. 510-2012-00077X (EEOC Dec. 8, 2017) (granting final approval of class action settlement of \$20 million plus injunctive relief to address sexual harassment). *See also Thornton v. Nat'l R.R. Passenger Corp.*, No. 1:98-cv-890 (D.D.C.) (\$16 million plus broad injunctive relief in race discrimination class action); *McLaurin v. Nat'l R.R. Passenger Corp.*, 1:98-cv-2019 (D.D.C.) (\$8 million plus broad injunctive relief in race discrimination class action); *Hyman v. First Union Corp.*, No. 94-1043

(D.D.C.) (\$58.5 million in age discrimination collective action); *In re PEPCO Employment Litig.*, No. 860603, 1993 U.S. Dist. LEXIS 7905 (D.D.C.) (June 8, 1993) (\$38.4 million and broad injunctive relief). Before coming to Mehri & Skalet, Mr. Lieder led or co-led numerous employment class action lawsuits, including a gender hostile environment, pay, and promotion case, *Carlson v. C.H. Robinson Worldwide, Inc.* No. 02-CV-3780 (D. Minn.), and had a role in the first successful sexual harassment class action in federal court, *Jenson v. Eveleth Taconite Co.*, 824 F. Supp. 847 (D. Minn. 1993). Mr. Lieder was also class counsel in *In re TV Writers Cases*, No. 268836 (Cal. Sup Ct. (Los Angeles Cty. 2011), a prominent age discrimination class action that settled for \$70 million.

44. M&S co-founder, Cyrus Mehri, served as co-lead counsel in several large race discrimination class actions, including: *Roberts v. Texaco Inc.*, No. 94-CIV-2015 (S.D.N.Y. 1997) (settled for \$176 million and broad programmatic relief on behalf of African American employees); *Abdallah, et. al. v. Coca-Cola Company*, No. 1:98-CV-3679 (N.D. Ga. 2000) (settled for \$192 million and broad programmatic relief on behalf of salaried African-American employees); *Robinson v. Ford Motor Co.*, No. 1:02-CV-844 (S.D. Ohio Aug. 1, 2005) (settled for \$10 million and creation of over 270 apprenticeship positions for African Americans). He was also co-lead counsel in *Amochaev v. Citigroup Global Markets d/b/a Smith Barney*, No. C-05-1298 (N.D. Cal. Aug. 13, 2008) (\$33 million settlement and injunctive relief to address gender discrimination in job opportunities and compensation), and in the following cases described above: *Augst-Johnson*, No. 1:06-CV-01142 (D.D.C.); *Norflet*, 3:04CV1099 (D. Conn.); *Carter*, No. 1:09-CV-01752 (D.D.C.); *Medicis*, No. 1:13-cv01345 (D.D.C.).

45. Mr. Lieder and Mr. Mehri recently coauthored a chapter in a book on statistics for employment cases, *Adverse Impact Analysis: Understanding Data, Statistics and Risk*, edited by Scott B. Morris and Eric M. Dunleavy.

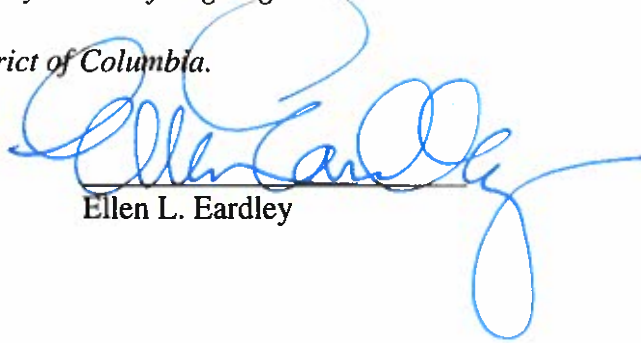
46. Lauren Nussbaum joined M&S in 2018. She has worked on various class matters representing plaintiffs in the civil rights and employment contexts, including a putative class of female employees who experienced a pattern of sexual harassment at Cook County Jail, *see Howard v. Cook County Sheriff's Office*, No. 1:17-cv-08146 (N.D. Ill.), a putative class of African American civilian employees of the New York Fire Department who experienced racial discrimination in promotions and compensation, *see Richardson v. City of New York*, No. 1:17-cv-09447 (S.D.N.Y.), and a putative class/collective of medical professionals alleging Fair Labor Standards Act and associated state wage and hour claims against Metropolitan Life Insurance Company, *see McNeely v. MetLife*, No. 1:18-cv-00885 (S.D.N.Y.). Prior to joining M&S, Ms. Nussbaum clerked for the Honorable Reggie B. Walton at the U.S. District Court for the District of Columbia.

47. In sum, I strongly support the class action settlement. Upon discussions with my colleagues and clients, it is my understanding that my co-counsel at M&S, A Better Balance, and the National Women's Law Center, and the Named Plaintiffs—Talisa Borders, Otisha Woolbright, and Stacey Lewis, also strongly support the class action settlement. The class settlement equals or succeeds a successful result if the case went to trial.

48. Finally, it is my observation that the Named Plaintiffs, Talisa Borders, Otisha Woolbright, and Stacey Lewis are committed to standing up for their peers who were pregnant while working at Walmart at any time between March 19, 2013 through March 5, 2014. They

believe that pregnant workers should be treated fairly, and they feel proud that by bringing this lawsuit they are helping other Walmart workers.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 15th day of October, 2019, in the District of Columbia.

A handwritten signature in blue ink, appearing to read "Ellen Eardley", is written over a horizontal line. The signature is fluid and cursive.

Ellen L. Eardley

EXHIBIT B

SETTLEMENT AGREEMENT

1. PREAMBLE

- 1.1 This case, *Borders v. Wal-Mart Stores, Inc.*, No. 3:17-cv-0506 (S.D. Ill.), was brought by Talisa Borders, Otisha Woolbright, and Stacey Lewis on behalf of themselves and others similarly situated against Walmart Inc., (f/k/a/ Wal-Mart Stores, Inc. and hereinafter “Walmart”) alleging, among other things, that during the Time Period Walmart denied employees requested workplace accommodations due to pregnancy and that such a denial violated Title VII of the Civil Rights Act. Walmart denies all allegations alleged in the Amended Complaint. In the interest of resolving this dispute between the Parties without the significant expense, delay, and inconvenience of further litigation of the collective and individual issues raised in this case, and in reliance upon the representations, mutual promises, covenants, and obligations set out in this Settlement Agreement, and for good and valuable consideration also set out in this Settlement Agreement, the Parties, through their undersigned counsel of record, hereby stipulate and agree as follows. This Settlement Agreement is made and entered into as of the dates of Execution set forth below, between the Settlement Class Representatives, on behalf of themselves and the Settlement Class Members, and Walmart, all as further defined below.

2. DEFINITIONS

- 2.1 “*Agreement*” or “*Settlement Agreement*” means this Settlement Agreement between the Parties.
- 2.2 “*Approved Claimant*” means any Claimant whose Claim is approved by the Claims Administrator.
- 2.3 “*ASC*” means Walmart’s Accommodation Service Center.
- 2.4 “*ASC Settlement Class*” means one of the two settlement classes to be certified for settlement purposes in accordance with Section 4 of this Agreement. The ASC Settlement Class consists of all women employed by Walmart at stores in the 39 National Policy States who were denied requested accommodations because of pregnancy by the ASC during the Time Period.
- 2.5 “*Attorneys’ Fees and Litigation Expenses*” means the attorneys’ fees and litigation expenses to be requested by Class Counsel subject to Court approval in accordance with this Agreement.
- 2.6 “*CAFA Notice*” means the notice to be made in accordance with the Class Action Fairness Act, 28 U.S.C. § 1715.
- 2.7 “*Claim*” means a request submitted by a Settlement Class Member to receive payment in accordance with the procedures set forth in this Agreement.

- 2.8 “**Claimant**” means any Settlement Class Member who submits a Claim.
- 2.9 “**Claim Filing Deadline**” means the date by which Settlement Class Members must submit a Claim Form to the Claims Administrator in accordance with this Agreement in order to be eligible to receive a payment pursuant to this Agreement.
- 2.10 “**Claim Form**” means a form substantially in the form of the Exhibit 1 attached to this Agreement, which Settlement Class Members shall use to submit Claims to the Claims Administrator.
- 2.11 “**Claims Administrator**” means, subject to Court approval, the entity selected by Class Counsel to administer the Claims process and be the administrator of the Qualified Settlement Fund (“QSF”). The identity of the Claims Administrator shall also be subject to approval by Walmart, whose consent shall not be unreasonably withheld. The Claims Administrator shall, among other things: (i) establish a QSF and QSF Account; (ii) determine and finalize the calculations of amounts payable to Approved Claimants as well as any related tax withholding amounts; (iii) prepare, print, and disseminate to the Settlement Class Members the Notice Packet and return envelope in accordance with the Notice Plan; (iv) receive and review the Claim Forms submitted by Claimants to determine eligibility; (v) track returned Notices and Exclusion Forms; (vi) attempt to ascertain current address and addressee information for each Notice Packet returned as undeliverable, and re-disseminate the Notice Packet and return envelope to those Settlement Class Members whose Notice Packet was returned as undeliverable; (vii) notify the Parties of determinations regarding submitted Exclusion Forms, consistent with this Agreement; (viii) determine the final Settlement Payment for each Approved Claimant in accordance with this Agreement; (ix) mail the settlement checks to Approved Claimants; (x) wire Class Counsel’s Attorneys’ Fees and Litigation Expenses to Class Counsel in accordance with this Agreement and Order of the Court; (xi) refer to Class Counsel and, where appropriate, also to Walmart’s Counsel, all inquiries by Settlement Class Members that the Claims Administrator cannot resolve and/or that involve matters not within the Claim Administrator’s duties as specified herein; (xii) respond to inquiries of Class Counsel or Walmart’s Counsel; (xiii) promptly apprise Parties’ counsel of the activities of the Claims Administrator; (xiv) send Notice Packets to self-identifiers; (xv) establish the Settlement Website to provide Settlement Class Members with information about this Settlement; and (xvii) perform other notice and administration duties in accordance with this Agreement and the Court’s orders.
- 2.12 “**Class Counsel**” means Mehri & Skalet, PLLC, National Women’s Law Center, and A Better Balance.
- 2.13 “**Class Representatives**” means Talisa Borders, Otisha Woolbright, and Stacey Lewis.
- 2.14 “**Court**” means the United States District Court for the Southern District of Illinois, as well as any appellate court which may review any orders entered by the District Court related to this Settlement.

- 2.15 “**Days**,” as used to calculate dates for events provided herein (unless the date is expressed in terms of “business days”), has the same meaning as used when calculating days under the Federal Rules of Civil Procedure.
- 2.16 “**Execution**” means the signing of this Agreement by all signatories hereto.
- 2.17 “**Final Judgment and Order of Dismissal**” means the Final Judgment and Order of Dismissal approving the Settlement and dismissing the Litigation with prejudice as against Walmart, substantially in the form of the proposed Final Judgment and Order of Dismissal attached hereto as Exhibit 2, which this Settlement contemplates will be approved and entered by the Court.
- 2.18 “**Gross Settlement Amount**” means the amount of money that Walmart will be obligated to pay under this Settlement, \$14,000,000, on a non-reversionary basis as provided for in this Agreement. With the exception of the cost to send CAFA Notice and the employers’ share of taxes to be paid in accordance with this Agreement, under no circumstances shall Walmart be obligated to pay more than the Gross Settlement Amount in connection with this Settlement.
- 2.19 “**Litigation**” means the case of *Borders v. Wal-Mart Stores, Inc.*, No. 3:17-cv-0506 (S.D. Ill.).
- 2.20 “**National Policy States**” means Alabama; Alaska; Arizona; Arkansas; Colorado; Delaware; Florida; Georgia; Idaho; Indiana; Iowa; Kansas; Maine; Maryland; Massachusetts; Michigan; Minnesota; Mississippi; Missouri; Nebraska; Nevada; New Hampshire; New Jersey; New York; New Mexico; North Carolina; North Dakota; Oregon; Pennsylvania; Rhode Island; South Carolina; South Dakota; Texas; Utah; Vermont; Virginia; Washington; Wisconsin; and Wyoming.
- 2.21 “**Net Settlement Amount**” means the portion of the Gross Settlement Amount remaining after deducting the amounts approved by the Court for (1) Attorneys’ Fees and Litigation Expenses and any interest earned in accordance with Section 10 of this Agreement; (2) Notice and Claims Administrator Costs; and (3) any other fees or expenses incurred in executing the terms of this Agreement that are approved by the Court.
- 2.22 “**Non-ASC Settlement Class**” means one of the two settlement classes to be certified for settlement purposes in accordance with Section 4 of this Agreement. The Non-ASC Settlement Class consists of all women employed by Walmart at stores nationwide who were denied requested accommodations because of pregnancy by store level management and/or store-level human resource personnel during the Time Period.
- 2.23 “**Notice**” means the Court-approved Notice of Proposed Settlement of Class Action Lawsuit and the Notice Process set forth in Section 6 of this Agreement.
- 2.24 “**Notice and Settlement Administration Costs**” means the costs that Walmart has agreed to pay, subject to Court approval, from the Gross Settlement Amount, to the Claims

Administrator to send Notice, administer the Claims process, and perform other settlement administration functions in accordance with this Agreement.

- 2.25 “**Notice Packet**” means the Notice and Claim Form which will be provided to Settlement Class Members by the Claims Administrator using the procedures set forth in Section 6 of this Agreement.
- 2.26 “**Notice Period**” means the minimum period of time during which Notice will be made as approved by the Court.
- 2.27 “**Parties**” means the Class Representatives and Walmart.
- 2.28 “**Plan of Allocation**” means the method by which the Net Settlement Amount shall be allocated among the Claimants, as described in Section 5.3.2_of this Agreement.
- 2.29 “**QSF**” means the Qualified Settlement Fund to be approved by the Court and set up by the Claims Administrator in accordance with Section 11 of this Agreement.
- 2.30 “**Releasing Settlement Class Members**” means all Settlement Class Members other than those Settlement Class Members who submit valid requests for exclusion in accordance with this Agreement.
- 2.31 “**Settlement**” means the compromise and settlement of the Litigation as contemplated by this Agreement.
- 2.32 “**Settlement Class**” or “**Settlement Classes**” refers to both the “ASC Settlement Class” and the “Non-ASC Settlement Class” unless otherwise noted. It means the settlement classes to be certified only for settlement purposes in accordance with Section 4 of this Agreement.
- 2.33 “**Notice List Data**” means an electronic database that Walmart will provide to the Claims Administrator which contains the following information for each person identified as being a potential Settlement Class Member and to whom notice will be sent: last known contact information including name, address, e-mail address (if available), telephone number (including cell phone number) (if available), and Social Security number; whether the Settlement Class Member’s request for accommodation was decided by the ASC and the disposition (if applicable); the state in which the Settlement Class Member worked for Walmart during the Time Period; whether the Settlement Class Member went on leave or resigned during the Time Period; whether Walmart’s internal records show an actual or expected date of delivery for the Settlement Class Member; and if the internal records contain such information, the total number of days (if any) prior to the actual or expected delivery date the Settlement Class Member was on leave or the total number of days (if any) prior to the actual or expected delivery date the Settlement Class Member resigned. Walmart will provide this electronic database within ten (10) business days of the Court’s preliminary approval of the Settlement Agreement. The parties agree that it is a material term to the Settlement Agreement that the Settlement Class Member Data provided by Walmart accurately present the data in its databases.

- 2.34 “**Settlement Class Members**” means the Class Representatives and all members of the Settlement Classes.
- 2.35 “**Settlement Effective Date**” means the date of the last of the following occurrences:
- 2.35.1 If no objections are filed to the Settlement, then thirty-one (31) days after the date of the entry of the Final Judgment and Order of Dismissal; or
- 2.35.2 If objections to the Settlement are filed and overruled and the time to seek permission to appeal or seek other judicial review of the entry of the Final Judgment and Order of Dismissal has expired with no appeal or other judicial review having been taken or sought, then sixty-five (65) days after the entry of the Final Judgment and Order of Dismissal; or
- 2.35.3 If an appeal or other judicial review has been taken or sought from the Final Judgment and Order of Dismissal, then twenty (20) days after any such appeal is withdrawn or an appellate decision affirming the Final Judgment and Order of Dismissal becomes final with no further rights to appeal.
- 2.36 “**Settlement Payment**” means the final payment that an Approved Claimant is entitled to receive under this Agreement pursuant to the calculations to be made under Section 5 of this Agreement.
- 2.37 “**Settlement Website**” means the website created and managed by the Claims Administrator, which will provide access to this Agreement, the court-approved Notice Packet, the online Claim Form, and other information regarding the Settlement.
- 2.38 “**Time Period**” means the period between March 19, 2013 and March 5, 2014, inclusive.
- 2.39 “**Walmart**” means Walmart Inc. f/k/a Wal-Mart Stores, Inc. and all of its current or former subsidiaries, affiliates, predecessors, insurers, agents, employees, successors, assigns, officers, officials, directors, partners, employers, attorneys, personal representatives, executors, and shareholders.

3. RECITALS

- 3.1 On May 12, 2017, Plaintiffs Talisa Borders and Otisha Woolbright filed a Complaint, and on January 29, 2019, Plaintiffs Borders and Woolbright filed an Amended Complaint along with Plaintiff Stacey Lewis, against Walmart in the United States District Court for the Southern District of Illinois, alleging that Walmart discriminated against Plaintiffs and the putative class members because Walmart during the Time Period denied employees requested workplace accommodations due to pregnancy, and that such a denial violated Title VII of the Civil Rights Act. Plaintiffs asserted claims for damages on behalf of a nationwide class under Title VII of the Civil Rights Act. Plaintiffs Borders and Woolbright also asserted individual retaliation claims under Title VII.

- 3.2 Walmart denies each and every one of the Plaintiff's allegations, as set forth in its Answer to the Complaint and Amended Complaint and other pleadings filed in the Litigation.
- 3.3 This case has been heavily litigated for over five years. On January 11, 2014, Plaintiff Borders filed her charge of discrimination with the U.S. Equal Employment Opportunity Commission alleging individual and class pregnancy discrimination claims and individual retaliation claims.
- 3.4 Beginning in December 2018, the Parties participated in a series of private mediation sessions with Michelle Yoshida, a private mediator with substantial experience in employment cases. As a result of those mediation sessions, and as a result of additional arms-length negotiations, the Parties reached an agreement to resolve the Litigation in accordance with the terms of this Agreement. All prior written documents exchanged between the Parties are superseded and replaced by this Agreement.
- 3.5 The Settlement Class Representatives and Class Counsel believe that the claims of the Settlement Class Members are meritorious. Class Counsel represent that they have conducted a thorough investigation into the facts of this case, and have diligently pursued an investigation of the named Plaintiffs' and the Settlement Class Members' claims against Walmart, including, but not limited to: (i) interviewing pregnant women who worked at Walmart and analyzing the results of the interviews; (ii) reviewing and analyzing relevant documents and data, including thousands of pages of documents and databases produced by Walmart and documents provided to Class Counsel by the named Plaintiffs; (iii) researching the applicable substantive and procedural law and Walmart's potential defenses, including other relevant pregnancy discrimination cases against Walmart; (iv) consulting with experts to develop models for identifying disparities in the rates of accommodation granted by the ASC to women employed in the National Policy States and other states, evaluating the leave taken by Settlement Class Members, and valuing the potential damages of Settlement Class Members; (v) developing and preparing factual and legal arguments for a class certification motion, which ultimately was not filed, and other substantive motions; (vi) advocating for the rights of the Settlement Class Members; and (vii) preparing for and engaging in mediation with Walmart and Walmart's counsel. Based on their own independent investigation and evaluation, Class Counsel are of the opinion that the Settlement is fair, reasonable, and adequate and that the Settlement is in the best interests of the Settlement Class Members in light of all known facts and circumstances, including the risk of significant delay, the defenses asserted by Walmart, trial risk, and appellate risk.
- 3.6 Walmart denies liability or wrongdoing of any kind associated with the claims alleged. Walmart further asserts that it has complied with all applicable provisions of federal or state statutory and common law. Walmart further states that despite its good faith belief that it is not liable for any of the claims asserted, Walmart will not oppose the District Court's certification of the Settlement Classes contemplated by this Agreement solely for purposes of effectuating this Settlement. Other than for purposes of this Settlement, Walmart does not waive its objections to class certification in this Litigation, or any other

litigation, for any purpose other than this Settlement, and Plaintiffs do not waive their contention that class certification is appropriate in this case.

- 3.7 The entry of Final Judgment and Order of Dismissal in this Litigation shall dismiss the Litigation with prejudice, with the exception of any claims that might be retained by any Settlement Class Members who timely submit a request to exclude themselves in accordance with the opt-out process described in this Agreement. Walmart shall retain any existing defenses to such excluded claims. The Parties agree to cooperate and take all steps necessary and appropriate to obtain preliminary and final approval of this Settlement, to effectuate its terms, and, to the extent of the obligations set forth herein, to dismiss this Litigation against Walmart with prejudice.
- 3.8 Each of these Recitals is incorporated into this Agreement as if fully set forth herein.

4. CERTIFICATION OF THE SETTLEMENT CLASS

- 4.1 In order to implement the Settlement, Class Counsel shall request that the District Court certify the Settlement Classes described in Section 2 above pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure. The proposed Court order shall expressly state that the Parties and Class Counsel agree that certification of the Settlement Classes is for settlement purposes in this Litigation only and for no other purpose.

5. MONETARY TERMS OF SETTLEMENT

- 5.1 Subject to the other terms and conditions of this Agreement, and subject to Court approval, Walmart agrees to pay the Gross Settlement Amount of Fourteen Million Dollars (\$14,000,000). No portion of the Gross Settlement Amount shall revert to Walmart.
- 5.2 All payments to Settlement Class Members, all Attorneys' Fees and Litigation Expenses awarded by the Court to Class Counsel, and all Notice and Settlement Administration Costs shall be paid from the Gross Settlement Amount. Other than the costs incurred by Walmart to prepare and send the CAFA Notice, and amounts required for the Employers' Share of Taxes in accordance with Section 5.3.3, the Gross Settlement Amount shall be the maximum amount of money that Walmart shall pay under this Settlement.
- 5.3 Net Settlement Amount
- 5.3.1 The Net Settlement Amount shall consist of the portion of the Gross Settlement Amount remaining after deducting the amounts approved by the Court for (1) Attorneys' Fees and Litigation Expenses and any interest earned in accordance with Section 10 of this Agreement; (2) Notice and Settlement Administration Costs; and (3) any other fees or expenses incurred in executing the terms of this Agreement that are approved by the Court.

- 5.3.1.1 Each Settlement Class Member who submits an Approved Claim shall be entitled to receive a share of the Net Settlement Amount in accordance with the Plan of Allocation.
- 5.3.1.2 Claims shall be made either by submitting a Claim form online through the Settlement Website or by mailing a Claim Form to the Claims Administrator in accordance with the terms of this Agreement.
- 5.3.1.3 To be timely, a Claim Form must be submitted to the Claims Administrator by the Claim Filing Deadline. The Claim Filing Deadline is the last day of the Notice Period.
- 5.3.2 Payments to Approved Claimants will be based on a Plan of Allocation, which shall be submitted to the Court for approval as part of the motions for preliminary and final approval. The Plan of Allocation will include a formula for claims, which will include the following components:
 - 5.3.2.1 A backpay component based on objective factors, which shall include the number of weeks of wages alleged to have been lost due to Walmart's denial of the Claimant's request for workplace accommodation because of pregnancy and the Claimant's pay rate;
 - 5.3.2.2 For members of the Non-ASC Settlement Class, evidence of a request for accommodation because of pregnancy and/or of the denial of a request for accommodation;
 - 5.3.2.3 A compensatory damages component based on information provided on the Claim Form regarding emotional distress and/or physical harm claimed to have been suffered as a result of a denial of accommodation and/or individual evidence of pregnancy discrimination;
 - 5.3.2.4 Other financial damages and expenses other than backpay claimed to have been suffered as a result of a denial of accommodation and/or of pregnancy discrimination, such as costs incurred for medical care or other treatment and consequential damages;
 - 5.3.2.5 Information provided by Class Counsel to the Claims Administrator and/or by the Claimant on the Claim Form regarding the Claimant's contribution to the prosecution of this matter; and
 - 5.3.2.6 The scope of the release applicable to the Claimant, which release shall be broader for the Class Representatives as compared to all other Settlement Class Members.
 - 5.3.2.7 Walmart shall have no responsibility or liability for the Plan of Allocation or any allocations, distributions or use of funds made pursuant to such Plan

and shall take no position for or against the proposed Plan of Allocation or any allocations, distributions or use of funds made pursuant to such Plan, provided, however, that Walmart shall have the right to review and comment on the proposed Plan of Allocation with respect to feasibility. Further, nothing related to the Plan of Allocation, including any allocations, distributions or use of funds made or recommended by the Claims Administrator pursuant to the Plan of Allocation shall be used by or against Walmart or any other person or entity in this or any other litigation

5.3.3 The Parties agree that the amounts paid to Approved Claimants shall be allocated such that 50% constitutes wages subject to the withholdings of all applicable local, state, and federal taxes and withholdings, and 50% constitutes remuneration for damages separate and distinct from lost wages. The QSF shall be responsible for issuing the appropriate tax forms to Approved Claimants, consistent with this Agreement. Walmart agrees to transfer to the QSF funds sufficient to pay the employer's share of applicable taxes, if any, which amount shall be in addition to the Gross Settlement Amount.

5.4 Attorneys' Fees and Litigation Expenses

5.4.1 Class Counsel shall apply to the Court for an award of reasonable Attorneys' Fees and Litigation Expenses. The amount of Attorneys' Fees and Litigation Expenses awarded by the Court shall be paid from the Gross Settlement Amount in accordance with this Agreement. Should the Court award less than the full amount of Attorneys' Fees and Litigation Expenses sought by Class Counsel, the difference shall revert to the Net Settlement Amount, subject to Section 17.2.

5.5 Notice and Settlement Administration Costs

5.5.1 Subject to Court approval, reasonable Notice and Settlement Administration Costs, up to \$200,000, shall be paid from the Gross Settlement Amount.

6. NOTICE TO THE SETTLEMENT CLASSES

6.1 The Claims Administrator shall provide notice of the Settlement to Settlement Class Members through a Court-approved Notice Package, which shall be comprised of a Notice and Claim Form in substantially the same form of Exhibits 1 and 3, subject to Court approval.

6.2 Within ten (10) business days of the date on which the Court enters an order granting preliminary approval of the Settlement, or on another reasonable date as agreed to by the Parties, Walmart shall provide the Claims Administrator and Class Counsel an Excel chart

with the Settlement Class Member Data for all members of the two Settlement Classes. The chart shall indicate whether each individual is currently employed by Walmart.

- 6.3 Within twenty (20) business days of the date on which the Court enters an order granting preliminary approval of the Settlement, or on another reasonable date as agreed to by the Parties (the “Notice Date”), using the Settlement Class Member Data provided by Walmart (as supplemented by any more current information that may be available from Class Counsel or based on address or other updates conducted by Claims Administrator), the Claims Administrator will send the Notice Packet by first class mail (including a postage-paid return envelope) to each person identified in the Notice List Data. Prior to the mailing of the Notice Packet to the persons identified in the Notice List Data, the Claims Administrator shall attempt to confirm the accuracy of the U.S. mail addresses through the United States Post Office’s National Change of Address database and shall mail the Notice Packet to any updated address obtained therefrom. On the same day that the Notice Packet is sent by first class mail, the Claims Administrator will send an email containing a link to the Notice Packet to those persons identified in the Notice List Data for whom last known email addresses are available with an explanatory email using language approved by the Parties.
- 6.4 Approximately half-way through the Notice Period, the Claims Administrator will send a reminder postcard by first class mail and email (where available) to any person identified in the Notice List Data who has not submitted a valid Claim Form or has not excluded themselves from the Settlement.
- 6.5 If any Notice Packet is returned as undeliverable for some to whom a Notice Packet had been mailed, the Claims Administrator shall promptly attempt to locate such person through an electronic search using the Social Security number and/or former address of that person or any other data the Claims Administrator deems appropriate, and shall promptly mail an additional Notice Packet to such person. The Claims Administrator will maintain a log of its activities undertaken pursuant to this Section.
- 6.6 The Notice will contain a URL to a website established and maintained by the Claims Administrator where Settlement Class Members may submit their Claim Forms electronically and in a secured manner and where Settlement Class Members may also obtain information regarding the Settlement. The Claims Administrator also will maintain a toll-free number that Settlement Class members may call with questions.
- 6.7 Information regarding the claims administrator’s website and relevant case pleadings will also be disseminated through Class Counsel’s websites.

7. CLASS ACTION FAIRNESS ACT (CAFA) NOTICE

- 7.1 Walmart shall provide Notice to the appropriate governmental authorities in accordance with the Class Action Fairness Act (“CAFA”). Walmart shall pay for the cost of providing

the CAFA Notice separate from and in addition to the \$14 million Gross Settlement Amount.

8. EXCLUSION PROCESS

- 8.1 A Settlement Class Member who wishes to exclude herself from this Settlement and from the release of claims pursuant to this Settlement shall submit a timely and valid request to exclude themselves. To be timely, the request for exclusion must be sent to the Claims Administrator and postmarked by the Claim Filing Deadline (or, in the case of a re-mailed notice, within 60 days of its mailing but not later than 30 days after the Claim Filing Deadline). To be valid, the request for exclusion must be in writing, signed by the Settlement Class Member and contain a statement that the individual requests to be excluded from the Settlement Class and that she is aware that by opting out she will forego any monetary relief from the Settlement.
- 8.2 A Settlement Class Member who submits a timely and valid request for exclusion may rescind her request. To be effective, such rescissions must be in writing, signed by the Settlement Class Member, and submitted not later than 30 days from the Claims Filing Deadline or 30 days from the post mark on the request for exclusion, whichever is later.
- 8.3 A Settlement Class Member who submits a timely request for exclusion, and who does not effectively rescind it, is not eligible to recover a share of the Net Settlement Amount. The Claims Administrator shall maintain a list of persons who have submitted requests for exclusion and rescissions and shall provide such list to the Parties upon request. The Claims Administrator shall retain the originals of all requests for exclusion and rescissions received from Settlement Class Members and shall provide copies of same to counsel for the Parties within five (5) business days of receipt.

9. OBJECTION PROCESS

- 9.1 A Settlement Class Member who wishes to object to the Settlement must submit a timely and valid objection in writing by filing it with the Court or submitting it to the Claims Administrator on or before the Claims Filing Deadline. To be considered timely, the objection must be postmarked on or before the deadline. To be considered valid, an objection must: (1) be from a Settlement Class Member; (2) be in writing and contain a statement that the individual objects to the Settlement of *Borders v. Wal-Mart Stores, Inc.*; (3) include the objector's name, address, dates of pregnancy, a description of the objector's request for accommodation due to pregnancy and Walmart's denial of the request, and the last four digits of the Settlement Class Member's Social Security Number; and (4) be signed and dated. The objection must include the basis for the objection (including why the objector believes the Settlement is not in the best interests of the Settlement Class Members), whether the objection applies only to the objector, to a specific subset of the class, or to the entire class, along with any and all documents that support the objection. The objection must also state whether the objector intends to appear at the final approval hearing. Additional instructions regarding how to object to the Settlement shall be contained in the Notice. A

Settlement Class Member who submits a request for exclusion is not eligible to object to the Settlement.

- 9.2 The Claims Administrator shall maintain a list of persons who have filed objections and shall provide such list to the Parties upon request. To the extent that objections are sent to the Claims Administrator, the Claims Administrator shall retain the originals of any such objections and shall provide copies of any such objections to counsel for the Parties within five (5) business days of receipt. Class Counsel shall then file any such objections with the Court.
- 9.3 Settlement Class Members who do not file timely and valid written objections in accordance with the procedures set forth in this Agreement and the Notice shall be deemed to have waived any objections to the Settlement and shall forever be foreclosed from making any objection (whether by appeal or otherwise) to any aspect of the Settlement, including, without limitation, the fairness, reasonableness, or adequacy of the proposed Settlement, or the Court's award of Attorneys' Fees and Litigation Expenses.

10. FUNDING AND DISTRIBUTION PROCESS

- 10.1 The Gross Settlement Amount shall be funded through a QSF in accordance with this Agreement. The timing of the payments by Walmart to the QSF is set forth in this Section.
- 10.2 Within (10) business days following the date on which the Court enters an order granting preliminary approval of the Settlement, or within fourteen (14) days following the date on which the Court enters an order approving the QSF, whichever is later, Walmart shall transfer 20% of the Gross Settlement Amount (\$2,800,000) to the QSF. The remainder after payment of Notice and Settlement Administration Costs shall be added to the Net Settlement Amount.
- 10.3 Subject to Section 10.4, within ten (10) business days following the Settlement Effective Date, Walmart shall transfer the remaining 80% of the Gross Settlement Amount (\$11,200,000) to the QSF. Class Counsel shall provide the Claims Administrator with the information as to whom the Attorneys' Fees and Litigation Expenses approved by the Court should be distributed from the QSF.
- 10.4 At the appropriate time, the Claims Administrator shall also calculate any additional amounts to be paid by Walmart for the employer's share of taxes and shall provide notice to Walmart, in writing, of the amount to be transferred and an account, other than the QSF, into which to transfer such funds. Within ten (10) business days of its receipt of such written notice, Walmart shall transfer such amount to an account other than the QSF as directed by the Claims Administrator.
- 10.5 Upon the Settlement Effective Date, Class Counsel shall retain any interest earned with respect to the amounts awarded for Attorneys' Fees and Litigation Expenses, and the interest earned with respect to the other amounts shall be added to the Net Settlement Amount.

- 10.6 In the event that the Settlement Effective Date does not occur, any amounts actually used or committed by the Claims Administrator for Notice and Settlement Administration Costs shall not be refundable to Walmart. Those amounts not used or committed by the Claims Administrator, including any interest earned, shall be refunded to Walmart.
- 10.7 Within thirty (30) days after the Settlement Effective Date, or on such other reasonable date as agreed to by the Parties, the Claims Administrator will distribute the monies paid pursuant to this Settlement by making the following payments:
- 10.7.1 Paying Approved Claimants their payments from the Net Settlement Amount as described in Section 5.3.
- 10.7.2 Paying Class Counsel's Court-approved Attorneys' Fees and Litigation Expenses as described in Section 5.4.
- 10.7.3 Paying the Claims Administrator any Notice and Administration Costs not previously paid.
- 10.8 For any Approved Claimant whose check remains uncashed one hundred twenty (120) days from issuance, the Claims Administrator shall mail a reminder notice to the Approved Claimant that the check will only remain valid for one hundred eighty (180) days from issuance. Thereafter, all uncashed checks shall be voided.
- 10.9 One year after the date checks are mailed, the Claims Administrator shall advise Class Counsel what amount, if any, remains in the Settlement Fund. Subject to any applicable laws that may govern the handling of such uncashed checks, Class Counsel shall determine, in their sole discretion, whether any such remaining funds are sufficient such that it is feasible to distribute such funds on a pro rata basis to those Approved Claimants who cashed their settlement checks or, if the amount remaining is insufficient to merit a second distribution. In the event of the latter, the Parties shall meet and confer as to an appropriate manner to handle such remaining funds, subject to Court approval.

11. QUALIFIED SETTLEMENT FUND

- 11.1 As required under this Agreement, Walmart shall transfer the required portions of the Class Settlement Amount to a Qualified Settlement Fund, to be held as a separate trust as described in Treasury Regulation § 1.468B-1, 26 C.F.R. § 1.468B-1. 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 Claims Administrator shall be the "administrator" within the meaning of Treasury Regulation § 1.468B-2(k)(3). The Parties shall cooperate in securing an order of the Court to establish the QSF in accordance with the terms hereof in conjunction with its preliminary approval of the Settlement and Notice as described in this

Agreement. The Court shall retain jurisdiction over the administration of the QSF. Walmart shall supply to the Claims Administrator and to the Internal Revenue Service the statement described in Treasury Regulation § 1.468B-3(e)(2) no later than February 15th of the year following each calendar year in which Walmart makes a transfer to the QSF. It is intended that the transfers to the QSF will satisfy the “all events test” and the “economic performance” requirements 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.

- 11.2 Upon establishment of the QSF, the Claims Administrator shall apply for an employer identification number for the QSF utilizing Internal Revenue Service Form SS-4 and in accordance with Treasury Regulation § 1.468B-2(k)(4).
- 11.3 If requested by either Walmart or the Claims Administrator, the Claims Administrator, the Claims 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.
- 11.4 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 Class required hereunder, the processing of Claims and requests for exclusion, the allowance or disallowance of claims by Claimants, payments to Class Counsel, investment of QSF funds, payment of federal, state, and local income, employment, unemployment, excise, and other taxes imposed on the QSF or its disbursements, or payment of the administrative, legal, accounting, or other costs occasioned by the use or administration of the QSF, since it is agreed that such deposits shall fully discharge Walmart’s obligations to Claimants and Class Counsel and for expenses of administration in respect to the disposition of the Gross Settlement Amount hereunder. Rather, the Claims Administrator shall have sole authority and responsibility for the administration of such funds and income thereon, disbursement to Claimants and Class Counsel, and payment of taxes and administrative costs in accordance with the provisions hereof, subject only to the rights of Walmart or Class Counsel to seek redress for any breach of the terms hereof.
- 11.5 The Claims Administrator shall cause to be filed, on behalf of the QSF, all required federal, state, and local tax returns, information returns, and tax withholdings statements in accordance with the provisions of Treasury Regulation § 1.468B-2(k)(1) and Treasury Regulation § 1.468B-2(l)(2)(ii). The Claims Administrator may, at the expense of the QSF, retain legal counsel and an independent, certified public accountant to consult with and advise the Claims Administrator or the Trustee 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 Claims 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 the 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.

- 11.6 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.
- 11.7 Based on the Claims Administrator's recommendation and approval by Class Counsel, the QSF may be invested in United States Treasury bills, money market funds primarily invested in the same, or certificates of deposit ("CDs"), provided that such portions of the QSF as may reasonably be required to pay current QSF administrative expenses, taxes or disbursements to Claimants or Class Counsel may be deposited in bank accounts which are federally insured to the greatest extent practicable. All federal, state, and local taxes imposed with respect to income earned by, or property of, the QSF, shall be paid from the QSF.
- 11.8 The Claims Administrator may amend, either in whole or in part, any administrative provision of this Section or the trust instrument through which the QSF is established to maintain the qualification of the QSF pursuant to the above-described authorities provided that the rights and liabilities of the Parties hereto and the Class are not altered thereby in any material respect.

12. COMPREHENSIVE WAIVER, RELEASE, DISMISSAL

- 12.1 Subject to the Court's final approval 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, acquit, and forever discharge Walmart from any and all allegations, claims, causes of action, demands, obligations, or liability, whether for injunctive relief, damages, penalties, or any other form of recovery, arising out of or in connection with claims that were made or could have been made with respect to pregnancy discrimination, whether under the Pregnancy Discrimination Act, 42 U.S.C. § 2000e(k) or otherwise, that arose during the Time Period. The Parties agree that nothing in this Agreement shall preclude claims for other forms of gender discrimination.
- 12.2 Subject to the Court's final approval of the Settlement, and for good and valuable consideration set forth herein, the receipt and sufficiency of which is hereby acknowledged,

and in addition to the release given by the Class Representatives pursuant to Section 12.1 of this Agreement, the Class Representatives on behalf of themselves and any and all of their spouses, representatives, heirs, successors, assigns, devisees, and executors (excluding the Class Members they seek to represent), release, acquit, and forever discharge Walmart from any and all allegations, claims, causes of action, demands, obligations, or liability, whether for injunctive relief, damages, penalties, or any other form of recovery, arising out of or in connection with any and all allegations, claims, causes of action, demands, obligations, or liability, whether for injunctive relief, damages, penalties or any other recovery in nature, that were made or could have been made against Walmart, through the date of the execution of this Agreement, including, but not limited to, any and all rights and claims whether based on tort, contract or any federal, state or local law, statute, or regulation, including but not limited to claims under Title VII of the Civil Rights Act of 1964, as amended, the Americans With Disabilities Act, the Family and Medical Leave Act, the Age Discrimination in Employment Act, the Fair Labor Standards Act, any state analogs to such laws, and the constitutions of the United States or any applicable state. The Class Representatives understand that subject to the foregoing, this is otherwise a full and final release covering all unknown and unanticipated injuries, debts, claims, or damages which may have arisen, or may arise, in connection with any act or omission by Walmart prior to the date of execution of this Agreement.

- 12.3 The Parties acknowledge that this Settlement, including the releases provided in this Section, reflects a compromise of disputed claims.
- 12.4 The Final Judgment and Order of Dismissal shall dismiss the Litigation with prejudice and shall incorporate the terms of this release.

13. DUTIES OF THE PARTIES WITH RESPECT TO OBTAINING PRELIMINARY COURT APPROVAL

- 13.1 Plaintiffs shall file with the District Court a motion for preliminary approval of the Settlement, asking the Court to preliminarily approve the Settlement Agreement and to certify the Settlement Classes and appoint Class Counsel for settlement purposes. Plaintiffs shall afford Walmart a reasonable time to review and comment on the motion for preliminary approval. The motion shall seek:
 - 13.1.1 Certification of the Settlement Classes and appointment of Class Counsel for settlement purposes in accordance with applicable legal standards and this Agreement;
 - 13.1.2 Preliminary approval of the Settlement;
 - 13.1.3 Approval as to the form and content of the Notice Packet;
 - 13.1.4 Approval of the establishment of the QSF in accordance with applicable legal requirements and this Agreement; and

- 13.1.5 A fairness hearing on the question of whether the proposed Settlement shall be finally approved as fair, reasonable, and adequate as to the Settlement Class.
- 13.2 Walmart shall cooperate with Class Counsel to obtain preliminary approval of the Settlement, including each of the elements in Section 13.1.
- 13.3 The Parties shall continue to take any steps necessary to stay any pending proceedings so as to preserve the status quo until either the Settlement Effective Date occurs or the Settlement Agreement is voided.
- 13.4 If the Court does not grant preliminary or final approval of the Settlement, the Parties shall work together in good faith to address the concerns raised by the Court. If the Parties are unable to jointly agree on solutions to address the Court's concerns, the Parties shall request the assistance of Michelle Yoshida, or another mediator agreed to by the parties, to assist them unless the Parties mutually 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 Michelle Yoshida, or another mediator agreed to by the parties, to assist them unless the parties mutually agree not to resort to a mediator.

14. DUTIES OF THE PARTIES FOLLOWING PRELIMINARY COURT APPROVAL

- 14.1 Following preliminary approval by the District Court of the Settlement, and no later than 30 days prior to the Claims Filing Deadline, Class Counsel will submit a motion for attorneys' fees and costs and memorandum in support.
- 14.2 Following preliminary approval by the District Court of the Settlement, and no later than fourteen (14) calendar days prior to the final fairness hearing, Class Counsel will submit a motion for final approval that includes a proposed Final Judgment and Order of Dismissal substantially in the form attached hereto as Exhibit 2. The proposed Final Judgment and Order of Dismissal shall:
 - 14.2.1 Grant final approval to the Settlement, adjudging the terms thereof to be fair, reasonable, and adequate, and directing consummation of its terms and provisions;
 - 14.2.2 Approve Class Counsel's application for Attorneys' Fees and Litigation Expenses;
 - 14.2.3 Dismiss this Litigation as between the Settlement Class Members on the one hand, and Walmart on the other hand, with prejudice and permanently bar the Releasing Settlement Class Members from further prosecuting any of the Released Claims, subject to the Court's continuing jurisdiction described in Section 14.3;
 - 14.2.4 State that the District Court shall retain continuing jurisdiction over this action as set forth in Section 14.3.
- 14.3 The District Court shall retain continuing jurisdiction over this action (a) for a period of six months after the Settlement Effective Date, or (b) for a period of one month after all

Settlement Class Members have received their final payments under the Settlement and any remaining funds from the Class Settlement Amount have been distributed, whichever is greater. The Parties agree to submit to the jurisdiction of the Court and shall be bound by the terms of this Settlement, including, without limitation, disputes related to interpreting, implementing and enforcing the Settlement, and will request that the Court retain jurisdiction to hear any such disputes.

- 14.4 Walmart shall cooperate with Class Counsel as necessary to obtain final approval and the dismissal of the Litigation.
- 14.5 The Final Judgment and Order of Dismissal shall not be considered final until the occurrence of the Settlement Effective Date.

15. MUTUAL FULL COOPERATION

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

16. STATEMENT OF NO ADMISSION

- 16.1 Nothing contained in this Agreement shall be construed or deemed an admission of liability, culpability, or wrongdoing on the part of Walmart. Walmart further denies liability for any alleged wrongdoing, expressly denies liability for the claims asserted and denies and does not admit any of the pleaded facts not admitted in its pleadings in the Litigation. Nor shall this Agreement constitute an admission by Walmart as to any interpretation of laws or as to the merits, validity, or accuracy of any claims made against it in the Litigation. Likewise, nothing in this agreement shall be construed or deemed an admission by Plaintiff or the Settlement Class with regards to the validity of any of Walmart's defenses or affirmative defenses. Each of the Parties has entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses.
- 16.2 The Parties further agree that this Agreement and all of its Exhibits, any Exclusions or Objections, the Court's actions (including Court orders) related to this Settlement, and all other statements, discussions, negotiations, actions, documents or items (including argument of counsel) undertaken by anyone relating to this Settlement are settlement communications or documents and, as such, they: (a) do not constitute, are not intended to constitute, and will not be deemed to constitute an admission by Walmart as to any violation of any federal, state, or local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or in equity; and (b) shall not be admissible in evidence and shall not be used for any purpose in this Litigation or in any other judicial,

arbitral, administrative, investigative, or other court, tribunal, forum, or proceeding, or any other litigation against any Party for any purpose, including as evidence of any admission by either Party of any liability (or lack of liability) with respect to any claim for damages or other relief, or of the appropriateness (or lack of appropriateness) of class certification or any element thereof, except in an action or proceeding to approve, interpret, or enforce the terms of this Agreement, including the Release.

17. VOIDING THE AGREEMENT

- 17.1 Except with respect to the provisions of Section 17.2, in the event that this Settlement is not finally approved, or if for any reason the Settlement Effective Date does not occur, and the parties are unable to come to an agreement pursuant to the process described in Section 13.4, the Settlement and this Agreement shall be deemed null, void, and unenforceable, and each Party shall retain all of its respective rights as they existed as of the date notice of the Settlement was first provided to the Court, and neither this Agreement, nor any of its accompanying Exhibits or any orders entered by the Court in connection with this Agreement, shall be admissible or used for any purpose in any subsequent proceedings in this Litigation or in any other judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or other proceeding. Provided, however, Walmart shall not be reimbursed for any monies reasonably spent by the Claims Administrator, or reasonably owed to the Claims Administrator but not yet paid, for Notice and Settlement Administration Costs.
- 17.2 In the event that the Court does not approve the Attorneys' Fees and Litigation Expenses in the amounts requested by Class Counsel, or in the event that the Attorneys' Fees and Litigation Expenses requested by Class Counsel are reduced, such findings shall not be a basis for rendering the entire Settlement Agreement null, void, or unenforceable. Class Counsel retain their right to appeal any decision or order by the Court regarding the Attorneys' Fees and Litigation Expenses.

18. SIGNATORIES' AUTHORITY

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

19. NO PRIOR ASSIGNMENTS

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

20. NOTICES

- 20.1 Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly

given: (i) on the date given, if given by hand delivery; (ii) within one (1) business day, if sent by overnight delivery services such as Federal Express or similar courier; (iii) on the third business day after mailing by United States registered or certified mail, return receipt requested, or (iv) on the day received for delivery by e-mail. All notices given under this Agreement shall be addressed as follows:

20.1.1 To the Class:

Ellen Eardley
Cyrus Mehri
Mehri & Skalet, PLLC
1250 Connecticut Ave NW, Suite 300
Washington, DC 20036
Tel: (202) 822-5100
Fax: (202) 822-4997
E-mail: cmehri@findjustice.com
eardley@findjustice.com

20.1.2 To Walmart:

Chad J. Doellinger
Naomi G. Beer
GREENBERG TRAURIG, LLP
1144 15th Street, Suite 3300
Denver, Colorado 80202
Tel: (303) 572-6500
Fax: (303) 572-6540
Email: DoellingerC@gtlaw.com
BeerN@gtlaw.com

21. CONFIDENTIALITY

- 21.1 The negotiations related to this Agreement (including the 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 Class Representatives and their immediate family, Walmart, their retained attorneys, their accountants and financial or tax advisers, the retained consultants, the mediator Michelle Yoshida, the Court, doctors, and therapists, unless otherwise agreed to by Class Counsel and Walmart or unless otherwise ordered by the Court. Notwithstanding the other provisions of this Section, Walmart may disclose the Settlement in filings that it is required to make with the Securities and Exchange Commission, including 10-Q and 10-K filings, or in other disclosures to investors, and Class Counsel may disclose the Notice Packet and Joint Press Release (once issued in accordance with Section 22.1) on their websites and social networking sites.

22. PRESS RELEASE

- 22.1 The Parties shall agree on the terms and language of a Joint Press Release with respect to this Settlement. The Joint Press Release may be updated upon the grant of preliminary approval and/or final approval by the District Court to reflect the then-current status of the District Court's approval as may be appropriate. Unless otherwise agreed to by counsel for the Parties, the Joint Press Release shall not be issued until final approval is granted. Other than with respect to the issuance of the Joint Press Release at final approval (or earlier issuance if so agreed to by counsel for the Parties), neither the Parties nor their counsel shall affirmatively reach out to the media regarding the Settlement, this Agreement or the resolution of the Litigation. In the event the Parties or their counsel are

contacted by the media about the Settlement, this Agreement or the resolution of the Litigation, they shall respond to such inquiries by referring to the Joint Press Release (if issued), using the language from the Joint Press Release (if not yet issued) and/or by referring such inquiries to any Court filings not under seal. Provided, however, that Class Counsel shall not be barred from discussing or circulating publicly available information about the Settlement Agreement and the resolution of the Litigation to persons who contact them with questions about the Settlement, this Agreement or the resolution of the Litigation, with the understanding that any such discussion shall be consistent with the information contained in the Joint Press Release and the motions for preliminary and final approval. In addition, all Class Counsel may put the Joint Press Release (once issued) and items from the publicly available case docket on their web sites with the understanding that any such information shall be consistent with the information contained in the Joint Press Release and the motions for preliminary and final approval.

23. DOCUMENTS AND DISCOVERY

- 23.1 The destruction or return of documents and discovery shall be governed by Paragraph 14 of the Protective Order that the Parties entered into in this Litigation. *See* Dkt. No. 108.


24. MISCELLANEOUS PROVISIONS

- 24.1 Construction. The Parties agree that the terms and conditions of this Settlement are the result of lengthy, intensive arms-length negotiations between the Parties and their counsel and that this Settlement shall not be construed in favor of or against any Party by reason of the extent to which any Party or her or his counsel participated in the drafting of this Settlement.
- 24.2 Captions and Interpretations. Paragraph titles or captions contained in this Agreement are a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision of this Agreement. Each term of this Agreement is contractual and not merely a recital.
- 24.3 Modification. This Agreement may not be changed, altered, or modified, except in a writing signed by the Parties and approved by the Court. Notwithstanding the foregoing, the Parties agree that any dates contained in this Agreement may be modified by agreement of the Parties without Court approval if the Parties agree and cause exists for such modification, or by the Court. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.
- 24.4 Integration Clause. This Agreement, the Exhibits hereto, and any other documents delivered pursuant hereto contain the entire agreement between the Parties relating to the resolution of the Litigation, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged in this Agreement. No rights under this Settlement may

be waived except in writing and signed by the Party against whom such waiver is to be enforced.

- 24.5 Binding on Assigns. This Settlement shall be binding upon, and inure to the benefit of, the Settlement Class Members and Walmart and their respective heirs, trustees, executors, administrators, successors, and assigns.
- 24.6 Counterparts. This Agreement may be executed by facsimile signature and in any number of counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one and the same Agreement, which shall be binding upon and effective as to all Parties.
- 24.7 Applicable Law. This Agreement shall be governed by Illinois law without regard to its choice of law or conflicts of law principles or provisions.

For Plaintiffs:

Name: Ellen Eardley
Title: Partner, Mehri+Skalet, PLLC
Signature: 
Date: 10-14-2019

For Walmart:


Name: Brian Duffy
Title: CEO, Greenberg Traurig LLP
Signature: 
Date: 10/14/2019

Exhibit 1 to the Settlement Agreement

Claim Form Deadline: _____
[insert website here]

DRAFT CLAIM FORM

Note: Format and layout will be finalized with the assistance of the claims administrator.

[Name & Address Label]

A class action settlement covers women who worked at Walmart and were denied workplace accommodations because of pregnancy between March 19, 2013 and March 5, 2014.

You may be eligible for a monetary award if you complete this form by _____, 2019. You may submit this form on line at _____, or, if you prefer, you may instead fill out this form and mail it to the claims administrator at the address identified below and postmarked by _____.

INSTRUCTIONS

Please read the instructions and claim form carefully. The information you provide on the claim form will determine whether you are eligible to participate in the settlement, and, if so, the amount of your monetary award. The amount of money you will receive also will depend upon the number of workers who submit claim forms.

The monetary awards will be determined by a claims administrator after reviewing all claim forms that are submitted. The claims administrator's distribution plan must be reviewed and approved by the court before the settlement is final.

You must complete all sections marked **REQUIRED**.

You must sign the claim form and certify that the information that you are providing is correct and acknowledge that the penalty for providing untruthful information is perjury.

Your submissions will be kept confidential to the fullest extent allowable under the law and will not be shared with anyone at Walmart unless they have a legitimate business need to review the information.

[Insert other instructions from claims administrator.]

REQUIRED BACKGROUND INFORMATION

- NAME:
- PHONE:
- PERSONAL EMAIL ADDRESS (if any):
- DATE OF BIRTH:
- LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER:
- ADDRESS, CITY, STATE, ZIP CODE:
- Please identify the Walmart location where you worked.

Claim Form Deadline: _____
[insert website here]

- Have you previously signed a document waiving or giving up pregnancy discrimination claims against Walmart? Y/N
- If so, please describe the claims related to the waiver, the date the waiver was signed, and the time period related to the waiver. Please submit a copy of the waiver.

REQUIRED INFORMATION REGARDING YOUR PREGNANCY & YOUR REQUEST FOR ACCOMMODATION OR ASSISTANCE FROM WALMART

- Were you pregnant at any point between March 19, 2013 and March 5, 2014? Y/N
- Did you ask any Walmart manager, supervisor, or human resources employee for a workplace accommodation because of your pregnancy? Y/N
(Examples of requests for workplace accommodations include a request for light duty, to avoid heavy lifting, to avoid climbing ladders, to use a stool, to carry a water bottle, to be allowed frequent restroom breaks, to avoid breathing in chemicals, for a modified schedule or transfer, for time off for a medical appointment related to pregnancy, etc. You may have requested a different accommodation and you should list that below if applicable.)
- Did Walmart deny your request? Y/N

IMPACT ON YOUR JOB DUE TO WALMART DENYING YOUR REQUEST FOR A PREGNANCY-RELATED ACCOMMODATION

If you lost time at work, had to take an unpaid leave, quit, or lost your job, due to Walmart denying your request for a pregnancy-related workplace accommodation at any point between March 19, 2013 and March 5, 2014, you may complete this section to be considered for additional funds from the settlement.

- Did you lose paid time at work because Walmart denied your request for a pregnancy-related accommodation? Y/N
 - How many full days of work did you lose?
 - 5 days or less
 - 6-15 days
 - 16-25 days
 - 26 days or more
 - How many partial days of work did you lose?
 - 5 days or less
 - 6-15 days
 - 16-25 days
 - 26 days or more
 - Were you hourly or salaried at the time that you lost work?
 - Hourly
 - Salaried

- Were you fired from Walmart because Walmart denied your request for a pregnancy related accommodation? Y/N
 - Did Walmart rehire you to work at Walmart within 6 months of childbirth?

PHYSICAL OR EMOTIONAL IMPACT OF WALMART DENYING YOUR REQUEST

If you experienced harm to your health (including physical harm, harm to your fetus, or emotional distress) due to Walmart denying your request for a pregnancy-related workplace accommodation at any point between March 19, 2013 and March 5, 2014, you may complete this section to be considered for additional funds from the settlement.

- Did you experience physical harm (including harm to your fetus), emotional distress, or other health issues because Walmart denied your pregnancy-related request for a workplace accommodation? Y/N
 - Did you see a health care professional (such as a doctor, counselor, or therapist) because Walmart denied your pregnancy-related request for a workplace accommodation? Y/N
 - Were you prescribed any medication as a result of Walmart denying your pregnancy-related request for a workplace accommodation? Y/N
- If you wish, you may provide additional information regarding the physical or emotional impact of Walmart denying your request for a pregnancy-related workplace accommodation here:

FINANCIAL IMPACT OF WALMART DENYING YOUR REQUEST

If you had financial losses due to Walmart denying your request for a pregnancy-related workplace accommodation, you may complete this section to be considered for additional funds from the settlement.

- Did you incur out-of-pocket expenses, such as health care costs, because Walmart denied your pregnancy-related request for accommodation? Y/N
- Did you suffer financial losses beyond lost pay, such as loss of a home or car or filing for bankruptcy, because of lost income after Walmart denied your request for an accommodation? Y/N
- If you wish, you may provide additional information regarding the financial impact of Walmart denying your request for a pregnancy-related workplace accommodation here:

CONTRIBUTIONS TO THE LITIGATION

If you contributed to the investigation or prosecution of this lawsuit, you may complete this section to be considered for additional funds from the settlement.

- Did you contribute to the investigation or prosecution of this lawsuit against Walmart? Y/N
 - If yes, please describe:

Claim Form Deadline: _____
[insert website here]

- The dates you contacted the attorneys representing the class, A Better Balance, the National Women’s Law Center, or Mehri & Skalet, PLLC,
 - The method of communication (email, phone, meeting)
 - The information and/or documents that you provided
- o Please describe any other contributions.

REQUIRED SWORN AFFIRMATION AND SIGNATURE PAGE

I declare under the penalty of perjury that the information and facts I have stated in this claim form and in any attachments are true and accurate to the best of my personal knowledge. I understand that making a knowingly false statement may subject me to prosecution for perjury.

I understand that I must keep the Claims Administrator informed of my current address and of any change in my home address. If I do not do so, I understand that I may not receive any award to which I might otherwise be entitled.

Executed this ___ day of _____, 2019

Signature

Typed or Printed Name

PLEASE KEEP A COPY OF YOUR COMPLETED CLAIM FORM AND ANY ATTACHMENTS. NO CLAIM FORMS OR ATTACHMENTS WILL BE RETURNED TO YOU.

To be eligible to be considered for a monetary award, you must complete the claim form online at _____ by _____.

If you prefer, you may complete, sign, and return this Claim Form by _____ (postmark date) to:

[INSERT]

Exhibit 2 to the Settlement Agreement

**IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
ILLINOIS**

TALISA BORDERS,
OTISHA WOOLBRIGHT, and
STACEY LEWIS,
On behalf of themselves and all others
similarly situated,
Plaintiffs

CIVIL ACTION – CLASS ACTION

3:17-cv-00506

Judge Staci M. Yandle
Magistrate Judge Mark A. Beatty

v.

WALMART STORES, INC.,
Defendant

[PROPOSED] FINAL JUDGMENT AND ORDER OF DISMISSAL

This matter came before the Court on Plaintiffs’ Motion for Final Approval of Settlement (“Final Approval Motion”).

WHEREAS, a putative class action is pending before the Court entitled *Borders, et al v. Wal-Mart Stores, Inc.* Case No. 3:17-cv-0506-SMY-MAB (United State District Court for the Southern District of Illinois);

WHEREAS, the Court has received and reviewed the Settlement Agreement entered into between the Plaintiffs/Class Representatives, on behalf of themselves and Settlement Class Members on the one hand, and Wal-Mart Stores, Inc. k/n/a Walmart Inc. (“Walmart”) on the other hand (the “Agreement”), and has considered the terms of the proposed settlement set forth therein (the “Settlement”);

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

WHEREAS, on _____, 2019, the Court entered its order preliminarily approving the Settlement of this class action as set forth in the Agreement approving the form and method of notice, and setting a date and time for a fairness hearing to consider whether the Settlement should be finally approved by the Court pursuant to Rule 23(d) of the Federal Rules of Civil Procedure as fair, adequate, and reasonable (the “Preliminary Approval Order”);

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

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

WHEREAS, the Court has considered all timely filed objections to the Settlement;
and

WHEREAS, the Court has conducted a Final Fairness Hearing on _____, 2020 (the “Settlement Approval Hearing”), and has considered the arguments presented, all papers filed and all proceedings had therein;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The Court has jurisdiction over the subject matter of this litigation and over all Parties to this litigation, including the Plaintiffs, Settlement Class Members, and Walmart.
2. In accordance with Rules 23(d) and 23(e) of the Federal Rules of Civil Procedure and the requirements of due process, all members of the Settlement Class have been given proper and adequate notice of the Settlement. Based upon the evidence submitted by the parties to the Settlement Agreement, the Settlement Agreement, the arguments of counsel, and all the files, records and proceedings in this case, the Court finds that the Notice and notice methodology implemented pursuant to the Settlement Agreement and the Court’s Preliminary Approval Order

(a) constituted the best practicable notice under the circumstances; (b) constituted notice that was reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the litigation, their right to object to the Settlement, and their right to appear at the Settlement Approval Hearing; (c) were reasonable and constituted due, adequate and sufficient notice to all persons entitled to notice; and (d) met all applicable requirements of the Federal Rules of Civil Procedure, and any other applicable law.

3. The Court also finds and determines that the parties have satisfied the requirements of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715(b), by serving the appropriate governmental authorities with timely notice of the Settlement.

4. The Settlement Agreement in this action warrants final approval pursuant to Rule 23(e) of the Federal Rules of Civil Procedure because it resulted from vigorously contested litigation, extensive discovery and motion practice, and extensive good-faith arm's length negotiations between the parties, and it is fair, adequate, and reasonable to those it affects. *Isby v. Bayh*, 75 F.3d 1191, 1199 (7th Cir. 1996) (articulating the "Isby" factors for class settlement approval in this Circuit); *Kaufman v. American Express Travel*, 877 F.3d 276, 284-85 (7th Cir. 2017) (describing factors to consider in approving class action settlement); *In re Southwest Airlines Voucher Litigation*, 799 F.3d 701, 711-13 (7th Cir. 2015) (same).

5. The Final Approval Motion is hereby GRANTED, and the Settlement as set forth in the Agreement is hereby APPROVED as fair, reasonable and adequate, for the exclusive benefit of the Settlement Class Members. The Parties are directed to consummate the Agreement in accordance with its terms.

6. The Court APPROVES payment of the Gross Settlement Amount in accordance with the terms of the Agreement.

7. The Court finds and determines that the Settlement Payments to be paid to the Settlement Class Members as provided for by the Agreement are fair and reasonable. The Court hereby APPROVES and ORDERS the payment of those amounts to be made to the Settlement Class Members out of the Net Settlement Amount in accordance with the Agreement.

9. The Court APPROVES payment of Attorneys' Fees and Litigation Expenses to Class Counsel in the amount of \$_____ as fair and reasonable. The Court further finds that no attorneys have asserted any attorney liens as to the Attorneys' Fees and Litigation Expenses awarded by the Court.

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

11. In consideration of the Net Settlement Amount provided for under the Agreement, and for other good and valuable consideration, each of the Releasing Settlement Class Members shall, by operation of this Order, have fully, finally, and forever released, relinquished, and discharged all Released Claims against Walmart in accordance with Section 12 of the Agreement the terms of which are incorporated herein by reference, shall have covenanted not to sue Walmart with respect to all such Settlement Class Member Released Claims, and shall be permanently barred and enjoined from instituting, commencing, prosecuting or asserting any such Settlement Class Member Released Claims against Walmart.

12. This Order is the Final Judgment in the suit as to all Settlement Class Member Released Claims.

13. Without affecting the finality of this Order in any way, this Court retains jurisdiction over: (a) the interpretation, implementation, and enforcement of the Settlement and the terms of the Agreement; (b) the distribution of the Class Settlement Amount, the Enhancement

Payments and the Payment of the Attorneys' Fees and Litigation Expenses; and (c) all other proceedings related to the implementation, interpretation, administration, consummation, and enforcement of the terms of the Agreement and the Settlement, and the administration of Claims submitted by Settlement Class Members. The time to appeal from this Judgment shall commence upon its entry.

14. In the event that the Settlement Effective Date does not occur, this Judgment shall be rendered null and void and shall be vacated, nunc pro tunc, except insofar as expressly provided to the contrary in the Agreement, and without prejudice to the status quo ante rights of Plaintiffs, the Settlement Class Members, and Walmart.

15. This Court finds that there is no just reason for delay and expressly directs Judgment and immediate entry by the Clerk of the Court.

IT IS SO ORDERED.

Date: [DATE], 2020

STACI M. YANDLE
United States District Judge

Exhibit 3 to the Settlement Agreement

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

BORDERS et al.,)	
Plaintiffs,	)	Civil No. 3:17-cv-0506
)	
v.	)	CLASS ACTION
)	
WAL-MART STORES, INC.,)	
Defendant.)	

**NOTICE OF CLASS ACTION, PROPOSED SETTLEMENT AGREEMENT,
AND SETTLEMENT HEARING**

IF YOU WERE PREGNANT
WHILE YOU WORKED AT WALMART
AND WALMART DENIED YOUR REQUEST
FOR A WORKPLACE ACCOMMODATION
BETWEEN MARCH 19, 2013 AND MARCH 5, 2014,
A PROPOSED CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

*A federal court has authorized this Notice.
This is not a solicitation from a lawyer.*

*Please read this Notice carefully and fully.
You may be eligible to claim money from a Settlement Fund.*

You may visit www.XXX.com for more information.

Summary

- Three women, who are called the Plaintiffs, have sued Walmart for pregnancy discrimination. They sued on behalf of themselves and all other Walmart employees whose requests for workplace accommodation were denied because of pregnancy from March 19, 2013 through March 5, 2014. After extensive negotiations, the Plaintiffs and Walmart have agreed on the terms of a Settlement.
- Walmart denies that it has done anything wrong, and the Court did not decide that issue. However, Walmart has agreed to be bound by the terms of this Settlement.
- The Court has reviewed the Settlement and given it preliminary approval.
- Before deciding whether to give final approval to the Settlement, the Court wishes to tell you about the Settlement and your rights to opt out of or object to the Settlement.
- The Court has allowed the following Settlement Classes to make claims for monetary relief:
 - 1) All women employed by Walmart at stores in the 39 National Policy States¹ who were denied requested accommodations because of pregnancy by the Accommodation Service Center (ASC) from March 19, 2013 through March 5, 2014.]

AND

- 2) All women employed by Walmart at stores nationwide who were denied requested accommodations because of pregnancy by store level management and/or store-level human resource personnel from March 19, 2013 through March 5, 2014.
- If you fit one of the definitions above, then you are a Class Member. If you are a Class Member, you may make a claim for money, opt out of the Settlement, object to the Settlement or do nothing.
 - Before the Settlement becomes final, the Court will hold a Settlement Hearing to consider whether the Settlement is fair, reasonable, and adequate. The hearing will be held at ___ PM/AM at the U.S. District Court, _____ before the Honorable Staci M. Yandle. If the Court decides the Settlement is fair, reasonable, and adequate, it will enter an order giving final approval to the Settlement and the Court's judgment will be final and binding.

¹ “*National Policy States*” means Alabama; Alaska; Arizona; Arkansas; Colorado; Delaware; Florida; Georgia; Idaho; Indiana; Iowa; Kansas; Maine; Maryland; Massachusetts; Michigan; Minnesota; Mississippi; Missouri; Nebraska; Nevada; New Hampshire; New Jersey; New York; New Mexico; North Carolina; North Dakota; Oregon; Pennsylvania; Rhode Island; South Carolina; South Dakota; Texas; Utah; Vermont; Virginia; Washington; Wisconsin; and Wyoming.

- You are not required to appear at the Settlement Hearing. If you are a Class Member and do not opt out or object, the attorneys for the Classes will represent you at no cost to you. If you wish to opt out of the Settlement, you must opt out in writing, but you do not need to appear at the hearing. If you wish to object to the Settlement, you must submit a written objection and you may, in addition and at your own expense, appear and be heard by the Court, either by yourself or with an attorney of your choice.

.

LEGAL RIGHTS AND OPTIONS FOR CLASS MEMBERS	
Submit a Claim Form	<p>This is the only way to be eligible to receive money from the Settlement Fund.</p> <p>You must submit a claim form by _____.</p>
Do Nothing	<p>Receive no money from the Settlement Fund. Give up certain rights.</p> <p>By doing nothing, you will not receive any money from the Settlement Fund, and you will give up any rights you might have to separately pursue the pregnancy discrimination claims against Walmart that are described in the Settlement Agreement.</p>
Opt Out	<p>Get out of this lawsuit (opt out). Receive no money from the Settlement Fund. Keep any rights you might have to pursue pregnancy discrimination claims against Walmart separately.</p> <p>If you exclude yourself, you will not be eligible to receive any money from the Settlement Fund, but you will keep any rights you might have to separately pursue the pregnancy discrimination claims against Walmart that are described in the Settlement Agreement.</p> <p>You must submit your request to opt out by _____.</p> <p>If you opt out, you may not also submit a Claim Form.</p>
Object/Comment	<p>Write to the Court about why you think the settlement is fair or unfair to the class. If you object or comment, you will remain a Settlement Class Member, and if the Settlement is approved, you will remain eligible to participate in the Settlement (assuming you submit a timely claim form) and you will give up any rights you might have to pursue the pregnancy discrimination claims against Walmart that are described in the Settlement Agreement.</p> <p>You must submit your comment or objection by _____.</p>
Go to the Hearing	<p>Ask to speak in Court about the fairness of the settlement.</p> <p>You must submit your request to speak in Court by _____.</p>

WHAT THIS NOTICE CONTAINS

[Insert final table of contents]

BASIC INFORMATION

1. Purpose of this Notice

This Notice informs you about this lawsuit, the certification of settlement classes (the “Class”), the terms of a proposed settlement (the “Settlement”), and your rights in connection with a hearing which will be held before the Court on a date to be determined, to consider the fairness, reasonableness, and adequacy of the Settlement. This Notice also describes the steps class members should take to exclude themselves from the Class and, for those who remain Class Members, the steps necessary to seek payment from the Settlement Fund if the Court approves the settlement.

2. Background: About the Lawsuit

Three women, who are the “Named Plaintiffs” or “Plaintiffs” in this lawsuit, retained attorneys called “Class Counsel” to investigate claims of pregnancy discrimination at Walmart Inc., (formerly known as Wal-Mart Stores, Inc. and hereinafter “Walmart”).

Two of these Named Plaintiffs filed charges of discrimination with the Equal Employment Opportunity Commission (“EEOC”), alleging that Walmart discriminated against them and a class of similarly situated women throughout the United States on the basis of pregnancy by denying their requests for accommodation in the workplace related to pregnancy from March 19, 2013 through March 5, 2014. For example, the Named Plaintiffs asked Walmart to be relieved from lifting heavy items at work during their pregnancies. The first of the Plaintiffs’ EEOC charges was filed on January 11, 2014.

On May 12, 2017, the Plaintiffs filed a Complaint on behalf of themselves as individuals and on behalf of a nationwide class of pregnant employees against Walmart pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(e), *et seq.* (“Title VII”). In this lawsuit, the Plaintiffs allege that Walmart denied their requests for workplace accommodations related to pregnancy while granting accommodations to other employees similarly restricted in their ability to work without accommodations.

In addition to the class claims asserted in the Complaint, the three Named Plaintiffs assert individual, non-class claims of retaliation against Walmart for allegedly retaliating against them for requesting workplace accommodations because of pregnancy. You can read all of the claims in the Amended Complaint, which can be found at _____.

Walmart denies that it discriminated against pregnant workers or that it otherwise did anything wrong. By entering into the proposed Settlement, Walmart does not admit any wrongdoing.

The Court has not determined and, if the Settlement is finally approved, will not determine whether Walmart discriminated against pregnant workers or otherwise did anything wrong. This Notice should not be regarded as an expression of the Court’s opinion on the merits of any claims or defenses of the Parties. No trial has occurred. The Court has made no finding or determination that Walmart has violated any law or obligation. Because the Named Plaintiffs and Walmart asked the Court to approve the Settlement, the Court will examine the Settlement Agreement to

determine whether it is fair, adequate and reasonable to the Class. The Court will not otherwise examine the merits of the parties' underlying claims or defenses.

The Settlement resolves all pregnancy discrimination claims under Title VII of the Civil Rights Act of 1964 or any state or local anti-discrimination law arising from March 19, 2013, through March 5, 2014. The Settlement also resolves the Named Plaintiffs' individual, non-class claims.

The Court has reviewed the Settlement and has preliminarily approved it as being fair, adequate and reasonable. Before deciding whether to give the Settlement final approval, the Court wishes to inform you of the general terms of the Settlement and of your rights to comment on the Settlement or to opt out, i.e., be excluded, from the monetary portion of the Settlement.

3. Class Definition—You May Be Part of the Class

You are a member of the Class affected by the Settlement if you fit within one of these two definitions:

- 1) All women employed by Walmart at stores in the 39 National Policy States² who were denied requested accommodations because of pregnancy by the Accommodation Service Center (ASC) from March 19, 2013 through March 5, 2014.]

OR

- 2) All women employed by Walmart at stores nationwide who were denied requested accommodations because of pregnancy by store level management and/or store-level human resource personnel from March 19, 2013 through March 5, 2014.

If you received this Notice in a mailing addressed to you, then Walmart's records show that you may have been an employee who was pregnant sometime between March 19, 2013 and March 5, 2014. If you requested a workplace accommodation because of pregnancy and Walmart denied your request during this time period, then you have legal rights and options that you may exercise before the Court finally approves the Settlement.

Do I Have to Be Part of this Lawsuit?

No. You may exclude yourself from, or "opt out" of, this lawsuit. If you do so, you will not receive any money from the Settlement Fund. You will keep any legal rights that you would otherwise have to sue Walmart individually. Information about how to opt out is included below.

² "*National Policy States*" means Alabama; Alaska; Arizona; Arkansas; Colorado; Delaware; Florida; Georgia; Idaho; Indiana; Iowa; Kansas; Maine; Maryland; Massachusetts; Michigan; Minnesota; Mississippi; Missouri; Nebraska; Nevada; New Hampshire; New Jersey; New York; New Mexico; North Carolina; North Dakota; Oregon; Pennsylvania; Rhode Island; South Carolina; South Dakota; Texas; Utah; Vermont; Virginia; Washington; Wisconsin; and Wyoming.

4. Summary of Settlement Terms

What Are the Terms of the Settlement?

The Settlement requires Walmart to establish a \$14 million Settlement Fund.

The Settlement Fund

Walmart will pay \$14 million dollars (\$14,000,000) into a Settlement Fund. Most of the Settlement Fund will pay Class Members. A portion of the Settlement Fund, not to exceed \$200,000, will be used to pay the costs of administering the Settlement. A portion of the Settlement Fund will also be used to reimburse Class Counsel for the costs and expenses of the litigation as well as pay attorneys' fees. This amount will not exceed one-third of the Settlement Fund plus costs. Class Counsel will submit a request for payment of their fees and costs to the Court by _____. The remainder of the Settlement Fund will be distributed to the Named Plaintiffs and Class Members to compensate them for their claims. In order to be eligible to receive a share from the Settlement Fund, class members must submit a claim form, a copy of which accompanies this Notice, as described below.

5. Settlement Hearing

The Court will decide whether to finally approve this Settlement after a Settlement Hearing to be held at _____PM/AM before the Honorable Staci M. Yandle,. The Court will determine whether the proposed Settlement is fair, reasonable, and adequate and whether it should be approved. The Court will also consider whether the motion of the Plaintiffs' attorneys for an award of attorneys' fees and expenses should be approved, and whether an order and judgment should be entered bringing the litigation to a conclusion.

Do I Have to Come to the Settlement Hearing?

No. You are not required to appear at the hearing. Class Counsel, who are the attorneys for the Plaintiffs, will appear at the hearing on behalf of all Class Members at no cost to you. But, if you would like to object to the Settlement, you may be heard at the Settlement Hearing, either by yourself, or, at your own expense, through an attorney of your choice.

6. Class Member Options

If you are a Class Member, you have several options. You must decide whether you want to: (A) submit a claim form in order to be eligible to receive money from the Settlement Fund; (B) do nothing; (C) exclude yourself from the Class and not receive a payment from the Settlement Fund; or (D) object to or comment on the Settlement.

Option A: Submit a Claim Form for Payment from the Settlement Fund

In order to be eligible to receive money from the Settlement Fund, you must complete the Claim Form and return it to the Claims Administrator by no later than _____. The Claim Form may be

submitted online at [insert web address], emailed to _____ or postmarked and mailed to the address on the Claim Form by _____.

If the Court approves the Settlement you are a Class Member and you file a timely Claim Form, you will be eligible to obtain money from the Settlement. The Claim Form asks for information about Walmart's denial of your request for workplace accommodations due to pregnancy and the impact it had on you. It also asks whether you contributed to the lawsuit by participating in interviews or sharing information with Class Counsel. Your answers to the questions on the Claim Form will determine how much money you will be eligible to receive.

If you are a Class Member but have already signed a document that releases claims against Walmart, you may have lost your right to recover any money under the Settlement for the claims you released. If you are unsure if you previously signed a release, you may still submit a Claim Form in this case and the Claims Administrator will determine your eligibility to receive an award.

The lawsuit will terminate all claims that the three Named Plaintiffs have or could have brought against Walmart, not just pregnancy discrimination claims. Named Plaintiffs who release these additional claims and who contributed to the initiation, litigation, and settlement of the lawsuit will be eligible for an enhanced monetary award.

Regardless of whether you submit a Claim Form, if you are a Class Member all pregnancy discrimination claims that you may have from March 19, 2013 through March 5, 2014, arising out of your employment with Walmart, will be barred by this Settlement, unless you opt out.

Option B: Do Nothing and Give Up Your Rights

If you take no action, you will remain a part of the Class. Regardless of whether you submit a claim form, if you do not opt out of the Settlement all pregnancy discrimination claims arising out of your employment that you may have against Walmart from March 19, 2013 through March 5, 2014 will be barred by this Settlement.

Option C: Opt Out: How Do I Exclude Myself from the Settlement?

You may opt out, or exclude yourself, from this case. If you opt out, you will *not be eligible for any payment* as part of this Settlement. If you wish to pursue your own separate lawsuit regarding your individual pregnancy discrimination claims related to your employment from March 19, 2013 through March 5, 2014, you must opt out.

Any Class Member who wishes to opt out of the Settlement Class must send a written, signed statement that they are opting out of the Settlement to:

[INSERT CLAIMS ADMINISTRATOR ADDRESS]

To be effective as an opt out, the letter must be emailed, submitted online, or postmarked on or before _____, and must contain each of the following:

- (a) your name, the last four digits of your social security number, current address and telephone number;
- (b) the name of this case *Borders v. Wal-Mart Stores, Inc.*, No. 3:17-cv-0506 (S.D. Ill.);
- (c) a statement that you wish to be excluded from the Class, including the following language:

“I understand that, by excluding myself from the Settlement in this case, I am foregoing all monetary benefits and I will receive no money from the Settlement Fund. I understand that I may bring a separate legal action, but I may receive nothing or less than what I would have received if I had filed a claim form in this case.”

Class Members who submit timely and valid opt outs will have no right to object to the Settlement in Court and will no longer be represented by Class Counsel.

If you submit the necessary information to opt out, you may change your mind and rescind your opt-out. To be effective, such a rescission must be in writing, signed, and postmarked or emailed on or before _____ to the Claims Administrator at the address identified above.

Option D: Comment on or Object to the Settlement and/or Speak at the Hearing

The Court must assess the overall fairness and reasonableness of the Settlement to the Class. Class Members who have not opted out of the Settlement may comment on or object to the Settlement. To have your objection considered by the Court, you must submit the objection in writing. This statement must be signed and must include your name, the name and number of this case *Borders v. Wal-Mart Stores, Inc.*, No. 3:17-cv-0506 (S.D. Ill.), the last four digits of your Social Security number, a description of your request that Walmart provide you an accommodation due to pregnancy and Walmart’s denial of the request between March 19, 2013 and March 5, 2014. This statement must be received by the Court or the Claims Administrator at the address above on or before _____.

You do not have to speak at the Settlement Hearing for your written comment or objection to be considered by the Court, but you may request to speak if you wish. To request to speak at the Settlement Hearing, you must include with your written comment or objection a notice stating your desire to speak or to have an attorney you may retain at your own expense speak on your behalf.

No Class Member may speak at the Settlement Hearing without first having filed and served an objection(s) in writing within the time period described above.

If you object or comment, you will remain a Settlement Class Member, and if the Settlement is approved, you will remain eligible to participate in the Settlement (assuming you submit a timely claim form) and you will give up your right to sue on the pregnancy discrimination claims described in the Settlement Agreement.

7. How Will the Claims Administrator Determine if I am Eligible to Participate?

If you submit a Claim, the Claims Administrator will first determine if you are eligible to participate in the Settlement. The Claims Administrator will review the information you submit about March 19, 2013 through March 5, 2014 to determine whether: you worked at Walmart during this time period, you were pregnant during this time period, you asked Walmart to accommodate your pregnancy during this time period, and Walmart denied your request for pregnancy accommodation during this time period.

The Claims Administrator may compare the dates of employment that you provide with information from Walmart's records.

8. How Will Payments Be Calculated?

The Claims Administrator will review each timely Claim Form submitted by Class Members and Named Plaintiffs ("Claimants"). A Claim Form accompanies this Notice and also can be downloaded from www.XXX.com. Claimants will be eligible to receive payments based on:

- the number of weeks of wages alleged to have been lost due to Walmart's denial of the Claimant's request for workplace accommodation because of pregnancy and whether the Claimant was an hourly or salaried employee;
- emotional distress or physical harm, if any, suffered as a result of Walmart's alleged denial of a pregnancy-related workplace accommodation and/or as a result of pregnancy discrimination; and
- financial damages and expenses, if any, as a result of Walmart's alleged denial of a pregnancy-related workplace accommodation and/or as a result of pregnancy discrimination, such as costs for medical care.

Claimants may choose not to answer questions about emotional distress, physical harm or financial damages, and if so, they will only be eligible to receive a payment based upon their membership in the class and weeks of work lost.

The Claims Administrator will determine monetary awards by reviewing each Claim Form using a formula that will be approved by the Court before it becomes final. At this time, it is not possible to predict how much money a particular Claimant will receive.

In addition to the factors identified above, the Claims Administrator may award a Claimant additional points if the Claimant contributed substantively to the litigation (for example, being a Named Plaintiff or participating in interviews with Class Counsel). The Named Plaintiffs, who will be releasing all claims against Walmart including their claims of retaliation, will receive additional points for releasing any and all claims against Walmart.

You will not have a right to challenge the allocation and distribution determined by the Claims Administrator.

The total amount of awards made to the Claimants shall not exceed the net amount of the Settlement Fund that remains after deducting Class Counsel's attorney's fees and costs and costs associated with the administration of the fund.

Claim Forms must be submitted subject to the penalty of perjury. The information provided on the Claim Form may be verified for accuracy against Walmart's records, any documents provided by Claimants, and information provided by Class Counsel.

The Claim Form may be submitted online, via email, or U.S. Mail to the addresses listed on the Claim Form. The Claim Form must be submitted, emailed, or postmarked _____.

What Happens After I Submit My Claim Form?

After all timely Claim Forms are reviewed, Class Counsel will submit the Claims Administrator's distribution formula to the Court for review. If the Court approves the distribution of the Settlement Fund and approves the Settlement as fair, reasonable, and adequate, it will enter an order giving the Settlement final approval. After the Court's order, the Claims Administrator will send eligible Claimants their awards in the form of a check via U.S. Mail.

If any undistributed funds remain one year after checks are mailed, the amount will be distributed pro rata or, if the amount is insufficient to merit a second distribution, Class Counsel will meet with Walmart and make a proposal to the Court regarding disposition of the remaining funds.

The Claims Administrator will maintain the distribution formula and allocation list for a period of five (5) years.

Are There Tax Consequences for Any Money I Might Get?

Any award you receive from the Settlement Fund will have tax consequences for you. The Claims Administrator will be responsible for withholding, remitting and reporting each Claimant's share of income taxes and payroll taxes, including applicable FICA, and/or Medicare, from the Settlement Fund. Walmart will be responsible to pay for the employer's share of taxes, including FICA, FUTA, SUTA and Medicare. Class Counsel, Walmart and the Claims Administrator are not tax advisors and cannot give you advice on any tax matters. Class Counsel urge you to consult your tax advisor for answers to any questions you may have about the tax implications of any potential award.

9. Confidentiality

Class Counsel, Walmart and the Claims Administrator take your confidentiality seriously. The names of the Claimants and any submissions will be kept confidential to the fullest extent allowable under the law and will not be shared with anyone at Walmart unless they have a legitimate business need to review the information. It is unlawful for Walmart to retaliate against you for your participation in this case.

10. The Lawyers Representing the Class

Class members are represented in this litigation by Class Counsel, led by Ellen Eardley of Mehri & Skalet, PLLC. Class Counsel includes:

A BETTER BALANCE
40 Worth Street, 10th Floor
New York, NY 10013
212-430-5982

NATIONAL WOMEN'S LAW CENTER
11 Dupont Cir NW, Suite 800
Washington, DC 20036
202-588-5180

MEHRI & SKALET, PLLC
1250 Connecticut Avenue, NW, Suite 300
Washington, DC 20036
202-822-5100

Unless you elect to exclude yourself from the Settlement, you will continue to be represented by Class Counsel in connection with implementation of the Settlement. Although it is not necessary, you may, if you wish to do so, retain your own attorney at your own expense.

How Will the Lawyers Be Paid?

In connection with the Settlement, the Court will award Class Counsel reasonable attorneys' fees and expenses out of the Settlement Fund. If you are a Class Member and receive a payment from the Settlement Fund, you will not owe any fees or expenses to the lawyers who have represented the Class. The attorneys' fees and expenses, as awarded by the Court, will be paid from the Settlement Fund only if and after the Settlement has been approved by the Court.

Class Counsel will file a motion for an award of attorneys' fees and expenses incurred. In its motion Class Counsel will request that the Court award them reimbursement of out-of-pocket expenses which are approximately \$275,000 plus attorneys' fees in the amount of up to 33.33% of the proposed \$14,000,000 payment by Walmart.

The attorneys have pursued these claims on behalf of Plaintiffs and the Class without receiving any compensation for their services or reimbursement of their out-of-pocket expenses. They have undertaken substantial financial risk in pursuing this matter.

11. Getting More Information

If you have further questions or are still not sure whether you are included, you can get free help at _____ or by calling or writing to Class Counsel or the Claims Administrator in this case, at the following phone number or address:

[INSERT]
OR
Ellen Eardley
(202) 822-5100
walmartpregnancy@findjustice.com

This Notice contains only a summary of the terms of the Settlement. For further information, the Settlement Agreement (which includes the complete terms of the Settlement), the Claim Form, and other documents connected with the Settlement are available for review and/or downloading at _____. Other orders that the Court may issue from time to time regarding the administration of the Settlement also will be available at _____.

PLEASE DO NOT CALL OR CONTACT THE COURT, THE OFFICE OF THE CLERK OF COURT, OR WALMART WITH QUESTIONS REGARDING THIS NOTICE.

Dated: _____, 2019 _____

The Honorable Staci M. Yandle
United States District Court Judge
United States District Court for the
Southern District of Illinois

EXHIBIT C

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

TALISA BORDERS,)	
OTISHA WOOLBRIGHT, and)	
STACEY LEWIS,)	
On behalf of themselves and all others)	
similarly situated,	)	Civil No. 3:17-cv-0506
)	
Plaintiffs,)	
)	
v.	)	CLASS ACTION
)	
WAL-MART STORES, INC.,)	
Defendant.)	

DECLARATION OF DINA L. BAKST

Pursuant to Title 28 USC Section 1746, I, Dina L. Bakst, hereby declare and state as follows:

1. I am over the age of eighteen years. I have personal knowledge of the facts set forth herein, and am competent to testify thereto.

2. I am submitting this declaration on behalf of myself and my co-counsel in support of Plaintiffs' Motion for Preliminary Approval.

3. I am the Co-President and Co-Founder of the legal advocacy organization A Better Balance, (hereinafter "ABB") and proposed co-lead class counsel (along with Elizabeth Chen and Elizabeth Gedmark) for the Plaintiffs in this matter. We are assisted by skilled lawyers at our organization and our co-counsel at the law firm Mehri & Skalet PLLC and the non-profit organization, the National Women's Law Center.

4. A Better Balance is a national legal advocacy organization dedicated to promoting fairness in the workplace and helping employees meet the conflicting demands of work and family. Through legislative advocacy, litigation, research, and public education, A Better Balance leverages the power of the law to help workers care for themselves and their

families without risking their economic security. A Better Balance has been a leader at the local, state, and national level in advancing the rights of pregnant and breastfeeding women in the workplace.

5. The organization runs a legal clinic, which provides legal assistance and information to low-wage workers. The clinic is where we often see the discriminatory treatment of pregnant workers firsthand. Attorneys at our organization have experience representing low wage caregivers and pregnant workers in employment discrimination cases, which has led to significant policy changes.

6. In 2014, A Better Balance opened a Southern Office providing services to low-wage workers and pushing for policy change in the Southeast United States.

7. The organization has fought for and won new paid leave policies, laws fostering equal pay, important pregnancy and caregiver protections, breastfeeding accommodations, LGBTQ protections, and victories on other economic justice issues throughout the country. We are dedicated to lifting up the voices of our clients and those most directly affected by our policy work and we have a particular focus on centering gender justice.

8. I received my Juris Doctor from the University of Michigan School of Law, where I was a member of the Michigan Journal of Gender Law. I am a member of the bar of the state of New York, and am admitted to practice before the U.S. District Courts for the Southern and Western Districts of New York, as well as the U.S. Second Circuit Court of Appeals.

9. I am the Co-Founder and Co-President of A Better Balance (ABB) and have ushered A Better Balance through to several accomplishments, including passage of the New York State Women's Equality Agenda and recent passage of the New York State Paid Family Leave Act, landmark legislation which guarantees 12 weeks of paid leave when caring for an

infant or family member. In 2016, A Better Balance worked with advocates to pass a paid sick days ordinance in Cook County, Illinois, ensuring that workers can stay on the job when they or their loved ones have unexpected illnesses.

10. In 2012, my Op-Ed in *The New York Times* – “Pregnant and Pushed Out of Job” – inspired the introduction of the federal Pregnant Workers Fairness Act, which was reintroduced in the House of Representatives on May 14, 2019. It also inspired the New York City Pregnant Workers Fairness Act and a wave of similar state and local laws, including one in Illinois, which we worked on closely with local advocates.

11. In 2013, I, along with my colleagues at ABB and our proposed class co-counsel, the National Women’s Law Center, co-authored a groundbreaking report titled, “It Shouldn’t Be A Heavy Lift: Fair Treatment for Pregnant Workers.” This report chronicled the challenges that pregnant employees face in seeking workplace pregnancy accommodations, laid out the legal landscape for pregnant workers and outlined recommendations for federal agency guidance on pregnancy accommodations, as well as providing federal and state policy recommendations and steps employers should take to adopt fair accommodation policies for pregnant workers.

12. In the wake of the publication of this 2013 report, I, along with my colleagues at ABB and our proposed class co-counsel, the National Women’s Law Center, presented on the topic of pregnancy accommodations and the current state of the law to the Women’s Bureau of the U.S. Department of Labor. Our advocacy on the topic led the Women’s Bureau to provide new information on its website on pregnancy accommodations.

13. More recently, I, along with my colleagues at ABB authored an innovative report entitled “Long Overdue – It Is Time for the Federal Pregnant Workers Fairness Act.” This report examines how pregnant workers seeking accommodations have fared under the new standards

set in *Young v. UPS*, does a deep dive into how states across the country have been passing accommodation laws through bipartisan efforts, and offers federal policy recommendations.

14. Over the past seven years, ABB has been a leader in supporting state-level advocacy on pregnancy accommodation laws. We have helped draft and contributed to passage of such laws across the country; over half of all states now have laws on the books. During legislative sessions we are regularly called on to testify as experts in committee, and once a bill is passed, we work to ensure that workers learn about their rights through public education campaigns and our direct services legal clinic.

15. Through our legal clinic, ABB also engages in representation of pregnant workers and litigation on their behalf, working to enforce the laws that we have helped pass. Our work successfully enforcing pregnancy discrimination laws through representation of low-wage pregnant workers has been featured in numerous news outlets.

16. ABB also coordinates and files amicus briefs to weigh in with our expertise on pregnancy discrimination matters. For example, in *Young v. United Parcel Serv., Inc.*, 135 S. Ct. 1338 (2015), ABB co-authored an amicus brief to the Supreme Court joined by women's rights and workers' rights organizations, challenging UPS's refusal to accommodate the medical needs of a pregnant worker. The *Young* decision established the legal framework relied in part by the plaintiffs in this case. More recently, ABB co-authored an amicus brief in *Durham v. Rural/Metro Corporation*, No. 18-14687 (11th Cir. Feb. 8, 2019), challenging an Alabama emergency services provider's refusal to accommodate the medical needs of a pregnant worker and the District Court's application of the *Young* standard.

17. My colleagues and I are often called upon to join panels and presentations to speak as experts on pregnancy discrimination issues. A non-exhaustive list of these

presentations includes: presenting on a webinar for retail workers across the country on their rights under the PDA; coordinating and presenting a webinar for state lawmakers on state-level pregnancy accommodations bills; presenting at the EEOC's EXCEL conference on state laws regarding pregnancy accommodations; coordinating, moderating, and presenting on the state of pregnancy discrimination law 40 years after the passage of the Pregnancy Discrimination Act for the New York City Bar Association; presenting on rights for pregnant workers as human rights at the American Constitution Society's National Convention. Further, we draft and distribute widely-used educational materials to inform workers of their rights and policymakers about the state of pregnancy discrimination law.

18. In 2015, I was awarded the Edith I. Spivack Award, named for the woman who was a pioneering lawyer and role model for generations of women, for her work championing women's rights. I am also co-author of *Babygate: How to Survive Pregnancy and Parenting in the American Workplace*, a groundbreaking national know your rights book for expecting and new parents covering everything from pregnancy discrimination, leave and breastfeeding rights, and workplace flexibility.

19. Prior to co-founding A Better Balance, I was an attorney with the NOW Legal Defense & Education Fund (now Legal Momentum) where I pursued litigation and public policy advocacy on a wide range of women's issues including economic justice, child care and reproductive rights. I also served as a labor/employment associate with Kaye, Scholer LLP. In addition to leading A Better Balance, I am a Board Member of Congregation Rodeph Sholom. I also serve on the Steering Committee of Governor Cuomo's New York State Council on Women and Girls.

20. Elizabeth Chen joined ABB in 2018. Since that time, she has used litigation and direct services to bring relief to workers, both on systemic and individual levels. Her work involves managing ABB's strategic pregnancy and caregiver discrimination litigation as well as our legal clinic, which provides legal information and direct services to hundreds of callers every year. Prior to joining ABB, Ms. Chen was a senior associate at a plaintiff-side law firm, where she litigated employment discrimination cases, including pregnancy discrimination claims against some of the nation's largest employers, as well as wage and hour and civil rights class actions. She also previously clerked for the Honorable William Joseph Haynes of the U.S. District Court for the Middle District of Tennessee. She began her career as a Reproductive Justice Fellow at the Center for American Progress, advocating for the rights of individuals to choose to parent, not to parent, and also to exercise autonomy over parenting the children they have. Ms. Chen has published law review articles on the intersection of criminal justice and reproductive justice, as well as sex stereotyping. In addition to her work with ABB, Ms. Chen volunteers with Open Hands Legal Services, a direct services organization that partners with service providers to offer free legal services on location to low-income individuals.

21. Elizabeth Gedmark joined ABB in 2011. Since 2014, when the Southern Office, based in Nashville, TN, was launched, Ms. Gedmark has leveraged the power of the law to help families in the South suffering from discrimination at work and to advance more family-friendly laws and policies. Ms. Gedmark is a co-author of the book, *Babygate: How to Survive Pregnancy and Parenting in the Workplace*. She is also the author of an article published in the Clearinghouse Review, "Using Pregnancy Discrimination Claims to Fight Poverty." Ms. Gedmark has served on the New York City Bar Sex and Law Committee and IWPR's Status of Women in the South Advisory Committee, and is currently serving on the Nashville Mayor's

Council on Gender Equity. Ms. Gedmark is often called upon to testify before state legislatures on pregnancy accommodation and other bills. In 2019, for example, she has already been called upon to testify three times in person. Ms. Gedmark serves on the board of a local non-profit childcare center in Nashville, TN.

22. The organization's resume is available at <https://www.abetterbalance.org/about/>, and full biographies for attorneys are also located on our site at <https://www.abetterbalance.org/about/our-staff/>.


23. We at ABB have spoken to hundreds of Walmart workers over the years about their experiences working at the retail giant. A large percentage of these individuals have been pregnant workers who were seeking or had sought accommodations, but had them denied.

24. Taking into account the risks of continued litigation as compared to the relief granted by the proposed settlement, I believe that this settlement is fair, reasonable, and adequate. It further represents an extremely favorable result to the class.

25. Under this proposed settlement, the notice program uses a multi-pronged approach tailored to best reach class members who work in low wage positions, and often move and change their contact information. It is well designed to give notice of the Settlement to the Class, and provides easy-to-follow guidance on how to submit claims.

26. Furthermore, class members are likely to receive their full back pay, as well as some amount of compensatory and/or consequential damages, which would be substantial in a case where there are so many estimated class members.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 15th day of October, 2019, in the State of New York.



Dina L. Bakst

EXHIBIT D

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

BORDERS et al,)	
On behalf of themselves and all others)	
similarly situated,	)	Civil No. 3:17-cv-0506
)	
Plaintiffs,)	
)	
v.	)	CLASS ACTION
)	
WAL-MART INC.,)	
Defendant.)	

DECLARATION OF EMILY MARTIN

Pursuant to Title 28 USC Section 1746, I, Emily Martin, hereby declare and state as follows:

1. I am over the age of eighteen years. I have personal knowledge of the facts set forth herein and am competent to testify thereto.

2. I am submitting this declaration on behalf of myself and my co-counsel in support of Plaintiffs’ Motion for Preliminary Approval.

3. I am Vice President for Education and Workplace Justice at the National Women's Law Center (hereinafter “NWLC” or “the Center”) and am proposed co-lead class counsel with other skilled attorneys and subject matter experts at NWLC. We are working alongside our trusted co-counsel at the firm Mehri & Skalet, PLLC and the non-profit organization A Better Balance.

4. NWLC was founded in 1972. We engage in legal and policy advocacy on behalf of women and girls across the country on issues of workplace justice, reproductive rights, health, education, and income security, with a particular focus on the needs of women of color and women in low-wage jobs. Pregnancy discrimination is a core focus of our workplace justice work.

5. Since its founding, the Center has played a leadership role in ensuring that pregnant workers are free from discrimination at work, including playing a lead role in advocacy to pass the Pregnancy Discrimination Act (“PDA”) in 1978.

6. In 2012, NWLC, and I personally, played a leading role in drafting the Pregnant Workers Fairness Act (“PWFA”), a federal bill that would ensure that all employers provide reasonable accommodations to address limitations arising out of pregnancy. For the last seven years we have led federal advocacy to pass this bipartisan bill to ensure that pregnant workers can gain the accommodations they need in the workplace to work safely while pregnant. These efforts consist of dozens of meetings with legislative staff, including providing technical assistance in drafting and negotiations around bill language and organizing briefings for Congressional staff, as well as acting as subject matter experts responding to requests for information and guidance from House and Senate congressional offices and committees.

7. In 2013, I, along with my colleagues at NWLC and our proposed class co-counsel, A Better Balance, co-authored a groundbreaking report titled, “It Shouldn’t Be A Heavy Lift: Fair Treatment for Pregnant Workers.” *available at* <https://nwlc.org/resources/it-shouldnt-be-heavy-lift-fair-treatment-pregnant-workers/>. This report chronicled the challenges that pregnant employees face in seeking workplace pregnancy accommodations, laid out the legal landscape for pregnant workers, and outlined recommendations for federal agency guidance on pregnancy accommodations, as well as provided federal and state policy recommendations and measures employers should take to adopt fair accommodation policies for pregnant workers.

8. In the wake of the publication of this 2013 report, I, along with my colleagues at the National Women's Law Center and our proposed class co-counsel, A Better Balance,

presented on the topic of pregnancy accommodations and the current state of the law to the Women's Bureau of the U.S. Department of Labor. Our advocacy on the topic led the Women's Bureau to provide new information on its website on pregnancy accommodations.

9. Beginning in 2012, NWLC, and I personally, worked closely with the Equal Employment Opportunity Commission ("EEOC") in the creation of updated enforcement guidance addressing pregnancy discrimination, which was published in 2014 and updated in 2015. I provided invited oral testimony and multiple rounds of written testimony to the EEOC in 2012 addressing pregnancy accommodations under Title VII, which informed the guidance the agency ultimately provided on the topic. My colleagues and I at NWLC also similarly provided detailed comments and other input addressing pregnancy discrimination and pregnancy accommodations to the Office of Federal Contract and Compliance Programs of the Department of Labor, which informed the updated sex discrimination regulations applicable to federal contractors issued by the Department of Labor in 2016.

10. In addition to our federal advocacy, NWLC has been a leader in supporting state-level efforts to improve protections for pregnant workers across the country. We have worked with legislators and advocates providing research, drafting, and technical assistance and campaign support in jurisdictions including Connecticut, Delaware, the District of Columbia, Illinois, Maryland, Minnesota, Nebraska, New Jersey, North Dakota, Oregon, South Carolina, Vermont, Washington, and West Virginia, among others. During state legislative sessions, we are regularly called on to testify as experts in committee, and once a bill is passed, we often provide feedback and guidance as needed in establishing regulations and other enforcement efforts.

11. NWLC also engages in representation of pregnant workers and supports litigation on their behalf by filing amicus briefs to weigh in with our expertise on pregnancy discrimination matters. For example, in *Young v. United Parcel Serv., Inc.*, 135 S. Ct. 1338 (2015), NWLC authored an amicus brief to the Supreme Court joined by 123 members of Congress, in support of Peggy Young’s challenge to UPS’s refusal to accommodate her medical needs during pregnancy, and played a coordinating role in the larger amicus effort in support of Peggy Young. The Young case established a legal standard that plaintiffs have relied on in part in this case.

12. My colleagues and I in the Workplace Justice team at NWLC are often called upon to join panels and presentations to speak as experts on pregnancy discrimination issues. Examples of such presentations in the last five years include: presenting on a webinar for retail workers across the country on their rights under the PDA, facilitating a “know-your-rights” training at a summit for Walmart workers in Illinois focused on pregnancy discrimination, coordinating and presenting a webinar for state lawmakers on state-level pregnancy accommodations bills, presenting at the Metropolitan Washington Employment Lawyers Association conference on the state of law regarding pregnancy discrimination and pregnancy accommodations post-*Young v. UPS*, presenting on an American Bar Association webinar addressing pregnancy discrimination, and presenting on a training webinar for legal services attorneys on pregnancy accommodations law.

13. NWLC also drafts and distributes widely-used educational materials to inform both policymakers and the public about the state of pregnancy discrimination law and related research. Most recently, in August 2019, we published a factsheet using data from the 2017 American Community Survey (ACS) 1- year estimates using IPUMSUSA and the U.S.

Department of Labor (DOL) O*NET OnLine Database to provide a landscape of where pregnant women work and what physical demands they face on the job. *See* Morgan Harwood & Sarah David Heydemann, NAT'L WOMEN'S LAW CTR, *By the Numbers: Where Do Pregnant Women Work?* (Aug. 12, 2019), <https://nwlc.org/resources/by-the-numbers-where-do-pregnant-women-work/>. This analysis was featured in an article in *The Nation* entitled, "The American Workplace Still Won't Accommodate Pregnant Workers." *See* Bryce Covert, *The American Workplace Still Won't Accommodate Pregnant Workers*, THE NATION (Aug. 12, 2019), <https://www.thenation.com/article/pregnant-workers-discrimination-workplace-low-wage/>.

14. In addition to our Center-wide subject matter expertise, my colleague Sunu Chandy and I have significant individual expertise in pregnancy discrimination and Title VII litigation, including in class cases.

15. I joined NWLC in 2009 and am a recognized national expert on pregnancy discrimination and accommodations law. I have been widely quoted in the media on issues relating to pregnancy discrimination and pregnancy accommodation, including in appearances on MSNBC and NPR, as well as in *The New York Times*, the *Washington Post*, the *Los Angeles Times*, *Fortune*, *ProPublica*, *Bloomberg*, *Cosmopolitan*, and *Politico*, to name a few examples. I lead NWLC's pregnancy discrimination work, including its federal and state advocacy and its litigation efforts.

16. Prior to joining NWLC, I served first as staff attorney and then as Deputy Director of the Women's Rights Project at the American Civil Liberties Union, from 2001 to 2009, where I spearheaded litigation, policy, and public education initiatives to advance the rights of women and girls, with a particular emphasis on the needs of low-income women and women of color. I also served as a law clerk for Senior Judge Wilfred Feinberg of the U.S.

Court of Appeals for the Second Circuit and Judge T.S. Ellis, III, of the Eastern District of Virginia.

17. I have experience representing women in individual and class sex discrimination cases. For example, I was lead counsel in *A.N.A., et al. v. Breckinridge County Board of Education*, Civil Action No. 3:08-cv-00004-CRS, a class action challenging sex segregation in a public middle school in Kentucky filed in U.S. District Court for the Western District of Kentucky. I also served on the team of attorneys for plaintiffs in *Lochren v. Cty. of Suffolk*, No. CV01-3925 ARL, 2010 WL 1207418 (E.D.N.Y. Mar. 23, 2010), a case in U.S. District Court in the Eastern District of New York that successfully challenged a Suffolk County Police Department policy excluding pregnant police officers from light duty.

18. My colleague at NWLC and another attorney on this matter, Sunu Chandy, joined the Center as its Legal Director in August 2017. She currently oversees Center-wide litigation efforts, including amicus briefs.

19. Before joining NWLC, she worked primarily as a civil rights attorney in various capacities for the past 20 years. Immediately prior to joining the Center, Ms. Chandy served as the Deputy Director for the Civil Rights Division with the U.S. Department of Health and Human Services overseeing a team of about 20 individuals, and before that she served as the General Counsel of the District of Columbia Office of Human Rights (OHR). At OHR she and her team oversaw agency decisions following investigations of discrimination in employment, education, housing and public accommodation matters.

20. From 1999 to 2014, Ms. Chandy served as a federal attorney with the EEOC in its New York district office, where she litigated class civil rights employment matters including on behalf of employees discriminated against based on sex, race, national origin, disability, age,

and religion. Ms. Chandy has also served as a legal consultant to the Ms. Foundation for Women and started her legal career representing unions and workers at a union-side labor law firm.

21. In several of the above-mentioned roles Ms. Chandy worked to enforce federal and local laws that prohibit sex discrimination, including on the basis of pregnancy. Her work in this area spanning the last 20 years has included supervising EEOC investigators on matters of pregnancy decisions, litigating small and large cases involving pregnancy discrimination, and overseeing investigations and draft resolutions of agency findings by the District of Columbia Office of Human Rights in matters of pregnancy discrimination.

22. For example, in *EEOC v. Princeton HealthCare System*, Civil Action No.:3:10-cv-04126 in U.S. District Court for the District of New Jersey, Ms. Chandy was on the team of attorneys that secured policy changes and financial relief of \$1.35 million in a large matter of disability related discrimination that also included women who were pregnant and not provided leave as a reasonable accommodation. The resolution of the case ensured that, in line with the law, the Defendant was required to engage in an interactive process with covered employees including employees with a disability related to pregnancy, when deciding how much leave is needed as an accommodation.

23. While at EEOC, Ms. Chandy was lead counsel in dozens of class cases, including on cases challenging sex harassment, racial harassment, age discrimination, religious discrimination, national origin-based discrimination, and all other areas of federal civil rights workplace protections. She was also on the team of attorneys in multiple cases challenging systemic workplace discrimination in a host of sectors, including class counsel for employment discrimination class actions, such as settling a \$54 million settlement in a sex discrimination case on behalf of a class of female Morgan Stanley officers and women eligible for officer

promotion in Morgan Stanley's Institutional Equity Division, and a \$2.5 million settlement in a sexual harassment and retaliation lawsuit on behalf of 89 female employees of the world's largest Burger King franchise, Carrols Corporation.

24. An additional attorney on this matter, Sarah David Heydemann, joined the National Women's Law Center as Legal Fellow for Education and Workplace Justice in September 2017. She was promoted to Senior Counsel for Education and Workplace Justice in July 2019. In her role as Legal Fellow and now as Senior Counsel, she is engaged in NWLC's federal advocacy on the Pregnant Workers Fairness Act (PWFA), corresponding with House and Senate offices on substantive legal questions related to pregnancy accommodations and creating "know-your-rights" documents, webinar presentations and other educational materials on pregnancy discrimination. She also assists in NWLC's state-level PWFA work, drafting testimony for state hearings and providing technical assistance to lawmakers. Before joining NWLC, Ms. Heydemann practiced union-side labor and employment law at a firm representing unions and individual workers in litigation in state and federal court as well as in administrative hearings.

25. I have been engaged with the matter at hand since its inception in 2014. Weighing the parties' extensive litigation efforts as well as the potential for the litigation to continue for years to come, with the interests of our clients in coming to a timely and satisfactory resolution, I believe this proposed settlement represents an excellent outcome for the classes and easily meets the "fair, reasonable, and adequate" legal standard required for Court approval.

26. We have carefully crafted the claim form to reach the maximum number of potential class members through several means of communication, keeping in mind the precarity

that low-wage workers often face in housing and access to consistent internet and phone service. Further, we have drafted the claim notice at a 9th grade readability level and made thoughtful attempts to simplify the instructions for members of the classes to submit claim forms.

27. We believe class members will attain relief in light of the component payments jointly agreed to in the proposed settlement, including back pay, compensatory damages in recognition of suffering class members incurred, and other financial damages and expenses incurred by class members such as costs for medical care.

28. All pregnant workers deserve dignified workplaces where they have access to accommodations that will allow them to continue to work safely while pregnant. We are hopeful that this proposed settlement helps to bring workplaces across the country in line with this goal.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 15th day of October, 2019, in the District of Columbia.



Emily Martin

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

BORDERS et al.,)	
On behalf of themselves and all others)	
similarly situated,	)	Civil No. 3:17-cv-0506
)	
Plaintiffs,)	
)	
v.	)	CLASS ACTION
)	
WAL-MART, INC.,)	
Defendant.)	

[PROPOSED] ORDER

Upon consideration of Plaintiffs’ Motion for Preliminary Approval of the Class Action Settlement, Conditional Certification of the Settlement Classes, Appointment of Plaintiffs as Class Representatives, Appointment of Plaintiffs’ Counsel as Class Counsel, and Approval of the Proposed Notice of Settlement and Class Action Settlement Procedure (“Motion”), Plaintiffs’ supporting memorandum, the proposed Settlement Agreement (“Settlement Agreement”), notice plan, and claim form, it is hereby ORDERED that the Motion is GRANTED.

The Court makes the following findings and rulings:

1. The parties’ proposed Settlement Agreement is within the range of fair, adequate, and reasonable, and, therefore, warrants submission to members of the Settlement Class for their consideration and a formal fairness hearing under Fed. R. Civ. P. 23(e) (“Settlement Hearing”).

2. The Settlement Classes are defined as follows:

The Accommodations Service Center (ASC) Settlement Class consists of all women employed by Walmart at stores in the 39 National Policy States who were denied requested accommodations because of pregnancy by the ASC between March 19, 2013 and March 5, 2014, inclusive.

The Non-ASC Settlement Class consists of all women employed by Walmart at stores nationwide who were denied requested accommodations because of

pregnancy by store level management and/or store-level human resource personnel between March 19, 2013 and March 5, 2014, inclusive.

These Settlement Classes are under Fed. R. Civ. P. 23 for settlement purposes only. Further, certification of the Settlement Classes is provisional pending final approval of the Settlement. If the Settlement is not approved, this certification will be null and void.

3. Talisa Borders and Otisha Woolbright are appointed the Class Representatives for the Non-ASC Settlement Class and Stacy Lewis is appointed the Class Representative for the ASC Settlement Class. Mehri & Skalet, PLLC, A Better Balance, and the National Women's Law Center are appointed Class Counsel.

4. The Notice of Proposed Settlement and Settlement Hearing Notice ("Notice) and the Reminder Notice are approved as appropriate notice to the class. The Claims Administrator shall send the Notice and Claim Form ("Claim Form") to Class Members as set forth in Section 6 of the Settlement Agreement.

5. The Notice sets forth the procedures pursuant to which members of the Settlement Class may exclude themselves ("opt out") from the monetary benefits of the Settlement Agreement. Any request for exclusion must be submitted within 60 days after Notice is mailed. Individuals may rescind their requests for exclusions as set forth in the Notice. Such rescissions must be submitted 30 days after the claim form deadline.

6. The Notice sets forth the procedures pursuant to which members of the Settlement Class may comment on or object to the terms of the Settlement Agreement. Any comment or objection must be submitted within 60 days after Notice is mailed.

7. The Notice sets forth the procedures pursuant to which members of the Settlement Class may file a claim for monetary relief. Claims must be submitted within 60 days from the mailing of the Notice.

8. The parties shall file a Motion for Final Approval of the Settlement and address any objections to the Settlement Agreement no later than _____ [no earlier than 60 days following the close of the claims, objection, and opt-out period]. Class Counsel shall also file its motion for an award of attorneys' fees and expenses on _____ [no later than 30 days prior to the claims filing deadline].

9. A hearing shall be held on _____ [no earlier than 15 days after the motion for final approval of the settlement] at _____ A.M. / P.M. in Courtroom _____, U.S. Courthouse, _____ to consider the motion for final approval of the proposed Settlement and Class Counsel's motion for an award of attorneys' fees and costs ("Settlement Hearing"). The procedures for members of the Settlement Class to object to the Settlement and to appear at the Settlement Hearing are set forth in the Notice.

10. A Qualified Settlement Fund shall be established and funded in accordance with Treasury Regulation § 1.468B-1, 26 C.F.R. § 1.468B-1. and the Settlement Agreement.

SO ORDERED.

Date: _____