

SETTLEMENT AGREEMENT

WHEREAS, Daryal Nelson, Tommy Armstrong and Howard Gurley, individually and on behalf of all persons similarly situated, parties of the first part (herein "Plaintiffs"), have filed a lawsuit against Wal-Mart Stores, Inc. and Wal-Mart Transportation LLC, parties of the second part (herein "Defendants") (Plaintiffs and Defendants collectively referred to throughout as "the Parties"); and

WHEREAS, Plaintiffs and their counsel and Defendants and their counsel have been negotiating with a view toward resolving all outstanding issues raised by the Consolidated Litigation; and

WHEREAS, Plaintiffs and Defendants have determined that a Settlement Agreement ("Agreement") is in the best interests of Plaintiffs, the class of individuals they represent and Defendants,

NOW, THEREFORE, they have entered into this Settlement Agreement in order to resolve all issues between the Parties and will submit the Settlement Agreement to the Court for its Preliminary and Final Approval.

I. INTRODUCTION

This Settlement Agreement ("Agreement") has been voluntarily entered into by the parties for the purpose of finally resolving the Consolidated Litigation between them.

This Settlement Agreement includes a joint statement of the purposes of the Agreement, a

description of the history of the Consolidated Litigation, and various substantive provisions agreed upon by the parties. As a result of negotiations supervised by a mediator, the parties have reached a voluntary agreement that is contained in this Agreement.

II. PURPOSES OF THE SETTLEMENT AGREEMENT

The parties have entered into this Settlement Agreement for the following purposes:

A. To ensure equal employment opportunity for African Americans applying for positions as over-the-road (“OTR”) truck drivers within Wal-Mart’s private fleet.

B. To provide for the implementation of recruitment, selection and personnel systems that will lead to African Americans composing a representative number of applicants in the applicant flow for the position of OTR truck driver within Wal-Mart’s private fleet.

C. To create an expedited and efficient procedure for implementing equitable and compensatory relief pursuant to the terms of this Agreement;

D. To provide finality to the resolution of all claims and defenses asserted in these civil actions; and

E. To resolve all disputes covered by this Settlement Agreement in such a way as to avoid further expensive and protracted litigation.

III. DEFINITIONS

A. “African American” means all persons having origins in any of the black racial groups of Africa.

B. “Applicant Claimant” means an Applicant Class Member who submits a Claim.

C. “Applicant Class Member” means any individual who meets the definition under Section VII.B. of this Agreement.

D. “Approval Date” means the date upon which the Court orders Final Approval of the settlement set forth in the Agreement, having determined that it is fair, adequate and reasonable.

E. “Approved Applicant Claimant” means any Applicant Class Member who submits an Approved Claim.

F. “Approved Claim” means any Claim that is approved by the Claims Administrator for payment after the deadline for audits and challenges allowable under Section XVIII.F has expired, or, if an audit or challenge is made, after all audits or challenges have been resolved in accordance with Section XVIII.F of this Agreement.

G. “Approved Claimant” means any Claimant who has submitted an Approved Claim.

H. “Approved Claimant Settlement Fund” means the amount remaining from the Settlement Fund, inclusive of any interest earned, after deduction of the following expenses and costs: Notice and Administration Costs, Class Counsel fees and costs, and Class Representatives’ enhancements.

I. “Approved Deterred Claimant” means any Deterred Class Member who submits an Approved Claim.

J. “Best Efforts” mean the good faith and reasonable steps taken to achieve compliance with all the specific objectives to which the Best Efforts are directed.

K. “Claim” means any Claim submitted by way of a Claim Form.

L. “Claim Form A” and “Claim Form B” mean the Claim Forms substantially in the form of the documents attached hereto as Exhibit 1 and 2, which have been agreed to by the Parties subject to approval by the Settlement Court as the two methods by which Claimants may submit Claims. Claim Form A and Claim Form B shall be referred to collectively as the “**Claim Forms.**” Each Claim Form shall include, or be accompanied by, a Tax Declaration election to

be filled out by each Claimant. Only those Class Members who submit one or the other of the Claim Forms are eligible to recover a share of the Settlement proceeds.

M. "Claimant" means any Class Member who submits a Claim.

N. "Claims Administrator" means the entity agreed to by the Parties subject to Court approval, which will perform the duties of, among other things: (i) mailing the Notice and Claim Forms (and accompanying Tax Declarations), to Class Members; (ii) tracking returned Claim Forms (and accompanying Tax Declarations) and Exclusion Letters; (iii) notifying the Parties of determinations regarding submitted Claim Forms and Exclusion Letters consistent with this Agreement; (iv) calculating the amounts due to each Claimant who submits an approved Claim; (v) issuing the required Tax Declarations to Claimants; and (vi) with the approval of Wal-Mart and Class Counsel, selecting, engaging, supervising, compensating, removing, and replacing the Trustee of the QSF.

O. "Class Counsel" means all counsel of record on behalf of Plaintiffs:

John W. Walker
Morgan E. Welch
Joseph Henry ("Hank") Bates III

P. "Class Member" means any individual who meets the definition under Section VII.B.1 and 2.

Q. "Class Representatives" or "Plaintiffs" mean Daryal T. Nelson, Tommy Armstrong and Howard Gurley.

R. "Consolidated Litigation" means the consolidated lawsuit filed by Daryal T. Nelson and Tommy Armstrong, 2:04CV171WRW, in the United States District Court for the Eastern District of Arkansas.

S. "Court" means the United States District Court for the Eastern District of Arkansas.

T. "Deterred Claimant" means any Deterred Class Member who submits a Claim.

U. “Deterred Class Member” means any individual who meets the definition in Section VII.B.2 of this Agreement.

V. “Exclusion Letter” means the letter a Class Member must deliver to the Claims Administrator in order to “opt-out” of the Class and to avoid being bound to the terms of the Settlement Agreement, which provides both injunctive and monetary relief. Upon delivering a valid and timely Exclusion Letter, an individual will no longer be considered a Class Member, part of the Settlement Class, or subject to the Settlement Agreement.

W. “Fairness Hearing” means the proceedings to be held before the Court to determine whether this Settlement Agreement should be approved as fair, adequate and reasonable; whether the Judgment should be entered; and whether the application of the Class Representatives and Class Counsel for payment of Class Counsel Fees and Expenses should be approved.

X. “Final Approval” means the entry of this Agreement on the Approval Date by the United States District Court for the Eastern District of Arkansas, and either: (1) the expiration of the time for filing of a direct appeal from the Court’s approval of the Agreement without the filing of a notice of appeal, or (2) if a timely direct appeal is filed, the final resolution of the appeal (including any requests for rehearing and/or petitions for a writ of certiorari), resulting in final judicial approval of the Settlement Agreement.

Y. “Initial Application Date” means the date that an Applicant Claimant first submitted, on or after June 22, 2001, an application for an OTR truck driver position. Unless an Applicant Claimant is able to establish conclusively through written evidence that Wal-Mart’s record for Initial Application Date is not correct, the Initial Application Date shall be established by Wal-Mart’s record.

Z. “Initial Deterrence Date” means the date that a Deterred Claimant was first deterred, on or after September 22, 2001, from applying for an OTR truck driver position.

AA. “Minimum Eligibility Requirements” mean the minimum eligibility requirements established and published by Wal-Mart in order to be considered for a position as an over-the-road (OTR) truck driver in Wal-Mart’s private fleet, and that are in effect at the time benchmarks, as specified in Section XIV, are established and placements opportunities, as specified in Section XV, are provided.

BB. “Minimum Qualifications” mean the current (as of the date this Agreement is executed) minimum eligibility requirements established and published by Wal-Mart in order to be considered for a position as an over-the-road (OTR) truck driver in Wal-Mart’s private fleet.

CC. “Notice” or “Notice of Settlement” means the notices substantially in the form of the notices attached hereto as Exhibits 3 and 4, which have been agreed to by the Parties subject to Court approval and which the Claims Administrator will mail to each Class Member or cause to be published explaining the terms of the Settlement and the Claims, the exclusion and objection processes, and the date of the Fairness Hearing.

DD. “Notice and Administration Costs” mean the costs and fees of the Claims Administrator to provide notice as described in Section XVII.E, to administer the Settlement as described in Sections X through XVII, and to establish and administer the QSF, including the costs and fees of the Trustee of the QSF, as described in Section XIX.

EE. “Opening” or “Open Position” means a vacancy in an OTR truck driver position that is to be filled by hiring external to Wal-Mart’s existing OTR truck driver workforce.

FF. “Parties” means the Class Representatives, the Class Members, and Wal-Mart.

GG. “Preliminary Approval Date” means the date upon which the Court enters an Order

preliminarily approving this Agreement, pending Notice to the Class of the terms of the Settlement Agreement, the right to opt-out of the Class and the right to submit objections to the Agreement, and a hearing on the fairness of the Settlement Agreement.

HH. "Preliminary Approval of Settlement" means proceedings before the Court for the purpose of jointly requesting an order preliminarily approving (1) this Settlement Agreement, (2) certification of the Settlement Class and (3) Notice of Settlement and the Plan of Notice. Class Counsel will also request that the Court appoint a Claims Administrator agreed to by the parties to oversee the management of the Settlement Funds and the implementation of the Settlement. The hearing for Preliminary Approval of Settlement and appointment of a Claims Administrator is currently scheduled for February 25, 2009 at 9:00 a.m. The Order preliminarily approving this Settlement Agreement, shall be substantially in the form attached hereto as Exhibit 5.

II. "Qualified Settlement Fund" or "QSF" means the Qualified Settlement Fund to be set up in accordance with Section XIX of this agreement. All payments from the Settlement Fund, including distribution checks to Approved Claimants and the Class Counsel fees and expenses as approved by the Court shall be made through the QSF.

JJ. "Release" means the release of claims set forth in Section VIII of the Agreement.

KK. "Settlement Class" means those persons described in Section VII.B.1 and 2 of the Agreement.

LL. "Settlement Class Members" mean each and every person described in Section VII.B.1 and 2 of the Agreement, who does not exercise his or her right to opt out of the Settlement Class pursuant to Section XVII.F.2.

MM. "Settlement Fund" means \$17,500,000 to be paid by Wal-Mart pursuant to this Settlement.

NN. "Tax Declaration" means a Form W-4 or such other analogous state or federal tax declaration as the Claims Administrator may reasonably require of to Class Members in accordance with Section XIX.E.

OO. "Term of the Agreement," "Period of the Agreement" or "Duration of the Agreement" is the period provided under Section VI of the Agreement.

PP. "Transportation Office (TO)" is any one of the transportation offices located throughout the continental United States that have been established by Wal-Mart to provide transportation services for the delivery of goods and merchandise to Wal-Mart Stores and that engage in the hiring of OTR truck drivers.

QQ. "Wal-Mart" or the "Company" means Wal-Mart Stores, Inc. and/or Wal-Mart Transportation LLC, as well as its parents, subsidiaries, affiliates, officers, directors, agents, management, successors and assigns and those in active concert or participation with them, or any of them.

IV. LITIGATION BACKGROUND

On September 22, 2004, Daryal T. Nelson, a rejected applicant for an OTR truck driver position at Wal-Mart, filed a class action complaint in this Court against Wal-Mart, which he amended on September 24, 2004, alleging that Wal-Mart discriminates against African Americans when hiring for OTR truck driver positions. Nelson's lawsuit asserted claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, and 42 U.S.C. § 1981.

On June 16, 2005, Tommy Armstrong, a former Wal-Mart Distribution Center employee and a rejected applicant for an OTR truck driver position at Wal-Mart, filed his class action complaint alleging that Wal-Mart discriminates against African Americans when hiring for OTR truck driver positions. Like Nelson, Armstrong's lawsuit asserted claims against Wal-Mart

pursuant to 42 U.S.C. § 1981 and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*

On June 27, 2005, this Court consolidated the Nelson and Armstrong complaints. On August 11, 2005, Armstrong and Nelson filed a Consolidated, Amended and Supplemental Class Action Complaint under Title VII and § 1981, alleging that Wal-Mart discriminates on the basis of race against African Americans seeking positions as OTR truck drivers. In their Consolidated, Amended and Supplemental Class Action Complaint, Plaintiffs claimed relief under theories of disparate treatment and disparate impact, and sought back pay, front pay, injunctive relief, punitive damages, and attorneys' fees.

On March 13, 2006, Plaintiffs filed their motion for class certification. On May 16, 2007, this Court partially granted and partially denied Plaintiffs' motion for class certification. In granting in part Plaintiffs' motion, the Court certified a class action, under Federal Rule of Civil Procedure 23(b)(2) for purposes of determining class-wide liability and obtaining declaratory and equitable relief. The Court's certified class, consisting of two sub-classes, included:

- a. African American persons who reside in the continental United States of America who have applied for employment as over-the-road truck drivers at Wal-Mart since September 22, 2001, and who have not been hired; and
- b. African American persons who reside in the continental United States of America who were deterred or thwarted from applying for positions as over-the-road truck drivers at Wal-Mart due to Wal-Mart's challenged policies and practices.

The Court denied Plaintiffs' request for certification of a class under Rule 23(b)(3) on the issue of punitive and compensatory damages, holding that "[a]ny class member wishing to bring an individual suit for punitive or compensatory damages after the conclusion of this litigation

will be free to do so without worrying about the risk of res judicata.”

After May 2007, the parties conducted discovery on the merits of the class claims. The discovery was broad, extensive, and thorough. The discovery included requests for production of documents, interrogatories and depositions of both lay and expert witnesses. Over two million pages of documents were produced. In addition, Wal-Mart produced computerized payroll data for all OTR truck drivers from 1998 through 2008 and 238 computer-readable logs of applications for OTR truck driver positions (including, in aggregate, 253,970 entries). With regard to depositions, over 50 persons were deposed including the Class Representatives and approximately 25 class members.

In July and September 2008, the parties served and filed expert reports and rebuttal expert reports. Plaintiffs submitted expert reports from Dr. Martin Shapiro, a statistician; Dr. Marc Bendick, a labor economist; and Dr. William Bielby, a sociologist. Wal-Mart submitted expert reports from Dr. Robert Topel, a labor economist; Dr. James Peoples, an economics professor at the University of Wisconsin-Milwaukee with a background in the trucking industry; Dr. John Ozment, a transportation logistics professor at the University of Arkansas; and Dr. Philip Tetlock, a sociologist.

After the discovery cutoff, Wal-Mart filed four motions: (1) a motion for summary judgment on the class claims; (2) a motion for summary judgment on the individual claims of the Class Representatives; (3) a motion for decertification; and (4) a motion to strike the testimony of Drs. Shapiro and Bendick. On January 14, 2009, the Court entered orders denying Wal-Mart's motions for summary judgment on the class claims, decertification, and to strike the testimony of the experts. On January 27, 2009, the Court entered an order denying without prejudice Wal-Mart's motion for summary judgment on the individual claims.

The trial was scheduled to begin March 16, 2009, and was scheduled to last three weeks.

On December 16, 22, and 23, 2008 and January 13, 14, 21, 22 and 29, 2009, the parties attended settlement and mediation sessions in an attempt to resolve the Consolidated Litigation. These settlement negotiations have culminated in this Settlement Agreement.

V. JURISDICTION

The Court has jurisdiction over the parties and subject matter of the civil action. This Court shall retain jurisdiction of this matter to enforce the terms of this Agreement.

VI. EFFECTIVE DATES AND DURATION OF THE AGREEMENT

A. Unless provided otherwise, the provisions in this Agreement are effective immediately upon the Final Approval.

B. The programmatic provisions of this Agreement contained in Sections X through XVI shall remain in effect for a period of four years (48 months), measured from the later of Final Approval or the date Wal-Mart implements the process for establishing TO hiring benchmarks set forth in Section XIV(B)(4), unless extended by the express written agreement of the Parties.

VII. SETTLEMENT CLASS

A. Certification of Settlement Class.

1. Class Counsel shall request that the District Court amend its prior orders regarding class certification in this Consolidated Litigation to certify the classes pursuant to Rule 23(b)(3), and to add in certain claims that were not previously certified, solely for the purpose of implementing the terms of this Settlement. The form of amended class certification order shall, subject to Court approval, expressly state that the Parties and Class Counsel agree that certification of the Settlement Class is a conditional certification for settlement purposes only,

and that Wal-Mart retains its right to object to certification of this Consolidated Litigation, or any other class action, under FRCP 23 or any other applicable rule, statute, law, or provision.

2. The Parties and Class Counsel agree that, if approved, certification of the Settlement Class is a conditional certification for settlement purposes only, and if for any reason the District Court does not grant Final Approval of the Settlement, or if Final Approval is not given following the appeal of any order by the District Court, the certification of the Settlement Class for settlement purposes shall be deemed null and void without further action by the Court or any of the Parties, and each Party shall retain all of their respective rights as they existed prior to execution of this Settlement Agreement, and neither this Settlement Agreement, nor any of its accompanying exhibits or any orders entered by the Court in connection with this Settlement Agreement, shall be admissible or used for any purpose in this Consolidated Litigation. Specifically, the Parties and Class Counsel agree that in the event that Final Approval is not obtained, nothing in this Agreement shall be deemed to waive Wal-Mart's objections and defenses to class certification, including but not limited to predominance, manageability, liability, or entitlement to monetary or equitable relief, or any other issue in the Consolidated Litigation or any other litigation, and this Agreement shall then be deemed null and void and not admissible in any court regarding the propriety of class certification, liability, or entitlement to monetary or equitable relief, or any other issue in the Consolidated Litigation or any other litigation. Further, in the event that Final Approval is not obtained, the Court's prior Rule 23(b)(2) order for class certification shall be reinstated and neither Party shall have waived any claims, objections, or defenses that existed in connection with the Consolidated Litigation.

3. The Parties and Class Counsel agree that, if approved, certification of the Settlement Class for settlement purposes is in no way an admission by Wal-Mart that class

certification is proper in this Consolidated Litigation, or any other litigation, against Wal-Mart. Moreover, Wal-Mart continues to assert that this Consolidated Litigation fails to meet the prerequisites necessary for class or collective action treatment under applicable law, especially with respect to predominance and manageability because the need to determine individualized issues and to satisfy due-process requirements make the case unmanageable. The Parties and Class Counsel further agree that, other than to effectuate the Settlement of this Consolidated Litigation in this jurisdiction, the certification of the Settlement Class for settlement purposes and all documents related thereto, including this Agreement and all accompanying exhibits and all orders entered by the Court in connection with this Agreement, are not intended to be admissible in any judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or other proceeding, including without limitation any wage and hour litigation, or any other litigation, against Wal-Mart. The Parties and Class Counsel agree that by entering into this Settlement Agreement and establishing a Settlement Class, the issues and problems of predominance and manageability are avoided, and that by providing notice and the opportunity to opt-out, due-process requirements are satisfied.

B. The Settlement Class Consists of:

1. African American persons, residing in the continental United States of America, who, on or after June 22, 2001, applied for employment as OTR truck drivers at Wal-Mart and who were not hired or who, on or after September 22, 2001, received notification of rejection for employment as OTR truck drivers at Wal-Mart ("Applicant Class Members"); and
2. African American persons, residing in the continental United States of America, who, on or after September 22, 2001, were deterred or thwarted from applying for employment as over-the road truck drivers at Wal-Mart due to policies and practices challenged

in the Consolidated Litigation (“Deterred Class Members”).

C. The Right to Opt-Out.

Any individual, meeting the definition of Class Member, who, through a timely filed Exclusion Letter, may opt-out of the Settlement Class and the provisions of the Settlement Agreement, and, in doing so, such individual shall not be held to the terms of the release contained in the Settlement Agreement.

VIII. RELEASE OF CLAIMS IN PRIVATE ACTIONS

A. Release of Claims by Settlement Class.

Upon Final Approval of the Agreement, Wal-Mart and its employees, officers, managers, insurers, representatives, and attorneys shall be fully released and forever discharged from any and all individual and/or class-wide claims, demands, charges, complaints, rights and causes of action of any kind, known or unknown, by the Class Representatives and all members of the Settlement Class other than those who opt out of the Settlement Class (collectively hereafter “Releasers”), and by the Releasers’ estates, whether seeking monetary and/or equitable relief of any sort, arising out of any conduct prior to the Preliminary Approval Date constituting alleged race discrimination in the hiring process for OTR truck drivers for Wal-Mart’s private fleet (including claims of individuals who applied for employment, attempted to apply for employment, or were discouraged from applying for employment) and any terms and conditions of employment that were asserted in the Consolidated Litigation or that could have been asserted or raised in the Consolidated Litigation, whether know or unknown, on the basis of, connected with, arising out of, or related in whole or in part to any or all of the alleged acts, omissions, facts, matters, transactions, circumstances, and occurrences that were directly or indirectly alleged, asserted, described, set forth or referred to in the Consolidated Litigation, whether such

allegations were or could have been based on common law or equity, or on any statute, rule, regulation, order, or law, whether federal, state, or local, or any grounds whatsoever, including, without limitation, Title VII, 42 U.S.C. § 1981, the Arkansas Civil Rights Act, or any other federal, state, or local law prohibiting race discrimination. (The released common law and/or equitable claims include but are not limited to the following: claims of breach of express or implied contract; breach of duty; breach of the (implied) covenant of good faith and fair dealing; unfair business practices; and claims for declaratory relief; injunctive relief; punitive damages; and attorneys' fees.)

This release also includes a release of all claims for attorneys' fees and costs incurred by Class Members or by Class Counsel in connection with the Consolidated Litigation and the Settlement of the Consolidated Litigation.

Further, Releasers understand and agree that this release is a full and final general release applying to both those released claims that are currently known, anticipated, or disclosed to the Class Members and to all those released claims that are presently unknown, unanticipated, and undisclosed to any and all Class Members arising out of the alleged facts, circumstances, and occurrences underlying: (i) the claims set forth in the Consolidated Litigation; and (ii) Wal-Mart's conduct with respect to the Consolidated Litigation. In exchange for the good and valuable consideration set forth herein, the Class Members, for themselves and the Settlement Class waive any and all rights or benefits that they as individuals or the classes may now have as a result of the alleged facts, circumstances, and occurrences underlying the claims set forth in the Consolidated Litigation under the terms of Section 1542 (a) of the California Civil Code (or similar statute in effect in any other jurisdiction), which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE

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

Finally, this Release, the form of which is attached as Exhibit 6, is final and shall survive expiration of the Agreement's terms.

B. General Release of all Claims by Class Representatives.

Upon Final Approval of the Agreement, for and in consideration of the mutual promises, terms and conditions by and between Class Representatives and Wal-Mart set forth herein, the sufficiency of which consideration is expressly acknowledged, the Class Representatives do hereby fully, finally and forever release and discharge Wal-Mart and its employees, officers, managers, insurers and attorneys from any and all past and/or present claims, demands, actions, causes of action, suits, damages, liabilities, assessments, judgments, costs, losses, debts, obligations and expenses, of any and every nature whatsoever, whether or not known, that they have had, now have, or may have from the beginning of time to the Preliminary Approval Date, including without limitation those arising in any way out of the alleged facts, circumstances and occurrences underlying those allegations of violations of Title VII, § 1981, the Arkansas Civil Rights Act, and any other federal, state, or local law prohibiting race discrimination, that were asserted or that might have been asserted by or on behalf of the Class Representatives and/or Class Members against Wal-Mart in this Consolidated Litigation. This Release is final and shall survive the expiration of the Term of the Agreement. Prior to receiving any monetary relief under this Agreement, including any enhanced payment, each Class Representative will be required to execute a full and final general release of all claims against Wal-Mart, known or unknown, whether or not asserted in or related to the Consolidated Litigation, in the form attached as Exhibit 7.

C. Unknown Claims.

Class Representatives and Settlement Class Members acknowledge that they may not now know fully the number or magnitude of the claims they may have, and that they may suffer some further loss or damage in some way connected with the subject matter of the Consolidated Litigation, but which is unknown or unanticipated at this time. Class Representatives and Settlement Class Members have taken these risks and possibilities into account and accept that, nevertheless, this Settlement Agreement covers all claims arising out of or related to the subject matter of the Consolidated Litigation, which, although unknown at the time of the execution of this Settlement Agreement, may be discovered later. Class Representatives and Settlement Class Members expressly waive any right to assert hereafter that through ignorance, oversight, or error any claim was intended to be excluded from this Settlement Agreement.

D. No Bar to Future Claims.

Nothing in the Agreement shall be construed to bar any claims of the Class Representatives or Settlement Class Members that arise after the Preliminary Approval Date.

IX. NO ADMISSION OF LIABILITY

This Settlement Agreement does not constitute and shall not be deemed to be a finding or determination by the Court, or an admission by any party, regarding the merits, validity or accuracy of any of the allegations, claims or defenses asserted in the Consolidated Litigation. This Agreement represents the compromise of disputed claims that the parties recognize would require protracted and costly litigation to determine. Wal-Mart denies that it has engaged in any policy or pattern or practice of unlawful discrimination, or that it has engaged in any other unlawful conduct as alleged in the Consolidated Litigation, and Wal-Mart's entry into this Agreement is not and may not be used by any person in any proceeding as an admission or

evidence that Wal-Mart and/or its employees, managers, and/or attorneys have on any occasion engaged in discriminatory employment practices or any other unlawful conduct, such being expressly denied. Wal-Mart has voluntarily entered into this Agreement because it believes the actions it has agreed to undertake demonstrate its strong commitment to diversity and equal employment opportunity. Neither the Agreement nor any compliance reports, filings, data, or other compliance information arising out of or related to the Agreement shall be discoverable, admissible or used as evidence of liability or non-liability for unlawful discrimination in any proceeding other than one relating to the enforcement of this Agreement.

X. MONETARY RELIEF

A. Wal-Mart shall, at the times required by this Agreement, transfer into a Qualified Settlement Fund ("QSF"), as further discussed in Section XIX, the amount of \$17,500,000 for the purpose of providing individual monetary awards to Approved Claimants, payment of enhancements to Class Representatives, payment of Class Counsel's fees and litigation costs, and payment of Notice and Administration Costs. In addition, and separate from its obligation to transfer \$17,500,000 into the QSF, Wal-Mart will pay its share of employer's payroll taxes. Wal-Mart shall place at least \$500,000 of the Class Settlement Amount in the QSF within ten (10) business days of Preliminary Approval or seven (7) business days after the QSF has been established, whichever event occurs last. Wal-Mart shall retain the right to defer transferring the remaining Class Settlement Amount into the QSF until Final Approval. If Wal-Mart elects to defer payment of the remaining portion until Final Approval, Wal-Mart agrees that it will fund the remaining \$17 million of the Settlement Fund within ten (10) business days after Final Approval, plus interest at an annualized rate of .75% to be calculated on a pro-rata basis based on the number of days between the Preliminary Approval Date and the date the wire is paid into the QSF

for the benefit of the Settlement Class. If for any reason the Settlement is not approved or if Wal-Mart exercises its right to rescind the Agreement as provided in Section XVIIG, all monies paid into the QSF along with accumulated interest, which have not been expended as part of the Notice and Administration Costs, shall be returned to Wal-Mart.

B. After all payments of attorneys' fees and litigation costs for Class Counsel, payments of enhancements to the Class Representatives, and payments of Notice and Administration Costs, have been made, and the sum of these amounts has been subtracted from the \$17,500,000 that is to be paid by Wal-Mart into the QSF, the resulting amount ("Approved Claimant Settlement Fund") will be designated for payment to Approved Claimants pursuant to the allocation plan set forth in Section XXB.

C. If there are fewer than 100 Approved Claimants, a minimum of \$2,000,000 shall be subject to *cy pres*. Of the *cy pres* amount, 10% shall go to Arkansas Baptist College in Little Rock, Arkansas; 10% shall go to Philander Smith College in Little Rock, Arkansas, and 80% will go to the United Negro College Fund to fund college scholarships for African American OTR truck drivers or the dependents of African American OTR truck drivers.

D. Wal-Mart will not oppose enhancement payments to Class Representatives provided the payments do not exceed a total of \$85,000 with neither Tommy Armstrong nor Daryal Nelson receiving more than \$40,000 each and Howard Gurley receiving no more than \$5,000, and further provided that Gurley, as Class Representative of the Deterred Class Members, receiving less than Armstrong and Nelson, Class Representatives of the Applicant Class Members.

XI. PROGRAMMATIC RELIEF

A. All programmatic relief established pursuant to Sections XI through XVI of this

Agreement will be monitored by Wal-Mart's Office of Diversity. In addition to amounts deposited in the Settlement Fund, Wal-Mart shall pay to Class Counsel \$200,000 as a one time only amount for Counsel to utilize in hiring consultants to assist in analyzing the various reports and compliance with the Settlement Agreement throughout the term of the Settlement Agreement. This amount will be provided to Class Counsel within ten (10) business days after Final Approval.

B. Nothing contained in the Programmatic Relief sections of this Agreement commits or requires Wal-Mart to create new or additional OTR truck driver positions.

XII. EEO TRAINING

All programmatic relief established pursuant to Sections XI through XVI of this Agreement will be conducted and monitored by Wal-Mart's Office of Diversity. During the term of the Agreement, Wal-Mart shall provide training regarding equal employment opportunity and specific compliance with the provisions of the Agreement to the following Transportation Department employees: personnel clerks, members of screening committees, human resources managers, operations managers and general transportation managers. The training shall include the following topics: (1) compliance with the Agreement; (2) equal employment opportunity and nondiscrimination as required by Wal-Mart; (3) federal, state and Company prohibitions of unlawful discrimination in hiring, training and retaliation; and (4) other topics that will encourage and promote equal employment in recruiting and hiring of African Americans. Such training may be delivered by computer program, live "discussion" format, video format, written materials, or any combination of these or other formats tailored to be effective in communicating the material, provided, however, that such training as it occurs within the first twelve months following Final Approval shall not be provided to participants solely through written materials. Plaintiffs shall not have prior input into the content or sufficiency of the training or materials

unless requested by Defendants. However, Plaintiffs reserve the right to review, analyze and potentially challenge the sufficiency of the training or materials as insufficient to meet the goal of encouraging and promoting equal employment in recruiting and hiring of African Americans.

At Wal-Mart's discretion, the training described in this section may be held in conjunction with other Company business.

Wal-Mart shall institutionalize the terms of this Agreement by incorporating this Agreement's programmatic relief into the diversity training.

XIII. ACTIVE RECRUITING EFFORTS

A. Purpose and Aspirational Goal.

The parties agree that the purpose of the Active Recruiting Efforts, as further described herein, is to increase the proportion of available, interested and qualified African Americans in the flow of applicants for OTR truck driver positions at Wal-Mart. To that end, and for the term of this Agreement, Wal-Mart will work to maximize the percentage of available, interested and qualified African American OTR truck driver applicants in its applicant flow.

B. Diversity Recruiter.

Within two months from Final Approval, Wal-Mart will assign to an individual or individuals within the Transportation Department the responsibility for the recruitment of available, interested and qualified African American applicants for Wal-Mart's OTR truck driver position. Such person or persons will be in addition to any person currently responsible for OTR recruitment. Upon expiration of this Agreement, Wal-Mart may extinguish such responsibility if it so chooses.

C. Advertisements.

During the Term of the Agreement, whenever it is determined by Wal-Mart that there is a need to fill an Opening with outside individuals, for each such Opening, Wal-Mart shall

advertise and publicize OTR truck driver employment opportunities in a manner reasonably calculated to eliminate any deterrent effect on African American applicants and to attract African American applicants so that all available, interested, and qualified individuals have an opportunity to become a part of the flow of applicants from which the position will be filled.

D. Recruiting Events.

During the Term of the Agreement, Wal-Mart will present a presence at job fairs throughout the United States for available, interested and qualified African American OTR truck drivers, if such job fairs exist; and it will present a presence at other OTR truck driver recruiting events that are attended by African Americans.

E. Screening Committee Diversity.

As long as the driver screening committee remains a part of the hiring process for OTR truck driver positions, Wal-Mart shall establish a goal of including one ethnic or racial minority on every screening committee at each TO and shall monitor compliance with that goal through its annual audits of each TO. In addition, Wal-Mart shall incorporate such goals into the annual review of appropriate management personnel, who are assessed on whether diversity goals have been met. During the term of this Agreement, if Wal-Mart makes changes to its screening committee process, Wal-Mart will report to Class Counsel the changes to its screening committee process and how such changes are consistent with the terms and goals of this Settlement Agreement.

F. Individual Notice of Openings to Applicants.

The purpose of this section is to provide individual notice of OTR truck driver Openings to interested Approved Claimants. For the Duration of this Agreement, Wal-Mart agrees to maintain at its home office a roster of those Approved Claimants who indicate on the Claim Form they are available and interested and continue to meet Minimum Qualifications for positions as

OTR truck drivers at Wal-Mart's TOs. Except for the Openings that are to be filled under Section XV of this Agreement, as soon as it is determined that an Opening for an OTR truck driver occurs, Wal-Mart shall notify each Approved Claimant on the home office roster by email if available, otherwise by regular mail, at the address indicated on the Claim Form unless specifically changed by the Claimant thereafter. The Claimant will have twenty-one (21) days from the date of the notice to return an application to the place indicated in the notice in order to be considered for the Opening. Approval of a Claim by the Claims Administrator neither determines whether that Claimant meets Minimum Eligibility Requirements nor creates a presumption that the Claimant meets Minimum Eligibility Requirements.

G. Documentation.

Wal-Mart will ensure that it documents its recruiting efforts and its efforts to provide the individual notice of Openings as provided in Section XIII.F and that all such records are retained for review by the Office of Diversity and are available to Class Counsel. Such documentation shall include, specifically but not exclusively: 1) a description of the placement of advertisements (publication, size, time, duration, targeted audience) and 2) a description of recruiting events/job fairs attended (place, date, targeted audience).

XIV. BENCHMARKS

A. General Principles.

1. Wal-Mart shall use its Best Efforts in good faith to meet or surpass the selection benchmarks as set forth in this section. The benchmarks do not establish maximum or minimum rates for the selection of African American OTR truck drivers.

2. In attempting to meet these Benchmarks, Wal-Mart shall not be required to select persons who do not meet Minimum Eligibility Requirements or to displace any incumbent associate from his or her position. Wal-Mart shall retain the right to select the individuals it, in

its sole good faith discretion, deems best qualified to fill the positions. These Benchmarks are not quotas; rather, they are expectations designed to afford guidance in determining whether Wal-Mart is making selection decisions in such a way as to afford equal employment opportunity for African American truck drivers.

3. As further provided herein, in order to establish Benchmarks, Wal-Mart shall institute the use of voluntary self-identification on application forms to identify the race of applicants. Once an applicant has self identified, that applicant's self- identification shall remain unchanged absent a compelling reason and proof for changing it.

4. All Benchmarks shall be determined on a TO-by-TO basis. Meeting Benchmarks on a TO-by-TO basis is not conclusive of compliance with this Agreement, and all relevant factors can be used to determine compliance.

B. Establishment of Benchmarks.

1. As soon as technologically possible after the date of Final Approval, Wal-Mart will implement a process that will allow it to post Openings on its website and will allow an individual to download an OTR truck driver application from an on-line website.

2. Within twelve (12) months from the date of Final Approval, Wal-Mart will implement a process that will allow applicants for OTR truck driver positions to provide self-identifying information.

3. Within twelve (12) months from the date of Final Approval, Wal-Mart shall begin monitoring, by the use of applicant self-identification, applicant flow of African Americans for open OTR truck driver positions at each stage of the hiring process including: (a) initial application, (b) meeting of Minimum Eligibility Requirements, (c) selection for interview before a screening committee, (d) recommendation for a management interview, (e) selection for

a management interview, (f) offer, and (g) acceptance. In addition, Wal-Mart will maintain in log format the home address (including ZIP code) of all applicants as well as each applicant's response (or non-response) to the inquiry on the application as to how the applicant learned of the job opening.

4. Within twelve (12) months from the date of Final Approval, Wal-Mart will implement a process that will allow it to establish on a TO-by-TO basis hiring benchmarks for all open OTR truck driver positions based on the proportion of minimally qualified, interested and available African Americans applying for an open OTR truck driver position at a TO as compared to the total number of minimally qualified, interested and available individuals competing for the same position. Actual applicant flow information shall be used to determine the number of African American applicants meeting then existing Minimum Eligibility Requirements, as well as the number of applicants of all races meeting then existing Minimum Eligibility Requirements.

5. The Applicant Rate for OTR truck driver positions shall be the applicant flow rate of a group as measured by the applicants who meet then existing Minimum Eligibility Requirements and are available for Open Positions (those which are vacant and being filled by external applicants) at individual TOs.

6. With regard to the time tables in paragraphs B.2-4 above, Wal-Mart will proceed with all possible dispatch to accomplish the goals set forth in those paragraphs prior to the twelve (12) month deadline, recognizing that there are technological problems inherent in establishing the processes involved. The first report called for in this Settlement Agreement shall set forth Wal-Mart's progress in meeting its requirements in B.2-4.

7. Pursuant to this Settlement Agreement, Wal-Mart aspires to hire African American OTR truck drivers at each of its Transportation Offices in proportion to the Applicant

Rate as described above.

8. Pursuant to this Settlement Agreement, Wal-Mart will take steps to ensure that even though applicants will be able to self-identify their race, any racial designation is kept from those who make OTR truck driver hiring decisions at a TO, including Screening Committee members, general transportation managers, and human resources managers, other than as is required to effect other provisions of this Agreement.

9. The Parties recognize that implementation of these Benchmarks and the procedures necessary to establish Benchmarks may require changes in the present way applications are treated and hiring decisions are made, but, consistent with these objectives, Wal-Mart will make Best Efforts to achieve these objectives.

XV. PLACEMENT OPPORTUNITIES

A. Wal-Mart will provide a total of twenty-three (23) placement opportunities to Approved Applicant Claimants at the following TOs:

Palestine, TX
Coldwater, MI
Mt. Crawford, VA
Cullman, AL
Douglas, GA
Midway, TN
LaGrange, GA
Spring Valley, IL
Mt. Pleasant, IA
St. James, MO
Grantsville, UT
Plainview, TX
Ft. Pierce, FL.

A placement will be made at each of these thirteen (13) TOs; there will no more than two placements pursuant to this provision at any one TO.

B. Approved Applicant Claimants, who qualify for a placement opportunity, will be

afforded the first and second Openings that become available at each of the identified TOs (until the twenty-three placements obligations are satisfied) once all audits or challenges of Claim determinations are completed by the Claims Administer and the Claims Administrator has delivered to Wal-Mart a list of those Approved Applicant Claimants who seek placement and the Initial Application Date to be used in making placement decisions.

C. In order to qualify for one of these placement opportunities, an Approved Applicant Claimant must:

1. Meet all Minimum Eligibility Requirements existing at the time of the placement;
2. Pass all routine tests and screening processes that are part of Wal-Mart's OTR truck driver hiring process including a background check, drug screen, DOT physical, and road test;
3. File a Claim indicating that he or she is available, interested, and qualified for a placement opportunity;
4. File an updated completed application.

Additionally, an Approved Applicant Claimant's last three years of OTR truck-driving employment must be with an employer who has complied with DOT drug testing regulations.

D. An Approved Applicant Claimant may indicate on the Claim Form he/she wishes to be considered for a placement opportunity at any or all thirteen (13) TOs identified in Section XV.A.

E. If two or more Approved Applicant Claimants meeting the criteria listed above in Paragraph C indicate a desire to be considered for a placement opportunity at any of the TOs set forth, preference shall be given to the Approved Applicant Claimant with the earliest Initial

Application Date, unless there is an objective, overriding consideration to select another Approved Applicant Claimant.

F. If a placement is not filled after being offered to ten Approved Applicant Claimants pursuant to this section, Wal-Mart's obligation for offering a placement will be considered satisfied for that placement opportunity.

G. Wal-Mart retains the right to make all decisions as to whether any applicant, including applicants with preferential placement opportunities, meets Wal-Mart's then existing Minimum Eligibility Requirements.

H. Each placement decision made pursuant to this provision shall be reviewed and approved by the Senior Director of Human Resources for the Transportation Department.

XVI. REPORTING, RECORDKEEPING, AND COMPLIANCE MEETINGS

A. Documents To Be Preserved For The Duration of The Agreement.

Wal-Mart shall retain the following employment-related records for the Duration of the Agreement or as required by state or federal law, whichever is longer:

1. Applications;
2. Applicant logs; and
3. Semi-Annual and Annual Progress Reports;
4. All databases related to the above.

B. Access to Documents.

1. Class counsel shall, upon reasonable notice and within sixty (60) days of a semi-annual or annual report, be entitled to review those documents that are used or referred to by Wal-Mart to prepare progress reports, except, however, that Class Counsel shall not be entitled to review any such documents that are protected by attorney-client privilege or attorney work product doctrine.

2. All documents required to be maintained by the express terms of the Agreement, and all documents that are provided to the Class Counsel under the terms of the Agreement, are presumed to be, and shall be treated as, confidential business records. Class Counsel shall not divulge any such documents to any third party unless: (a) prior written permission has been obtained from Wal-Mart, or (b) so ordered by the Court after notice to Wal-Mart and an opportunity for Wal-Mart to object to such disclosure and be heard. Upon expiration of this Agreement, Class Counsel shall promptly return to Wal-Mart or notify Wal-Mart's counsel that it has destroyed any and all documents Wal-Mart furnished under this Agreement. This provision shall not prevent a party from filing otherwise confidential documents with the Court, provided that, either: (a) such documents are filed under seal; or (b) Class Counsel gives ten (10) days advance notice to Wal-Mart, to permit opportunity to seek a protective order sealing such documents.

C. Reporting Schedule.

Within six months of Final Approval, and at six (6) month intervals for the first twenty-four (24) months, and at twelve (12) month intervals thereafter, through the Term of the Agreement, Wal-Mart, through its Office of Diversity, shall provide progress reports to Class Counsel on Wal-Mart's compliance with the Agreement's requirements. All such progress reports shall be subject to the same confidentiality restrictions described in Section XVI.B.2 above.

D. Contents of the Progress Reports.

Wal-Mart's progress reports shall include information regarding the following:

1. Progress in achieving each of the Benchmarks described above in Section XIV at any TO at which there was a hiring event for an Opening. This report will include the actual proportion of African Americans in the applicant flow. Wal-Mart will indicate any

shortfalls in achieving Benchmarks for the preceding twelve-month period, will analyze the possible reasons for any such shortfall, and will identify plans to facilitate achievement of the Benchmark not met. In addition, if applicable, Wal-Mart will analyze possible reasons that any Benchmark was met through good faith offers only.

2. Number and proportion of African Americans extended a good faith offer or hired into an OTR truck driver position.

3. Summary of activity in implementing targeted recruitment efforts and diversity training, with copies of materials attached;

4. Summary of recruitment efforts referred to in Section XIII.

Within one month of the first progress report, representatives of Wal-Mart and Class Counsel shall confer in order to review the initial implementation of the Agreement, Wal-Mart's compliance with the requirements, and other related topics. Thereafter, representatives of Wal-Mart and Class Counsel will confer yearly or if requested by Class Counsel or Wal-Mart.

XVII. SETTLEMENT APPROVAL AND IMPLEMENTATION PROCEDURE

A. Duties of the Parties Prior to Court Approval.

On or before February 19, 2009, the Plaintiffs shall apply to the District Court for the entry of an order granting Preliminary Approval of the Settlement and Notice substantially in the form of the document attached hereto as Exhibit 5, which:

1. Preliminarily amends the District Court's prior certification orders for purposes of Settlement in accordance with Section VII.A.

2. Preliminarily approves the Settlement;

3. Schedules a fairness hearing on the question of whether the proposed settlement should finally be approved as fair, reasonable, and adequate as to the Class;

4. Approves as to form and content the proposed Notice;
5. Approves as to form and content the proposed Claim Forms;
6. Approves as to form and content the proposed opt-out Exclusion Letter;
7. Directs the publication and mailing of Notice by first class mail to the

Class Members.

B. Duties of the Parties Following Final Court Approval.

Following Final Approval by the Court of the Settlement, the Parties will submit a proposed Final Judgment and Order of Dismissal, which includes language substantially in the form of the attached hereto as Exhibit 8. The proposed Final Judgment and Order of Dismissal shall:

1. Certify the Class for Settlement purposes in accordance with FRCP 23(b)(3) and Exhibit 5 to this Agreement;
2. Approve the Class Settlement, adjudging the terms thereof to be fair, reasonable, and adequate and directing consummation of its terms and provisions;
3. Dismiss the Consolidated Litigation on the merits and with prejudice and permanently bar the named Plaintiffs, the Class Representatives, and all Class Members (other than those who timely file valid Exclusion Letters) from further prosecuting any of the released claims against Wal-Mart.
4. Retain continuing jurisdiction over: (a) implementation of this settlement and any award or distribution of the Qualified Settlement Fund, including interest earned thereon; (b) disposition of the Qualified Settlement Fund; (d) all parties hereto for the purposes of enforcing this Agreement. Wal-Mart shall cooperate with Class Counsel as necessary to obtain final judgment and the dismissal of the Consolidated Litigation.

C. Mutual Full Cooperation.

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

D. Prerequisites to Payment of Settlement Amount.

Prior to any payment to the QSF, Plaintiffs and Class Counsel agree that the following conditions must be satisfied:

1. delivery to Wal-Mart of an original and/or counterparts of this Agreement fully executed by Plaintiffs and Class Counsel;
2. the Court's Preliminary Approval of the Agreement before transferring any portion of the \$17,500,000 into the QSF;
3. the establishment of the QSF pursuant to Section XIX.

E. Notice to Settlement Class Members.

The Claims Administrator shall disseminate the Notice of Proposed Class Action Settlement and Final Fairness and Approval Hearing ("Notice of Settlement") as described in this Agreement, which the Plaintiffs and Wal-Mart will ask the Court to approve. The Notices for mailing and publications shall be substantially in the forms of Exhibits 3 and 4. All Notice and Administration Costs, including but not limited to printing and mailing costs of the Notice of

Settlement, costs of publishing notice, cost of mailing and administering Claim Forms, the cost for Exclusion Letters, including the cost of re-mailing such notices and forms returned as undeliverable that includes a forwarding address, (along with the Claims Administrator's fees and the fees and costs of the Trustee of the QSF), shall be paid out of the QSF.

1. Mailed Notice.

Within 10 (ten) days following the Preliminary Approval Date, Wal-Mart shall provide the Claims Administrator with a computer disk containing the full names, social security numbers, last known addresses and phone numbers, and Initial Application Date of all applicants for employment as an OTR truck driver in Wal-Mart's private fleet who applied from June 22, 2001 through the Preliminary Approval Date who are potential Settlement Class members. Within ten (10) days following the Preliminary Approval Date, Class Counsel shall also provide the Claims Administrator with a computer readable list of all known potential Settlement Class members and their mailing addresses. Prior to the mailing of the Notice of Settlement, the Claims Administrator will combine these lists of potential Settlement Class members received from Wal-Mart and Class Counsel and update any new address information for potential class members as may be available through the National Change of Address system. The Claims Administrator shall determine through a computer database search the most recent address that may be obtained for each person on the combined list of potential Settlement Class members. Within thirty (30) days of the Preliminary Approval Date, the Claims Administrator shall mail, via first class postage, Notice of Settlement (substantially in the form of Exhibit 3), the Claim Form and the Claim Form instructions (substantially in the form of Exhibit 9 attached), all in the form approved by the Court in the Preliminary Approval Order, to all known potential Settlement Class members at their last known address or, if available, at the most recent address that may have

been obtained through the computer database search.

2. Published Notice.

Within fourteen (14) days of the Preliminary Approval Date, Class Counsel shall submit for publication the Notice of the class settlement, in the form approved by the Court in the Preliminary Approval Order but substantially in the form of Exhibit 4, to (a) a nationally distributed magazine targeted to African American audiences, *Jet* (three weekly placements), and (b) three nationally distributed magazines targeted to OTR truck drivers, *Trucker News*, *The Trucker*, and *American Trucker*. In addition, radio announcements will be placed nationally through *American Urban Radio Network*.

F. Objections and Exclusions.

Class members may object to the class settlement or opt-out of the Class.

1. Objections.

Class members objecting to the terms of the Agreement must do so in writing within ninety (90) days of the Preliminary Approval Date. The written objection must be sent to the Claims Administrator on or before the date specified in the Preliminary Approval Order. The Claims Administrator will record the date of receipt of each objection and forward it to both Wal-Mart and Class Counsel within two (2) business days following receipt. The Claims Administrator will also file the original objections with the Clerk of the Court no later than ten (10) days prior to the scheduled Fairness Hearing date. The Claims Administrator shall retain copies of all written objections until such time as it has completed its duties and responsibilities under this Agreement.

2. Exclusions.

Class members may exclude themselves from, or opt-out of, the class and the class

settlement. Any request for exclusion must be in the form of the written Exclusion Letter sent to the Claims Administrator. Information on how to opt-out of the class and class settlement shall be made available by the Claims Administrator. A person wishing to opt-out must sign the Exclusion Letter, which includes the following language:

I am an African American Truck Driver. I understand that I am requesting to be excluded from the class settlement and that I will receive no money from the settlement fund created under the Settlement Agreement entered into by Wal-Mart. I understand that if I am excluded from the class settlement, I may bring a separate legal action for my individual claims, but may receive nothing or less than what I would have received if I had filed a Claim under the class settlement procedure in this case. I also understand that in any individual action, I may be bound by the terms of the injunctive relief provided in the Class Settlement agreement.

A class member submitting an Exclusion Letter shall sign and date the statement and deliver it to the Claims Administrator within ninety (90) days of the Preliminary Approval date.

The Claims Administrator shall date stamp the original of any Exclusion Letter and serve copies on both Wal-Mart and Class Counsel within two (2) business days of receipt of each such statement. Class Counsel will also file the original Exclusion Letters with the Clerk of the Court no later than ten (10) days prior to the scheduled Fairness Hearing date. The Claims Administrator shall retain copies of all Exclusion Letters until such time as it has completed its duties and responsibilities under this Agreement.

3. Rescission of Class Member Opt-Outs.

The Parties recognize that some class members who initially submit Exclusion Letters seeking exclusion may, upon further reflection, wish to withdraw or rescind such Exclusion Letters. The Parties agree that class members shall be permitted to withdraw or rescind their Exclusion Letters by submitting a "Rescission of Exclusion Letter" to the Claims Administrator. The Rescission of Exclusion Letter shall include the following language:

I previously submitted an Exclusion Letter seeking exclusion from

the class and the class settlement. I have reconsidered and wish to withdraw my Exclusion Letter. I understand that by rescinding my Opt-out I will be part of the class and may be eligible to receive an award from the Class Settlement Fund and may not bring a separate legal action against Wal-Mart seeking relief.

A class member submitting such a rescission statement shall sign and date the statement and cause it to be delivered to the Claims Administrator within ninety (90) days of the Preliminary Approval Order.

The Claims Administrator shall stamp the date received on the original of any Rescission of Exclusion Letter and serve copies to counsel for Wal-Mart and Class Counsel no later than two (2) days after receipt thereof and shall file the date-stamped originals with the Clerk of the Court no later than ten (10) business days prior to the date of the Fairness Hearing. The Claims Administrator shall retain copies of all Rescissions of Exclusion Letters until such time as the Claims Administrator is relieved of its duties and responsibilities under this Agreement.

G. Defendant's Rescission of Agreement.

If, prior to the Fairness Hearing, persons who otherwise would be Settlement Class Members, in accordance with the provisions of this Agreement and the notice given pursuant thereto, request exclusion from the Settlement Class ("Exclusion Letter"), and if the number of claimants who have "opted-out" equals or exceeds the amount specified in a separate supplemental agreement ("Supplemental Agreement") between the parties, then Defendants shall have, in their sole and absolute discretion, the option to terminate the Settlement Agreement in accordance with the procedures set forth herein and in the Supplemental Agreement. The Supplemental Agreement and all of its terms are hereby incorporated into this Settlement Agreement (and vice versa); however, the Supplemental Agreement will not be filed with the Court unless and until a dispute arises among the parties concerning its interpretation or application. Subject to the terms of the Supplemental Agreement, Wal-Mart, at its sole

discretion, shall have the right to void this Settlement Agreement within fifteen (15) business days after the deadline for submitting an Exclusion Letter. If Wal-Mart exercises this option, all of Wal-Mart's obligations under the Settlement Agreement shall cease to be of any force and effect, and the Settlement Agreement and any orders entered in connection therewith shall be vacated, rescinded, canceled, and annulled, and the parties shall return to the status quo in the Consolidated Litigation as if the parties had not entered into the Settlement Agreement. In addition, in such event, the Settlement Agreement and all negotiations, Court orders and proceedings relating thereto shall be without prejudice to the rights of any and all parties hereto, and evidence relating to the Settlement Agreement and all negotiations shall not be admissible or discoverable in the Consolidated Litigation or otherwise. In the event Wal-Mart exercises this option, all expended Notice and Administration Costs shall not be refundable to Wal-Mart but all other monies paid into the QSF, including earned interest, shall be refunded to Wal-Mart.

H. Final Fairness and Approval Hearing.

On June 30, 2009, a Fairness and Final Approval Hearing shall be held before the Court in order to consider and determine (i) whether the Court should give this Agreement Final Approval; (ii) Class Counsel's application for attorneys' fees and costs; and (iii) any timely objections made pursuant to Section XVII.F and all responses by Plaintiffs and Wal-Mart to such objections. At the Fairness and Final Approval Hearing, Plaintiffs and Wal-Mart shall ask the Court to give Final Approval to this Agreement. If Plaintiffs' and Wal-Mart's request for Final Approval is granted, a Judgment and Dismissal that includes language consistent with that included in Exhibit 8 shall be entered in the Consolidated Litigation. Class Counsel shall furnish the Claims Administrator with a copy of the Judgment and Dismissal and serve notice of entry of the Judgment and Dismissal on Wal-Mart within two (2) business days of receiving it.

XVIII. CLAIMS ADMINISTRATION

A. Selection of Claims Administrator.

1. Class Counsel and Wal-Mart will confer and agree on the selection of the Claims Administrator, the selection of whom shall be submitted to the Court for approval. The Claims Administrator will be responsible for distributing the Notice of Settlement, Claim Forms, and the Exclusion Letter forms, as well as making eligibility decisions, handling inquiries about the calculation of the individual Settlement Payments.

2. The Claims Administrator shall establish a website at the earliest practicable time, through which Claimants will be able to view and/or download a copy of the Settlement Agreement and all forms necessary to effectuate the administration of the Agreement. In addition, potential Claimants should be able to communicate with the Claims Administrator through the use of e-mail.

3. The Claims Administrator shall begin processing Claims by Settlement Class Members immediately after such claims are submitted, and shall determine the anticipated amount of individual awards before the scheduled hearing for Final Approval. Under no circumstances shall the Claims Administrator make any disbursement to Settlement Class Members until all timely Claims have been considered, calculated and accounted for and the obligations set forth herein have been satisfied, and until Final Approval.

4. The Claims Administrator will act as the administrator of the Qualified Settlement Fund (QSF), as further described in Section XIX of this Agreement, for the purpose of receiving all funds payable in this matter. The QSF will

meet all Internal Revenue Code requirements for the establishment of such a Fund. The QSF will be the vehicle for the receipt and disbursement of all funds as well as payments to attorneys and claimants, incentive awards, and payments to the Settlement Administrator.

B. Submission of Claim Forms.

Class members who seek recovery of monetary compensation must complete a Claim Form, affirm that the information contained on the Claim Form is true to the best of the Claimant's knowledge and belief, and cause it to be filed with the Claims Administrator by the Claim filing deadline set forth in the Preliminary Approval Order. The Claim Form must be postmarked on or before such date in order to be considered timely. Failure to file a timely Claim Form, for any reason whatsoever, shall bar the potential class member from having his or her Claim considered and from receiving monetary compensation from the Settlement Fund Account. Class members who file a Claim Form must notify the Claims Administrator of any change of address. A failure to notify the Claims Administrator of a change of address may result in the forfeiture of a monetary award. The Claims Administrator shall be available through the toll-free line and via e-mail through the Claims Website to respond to requests from class members for assistance in completing and filing Claim Forms. Class Counsel shall also be available to consult with and provide assistance to potential class members who request assistance in completing their Claim Forms.

C. Deceased Claimants.

Claims may be filed by deceased Claimants through representatives of their estate if appropriate documentation is provided. Any Claims paid to a deceased Claimant shall be made payable to the estate of the deceased Claimant.

D. Determining Eligibility.

The Claims Administrator shall make the determination as to whether a Claim Form is complete and, if a Claimant is to be approved for a monetary award, the date to be used to calculate the amount of a monetary award. If a Claim Form is not complete, and if it appears that such additional information would complete the Claim Form, the Claims Administrator shall request additional information from the Claimant. Such requests for information shall be in writing and shall specify the information necessary to complete the Claim Form. The requests for information will be sent via first class mail, or e-mail if Claimant supplies an e-mail address, and inform the Claimant that a response must be returned no later than thirty (30) days from the date the request for information was mailed. The Claimant must provide the requested information to the Claims Administrator by mail with a postmark no later than thirty (30) days from the date of the mailed request for information. Such additional information shall be considered part of the original Claim Form and will relate back to the original filing date. The failure of a Claimant to timely respond to the request for information may result in the denial of the Claim.

E. Late-Filed Claims.

For Claims received after the filing deadline, the Claims Administrator shall notify late-filing Claimants that their Claims are untimely and that they are not eligible for any monetary award. The Claims Administrator shall also inform late-filing Claimants that they may seek a review of the determination that they filed untimely by requesting the Claims Administrator to reconsider its determination. The Claims Administrator may reverse its determination that a Claim was not timely filed only if the Claimant proves that the Claim Form was filed on or before the filing deadline and that the untimeliness determination is erroneous.

F. Appeals of Claims Eligibility.

As determinations are made, the Claims Administrator shall provide written notification to Class Counsel and Wal-Mart Counsel of the name of the claimants and Claims Administrator's

eligibility decision for each. Additionally, the Claims Administrator shall provide written notification to the Claimant of eligibility decision. Wal-Mart and Claimants may appeal eligibility and ineligibility determinations. Class Counsel will not file appeals on behalf of individual claimants. All appeals must be made in writing and with a postmark no later than twenty-one (21) days from the date of the notice of Claim determination. Failure to file a timely request for review shall bar any further challenge of an eligibility determination decision.

The Claims Administrator shall resolve the requests for review based on the written requests for review and any other documentation or written information submitted by the Claimant, Wal-Mart or Class Counsel.

The Claims Administrator shall attempt to expeditiously resolve any requests for review within sixty (60) days after the filing of the request for review. The Claims Administrator's decisions shall be communicated to the Claimant, Wal-Mart and Class Counsel in writing and shall be binding and nonappealable.

G. Claimant Information Provided by Wal-Mart.

The parties understand and agree that Wal-Mart may possess information that may assist in the determination of eligibility of potential class members for monetary compensation. Wal-Mart shall reasonably cooperate in providing such information which Class Counsel or the Claims Administrator deems reasonably necessary to assist in determining the eligibility of any class member for monetary relief. Wal-Mart shall attempt to provide such information within fourteen (14) days of any written requests for the information.

XIX. QUALIFIED SETTLEMENT FUND.

A. At the times required by this Agreement, Wal-Mart shall transfer the required portions of the Class Settlement Amount and the Class Counsel Fees and Expenses to a trustee selected jointly by Class Counsel and Wal-Mart (the "Trustee") to be held as a separate trust

constituting a QSF as described in Treasury Regulation §1.468B-1, 26 C.F.R. §1.468B-1. Class Counsel and Wal-Mart jointly shall, and shall cause the Trustee to, 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. Wal-Mart 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 of Settlement as described in Section XVII. The Court shall retain jurisdiction over the administration of the QSF. Wal-Mart 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 15 of the year following each calendar year in which Wal-Mart makes a transfer to the QSF. It is intended that the transfers to the QSF will satisfy the “all events test” and the “economic performance” requirement of §461(h)(1) of the Internal Revenue Code, and Treasury Regulation §1.461-1(a)(2). Accordingly, Wal-Mart 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.

B. Upon establishment of the QSF, the Trustee 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).

C. If requested by either Wal-Mart or the Claims Administrator, the Claims Administrator, the Trustee and Wal-Mart 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.

D. Following its deposits as described in Section X.A of this Agreement, Wal-Mart shall have no responsibility, financial obligation or liability whatsoever with respect to the notifications to the Class required hereunder, the processing of Claims and Exclusion Letters, the allowance or disallowance of claims by Claimants, payments to Class Counsel, investment of QSF funds, payment of federal, state, and local income, employment, unemployment, excise, and other taxes imposed on the QSF or its disbursements, 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 Wal-Mart's obligation to Claimants, Class Counsel and expenses of administration with respect to the disposition of the Class Settlement Amount, and the Class Counsel Fees and Expenses hereunder. Rather, the Claims Administrator, under the control and direction of the Court, 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 Wal-Mart or Class Counsel to audit the determinations of the Claims Administrator in accordance with Section XVIII.F of this Agreement or to seek redress for any breach of the terms hereof.

E. 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. Subject to any contrary holdings in any such ruling:

1. As provided in Section XIX.C, a portion of the distributions from the QSF to the Class Members shall be treated as “wages” or “compensation” paid by the QSF during the calendar year of payment. Claimants may file with the QSF a Tax Declaration. Any Claimant who does not file a Tax Declaration with the QSF shall have taxes withheld at the rate for a single person claiming no withholding exemptions. Class Members shall be responsible for payment of appropriate federal, state, and local income taxes on any claim paid out pursuant to this Agreement, except that Wal-Mart shall transfer to the QSF funds sufficient to pay any appropriate employer-associated taxes. The Parties agree that no portion of any distributions from the QSF to the Class Members is made in satisfaction of any excluded liability as described in Treasury Regulation §1.468B-1(g), related to Qualified Settlement Funds.

2. All federal, state, and local withholding, employment, unemployment, excise, or similar taxes that may be imposed with respect to distributions from the QSF (including, but not limited to, FICA, FUTA, Medicare taxes, and all state and local taxes and, in each instance, both the Class Claimants’ and QSF’s share of all taxes), shall be paid from the QSF. Wal-Mart will fund the employer’s share of taxes and withholdings and such taxes and withholdings will not be paid from the Settlement Fund.

3. Federal, state and local income tax and other payroll tax withholding rates on all distributions from the QSF will be as determined by applicable law. The Claims Administrator’s good faith determination as to the withholding rates shall be final, provided that should an advance ruling be sought by either or both of Wal-Mart or the Claims Administrator in regard to the obligation for, or rate of, any taxes pursuant to Section XIX.E.1 and 2, the Parties and the Claims Administrator shall be bound by the ruling of the appropriate taxing authority.

F. 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.

G. The QSF shall be invested in United States Treasury bills or money market funds primarily invested in the same, 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 with respect to income earned by, or property of, the QSF, shall be paid from the QSF.

H. 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.

XX. DISTRIBUTION OF SETTLEMENT FUND.

A. Settlement Class.

Members of the Settlement Class who applied and were not hired for OTR truck driver positions shall be compensated according to the formula set forth in Section XX.B, providing:

- (i) the Applicant Claimant submitted, on or after June 22, 2001, an application to be employed as an OTR truck driver in Wal-Mart's private fleet and was not hired, or received, on or after September 22, 2001, a notification of rejection as an OTR truck driver in Wal-Mart's private fleet;
- (ii) the Applicant Claimant is African American; and
- (iii) the Applicant Claimant met Minimum Qualifications for the position at

the time the application was submitted; and

- (iv) the Applicant Claimant provides a current MVR; and
- (v) the Applicant Claimant provides a photocopy of his/her CDL, driver's license, or a government-issued identification card; and
- (vi) the Applicant Claimant provides his/her social security number; and
- (iv) the Applicant Claimant signs a Claim Form attesting to information/statements contained on his/her Claim.

For Applicant Claimants, the Claims Administrator, in calculating the amount of an award, shall use the Initial Application Date for an Applicant Claimant as reflected in Wal-Mart's records, or in other written records submitted by an Applicant Claimant conclusively demonstrating he or she submitted an earlier dated OTR truck driver application to Wal-Mart during the class period than reflected in Wal-Mart's records.

Members of the Settlement Class who were deterred from applying for Wal-Mart OTR truck driver positions shall be compensated in accordance to the formula set forth Section XIX B providing:

- (i) the Deterred Claimant was deterred on or after September 22, 2001 from filing an application for employment as an OTR truck driver in Wal-Mart's private fleet and:
- (ii) the Deterred Claimant is African American; and
- (iii) the Deterred Claimant met Minimum Qualifications at the time he/she was deterred; and
- (iv) the Deterred Claimant provides a current MVR and proof of a CDL at the time the Claimant was deterred, and was actively seeking employment during the class period; and
- (v) the Deterred Claimant states a reason why or how he/she was deterred

from applying at Wal-Mart; and

(vi) the Deterred Claimant states the earliest date upon which he/she was deterred; and

(vii) the Deterred Claimant signs the Claim Form attesting to the information/statements contained in his/her claim.

B. Formula for Monetary Awards.

After all payments of Class Counsel's fees and litigation costs, payments of the Notice and Administration Costs, and payment of the enhancements to the Class Representatives, and the sum of these amounts has been subtracted from the \$17,500,000 that is to be paid by Wal-Mart into the Qualified Settlement Fund, the resulting amount ("Approved Claimant Settlement Fund") will be designated for payment to the Approved Claimants as follows:

1. For each Approved Applicant Claimant, the Claims Administrator will determine the Initial Application Date, which will be the former of either (a) the initial application for an OTR truck driver position, meeting Minimum Qualifications, submitted on or after June 22, 2001, or (b) the initial application for an OTR truck driver position meeting Minimum Qualification, that resulted in notification of rejection on or after September 22, 2001. The Approved Applicant Claimant will be allocated a number of Monthly Credits equal to four times the number of months between the month of the Initial Application Date and June 2009. For example, if an Approved Applicant Claimant's Initial Application Date were June 3, 2006, he would be assigned 140 Monthly Credits (4 X 35).

2. For each Approved Deterred Claimant, the Claims Administrator will determine the Initial Deterrence Date, which will be the earliest date on or after September 22, 2001 that the claimant (a) met the Minimum Qualifications, (b) was actively seeking employment as an OTR truck driver, and (c) was deterred from seeking employment as an OTR truck driver at Wal-Mart.

The Approved Deterred Claimant will be allocated a number of Monthly Credits equal to the number of months between the month of the Initial Deterrence Date and June 2009. For example, if an Approved Deterred Claimant's Initial Deterrence Date were June 3, 2006, he would be assigned 35 Monthly Credits.

3. If at some point prior to June 2009, an Approved Claimant ceased meeting the Minimum Qualifications for reasons including but not limited to occupation change, retirement or death, the month in which the Approved Claimant ceased meeting the Minimum Eligibility Requirements, rather than June 2009, will be used in calculating his number of Monthly Credits.

4. The value of an individual Monthly Credit will be calculated by dividing the amount of funds in the Approved Claimant Settlement Fund by the total number of monthly credits allocated to all Approved Claimants. Then, each Approved Claimants' monetary relief will be calculated by multiplying his assigned number of Monthly Credits by the value of an individual Monthly Credit.

C. Allocation and Taxing of Monetary Awards.

The monetary awards shall be allocated 70% to lost wages and 30% to compensatory damages. Flat rate deductions from gross amounts that are determined to be wage payments will be made for federal and state income taxes, the employee's share of social security and Medicare tax, and any local income or payroll tax that apply. Any amounts designated as interest shall not be subject to withholding and shall be reported, if required, to the IRS on Form 1099-INT. The amounts paid for other damages shall not be subject to withholding and shall be reported to the IRS on Form 1099-MISC.

The Claims Administrator will be responsible for preparing and filing all appropriate tax filings and reports (except for any unemployment compensation taxes that may be due, which will

be the sole responsibility of Wal-Mart to calculate and pay), including, but not limited to, W-2 and 1099 forms for all eligible Claimants and Class Representatives for their payments from the Settlement Fund, as well as any required for the Settlement Fund. The Claims Administrator will also be responsible for reporting and remitting to the appropriate taxing authorities the employer's share of taxes or contributions required to be paid by Wal-Mart in a timely manner after receipt of the amount due for those payments from Wal-Mart.

The Claims Administrator will inform Wal-Mart of the employer's share of all taxes or contributions (i.e., matching social security and Medicare tax) required to be paid by Wal-Mart and Wal-Mart shall timely remit all such payments to the Claims Administrator for payment to appropriate taxing authorities.

C. Report from Claims Administrator of Monetary Awards

After the Claims Administrator determines the amount of monetary awards, the Claims Administrator shall file a report with the Court and provide a copy to, Class Counsel and Wal-Mart setting forth the amount of the monetary awards to eligible class members.

D. Distribution of Awards

After the Court has entered an order approving distribution of the monetary awards, the Claims Administrator shall distribute the monetary awards to eligible class members via first class mail. The Claims Administrator shall only issue the checks in the name of the Approved Claimants unless Section XVIII.C is applicable. Included with the check due to the eligible Claimant will be a statement showing the gross amount of the payment and an itemized statement of all deductions made.

E. Report from Claims Administrator of Distribution.

Within thirty (30) days of the distribution of the monies provided under this Agreement from the Settlement Fund, the Claims Administrator shall furnish an accounting of all

distributions from the Settlement Fund to the Court with copies to Class Counsel and Wal-Mart.

XXI. ATTORNEYS' FEES, COSTS AND EXPENSES

A. Basis for Award of Fees, Costs and Expenses.

1. The parties have agreed that it is appropriate as part of this Settlement Agreement that a portion of the Settlement Fund be used for payment to Class Counsel, on behalf of the Class Representatives and the Settlement Class, reasonable attorneys' fees, litigation expenses, and costs in this case.

2. The Company has agreed not to object to the Class Counsel's application for reasonable attorneys' fees, litigation expenses, and costs so long as such application does not exceed the amount of \$6,283,000 for work performed and costs and expenses incurred through the termination of this Consolidated Litigation. Included in this amount is \$5,833,000 (one third of the QSF) for attorneys' fees and up to \$450,000 for litigation costs and expenses incurred by Class Counsel. This amount fully satisfies any arguable obligation the Company may have to pay attorneys' fees, litigation expenses, and costs for and on behalf of the Plaintiffs, Class Representatives and the Settlement Class for any and all work performed and costs and expenses incurred through and including Final Approval.

B. Payment of Award.

Any disagreements among Class Counsel shall be resolved among themselves outside of the terms of this Agreement, and Wal-Mart shall have no part in or incur any fees, costs or expense in connection with any such dispute.

XXII. MISCELLANEOUS PROVISIONS

A. Execution in Counterparts.

The parties agree that the Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be part of the same Agreement.

B. Parties' Authority.

The respective signatories to this Agreement each represent that they are fully authorized to enter into this Settlement and bind the respective Parties to its terms and conditions.

C. No Prior Assignments.

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.

D. Notices.

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 as of: (i) 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; or (iii) the third business day after mailing by United States registered or certified mail, return receipt requested. All notices given under this Agreement shall be addressed as follows:

1. To the Class:

John W. Walker
1723 Broadway
Little Rock, AR 72206

Joseph Henry ("Hank") Bates III
Carney Williams Bates Bozeman & Pulliam PLC
11311 Arcade Dr., Ste. 200
P.O. Box 25438
Little Rock, AR 72221-5438

Morgan E. Welch
Welch & Kitchens, LLC
One Riverfront Place, Ste. 413
North Little Rock, AR 72114

2. To Wal-Mart:

Philip E. Kaplan (#68026)
JoAnn C. Maxey (#83117)
WILLIAMS & ANDERSON PLC
111 Center Street, Suite 2200
Little Rock, AR 72201

Lawrence C. DiNardo
Michael J. Gray
JONES DAY
77 West Wacker
Chicago, IL 60601

C. Joint Press Release.

The parties have agreed to issue three joint press releases, the first to be released at the time of the filing of the motion for Preliminary Approval, the second to the public at the time of Preliminary Approval of the Settlement, and the third to the public at the time of Final Approval of the Settlement. The parties will agree on the contents of each press release. Neither side shall make any other statements to the media concerning the Settlement and both sides shall decline to respond substantively to media inquiries concerning the Settlement.

D. Documents and Discovery.

Within sixty (60) days after completion of the Claims Administration process, Class Counsel shall return to Wal-Mart all documents and data, both electronic and hard copy, produced by Wal-Mart to Class Counsel in connection with this Consolidated Litigation and subject to the terms of the Protective Order. Class Counsel shall certify to Wal-Mart their good faith efforts to comply with this provision.

E. 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 Consolidated

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.

F. Binding on Assigns.

This Settlement shall be binding upon, and inure to the benefit of, the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.

JOHN W. WALKER

JOSEPH HENRY BATES III

MORGAN E. WELCH

ATTORNEYS FOR PLAINTIFFS

WAL-MART STORES, INC. AND
WAL-MART TRANSPORTATION, LLC

BY: B. MICHAEL BENNETT
Vice President, Wal-Mart Stores, Inc.