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IRIS Y. MARTINEZ
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2019CH01107

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

ETHAN ROACH, on behalf of himself and all other persons similarly situated, known and unknown,	)	Case No. 2019CH01107
Plaintiff,	)	Judge: Honorable Pamela McLean Meyerson
v.	)	
WALMART INC.	)	
Defendant.	)	

PLAINTIFF'S UNOPPOSED MOTION AND MEMORANDUM OF LAW FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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I. Introduction

On December 14, 2020, this Court granted preliminary approval of the Parties' $10 million class action Settlement under the Illinois Biometric Information Privacy Act ("BIPA").[1] After preliminary approval, the Settlement Administrator successfully distributed individual Class Notices to over 99% of the Settlement Class Members. The Notices informed Settlement Class Members of their rights in the Settlement: the right submit a Claim Form to request a payment, the right to request to be excluded from the Settlement, and the right to object to the fairness of the Settlement. A remarkable 46% of Settlement Class Members submitted valid Claim Forms to request payment. Only one Settlement Class Member objected to the Settlement and only seven individuals requested exclusion from it. The Settlement Class's positive reaction to the Notice process reflects the fairness of the Settlement. Based on the successful Notice process and strength of the Settlement, the Court should grant final approval at the hearing on June 16, 2021.

II. Factual, Legal, and Procedural History (Ex. 1, Settlement Agreement, § I.)

The factual, legal, and procedural history of this case are summarized in Plaintiff's Motion for Preliminary Approval and in Section I of the Settlement Agreement.[2]

III. Summary of Settlement Terms

A. The Settlement Class (Ex. 1, Settlement Agreement, § III.)

This Settlement applies to the following Settlement Class, which the Court preliminarily certified on December 14, 2020:

> All current and former associates who worked at a Walmart Store, Super Center, Neighborhood Market, or Sam's Club in Illinois and who without first providing written consent used a palm scanner to access the at-issue cash recycler system

[1] Capitalized terms not defined here are defined in the Parties' Settlement Agreement, which is attached here as Exhibit 1.

[2] Walmart does not concede any of Plaintiff's factual allegations or legal contentions stated or referenced in this Motion, the Motion for Preliminary Approval or the Settlement Agreement, but does not oppose the Court granting final approval of the settlement.

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while a palm scanner was enabled at a Walmart or Sam's Club location in Illinois during the time period from January 28, 2014 and February 28, 2018 for a Walmart location and between January 28, 2014 and April 24, 2019 for a Sam's Club location ("Settlement Class" or "Settlement Class Members").

B. Settlement Fund; Allocation of the Fund; Payments to Claimants (Ex. 1, Settlement, § IV.2)

While denying all liability, Walmart will pay a Gross Fund of $10,000,000.00 to resolve the class action claims in this case. None of the Gross Fund shall revert back to Walmart. The "Net Fund" is the Gross Fund minus the following deductions, which are subject to Court approval: Settlement Class Counsel's attorney fees and costs (one-third of the Gross Fund); the Settlement Administrator's costs ($56,210); and the Settlement Class Representative's Incentive Award ($10,000). If the Court approves the previous deductions, the Net Fund will be $6,600,456.67. The Net Fund will be distributed pro rata to Settlement Class Members who timely return valid Claim Forms ("Settlement Class Participants"). There are at least 10,175 Settlement Class Participants.[3] If the Court approves the Settlement as presented, each Settlement Class Participant will receive a net payment of at least $645. Ex. 2, Declaration of Zachary C. Flowerree ("Flowerree Decl.") ¶ 11.

C. Release of Claims (Ex. 1, Settlement, § IV.3)

Subject to final approval by the Court, Releasing Settlement Class Members (the Settlement Class Members minus the seven individuals who excluded themselves) will release the Released Parties[4] from all claims arising out of allegations in the Class Action Complaint in this Action, or that could have been asserted but were not asserted in the Action arising out the same

[3] The Parties are still investigating whether approximately 31 claims are valid. The Parties will finalize this investigation before the final approval hearing.

[4] Defined as "Walmart, G4S Retail Solutions (USA), Inc., Revolution Retail Systems LLC and each of their respective current and former owners, affiliates, parents, subsidiaries, divisions, officers, directors, shareholders, agents, employees, attorneys, insurers, benefit plans, predecessors, and successors." G4S Retail Solutions (USA), Inc. is Walmart's vendor who contracted with Revolution Retail Systems LLC to install and service the at-issue cash recycler technology.

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nucleus of facts, whether known or unknown, including allegations that the Released Parties failed to adopt appropriate policies or improperly collected, stored, or used biometric identifiers and information that may have been obtained from Settlement Class Members, including but not limited to claims arising under BIPA, and all other federal, state, and local law, including the common law as well as related claims for equitable or declaratory relief, liquidated damages, penalties, attorneys' fees and costs, expenses, and interest.

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

D. Uncashed Checks to *Cy Pres* Recipient(s) (Ex. 1, Settlement, § IV.9)

Settlement Class Participants who receive paper checks in lieu of requesting electronic payment will have 150 days to cash their checks after issuance. The Settlement Agreement provides that the Settlement Administrator will distribute funds from checks that remain uncashed after the 150-day deadline to the Illinois Bar Foundation, the Associates in Critical Need Trust, and/or another *cy pres* recipient agreed to by the Parties and approved by the Court. Consistent with 735 ILCS 5/2-807, Plaintiff requests that the Court award 50% of funds from uncashed checks to the Illinois Bar Foundation and 50% to the Associates in Critical Need Trust.

E. Incentive Award, Attorney Fees and Costs, and Settlement Administration Costs (Ex. 1, Settlement, § IV.7-8)

Consistent with the Settlement Agreement and the Preliminary Approval Order, on April 2, 2021, Plaintiff filed a Motion and Memorandum for Attorney Fees [one-third of the Gross Fund], Incentive Award [$10,000], and Settlement Administration Costs [$56,210]. Consistent with the Notice provided to Settlement Class Members, the Settlement Administrator posted the Motion on the Settlement website so that Settlement Class Members could review it when deciding whether to object to the Settlement or exclude themselves from it.

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IV. The Class Notice Process Was Successful (Ex. 3, Decl. of Due Diligence, ¶¶ 5-15)

On January 19th and 25th, 2021, Defendant's Counsel provided the Settlement Administrator with a Class List containing Settlement Class Members' names, last known mailing addresses, telephone numbers (when available), Walmart ID numbers, and social security numbers. After removing sixteen duplicates, the final Class List contained information for 21,682 Settlement Class Members. Because email addresses were not available for Settlement Class Members, the Settlement Administrator performed a reverse append email address search and identified email addresses for 14,223 Settlement Class Members. Before distributing Notice, the Settlement Administrator updated mailing addresses for Settlement Class Members by running their names and addresses through the National Change of Address Database with the U.S. Postal Service.

On February 3, 2021, the Settlement Administrator mailed the approved Notice of Class Action Settlement, Claim Form and return envelope to the most current mailing addresses for the Settlement Class Members. A copy of the Notice is attached as Attachment 1 and a copy of the Claim Form is attached as Attachment 2 to the Settlement Administrator's Declaration. On the same day, the Settlement Administrator emailed the approved Notice with a link to the settlement website to 14,223 Class Member email addresses and sent text messages with a link to the website to 26,162 Class Member phone numbers.[5] 13,010 emails (91.5%) and 23,178 text messages (88.6%) were delivered. In addition, the Settlement Administrator initiated a Facebook notice campaign targeted to reach Settlement Class Members. As claims were received, the Facebook notice was further targeted to Settlement Class Members who had not yet filed a Claim Form.

[5] There were two phone numbers for certain Settlement Class Members.

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If a Settlement Class Member's mailed Notice was returned as undeliverable and without a forwarding address, the Settlement Administrator performed an advanced address search using Experian, a reputable research tool. The Settlement Administrator used the Settlement Class Member's name, previous address, and Social Security Number to locate a current address. 1,310 mailed Notices were returned to the Settlement Administrator as undeliverable. From the address research, the Settlement Administrator located 1,065 updated addresses and the Notices were mailed to the updated addresses on March 25, 2021. In addition, the Settlement Administrator promptly mailed the Notices to updated addresses provided by Postal Service, Settlement Class Counsel, and Settlement Class Members. As of June 7, 2021, a total of 566 out of 21,682 mailed Notices were undeliverable. Out of 21,682 Settlement Class Members, only 74 Settlement Class Members did not receive notice by mail, email or text. This Notice delivery rate of 99.66% far exceeds the 70 percent delivery threshold considered adequate by the influential Federal Judicial Center. *See* FJC, Judges' Class Action Notice & Claims Process Checklist & Plain Language Guide, at 3 (2010), available here.

Through the May 4, 2021 deadline, the Settlement Administrator has received 10,175 completed Claim Forms from Settlement Class Members. The Settlement Administrator also received 24 late Claim Forms and 152 invalid claims. The Parties are still investigating whether approximately 31 claims are valid. The 46% claims rate here far exceeds the median claims rate of 9 percent in a recent federal government study of class action settlements. *See* Federal Trade Commission, Consumers and Class Actions: A Retrospective and Analysis of Settlement Campaigns, p. 11 (Sept. 2019), available at here. Likewise, the claims rate here far exceeds the approximately 12.5 percent claims rate in a recent BIPA settlement against a payroll vendor, ADP,

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and even the "impressive" claims rate of approximately 22 percent in the recent Facebook BIPA settlement. Ex. 2, Flowerree Decl. ¶ 10.

The deadline to object or request exclusion from the Settlement was May 4, 2021. The Settlement Administrator received one timely objection and seven requests for exclusion. *See* Ex. 3, Decl. of Due Diligence, ¶¶ 14-15 and Attachs. 3-4.

V. Final Approval Is Warranted

A. The Proposed Settlement Is Fair, Reasonable, and Adequate

To approve a class settlement, the Court must find it "fair, reasonable, and adequate." *People ex rel. Wilcox v. Equity Funding Life Ins. Co.*, 61 Ill. 303, 316 (1975). In determining whether a settlement is fair, reasonable, and adequate, courts consider the following factors: "(1) the strength of the case for plaintiffs on the merits, balanced against the money or other relief offered in settlement; (2) the defendant's ability to pay; (3) the complexity, length and expense of further litigation; (4) the amount of opposition to the settlement; (5) the presence of collusion in reaching a settlement; (6) the reaction of members of the class to the settlement; (7) the opinion of competent counsel; and (8) the stage of proceedings and the amount of discovery completed." *GMAC Mrtg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 493 (1st Dist. 1992). As explained below, these factors support final approval.

1. Strength of case against the settlement value

The most important factor in evaluating final approval is confirming that the settlement value is adequate in light of the strength of the case. *Steinberg v. Sys. Software Associates, Inc.*, 306 Ill. App. 3d 157, 170 (1st Dist. 1999); *City of Chicago v. Korshak*, 206 Ill. App. 3d 968, 972 (1st Dist. 1990). Plaintiff alleges that Walmart violated two provisions of BIPA by requiring employees to use a palm scan cash recycler: (1) Section 15(a) by possessing Plaintiff's and the

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potential class's biometric identifiers and information without establishing a publicly available data retention schedule and destruction policy; and (2) Section 15(b) by collecting Plaintiff's and the potential class's biometric identifiers and information without following BIPA's informed written consent procedures. 740 ILCS 14/15(a), (b). Plaintiff contends that BIPA allows recovery of $1,000 per class member for each violation ($2,000 in total), provided Plaintiff proves the violations were "negligent." 740 ILCS 14/20(1).[6]

If the Court approves the Settlement, the claimants will receive at least $645 net per person. Ex. 2, Flowerree Decl. ¶ 11. This represents a meaningful monetary recovery compared to the following class action BIPA settlements that have received final approval:

Case	Judge	Date	Class Size	Per Class Member
Kusinski v. ADP, LLC, 17-CH-12364 (Cook Cnty.)	Atkins	Feb. 10, 2021	320,000	$250 net per claimant with 20% claims rate[7]
Prelipceanu v. Jumio Corp., 18-CH-15883	Mullen	July 21, 2020	Thousands	$262.28 net per claimant[8]
Rafidia v. KeyMe, Inc., 18-CH-11240	Gamrath	June 5, 2020	2,117	$515 net per claimant
Marshall v. Life Time Fitness, Inc., 17-CH-14262 (Cir. Ct. Cook Cty.)	Tailor	Aug. 7, 2019	6,000	$270 net per claimant[9]
Zhirovetskiy v. Zayo Group, LLC, 17-CH-09323 (Cir. Ct. Cook Cty.)	Flynn	Apr. 8, 2019	2,475	$450 gross

[6] While BIPA allows recovery of $5,000 for reckless or intentional violations, Plaintiff believes he would have been unable to prove reckless or intentional misconduct. Walmart began complying with BIPA in late 2017, before the current spread of BIPA litigation and before the Illinois Supreme Court clarified the scope of BIPA in *Rosenbach*. In this context, Plaintiff believes he would have been unable to show that Walmart knowingly disregarded BIPA's requirements.

[7] The actual claims rate in *ADP* was only 12.5 percent, almost one-quarter of the claims rate here, so the ultimate net per claimant amount in *ADP* was above $250.

[8] The Parties' settlement agreement and filings did not disclose the number of class members in this $7 million settlement or the ultimate net per person recovery. Class Counsel's fee petition represented that "thousands" of class members had filed claims. Legal websites state that class members who submitted claims received up to $262.28 per person. *See* https://topclassactions.com/lawsuit-settlements/lawsuit-news/illinois-jumio-biometric-class-action-settlement/ (last visited June 7, 2021).

[9] The settlement also included dark web monitoring the parties valued at $130 per class member.

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The Settlement here also represents a meaningful recovery when compared against average recoveries in class action settlements. *See In re Ravisent Techs., Inc. Sec. Litig.,* 2005 WL 906361, at *9 (E.D. Pa. Apr. 18, 2005) (approving settlement, which amounted to 12.2% of damages, and citing a study by Columbia University Law School, which determined that "since 1995, class action settlements have typically recovered between 5.5% and 6.2% of the class members' estimated losses.") (internal citations omitted).

a. The recovery is significant in light of class certification risk

The $10 million class-wide recovery here is significant because Walmart had a viable defense against class certification. Walmart's employees could access its cash recycler system through a palm scan or numeric pin code. *See* Ex. 1, Settlement Agreement, § I. In its interrogatory answers, Walmart stated that it stopped using the palm scan technology and deleted users' data at its Walmart stores in Illinois before Plaintiff filed this lawsuit. Ex. 2, Flowerree Decl. ¶ 12. After an exhaustive search as part of discovery and additionally in advance of mediation, Walmart and its vendors were unable to find any data that would identify all employees who used the palm scanner versus those who used the pin code, only. Ex. 1, Settlement Agreement, § I. Thus, Plaintiff faced a risk that he would have been unable to demonstrate the class was ascertainable and that common issues would predominate. Ex. 2, Flowerree Decl. ¶ 12. Without a certified class, there obviously could have been no class-wide recovery. Settlement Class Counsel believe this class certification risk justifies a meaningful discount on the Settlement Class's claims. *Id.*

b. The recovery is significant in light of risks on the merits

Plaintiff also faced a risk that Walmart would defeat his claims on the merits.

First, Walmart argued that Plaintiff's claims were barred by the one-year statute of limitations for certain privacy claims. Ex. 1, Settlement Agreement, § I. Although this Court denied

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Walmart's Motion to Dismiss on the statute of limitations, the issue is currently on appeal before the First District Appellate Court. *See* Ex. 4, *Tims v. Black Horse Carriers, Inc.*, No. 1-28-0564 and Circuit Court certification Order. In accepting the Rule 308 petition, the First District determined that there was a "substantial ground for difference of opinion" on whether a one-year statute of limitations applies to BIPA claims. *Id.* If the First District holds that the one-year limitations period applies to BIPA claims, Plaintiff's claim here would be time barred because he stopped working for Walmart in 2017 and filed this case in January 2019. *See* Class Action Complaint, ¶¶ 1-2, Although Settlement Class Counsel are confident the First District will endorse the five-year limitations period, they believe a risk discount is appropriate on the limitations defense. Ex. 2, Flowerree Decl. ¶ 14.

Second, Plaintiff faced a risk that Walmart would demonstrate it is not covered by BIPA. BIPA does not apply "in any manner to a financial institution or an affiliate of a financial institution that is subject to Title V of the federal Gramm-Leach-Bliley Act of 1999 and the rules promulgated thereunder." 740 ILCS 14/25(c). Walmart contended that its cash recycler system serves to, among other things, directly deposit U.S. currency with financial institutions (*i.e.*, national banks) and draw on lines of credit from national banks. Based on this, Walmart contended that the cash recyclers therefore contain "bank cash" – *i.e.*, funds belonging to financial institutions subject to Title V of the Gramm-Leach-Bliley Act. Walmart further contended that the purpose of the cash recyclers, and the palm scanning feature, is to protect the cash held inside, including the bank cash belonging to financial institutions subject to Title V of the Gramm-Leach-Bliley Act. Thus, Walmart contended that applying BIPA to the cash recyclers would improperly make the law apply "in any manner" to these financial institutions. Settlement Class Counsel believes the Gramm-

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Leach-Bliley argument justifies a small risk discount on the Settlement Class's claims. Ex. 2, Flowerree Decl. ¶ 15.

Third, Walmart argued that its cash recycler system did not collect a biometric identifier or biometric information covered by BIPA. Ex. 2, Flowerree Decl. ¶ 16. The palm scanner on the cash recyclers operates by collecting data points based on a user's vascular patterns. *Id.* The data points are stored as an encrypted hash and, according to the palm scan vendor materials, cannot be used to recreate a person's vascular characteristics. *Id.* Settlement Class Counsel believe they would establish that the palm scan data is nevertheless covered by BIPA, but this would have required expert testimony, which increases costs and delays the likelihood of ultimate resolution. *Id.* Settlement Class Counsel believe that avoiding uncertainty and the risk of delay justifies a small discount on the value of the Settlement Class's claims. *Id.*

Fourth, Walmart argued that Plaintiff's claim under Section 15(a) of BIPA – for failure to establish a publicly available biometric data retention/destruction policy – is not a basis for individual damages recovery. Ex. 2, Flowerree Decl. ¶ 17. In its recent decision in *Bryant v. Compass Group USA, Inc.*, 958 F.3d 617 (7th Cir. 2020), the Seventh Circuit held that Section 15(a)'s policy requirement is aimed at protecting public rights, not individual rights. Plaintiff would have faced difficulty in showing how Walmart's failure to establish a biometric data retention/destruction policy injured him personally. In discovery, Walmart stated that separated employees' palm scan data was automatically overwritten and deleted within 30 days of separation from employment. Ex. 2, Flowerree Decl. ¶ 17. So, Section 15(a)'s destruction requirement was not in play. Plaintiff believes the holding in *Bryant* justifies a meaningful risk discount on the Settlement Class's Section 15(a) claims. *Id.*

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Fifth, Walmart contended that employment-based BIPA claims are preempted by the Illinois Workers' Compensation Act. In negotiating the Settlement, Settlement Class Counsel did not consider preemption to be a meaningful risk. But now that the issue is on appeal before the Illinois Supreme Court, *McDonald v. Symphony Bronzeville Park, LLC*, Case No. 126511 (Ill.) (petition for leave to appeal accepted on January 26, 2021), Settlement Class Counsel believe the uncertainty surrounding the appeal justifies a risk discount. Ex. 2, Flowerree Decl. ¶ 18.

In sum, the net per claimant recovery of at least $645 represents a meaningful recovery in light of the litigation risks. Ex. 2, Flowerree Decl. ¶ 19.

2. Defendant's ability to pay

Walmart's ability to pay a judgment did not influence the Settlement amount in this case. Ex. 2, Flowerree Decl. ¶ 20. As a result, this factor is of minimal relevance.

3. Complexity, length and expense of further litigation

If the litigation had continued, it would have been complex, expensive, and protracted. Ex. 2, Flowerree Decl. ¶ 21. There is only limited precedential authority on BIPA defenses that Walmart asserted in this case. *Id.* As a result, the parties likely would have spent significant resources briefing contested issues. *Id.* In addition, Plaintiff would have hired an expert witness to testify about whether Walmart's technology collected biometric identifiers and information. *Id.* This likely would have resulted in Walmart hiring its own expert witness. *Id.* Given the limited precedential authority on BIPA claims, the parties likely would have appealed any final judgment entered by this Court. *Id.* Instead of expensive, complicated, and protracted litigation, this Settlement provides significant monetary relief to Settlement Class Participants now.

4. Amount of opposition

There is virtually no opposition to the Settlement. Of the 21,682 Settlement Class

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Members, only one person objected to the Settlement and only seven requested to be excluded from it. In total, the objector and opt-outs amount to a scant three hundredths of one percent of the Settlement Class. This low level of opposition supports approval of the Settlement. *See, e.g., Am. Int'l Grp., Inc. v. ACE INA Holdings, Inc.*, No. 07 CV 2898, 2012 WL 651727, at *6 (N.D. Ill. Feb. 28, 2012) ("Out of a class of over thirteen hundred class members, only three . . . have objected, and just one has excluded itself from the class. Thus, . . . there has been almost no opposition to the settlement."); *In re Mexico Money Transfer Litig. (W. Union & Valuta)*, 164 F. Supp. 2d 1002, 1021 (N.D. Ill. 2000) (finding lack of opposition when 99.9% of the class "neither opted out nor filed objections to the proposed settlements."), *aff'd sub nom. In re Mexico Money Transfer Litig.*, 267 F.3d 743 (7th Cir. 2001).[10] Indeed, approval of a class settlement is appropriate even if a large percentage of the class objects, provided the Court considers and overrules those objections. *Isby v. Bayh*, 75 F.3d 1191, 1200 (7th Cir. 1996) (affirming approval of class settlement where "thirteen per cent of the class submitted written objections in response to the notice of settlement").

5. The presence of collusion in reaching a settlement

The Parties negotiated the Settlement at arm's-length between counsel, after a mediation with Judge Holderman, an experienced BIPA mediator. *See* Ex. 1, Settlement Agreement, § I. There is no collusion.

6. Reaction of class members

The reaction of Settlement Class Members supports approval of the Settlement. Only eight Settlement Class Members objected to or opted out of the Settlement – well less than one-tenth of one percent – while almost 50 percent of Settlement Class Members submitted claims for payment. In other words, for every Settlement Class Member who objected to the Settlement or requested

[10] Because of the similarity between federal and Illinois class action law, federal decisions are persuasive. *See Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill. 2d 100, 125 (2005) (citations omitted).

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to be excluded from it, over 1,250 submitted a claim form for payment in it. This demonstrates that Settlement Class Members overwhelmingly support the Settlement.

7. Opinion of competent counsel

Settlement Class Counsel believe the Settlement is fair, reasonable, and adequate. Ex. 1, Settlement Agreement, § IV.29. The opinion of counsel further supports final approval.

8. Stage of the proceedings

While the case is in its relatively early stages, this fact supports final approval. Given the other indicators supporting final approval, an early Settlement is better than a later one because it provides actual relief now. In addition, given that the Parties primarily disagree over legal issues, not factual ones, advancing further through the discovery process would have been unlikely to increase the value of Settlement Class Members' claims. *See AT & T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 350 (N.D. Ill. 2010) ("the focus of this litigation appears to be more on legal than factual issues, and there is no indication that formal discovery would have assisted the parties in devising the Proposed Settlement Agreement").

B. The Court Should Overrule the Objection of Mary Goetsch

The sole objection to the Settlement lacks merit. Ms. Goetsch objected because she does not "believe anyone was harmed by the use of the Palm Scan." *See* Ex. 3, Decl. of Due Diligence, at Attach. 4. As support, Ms. Goetsch states: (1) that the palm scanner was used for a short period of time at her store, (2) that employees agreed to the procedure and signed a legal waiver, (3) that the purpose of the palm scanner was to "save time and paperwork," (4) that if a worker objected to the palm scanner "alternative arrangements would have been made," and (5) that a lawsuit drives up costs and that she is "opposed to class action suits on the principle . . ." *Id.* There are several legal problems with Ms. Goetsch's objection.

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First, Ms. Goetsch's objection to the *fact* of the Settlement – instead of its *fairness* – does not weigh against approval. In a Telephone Consumer Protection Act settlement for a defendant initiating automated phone calls allegedly without consent, a class member objected because he thought the defendant should not be required to pay: "I think receiving an automated call after an IKEA delivery was entirely appropriate & expected . . . I do not think XPO should be required to pay this settlement." *Leung v. XPO Logistics, Inc.*, 326 F.R.D. 185, 197 (N.D. Ill. 2018). The Court overruled the objection because it did "not raise questions about the fairness of the settlement to class members." *Id.* So too here: Ms. Goetsch claims that she and other Settlement Class Members were not "harmed" and so are not entitled to payment, but she does not argue there is anything deficient or unfair about the *amount* of the Settlement or the *process* afforded to Settlement Class Members. Ms. Goetsch's belief about a lack of harm is also inconsistent with the Illinois Supreme Court's determination that a violation of BIPA's informed consent provisions is a "real and significant" injury. *Rosenbach v. Six Flags Entm't Corp.*, 2019 IL 123186, ¶ 34 (Ill. 2019).

Second, several of Ms. Goetsch's statements are legally irrelevant. BIPA regulates collection and possession of biometric data; there is no exception for a company that only uses the technology for "a short time," as Ms. Goetsch alleges about Walmart's use of the palm scanner. Nor is there any legal relevance to Ms. Goetsch's subjective understanding about the purpose of the biometric technology or whether employees could opt-out of using it. Instead, what matters is whether a private entity, like Walmart, discloses, in writing, that it is collecting biometric data, the purpose of the collection and length of time a private entity will retain the data, and receives a written release from the subject of the collection. 740 ILCS 14/15(b)(1)-(3). Finally, Ms. Goetsch's opposition to class actions "on principle" is not a legally recognized basis for refusing to approve a class action settlement.

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Third, Ms. Goetsch is mistaken in suggesting that all employees signed a legal waiver before using the biometric technology. Based on information exchanged in discovery, the store where Ms. Goetsch worked began using the technology months before Walmart implemented a written consent. On top of this, the Settlement Class is defined is individuals who used the palm scanner without first providing "written consent."

Ultimately, nothing in Ms. Goetsch's objection undermines the fairness and adequacy of this Settlement and so the Court should overrule the objection.

C. The Settlement Class Meets the Elements for Certification Under 735 ILCS 5/2-801

Final certification of the Settlement Class remains appropriate for the same reasons the Court preliminarily certified the Settlement Class. Nothing material has changed except that the Class Notice process was successful.

VI. Conclusion

The Court should grant final approval of the Settlement and enter the proposed Final Approval Order, attached here as Exhibit 5.

Respectfully submitted,

Dated: June 9, 2021

/s/ Zachary C. Flowerree
One of Plaintiff's Attorneys

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Attorneys for Plaintiff and
Settlement Class Members

CERTIFICATE OF SERVICE

The undersigned counsel certifies that his office served the above document through the Court's electronic filing system on Defendant's attorneys of record on June 9, 2021.

/s/ Zachary C. Flowerree
One of Plaintiff's Attorneys

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EXHIBIT 1

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

COUNTY DEPARTMENT, CHANCERY DIVISION

ETHAN ROACH, on behalf of himself and all other persons similarly situated, known and unknown,	)	Case No. 2019CH01107
Plaintiff,	)	Judge: Honorable Pamela McLean Meyerson
v.	)	
WALMART INC.	)	
Defendant.	)	

CLASS ACTION SETTLEMENT AGREEMENT

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

I. PROCEDURAL HISTORY

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

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

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

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

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

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

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

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

II. WALMART DENIES LIABILITY

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

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

III. CERTIFICATION OF THE SETTLEMENT CLASS

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

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

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

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

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

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

IV. SETTLEMENT TERMS

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

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

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

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

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

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

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

3. Release of Claims

a. Definitions

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

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

b. Release for Settlement Class Members

Subject to final approval by the Court of the Settlement, and for good and valuable consideration set forth herein, the receipt and sufficiency of which is hereby acknowledged, all

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

c. General Release for Settlement Class Representative

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

4. Settlement Administration

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

5. Timeline of Settlement Events

The Parties contemplate the following timeline for settlement events:

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

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

b. Within fourteen (14) business days after the Court grants preliminary approval of the Settlement, or within fourteen business days after Walmart receives the information from the Settlement Administrator needed to transfer such funds to the Qualified Settlement Fund, whichever is later, Walmart shall fund the amounts agreed to for Notice and settlement administration to the Qualified Settlement Fund established by the Settlement Administrator.

c. Within twenty-one (21) days after the Court grants preliminary approval of the Settlement, the Settlement Administrator shall establish a Settlement website. The website address will be www.WalmartPalmScanSettlement.com, or another website address agreed to by the Parties. The Settlement website shall include a brief description of the claims asserted in the Action, the Notice of Class Action

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

d. The Settlement Administrator will mail a Notice and Claim Form to everyone on the Class List in accordance with Section IV.11(b)(1) of this Settlement Agreement within fourteen (14) days after receiving the Class List. The same day, the Settlement Administrator shall send the notice communication described in Section IV.11.(b)(3)-(4) to Settlement Class Members by email and text message (assuming those forms of contact information exist for Settlement Class Members). Also the same day, the Settlement Administrator shall place a Facebook advertisement directed to Settlement Class Members, as described in Section IV.11.(b)(5). The Facebook advertisement shall remain in place for a maximum of ninety (90) days from initial placement, after which point it shall be taken down.

e. Sixty (60) days after initial distribution of Notice, the Settlement Administrator shall send a reminder email and text message notice communication described in Section IV.11.(b)(3)-(4) to Settlement Class Members who have not returned a Claim Form (assuming those forms of contact information exist for Settlement Class Members).

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f. Settlement Class Counsel shall file a motion for attorney fees, litigation costs, settlement administration costs, and the Settlement Class Representative's Incentive Award within sixty (60) days from the date of the mailing of the Notice to Settlement Class Members. Settlement Class Counsel shall provide this motion to the Settlement Administrator to be posted on the Settlement website so that Settlement Class Members may obtain a copy during the objection/exclusion period as described in the Notice.

g. All completed claim forms must be postmarked or returned to the Settlement Administrator within ninety (90) days from the date of the initial distribution of the Notice to Settlement Class Members.

h. Audit rights: Within fourteen (14) days of the Claim filing deadline, the Settlement Administrator shall provide counsel for the Parties with a report that contains the information provided in the Claim Forms and its determination whether or not each Claim should be approved or denied. Original Claim Forms will also be made available to counsel for the parties upon request. Within seven (7) days of having received the report of proposed approved and denied Claims from the Settlement Administrator, Settlement Class Counsel and Walmart's counsel shall meet and confer regarding any issues that either Settlement Class Counsel or Walmart believes need to be raised with the Settlement Administrator regarding the Claims. Settlement Class Counsel and Walmart's counsel agree to use their best efforts to resolve any disputes. If necessary, the Parties may request that the Settlement Administrator conduct reasonable follow up with particular Settlement Class Participants in the event of questions regarding the information provided by

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

i. All requests for exclusion from the Settlement must be postmarked or returned to the Settlement Administrator within ninety (90) days from the date of the initial distribution of the Notice to Settlement Class Members. Within seven (7) days after the deadline to submit requests for exclusion, the Settlement Administrator shall provide all such requests received to the Parties' counsel. Settlement Class Counsel shall file the requests for exclusion with its motion for final approval of the Settlement.

j. All objections to the Settlement must be postmarked or returned to the Settlement Administrator within ninety (90) days from the date of the initial distribution of the Notice to Settlement Class Members. Within three days of receiving an objection, the Settlement Administrator shall provide the objection, and any supporting materials, to counsel for the Parties. Within one business day of receiving an objection from the Settlement Administrator, Settlement Class Counsel shall file the objection with the Court.

k. Settlement Class Counsel will file a motion for final approval of this Settlement within seven (7) days before the Final Approval Hearing or such other date as set by the Court.

l. No later than fourteen (14) business days after the Settlement Effective Date, Walmart will transfer the remainder of the Gross Fund, less the amount already transferred for Settlement Administration (pursuant to Section IV.4 above), to the Qualified Settlement Fund account established by the Settlement Administrator.

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m. Within twenty-eight (28) days of the Settlement Effective Date, the Settlement Administrator will mail or deliver the following payments: (1) Settlement award payments to Settlement Class Participants; (2) the Settlement Class Representative's Incentive Award; and (3) Settlement Class Counsel's award of attorney fees and litigation costs (by wire transfer).

n. The deadline for Settlement Class Participants to cash checks will be one hundred and fifty (150) days from the date the checks are issued by the Settlement Administrator.

o. Within twenty-one (21) days of the deadline for Settlement Class Participants to cash checks, the Settlement Administrator shall deliver funds from any uncashed checks to the *cy pres* recipient(s) agreed by the Parties and approved by the Court.

6. Tax Treatment of Settlement Awards

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

7. Settlement Class Counsel's Attorney Fees and Costs

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

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

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

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

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

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

8. Incentive Award

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

9. All Uncashed Checks to *Cy Pres*

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

10. Responsibilities of the Parties

a. The Parties shall perform all duties as stated in this Settlement Agreement.

b. If Walmart intends to communicate with current employee Settlement Class Members regarding the Settlement, Walmart shall first provide its proposed communication to

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

11. Approval of Settlement; Notice; Settlement Implementation

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

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

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

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

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

(2) Updated Contact Information

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

(3) Text Notice

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

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

(4) Email Notice

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

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

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

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

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

(5) Facebook Notice

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

"Palm Scan Lawsuit Settlement for Illinois Walmart and Sam's Club employees."

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

[2] See Footnote 1.

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

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

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

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

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

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

13. Qualified Settlement Fund

As required under this Agreement, Walmart shall transfer the required portions of the Gross Fund to a Qualified Settlement Fund ("QSF"), to be held as a separate trust as described in Treasury

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Regulation §1.468B-1, 26 C.F.R. §1.468B-1. Settlement Class Counsel and Walmart jointly shall take such steps as shall be necessary to qualify the QSF under §468B of the Internal Revenue Code, 26 U.S.C. §468B, and the regulations promulgated pursuant thereto. Walmart shall be considered the "transferor" within the meaning of Treasury Regulation §1.468B-1(d)(1). The Settlement Administrator shall be the "administrator" within the meaning of Treasury Regulation §1.468B-2(k)(3). The Parties shall cooperate in securing an order of the Court to establish the QSF in accordance with the terms hereof in conjunction with its preliminary approval of the Settlement and Notice as described in the Agreement. The Court shall retain jurisdiction over the administration of the QSF. Walmart shall supply to the Settlement Administrator and to the Internal Revenue Service the statement described in Treasury Regulation §1.468B-3(e)(2) no later than February 15th of the year following each calendar year in which Walmart makes a transfer to the QSF. It is intended that the transfers to the QSF will satisfy the "all events test" and the "economic performance" requirement of §461(h)(1) of the Internal Revenue Code, and Treasury Regulation §1.461-1(a)(2). Accordingly, Walmart shall not include the income of the QSF in its income. Rather, the QSF shall be taxed on its modified gross income, excluding the sums transferred to it, and shall make payment of resulting taxes from its own funds. In computing the QSF's modified gross income, deductions shall be allowed for its administrative costs and other deductible expenses incurred in connection with the operation of the QSF, including, without limitation, state and local taxes and legal, accounting, and other fees relating to the operation of the QSF.

Upon establishment of the QSF, the Settlement Administrator shall apply for an employer identification number for the QSF utilizing Internal Revenue Service Form SS-4 and in accordance with Treasury Regulation §1.468B-2(k)(4).

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

Following its deposits as described in this Agreement, Walmart shall have no responsibility, financial obligation, or liability whatsoever with respect to the notifications to the Settlement Class required hereunder, the processing of Claims and exclusion requests, the allowance or disallowance of claims by Settlement Class Participants, payments to Settlement Class Counsel, investment of QSF funds, payment of federal, state, and local income, employment, unemployment, excise, and other taxes imposed on the QSF or its disbursements, or payment of the administrative, legal, accounting, or other costs occasioned by the use or administration of the QSF, since it is agreed that such deposits shall fully discharge Walmart's obligations to Settlement Class Participants and Settlement Class Counsel and for expenses of administration in respect to the disposition of the Settlement funds hereunder. Rather, the Settlement Administrator shall have sole authority and responsibility for the administration of such funds and income thereon, disbursement to Settlement Class Participants and Settlement Class Counsel, and payment of taxes and administrative costs in accordance with the provisions hereof, subject only to the rights of Walmart or Settlement Class Counsel to seek redress for any breach of the terms hereof.

The Settlement Administrator shall cause to be filed, on behalf of the QSF, all required federal, state, and local tax returns, information returns and tax withholdings statements in accordance with the provisions of Treasury Regulation §1.468B-2(k)(1) and Treasury Regulation §1.468B-2(l)(2)(ii). The Settlement Administrator may, at the expense of the QSF, retain legal counsel and an independent, certified public accountant to consult with and advise the Settlement

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Administrator with respect to the preparation and filing of such materials and the federal, state and local tax compliance of the QSF. Either Walmart or the Settlement Administrator, independently or jointly, may, but are not required to, apply to the Internal Revenue Service and/or any applicable state taxing authority for an advance ruling as to any issue pertinent to the qualification of the QSF under Internal Revenue Code §468B and Treasury Regulations promulgated thereunder, its tax status under applicable state law, and/or its tax payment, reporting and withholding duties, so long as Walmart and the remaining Parties are reasonably satisfied that such application and ruling will not compromise the confidentiality of settlement evidenced herein as required by this Agreement. Subject to any contrary holdings in any such ruling, Settlement Class Members shall be responsible for payment of appropriate federal, state, and local income taxes on any claim paid out pursuant to this Agreement. The Parties agree that no portion of any distributions from the QSF to the Settlement Class Members is made in satisfaction of any excluded liability as described in Treasury Regulation § 1.468B-1(g), related to Qualified Settlement Funds.

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

Based on the Settlement Administrator's recommendation and approval by the Parties, the QSF may be invested in United States Treasury bills, money market funds primarily invested in the same, or certificates of deposit (CDs), provided that such portions of the QSF as may reasonably be required to pay current QSF administrative expenses, taxes or disbursements to Settlement Class Participants or Settlement Class Counsel may be deposited in bank accounts which are federally insured to the greatest extent practicable. All federal, state, and local taxes imposed with respect to income earned by, or property of, the QSF, shall be paid from the QSF.

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The Settlement Administrator may amend, either in whole or in part, any administrative provision of this Section or the trust instrument through which the QSF is established to maintain the qualification of the QSF pursuant to the above-described authorities provided that the rights and liabilities of the Parties hereto and the Settlement Class are not altered thereby in any material respect.

14. No Solicitation of Settlement Objections or Exclusions

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

15. Final Settlement Approval Hearing

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

16. Walmart's Representations Regarding Biometric Systems

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

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

17. Venue of Approval

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

18. Walmart's Legal Fees

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

19. Certification of Distribution of Settlement Checks

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

20. Attachments and Headings

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

21. Amendment or Modification

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

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22. Entire Agreement

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

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

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

24. Authorization to Enter into Settlement Agreement

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

25. Binding on Successors and Assigns

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

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

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

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

27. Confidentiality

The negotiations related to this Agreement (including the negotiations regarding the Term Sheet, negotiations related to the drafting of this Agreement, and any negotiations prior to preliminary approval or between the time of preliminary and final approval) will remain strictly confidential and shall not be discussed with anyone other than the Settlement Class Representatives and Walmart, their retained attorneys, their accountants and financial or tax advisers, their retained consultants, the Court, and the mediator Judge James Holderman and his staff, unless otherwise agreed to by Settlement Class Counsel and Walmart or unless otherwise ordered by the Court. Notwithstanding the other provisions of this Section, Walmart may, if necessary, disclose the settlement in filings that Walmart Inc. is required to make with the Securities and Exchange Commission, including 10-Q and 10-K filings, or in other disclosures to investors.

28. Counterparts

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

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29. This Settlement is Fair, Adequate and Reasonable

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

30. Media Statements

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

31. Jurisdiction of the Court

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

32. Cooperation and Drafting

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

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33. Invalidity of Any Provision

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

34. Circular 230 Disclaimer

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

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DATED: December 7, 2020. Ethan Roach

DocuSigned by:
84E5FB69B47A485...

Settlement Class Representative

DATED: **December 8, 2020**. Walmart Inc.

By: _____

Its: **Counsel for Walmart, Inc.**

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ATTACHMENT A

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CLASS ACTION SETTLEMENT AGREEMENT
Ethan Roach v. Walmart Inc., Case No. 2019-CH-01107

ATTACHMENT A

Individual General Release by Plaintiff / Settlement Class Representative

Subject to the Court's final approval of the Settlement and granting of an Incentive Award to Plaintiff, which Plaintiff acknowledges is good, valuable, and sufficient consideration, Ethan Roach, the Plaintiff, on behalf of himself and any and all spouses, representatives, heirs, successors, assigns, devisees, and executors (excluding the Settlement Class Members he seeks to represent), releases, acquits, and forever discharges Walmart Inc., G4S Retail Solutions (USA), Inc. and Revolution Retail Systems (and each of their current and former owners, affiliates, parents, subsidiaries, divisions, officers, directors, shareholders, agents, employees, attorneys, insurers, benefit plans, predecessors, and successors) (the "Released Parties") from any and all allegations, claims, causes of action, demands, obligations, or liability, of whatever kind or nature, whether for injunctive relief, damages, penalties, or any other form of recovery, in this court or in any other court or forum, whether known or unknown, suspected or unsuspected, that the Plaintiff may now have, has ever had, or hereafter may have, whether relating to the subject matter of this litigation or otherwise, whether arising under the Illinois Biometric Information Privacy Act or otherwise, whether relating in any way to his employment at Walmart, and 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.

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ATTACHMENT B

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NOTICE OF CLASS ACTION SETTLEMENT
Roach v. Walmart Inc., Case No. 2019-CH-01107

1. Introduction

The Circuit Court of Cook County preliminarily approved a class action settlement in the lawsuit *Roach v. Walmart Inc.,* Case No. 2019-CH-01107 (the "Lawsuit").

The Court has approved this Notice to inform you of your rights in the settlement. As described in more detail below, you may:

(1) request a settlement payment and give up certain legal claims you have;

(2) exclude yourself from the settlement and not receive a settlement payment or give up any legal claims;

(3) object to the settlement; or

(4) do nothing, not receive a settlement payment, and give up certain legal claims you have.

Before any money is paid, the Court will decide whether to grant final approval of the settlement.

2. What Is this Lawsuit About?

This Lawsuit is about whether Walmart Inc. ("Walmart") violated the the Illinois Biometric Information Privacy Act ("BIPA"). BIPA prohibits private companies from capturing, obtaining, storing, transferring, and/or using an individual's biometric identifiers and/or biometric information, including fingerprint or hand geometry scan data, without first providing an individual with certain written disclosures and obtaining written consent. The Lawsuit alleges that Walmart violated BIPA by collecting palm scan data from Walmart employees in Illinois through its cash recycler system without first providing written notice or obtaining written consent.

Walmart denies the allegations in the Lawsuit and denies any violation of the law.

Both sides agreed to the settlement to resolve the Lawsuit. The Court did not decide whether Walmart violated the law.

You can learn more about the Lawsuit by contacting the settlement administrator, Analytics Consulting LLC, at **1-xxx-xxx-xxxx**, or Settlement Class Counsel, Werman Salas P.C., at (312) 419-1008. You may also review the Settlement Agreement and related case documents at the settlement website: www.WalmartPalmScanSettlement.com

3. Who Is Included in the Settlement?

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

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There are an estimated 21,677 Settlement Class Members.

4. What does the Settlement Provide?

The class action settlement provides for a total payment of $10,000,000 that Walmart has agreed to pay to settle the claims of Settlement Class Members. Subject to Court approval, the gross settlement fund shall be reduced by the following: (1) an award of up to one third of the total settlement for Settlement Class Counsel's attorney fees and litigation costs; (2) an Incentive Award of $10,000 to the Settlement Class Representative; and (3) the Settlement Administrator's costs of up to $100,000. Following these reductions, the remaining amount shall be the net settlement fund which shall be distributed pro rata to Settlement Class Members who timely return valid claim forms ("Settlement Class Participants").

The amount of money each Settlement Class Participant will receive will depend on the number of Settlement Class Members who timely return valid claim forms. For example, if 50% of the estimated 21,677 Settlement Class Members submit valid timely claim forms, the Parties estimate you would receive a payment in the approximate amount of **$604.**

Unless you exclude yourself from the settlement as explained below, you will give up all claims arising out of the allegations in the Class Action Complaint in this lawsuit, or that could have been asserted but were not asserted in the Lawsuit arising out of the same nucleus of facts, whether known or unknown, including allegations that Walmart, the vendors of Walmart's cash recycler system (G4S Retail Solutions (USA), Inc., Revolution Retail Systems LLC), and their related entities, failed to adopt appropriate policies or improperly collected, stored, or used biometric identifiers and information that may have been obtained from Settlement Class Members through the palm scanner in Walmart's cash recycler system, including but not limited to claims arising under BIPA, and all other federal, state, and local law, including the common law as well as related claims for equitable or declaratory relief, liquidated damages, penalties, attorneys' fees and costs, expenses, and interest. The full Release of Claims is set forth in the Settlement Agreement.

5. What Are Your Options?

(1) **Request a settlement payment**. If you want to receive a settlement payment, you must complete and submit online, or postmark and mail for return, a claim form by **Insert date 90 days from Notice distribution**. You may return your claim form in the accompanying pre-paid envelope. Or you may also complete and submit a claim form online through the settlement website: www.WalmartPalmScanSettlement.com. If you timely return a completed and valid claim form, and if the Court grants final approval of the settlement, you will receive a check or an electronic payment, depending on which method of payment you select on the claim form. If required by law, you may also be sent a 1099 tax reporting form.

(2) **Exclude yourself from the settlement and receive no money.** If you do not want to be legally bound by the settlement, you must exclude yourself from the settlement by **Insert date 90 days from Notice distribution**. To do so, you must mail or email your written request for exclusion to the Settlement Administrator (contact information below). Your written request for exclusion must include your full name, address, telephone number, the last four digits of your Social Security Number, a statement that you wish to be excluded from the settlement, and it must be personally signed by you. If you exclude yourself, you will not receive money from this

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settlement, but you will keep your legal rights regarding any claims that you may have against Walmart and the other Released Parties.

(3) **Object to the Settlement.** You may object to the settlement by **Insert date 90 days from Notice distribution**. If you want to object to the settlement, you must mail or email a written objection to the Settlement Administrator (contact information below), which includes your full name, address, telephone number, the last four digits of your Social Security Number, the grounds for the objection, and copies of any other documents that you wish to submit in support your objection. Any objection must also be personally signed by you. If you exclude yourself from the settlement, you cannot file an objection.

(4) **Do Nothing**. You may choose to do nothing. If you do nothing, you will receive no money from the settlement, but you will still be bound by all orders and judgments of the Court. You will not be able to file or continue a lawsuit against the Released Parties regarding any legal claims arising out of allegations in the Class Action Complaint.

6. How do I update my Contact Information?

You must notify the Settlement Administrator of any changes in your mailing address so that your settlement award, should you request one, will be sent to the correct address. To update your address, contact the Settlement Administrator, listed below.

7. Who Are the Attorneys Representing the Class and How Will They Be Paid?

The Court has appointed Settlement Class Counsel, identified below, to represent Settlement Class Members in this settlement. Settlement Class Counsel will request one-third of the total settlement amount as attorney fees plus reimbursement of their costs. You may review Settlement Class Counsel's request for attorney fees and costs at the settlement website, www.WalmartPalmScanSettlement.com, after **Insert date 60 days from Notice distribution.** You will not have to pay Settlement Class Counsel from your settlement award or otherwise. You also have the right to hire your own attorney at your own expense.

Douglas M. Werman
Zachary C. Flowerree
Michael M. Tresnowski
Werman Salas P.C.
77 West Washington Street
Suite 1402
Chicago, IL 60602
(312) 419-1008
info@flsalaw.com

8. When is the Final Approval Hearing?

The Court will hold a hearing in this case on **Insert date from preliminary approval order**, in Courtroom 2305 of the Circuit Court of Cook County, Illinois, Richard J. Daley Center, 50 W. Washington Street, Chicago, Illinois 60602 at __:__ a.m./p.m., to consider, among other things, (1) whether to finally approve the settlement; (2) a request by the lawyers representing all class members for an award of no more than one-third of the settlement as attorney fees plus litigation costs ($3,333,333.33); and (3) a request for an Incentive Award of $10,000.00 for Settlement Class Representative Ethan Roach; and (4) a request for up to $100,000.00 to the Settlement

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Administrator. You may appear at the hearing, but you are not required to do so.

If you have any questions or for more information, contact the Settlement Administrator or Settlement Class Counsel at:

Settlement Administrator	**Settlement Class Counsel**
Analytics Consulting LLC Address Line 1 Address Line 2 Telephone Number Email address	Douglas M. Werman Zachary C. Flowerree Michael M. Tresnowski Werman Salas P.C. 77 West Washington Street, Ste. 1402 Chicago, IL 60602 (312) 419-1008

PLEASE DO NOT CONTACT THE COURT OR WALMART ABOUT THIS SETTLEMENT.

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CLAIM FORM

Roach v. Walmart Inc., Case No. 2019-CH-01107

To receive a settlement payment, your completed Claim Form must be submitted online or postmarked and mailed to the Settlement Administrator on or before Insert date 90 days from Notice distribution.

You can return a completed Claim Form by U.S. mail in the pre-paid envelope that was mailed to you or submit a claim electronically at the settlement website: www.WalmartPalmScanSettlement.com.

You will only receive a settlement payment if you timely return this Claim Form and the Court grants final approval of the settlement.

By signing below, you affirm that you used a palm scanner to access a cash recycler system at a Walmart or Sam's Club store in Illinois.

Printed Name: _____ Signature: _____

Date: _____ Phone Number: _____

Street Address: _____ City: _____

State: ___ Zip Code: _____ Email: _____

Insert Settlement Administrator's Contact Information

How I Wish to Receive Payment

Please check one of the boxes below to indicate how you would like to receive your settlement payment. If you indicate "electronic payment," instructions will be emailed to you for how to receive payment. If you do not make a selection, you will be mailed a physical check to the address identified above.

- □ Electronic payment
- □ A physical check by mail

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IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2019CH01107

13630672

EXHIBIT 2

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

ETHAN ROACH, on behalf of himself and all other persons similarly situated, known and unknown,	)	Case No. 2019CH01107
Plaintiff,	)	Judge: Honorable Pamela McLean Meyerson
v.	)	
WALMART INC.	)	
Defendant.	)	

DECLARATION OF ZACHARY C. FLOWERREE

Zachary C. Flowerree, being first duly sworn on oath, deposes and states under penalty of perjury the following:

1. I submit this Declaration in support of Plaintiff's Unopposed Motion and Memorandum for Final Approval of Class Action Settlement.

2. I am a Partner at Werman Salas P.C. I am one of the attorneys appointed as Settlement Class Counsel in the above-captioned lawsuit. Except as noted otherwise, I have personal knowledge of the facts set forth in this Declaration. If called as a witness, I could and would testify to them.

3. Attached to this Declaration is a Firm Resume with my law firm's accomplishments.

4. I graduated, *with honors*, from The University of Chicago Law School in June 2011. While in law school, I was a student attorney in the Mandel Legal Aid Clinic's Employment Discrimination Project, a staff member of the *University of Chicago Legal Forum*,

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and a semi-finalist in the University of Chicago's Hinton Moot Court Competition. I received a Bachelor of Arts Degree, *summa cum laude*, from the University of South Florida in 2007.

5. From October 2011 through April 2014, I worked as an Associate in the Labor and Employment-Relations Department at Winston & Strawn LLP in Chicago, Illinois. At Winston & Strawn, I represented employers in federal and state courts and administrative agencies throughout the country, including in class actions.

6. Since joining Werman Salas P.C. in June 2014, my practice has focused on representing employees in class and collective actions.

7. I have been appointed class counsel in the following cases: *Davis v. A Sure Wing, LLC*, Case No. 3:15-cv-01384-SCW, ECF No. 55 (S.D. Ill. Aug. 29, 2016) (certified settlement class of 1,951 tipped employees of restaurant franchise alleging violations of the tip-credit provisions of the Missouri Minimum Wage Law and Illinois Minimum Wage Law); *Steward v. Colonial Ice Cream, Inc. d/b/a Colonial Cafe & Ice Cream*, Case No. 1:15-cv-02284, ECF No. 100 (N.D. Ill. May 3, 2016) (certified settlement class of 457 tipped employees alleging violations of the tip-credit provisions of the Illinois Minimum Wage Law); *Sanchez v. Roka Akor Chicago LLC*, Case No. 1:14-cv-0645, ECF No. 70 (N.D. Ill. Jan. 7, 2016) (contested certified class of 62 servers alleging violations of the tip-credit provisions of the Illinois Minimum Wage Law); *Cope v. Let's Eat Out, Incorporated*, Case No. 6:16-cv-03050-SRB (W.D. Mo. May 10, 2017) (contested certified classes of 993 tipped employees alleging violations of the Missouri Minimum Wage Act and the Missouri common law); *Adams v. World Hyundai of Matteson LLC*, 2018-CH-15640, Preliminary Approval Order (Cir. Ct. Cook Cnty., Ill. July 10, 2019) (Cohen, J.) (certified settlement class of estimated 204 employees in case alleging violations of the Biometric Information Privacy Act for improper collection, possession, and transfer of

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employees' biometric fingerprint identifiers and information); *Guerrero v. Bob's Discount Furniture, LLC*, Case No. 2019-CH-01046, Preliminary Approval Order (Cir. Ct. Cook Cnty, Ill. Nov. 18, 2019) (Meyerson, J.) (same for estimated 165 person class, which was later expanded to 225 class members); *Kiefer v. Bob Evans Farms, LLC*, Case No. 17-L-112, Preliminary Approval Order (Cir. Ct. Tazewell Cnty., Ill. Oct. 18, 2019) (same for estimated 1,504 person class); *Phillips v. Warehouse Services, Inc.*, No. 2019-CH-01183, Preliminary Approval Order (Cir. Ct. Cook Cnty., Ill. Dec. 19, 2019) (same for 655 person class); *Briggs, et al. v. RhinoAG, Inc.*, No. 2019-CH-12, Preliminary Approval Order (Cir. Ct. Ford Cnty., Ill. Jan. 2, 2020) (same for estimated 202 person class); *Anderson v. Dana Hotel, LLC*, No. 2019-CH06098, Preliminary Approval Order (Cir. Ct. Cook Cnty., Ill. March 3, 2020) (same for estimated 60 person class); *Trost v. Pretium Packaging, L.L.C.*, No. 2020-CH-03606, Preliminary Approval Order (Cir. Ct. Cook Cnty., Ill. May 8, 2020) (same for estimated 1,728 person class); *Jones v. CBC Rest. Corp.*, 1:19-cv-06736, ECF No. 45, ¶ 6 (N.D. Ill. June 12, 2020) (same for 4,013 person class that was later expanded to 4,053 class members); *Lane v. Schenker, Inc.*, 3:19-cv-00507-NJR, ECF No. 44, at ¶ 8 (S.D. Ill. July 29, 2020) (same for estimated 317 person class); *Collier v. Pete's Fresh Market 2526 Corporation*, No. 2019-CH-5125, Preliminary Approval Order (Cir. Ct. Cook Cnty., Ill. Aug. 3, 2020) (same for two class totaling 6,292 persons); *Heard v. THC – North Shore, Inc.*, 2017-CH-16918 (Cir. Ct. Cook Cnty. Jan. 20, 2021) (same for estimated 2,850 person class); *Davis v. Heartland Employment Services, LLC*, No. 19-cv-00680, Preliminary Approval Order (N.D. Ill. May 18, 2021) (same for estimated 10,836 person class).

8. My law firm has been actively developing and litigating dozens of potential class actions alleging similar violations of the Biometric Information Privacy Act ("BIPA") as are alleged in this case. I have been appointed class counsel for settlement purposes in twelve cases

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similar to this one on behalf of employees alleging violations of the BIPA based on biometric tracking systems. *See* Paragraph 7, *supra*.

9. I have been involved in every stage of the above-captioned litigation, including interviewing the Class Representative, drafting and editing pleadings, drafting the response to Defendant's motion to dismiss and arguing the motion, drafting discovery requests, reviewing Defendant's discovery responses and documents, drafting mediation materials, attending mediation, drafting and negotiating the settlement documents, and drafting settlement approval documents.

10. The claims rate here exceeds the approximately 12.5 percent claims rate in a recent BIPA settlement against a payroll vendor, ADP, and even the "impressive" claims rate of approximately 22 percent in the recent Facebook BIPA settlement.[1]

11. If the Court approves the requested Attorney Fees, Settlement Administration Costs, and Incentive Award, the claimants in this Settlement will receive at least $645 net per person. This represents a meaningful monetary recovery compared to the following class action BIPA settlements that have received final approval:[2]

Case	**Judge**	**Date**	**Class Size**	**Per Class Member**
Kusinski v. ADP, LLC, 17-CH-12364 (Cook Cnty.)	Atkins	Feb. 10, 2021	320,000	$250 net per claimant with 20% claims rate[3]

[1] Class counsel in *ADP* disclosed the claims rate in their final approval motion. *Kusinski v. ADP, LLC*, 17-CH-12364 (Cook Cnty. Feb. 1, 2021) In the *Facebook* case, the Court's final approval order disclosed the claims rate and described it as "impressive." *In Re Facebook Biometric Information Privacy Litig.*, 15-cv-3747-JD, pp. 1, 4, 14 (N.D. Cal. Feb. 26, 2021).

[2] This chart is based on my review of the settlement filings in these cases.

[3] The actual claims rate in *ADP* was only 12.5 percent, almost one-quarter of the claims rate here, so the ultimate net per claimant amount in *ADP* was above $250.

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Case	Judge	Date	Class Size	Per Class Member
Prelipceanu v. Jumio Corp., 18-CH-15883	Mullen	July 21, 2020	Thousands	$262.28 net per claimant[4]
Rafidia v. KeyMe, Inc., 18-CH-11240 (Cook Cnty.)	Gamrath	June 5, 2020	2,117	$515 net per claimant
Marshall v. Life Time Fitness, Inc., 17-CH-14262 (Cook Cnty.)	Tailor	Aug. 7, 2019	6,000	$270 net per claimant[5]
Zhirovetskiy v. Zayo Group, LLC, 17-CH-09323 (Cook Cnty.)	Flynn	Apr. 8, 2019	2,475	$450 gross

12. The $10 million class-wide recovery here is significant because Walmart had a viable defense against class certification. Walmart's employees could access its cash recycler system through a palm scan or numeric pin code. *See* Ex. 1, Settlement Agreement, § I. In its interrogatory answers, Walmart stated that it stopped using the palm scan technology and deleted users' data at its Walmart stores in Illinois before Plaintiff filed this lawsuit. After an exhaustive search as part of discovery and additionally in advance of mediation, Walmart and its vendors were unable to find any data that would identify all employees who used the palm scanner versus those who used the pin code, only. Ex. 1, Settlement Agreement, § I. Thus, Plaintiff faced a risk that he would have been unable to demonstrate the class was ascertainable and that common issues would predominate. Without a certified class, there obviously could have been no class-wide recovery. Settlement Class Counsel believe this class certification risk justifies a meaningful discount on the Settlement Class's claims.

13. Plaintiff also faced a risk that Walmart would defeat his claims on the merits.

[4] The Parties' settlement agreement and filings did not disclose the number of class members in this $7 million settlement or the ultimate net per person recovery. Class Counsel's fee petition represented that "thousands" of class members had filed claims. Legal websites state that class members who submitted claims received up to $262.28 per person. *See* https://topclassactions.com/lawsuit-settlements/lawsuit-news/illinois-jumio-biometric-class-action-settlement/ (last visited May 21, 2021).

[5] The settlement also included dark web monitoring the parties valued at $130 per class member.

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14. First, Walmart argued that Plaintiff's claims were barred by the one-year statute of limitations for certain privacy claims. Ex. 1, Settlement Agreement, § I. Although this Court denied Walmart's Motion to Dismiss on the statute of limitations, the issue is currently on appeal before the First District Appellate Court. *See Tims v. Black Horse Carriers, Inc.*, No. 1-28-0564. In accepting the Rule 308 petition, the First District determined that there was a "substantial ground for difference of opinion" on whether a one-year statute of limitations applies to BIPA claims. *Id.* If the First District holds that the one-year limitations period applies to BIPA claims, Plaintiff's claim here would be time barred because he stopped working for Walmart in 2017 and filed this case in January 2019. *See* Class Action Complaint, ¶¶ 1-2, Although Settlement Class Counsel are confident the First District will endorse the five-year limitations period, they believe a risk discount is appropriate on the limitations defense.

15. Second, Plaintiff faced a risk that Walmart would demonstrate it is not covered by BIPA. BIPA does not apply "in any manner to a financial institution or an affiliate of a financial institution that is subject to Title V of the federal Gramm-Leach-Bliley Act of 1999 and the rules promulgated thereunder." 740 ILCS 14/25(c). Walmart contended that its cash recycler system serves to, among other things, directly deposit U.S. currency with financial institutions (*i.e.*, national banks) and draw on lines of credit from national banks. Based on this, Walmart contended that the cash recyclers therefore contain "bank cash" – *i.e.*, funds belonging to financial institutions subject to Title V of the Gramm-Leach-Bliley Act. Walmart further contended that the purpose of the cash recyclers, and the palm scanning feature, is to protect the cash held inside, including the bank cash belonging to financial institutions subject to Title V of the Gramm-Leach-Bliley Act. Thus, Walmart contended that applying BIPA to the cash recyclers would improperly make the law apply "in any manner" to these financial institutions.

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Settlement Class Counsel believes the Gramm-Leach-Bliley argument justifies a small risk discount on the Settlement Class's claims.

16. Third, Walmart argued that its cash recycler system did not collect a biometric identifier or biometric information covered by BIPA. The palm scanner on the cash recyclers operates by collecting data points based on a user's vascular patterns. The data points are stored as an encrypted hash and, according to the palm scan vendor materials, cannot be used to recreate a person's vascular characteristics. Settlement Class Counsel believe they would establish that the palm scan data is nevertheless covered by BIPA, but this would have required expert testimony, which increases costs and delays the likelihood of ultimate resolution. Settlement Class Counsel believe that avoiding the risk of delay justifies a small discount on the value of the Settlement Class's claims.

17. Fourth, Walmart argued that Plaintiff's claim under Section 15(a) of BIPA – for failure to establish a publicly available biometric data retention/destruction policy – is not a basis for individual damages recovery. In its recent decision in *Bryant v. Compass Group USA, Inc.*, 958 F.3d 617 (7th Cir. 2020), the Seventh Circuit held that Section 15(a)'s policy requirement is aimed at protecting public rights, not individual rights. Plaintiff would have faced difficulty in showing how Walmart's failure to establish a biometric data retention/destruction policy injured him personally. In discovery, Walmart stated that separated employees' palm scan data was automatically overwritten and deleted within 30 days of separation from employment. So, Section 15(a)'s destruction requirement was not in play. Plaintiff believes the holding in *Bryant* justifies a meaningful risk discount on the Settlement Class's Section 15(a) claims.

18. Fifth, Walmart contended that employment-based BIPA claims are preempted by the Illinois Workers' Compensation Act. In negotiating the Settlement, Settlement Class Counsel

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did not consider preemption to be a meaningful risk. But now that the issue is on appeal before the Illinois Supreme Court, *McDonald v. Symphony Bronzeville Park, LLC*, Case No. 126511 (Ill.) (petition for leave to appeal accepted on January 26, 2021), Settlement Class Counsel believe the uncertainty surrounding the appeal justifies a risk discount.

19. In sum, the net per claimant recovery of at least $645 represents a meaningful recovery in light of the litigation risks.

20. Walmart's ability to pay a judgment did not influence the Settlement amount in this case.

21. If the litigation had continued, it would have been complex, expensive, and protracted. There is only limited precedential authority on BIPA defenses that Walmart asserted in this case. As a result, the parties likely would have spent significant resources briefing contested issues. In addition, Plaintiff would have hired an expert witness to testify about whether Walmart's technology collected biometric identifiers and information. This likely would have resulted in Walmart hiring its own expert witness. Given the limited precedential authority on BIPA claims, the parties likely would have appealed any final judgment entered by this Court. Instead of expensive, complicated, and protracted litigation, this Settlement provides significant monetary relief to Settlement Class Members now.

22. Based on information exchanged in discovery, the store where Ms. Goetsch worked began using the technology months before Walmart implemented a written consent. On top of this, the Settlement Class is defined as individuals who used the palm scanner without first providing "written consent."

23. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and

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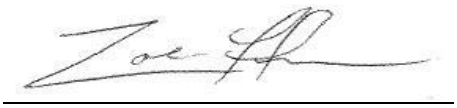
correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Executed on June 9, 2021



Zachary C. Flowerree

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FIRM RESUME

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Introduction:

Werman Salas P.C. is a Chicago based national law firm focused on the recovery of unpaid wages for workers in class and collective actions across the United States.

Recognizing the firm's skill and experience, a federal court described Werman Salas P.C. as "national leaders in advocating the rights of working people …" *Sanchez v. Roka Akor Chicago LLC*, 2017 WL 1425837 (N.D. Ill., Apr. 20, 2017). A federal magistrate judge described Werman Salas P.C. as "known and recognized lawyers in wage and hour litigation" with "an excellent national reputation." *Osman, et al. v. Grube, Inc.*, 2018 WL 2095172, at *4 (N.D. Ohio May 4, 2018).

Significant Biometric Information Privacy Act Class Actions
Lead or Co-Lead Counsel

- *Collier v. Pete's Fresh Market 2526 Corporation*, No. 2019-CH-5125 (Cir. Ct. Cook Cnty., Ill.) (appointed co-lead class counsel in settlement for over 6,000 class members alleging Biometric Information Privacy Act claims based on use of biometric timekeeping equipment)

- *Lane v. Schenker, Inc.*, 3:19-cv-00507-NJR, ECF (S.D. Ill.) (appointed co-lead class counsel in settlement for over 300 class members alleging Biometric Information Privacy Act claims based on use of biometric timekeeping equipment)

- *Jones v. CBC Rest. Corp.*, 1:19-cv-06736 (N.D. Ill.) (appointed class counsel in settlement for over 4,000 class members alleging Biometric Information Privacy Act claims based on use of biometric timekeeping equipment)

- *Trost v. Pretium Packaging, L.L.C.*, No. 2020-CH-03606 (Cir. Ct. Cook Cnty., Ill.) (appointed co-lead class counsel in settlement for over 1,700 class members alleging Biometric Information Privacy Act claims based on use of biometric timekeeping equipment)

- *Kiefer v. Bob Evans Farms, LLC*, Case No. 17-L-112 (Cir. Ct. Tazewell Cnty., Ill.) (appointed class counsel in settlement for 1,500 class members alleging Biometric Information Privacy Act claims based on use of biometric timekeeping equipment)

- *Phillips v. Warehouse Services, Inc.*, No. 2019-CH-01183 (Cir. Ct. Cook Cnty., Ill.) (appointed class counsel in settlement for over 600 class members alleging Biometric Information Privacy Act claims based on use of biometric timekeeping equipment)

- *Alvarado v. Int'l Laser Prods., Inc.*, No. 18 C 7756, 2019 WL 3337995 (N.D. Ill. June 19, 2019) (contested certified class for hundreds of class members alleging violations of the Biometric Information Privacy Act based on use of biometric timekeeping equipment)

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- *Adams v. World Hyundai of Matteson LLC*, 2018-CH-15640 (Cir. Ct. Cook Cnty., Ill.) (appointed class counsel in settlement for over 200 class members alleging Biometric Information Privacy Act claims based on use of biometric timekeeping equipment)

- *Briggs, et al. v. RhinoAG, Inc.*, No. 2019-CH-12 (Cir. Ct. Ford Cnty., Ill.) (appointed class counsel in settlement for hundreds class members alleging Biometric Information Privacy Act claims based on use of biometric timekeeping equipment)

- *Guerrero v. Bob's Discount Furniture, LLC*, Case No. 2019-CH-01046 (Cir. Ct. Cook Cnty., Ill.) (appointed class counsel in settlement for 165 class members, later expanded to 225 class members, alleging Biometric Information Privacy Act claims based on use of biometric timekeeping equipment)

Significant Unpaid Wage Class Actions:
Lead or Co-Lead Counsel

- *Arrez v. Kelly Services, Inc.,* No. 07-cv-1289 (N.D. Ill.) (appointed class counsel in settlement for 95,000 class members in lawsuit alleging violations of the Illinois Wage Payment and Collection Act for unpaid vacation pay benefits and of the Illinois Day and Temporary Labor Services Act for wage payment and notice violations)

- *Ortiz v. Manpower*, Inc., No. 12-cv-5248 (N.D. Ill.) (unpaid wage class action for over 85,000 class members)

- *Garcia v. JC Penney Corp., Inc.*, No. 12-CV-3687, 2016 WL 878203 (N.D. Ill. Mar. 8, 2016) (unpaid wage class action for over 36,000 employees)

- *Polk v. Adecco*, No. 06 CH 13405 (Cook County, Ill.) (unpaid wage class action for over 36,000 class members)

- *Driver v. AppleIllinois, LLC*, 265 F.R.D. 293, 311 (N.D. Ill. 2010) & *Driver,* No. 06-cv-6149 (N.D. Ill.) (class action for 19,000 tipped restaurant employees; decertification denied)

- *Williams v. Volt*, No. 10-cv-3927 (N.D. Ill.) (unpaid wage class action for over 15,000 employees)

- *Martignago, et al v. Merrill Lynch & Co., Inc*., Case No. 11-cv-03923-PGG (multi-state class action certified for over 10,000 employees)

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Kernats v. Comcast Corp. Inc., Nos. 09 C 3368 and 09 C 4305, 2010 U.S. Dist. LEXIS 112071 (N.D. Ill. Oct. 20, 2010) (class certification granted for over 8,000 Illinois employees)

- *Ryan Black v. P.F. Chang's China Bistro, Inc.*, Case No. 16 C 03958 (N.D. Ill.) (class and collective action settlement for thousands of restaurant workers)

- *McDonnell v. Groupon,* Case No. 14 cv 9028 (N.D. Ill.) (certified settlement class of 2,024 inside Account Representatives and Account Executives alleging overtime misclassification violations under the Illinois Minimum Wage Law and the Fair Labor Standards Act)

- *Magpayo v. Advocate Health & Hosps. Corp.,* No. 16-CV-01176, 2018 WL 950093, at *1 (N.D. Ill. Feb. 20, 2018) (Following contested motion practice, the court certified Rule 23 classes under the Illinois Minimum Wage Law and under the Illinois Wage Payment and Collection Act for unpaid overtime and straight time wages due for working through unpaid meal periods)

- *Higgins v. Verizon North LLC,* No. 4:11-cv-1393 (E.D. Mo.) (appointed class counsel in settlement for 377 class members in lawsuit alleging off-the-clock violations under the Missouri Minimum Wage Law, the Fair Labor Standards Act, and under common law)

- *Davis v. A Sure Wing, LLC*, Case No. 3:15-cv-01384-SCW, ECF No. 55 (S.D. Ill. Aug. 29, 2016) (certified settlement class of 1,951 tipped employees of restaurant franchise alleging violations of the tip-credit provisions of the Missouri Minimum Wage Law and Illinois Minimum Wage Law)

- *Cope v. Let's Eat Out, Incorporated*, Case No. 6:16-cv-03050-SRB (W.D. Mo. May 10, 2017) (contested certified classes of 993 tipped employees alleging violations of the Missouri Minimum Wage Act and the Missouri common law)

- *Zamudio v. Nick & Howard LLC d/b/a The Underground, et al.,* Case No. 15-cv-3917 (N.D. Ill.) (certified settlement class of 108 servers and bartenders in lawsuit alleging violations of the Illinois Minimum Wage Law and the Illinois Wage Payment and Collection Act for unpaid minimum and other earned wages)

- *Rusin v. Chicago Tribune Company,* Case No. 12 cv 01135 (N.D. Ill.) (certified settlement class of 46 field reporters in lawsuit alleging overtime misclassification violations under the Illinois Minimum Wage Law)

- *Snoep v. Asia on Illinois LLC,* Case No. 12 cv 2387 (N.D. Ill.) (certified settlement class of 176 tipped employees in lawsuit alleging violations of the tip credit provisions of the Illinois Minimum Wage Law)

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- *Peraza, et al. v. Dominick's Finer Foods, LLC.,* Case No. 11 cv 8390 (N.D. Ill) (certified settlement class of 85 managers in lawsuit alleging overtime misclassification violations under the Illinois Minimum Wage Law and the Fair Labor Standards Act)

- *Hopkins v. Theofanous Brothers, Inc.,* Case No. 10 CH 672 (Circuit Court of McHenry County, Chancery Division) (following contested motion practice, the court certified classes under the Illinois Minimum Wage Law for unpaid minimum wages and under the Illinois Wage Payment and Collection Act for unauthorized deductions)

- *O'Donnell v. AT&T Services, Inc.,* Case No. 10 CH 46886 (Circuit Court of Cook County, Chancery Division) (certified settlement class of 272 IT Analysts in lawsuit alleging overtime misclassification violations under the Illinois Minimum Wage Law)

- *Gonzalez v. Fellowes, Inc.,* Case No. 10 cv 7682 (N.D. Ill.) (certified settlement class of 805 day and temporary laborers who alleged they were not paid for the time they worked through their meal breaks in violation of the Illinois Wage Payment and Collection Act, Illinois Minimum Wage Law, Illinois Day and Temporary Labor Services Act, and Fair Labor Standards Act)

- *Barragan v. Evanger's Dog and Cat Food Co., Inc.,* Case No. 09 cv 227 (N.D. Ill.) (following contested motion practice, the court certified a Rule 23 class under the Illinois Minimum Wage Law for unpaid overtime wages)

- *Jimenez v. Yamuna Enterprises, Inc.*, Case No. 07 CH 20918 (Circuit Court of Cook County, Chancery Division) (following contested motion practice, the court certified classes under the Illinois Minimum Wage Law and Illinois Wage Payment and Collection Act for owed overtime, minimum wages, and other unpaid wages)

- *Shaukat, et al. v. Wireless 4 U*, Case No. 06 cv 4214 (N.D. Ill.) (following contested motion practice, the court certified Rule 23 classes under Illinois, Arizona, and Missouri state law for the non-payment of commission wages)

- *Steward v. Colonial Ice Cream, Inc. d/b/a Colonial Cafe & Ice Cream*, Case No. 1:15-cv-02284, ECF No. 100 (N.D. Ill. May 3, 2016) (certified settlement class of 457 tipped employees alleging violations of the tip-credit provisions of the Illinois Minimum Wage Law)

Significant Collective Actions for Minimum Wages or Overtime:
Lead or Co-Lead Counsel

- *Robbins v. Blazin Wings, Inc.,* No. 15-CV-6340 CJS, 2016 WL 1068201, at *1 (W.D.N.Y. Mar. 18, 2016) (following contested motion practice, the court authorized step one FLSA certification to a nationwide class and over 5,000 servers and bartenders filed consents to join the case; after extensive discovery, the parties resolved the action on a collective action basis)

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- *Knox v. The Jones Group,* No. 15-cv-1738 (S.D. Ind) (following contested motion practice the court authorized step one FLSA certification and 559 servers and bartenders filed consents to join the case; after extensive discovery, the parties resolved the action on a collective action basis)

- *Brunty v. Optima Health Plan,* No. 2:19-cv-255 (E.D. Va.) (collective action settlement for 178 Care Coordinator Non-RNs alleging overtime misclassification claims under the FLSA)

- *Turner v. BFI Waste Service, LLC,* No. 2:16-cv-2864-DCN (D.S.C.) (following contested motion practice the court authorized step one FLSA certification and 126 drivers filed consents to join the case; the parties later resolved the action for the collective)

- *Wolverton v. Diversified Restaurant Holdings, Inc., et al.*, Case No. 2:14-cv-11333-VAR-DRG (E.D. Mich.) (collective action settlement involving hundreds of restaurant franchise employees)

- *Burns v. RespiteCare,* Case No. 1:17-cv-00917 (N.D. Ill.) (collective action settlement for 94 Home Service Aides alleging failure to pay all overtime wages in violation of the FLSA)

- *Castaldo v. Uncle Julio's Corporation*, Case No. 1:15-cv-09176 (N.D. Ill.) (collective action settlement involving 396 tipped employees)

- *McLamb v. High 5 Hospitality, LLC d/b/a Buffalo Wild Wings*, Case No. 1:16-cv-00039-GMS (D. Del.) (collective action settlement encompassing up to 612 tipped employees)

- *Osman v. Grube, Inc.,* Case No. 3:16-cv-00802-JJH (N.D. Ohio) (collective action settlement reached for 323 tipped workers in lawsuit alleging violations of the tip credit provisions of the Fair Labor Standards Act)

- *Grosscup v. KPW Management, Inc.*, Case No. 16 C 06501 (N.D. Ill.) (collective action settlement reached for 232 tipped workers in lawsuit alleging violations of the tip credit provisions of the Fair Labor Standards Act)

- *Russell v. EqHealth Solutions, Inc.*, 3:19-cv-000005 (M.D. La.) (collective action settlement for 63 care coordinators and utilization reviewers who alleged overtime misclassification claims under the FLSA)

- *Putman v. Galaxy 1 Marketing, Inc.,* 3:10-cv-72-JAJ-RAW (S.D. Iowa) (following contested motion practice the court authorized step one FLSA certification and 153 satellite installers filed consents to join the case; after extensive discovery on plaintiffs'

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independent contractor misclassification claims, the parties resolved the action on a collective action basis)

Significant Telephone Consumer Protection Act Class Actions
Lead or Co-Lead Counsel

- *Buchanan v. Sirius XM Radio Inc.*, Case No. 17-cv-728 (N. D. Tex.) (class action settlement for over 14 million class members)

Our Attorneys:

- **Douglas M. Werman, *Founder and Managing Partner***

Doug acted as lead and co-lead counsel in hundreds of individual, collective and class action lawsuits throughout the United States resulting in more than $250,000,000 being paid to working people and their families.

Doug has served as counsel of record in scores of ground breaking cases, including the successful appeal of *Ervin v. OS Restaurant Serv.*, 09-3029 (7th Cir. Jan. 18, 2011), which confirmed the ability of employees to litigate, in the same lawsuit, Fair Labor Standards Act collective action claims together with state law class action claims for owed minimum wages and overtime pay. He is on the Board of Editors of the leading treatise on the Fair Labor Standards Act, entitled, "*The Fair Labor Standards Act*," and is a recurring speaker at Chicago and American Bar Association events, the National Employment Lawyers Association, the Illinois Institute for Continuing Education, and other legal conferences. Doug was on the working committees that helped author the Illinois Day and Temporary Labor Services Act, the 2006 amendments to the Illinois Minimum Wage Law, and the 2011 "Wage Theft" amendments to the Illinois Wage Payment and Collection Act. Recently, Doug was one of ten lawyers in the United States, working in conjunction with Federal Judiciary Center, who drafted Mandatory Initial Discovery Protocols to be used by the United States federal courts in Fair Labor Standards Act cases. Doug is also the proud recipient of the Thirteenth Annual Award for Excellence in Pro Bono Service awarded by the United States District Court for the Northern District of Illinois, in conjunction with the Chicago Chapter of the Federal Bar Association.

Doug graduated from Loyola University of Chicago School of Law in 1990. After his graduation, he worked at national management side labor law firms until starting Werman Law Office P.C. in 2001, which became Werman Salas P.C. on January 1, 2014. As a defense lawyer, Doug represented a broad range of clients in many business areas including telecommunications, retail, transportation, waste management, insurance, warehousing, and construction. His work on behalf of employers included extensive experience performing human resource counseling and before the National Labor Relations Board, including unfair labor practice proceedings and union representation cases.

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- **Maureen A. Salas, *Partner***

Maureen is a highly knowledgeable and skilled class action litigator who is dedicated to obtaining successful results for her clients. Maureen has delivered outstanding results to her clients by winning trials, winning summary judgment motions, and by negotiating favorable settlements for her clients.

Maureen began working at the firm in 2006 and became a shareholder in 2013. She primarily represents employees in class and collective action wage and hour litigation, and she has had tremendous success recovering wages for workers across the nation in a variety of industries. Maureen has recovered tens of millions of dollars for working people during her tenure with the firm. Maureen also prides herself in delivering excellent service and results to the clients she represents in single plaintiff employment matters involving claims for discrimination, retaliatory discharge, and claims under the Family Medical Leave Act.

Maureen's commitment to her practice of representing workers extends outside the courtroom. Maureen served as a Contributing Editor for the leading treatise on the Fair Labor Standards Act, entitled, "*The Fair Labor Standards Act*" (2010). She also serves as a Chapter Editor for the American Bar Association's Federal Labor Standards Legislation Committee's Midwinter Treatise.

Maureen has been asked to share her knowledge and experience with her peers and has served as a speaker on esteemed panels on a national and local level. She had the privilege of speaking on the topic of employee misclassification at the American Bar Association's Labor and Employment Law Conference in 2017 and at its Annual Meeting in 2012. Maureen also had the honor of speaking on multiple occasions for the National Employment Lawyers Association, an organization that advances employee rights and advocates for equality and justice in the American workplace. Maureen has spoken on a local level for the Chicago Bar Association and the Illinois Bar Association on topics related to wage and hour litigation and pregnancy discrimination.

Maureen received her Juris Doctor degree, *summa cum laude*, from DePaul University College of Law in May 2006, and she was elected into the Order of the Coif in recognition of her scholastic excellence. Maureen also earned the distinction of becoming a Quarter-Finalist in the 2006 Wagner Competition, the nation's largest student-run appellate moot court competition and the premier competition dedicated exclusively to the areas of labor and employment law. As a law student, Maureen also worked as an intern for the Equal Employment Opportunity Commission. Maureen received her Bachelor of Science degree, *magna cum laude*, in Public Administration from the University of Arizona in 2002.

- **Zachary C. Flowerree, *Partner***

Zac Flowerree has recovered over $25 million in unpaid minimum wages and overtime compensation for thousands of workers in collective and class action lawsuits across the country

For much of his career, Zac has been a forceful advocate for tipped employees in the restaurant industry. He has fought to recover unpaid wages for servers and bartenders who were paid tip-

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credit wages while forced to perform excessive side work and cleaning tasks, pay for walkouts, uniforms, or breakages, or give a portion of their hard-earned tips to managers or non-tipped employees.

Currently, Zac is expanding his representation of Illinois workers who are required to use their biometric identifiers – like their fingerprints or facial scans – to clock in and out of their shifts. Zac and Werman Salas P.C. are currently prosecuting more than two dozen potential class action lawsuits against restaurants, healthcare facilities, warehouses, retail chains, and manufacturing plants for improper collection, retention, and disclosure of workers' sensitive biometric identifiers and information.

Before dedicating himself to workers' rights in 2014, Zac represented employers at Winston & Strawn LLP, one of the most preeminent law firms in Chicago.

Zac graduated with honors from the University of Chicago Law School in 2011. While in law school, Zac won the Thomas R. Mulroy prize for appellate advocacy, published a journal article in the University of Chicago Legal Forum, and represented victims of workplace discrimination at the Mandel Legal Aid Clinic.

- **Sarah J. Arendt, *Partner***

Sarah Arendt has represented thousands of employees in class, collective, and individual actions to recover unpaid minimum wages, overtime compensation, and other owed wages and penalties. She has recovered over $7 million in owed wages for her clients. A federal court has called Sarah a "highly respected and experienced lawyer" in wage and hour law.

Sarah takes on wage theft in all its forms – she has represented federal employees seeking owed overtime and night pay from the U.S. Government, inside sales representatives who were misclassified as managers by their tech firm and big-box employers, and tipped workers who were not paid the minimum wage by restaurant franchises across the country. Sarah has also recovered unpaid wages and overtime compensation for home health and companion care workers, including those who work 24-hour shifts in the homes of their employer's clients.

Sarah doesn't just fight wage theft. She has also recovered hundreds of thousands of dollars for employees who have been discriminated against on the basis of their age, national origin, sex, sexual orientation, and military service. She has represented clients before the Equal Employment Opportunity Commission and the Illinois Department of Human Rights.

Sarah is also an ardent advocate for workers outside the office. She is a regular contributor to a leading treatise, "The Fair Labor Standards Act," and has spoken on state and local vacation pay legislation at the Chicago-Kent College of Law. Sarah was the recipient of LAF Chicago's 2015 Volunteer of the Year Award for their Violence Against Women Act and U Visa Pro Bono Project. She is a former Peggy Browning fellow and the current Co-Coordinator of the Peggy Browning Alumni Association – Chicago Chapter, which encourages law students and young attorneys to pursue careers in union-side labor law. Sarah is also a member of the Women Employed Quality

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Jobs Council, where she helped draft the proposed No Salary History bill, which passed the Illinois legislature with overwhelming support but was vetoed by Governor Rauner in 2017.

Sarah received her J.D. from the University of Chicago Law School. During law school Sarah worked to overturn the convictions of wrongly-accused prisoners through The Exoneration Project clinic. She also worked as a research assistant to Professor Tom Ginsburg and Dean Thomas J. Miles.

- **Sally Abrahamson, *Partner***

Throughout her career, Sally has recovered over $100 million dollars for workers and has litigated and settled cutting edge cases. Sally is nationally recognized as an aggressive litigator, who can also work effectively with the other side when a deal can be made.

Notably, Sally has litigated some of the biggest cases in the country against national chain restaurants and recovered tens of millions of dollars for tipped workers. She litigates a wide-range of wage-and-hour cases on behalf of service employees, technicians, and sales employees (among others). Sally also litigates disparate impact discrimination cases, including *Cote v. Walmart*, which resulted in a $7.5 million class action settlement on behalf of Walmart associates who were unable to obtain health insurance coverage for their same-sex spouses from Walmart. In 2017, Sally won Public Justice's prestigious Trial Lawyer of the Year Award as part of the litigation team in a class action against the Census Bureau. The case challenged the use of arrest and criminal history records as a screen for employment for 850,000 applicants and in 2016, the parties reached a landmark settlement that required the Census Bureau to reform its hiring practices for the 2020 decennial census.

Prior to joining Werman Salas P.C. in 2020, Sally was a partner at Outten & Golden LLP, a plaintiff-side employment firm with a national presence. Sally also previously worked as a staff attorney at the D.C. Employment Justice Center, where she won two bench trials. She clerked for the Honorable Frank Montalvo, U.S. District Judge in the Western District of Texas, El Paso Division. In addition to serving as Judge Montalvo's law clerk, Sally drafted speeches and papers in Spanish on topics ranging from arbitration to due process in support of Judge Montalvo's position on the Committee on International Judicial Relations.

Sally speaks frequently about issues facing LGBTQ employees and low-wage workers. She has won several awards and received national recognition for her litigation skills, including:

- Super Lawyers Super Lawyer: 2020
- Super Lawyers Rising Star: 2016-2019
- Legal 500 United States Recommended Labor and Employment Lawyer 2019-2020
- Finalist for Public Justice's Trial Lawyer of the Year Award 2018
- Trial Lawyer of the Year Award, Public Justice, Gonzalez v. Pritzker 2017

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- National LGBT Bar Association Best LGBT Lawyers Under 40 – Class of 2017

Sally received her B.A. from Oberlin College and her J.D., with honors, from American University's Washington College of Law where she received the Dean's Award for Professional Responsibility – Outstanding Student in the Clinical Program for her work with the Domestic Violence Clinic.

- **Michael Tresnowski,** ***Associate***

Mike represents workers seeking to recover unpaid wages in individual, collective, and class action lawsuits. He represents employees throughout the nation across a wide range of industries.

Before committing his practice exclusively to workers' rights, Mike represented both individuals and companies in complex commercial cases as an associate at Miller Shakman Levine and Feldman, a Chicago litigation boutique. Mike's practice involved a wide range of issues including executive compensation, antitrust, and professional malpractice. Mike's knowledge of federal courts is informed by his service as a law clerk for the Honorable James B. Zagel, United States District Judge on the Northern District of Illinois.

Mike graduated with honors from the University of Chicago Law School in 2016, where he was an Articles Editor on the University of Chicago Law Review. He represented victims of racial discrimination in class action proceedings as a participant in the law school's Employment Law Clinic.

Prior to law school, Mike was a public school teacher in Washington D.C. He remains a supporter of public education as an elected member of the Local School Council at the Chicago Public School in his neighborhood. He graduated in 2010 from the University of Notre Dame with degree in philosophy.

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IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2019CH01107

13630672

EXHIBIT 3

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

ETHAN ROACH, on behalf of himself and all other persons similarly situated, known and unknown,	)	
Plaintiff,	)	Case No. 2019-CH-01107
v.	)	Judge: Honorable Pamela Mclean Meyerson
WALMART, INC.,	)	
Defendant.	)	

DECLARATION OF DUE DILIGENCE

I, Caroline P. Barazesh, state as follows:

1. I am over the age of twenty-one. I am competent to give this declaration. This declaration is true and correct to the best of my knowledge, information and belief.

2. I am currently a Director for Analytics Consulting LLC (hereinafter "Analytics"), located at 18675 Lake Drive East, Chanhassen, Minnesota, 55317. In my capacity as Director, I am responsible for claims administration in the above-captioned litigation.

3. Analytics Consulting LLC was approved by the Court to provide settlement administration services in the *Roach v Walmart, Inc.* case ("Settlement"). In this capacity, Analytics Consulting, LLC was charged with (a) establishing and maintaining a related settlement fund account; (b) establishing and maintaining a calendar of administrative deadlines and responsibilities; (c) printing, mailing and emailing the Notice of Class Action Settlement; (d) sending notification text messages; (e) establishing a claims filing settlement website; (f) receiving and validating Requests for Exclusion, Objections, and Claims submitted by Settlement Class Members; (g) processing and mailing payments to Settlement Class Members

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and Settlement Class Counsel; and (h) other tasks as the Parties mutually agree or the Court orders Analytics to perform.

4. On December 16, 2020, Analytics received the final version of the Court-approved Notice of Class Action Settlement ("Notice"). The Notice advised Settlement Class Members of their right to file a timely and valid claim form to receive a settlement payment, request exclusion from the Settlement, object to the Settlement, or do nothing, and the implications of each such action. The Notice advised Settlement Class Members of applicable deadlines and other events, including the Final Approval Hearing, and how Settlement Class Members could obtain additional information.

5. On January 19, 2021, Defendant's Counsel provided Analytics with Class List containing Settlement Class Members' names, last known mailing address, telephone numbers and alternate telephone numbers (when available) and Walmart ID number. A second file containing the same information plus Social Security Numbers was received by Analytics on January 25, 2021. The Class List provided to Analytics contained data for 21,698 Settlement Class Members. Sixteen duplicate records were identified and excluded from the mailing list. Fifty-five records had only partial mailing addresses. Analytics researched these records and corrected the addresses. This resulted in a total of 21,682 Settlement Class Members in the mailing list.

6. The Class List data did not include email addresses, so a reverse append email address search was carried out and email addresses for 14,223 Settlement Class Members were identified.

7. The mailing addresses contained in the Class List were processed and updated utilizing the National Change of Address Database ("NCOA") maintained by the U.S. Postal

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Service. The NCOA contains requested changes of address filed with the U.S. Postal Service. In the event that any individual had filed a U.S. Postal Service change of address request, the address listed with the NCOA would be utilized in connection with the mailing of the Notice Packets.

8. Analytics established a toll-free phone number of (877) 821-0124, and a website www.WalmartPalmScanSettlement.com to provide assistance and information to Settlement Class Members. The website provided the opportunity for Settlement Class Members to file a claim form electronically. The toll-free phone number and website address were included in the Notice.

9. On February 3, 2021, Analytics mailed the approved Notice of Class Action Settlement, Claim Form and return envelope ("Notice Packet") to the most current mailing address of the 21,682 Settlement Class Members via USPS First Class Mail. A copy of the Notice is attached hereto as Attachment 1 and a copy of the Claim Form is attached as Attachment 2. On the same day, Analytics emailed the approved Notice of Class Action Settlement with a link to the website to 14,223 Class Member email addresses and sent text messages with a link to the website to 26,162 Class Member phone numbers. 13,010 emails (91.5%) and 23,178 text messages (88.6%) were delivered.

10. A Facebook notice targeted to reach Settlement Class Members was implemented after the Claim forms were sent to Settlement Class Members. As claims were received, the Facebook notice was further targeted to Settlement Class Members who had not yet filed a Claim Form. The Facebook notice was terminated immediately after the May 4, 2021, claim deadline.

11. If a Class Member's Notice Packet was returned by the USPS as undeliverable and without a forwarding address, Analytics performed an advanced address search on all these

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addresses by using Experian, a reputable research tool. Analytics used the Class Member's name, previous address and Social Security Number to locate a current address. 1,310 Notice Packets were returned to Analytics as undeliverable by USPS. From the address research, Analytics located 1,065 updated addresses and the Notice Packets were mailed to the updated addresses on March 25, 2021. In addition, Analytics promptly mailed the Notice Packet to updated addresses provided by USPS, Settlement Class Counsel and Settlement Class Members. After mailing Notice Packets to updated addresses, 321 Notice Packets were again returned as undeliverable by USPS. As of June 9, 2021, a total of five hundred and sixty-six (566) out of 21,682 Notice Packets mailed were undeliverable. Out of 21,682 Settlement Class Members on the Class List, only seventy-four (74) Settlement Class Members did not receive notice by mail, email or text.

12. On April 5, 2021, reminder emails and text messages were sent to Settlement Class Members who had not yet returned a Claim Form. 11,182 text messages and 7,482 emails were sent, with a link to the website. 10,887 text messages (97.36%) and 7,437 emails (99.39%) were delivered.

13. Settlement Class Members had to return a valid Claim Form by May 4, 2021, to receive a settlement payment from the proposed settlement. As of June 9, 2021, a total of 10,175 valid and timely Claim Forms have been received. 46.92% of Settlement Class Members on the Class List have submitted a valid Claim Form. 24 Claim Forms were submitted and received after the deadline and were rejected. 183 Claim Forms were received from people not in the Class List. These Claim Forms were forwarded to Defense Counsel as they were received, for further research to determine if they were Settlement Class Members. The Parties reported that 152 of these claims are invalid. The Parties are still investigating whether 31 claims are valid.

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14. Settlement Class Members could opt out of the settlement by mailing a written statement requesting exclusion from the Settlement Class to Analytics by May 4, 2021. As of June 9, 2021, Analytics has received seven requests for exclusion from Settlement Class Members. Two requests for exclusion were received after the exclusion deadline but Class Counsel and Defense Counsel agreed to accept them. The requests for exclusion are attached as Attachment 3.

15. Settlement Class Members could object to the proposed settlement by mailing a written statement objecting to the settlement to Analytics by May 4, 2021. As of June 9, 2021, Analytics has received one objection from a Settlement Class Member. The objection is attached as Attachment 4.

16. Analytics' total costs for services in connection with the administration of this Settlement, including fees incurred and anticipated future costs for completion of the administration, are $56,210.00. This amount will be paid by Defendant from the Gross Fund. Analytics' work in connection with this matter will continue with the issuance and mailing of the settlement checks and electronic payments, etc., and to do the necessary tax reporting for the settlement fund.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

C. P. Barazesh

Dated: June 9, 2021

Caroline P. Barazesh

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ATTACHMENT 1

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NOTICE OF CLASS ACTION SETTLEMENT

Roach v. Walmart Inc., Case No. 2019-CH-01107

1. Introduction

The Circuit Court of Cook County preliminarily approved a class action settlement in the lawsuit *Roach v. Walmart Inc*., Case No. 2019-CH-01107 (the "Lawsuit").

The Court has approved this Notice to inform you of your rights in the settlement. As described in more detail below, you may:

(1) request a settlement payment and give up certain legal claims you have;

(2) exclude yourself from the settlement and not receive a settlement payment or give up any legal claims;

(3) object to the settlement; or

(4) do nothing, not receive a settlement payment, and give up certain legal claims you have.

Before any money is paid, the Court will decide whether to grant final approval of the settlement.

2. What Is this Lawsuit About?

This Lawsuit is about whether Walmart Inc. ("Walmart") violated the Illinois Biometric Information Privacy Act ("BIPA"). BIPA prohibits private companies from capturing, obtaining, storing, transferring, and/or using an individual's biometric identifiers and/or biometric information, including fingerprint or hand geometry scan data, without first providing an individual with certain written disclosures and obtaining written consent. The Lawsuit alleges that Walmart violated BIPA by collecting palm scan data from Walmart employees in Illinois through its cash recycler system without first providing written notice or obtaining written consent.

Walmart denies the allegations in the Lawsuit and denies any violation of the law.

Both sides agreed to the settlement to resolve the Lawsuit. The Court did not decide whether Walmart violated the law.

You can learn more about the Lawsuit by contacting the settlement administrator, Analytics Consulting LLC, at **877-821-0124**, or Settlement Class Counsel, Werman Salas P.C., at (312) 419-1008. You may also review the Settlement Agreement and related case documents at the settlement website: www.WalmartPalmScanSettlement.com.

3. Who Is Included in the Settlement?

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

There are an estimated 21,677 Settlement Class Members.

4. What does the Settlement Provide?

The class action settlement provides for a total payment of $10,000,000 that Walmart has agreed to pay to settle the claims of Settlement Class Members. Subject to Court approval, the gross settlement fund shall be reduced by the following: (1) an award of up to one third of the total settlement for Settlement Class Counsel's attorney fees and litigation costs; (2) an Incentive Award of $10,000 to the Settlement Class Representative; and (3) the Settlement Administrator's costs of up to $100,000. Following these reductions, the remaining amount shall be the net settlement fund which shall be distributed pro rata to Settlement Class Members who timely return valid claim forms ("Settlement Class Participants").

The amount of money each Settlement Class Participant will receive will depend on the number of Settlement Class Members who timely return valid claim forms. For example, if 50% of the estimated 21,677 Settlement Class

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Members submit valid timely claim forms, the Parties estimate you would receive a payment in the approximate amount of **$604**.

Unless you exclude yourself from the settlement as explained below, you will give up all claims arising out of the allegations in the Class Action Complaint in this lawsuit, or that could have been asserted but were not asserted in the Lawsuit arising out of the same nucleus of facts, whether known or unknown, including allegations that Walmart, the vendors of Walmart's cash recycler system (G4S Retail Solutions (USA), Inc., Revolution Retail Systems LLC), and their related entities, failed to adopt appropriate policies or improperly collected, stored, or used biometric identifiers and information that may have been obtained from Settlement Class Members through the palm scanner in Walmart's cash recycler system, including but not limited to claims arising under BIPA, and all other federal, state, and local law, including the common law as well as related claims for equitable or declaratory relief, liquidated damages, penalties, attorneys' fees and costs, expenses, and interest. The full Release of Claims is set forth in the Settlement Agreement.

5. What Are Your Options?

(1) **Request a settlement payment.** If you want to receive a settlement payment, you must complete and submit online, or postmark and mail for return, a claim form by **May 4, 2021**. You may return your claim form in the accompanying pre-paid envelope. Or you may also complete and submit a claim form online through the settlement website: www.WalmartPalmScanSettlement.com. If you timely return a completed and valid claim form, and if the Court grants final approval of the settlement, you will receive a check or an electronic payment, depending on which method of payment you select on the claim form. If required by law, you may also be sent a 1099 tax reporting form.

(2) **Exclude yourself from the settlement and receive no money.** If you do not want to be legally bound by the settlement, you must exclude yourself from the settlement by **May 4, 2021**. To do so, you must mail or email your written request for exclusion to the Settlement Administrator (contact information below). Your written request for exclusion must include your full name, address, telephone number, the last four digits of your Social Security Number, a statement that you wish to be excluded from the settlement, and it must be personally signed by you. If you exclude yourself, you will not receive money from this settlement, but you will keep your legal rights regarding any claims that you may have against Walmart and the other Released Parties.

(3) **Object to the Settlement.** You may object to the settlement by **May 4, 2021**. If you want to object to the settlement, you must mail or email a written objection to the Settlement Administrator (contact information below), which includes your full name, address, telephone number, the last four digits of your Social Security Number, the grounds for the objection, and copies of any other documents that you wish to submit in support your objection. Any objection must also be personally signed by you. If you exclude yourself from the settlement, you cannot file an objection.

(4) **Do Nothing.** You may choose to do nothing. If you do nothing, you will receive no money from the settlement, but you will still be bound by all orders and judgments of the Court. You will not be able to file or continue a lawsuit against the Released Parties regarding any legal claims arising out of allegations in the Class Action Complaint.

6. How do I update my Contact Information?

You must notify the Settlement Administrator of any changes in your mailing address so that your settlement award, should you request one, will be sent to the correct address. To update your address, contact the Settlement Administrator, listed below.

Walmart Palm Scan Settlement
Analytics Consulting LLC
P.O. Box 2006
Chanhassen, MN 55317-2006
Toll-free: 877-821-0124
Email: info@walmartpalmscansettlement.com

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7. Who Are the Attorneys Representing the Class and How Will They Be Paid?

The Court has appointed Settlement Class Counsel, identified below, to represent Settlement Class Members in this settlement. Settlement Class Counsel will request one-third of the total settlement amount as attorney fees plus reimbursement of their costs. You may review Settlement Class Counsel's request for attorney fees and costs at the settlement website, www.WalmartPalmScanSettlement.com, after **April 5, 2021**. You will not have to pay Settlement Class Counsel from your settlement award or otherwise. You also have the right to hire your own attorney at your own expense.

Douglas M. Werman
Zachary C. Flowerree
Michael M. Tresnowski
Werman Salas P.C.
77 West Washington Street
Suite 1402
Chicago, IL 60602
(312) 419-1008
WalmartPalmScanSettlement@flsalaw.com

8. When is the Final Approval Hearing?

The Court will hold a hearing in this case on **June 16, 2021**, in Courtroom 2305 of the Circuit Court of Cook County, Illinois, Richard J. Daley Center, 50 W. Washington Street, Chicago, Illinois 60602 at 2:00 p.m., to consider, among other things, (1) whether to finally approve the settlement; (2) a request by the lawyers representing all class members for an award of no more than one-third of the settlement as attorney fees plus litigation costs ($3,333,333.33); and (3) a request for an Incentive Award of $10,000.00 for Settlement Class Representative Ethan Roach; and (4) a request for up to $100,000.00 to the Settlement Administrator. You may appear at the hearing, but you are not required to do so. On or before May 14, 2021, the Settlement Administrator shall update the Settlement website and state whether the Final Approval Hearing will be held remotely via Zoom and, if so, provide meeting information.

If you have any questions or for more information, contact the Settlement Administrator or Settlement Class Counsel at:

Settlement Administrator	**Settlement Class Counsel**
Walmart Palm Scan Settlement Analytics Consulting LLC P.O. Box 2006 Chanhassen, MN 55317-2006 Toll-free: 877-821-0124 Email: info@walmartpalmscansettlement.com	Douglas M. Werman Zachary C. Flowerree Michael M. Tresnowski Werman Salas P.C. 77 West Washington Street, Ste. 1402 Chicago, IL 60602 (312) 419-1008

PLEASE DO NOT CONTACT THE COURT OR WALMART ABOUT THIS SETTLEMENT.

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ATTACHMENT 2

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Walmart Palm Scan Settlement
Analytics Consulting LLC
P.O. Box 2006
Chanhassen, MN 55317-2006
Toll-free: 877-821-0124
Email: info@walmartpalmscansettlement.com

CLAIM FORM

Roach v. Walmart Inc., Case No. 2019-CH-01107

To receive a settlement payment, your completed Claim Form must be submitted online or postmarked and mailed to the Settlement Administrator on or before **May 4, 2021**.

You can return a completed Claim Form by U.S. mail in the pre-paid envelope that was mailed to you or submit a claim electronically at the settlement website: www.WalmartPalmScanSettlement.com.

You will only receive a settlement payment if you timely return this Claim Form and the Court grants final approval of the settlement.

By signing below, you affirm that you used a palm scanner to access a cash recycler system at a Walmart or Sam's Club store in Illinois.

Printed Name: _____ Signature: _____

Date: _____ Phone Number: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Email: _____

HOW I WISH TO RECEIVE PAYMENT

Please check one of the boxes below to indicate how you would like to receive your settlement payment. If you indicate "electronic payment," instructions will be emailed to you for how to receive payment. If you do not make a selection, you will be mailed a physical check to the address identified above.

- ☐ Electronic payment
- ☐ A physical check by mail

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ATTACHMENT 3

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I, Bailey Elizabeth, Miller wish to be excluded from the Walmart Palm Scan Settlement

Bailey Miller

Bailey E Miller

REDACTED, REDACTED

REDACTED

SN: REDACTED

5/5/2021

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Analytics **#307803**

Ticket Details

Status	Priority	Source	Type
Open	Low	Email	
			Group
			Claims
Agent	**Product**	**Claim Number**	
Erin Kramer	Private Sector Cases		

by **Bailey Miller** on **Tue, 4 May at 1:12 PM** via **Email**

Walmart Palm Scan Settlement

I, Bailey E. Miller, wish to exclude myself from the Walmart Palm Scan Settlement.

Bailey Elizabeth Miller

REDACTED

Sn: REDACTED

Comments

by **Erin Kramer** on **Wed, 5 May at 3:42 AM** as **Outbound email**

Thank you for your email,

If you do not want to be legally bound by the settlement, you must exclude yourself from the settlement by May 4, 2021. To do so, you must mail or email your written request for exclusion to the Settlement Administrator (contact information below). Your written request for exclusion must include your full name, address, telephone number, the last four digits of your Social Security Number, a statement that you wish to be excluded from the settlement, ***and it must be personally signed by you.*** If you exclude yourself, you will not receive money from this settlement, but you will keep your legal rights regarding any claims that you may have against Walmart and the other Released Parties.

Sincerely,

Office of the Claims Administrator

by **Erin Kramer** on **Wed, 5 May at 3:42 AM** as **Private note**

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April 30, 2021

Walmart Palm Scan Settlement
P.O. Box 2006
Chanhassen, MN, 55317-2006

This letter is to request my exclusion from the Walmart Palm Scan Settlement.

Bahati Fernandez
REDACTED

Sincerely yours,

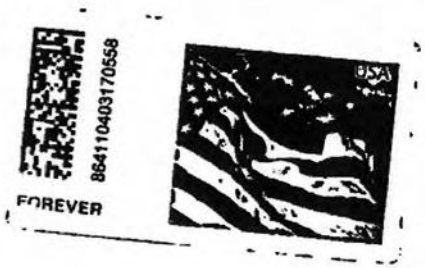
Bahati Fernandez

Ms. Bahati Fernandez

REDACTED

S SUBURBAN IL 604

5 MAY 2021 PM 4 L



Walmart Palm Scan Settlement
P.O. Box 2006
Chanhassen, MN 55317-2006

55317-200606

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April 9, 2020

Settlement Administrator
Analytics Consulting LLC
PO Box 2006
Chanhassen, MN 55317

To Whom it May Concern,

I wish to be excluded form the Walmart Palm Settlement in regards to *Roach v Walmart Inc.* I do not believe I am eligible for the settlement.

Thanks and best wishes,

Neil Darrow

REDACTED

REDACTED

Neil Darrow

PEORIA IL 616

15 APR 2021 P 2 L

Walmart Palm Scan Settlement
Analytics Consulting LLC
PO Box 2006
Chanhassen Mn 55317-9800

55317$2006

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To: Settlement Administrator 4-15-21

RE: Claim No. 1014153
PIN: 9+9X+L14
Roach vs. Walmart Inc.
Case No. 2019-CH-01107

I wish to be excluded from the settlement in the above referenced case. I understand by doing so, I will not receive a settlement payment from this case and will not be giving up any legal claims I may have in the future against Walmart and the other released parties.

Thank You!

Karen M. Stone

REDACTED

SSN: REDACTED

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EP14H July 2013 Outer Dimension: 10 x 5

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Walmart Palm Scan Settlement
Analytics Consulting LLC
P.O. Box 2006
Chanhassen, MN 55317-2006
Toll-free: 877-821-0124
Email: info@walmartpalmscansettlement.com

ROA0000E87F8F

PRESORTED FCM *********AUTO**5-DIGIT 62801
DEBERA D WILLIAMS
007967 REDACTED

Claim Number: 1016114

PIN: Byk8%h7S

Phone: REDACTED

SS: REDACTED

Please exclude me from any lawsuit or settlement.
Debera D. Williams

CLAIM FORM

Roach v. Walmart Inc., Case No. 2019-CH-01107

To receive a settlement payment, your completed Claim Form must be submitted online or postmarked and mailed to the Settlement Administrator on or before **May 4, 2021**.

You can return a completed Claim Form by U.S. mail in the pre-paid envelope that was mailed to you or submit a claim electronically at the settlement website: www.WalmartPalmScanSettlement.com.

You will only receive a settlement payment if you timely return this Claim Form and the Court grants final approval of the settlement.

By signing below, you affirm that you used a palm scanner to access a cash recycler system at a Walmart or Sam's Club store in Illinois.

Printed Name: _____ Signature: _____

Date: _____ Phone Number: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Email: _____

HOW I WISH TO RECEIVE PAYMENT

Please check one of the boxes below to indicate how you would like to receive your settlement payment. If you indicate "electronic payment," instructions will be emailed to you for how to receive payment. If you do not make a selection, you will be mailed a physical check to the address identified above.

☒ Electronic payment

☐ A physical check by mail

00027714-007967-001-001

REDACTED

D. Williams

SAINT LOUIS MO 630
8 FEB 2021 PM 5 L

NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

BUSINESS REPLY MAIL
FIRST-CLASS MAIL PERMIT NO. 28 CHANHASSEN MN

POSTAGE WILL BE PAID BY ADDRESSEE

WALMART PALM SCAN SETTLEMENT
ANALYTICS CONSULTING LLC
PO BOX 2006
CHANHASSEN MN 55317-9800

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2-19-2021

I am writing to you regarding the Walmart Plan Scan lawsuit. I wish to be excluded from the Settlement, but keep my legal rights

Thank you, Carol A Crase

Carol A Crase

REDACTED

REDACTED

REDACTED

SS# REDACTED

REDACTED

Ms. Carol Crase

REDACTED

SAINT LOUIS MO 630

19 FEB 2021 PM 7 L

NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

BUSINESS REPLY MAIL

FIRST-CLASS MAIL PERMIT NO. 28 CHANHASSEN MN

POSTAGE WILL BE PAID BY ADDRESSEE

WALMART PALM SCAN SETTLEMENT
ANALYTICS CONSULTING LLC
PO BOX 2006
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Robert Emery Marker
REDACTED

SSN ***-**-REDACTED

Wal-Mart Palm Scan Settlement

I Robert E Marker, wish to be excluded from the Wal-Mart Palm Scan settlement, *Roach v. Walmart Inc.* Case No. 2019-CH-01107.

Robert Marker , 05/01/2021

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Analytics **#306934**

Ticket Details

Status	Priority	Source	Type
Open	Low	Email	

Group
Claims

Agent	Product	Claim Number
Erin Kramer	Private Sector Cases	

by **Marker, Robert** on **Sat, 1 May at 7:10 AM** via **Email**

Settlement Exclusion

Hello,
I wish to be excluded from the settlement. I have attached the statement here.
Best,
Robert

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ATTACHMENT 4

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Walmart Palm Scan Settlement
Analytics Consulting LLC
P.O. Box 2006
Chanhassen, MN 55317-2006
Toll-free: 877-821-0124
Email: info@walmartpalmscansettlement.com

ROA0000B61EC2

Claim Number: 1003189

PIN: b8Fm4ws9

PRESORTED FCM ******AUTO**ALL FOR AADC 605
MARY A GOETSCH
REDACTED
014128

CLAIM FORM

Roach v. Walmart Inc., Case No. 2019-CH-01107

To receive a settlement payment, your completed Claim Form must be submitted online or postmarked and mailed to the Settlement Administrator on or before **May 4, 2021**.

You can return a completed Claim Form by U.S. mail in the pre-paid envelope that was mailed to you or submit a claim electronically at the settlement website: www.WalmartPalmScanSettlement.com.

You will only receive a settlement payment if you timely return this Claim Form and the Court grants final approval of the settlement.

By signing below, you affirm that you used a palm scanner to access a cash recycler system at a Walmart or Sam's Club store in Illinois.

Printed Name: Mary A. Goetsch Signature: Mary A. Goetsch

Date: Feb. 13, 2021 Phone Number: REDACTED

Street Address: REDACTED

City: REDACTED State: REDACTED Zip Code: REDACTED

Email:

HOW I WISH TO RECEIVE PAYMENT

Please check one of the boxes below to indicate how you would like to receive your settlement payment. If you indicate "electronic payment," instructions will be emailed to you for how to receive payment. If you do not make a selection, you will be mailed a physical check to the address identified above.

- ☐ Electronic payment
- ☐ A physical check by mail

No payment. I enclose a letter explaining I object to the Settlement. option (3).
No Harm Done.

00027714-014128-001-001

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Mary Goetsch
REDACTED

REDACTED Voice Mail

Walmart Palm Scan Settlement
Analytics Consulting LLC
P.O. Box 2006
Chanhassen, MN 55317-2006

February 13, 2021

Dear D. Werman, Z. FloWerree, M. Tresnowski and W. Salas:

I am responding to your class action suit against Walmart, Inc. I use option 3, which is Object to Settlement. As a retired hourly Walmart Associate, I have no interest in the Company. However, I like to do the morally right thing in everything I do. I do not believe anyone was harmed by the use of Palm Scan, especially for the short period of time my store (#5352 in Batavia, IL) used the procedure. I think we did it less than three months and then Management used another procedure of cash drawer accountability.

At the time Associates scanned palm for the first time, we agreed to the procedure and signed the legal waiver of any future legal complaint. It was my understanding scanning the palm was only to save time and paperwork. The purpose was to try to keep better tabs on which cashier was using which till. Walmart is a hectic store and even with the new "cash robot machine" the higher-up hourly Associates (CSM) had to do many audits during the day because cashiers STILL would rove between registers in order to keep customer lines down. I was not under the belief any worker objected to the palm scan. If they did, I firmly believe alternate arrangements would have been made. Our goal was always to serve the customer in line rather than argue about cash till procedure and possible shortages or overage. A lawsuit without merit (my opinion, of course) only drives up Corporate costs and ultimately the customer pays a higher price and also Associates may earn less of a bonus. I was well paid for my work and I hate to see lawyers reap compensation.

Generally I am opposed to class action suits on the principle that many taking part only do so because they look at it as "free money". They neither earn it, nor were harmed by the proposed complaint. There IS one problem I see at Walmart: society in general is being nearly coerced into computerization and complete use of email and electronic bank deposits. I am uncomfortable with Internet and did not even set up email at the Public Library until 2015. That was the time I wanted to apply and work for Walmart. I succeeded and would not have been hired without email. Now as a consumer, of course I can refuse to use the Internet and my email account. I am finding even the federal government forced me into receiving the last Economic Impact Payment by a plastic ATM card (they refused to issue paper checks) and it cost me $7 out of the $600. Plus, it was a lot of bother to use the card at my bank. Now THAT is a class action! If in the future the IRS were to refuse to issue paper check refunds, people WILL BE HARMED. It is OUR MONEY.

Maybe you could look into this. This is a lawsuit I would join.

Best regards,
Mary Goetsch

Verification. Walmart has my Social Security, I am sure.

REDACTED

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Mary Goetsch
REDACTED

S SUBURBAN IL 604
17 FEB 2021 PM 4 L

Walmart Palm Scan Settlement
Analytics Consulting LLC
P.O. Box 2006
Chanhassen, MN 55317-2006

Option (3)

55317-200606

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Thank You

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FILED
6/9/2021 4:22 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2019CH01107

13630672

EXHIBIT 4

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No. 1-20-0563

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JOROME TIMS, and ISAAC WATSON, Individually and on Behalf of a Class of Similarly Situated Persons, Plaintiffs-Respondents, v. BLACK HORSE CARRIERS, INC., Defendant-Petitioner.	Appeal from the Circuit Court of Cook County No. 19 CH 3522 Honorable David B. Atkins, Judge Presiding

ORDER

Justices Mikva, Cunningham, Connors, and Harris order as follows:

This matter coming to be heard on defendant-petitioner Black Horse Carriers, Inc.'s petition for leave to appeal pursuant to Illinois Supreme Court Rule 308(a);

IT IS HEREBY ORDERED: the petition for leave to appeal is GRANTED.

ORDER ENTERED

APR 2 3 2020

APPELLATE COURT FIRST DISTRICT

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

JOROME TIMS, individually and on behalf of all others similarly situated,

Plaintiff,

v.

BLACK HORSE CARRIERS,
Defendant.

No. 2019-CH-03522

Calendar 16

Judge David B. Atkins

JUDGE DAVID B. ATKINS
FEB 26 2020
Circuit Court-1879

ORDER

THIS CASE COMING TO BE HEARD on Defendant's Motion to Reconsider, or in the Alternative for Appellate Certification, the court having reviewed the written submissions and being fully advised in the premises,

THE COURT HEREBY FINDS AND ORDERS:

1. Defendant Black Horse Carriers now seeks reconsideration of this court's September 23, 2019 Order denying its Motion to Dismiss, finding that §13-205's "catch-all" 5-year statute of limitations applied and thus Plaintiff's action was timely filed. The court further found that §13-201's 1-year limitations period did not apply to Plaintiff's statutory BIPA claims.

2. As before, Plaintiff's reliance on *Travelers Cas. and Sur. Co. v. Bowman*[1] is misplaced. The Illinois Supreme Court has not held that a 1-year limitations period applies to statutory claims under BIPA, particularly where such claims do not require any publication of the relevant information. Like this court, many courts in this Circuit have found[2] that the 1-year period set forth in §13-201 does not apply in BIPA cases, but rather §13-205's "catch-all" provision is applicable. Accordingly, Defendant's Motion to Reconsider is denied insofar as the court declines to reconsider its substantive ruling in the September 23, 2019 Order.

3. Nevertheless, the court finds Appellate certification of the question is appropriate. As noted above, there is no direct authority in Illinois on what statute of limitations properly applies to claims under BIPA, and the issue has arisen in numerous such cases at the trial level, including this one. Especially in light of the impact a 1-year vs. 5-year period would have on the facts of this case, some guidance on the matter would

[1] 229 Il. 2d 461 (2008)

[2] See, e.g. *Robertson v. Hostmark Hospitality Group*, 18 CH 5194 (Cir. Ct. Cook Cty. July 31, 2019); *Van Jacobs v. New World Van Lines*, 19 CH 02619 (Cir. Ct. Cook Cty. October 29, 2019); and numerous others cited in full in Plaintiff's response to the instant Motion.

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materially advance this litigation. The Motion is therefore granted in part in that the court hereby certifies the following question to the Illinois Appellate Court pursuant to Illinois Supreme Court Rule 308: whether the limitations periods set forth in 735 ILCS 5/13-201 ("Defamation – Privacy") or 735 ILCS 5/13-205 apply to claims brought under the Biometric Information Privacy Act, 740 ILCS 14/1, *et seq*.

ENTERED: JUDGE DAVID B. ATKINS

FEB 26 2020

Circuit Court-1879

Judge David B. Atkins

The court.

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FILED
6/9/2021 4:22 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2019CH01107

13630672

EXHIBIT 5

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

ETHAN ROACH, on behalf of himself and all other persons similarly situated, known and unknown,	)	Case No. 2019CH01107
Plaintiff,	)	Judge: Honorable Pamela McLean Meyerson
v.	)	
WALMART INC.	)	
Defendant.	)	

FINAL APPROVAL ORDER

On June 16, 2021, the Court held a Final Approval Hearing and heard Plaintiff's Unopposed Motion and Memorandum in Support of Final Approval of Class Action Settlement and Plaintiff's Motion and Memorandum for Attorney Fees, Incentive Award, and Settlement Administration Costs. The Court has considered the Motions and attached exhibits, as well as the Parties' presentation at the final approval hearing, and otherwise being fully informed on the premises, hereby finds and orders as follows:

1. Capitalized terms used in this Order that are not otherwise defined herein have the same meaning assigned to them as in the Parties' Settlement Agreement.

2. The Court has jurisdiction over the subject matter of this action, Plaintiff, the Settlement Class Members, and Defendant.

3. The Court finds that there is a bona fide legal dispute between the Parties as to whether Defendant violated the Illinois Biometric Information Privacy Act ("BIPA"), 740 ILCS 14/1, *et seq.* by allegedly: (1) collecting Plaintiff's and other employees' biometric palm scan identifiers and information ("biometric data") without following BIPA's informed written consent

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procedures; and (2) possessing Plaintiff's and other employees' biometric data without a publicly available data retention schedule and destruction policy.

4. The Court grants final approval of the Settlement memorialized in the Settlement Agreement filed with the Court.

5. The Court finds that the Settlement is fair, reasonable, and adequate. More specifically, the Court finds that: (a) the strength of Plaintiff's claims on the merits weighed against Defendant's defenses, and the complexity, length and expense of further litigation, support approval of the settlement; (b) the Gross Fund of $10,000,000.00 as set forth in the Settlement Agreement is a fair, reasonable and adequate settlement of the claims; (c) the settlement was reached pursuant to arm's-length negotiations between the Parties after a mediation with retired Judge James Holderman; (d) the reaction of Settlement Class Members supports approval of the settlement because a high percentage returned Claim Forms, only one Settlement Class Member objected to the settlement, and only five Settlement Class Members requested to be excluded from the settlement; (e) the support for the settlement expressed by Settlement Class Counsel, who have significant experience representing parties in complex class actions (including, specifically, class actions brought under BIPA) weighs in favor of approval of the settlement; and (f) the litigation has progressed to a stage where the Court and the Parties could evaluate the merits of the case, potential damages, and the probable course of future litigation, and thus warrants approval of the settlement.

6. The Court approves the settlement as a final, fair, reasonable, adequate, and binding release of the claims of Plaintiff and the Releasing Settlement Class Members as provided in the Settlement Agreement.

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7. The Court finds, for settlement purposes only, that the preliminarily certified Settlement Class satisfies the applicable standards for certification pursuant to Section 2-801 *et seq.* of the Illinois Code of Civil Procedure. The Settlement Class is finally certified for settlement purposes only as follows:

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

8. Excluded from the Settlement Class are the following individuals who timely filed requests to be excluded: Bahati Fernandez, Debera Williams, Carol Crase, Karen Stone, Neil Darrow, Robert Marker, and Bailey Miller.

9. The Notice of Class Action Settlement ("Notice"), sent to the Settlement Class Members by the Settlement Administrator via First Class regular U.S. mail and, when available, by email, text message, and Facebook posting, adequately and consistent with due process informed the Settlement Class Members of the terms of the Settlement, their potential recovery if they decided to submit a Claim Form, their right to request exclusion from the settlement and pursue their own remedies, and their opportunity to submit objections and appear and be heard at the Final Approval Hearing.

10. The sole objector to the Settlement was Mary Goetsch. Ms. Goetsch's objection is overruled because it is founded on the belief that Settlement Class Members were not harmed by Defendant's alleged violations of BIPA. The objection does not undermine the fairness or adequacy of the Settlement.

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11. Analytics Consulting LLC ("Settlement Administrator") is administering the settlement pursuant to the Settlement Agreement, with the assistance of Settlement Class Counsel and Defendant's counsel. The Settlement Administrator shall make settlement payments to the Settlement Class Participants as provided in the Settlement Agreement.

12. The Parties are directed to perform the obligations set forth in the Settlement Agreement, and the Court expressly adopts and incorporates herein all the terms of the Settlement Agreement.

13. The Court awards Settlement Class Counsel reasonable attorney fees of one-third of the $10,000,000.00 Gross Fund ($3,333,333.33), which are payable as described in the Settlement Agreement.

14. The Court awards Class Representative Ethan Roach an Incentive Award of $10,000.00, which is payable from the Gross Fund as described in the Settlement Agreement.

15. The Court awards the Settlement Administrator its costs of $56,210.00, which are payable from the Gross Fund as described in the Settlement Agreement.

16. Funds from settlement checks not cashed by the 150-day check cashing deadline will be distributed to the following *cy pres* recipients: the Illinois Bar Foundation (50%) and the Associates in Critical Need Trust (50%).

17. This matter is dismissed without prejudice. The dismissal shall automatically convert to one with prejudice within seven days after Plaintiff files a declaration with the Court from the Settlement Administrator confirming that Defendant has fully funded the Qualified Settlement Fund with the remainder of the Gross Fund.

18. The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of the Settlement Agreement.

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IT IS SO ORDERED.

ENTERED: _____

_____
Judge Pamela McLean Meyerson