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Cote v. Wal-Mart Stores, Inc.

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Cote v. Wal-Mart Stores, Inc.

Keywords

cote, wal-mart, 1:15-cv-12945-WGY, retail, disparate treatment, sex, same-sex spouse, terms and conditions, consent decree, employment law, Title VII

Exhibit 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JACQUELINE A. COTE, on behalf of herself
and others similarly situated,

Plaintiff,

v.

WAL-MART STORES, INC.,

Defendant.

Civil Action No. 15-cv-12945-WGY

SETTLEMENT AGREEMENT

1. PREAMBLE

1.1 This Case, *Cote v. Wal-Mart Stores, Inc.*, No. 15-cv-12945-WGY (D. Mass.) was brought by Jacqueline Cote on behalf of herself and others similarly situated against Wal-Mart Stores, Inc., alleging, among other things, that prior to January 1, 2014 Wal-Mart Stores, Inc. did not provide spousal health insurance to employees who had lawful marriages to same-sex spouses and that such a denial violated Title VII of the Civil Rights Act. Wal-Mart Stores, Inc. denies all of the allegations alleged in the Complaint. In the interest of resolving this dispute between the Parties without the significant expense, delay, and inconvenience of further litigation of the collective and individual issues raised in this Case, and in reliance upon the representations, mutual promises, covenants, and obligations set out in this Settlement Agreement, and for good and valuable consideration also set out in this Settlement Agreement, the Parties, through their undersigned counsel of record, hereby stipulate and agree as follows. This Settlement Agreement is made and entered into as of the dates of Execution set forth below, between the Settlement Class Representative on behalf of herself and the Settlement Class Members and Wal-Mart Stores, Inc., all as further defined below.

2. DEFINITIONS

- 2.1 The term “*Agreement*” or “*Settlement Agreement*” as used herein means this Settlement Agreement between the Parties.
- 2.2 The term “*Attorneys’ Fees and Litigation Expenses*” as used herein means the Attorneys’ Fees and Litigation Expenses to be requested by Class Counsel, subject to Court approval in accordance with Section 5.4 of this Agreement.
- 2.3 The term “*CAFA Notice*” as used herein means the notice to be made in accordance with the Class Action Fairness Act, 28 U.S.C. § 1715.

- 2.4 The term “*Class Settlement Amount*” means the Seven Million Five Hundred Thousand Dollars (\$7,500,000) that Walmart has agreed to pay pursuant to this Settlement, as described more fully in Section 5.1 of this Agreement.
- 2.5 The Term “*Claim Form*” as used herein means the forms for submission of Short Form Claims and Long Form Claims (as both are described in Section 5.3 and its subparts) each of which are attached hereto as Exhibit A, which Settlement Class Members must submit in order to be considered for eligibility to receive a payment under this Settlement.
- 2.6 The term “*Claims Administrator*” as used herein means KCC Class Action Services LLC (“KCC”), the entity that, subject to Court approval, shall perform the duties of, among other things: (i) establishing a Qualified Settlement Fund and Qualified Settlement Fund Account, and determining and finalizing the calculations of settlement payments and tax withholding amounts for the Qualified Claimants, as applicable; (ii) preparing, printing and disseminating to the Settlement Class Members the Notice Packet and return envelope in accordance with the Notice Plan; (iii) receiving and reviewing the Claim Forms submitted by Settlement Class Members to determine initial eligibility based on marriage date and the amount of payment; (iv) tracking returned Notices and Requests to Opt Out; (v) ascertaining current address and addressee information for each Notice Packet returned as undeliverable, and re-disseminating the Notice Packet and return envelope to Settlement Class Members whose Notice Packet was returned as undeliverable; (vi) notifying the Parties of determinations regarding submitted Requests to Opt Out, consistent with this Agreement; (vii) determining the final Settlement Payment for each Settlement Class Member in accordance with this Agreement; (viii) mailing the settlement checks to Settlement Class Members who are entitled to receive Settlement Payments; (ix) wiring Class Counsel’s attorneys’ fees, expenses, and costs, and mailing the Service Payment and Settlement Payments in accordance with this Agreement and Order of the Court; (x) referring to Class Counsel and, where appropriate also to Walmart’s Counsel, all inquiries by Settlement Class Members that the Claims Administrator cannot resolve and/or that involve matters not within the Claim Administrator’s duties specified herein; (xi) responding to inquiries of Class Counsel or Walmart’s Counsel; (xii) promptly apprising counsel for the Parties of the activities of the Claims Administrator; (xiii) send notices to self-identifiers; (xiv) establishing a web site to provide Settlement Class Members with information about this Agreement; (xv) provide publication notice to the Settlement Class Members; and (xvi) other notice and administration duties in accordance with this Agreement and the District Court’s orders.
- 2.7 The term “*Class Counsel*” as used herein means the following counsel: GLBTQ Legal Advocates & Defenders (GLAD), the Washington Lawyers’ Committee for Civil Rights and Urban Affairs, Outten & Golden LLP, and Arnold & Porter LLP.
- 2.8 The term “*Court*” as used herein means the District Court and any appellate court that may review any orders entered by the District Court related to this Settlement.
- 2.9 The term “*Defendant*” as used herein means Wal-Mart Stores, Inc.

- 2.10 The term “***District Court***” as used herein means the United States District Court for the District of Massachusetts.
- 2.11 The term “***Execution***” as used herein means the signing of this Agreement by all signatories hereto.
- 2.12 The term “***Final Judgment and Order of Dismissal***” as used herein refers to the Final Judgment and Order of Dismissal approving the Settlement and dismissing the Litigation with prejudice as against Defendant, substantially in the form of the proposed Final Judgment and Order of Dismissal attached hereto as Exhibit B which this Settlement contemplates will be entered and approved by the Court.
- 2.13 The term “***Health Care Costs***” as used herein includes any medical, dental, and/or vision costs that may have been reimbursable or otherwise covered under any applicable Walmart sponsored Health Insurance Policy, as set forth in the applicable Summary Plan Descriptions (“SPDs”) for each year of the Settlement Class Period. Copies of the SPDs for each year of the Settlement Class Period shall be made available to Settlement Class Members on the web site maintained by the Claims Administrator.
- 2.14 The term “***Health Insurance Benefits***” as used herein means the medical, dental and/or vision benefits available to eligible Walmart associates, as set forth in the applicable Summary Plan Descriptions (“SPDs”) for each year of the Settlement Class Period.
- 2.15 The term “***Health Insurance Policy or Policies***” as used herein includes any insurance policy that insured against or covered any medical, dental, and/or vision costs.
- 2.16 The term “***Legal Same-Sex Spouse***” as used herein means the same-sex spouse to whom any Settlement Class Member was legally married during the Settlement Class Period. The Settlement Class Member was legally married if her or his marriage was obtained from a state or jurisdiction that performed and/or recognized marriage between same-sex spouses. For the purpose of this Agreement, the state or jurisdiction where the Settlement Class Member resided or worked at the time of her or his marriage and/or during the Settlement Class Period is irrelevant to whether the Settlement Class Member was legally married to a same-sex spouse during the Settlement Class Period.
- 2.17 The term “***Litigation***” as used herein means the action titled *Jacqueline Cote v. Wal-Mart Stores, Inc.*, Case No. 15-cv-12945-WGY, pending in the United States District Court for the District of Massachusetts (Judge William Young).
- 2.18 The term “***Net Settlement Amount***” as used herein means that portion of the Class Settlement Amount remaining after the subtraction of: (a) Attorneys’ Fees and Litigation Expenses approved and awarded by the Court; (b) the Service Payment approved and awarded by the Court; and (c) Notice and Administration Costs.
- 2.19 The term “***Notice Packet***” as used herein means the Notice attached hereto as Exhibit C and the Claim Forms attached hereto as Exhibit A. “Notice” means the Court-approved Notice of Proposed Settlement of Class Action Lawsuit and the Notice Process set forth in Section 7.

- 2.20 The term “*Notice and Administration Costs*” as used herein means the costs to send Notice, administer the Settlement, and for the Claims Administrator to perform all other reasonable duties contemplated by this Agreement.
- 2.21 The term “*Parties*” as used herein means the Settlement Class Representative and Walmart.
- 2.22 The term “*Plan of Allocation*” as used herein means the method by which the Net Settlement Amount shall be allocated among the Settlement Class Members who do not submit a timely and valid Request to Opt Out, as set forth in Section 5 of this Agreement.
- 2.23 The term “*Preliminary Approval Order*” as used herein means the District Court’s order granting preliminary approval of this Settlement.
- 2.24 The term “*Programmatic Relief*” as used herein means the programmatic, non-monetary relief agreed to by the Settlement Class Representative (on behalf of the Settlement Class Members) and Walmart, in accordance with Section 6 of this Agreement.
- 2.25 The term “*QSF*” as used herein means the Qualified Settlement Fund to be established by the Claims Administrator in accordance with this Agreement.
- 2.26 The term “*Qualified Claimants*” as used herein means the Settlement Class Members who are entitled to receive a Settlement Payment under this Agreement.
- 2.27 The term “*Released Claims*” as used herein means the claims, rights, demands, charges, complaints, causes of action, obligations, damages, penalties, debts, costs and expenses (other than those costs and expenses required to be paid pursuant to this Settlement Agreement), liens, or liabilities of any and every kind that are released, acquitted and forever discharged pursuant to Section 13 of this Agreement.
- 2.28 The term “*Releasees*” as used herein means Walmart and each of its current and former subsidiaries, parent corporations, affiliates, predecessors, insurers, agents, employees, successors, assigns, officers, officials, directors, employers, attorneys, personal representatives, executors, and shareholders, including their respective pension, profit sharing, savings, health, and other employee benefit plans of any nature, the successors of such plans, and those plans’ respective current or former trustees and administrators, agents, employees, and fiduciaries, as well as the personal representatives or executors of any such persons.
- 2.29 The term “*Releasing Same-Sex Spouses*” as used herein means the Legal Same-Sex Spouses of Releasing Settlement Class Members.
- 2.30 The term “*Releasing Settlement Class Members*” as used herein means the Settlement Class Representative and all Settlement Class Members, other than those who submit timely and valid Requests to Opt Out.

- 2.31 The term “***Request to Opt Out***” as used herein means the request to opt out that is sent by any Settlement Class Member who does not wish to remain in the Settlement Class, in accordance with Section 9 of this Agreement.
- 2.32 The term “***Service Payment***” as used herein means the amount of the service payment that Class Counsel shall request to be paid to the Settlement Class Representative and that the Court shall approve, in accordance with Section 5.5 of this Agreement.
- 2.33 The term “***Settlement***” as used herein means the compromise and settlement of the Litigation as contemplated by this Agreement, including this Settlement Agreement.
- 2.34 The term “***Settlement Class***” as used herein means the settlement class to be certified for settlement purposes in accordance with Section 4 of this Agreement. The Settlement Class consists of (A) all current and former associates (as that term is used by Walmart to encompass all Walmart employees) who work or worked for Walmart in the 50 United States, the District of Columbia or Puerto Rico (whether at a retail Store, Supercenter, Neighborhood Market, Sam’s Club, Distribution Center, Home Office, dotcom, or any other Walmart facility) during the Settlement Class Period who (B) (i) were legally married to a Legal Same-Sex Spouse during the Settlement Class Period; and (ii) would have been eligible to receive spousal Health Insurance Benefits from Walmart for that Legal Same-Sex Spouse during the Settlement Class Period but for the limitation during the Settlement Class Period on providing spousal Health Insurance Benefits to Legal Same-Sex Spouses; and (iii) did not receive same-sex spousal Health Insurance Benefits from Walmart (such as through an HMO Plan) during some or all of the Settlement Class Period during which they worked at Walmart. Excluded from the Settlement Class are any individuals who previously obtained a judgment regarding or entered into a settlement regarding Walmart’s limitation during the Settlement Class Period on providing spousal Health Insurance Benefits to Legal Same-Sex Spouses.
- 2.35 The term “***Settlement Class List***” as used herein means the listing of the Settlement Class Members to whom Notice shall be distributed in accordance with this Agreement.
- 2.36 The term “***Settlement Class Members***” as used herein means the Settlement Class Representative and all members of the Settlement Class.
- 2.37 The term “***Settlement Class Period***” as used herein means the period of time from January 1, 2011 through and including December 31, 2013.
- 2.38 The term “***Settlement Class Representative***” as used herein means Jacqueline Cote, the named plaintiff in the litigation and the person Class Counsel shall request be appointed by the District Court as the Settlement Class Representative for purposes of the Settlement Class. Jacqueline Cote is also a member of the Settlement Class.
- 2.39 The term “***Settlement Effective Date***” as used herein means the first day following the later of the occurrences identified in Section 2.39.1 and 2.39.2:
- 2.39.1. The date on which the time to appeal or seek permission to appeal or seek other judicial review of the entry of the Final Judgment and Order of Dismissal

approving the Settlement and dismissing this Litigation with prejudice as to Defendant has expired with no appeal or other judicial review having been taken or sought; or

- 2.39.2. If an appeal or other judicial review has been taken or sought, the latest of: (i) the date the Final Judgment and Order of Dismissal is finally affirmed by an appellate court with no possibility of subsequent appeal or other judicial review therefrom; (ii) the date the appeal(s) or other judicial review therefrom are finally dismissed with no possibility of subsequent appeal or other judicial review; or (iii) if remanded to the District Court or to a lower appellate court following an appeal or other review, the date, after the Final Judgment and Order of Dismissal has been entered by the District Court after remand, upon which the time to appeal or seek permission to appeal or seek other judicial review of the entry of that Final Judgment and Order of Dismissal has expired with no further appeal or other judicial review having been taken or sought. If further appeal is sought after a remand, the time periods in this Sub-Section shall apply.
- 2.39.3. The provisions and deadlines set forth in this Section shall apply even if there are no objections to the Settlement.
- 2.40 The term “**Settlement Payment**” or “**Final Payment**” as used herein means the final payment that a Settlement Class Member is entitled to receive under this Agreement after submitting a Claim Form and pursuant to the calculations to be made under Section 5 of this Agreement.
- 2.41 The term “**Walmart**” as used herein means Defendant Wal-Mart Stores, Inc.

3. RECITALS

- 3.1 On July 14, 2015, Plaintiff Jacqueline Cote filed a complaint against Walmart in the United States District Court for the District of Massachusetts alleging that Walmart discriminated against Plaintiff and the putative class members because, prior to the 2014 plan year, Walmart did not provide health care benefits to its associates who had same-sex spouses on the same terms that it provided spousal health care benefits to associates with opposite-sex spouses. Plaintiff asserted claims for damages and injunctive relief on behalf of a nationwide class under Title VII of the federal Civil Rights Act and on behalf of a Massachusetts state-wide class under the Massachusetts Fair Employment Practices Law. Plaintiff also asserted an individual claim under the federal Equal Pay Act.
- 3.2 Walmart denies each and every one of the Plaintiff’s allegations, as set forth in its Answer to the Complaint and other pleadings filed in the Litigation.
- 3.3 Beginning in February 2016, the Parties participated in a series of private mediation sessions with Mark Irvings, a private mediator with substantial experience in employment cases. As a result of those mediation sessions, and as a result of additional arms-length negotiations, the Parties reached an agreement to resolve the Litigation in accordance with the terms of this Agreement. All prior written documents exchanged between the Parties are superseded and replaced by this Agreement.

- 3.4 The Settlement Class Representative and Class Counsel believe that the claims of the Settlement Class Members are meritorious. Class Counsel represent that they have conducted a thorough investigation into the facts of this case, and have diligently pursued an investigation of the named Plaintiff's and the Settlement Class Members' claims against the Defendant, including, but not limited to: (i) interviewing dozens of class members and analyzing the results of class member interviews; (ii) reviewing and analyzing relevant documents, including thousands of pages of documents and databases produced by Walmart and documents provided to Class Counsel by Settlement Class Members; (iii) researching the applicable substantive and procedural law and Walmart's potential defenses; (iv) consulting with experts to develop a model for valuing the potential damages of Settlement Class Members; (v) developing and preparing factual and legal arguments for a class certification motion and other substantive motions; (vi) advocating for the rights of the Settlement Class Members; and (vii) preparing for and engaging in mediation with Walmart and Walmart's counsel. Based on their own independent investigation and evaluation, Class Counsel are of the opinion that the Settlement is fair, reasonable, and adequate and that the Settlement is in the best interests of the Settlement Class Members in light of all known facts and circumstances, including the risk of significant delay, the defenses asserted by the Defendant, trial risk, and appellate risk.
- 3.5 Walmart denies liability or wrongdoing of any kind associated with the claims alleged and further contends that this Litigation is not appropriate for class action treatment pursuant to Rule 23 of the Federal Rules of Civil Procedure or any other federal or state rule, statute, law, or provision. Walmart continues to assert that the Litigation fails to meet the prerequisites necessary for class action treatment under applicable law, especially, but not solely, with respect to predominance and manageability because the need to determine individualized issues make the Litigation unmanageable consistent with due process. Walmart further asserts that it has complied with all applicable provisions of federal or state statutory and common law. Walmart further states that despite its good faith belief that it is not liable for any of the claims asserted, and despite its good faith belief that class certification is not appropriate in this case, Walmart agrees that it will not oppose the District Court's certification of the Settlement Class contemplated by this Agreement solely for purposes of effectuating this Settlement. Other than for purposes of this Settlement, Walmart does not waive its objections to certification of the Settlement Class, or any other class, in this Litigation for any other purpose.
- 3.6 Each of these Recitals is incorporated into this Agreement as if fully set forth herein.

4. SETTLEMENT CLASS

- 4.1 In order to implement the Settlement, Class Counsel shall request that the District Court certify the Settlement Class described in Section 2.34, above, pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure.
- 4.2 With respect to determining which individuals "would have been eligible to receive spousal Health Insurance Benefits from Walmart for that Legal Same-Sex Spouse during

the Settlement Class Period but for the limitation during the Settlement Class Period on providing spousal Health Insurance Benefits to Legal Same-Sex Spouses,” as provided for in Section 2.34, Walmart and/or a third-party retained by Walmart at Walmart’s sole cost shall make such determinations based on the eligibility criteria in effect at the time of the Settlement Class Member’s employment during the Settlement Class Period. Eligibility determinations made in accordance with this Section shall be subject to review by a neutral in accordance with Section 5.2. The decision of the neutral shall be final and not subject to appeal or any other review.

- 4.3 The Parties agree that certification of the Settlement Class is for settlement purposes only, and Walmart’s non-objection to this certification is in no way an admission by Walmart that class certification is proper in this or any other Litigation for any other purpose. Walmart further incorporates by reference Section 3.5.
- 4.4 The Parties further agree that if for any reason the District Court does not grant final approval of the Settlement, or if final approval is not granted following the appeal of any order by the District 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, void, and unenforceable, and the provisions of Section 18 shall apply.

5. MONETARY TERMS OF SETTLEMENT

- 5.1 Subject to the other terms and conditions of this Agreement, and subject to Court approval, Walmart agrees to pay the Class Settlement Amount of Seven Million Five Hundred Thousand Dollars (\$7,500,000). No portion of the Class Settlement Amount shall revert to Walmart.
- 5.2 All payments to Settlement Class Members, all Attorneys’ Fees and Litigation Expenses awarded by the Court to Class Counsel, any Service Payment awarded by the Court to the Settlement Class Representative, and all Notice and Administration Costs shall be paid from the Class Settlement Amount. Other than the costs incurred by Walmart to prepare and send the CAFA Notice, to make eligibility determinations in accordance with Section 4.2 and, where necessary, to obtain a neutral review of those determinations, to implement the Programmatic Relief, and amounts required for the Employers’ Share of Taxes in accordance with Section 5.7, the Class Settlement Amount shall be the maximum amount of money that Walmart shall pay under this Settlement.
- 5.3 Payments to Settlement Class Members
 - 5.3.1. The Net Settlement Amount shall be the amount remaining from the Class Settlement Amount after Attorneys’ Fees and Litigation Expenses awarded by the Court, any Service Payment awarded to the Settlement Class Representative by the Court, and all Notice and Administration Costs have been subtracted.
 - 5.3.2. Settlement Class Members who do not timely serve a valid Request to Opt Out of the Settlement shall be eligible to recover a share of the Net Settlement Amount in accordance with the Plan of Allocation described in Section 5.3.3.

5.3.3. Settlement Class Members shall receive final shares of the Net Settlement Amount pursuant to the following Plan of Allocation. Under the Plan of Allocation, a Settlement Class Member may file either: (1) a Long Form to receive payments as set forth in Section 5.3.3.1 and/or Section 5.3.3.2, by providing proof of out-of-pocket Health Care Costs and/or the costs of purchasing a separate Health Insurance Policy or Policies; or (2) a Short Form to receive a pro-rata share of the Net Settlement Amount after payments have been made to claimants who file Long Form Claims, based on the number of months that the Settlement Class Member was married to a Legal Same-Sex Spouse and would have been eligible to receive spousal Health Insurance Benefits from Walmart for that Legal Same-Sex spouse during the Settlement Class Period but for the limitation during that time period on providing such Health Insurance Benefits to Legal Same-Sex Spouses. For Health Care Costs to be established or demonstrated in connection with a Long Form Claim, they must be costs that may have been reimbursable or otherwise covered under any applicable Walmart sponsored Health Insurance Policy, as set forth in the applicable Summary Plan Descriptions (“SPDs”) for each year of the Settlement Class Period. As described herein, the “final payment” is the payment that each Settlement Class Member shall receive under this Settlement when payments are disbursed to Settlement Class Members by the Claims Administrator.

5.3.3.1. Long Form Claim - Out-of-Pocket Health Care Costs: Settlement Class Members whose Legal Same-Sex Spouses were not covered by any Health Insurance Policy and who had out-of-pocket Health Care Costs (including costs billed to the Settlement Class Member’s Legal Same-Sex Spouse) during the Settlement Class Period while the Settlement Class Member was married to her or his Legal Same-Sex Spouse shall be eligible to receive a payment calculated based on 1.0 times those out-of-pocket Health Care Costs. Settlement Class Members whose spouses were not covered by any Health Insurance Policy and whose out-of-pocket Health Care Costs (including costs billed to the Settlement Class Member’s spouse) were \$60,000 or greater during the Settlement Class Period while the Settlement Class Member was married to her or his Legal Same-Sex Spouse, shall be eligible to receive a payment calculated based on 2.5 times those Health Care Costs. In order to receive any payments under this Section, such Settlement Class Members must provide the Claims Administrator with proof of such Health Care Costs in accordance with Section 5.3.3.6 and must also affirm that the Health Care Costs for which reimbursement is sought have not been otherwise reimbursed.

5.3.3.2. Long Form Claim for Costs - Separate Health Insurance Policy or Policies: Settlement Class Members who purchased (or whose spouses purchased) a separate Health Insurance Policy or Policies for their same-sex spouses during the Settlement Class Period while the Settlement Class Member was married to her or his Legal Same-Sex Spouse shall be eligible to receive a payment calculated based on 1.0 times the costs of the Health Insurance Policy or Policies paid by the Settlement Class Member

and/or her or his Legal Same-Sex Spouse during the Settlement Class Period. In order to receive any payment under this Section, such Settlement Class Members must provide the Claims Administrator with proof of the costs of such Health Insurance Policy or Policies in accordance with Section 5.3.3.5.

5.3.3.3. Short Form Claims: All other Settlement Class Members who file a Short Form Claim establishing their membership in the Settlement Class shall be eligible to receive final payments consisting of a pro-rata share of the Net Settlement Amount remaining after payments are made to Settlement Class Members who submit Long Form Claims pursuant to Sections 5.3.3.1 and 5.3.3.2 above, based on the number of months that the Settlement Class Member was married to a Legal Same-Sex Spouse and would have been eligible to receive spousal Health Insurance Benefits from Walmart during the Settlement Class Period but for the limitation during that time period on providing such Health Insurance Benefits to Legal Same-Sex Spouses.¹ Such final payments shall not exceed \$5,000 per plan year (or pro-rated portion thereof) for each Settlement Class Member who worked at Walmart and was otherwise eligible for spousal health benefits during the Settlement Class Period. In order to receive such final payments, Settlement Class Members must complete a Claim Form providing their approximate dates of employment and date of marriage.

5.3.3.4. Any Settlement Class Member who wishes to receive a payment under this Settlement must file a Long Form Claim or a Short Form Claim with the Claims Administrator within 60 days of the date the Notice is mailed to Settlement Class Members. In order for a Long Form Claim or a Short Form Claim to be processed by the Claims Administrator and for the Settlement Class Member to receive a final payment, the Claim Form must identify the Settlement Class Member's approximate dates of employment at Walmart and the date of her or his marriage. Walmart (or a third-party entity contracted by Walmart) shall verify each such Settlement Class Member's actual dates of employment at Walmart and her or his eligibility to receive spousal health insurance during the Settlement Class Period. Within 14 days of Walmart making these determinations, the Claims Administrator shall mail a description of the determination to the relevant Settlement Class Member. If the Settlement Class Member wishes to challenge Walmart's determination of her or his employment by Walmart or eligibility to receive spousal health insurance, the Settlement Class Member must within 14 days of receiving the determination mail to the

¹ For example, a Settlement Class Member who was married to a Legal Same-Sex Spouse and eligible for spousal health insurance for only 6 months during the Settlement Class Period would receive a payment that is 1/6 of the payment that a Settlement Class Member who was married to a Legal Same-Sex Spouse and eligible for spousal health insurance for 36 months during the Settlement Class Period would receive.

Claims Administrator a statement and any supporting documentation explaining why Walmart's determination is incorrect. Any challenges to Walmart's determinations shall be reviewed by a neutral—agreed to jointly by the Parties and paid by Walmart separately from and in addition to the \$7.5 million Class Settlement Amount—who will make a final, binding decision regarding the Settlement Class Member's actual dates of employment and eligibility to receive spousal health insurance during her or his employment by Walmart during the Settlement Class Period. The decision of the neutral shall be final and not subject to appeal or any other review.

5.3.3.5. Settlement Class Members who file Long Form Claims under Section 5.3.3.1 or Section 5.3.3.2 must submit a completed Long Form Claim, attached hereto as Exhibit A, to the Claims Administrator within 60 days of the date the Notice is mailed to Settlement Class Members. To be eligible for a payment under either Section 5.3.3.1 or Section 5.3.3.2, Settlement Class Members must provide evidence through the Long Form Claim, documents, declarations and/or statements that they or their Legal Same-Sex Spouses were charged for such costs and were not reimbursed through other sources. Settlement Class Members may submit such evidence contemporaneously with the Long Form Claim (i.e., within 60 days of the notice mailing) or up to 90 days after the Notice Mailing. In the event that a Settlement Class Member files a Long Form Claim but fails to submit supporting evidence within 80 days of the Notice Mailing, the Claims Administrator will notify Class Counsel so that Class Counsel may contact the Settlement Class Member to confirm whether they wish to complete the Long Form Claim or convert her or his claim to a Short Form Claim. Within 30 days after receiving a completed Long Form Claim and the determination of eligibility referenced in Section 5.3.3.4, Long Form Claim, and any related documentation or information from a Settlement Class Member, the Claims Administrator will make a final, binding determination as to the amount that the Settlement Class Member is entitled to receive under Sections 5.3.3.1 and/or 5.3.3.2. Within 14 days of making any such determination, the Claims Administrator shall mail a description of the determination to the relevant Settlement Class Member. If the Settlement Class Member wishes to challenge the Claims Administrator's determination, the Settlement Class Member must within 14 days of receiving the determination mail to the Claims Administrator a statement that seeks reconsideration of the determination and describes why the determination should be modified by the Claims Administrator. Upon a showing of good cause for reconsidering the determination, the Claims Administrator may modify the determination. Any determination in this section by the Claim Administrator, including a decision to modify or not modify a prior determination, shall be final and not subject to appeal or any other review.

5.3.3.6. Settlement Class Members can only receive a final payment by submitting (1) a Long Form Claim for payments under Section 5.3.3.1 and/or 5.3.3.2, or (2) a Short Form Claim to receive a payment to be determined by a pro rata share under Section 5.3.3.3, but may not file both a Long Form Claim and a Short Form Claim. A single Settlement Class Member, however, may file a Long Form Claim under Section 5.3.3.1 and under Section 5.3.3.2, but may not submit a claim to receive a payment based on both types of costs for the same month. If the pro rata share that a Settlement Class Member would receive under Section 5.3.3.3 by filing a Short Form Claim is greater than the payment he or she would receive by filing a Long Form Claim under Section 5.3.3.1 and/or 5.3.3.2, the Settlement Class Member's Long Form Claim shall be automatically converted into a Short Form Claim and the Settlement Class Member shall receive the greater pro rata share under Section 5.3.3.3 as her or his final payment under the Settlement.²

5.3.3.7. If Settlement Class Members who file Long Form Claims would be entitled to collectively receive payments that exceed \$3.5 million under Sections 5.3.3.1 and 5.3.3.2, such Settlement Class Members will have their payments reduced on a pro rata basis so that they collectively receive final payments that are equal to \$3.5 million.³ If the Settlement Class Members who file Long Form Claims would be entitled to collectively receive payments under Sections 5.3.3.1 and 5.3.3.2 that are less than or equal to \$3.5 million, the those payments shall be the final payments that such Settlement Class Members receive under the Settlement.

5.3.3.8. In the event that a potential Settlement Class Member who is not listed on the data provided by Walmart to the Claims Administrator pursuant to

² For example, if each Settlement Class Member who files an approved Short Form Claim is entitled to receive \$5,000 per plan year (*i.e.*, the maximum payment per plan year), and a Settlement Class Member who was married to a Legal Same-Sex Spouse and eligible for spousal health insurance for 24 months during the Settlement Class Period submits proof of \$3,000 of out-of-pocket Health Care Costs under Section 5.3.3.1 and \$5,000 of costs of Health Insurance Policy or Policies under 5.3.3.2, the Settlement Class Member would receive \$10,000 as a pro rata share of the Net Settlement Agreement (as the \$10,000 payment for two plan years exceeds \$8,000 in out-of-pocket Health Care Costs and \$5,000 of costs of health Insurance Policy or Policies).

³ For example, if all of the Settlement Class Members who file Long Form Claims would be entitled to receive \$4 million under Sections 5.3.3.1 and 5.3.3.2, such Settlement Class Members would receive payments that are equal to 87.5% of the of out-of-pocket Health Care Costs under Section 5.3.3.1 and costs of Health Insurance Policy or Policies under 5.3.3.2 that they proved through their Long Form Claims. In such a situation, a Settlement Class Member who would be entitled to receive \$100,000 under Sections 5.3.3.1 and 5.3.3.2 instead would receive \$87,500 as his or her final payment under the Settlement.

Section 7.1 (a “Self-Identifier”) contacts the Claims Administrator or counsel for the Parties, such Self-Identifier shall be directed to a website maintained by the Claims Administrator where they may download the Notice Packet or request that one be mailed to them. Any such request must be made before the close of the Notice Period. Any Self-Identifier who wishes to submit a Claim Form (including those who download Claim Forms from the website) must do so within 60 days of the Notice Date, or 30 days after first contacting the Claims Administrator, whichever is later. The Claims Administrator shall inform all Self-Identifiers who contact it of this deadline. The Claims Administrator shall maintain a list of all Self-Identifiers, including the date on which each Self-Identifier first contacted the Claims Administrator, and shall provide it to counsel for the parties on a rolling basis during the Notice Period, and shall provide the final list to counsel for the parties no later than 10 days after the close of the Notice Period. Walmart (or a third-party entity contracted by Walmart) shall verify each such Self-Identifier’s actual dates of employment at Walmart and her or his eligibility to receive spousal health insurance during the Settlement Class Period on a rolling basis as that information is received from the Claims Administrator, and shall provide its final determination of such eligibility no later than 30 days after receipt of the final list from the Claims Administrator. Within 14 days of Walmart making these determinations, the Claims Administrator shall mail a description of the determination to the relevant Self-Identifier. If the Self-Identifier wishes to challenge Walmart’s determination of her or his employment at Walmart or eligibility to receive spousal health insurance, the Self-Identifier must, within 14 days of receiving the determination, mail to the Claims Administrator a statement and any supporting documentation explaining why Walmart’s determination is incorrect. Any challenges to Walmart’s determinations shall be reviewed by a neutral—agreed to jointly by the Parties and paid by Walmart separately from and in addition to the \$7.5 million Class Settlement Amount—who will make a final, binding decision regarding the Self-Identifier actual dates of employment and eligibility to receive spousal health insurance during her or his employment by Walmart during the Settlement Class Period. The decision of the neutral shall be final and not subject to appeal or any other review. In the event that a determination is made that the Self-Identifier was employed and eligible for spousal health insurance during the Settlement Class Period, they shall be deemed a Settlement Class Member provided they meet the other criteria set forth in this Agreement.

5.3.3.9. All Long Form Claims and Short Form Claims submitted by Settlement Class Members must be signed under penalty of perjury.

5.3.3.10. Settlement Class Members who have filed timely Long Form Claims or Short Form Claims shall receive their final payments under the Settlement only after all final payments of Settlement Class Members have been

determined by the Claims Administrator. At the conclusion of the claims process, the Claims Administrator shall provide counsel for the parties with a listing of all Class Members whose claims have been verified, and the amount of such claims.

5.3.3.11. Any amount of the Net Settlement Amount that remains after all of the payments described above have been paid shall be divided equally between the following *cy pres* designees: (1) Equality Federation (<http://www.equalityfederation.org/about/>) and (2) the National Center for Transgender Equality (<http://www.transequality.org/about/>), subject to approval by the Court. If the Court does not approve one or more of these *cy pres* designees, Class Counsel may, after consultation with Walmart, propose one or more *cy pres* designees for the Court to approve.

5.3.4. The Parties have determined that, subject to Court approval, the Plan of Allocation is an appropriate method to distribute the Net Settlement Amount to the Settlement Class Members. The Parties further agree that the terms of the Plan of Allocation, including any dollar values assigned to any particular Settlement Class Member or claim, are for purposes of this Settlement only and shall not be construed as an admission by any Party, nor shall they be admissible for any purpose (other than for the purpose of effectuating this Settlement), in this Litigation, or any other judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or other proceeding. Neither Walmart nor the Walmart Associates' Health and Welfare Plan shall have any duty under this Agreement to provide further payments or benefits to Settlement Class Members for the Settlement Class Period.

5.4 Attorneys' Fees and Litigation Expenses

5.4.1. Class Counsel shall request that, subject to Court approval, they be paid Attorneys' Fees not to exceed twenty-five percent of the Class Settlement Amount, plus reasonable Litigation Expenses, all to be paid from the Class Settlement Amount. Walmart takes no position on the amounts to be sought by Class Counsel for an award of Attorneys' Fees and Litigation Expenses, but does not object to a reasonable award for Attorneys' Fees and Litigation Expenses by the Court. Any amounts awarded by the Court for Attorneys' Fees and Litigation Expenses shall be paid from the Class Settlement Amount. This Settlement is not contingent on the award of Attorneys' Fees and Litigation Expenses, and in the event that the Court does not approve the Attorneys' Fees and Litigation Expenses in the amount requested by Class Counsel, or in the event that the Court awards Attorneys' Fees and Litigation Expenses in an amount that is less than the amount requested by Class Counsel, any amounts not approved shall become part of the Net Settlement Amount for distribution to Settlement Class Members. Nothing in this Section or Agreement limits the rights of Class Counsel to appeal any decision by the Court regarding Attorneys' Fees and Litigation Expenses.

5.5 Service Payment

5.5.1. Class Counsel shall request that, subject to Court approval, the Settlement Class Representative, Jacqueline Cote, be paid a Service Payment in the amount of Twenty Five Thousand Dollars (\$25,000), to compensate her for her services as a class representative and to be paid from the Class Settlement Amount. The Service Payment shall be in addition to any Claim that the Settlement Class Representative might make and receive under the Settlement. Walmart takes no position on the amount sought by Class Counsel as a Service Payment for the Settlement Class Representative, but does not object to a reasonable Service Payment if approved by the Court. This Settlement is not contingent on the approval of the Service Payment, and in the event that the Court does not approve the requested Service Payment, or in the event that the Court awards a Service Payment in an amount that is less than the amount requested by Class Counsel, any amount not approved shall become part of the Net Settlement Amount for distribution to Settlement Class Members.

5.6 Notice and Administration Costs.

5.6.1. The Claims Administrator has estimated that Notice and Administration Cost will be One Hundred and Ten Thousand Dollars (\$110,000). The Parties agree that the actual Notice and Administration Cost shall not exceed this figure unless the Parties agree that a reasonable basis exists for additional Notice and Administration Cost to be incurred. Any such increase in the Notice and Administration Cost shall be subject to Court approval. In the event that the actual Notice and Administration Cost is less than this estimate, any remaining funds shall be redistributed to Settlement Class Members or donated to the *cy pres* designees in accordance with Section 5.3.3.11.

5.7 Each recipient of any monies paid in accordance with this Agreement is responsible for any taxes associated with the monies received by that recipient, provided however that Walmart agrees to pay the employers' share of taxes of any applicable taxes in addition to the Class Settlement Amount. The Settlement Class Representative, on behalf of herself and the Settlement Class Members, acknowledges and agrees that she has not relied upon any advice from Walmart or Class Counsel as to the taxability of the payments received pursuant to this Settlement Agreement. The amounts paid in connection with Long Form Claims and Short Form Claims submitted by Settlement Class Members shall be allocated such that twenty percent (20%) is treated as wages for the purposes of withholding all applicable local, state and federal taxes and withholdings and eighty percent (80%) is treated as remuneration for damages separate and distinct from lost wages.⁴

5.8 By giving such direction to the Claims Administrator regarding tax withholdings on the final payments of Settlement Class Members, the Parties and their counsel are not

⁴ For example, if a Settlement Class Member receives a \$10,000 final Short Form Claim payment based on his or her pro rata share of the Settlement, taxes would be withheld on \$2,000 of the \$10,000 final payment, such that the Settlement Class Member would receive \$8,000 plus whatever portion of the \$2,000 is not withheld for paying taxes.

providing Settlement Class Members, the Claims Administrator, or anyone else with legal or tax advice about the applicable taxes that must be paid under federal, state, or local law. The QSF shall be responsible for issuing appropriate tax forms to Settlement Class Members, consistent with this Agreement.

6. PROGRAMMATIC RELIEF

- 6.1 Walmart presently offers the same spousal health insurance benefits to associates in the 50 United States, the District of Columbia, and Puerto Rico with same-sex spouses as it does to associates in the 50 United States, the District of Columbia, and Puerto Rico with opposite-sex spouses. Walmart has no intent to modify this practice, and commits to treating same-sex and opposite-sex spouses or couples equally in the provision of health insurance benefits, so long as to do so is consistent with applicable law. Provided, however, that nothing in this Paragraph prevents Walmart from in the future changing the terms of its Health Insurance Benefits plans to modify, remove or add such plans, so long as Health Insurance Benefits are provided to same-sex and opposite-sex spouses on the same terms.

7. NOTICE TO THE SETTLEMENT CLASS MEMBERS

- 7.1 The Claims Administrator shall provide notice of the Settlement to Settlement Class Members as follows:
- 7.1.1. Within ten (10) business days of the date on which the District Court enters an order granting preliminary approval of the Settlement, or on another reasonable date as agreed to by the Parties, Walmart shall provide the Claims Administrator and Class Counsel an Excel chart listing the names, last known addresses and telephone numbers and Social Security numbers for all identifiable potential Settlement Class Members, as that information exists in Walmart's employment records. This listing shall include information regarding those persons identified through the notice process undertaken in accordance with the District Court's ruling as set forth in its January 26, 2016 Order [ECF No. 20], as well as any other persons identified by Class Counsel or Defendant.
 - 7.1.2. Within twenty (20) business days of the date on which the District Court enters and order granting preliminary approval of the Settlement, or on another reasonable date as agreed to by the Parties, using the data provided by Walmart (as supplemented by any more current information that may be available from Class Counsel), the Claims Administrator will send the Notice Packet by first class mail (including a postage-paid return envelope) to each Settlement Class Member that has been identified (the "Notice Date"). The Claims Administrator will send a reminder postcard by first class mail half-way through the Notice period. Prior to the mailing of the Notice Packet to the Settlement Class Members, the Claims Administrator shall attempt to confirm the accuracy of the addresses through the United States Post Office's National Change of Address

database, and shall mail the Notice Packet to any updated address obtained therefrom.

- 7.1.3. If any Notice Packet is returned as undeliverable for a Settlement Class Member, the Claims Administrator shall promptly attempt to locate such Settlement Class Member through an electronic search using the Social Security number and/or former address of that person, and shall promptly mail an additional Notice to such person. The Claims Administrator will attempt up to two re-mailings per Settlement Class Member. Each re-mailing shall re-start the 60 day notice period for that Settlement Class Member, except that in no event shall the close of the notice period exceed 90 days from the Notice Date. The Claims Administrator shall, within ten (10) calendar days after the last day on which it makes such a re-mailing, notify Class Counsel and Defendant's Counsel of the precise date of the end of the Notice Period.
- 7.1.4. The Notice will contain a URL to a web site established and maintained by the Claims Administrator where Settlement Class Members may submit their Claim Forms electronically and in a secured manner.
- 7.1.5. Information regarding the Settlement will also be disseminated through Walmart's Lesbian, Gay, Bisexual, and Transgender (LGBT) "associate resource group," Walmart PRIDE, including through its e-mail listserve and its Facebook group.
- 7.1.6. The Notice will be published in the following manners: through targeted advertisements on Facebook to people who identify with LGBT-related causes and organizations and also associate with Walmart, and advertisements in LGBT-oriented publications.

8. CLASS ACTION FAIRNESS ACT NOTICE

- 8.1 Walmart shall provide CAFA Notice to the appropriate governmental authorities in accordance with the Class Action Fairness Act. Walmart shall pay for the cost of providing the CAFA Notice separate from and in addition to the \$7.5 million Class Settlement Amount.

9. OPT-OUT PROCESS

- 9.1 A Settlement Class Member who wishes to exclude herself or himself from this Settlement and from the release of claims pursuant to this Settlement, shall submit a timely and valid Request to Opt Out. To be timely, the Request to Opt Out must be filed within 60 days of the Notice Date (or, in the case of a re-mailed notice, within 60 days of its mailing but not later than 90 days from the Notice Date). To be valid, the Request to Opt Out shall (1) contain the words "I wish to be excluded from the Settlement Class in the Walmart LGBT Health Benefits Settlement"; (2) contain the Settlement Class Member's name, address, location at which the Settlement Class Member worked at Walmart, the period of time in which the Settlement Class Member worked at Walmart,

the date of the Settlement Class Member's legal marriage to a same-sex spouse, the last four digits of the Settlement Class Member's social security number and any other information that is sufficient to identify that the person is a member of the Settlement Class, and (3) be signed and dated.

- 9.2 A Settlement Class Member who submits a timely Request to Opt Out is not eligible to recover a share of the Net Settlement Amount. The Claims Administrator shall maintain a list of persons who have sent Requests to Opt Out and shall provide such list to the Parties upon request. The Claims Administrator shall retain the originals of all Requests to Opt Out (including the envelopes with the postmarks) received from Settlement Class Members, and shall provide copies of all Requests to Opt Out to counsel for the Parties within three (3) business days of receipt. Walmart retains the right to assert any and all defenses to the claims of persons who opt out from this Settlement.
- 9.3 Walmart, at its sole discretion, shall have the right to terminate the Settlement in the event that the number of timely opt-outs from the Settlement exceeds 35. In the event that the Settlement is terminated in accordance with this Subsection, the provisions of Section 18 of this Agreement apply.

10. OBJECTION PROCESS

- 10.1 A Settlement Class Member who wishes to object to the Settlement must timely submit to the Claims Administrator and/or file with the Court a valid objection, in writing, on or before 60 days after the date the Notice is mailed to Settlement Class Members (or, in the case of a re-mailed notice, within 60 days of its mailing but not later than 90 days from the Notice Date). To be considered timely, the objection must be postmarked or otherwise received by the Claims Administrator or the Court on or before the deadline. To be considered valid, an objection must (1) be from a Settlement Class Member, (2) be in writing and contain the words "I object to the Walmart LGBT Health Benefits Settlement," (3) include the objector's name, address, date of marriage to a Legal Same-Sex Spouse, the period of time in which the Settlement Class Member worked at Walmart, at what location or locations the Settlement Class Member worked at Walmart, and the last four digits of the Settlement Class Member's Social Security Number, and (4) be signed and dated. The objection must include the basis for the objection (including why the objector believes the Settlement is not in the best interests of the Settlement Class Members), along with any and all documents that support the objection. The objection must also state whether or not the objector intends to appear at the final approval hearing. Additional instructions regarding how to object to the Settlement shall be contained in the Notice. A Settlement Class Member who submits a Request to Opt Out is not eligible to object to the Settlement.
- 10.2 The Claims Administrator shall maintain a list of persons who have filed objections and shall provide such list to the Parties upon request. To the extent that Objections are sent to the Claims Administrator, the Claims Administrator shall retain the originals of all objections (including the envelopes with the postmarks) received from Settlement Class Members, and shall provide copies of all objections to counsel for the Parties within three (3) business days of receipt.

- 10.3 Settlement Class Members who do not file and serve timely and valid written objections in accordance with the procedures set forth in this Agreement and the Notice shall be deemed to have waived any objections to the Settlement and shall forever be foreclosed from making any objection (whether by appeal or otherwise) to any aspect of the Settlement, including, without limitation, the fairness, reasonableness, or adequacy of the proposed Settlement, or the Court's award of Attorneys' Fees and Litigation Expenses and a Service Payment.

11. FUNDING AND DISTRIBUTION PROCESS

- 11.1 The Class Settlement Amount shall be funded through a QSF in accordance with this Agreement. The timing of the payments by Walmart to the QSF are as follows:
- 11.1.1. Within 10 business days following receipt by Walmart of the information needed to transfer funds to the QSF (including wire transfer instructions and W9 for the QSF to be provided by the Claims Administrator), or on another reasonable date as agreed to by the Parties, Walmart shall transfer the estimated Notice and Administration Costs to the QSF, who shall distribute that amount to the Claims Administrator. In the event that the Settlement Effective Date does not occur, any amounts actually used by the Claims Administrator for notice and administration shall not be refundable to Walmart.
- 11.2 Subject to Section 11.3, within 10 business days following the Settlement Effective Date, Walmart shall transfer to the QSF amounts sufficient to cover the remainder of the Class Settlement Amount. Class Counsel shall provide the QSF with the information as to whom the Attorneys' Fees and Litigation Expenses and the Service Payment should be distributed and what amounts shall be distributed to which law firms. Any additional amounts to be transferred by Walmart for the employer's share of taxes shall be transferred by Walmart directly to the Claims Administrator and not to the QSF.
- 11.3 Within thirty (30) days of the Effective Date, the Claims Administrator will distribute the money in the Net Settlement Fund by making the following payments:
- 11.3.1. Paying Class Counsel's Court-approved attorneys' fees and costs as described in Section 5.4.
- 11.3.2. Paying the Settlement Class Representative the Court-approved Service Payment as described in Section 5.5.
- 11.3.3. Paying Settlement Class Members their final payments from the Net Settlement Fund as described in Section 5.3.
- 11.4 Settlement Class Members will have ninety (90) days from the date the settlement checks are mailed to cash their settlement checks. Twenty (20) days before the close of the ninety (90)-day period for Settlement Class Members to redeem their final payments, the Claims Administrator will provide Class Counsel with the names and contact information, including (1) last known addresses, (2) last known telephone numbers, and (3) if readily available, last known email addresses, for all Settlement Class Members

who did not cash their settlement checks. Class Counsel may then contact said Settlement Class Members to encourage them to cash their checks.

- 11.5 At the expiration of the period for redeeming final payments as set forth in Section 11.4, the Claims Administrator shall advise counsel for the Parties what amount, if any, remains in the Settlement Fund, and Class Counsel shall determine, in their sole discretion, whether any such remaining funds will be redistributed to those Settlement Class Members who cashed their settlement checks consistent with each Settlement Class Member's pro rata share of the Net Settlement Fund or, if the amount remaining is insufficient to merit a second distribution, donated to the *cy pres* designees.

12. QUALIFIED SETTLEMENT FUND

- 12.1 As required under this Agreement, Walmart shall transfer the required portions of the Class Settlement Amount, to be held as a separate trust constituting a QSF as described in Treasury Regulation § 1.468B-1, 26 C.F.R. § 1.468B-1. Class Counsel and Walmart jointly shall take such steps as shall be necessary to qualify the QSF under §468B of the Internal Revenue Code, 26 U.S.C. §468B, and the regulations promulgated pursuant thereto. Walmart shall be considered the "transferor" within the meaning of Treasury Regulation § 1.468B-1(d)(1). The Claims Administrator shall be the "administrator" within the meaning of Treasury Regulation § 1.468B-2(k)(3). The Parties shall cooperate in securing an order of the Court to establish the QSF in accordance with the terms hereof in conjunction with its preliminary approval of the Settlement and Notice as described in this Agreement. The Court shall retain jurisdiction over the administration of the QSF. Walmart shall supply to the Claims Administrator and to the Internal Revenue Service the statement described in Treasury Regulation § 1.468B-3(e)(2) no later than February 15th of the year following each calendar year in which Walmart makes a transfer to the QSF. It is intended that the transfers to the QSF will satisfy the "all events test" and the "economic performance" 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.
- 12.2 Upon establishment of the QSF, the QSF 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).
- 12.3 If requested by either Walmart or the Claims Administrator, the Claims Administrator, the QSF 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.

- 12.4 Following its deposits as described in Section 11 of this Agreement, and other than as specifically set forth herein, Walmart shall have no financial obligation or liability whatsoever with respect to the notifications to the Class required hereunder, the processing of Claims and Opt-Out Letters, the allowance or disallowance of claims by Claimants, payments to Class Counsel, investment of QSF funds, payment of federal, state, and local income, employment, unemployment, excise, and other taxes imposed on the QSF or its disbursements, or payment of the administrative, legal, accounting, or other costs occasioned by the use or administration of the QSF, since it is agreed that such deposits shall fully discharge Walmart's obligations to Claimants and Class Counsel and for expenses of administration in respect to the disposition of the Class Settlement Amount hereunder. Rather, the Claims Administrator shall have sole authority and responsibility for the administration of such funds and income thereon, disbursement to Claimants and Class Counsel, and payment of taxes and administrative costs in accordance with the provisions hereof, subject only to the rights of Walmart or Class Counsel to seek redress for any breach of the terms hereof.
- 12.5 The Claims Administrator shall cause to be filed, on behalf of the QSF, all required federal, state, and local tax returns, information returns and tax withholdings statements in accordance with the provisions of Treasury Regulation §1.468B-2(k)(1) and Treasury Regulation §1.468B-2(l)(2)(ii). The Claims Administrator may, at the expense of the QSF, retain legal counsel and an independent, certified public accountant to consult with and advise the Claims Administrator or the QSF with respect to the preparation and filing of such materials and the federal, state and local tax compliance of the QSF. Either Walmart or the Claims Administrator, independently or jointly, may, but are not required to, apply to the Internal Revenue Service and/or any applicable state taxing authority for an advance ruling as to any issue pertinent to the qualification of the QSF under Internal Revenue Code §468B and Treasury Regulations promulgated thereunder, its tax status under applicable state law, and/or its tax payment, reporting and withholding duties, so long as Walmart and the remaining Parties are reasonably satisfied that such application and ruling will not compromise the confidentiality of 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.
- 12.6 The taxable year of the QSF shall be the calendar year in accordance with Treasury Regulation §1.468B-2(j). The QSF shall utilize the accrual method of accounting within the meaning of § 446(c) of the Internal Revenue Code.
- 12.7 Based on the QSF'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 Claimants or Class Counsel may be deposited in bank accounts which are federally insured to the greatest extent practicable. All federal, state, and local taxes

imposed with respect to income earned by, or property of, the QSF, shall be paid from the QSF.

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

13. COMPREHENSIVE WAIVER, RELEASE, AND DISMISSAL

- 13.1 Subject to final approval by the Court of the Settlement, and for good and valuable consideration set forth herein, the receipt and sufficiency of which is hereby acknowledged, all Releasing Settlement Class Members, and each of their Releasing Legal Same-Sex Spouses, do hereby irrevocably release, acquit, and forever discharge all of the Releasees of and from any and all rights, demands, charges, complaints, causes of action, obligations, damages, penalties, debts, costs and expenses (other than those costs and expenses required to be paid pursuant to this Agreement), liens, or liabilities of any and every kind, that were asserted in the Litigation, or that could have been asserted but were not asserted in the Litigation, under the facts pled in the Complaint, or in any other court or forum, whether known or unknown, on the basis of, connected with, arising out of, or related in whole or in part to any or all of the alleged acts, omissions, facts, matters, transactions, circumstances, and occurrences that were directly or indirectly alleged, asserted, described, set forth, or referred to in the Litigation, whether such allegations were or could have been based on common law or equity, or on any statute, rule, regulation, order, or law, whether federal, state, or local and whether for damages or injunctive or any other kind of relief, under the facts pled in the Complaint. This release includes, but is not limited to, claims for discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.*, the Equal Pay Act of 1963, 29 U.S.C. § 206(d), and the Massachusetts Fair Employment Practices Law, Mass. Gen. Laws ch. 151B § 4.
- 13.2 The Releasing Settlement Class Members and each of their Releasing Legal Same-Sex Spouses understand and agree that the release of the Released Claims is a full and final release applying to both those Released Claims that are currently known, anticipated, or disclosed to the Releasing Settlement Class Members and to their Releasing Same-Sex Spouses and all those Released Claims that are presently unknown, unanticipated, or undisclosed to any Releasing Settlement Class Member arising out of the facts alleged in the Litigation. In exchange for the good and valuable consideration set forth herein, all Releasing Settlement Class Members and all of their Releasing Same-Sex Spouses further waive any and all rights or benefits that they as individuals or the classes may now have as a result of the alleged facts, circumstances, and occurrences underlying the claims set forth in the Litigation under the terms of Section 1542 (a) of the California Civil Code (or similar statute in effect in any other jurisdiction), which provides as follows:

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

- 13.3 The Parties acknowledge that this Settlement, including the releases provided in this Section, reflects a compromise of disputed claims.
- 13.4 The Settlement Class Representative, Class Counsel, and Counsel for the Defendant further warrant and affirm that they have not received notice or notification of any medical, third-party insurance carrier, Medicare or Medicaid lien with respect to this Litigation. The Parties are not presently aware of any payments to be made to Settlement Class Members pursuant to this Agreement that will give rise to a medical, third-party insurance carrier, Medicare, or Medicaid lien.
- 13.5 Notwithstanding anything to the contrary in this Agreement, the releases herein do not prohibit the Releasing Settlement Class Members from filing a charge or complaint with any state or federal governmental agency, from cooperating in good faith with an investigation by a state or federal governmental agency, or from communicating in good faith with any state or federal governmental agency, provided however, that the Releasing Settlement Class Members do release and relinquish any right to receive any award of back pay, front pay, compensatory damages, or punitive damages as a result of participating in any such charge, investigation, or communication.
- 13.6 As part of the motion for final approval, Class Counsel shall request that the Court enter Final Judgment and an Order of Dismissal, which shall dismiss the Litigation with prejudice, and release the Released Claims as described above, with the exception of any claims which might be retained by Settlement Class Members who exclude themselves from the Settlement, if any. Walmart shall retain any existing defenses to such excluded claims. The Parties agree to cooperate and take all steps necessary and appropriate to obtain preliminary and final approval of this Settlement, to effectuate its terms, and, to the extent of the obligations set forth in this Agreement, to dismiss this Litigation with prejudice. The form of Final Judgment and Order of Dismissal agreed to by the Parties, subject to Court approval, is attached as Exhibit B.

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

- 14.1 Within 30 days after the full Execution of this Agreement, Class Counsel shall apply to the District Court for the entry of an order granting preliminary approval of the Settlement Agreement substantially in the following form:
 - 14.1.1. Granting preliminary approval to the Settlement Agreement;
 - 14.1.2. Approving as to form and content the proposed Notices and notice plan;

- 14.1.3. Scheduling a final fairness hearing on the question of whether the proposed Settlement should be finally approved as fair, reasonable, and adequate as to the Settlement Class Members, to be held no sooner than 90 days after the date of the Preliminary Approval Order;
- 14.1.4. Approving GLBTQ Legal Advocates & Defenders (GLAD), the Washington Lawyers' Committee for Civil Rights and Urban Affairs, Outten & Golden LLP, and Arnold & Porter LLP as Class Counsel;
- 14.1.5. Approving Jacqueline Cote as the Settlement Class Representative; and
- 14.2. Approving KCC as Claims Administrator. Walmart shall cooperate with Class Counsel as necessary to obtain preliminary approval.
- 14.3. The Parties shall continue to take any steps necessary to stay any pending proceedings so as to preserve the status quo in the event that the Settlement Effective Date does not occur.

15. DUTIES OF THE PARTIES FOLLOWING PRELIMINARY COURT APPROVAL

- 15.1. Following preliminary approval by the District Court of the Settlement, and no later than 14 calendar days prior to the final fairness hearing, Class Counsel will submit a motion for final approval to include a proposed Final Judgment and Order of Dismissal substantially in the form attached hereto as Exhibit B. The proposed Final Judgment and Order of Dismissal shall:
 - 15.1.1. Grant final approval to the Settlement, adjudging the terms thereof to be fair, reasonable, and adequate, and directing consummation of its terms and provisions;
 - 15.1.2. Approve Class Counsel's application for Attorneys' Fees and Litigation Expenses;
 - 15.1.3. Approve the Service Payment to the Settlement Class Representative proposed by Class Counsel;
 - 15.1.4. Dismiss this Litigation as between the Settlement Class Members on the one hand, and Walmart on the other hand, with prejudice and permanently bar the Releasing Settlement Class Members and their Releasing Same-Sex Spouses from further prosecuting any of the Released Claims, subject to the Court's continuing jurisdiction described in Section 15.2.
 - 15.1.5. State that the District Court shall retain continuing jurisdiction over this action as set forth in Section 15.2
- 15.2. The District Court shall retain continuing jurisdiction over this action (a) for a period of six months after the Settlement Effective Date, or (b) for a period of one month after all

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

15.3 Walmart shall cooperate with Class Counsel as necessary to obtain final approval and the dismissal of the Litigation.

15.4 The Final Judgment and Order of Dismissal shall not be considered final until the occurrence of the Settlement Effective Date.

16. MUTUAL FULL COOPERATION

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

17. STATEMENT OF NO ADMISSION

17.1 Nothing contained in this Agreement shall be construed or deemed an admission of liability, culpability, or wrongdoing on the part of Walmart. Walmart further denies liability for any alleged wrongdoing, expressly deny liability for the claims asserted and deny and do not admit any of the pleaded facts not admitted in their pleadings in the Litigation. Walmart further disagrees that a class in this Litigation is appropriate or authorized under law, other than for purposes of effectuating this Settlement. Nor shall this Agreement constitute an admission by Walmart as to any interpretation of laws or as to the merits, validity, or accuracy of any claims made against it in the Litigation. Likewise, nothing in this agreement shall be construed or deemed an admission by Plaintiff or the Settlement Class with regards to the validity of any of Walmart's defenses or affirmative defenses. Each of the Parties has entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

17.2 The Parties further agree that this Agreement and all of its Exhibits, any Opt Out Requests or Objections, the Court's actions (including Court orders) related to this Settlement, and all other statements, discussions, negotiations, actions, documents or items (including argument of counsel) undertaken by anyone relating to this Settlement are settlement communications or documents and, as such, they: (a) do not constitute, are not intended to constitute, and will not be deemed to constitute an admission by Defendant as to any violation of any federal, state, or local law, statute, ordinance,

regulation, rule, or executive order, or any obligation or duty at law or in equity; and (b) shall not be admissible in evidence and shall not be used for any purpose in this Litigation or in any other judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or proceeding, or any other litigation against Defendant for any purpose, including as evidence of any admission by Defendant of any liability with respect to any claim for damages or other relief, or of the appropriateness of class certification or any element thereof, except in an action or proceeding to approve, interpret, or enforce the terms of this Agreement, including the Release.

18. VOIDING THE AGREEMENT

- 18.1 Except with respect to the provisions of Section 18.2, in the event that this Settlement is not finally approved, or if for any reason the Settlement Effective Date does not occur, the Settlement and this Agreement shall be deemed null, void, and unenforceable and each Party shall retain all of its respective rights as they existed as of the date notice of the Settlement was first provided to the Court, and neither this Agreement, nor any of its accompanying Exhibits or any orders entered by the Court in connection with this Agreement, shall be admissible or used for any purpose in any subsequent proceedings in this Litigation or in any other judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or other proceeding, including any workers' compensation action. Provided, however, Walmart shall not be reimbursed for any monies reasonably spent by the Claims Administrator, or reasonably owed to the Claims Administrator but not yet paid, for Notice and Administration Costs.
- 18.2 In the event that the Court does not approve the Attorneys' Fees and Litigation Expenses or the Service Payment in the amount requested by Class Counsel, or in the event that the Attorneys' Fees and Litigation Expenses or Incentive Payments requested by Class Counsel is reduced, such findings shall not be a basis for rendering the entire Settlement Agreement null, void, or unenforceable. Class Counsel retain their right to appeal any decision or order by the Court regarding the Attorneys' Fees and Litigation Expenses.

19. SIGNATORIES' AUTHORITY

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

20. NO PRIOR ASSIGNMENTS

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

21. NOTICES

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

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

21.1.1. To the Class:

Juno Turner
Peter Romer-Friedman
OUTTEN & GOLDEN LLP
685 Third Avenue, 25th Floor
New York, New York 10017
Tele: (212) 245-1000
Fax: (646) 509-2060
Email: jturner@outtengolden.com
prf@outtengolden.com

21.1.2. To Walmart:

Brian L. Duffy
Naomi G. Beer
GREENBERG TRAUIG, LLP
1200 17th Street, Suite 2400
Denver, Colorado 80202-5835
Tele: (303) 572-6500
Fax: (303) 572-6540
Email: DuffyB@gtlaw.com
BeerN@gtlaw.com

22. CONFIDENTIALITY

- 22.1 Subject to the provisions of Section 23, 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 Representative and Walmart, their retained attorneys, their accountants and financial or tax advisers, the retained consultants, the Court, doctors, therapists, and the mediator Mark Irvings and his staff, unless otherwise agreed to by Class Counsel and Walmart or unless otherwise ordered by the Court. Notwithstanding the other provisions of this Section, Walmart may disclose the Settlement in filings that it is required to make with the Securities and Exchange Commission, including 10-Q and 10-K filings, or in other disclosures to investors.

23. PRESS RELEASE

- 23.1 The Parties shall agree on the terms and language of a Joint Press Release with respect to this Settlement to be released at the time the Motion for Preliminary Approval is filed

with the Court. The Joint Press Release may be reissued upon the grant of preliminary approval and/or final approval by the District Court, and may be updated prior to such reissuance to reflect the then-current status of the District Court's approval as may be appropriate. In the event the Parties or their counsel are contacted by the media about the Settlement or the resolution of the Litigation, they shall refer all such inquiries to the Joint Press Release or to any Court filings not under seal. Provided, however, that the Washington Lawyers' Committee for Civil Rights and GLAD, both of whom represented the named Plaintiff and the Settlement Class in this Litigation, shall not be barred from circulating publicly available information about the Settlement Agreement and the resolution of the Litigation to their members, boards of directors, and/or funders. In addition, all Class Counsel may put the Joint Press Release and items from the publicly available case docket on their web sites with the understanding that any such information shall be consistent with the information contained in the Joint Press Releases and motions for preliminary and final approval.

24. DOCUMENTS AND DISCOVERY

- 24.1 The destruction or return of documents and discovery shall be governed by Section 19 of the Protective Order that the Parties entered into in this Litigation. *See* Dkt. Nos. 41-42.

25. MISCELLANEOUS PROVISIONS

- 25.1 Construction. The Parties agree that the terms and conditions of this Settlement are the result of lengthy, intensive arms-length negotiations between the Parties and their counsel and that this Settlement shall not be construed in favor of or against any Party by reason of the extent to which any Party or her or his counsel participated in the drafting of this Settlement.
- 25.2 Captions and Interpretations. Paragraph titles or captions contained in this Agreement are a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision of this Agreement. Each term of this Agreement is contractual and not merely a recital.
- 25.3 Dates. All dates for events provided in this Agreement based on a number of days (unless the date is expressed in terms of "business days") shall be calculated using the same approach as calculating days under Rule 6 of the Federal Rules of Civil Procedure.
- 25.4 Modification. This Agreement may not be changed, altered, or modified, except in a writing signed by the Parties and approved by the Court. Notwithstanding the foregoing, the Parties agree that any dates contained in this Agreement may be modified by agreement of the Parties without Court approval if the Parties agree and cause exists for such modification. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.
- 25.5 Integration Clause. This Agreement, the Exhibits hereto, and any other documents delivered pursuant hereto contain the entire agreement between the Parties relating to the resolution of the Litigation, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a

Party or such Party's legal counsel, are merged in this Agreement. No rights under this Settlement may be waived except in writing and signed by the Party against whom such waiver is to be enforced.

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

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For Plaintiff:

Name: Peter Romer-Friedman

Title: Counsel

Signature:  _____

Date: December 2, 2016

For Walmart:

Name: _____

Title: _____

Date: _____

Date: _____

For Plaintiff:

Name: _____

Title: _____

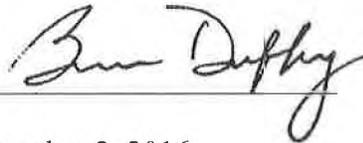
Signature: _____

Date: _____

For Walmart:

Name: Brian Duffy

Title: Chief Executive Officer

Signature: 

Date: December 2, 2016

EXHIBIT A

Cote v. Wal-Mart Stores, Inc., Case No. 15-cv-12945-WGY (D. Mass.)

SHORT FORM CLAIM

**SUBMIT THIS SHORT FORM CLAIM TO RECEIVE
A PAYMENT UNDER THIS SETTLEMENT**

* * *

1. Instructions

- a. If you wish to receive a payment and participate in the settlement, **you must properly complete and return this Short Form Claim (or a Long Form Claim, listed behind the Short Form Claim in the Notice packet)** (preferably in the enclosed postage-paid envelope). You may also return your Claim Form by faxing it to ___ - ___ - ___ or emailing it to _____@_____.com.
- b. To be considered timely, a Claim Form **must be postmarked on or before _____, 2017, [60 days after mailing of Notice] or faxed or emailed so that it is received on or before [DATE] [60 days after mailing of Notice].**
- c. To properly complete the Short Claim Form, you must provide the personal information requested below in Paragraph 2, and truthfully respond to the questions below in Paragraph 3 to determine your membership in the Settlement Class and the months for which you are eligible to receive compensation under the Settlement Agreement.
- d. Any Claim Form that is not submitted by First Class Mail or the equivalent, or is postmarked or received by fax or email after [DATE] **[60 days after mailing of Notice]**, is not addressed to the proper address, or is not signed and dated by the Settlement Class Member under penalty of perjury will **not** constitute a valid claim and may prevent you from receiving a payment from the settlement. For more information on the Settlement and how your payment will be calculated, as well as your rights in connection with the settlement, please see the attached Notice.
- e. WE ENCOURAGE YOU TO MAKE A COPY OF THE SIGNED CLAIM FORM FOR YOUR RECORDS.
- f. Changes of Address: It is *your responsibility* to keep a current address on file with the Claims Administrator. This is the address that will be used to mail your payment and tax forms. Please make sure to notify the Claims Administrator of any change of address.
- g. If your same-sex spouse obtained spousal health insurance coverage through a Walmart-sponsored HMO plan during the Settlement Class Period (January 1, 2011 to December 31, 2013), you may not be eligible to receive a payment under the settlement for the months during which such coverage was provided to your same-sex spouse. If you are unsure whether your same-sex spouse obtained spousal health

insurance coverage through a Walmart-sponsored HMO plan during the Settlement Class Period, you should submit an inquiry through the Claims Administrator.

- h. If you have any questions about how to complete your Claim Form, or if you have questions about whether or not you are eligible to submit a Claim Form in connection with this Settlement you may contact the Claims Administrator or Class Counsel, whose contact information is provided in the Notice.

2. Personal Information (please print) (Note: Your street address, email address and social security number will be kept confidential by the parties and the Claims Administrator and used only for processing your payment and reporting tax information.)

- a. Your name: _____.
- b. Your name while a Walmart Sam's Club or associate (if different): _____.
- c. Current Street Address: _____.
- d. Current City/State/Zip: _____.
- e. Current Email Address: _____.
- f. Last 4 Digits of Social Security No: _____.
- g. Walmart Benefits ID Number (if known): _____.

3. Class Membership

- a. **Did you work at Walmart or Sam's Club between January 1, 2011 and December 31, 2013?**

(please circle) Yes No

If yes, please provide the approximate dates and location of your employment at Walmart or Sam's Club during that time period:

Date employment began: _____.

Date employment ended: _____.

Location(s) where you worked: _____.

_____.

- b. **Were you married to a same-sex spouse at any point in time between January 1, 2011 and December 31, 2013?**

(please circle) Yes No

If yes, please provide the dates of your marriage to your same-sex spouse

Date of marriage: _____.

End date of marriage: _____
(if still married write today's date or "Present")

4. No Assignment of Claims

By signing below, I verify that I have not assigned any of the claims described above.

5. Medical Liens

By signing below, I verify that I am not subject to any medical liens arising out of any claims that are the subject of this Settlement. (If you are subject to any medical liens, please contact the Claims Administrator).

6. Authorization to Disclose Protected Health Information

By signing below, I provide my authorization to the Claims Administrator, Class Counsel, and Walmart's counsel to receive the information requested by this Claim Form, including any information that may be protected health information. Any personal information that I provide through this Claim Form shall be treated as confidential and shall be handled pursuant to the protective order approved by the Court in this case.

7. Signature

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Date: _____, 20__

Signature

Print Name

SEND TO THE CLAIMS ADMINISTRATOR AT:

Email: _____@_____.com

THIS FORM MUST BE MAILED BY U.S. FIRST CLASS MAIL, POSTMARKED OR
RECEIVED BY FAX OR EMAIL NO LATER THAN:
[DATE]

KEEP A COPY OF THIS FORM FOR YOUR RECORDS. YOU MAY WISH TO REQUEST A
RETURN RECEIPT FROM THE POST OFFICE

Cote v. Wal-Mart Stores, Inc., Case No. 15-cv-12945-WGY (D. Mass.)

LONG FORM CLAIM

**SUBMIT THIS LONG FORM CLAIM TO
RECEIVE A PAYMENT UNDER THIS SETTLEMENT**

* * *

1. Instructions

- a. If you wish to receive a payment and participate in the settlement, **you must properly complete and return this Long Form Claim (or a Short Form Claim, listed before the Long Form Claim in the Notice packet)** (preferably in the enclosed postage-paid envelope). You may also return your Claim Form by faxing it to ___ - ___ - ___ or emailing it to _____@_____.com.
- b. To be considered timely, a Long Form Claim **must be postmarked on or before [DATE] [60 days after mailing of Notice], or faxed or emailed so that it is received on or before _____, 2017 [60 days after mailing of Notice]**. You will have an additional 30 days to submit any documents, declaration(s), or statements to support your Long Form Claim, and therefore may submit such documentation by [DATE] **[90 days after mailing of Notice]**.
- c. To properly complete the Long Form Claim, you must provide the personal information requested below in Paragraph 2, and truthfully respond to the questions below in Paragraph 3 to determine your membership in the Settlement Class and the months for which you are eligible to receive compensation under the Settlement Agreement. **In addition, you must submit detailed documentation as requested in Paragraph 4 and attach any declaration(s), bills, statements, or other information to demonstrate your same-sex spouse's out-of-pocket Health Care Costs or the cost of purchasing a health insurance policy for your same-sex spouse during the Class Period.**
- d. Any Claim Form that is not submitted by First Class Mail or the equivalent, or is postmarked or received by fax or email after [DATE] **[60 days after mailing of Notice]**, is not addressed to the proper address, or is not signed and dated by the Settlement Class Member under penalty of perjury will **not** constitute a valid claim and may prevent you from receiving a payment under this settlement. For more information on the Settlement and how your payment will be calculated, as well as your rights in connection with the settlement, please see the attached Notice, above.
- e. WE ENCOURAGE YOU TO MAKE A COPY OF THE SIGNED CLAIM FORM FOR YOUR RECORDS.
- f. Changes of Address: It is *your responsibility* to keep a current address on file with the Claims Administrator. This is the address that will be used to mail your

payment and tax forms. Please make sure to notify the Claims Administrator of any change of address.

- g. If your same-sex spouse obtained spousal health insurance coverage through a Walmart sponsored HMO plan during the Settlement Class Period (January 1, 2011 to December 31, 2013), you may not be eligible to receive a payment under the settlement for the months during which such coverage was provided to your same-sex spouse. If you are unsure whether your same-sex spouse obtained spousal health insurance coverage through a Walmart-sponsored HMO plan during the Settlement Class Period, you should submit an inquiry through the Claims Administrator.
- h. If you have any questions about how to complete your Claim Form, or you have questions about whether or not you are eligible to submit a Claim Form in connection with this Settlement, you may contact the Claims Administrator or Class Counsel, whose contact information is provided in the Notice.

2. Personal Information (please print) (Note: Your street address, email address and social security number will be kept confidential by the parties and the Claims Administrator and used only for processing your payment and reporting tax information.)

- a. Your name: _____.
- b. Your name while a Walmart Sam's Club or associate (if different): _____.
- c. Current Street Address: _____.
- d. Current City/State/Zip: _____.
- e. Current Email Address: _____.
- f. Last 4 Digits of Social Security No: _____.
- g. Walmart Benefits ID # (if known): _____.

3. Class Membership

- a. **Did you work at Walmart or Sam's Club between January 1, 2011 and December 31, 2013?**

(please circle) Yes No

If yes, please provide the approximate dates of your employment at Walmart or Sam's Club during that time period:

Date employment began: _____.

Date employment ended: _____.

Location(s) where you worked: _____.

_____.

- b. **Were you married to a same-sex spouse at any point in time between January 1, 2011 and December 31, 2013?**

(please circle) Yes No

If yes, please provide the dates of your marriage to your same-sex spouse

Date of marriage: _____.

End date of marriage: _____.

(if still married write today's date or "Present")

4. Documenting the Out-of-Pocket Health Care Costs of Your Same-Sex Spouse or the Cost of Purchasing a Health Insurance Policy for Your Same-Sex Spouse

- a. **To receive a payment for a Long Form Claim, you must provide documentation of (1) the out-of-pocket Health Care Costs your same-sex spouse was charged (but which were not forgiven by a medical provider) during the Settlement Class Period (January 1, 2011 to December 31, 2013), including any medical, dental or vision costs, **and/or** (2) the cost that was actually paid to purchase a health insurance policy for your same-sex spouse from an entity other than Walmart during the Class Period (January 1, 2011 to December 31, 2013). You can provide documentation of out-of-pocket Health Care Costs *and* the cost of purchasing a health insurance policy during the Class Period, but you cannot submit a claim for both types of costs for *the same* month(s) during the Class Period.**

- b. ***If you are submitting documentation of out-of-pocket Health Care Costs of your same-sex spouse, please provide the following information.***

Describe generally the types of out-of-pocket Health Care Costs which you are submitting for this claim. ***Please note that if the out-of-pocket Health Care Costs which you are submitting would not have been covered under a Walmart sponsored Health Insurance Policy, you cannot submit a claim based on those costs. A list of excluded health care services can be found on the Claims Administrator's web site at [insert].***

Approximately what months were the health care services provided in the following years of the Class Period?

_____ 2011
_____ 2012
_____ 2013

How much were the total charges of out-of-pocket Health Care Costs?

\$ _____

Please confirm that the out-of-pocket Health Care Costs that you are submitting for this claim have NOT been forgiven by the medical provider.

(Please circle) Yes, the costs have NOT been forgiven.

No, some or all of the costs HAVE been forgiven

If NO, what portion of the total charges were forgiven

\$ _____

Please confirm that the out-of-pocket Health Care Costs that you are submitting for this claim relate to medical, vision, or dental services that were provided during month(s) in which your spouse was NOT enrolled in any medical Health Insurance Plan.

(Please circle) Yes, the costs were charged for services in months when my spouse was NOT enrolled in any medical Health Insurance Plan

No, the costs were charged for services in months when my spouse WAS enrolled in a medical Health Insurance Plan

If NO, please state the months your same-sex spouse WAS enrolled in a medical Health Insurance Plan during the Class Period:

_____ 2011
_____ 2012
_____ 2013

- c. *If you are submitting documentation of the cost of purchasing a health insurance policy for your same-sex spouse, please provide the following information.*

What months was your same-sex spouse covered by the alternative health insurance policy or policies during the Class Period?

_____ 2011
 _____ 2012
 _____ 2013

How much did you or your spouse actually pay to purchase the alternative health insurance policy or policies in each year of the Class Period?

\$ _____ 2011
 \$ _____ 2012
 \$ _____ 2013

- d. *In an attachment to this Long Form Claim, please provide any and all documentation of the out-of-pocket Health Care Costs of your same-sex spouse or the cost of purchasing a health insurance policy for your same-sex spouse during the Class Period. Such documentation may include any declaration(s), bills, statements, or other information to demonstrate your same-sex spouse's out-of-pocket Health Care Costs or the cost of purchasing a health insurance policy for your same-sex spouse. Your Long Form Claim cannot be processed without this information, which must be received no later than [90 days after mailing of Notice].*

5. Determination by the Claims Administrator

After your Long Form Claim is submitted, the Claims Administrator will make a determination about the amount of your out-of-pocket Health Care Costs or cost of purchasing a health insurance policy that will be accepted for the purpose of the payment that you may be entitled to receive under the Settlement. After the determination is made, you will receive a copy of the Claims Administrator's determination of your Long Form Claim, and you then will have an opportunity to ask the Claims Administrator to reconsider its determination by describing why the determination should be modified. Upon a showing of good cause for reconsidering the determination, the Claims Administrator may modify the determination.

6. No Assignment of Claims

By signing below, I verify that I have not assigned any of the claims described above.

7. Medical Liens

By signing below, I verify that I am not subject to any medical liens arising out of any claims that are the subject of this Settlement. (If you are subject to any medical liens, please contact the Claims Administrator).

8. Authorization to Disclose Protected Health Information

By signing below, I provide my authorization to the Claims Administrator, Class Counsel, and Walmart’s counsel to receive the information requested by this Claim Form, including any information that may be protected health information. Any personal information that I provide through this Claim Form shall be treated as confidential and shall be handled pursuant to the protective order approved by the Court in this case.

9. Signature

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Date: _____, 20__

Signature

Print Name

SEND TO THE CLAIMS ADMINISTRATOR AT:

Email: _____@_____.com

THIS FORM MUST BE MAILED BY U.S. FIRST CLASS MAIL, POSTMARKED OR RECEIVED BY FAX OR EMAIL NO LATER THAN:

[DATE] [60 days after mailing of Notice]

ANY SUPPORTING DOCUMENTATION TO SUPPORT YOUR LONG FORM CLAIM MUST BE MAILED BY U.S. FIRST CLASS MAIL, POSTMARKED OR RECEIVED BY FAX OR EMAIL NO LATER THAN:

[DATE] [90 days after mailing of Notice]

KEEP A COPY OF THIS FORM FOR YOUR RECORDS. YOU MAY WISH TO REQUEST
A RETURN RECEIPT FROM THE POST OFFICE

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JACQUELINE A. COTE,
On behalf of herself and others
similarly situated,

Plaintiff,

v.

WAL-MART STORES, INC.,

Defendant.

CIVIL ACTION NO. 15-cv-12945-WGY

[PROPOSED] FINAL ORDER APPROVING SETTLEMENT

This matter came before the Court on Plaintiff's Motion for Final Approval of Settlement ("Final Approval Motion"), Plaintiff's Motion for an Award of Attorneys' Fees and Reimbursement of Expenses ("Motion for Fees and Expenses"), and Plaintiff's Motion for a Service Award for the Class Representative ("Motion for a Service Award").

WHEREAS, a putative class action is pending before the Court entitled *Cote v. Wal-Mart Stores, Inc.*, No. 15-cv-12945-WGY (United States District Court for the District of Massachusetts) (the "Litigation"); and

WHEREAS, the Court has received and reviewed the Settlement Agreement entered into between the Settlement Class Representative and the Settlement Class Members on the one hand, and the Defendant Wal-Mart Stores, Inc. ("Walmart") on the other hand (the "Agreement"), and has considered the terms of the proposed settlement set forth therein (the "Settlement"); and

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

WHEREAS, on _____, 2016, the Court entered its order preliminarily approving the Settlement, approving the form and method of notice, appointing a claims administrator, and setting a date and time for a final fairness hearing to consider whether the Settlement should be finally approved by the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure as fair, adequate, and reasonable (the "Preliminary Approval Order"); and

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

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

WHEREAS, as part of the Preliminary Approval Order, the Court certified the Settlement Class for settlement purposes only in accordance with the terms of the Agreement and pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, appointed Jacqueline Cote as the Class Representative, and appointed GLBTQ Legal Advocates & Defenders (GLAD), Outten & Golden LLP, the Washington Lawyers' Committee for Civil Rights & Urban Affairs, and Arnold & Porter LLP as Class Counsel, and appointed _____ as the Claims Administrator; and

WHEREAS, the Court having considered all timely filed objections to the Settlement [or, if applicable, no timely objections to the Settlement were filed]; and

WHEREAS, the Court having conducted a Final Fairness Hearing on _____, 2017 (the "Settlement Approval Hearing"), and having considered the arguments presented, all papers filed, and all proceedings had therein,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

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

2. In accordance with Rule 23(c) and (e) of the Federal Rules of Civil Procedure and the requirements of due process, all members of the Settlement Class have been given proper and adequate notice of the Settlement. Based upon the evidence submitted by the parties, the Agreement, the arguments of counsel, and all the files, records, and proceedings in this case, the Court finds that the Notice and notice methodology implemented pursuant to the Agreement and the Court's Preliminary Approval Order: (a) constituted the best practicable notice under the circumstances; (b) constituted notice that was reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of the litigation, their right to object to the Settlement, and their right to appear at the Final Fairness Hearing; (c) were reasonable and constituted due, adequate and sufficient notice to all persons who are entitled to notice; and (d) met all applicable requirements of the Federal Rules of Civil Procedure and any other applicable law.

3. The Settlement in this action warrants final approval pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, because it resulted from vigorously contested litigation, extensive discovery and motion practice, and extensive good-faith arm's length negotiations between the parties, and is it is fair, adequate, and reasonable to those it affects, considering the following factors:

- (1) the complexity, expense, and likely duration of the litigation;
- (2) the reaction of the class to the settlement;
- (3) the stage of the proceedings and the amount of discovery completed;
- (4) the risks of establishing liability;
- (5) the risks of establishing damages;
- (6) the risks of maintaining the class action through the trial;

(7) the ability of the defendants to withstand a greater judgment;

(8) the range of reasonableness of the settlement fund in light of the best possible recovery; and

(9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Bezdek v. Vibram USA Inc. 79 F. Supp. 3d 324, 343-44 (D. Mass. 2015), *aff'd*, 809 F.3d 78 (1st Cir. 2015) (internal citations and quotations omitted). Settlements that follow sufficient discovery and genuine arms-length negotiation are presumed to be fair and “within the range of reasonableness.” *Id.* at 343.

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

5. The Court APPROVES payment of the Class Settlement Amount in accordance with the terms of the Agreement.

6. The Motion for a Service Award is GRANTED, and the Court APPROVES payment of a Service Payment to the Settlement Class Representative, Jacqueline Cote, in the amount of \$25,000, to be paid from the Class Settlement Amount in accordance with the terms of the Agreement. The requested Service Payment, in recognition of the services she rendered on behalf of the Class Members, is reasonable.

7. The Motion for Fees and Expenses is GRANTED, and the Court APPROVES payment of Attorneys’ Fees and Reimbursement of Litigation Expenses to Class Counsel in the amount of

[\$_____] for Attorney's Fees and [\$_____] in Litigation Expenses, to be paid from the Class Settlement Amount in accordance with the terms of the Agreement and to be divided by Class Counsel in accordance with the agreement of Class Counsel. The Attorneys' Fees requested by Class Counsel based on the percentage of the fund method are reasonable based upon the following factors:

- (1) the size of the fund and the number of persons benefitted;
- (2) the skill, experience, and efficiency of the attorneys involved;
- (3) the complexity and duration of the litigation;
- (4) the risks of the litigation;
- (5) the amount of time devoted to the case by counsel;
- (6) awards in similar cases; and
- (7) public policy considerations, if any.

Hill v. State St. Corp., No. 09 Civ. 12146, 2015 WL 127728, at *17 (D. Mass. Jan. 8, 2015). The Court further finds that no attorneys have asserted any attorney liens as to the Attorneys' Fees and Litigation Expenses awarded by the Court.

8. The planned distribution of the Class Settlement Amount is hereby APPROVED as fair, adequate, and reasonable. The Class Settlement Amount shall be distributed in accordance with the terms of the Agreement.

9. The Litigation is hereby DISMISSED WITH PREJUDICE and without costs to any Party, other than as specified in the Agreement and this Order, including in Section 12 of this Order below.

10. In consideration of the Programmatic Relief and Class Settlement Amount provided for under the Agreement, and for other good and valuable consideration, each of the Releasing Settlement Class Members and each of their Releasing Legal Same-Sex Spouses shall, by operation of

this Order, have fully, finally, and forever released, relinquished, and discharged all Released Claims against the Releasees in accordance with Section 13 of the Agreement, the terms of which section are incorporated herein by reference, shall have covenanted not to sue the Releasees with respect to all such Released Claims, and shall be permanently barred and enjoined from instituting, commencing, prosecuting or asserting any such Released Claims against the Releasees.

11. This Order shall constitute the Final Judgment in the action as to all Settlement Class Members' Released Claims.

12. Without affecting the finality of this Order in any way, this Court retains jurisdiction over: (a) the interpretation, implementation, and enforcement of the Settlement and the terms of the Agreement; (b) the distribution of the Class Settlement Amount, the Service Payment to the Settlement Class Representative and, the Payment of the Attorneys' Fees and Litigation Expenses, and any *cy pres* distribution; and (c) all other proceedings related to the implementation, interpretation, administration, consummation, and enforcement of the terms of the Agreement and the Settlement, and the administration of Claims submitted by Settlement Class Members. This Court shall retain jurisdiction over this action (a) for a period of six months after the Settlement Effective Date, or (b) for a period of one month after all Settlement Class Members have received their final payments under the Settlement and any remaining funds from the Class Settlement Amount have been distributed as *cy pres*, whichever is greater.

12. The parties shall abide by all terms of the Settlement Agreement. In the event that the Settlement Effective Date does not occur, this Order shall be rendered null and void and shall be vacated, nunc pro tunc, except insofar as expressly provided to the contrary in the Settlement Agreement, and without prejudice to the status quo ante rights of Plaintiff, the Settlement Class Members, and Walmart.

IT IS SO ORDERED.

Dated: _____

The Honorable William G. Young
United States District Court
District of Massachusetts

EXHIBIT C

COURT AUTHORIZED NOTICE

If you worked at a Walmart or Sam’s Club and had a same-sex spouse at some point between January 1, 2011 and December 31, 2013, then a proposed class action settlement could affect your rights.

A federal court has authorized this Notice.

If you take no action, you will be bound by the settlement. Your rights will be impacted.

- Please read this Notice carefully and fully. This Notice explains the lawsuit known as *Cote v. Wal-Mart Stores, Inc.*, No. 15-cv-12945-WGY, the Settlement, and your legal rights in this lawsuit.
- This Notice describes a proposed class action settlement under which—if approved by the Court—Walmart would pay \$7.5 million to settle the claims of Plaintiff Jacqueline Cote (the “Named Plaintiff”) and other similarly situated Walmart associates who were legally married to a same-sex spouse between January 1, 2011 and December 31, 2013 (“the Settlement Class Period”) and were not permitted to enroll that same-sex spouse in a Walmart sponsored health insurance plan during the Settlement Class Period (“Settlement Class Members”).
- The proposed settlement resolves the claims of the Named Plaintiff and the Settlement Class Members who claim that, prior to January 1, 2014, Walmart and Sam’s Club discriminated against associates with same-sex spouses by failing to provide their same-sex spouses with the same spousal health insurance benefits provided to opposite-sex spouses. As of January 1, 2014, Walmart began making available the same health insurance benefits to same-sex spouses of its associates that it offers to opposite sex-spouses.
- The court has not decided that Walmart did anything wrong. But your legal rights may be affected, and you have a choice to make now.

YOUR LEGAL RIGHTS AND OPTIONS	
Submit a Claim Form to receive a payment	If you are a Class Member and would like to receive a payment from the settlement, you must submit a either a Short Form Claim or a Long Form Claim no later than [60 days after notice mailing]. If you file a Long Form Claim, you have an additional 30 days to submit documentation to support your Long Claim Form and must provide that documentation by [90 days after notice mailing]. You will give up any right to sue Walmart separately about the claims covered by the settlement.
Do Nothing.	By doing nothing, you will not receive a payment from the settlement, but you will still give up any right to pursue claims against Walmart separately about the claims covered by the Settlement.

<p>Exclude Yourself.</p>	<p>You can exclude yourself, or “opt out” from this lawsuit and the proposed Settlement. This means you will not participate in the Settlement and will keep any rights you may have to pursue claims against Walmart separately. Any claims you may have are subject to the applicable statute of limitations, so you should consult an attorney about them promptly if you choose to opt out.</p>
<p>Object.</p>	<p>If you are not satisfied with the terms of the proposed Settlement, then you may inform the Court about your views by filing a written objection with the Claims Administrator and/or the Court in accordance with the procedures set forth in this Notice. You may also appear in Court to explain why you do not like the proposed Settlement. Unless you opt out, you may object to the proposed Settlement. You are allowed to file a Long Form Claim or a Short Form Claim and object to the proposed Settlement. You cannot both opt out and object to the proposed Settlement.</p>

- These rights and options – and the deadlines to exercise them – are explained in this Notice.

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BASIC INFORMATION

1. Why Did I Get This Notice?

If you worked for Walmart between January 1, 2011 and December 31, 2013, were legally married to a same-sex spouse during that same period, and would have been eligible for spousal Health Insurance Benefits from Walmart or Sam's Club but for the limitation on providing spousal Health Insurance Benefits to same-sex spouses during that time period, you are a member of the Settlement Class in this lawsuit, which is known as *Cote v. Wal-Mart Stores, Inc.*, Case No. 15-cv-12945-WGY (D. Mass.).

The purpose of this Notice is to inform you about (a) this litigation, (b) the certification of a Settlement Class, (c) the terms of the proposed Settlement, and (d) your rights in connection with the proposed Settlement and a hearing to be held before the Court on [DATE] to consider the fairness, reasonableness, and adequacy of the proposed Settlement and related matters. This Notice also describes the steps necessary to submit a Claim Form to be eligible to receive a payment from the proposed Settlement should the Court approve the proposed Settlement, as well as those steps that must be taken by any Settlement Class Members who wish to be excluded from the Settlement Class.

2. What Is This Lawsuit About?

This lawsuit claims that Walmart discriminated against associates with same-sex spouses based on sex by failing to provide spousal health insurance benefits to the same-sex spouses of associates before January 1, 2014. The Named Plaintiff is seeking damages for herself and other Settlement Class Members who were denied the opportunity to enroll their same-sex spouses in a Walmart sponsored health insurance plan from January 1, 2011 to December 31, 2013 ("the Settlement Class Period"). The Court has not decided the merits of the case. Walmart denies that it did anything wrong and no court has found that Walmart did anything wrong or violated any federal or state law.

3. What Is a Class Action?

In a class action, one or more people called Named Plaintiffs bring a lawsuit on behalf of people who the court finds have similar claims. These people, considered members of the same Class, are called Class Members. In a class action, one court resolves the case for all Class Members, except for those individuals who exclude themselves from the Class.

Questions?

Contact Peter Romer-Friedman or Juno Turner
Outten & Golden LLP
685 Third Avenue, 25th Floor
New York, NY 10017
(212) 245-1000
walmartLGBTcase@outtengolden.com

4. Who is in the Settlement Class in this Class Action?

On [date], the court overseeing this lawsuit certified for settlement purposes a Settlement Class of current and former Walmart and Sam's Club associates who: (1) worked at Walmart or Sam's Club in the 50 United States, the District of Columbia or Puerto Rico between January 1, 2011 and December 31, 2013; (2) were legally married to a same-sex spouse during that same period; and (3) would have been eligible for spousal Health Insurance Benefits from Walmart or Sam's Club but for the limitation on providing spousal Health Insurance Benefits to same-sex spouses during that same period.

To be a Settlement Class Member, there is no requirement that you tried to enroll your same-sex spouse in a Walmart sponsored health insurance plan before January 1, 2014. There is also no requirement that you worked in a state that recognized your same-sex marriage before January 1, 2014—it is sufficient that the state or jurisdiction in which you were married performed or recognized marriages between same-sex couples prior to January 1, 2014.

5. Why Is There a Settlement?

The Court did not decide in favor of Plaintiff or in favor of Walmart. Instead, both sides agreed to the proposed Settlement to avoid a court trial and to provide compensation to the Settlement Class Members. The Named Plaintiff and the attorneys appointed to represent the Settlement Class believe that the proposed Settlement is in the best interests of the Settlement Class Members and is fair, reasonable, and adequate.

6. How Do I Know If I Am Part of the Settlement?

If you are a member of the Settlement Class described in Section 4, above, you are part of the proposed Settlement.

If you did not receive a copy of this Notice directly, you may still qualify as a Class Member if you meet the Class definition, and you may still file a Claim Form like other potential Class Members. If you aren't sure about your status, then you can contact the Claims Administrator at the address identified in Section 17. You can also contact Class Counsel, whose contact information is listed below.

Questions?

Contact Peter Romer-Friedman or Juno Turner
Outten & Golden LLP
685 Third Avenue, 25th Floor
New York, NY 10017
(212) 245-1000
walmartLGBTcase@outtengolden.com

THE PROPOSED SETTLEMENT – ESSENTIAL TERMS

7. What are the Terms of the Proposed Settlement?

The proposed Settlement requires Walmart to pay \$7.5 million to compensate Settlement Class Members, as well as to pay the attorneys' fees and expenses of Class Counsel, a service award to the Named Plaintiff, and the cost of having the Claims Administrator provide notice to the Class Members and undertake other duties to administer the Settlement. In addition, under the proposed Settlement Walmart will commit to continuing to treat same-sex and opposite-sex spouses or couples equally in the provision of health insurance benefits so long as to do so is consistent with applicable law. As of January 1, 2014, Walmart began making available the same health insurance benefits to same-sex spouses of its associates that it offered to opposite sex-spouses.

PROGRAMMATIC RELIEF

8. What Steps Will Walmart Take to Ensure that the Same-Sex Spouses of Associates With Receive Health Insurance Benefits in the Future?

Since January 1, 2014, Walmart has offered the same spousal health insurance benefits to associates in the 50 United States, the District of Columbia, and Puerto Rico with same-sex spouses as it does to associates in the 50 United States, the District of Columbia, and Puerto Rico with opposite-sex spouses. Under the proposed Settlement, Walmart commits to continuing to treat same-sex and opposite-sex spouses equally in the provision of health insurance benefits, so long as to do so is consistent with applicable law. Provided, however, that nothing in the proposed Settlement prevents Walmart from changing the terms of its health insurance benefits so long as such benefits are provided to same-sex and opposite spouses on the same terms.

COMPENSATION FOR CLASS MEMBERS

9. How Can I Receive Compensation Under the Settlement and How Much Compensation Can I Receive?

To receive compensation under the proposed Settlement, you must file a Claim Form no later than [60 days from notice mailing]. You must file either:

(A) a **Long Form Claim** to establish or demonstrate (i) out-of-pocket health care costs that your same-sex spouse incurred during the Class Period when your spouse did not have health insurance, and/or (ii) the cost of purchasing a health insurance policy for your same-sex spouse during the Class Period; or

Questions?

Contact Peter Romer-Friedman or Juno Turner
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[-3-]

(B) a **Short Form Claim**, through which you will receive a proportionate share of the Settlement Fund (based on the number of months you would have been eligible for spousal health insurance benefits during the Class Period) based on the amounts remaining after determination of the payments to be made to Settlement Class Members who file Long Form Claims and the amounts to be paid for attorneys' fees and costs, a service award for the Named Plaintiff, and the costs of administering the Settlement.

You must choose whether to file a Long Form Claim or a Short Form Claim, and may not file both types of Claims. In order for your Long Form Claim to be approved, you will have to provide information and documents to demonstrate the out-of-pocket costs your same-sex spouse incurred or the cost of purchasing a health insurance policy for your same-sex spouse. If, however, the payment you would be entitled to receive for an approved Long Form Claim would be less than the payment for filing a Short Form Claim, your Long Form Claim will be automatically converted into a Short Form Claim. The Class Members who file Long Form Claims may not collectively receive more than \$3.5 million of the \$7.5 million Settlement Fund. This cap on the Long Form Claim payments will ensure that Class Members who file Short Form Claims will receive meaningful monetary relief under the proposed Settlement.

Long Form Claims:

If you file a Long Form Claim, you must file the Long Form Claim by [60 days from the notice mailing] but you may provide any documentation to support your Long Form Claim by [90 days from the notice mailing].

The Parties have agreed to allocate up to \$3.5 million of the Class Settlement Amount to payment of Long Form Claims. If you file a Long Form Claim, you will be eligible to receive a payment that is 1.0 times the amount of (i) the out-of-pocket health care costs that your same-sex spouse incurred during the class period when she or he did not have health insurance, and/or (ii) the cost of purchasing a health insurance policy for your same-sex spouse during the class period. If the total amount of approved Long Form Claims exceeds \$3.5 million, the amount of each payment to Settlement Class Members who submitted approved Long Form Claims will be reduced proportional to their requested share of the overall eligible costs of approved Long Form Claims. You cannot receive payments for out-of-pocket health care costs *and* the cost of purchasing a health insurance policy *in the same month* during the Class Period, but you may receive payments for these different types of costs in *different months* during the Class Period. If the out-of-pocket health care costs that you identify are \$60,000 or greater during the Class Period when your spouse did not have health insurance, you will be eligible to receive a payment that is 2.5 times the amount of the out-of-pocket costs that you identify through your Long Form Claim and supporting documentation.

Questions?

Contact Peter Romer-Friedman or Juno Turner
Outten & Golden LLP
685 Third Avenue, 25th Floor
New York, NY 10017
(212) 245-1000
walmartLGBTcase@outtengolden.com

If you file a Long Form Claim and identify out-of-pocket health care costs, you must (1) demonstrate to the Claims Administrator that your same-sex spouse was charged out-of-pocket health care costs during the Class Period when she or he did not have health insurance, including by submitting documents, declaration(s) from you and/or another person with knowledge of those charges, or statements about the charges; and (2) affirm that the out-of-pocket health care costs you have identified were not forgiven by the medical provider.

If you file a Long Form Claim and identify the cost of purchasing a health insurance policy for your same-sex spouse, you must demonstrate to the Claims Administrator that you or your same-sex spouse actually paid for the cost of purchasing a health insurance policy for your same-sex spouse, including by submitting documents, declarations or statements about such payments.

For all Long Form Claims, you must also identify basic information about yourself that will establish your membership in the Class. That basic information includes: (1) your dates and locations of employment at Walmart or Sam's Club during the Settlement Class Period; and (2) the dates that you were legally married to a same-sex spouse during the Class Period.

Short Form Claims:

If you file a Short Form Claim, you must file the Short Form Claim by [60 days from the notice mailing].

If you file a Short Form Claim, you will receive a pro rata share of the Settlement Funds (based on the number of months you would have been eligible for spousal health insurance benefits) remaining after payments are made to Class Members who file Long Form Claims, as well as payments for attorneys' fees and costs, a service award for the Named Plaintiff, and the costs of administering the Settlement. The maximum payment that you can receive by submitting a Short Form Claim is \$5,000 per year of the Settlement Class Period or \$15,000 overall for the three-year Class Period.

If you file a Short Form Claim, you do not need to provide any documents, declarations, or statements about out-of-pocket health care costs or the costs of purchasing a health insurance policy for your same-sex spouse. Instead, in the Short Form Claim you will identify basic information about yourself that will establish your membership in the Class and that will entitle you to receive a pro rata share of a portion of the Settlement Funds. That basic information includes: (1) your dates and locations of employment at Walmart or Sam's Club during the Settlement Class Period; and (2) the dates that you were legally married to a same-sex spouse during the Class Period.

Questions?

Contact Peter Romer-Friedman or Juno Turner
Outen & Golden LLP
685 Third Avenue, 25th Floor
New York, NY 10017
(212) 245-1000
walmartLGBTcase@outtengolden.com

10. Can I challenge determinations as to my employment at Walmart and/or eligibility to have received spousal Health Insurance Benefits from Walmart but for the limitation on providing Health Insurance Benefits to legal same sex spouses?

Yes. If you disagree with the determination as to your employment dates or eligibility to have received spousal Health Insurance Benefits from Walmart during the Settlement Class Period, you can challenge that determination by writing to the Claims Administrator and describing how the determination is inaccurate and what the correct information is. If you have documents to support your challenge, you should provide the Claims Administrator with copies of those documents to support your challenge. If the Claims Administrator or Walmart disagrees with your challenge, a neutral third party agreed upon by the parties will review and decide your challenge. Any challenge that you file must be submitted to the Claims Administrator no later than [90 days after Notice date or XX days after the information is provided to you by the Claims Administrator]. The neutral's decision to reject in whole or in part your challenge to Walmart's personnel information shall be final and not subject to appeal or any other review.

RELEASE

11. What Claims Are Released by the Settlement?

If the Court grants final approval of the Settlement, then all Settlement Class Members who do not opt out of the settlement, as well as each of their legally married same-sex spouses, will give up (or "release") their right to sue Walmart regarding its failure to provide health insurance benefits to same-sex spouses of associates prior to January 1, 2014. This release includes, but is not limited to, claims for discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.*, the Equal Pay Act of 1963, 29 U.S.C. § 206(d), and the Massachusetts Fair Employment Practices Law, Mass. Gen. Laws ch. 151B § 4. Settlement Class Members and their legally married same-sex spouses give up these rights whether or not they choose to file a Claim. Unless you opt out of the lawsuit, you and your same-sex spouse will be covered by the Release, even if you do not submit a Long Form Claim or a Short Form Claim. The full details of the Release are contained in the Settlement Agreement between the parties.

THE LAWYERS REPRESENTING YOU AND THE CLASS

12. Do I Have a Lawyer in this Case?

The Court has appointed the law firms of GLBTQ Legal Advocates & Defenders (GLAD), Outten & Golden LLP, the Washington Lawyers' Committee for Civil Rights & Urban Affairs, and Arnold & Porter LLP to represent you and the other Class Members. Together, the lawyers are called Class Counsel. Unless you elect to exclude yourself from the Settlement, you will

Questions?

Contact Peter Romer-Friedman or Juno Turner
Outten & Golden LLP
685 Third Avenue, 25th Floor
New York, NY 10017
(212) 245-1000
walmartLGBTcase@outtengolden.com

continue to be represented by Class Counsel in connection with the implementation of the Settlement throughout the duration of the terms of the Settlement at no cost to you. Although it is not necessary, you may, if you wish to do so, retain your own attorney at your own expense.

You may find out more information about Class Counsel by visiting their websites:

<http://www.glad.org/>

<http://www.outtengolden.com/>

<http://www.washlaw.org.com/>

<http://www.arnoldporter.com/en/>

If you have questions about the proposed Settlement you can get free legal help by contacting Class Counsel:

Peter Romer-Friedman
Juno Turner
Outten & Golden LLP
685 Third Avenue, 25th Floor
New York, NY 10017
(XXX)XXX-XXXX
walmartLGBTcase@outtengolden.com

Gary Buseck
Allison Wright
GLBTQ Legal Advocates
& Defenders
30 Winter Street, STE 800
Boston, MA 02108
(617) 426-1350

13. How Will The Lawyers Be Paid?

Class Counsel will ask the Court for an award of attorneys' fees and costs, to be paid from the \$7.5 million Class Settlement Amount. Class Counsel will request that the Court approve attorneys' fees that will be no greater than 25% of the Class Settlement Amount. The fees will pay Class Counsel for investigating the facts, litigating the case, and negotiating and implementing the settlement. Class Counsel will also ask the Court to approve the reimbursement of their out-of-pocket costs. The Court may award less than these requested amounts to Class Counsel. The Court will examine the request of Class Counsel at the Fairness Hearing, as well as any objections to that request, and determine the amount of fees to award.

Questions?

Contact Peter Romer-Friedman or Juno Turner
Outten & Golden LLP
685 Third Avenue, 25th Floor
New York, NY 10017
(212) 245-1000
walmartLGBTcase@outtengolden.com

NAMED PLAINTIFF

14. What May the Named Plaintiff Receive Under the Settlement?

The Named Plaintiff may receive a payment like any other Settlement Class Member by filing a Long Form Claim or a Short Form Claim. In addition, Class Counsel will ask the Court to award a service payment of \$25,000 to be paid from the Class Settlement Amount to the Named Plaintiff. The proposed Service Award would recognize the service the Named Plaintiff provided here, including her participation in the prosecution and settlement of this case.

HOW TO PROCEED

15. What Are My Options?

After reviewing the terms of the proposed Settlement set forth in this Notice, you have three options. You must decide at this stage whether you want to: (1) remain a Settlement Class Member and retain an opportunity to participate in the Settlement by filing a Long Form Claim or a Short Form Claim; (2) opt-out and exclude yourself from participating in the settlement; or (3) object to the proposed Settlement.

REMAIN A SETTLEMENT CLASS MEMBER

16. How Do I Remain in the Settlement Class?

If you do not request to be excluded, you will remain a part of the Settlement Class. The Court will hold the Final Approval Hearing (called a Fairness Hearing) and you, as a Settlement Class Member, will be represented by Class Counsel at no cost to you. To be eligible to receive a payment under the Settlement, you must complete a Long Form Claim or a Short Form Claim attached to this Notice and return it to the Claims Administrator postmarked or filed on-line by no later than [DATE] [60 days after the mailing of the Notice].

Whether or not you submit a Claim Form, unless you opt out, all Released Claims (described above and defined in the Settlement) that you may have will be barred by this Settlement. Unless you opt out, you remain eligible to object, whether or not you submit a Claim Form.

OPTING OUT OF THE SETTLEMENT

Questions?

Contact Peter Romer-Friedman or Juno Turner
Outten & Golden LLP
685 Third Avenue, 25th Floor
New York, NY 10017
(212) 245-1000
walmartLGBTcase@outtengolden.com

15. Who Should Opt Out of the Class?

If (1) you want to keep the right to sue or continue to sue Walmart regarding the non-provision of health insurance benefits to same-sex spouses of associates prior to January 1, 2014, or (2) you do not want to be bound by the Settlement of this lawsuit, then you should take steps to exclude yourself from the Settlement. This is called “opting out” of the Settlement. Walmart will retain the right to assert any and all defenses to the claims of persons who opt out of this Settlement.

16. How Do I Opt Out of the Class?

To opt out of the Settlement, you must mail a written, signed statement that you are opting out of the Settlement to the **Claims Administrator** at the address below:

To be effective, the opt-out statement must (1) contain the words “I wish to be excluded from the Settlement Class in the Walmart LGBT Health Benefits Settlement”; (2) contain the your name, address, location at which you worked at Walmart, the period of time in which you worked at Walmart, the date of your legal marriage to a same-sex spouse, and the last four digits of your social security number, and (3) be signed and dated. To be effective, this opt-out statement must be mailed via First Class United States Mail, postage prepaid, to the Claims Administrator, and must be postmarked on or before [DATE] [60 days after the mailing of the Notice].

Please note that if you submit a timely and valid request for exclusion you will have no right to object to the Settlement in Court and will no longer be represented by Class Counsel.

OBJECTING TO THE SETTLEMENT

17. How Do I Tell the Court That I Don't Like the Settlement?

The Court must assess the overall fairness and reasonableness of the Settlement to the Class. If you are a Class Member, then you can object to the Settlement if you don't like any part of it, and the Court will consider your views. However, to speak at the hearing or have your objection to the Settlement considered by the Court, you must submit a written objection to the Settlement prior to the Final Approval Hearing that includes a detailed description of the basis of the objection. To be considered, the objection statement must be postmarked or otherwise

Questions?

Contact Peter Romer-Friedman or Juno Turner
Outten & Golden LLP
685 Third Avenue, 25th Floor
New York, NY 10017
(212) 245-1000
walmartLGBTcase@outtengolden.com

submitted to the Claims Administrator and/or to the Court, with copies to counsel for the parties on or before [DATE] [60 days after the mailing of Notice]. The written objection document must include all reasons for the objection and any reasons not included in the written objection will not be considered. The written objection must also include your name, street address, email address, and telephone number(s) and also must (1) contain the words "I object to the Walmart LGBT Health Benefits Settlement," (2) include the date of marriage to a same-sex spouse, the period of time in which you worked at Walmart, at what location(s) you worked at Walmart, and the last four digits of your Social Security Number, and (4) be signed and dated. If you wish to appear at the Fairness Hearing, your objection must contain the words "I intend to speak at the Fairness Hearing."

If you submit an Opt-Out Statement, you may not also submit objections to the Settlement.

The address of the Claims Administrator is:

ADD IN OTHER ADDRESS INFORMATION FOR CLASS COUNSEL AND FOR DEFENDANT'S COUNSEL HERE.

THE COURT'S FAIRNESS HEARING

18. When and Where Will the Court Decide Whether to Approve the Settlement?

The Court will hold a Final Approval Hearing (called a Fairness Hearing) at _____ a.m./p.m. on [DATE], in the courtroom of the Honorable William Young in John Joseph Moakley U.S. Courthouse, 1 Courthouse Way, Boston, MA 02210.

At this hearing, the Court will determine whether the proposed Settlement is fair, reasonable, and adequate. If there are any objections, then the Court will consider them. The Court will also consider whether the motion of Class Counsel for an award of attorneys' fees and costs should be approved, and whether, in accordance with the Settlement, a final order and judgment should be entered bringing the litigation to a conclusion.

Questions?

Contact Peter Romer-Friedman or Juno Turner
Outten & Golden LLP
685 Third Avenue, 25th Floor
New York, NY 10017
(212) 245-1000
walmartLGBTcase@outtengolden.com

19. Do I Have To Come To The Fairness Hearing?

No. Class Counsel and Walmart’s counsel will answer questions that the Judge may have. If you send an objection, then you don’t have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it.

20. May I Speak at the Hearing?

You may speak at the Fairness Hearing only if you have filed an objection, as outlined in Section 17, and if your objection includes the words “I intend to appear at the Fairness Hearing.” You may appear either in person or through a lawyer hired at your own expense. You may withdraw your objections at any time. You may not present an objection at the Fairness Hearing based on a reason not stated in your written objections.

GETTING MORE INFORMATION

21. Where Can I Get More Information?

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by visiting the case web site, www._____.com, or contacting the Claims Administrator. If you have further questions or are still not sure whether you are included, you can get free help at www._____.com, by calling the Claims Administrator at (____) ____ - ____, or by calling or writing to Class Counsel in this case at the contact numbers/address listed in Section 17.

Again, the important deadlines are:

Last Day To Submit A Long Form Claim or a Short Form Claim: [DATE] [60 days after mailing Notice.]

Last Day To Submit Documentation to Support a Long Form Claim: [DATE] [90 days after mailing Notice.]

Last Day To “Opt-Out” Of The Settlement Class: DATE [60 days after mailing Notice.]

Last Day To Object To The Settlement: DATE [60 days after mailing Notice.]

Final Approval Hearing: [DATE].

Questions?

Contact Peter Romer-Friedman or Juno Turner
Outten & Golden LLP
685 Third Avenue, 25th Floor
New York, NY 10017
(212) 245-1000
walmartLGBTcase@outtengolden.com

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

Dated: _____, 2016

The Honorable William Young
United States District Judge

Questions?

Contact Peter Romer-Friedman or Juno Turner
Outten & Golden LLP
685 Third Avenue, 25th Floor
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