

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

VASSILIOS KUKORINIS, on behalf  
of himself and any others similarly  
situated,

Plaintiff,

v.

WALMART INC.,

Defendant.

Case No. 8:22-cv-02402-VMC-TGW

**PLAINTIFF'S UNOPPOSED MOTION  
FOR FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT  
AND MEMORANDUM OF LAW IN SUPPORT THEREOF**

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**TABLE OF CONTENTS**

I. INTRODUCTION..... 1

II. SUMMARY OF THE LITIGATION AND SETTLEMENT .....2

A. Investigation, the Litigation, and Settlement Negotiations.....2

B. Preliminary Settlement Approval and Implementation  
Of the Court-Approved Notice Plan.....6

    Settlement Website .....6

    Toll-Fee Number ..... 7

    Media Notice Campaign..... 7

    Email Notice ..... 7

    Reminder Emails.....8

    Publication in People Magazine.....9

    Press Release & Earned Media .....9

C. The Positive Response of the Class to Date .....9

III. KEY TERMS OF THE SETTLEMENT ..... 10

IV. THE COURT SHOULD GRANT FINAL APPROVAL OF THE  
SETTLEMENT AS IT IS FAIR, REASONABLE, AND ADEQUATE..... 12

A. Plaintiff and the Class Counsel Have Adequately Represented  
the Class..... 13

B. The Settlement is the Result of Arm’s-Length Negotiations ..... 14

C. The Relief Provided for the Class is More Than Adequate ..... 14

    1. The Settlement accounts for the costs, risks, and delay  
    of trial and appeals ..... 14

2.	The Settlement provides for an effective method of processing Claims and distributing relief to the Settlement Class Members .....	17
3.	The terms of the proposed award of attorneys' fees are reasonable .....	19
D.	The Proposed Settlement Treats Class Members Equitably Relative to Each Other .....	19
E.	The Substance and Amount of Opposition to the Settlement .....	20
V.	THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS .....	23
1.	The Settlement Class is Numerous and Ascertainable.....	23
2.	There Are Common Questions of Law and Fact .....	24
3.	Plaintiff's Claims Are Typical of the Settlement Class.....	24
4.	Plaintiff and Class Counsel Have Fairly and Adequately Protected the Interests of the Class .....	25
5.	The Requirements of Rule 23(b)(3) Are Met.....	25
VI.	THE BEST PRACTICABLE NOTICE WAS PROVIDED TO THE SETTLEMENT CLASS .....	27
VII.	THE COURT SHOULD MAKE FINAL ITS APPOINTMENT OF THE CLASS REPRESENTATIVE AND CLASS COUNSEL .....	30
VIII.	CONCLUSION .....	30

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>Ass’n for Disabled Ams., Inc. v. Amoco Oil Co.</i> , 211 F.R.D. 457 (S.D. Fla. 2002) .....	22
<i>Behrens v. Wometco Enters., Inc.</i> , 118 F.R.D. 534 (S.D. Fla. 1988) .....	16
<i>Bennett v. Behring Corp.</i> , 737 F.2d 982 (11th Cir. 1984) .....	<i>passim</i>
<i>Braynen v. Nationstar Mortg., LLC</i> , No. 14-CV-20726,2015 U.S. Dist. LEXIS 151744 (S.D. Fla. Nov. 9, 2015).....	22
<i>Burrow v. Forjas Taurus S.A.</i> , No. 16-cv-21606, 2019 U.S. Dist. LEXIS 63893 (S.D. Fla. Mar. 15, 2019).....	26
<i>Camden I Condo. Ass’n v. Dunkle</i> , 946 F.2d 768 (11th Cir. 1991) .....	19
<i>Carter v. Forjas Taurus S.A.</i> , No. 1:13-cv-24583, 2016 U.S. Dist. LEXIS 96054 (S.D. Fla. July 22, 2016) .....	27
<i>Cherry v. Dometic Corp.</i> , 986 F.3d 1296 (11th Cir. 2021).....	23, 24
<i>Cotter v. Checkers Drive-In Rests., Inc.</i> , No. 8:19-cv-1386, 2021 U.S. Dist. LEXIS 160592 (M.D. Fla. Aug. 25, 2021) .....	13, 20, 28
<i>DeSouza v. Aerocare Holdings LLC</i> , No. 6:22-cv-1047, 2024 U.S. Dist. LEXIS 52076 (M.D. Fla. Mar. 25, 2024) .....	14
<i>Desue v. 20/20 Eye Care Network, Inc.</i> , No. 21-cv-61275, 2023 U.S. Dist. LEXIS 117355 (S.D. Fla. July 8, 2023).....	28, 29

*Dorado v. Bank of Am., N.A.*,  
 No. 1:16-cv-21147, 2017 U.S. Dist. LEXIS 219407  
 (S.D. Fla. Mar. 23, 2017)..... 16

*In re Equifax Customer Data Sec. Breach Litig.*,  
 MDL No. 2800, 2020 U.S. Dist. LEXIS 118209  
 (N.D. Ga. Mar. 17, 2020) ..... 17

*In re Equifax Equifax Customer Data Sec. Breach Litig.*,  
 999 F.3d at 1277 (11th Cir. 2021)..... 17, 20

*Ferron v. Kraft Heinz Foods Co.*,  
 No. 20-cv-62136-RAR, 2021 U.S. Dist. LEXIS 129955  
 (S.D. Fla. July 13, 2021) ..... 20, 24

*Gevaerts v. TD Bank*,  
 No. 1:14-cv-20744-RLR, 2015 U.S. Dist. LEXIS 150354  
 (S.D. Fla. Nov. 5, 2015)..... 16

*Grant v. Ocwen Loan Serv., LLC*,  
 No. 3:15-cv-01376, 2019 U.S. Dist. LEXIS 14673  
 (M.D. Fla. Jan. 29, 2019)..... 21

*Hanley v. Tampa Bay Sports & Entm't Ltd. Liab. Co.*,  
 No. 8:19-cv-00550, 2020 U.S. Dist. LEXIS 89175  
 (M.D. Fla. Apr. 23, 2020)..... 23

*Harvey v. Hammel & Kaplan Co., LLC*,  
 No. 3:19-cv-640, 2020 U.S. Dist. LEXIS 229017  
 (M.D. Fla. Dec. 7, 2020)..... 15, 20

*In re Health Ins. Innovations Sec. Litig.*,  
 No. 8:17-cv-2186, 2021 U.S. Dist. LEXIS 61051  
 (M.D. Fla. Mar. 23, 2021) ..... 16, 17

*Horton v. Metro. Life Ins. Co.*,  
 No. 93-cv-1849, 1994 U.S. Dist. LEXIS 21394  
 (M.D. Fla. Oct. 25, 1994) ..... 21

*Klay v. Humana, Inc.*,  
 382 F.3d 1241 (11th Cir. 2004)..... 26

*Lee v. Ocwen Loan Servicing, LLC*,  
 No. O. 14-CV-60649, 2015 U.S. Dist. LEXIS 121998 (S.D. Fla.  
 Sept. 14, 2015)..... 18

*Marty v. Anheuser-Busch Cos., LLC*,  
 No. 13-cv-23656, 2015 U.S. Dist. LEXIS 144290  
 (S.D. Fla. Oct. 22, 2015)..... 29

*Narvaez v. Law Offices of Antonio Duarte, III, P.A.*,  
 No. No. 8:14-cv-1646, 2015 U.S. Dist. LEXIS 37744 (M.D. Fla.  
 Mar. 25, 2015)..... 24, 25

*Northrup v. Innovative Health Ins. Partners, LLC*,  
 329 F.R.D. 443 (M.D. Fla. 2019)..... 24

*Perez v. Asurion Corp.*,  
 501 F. Supp. 2d 1360 (S.D. Fla. 2007)..... 20, 29

*Saccoccio v. JP Morgan Chase Bank, N.A.*,  
 297 F.R.D. 683 (S.D. Fla. 2014) ..... 22

*Schojan v. Papa John’s Int’l*,  
 303 F.R.D. 659 (M.D. Fla. 2014)..... 26

*In re United States Oil & Gas Litig.*,  
 967 F.2d 489 (11th Cir. 1992) ..... 13

*Wal-Mart Stores, Inc. v. Dukes*,  
 564 U.S. 338 (2001) ..... 24

*In re Wawa, Inc. Data Sec. Litig.*,  
 85 F.4th 712 (3d Cir. 2023) ..... 29

*Wilson v. EverBank*,  
 No. 14-cv-22264, 2016 U.S. Dist. LEXIS 15751 (S.D. Fla. Feb. 3,  
 2016) ..... 14, 19, 22

**Other Authorities**

Fed. R. Civ. P. 23 ..... *passim*

## I. INTRODUCTION

On January 19, 2024, the Court issued an Order granting Plaintiff’s Motion for Preliminary Approval of this nationwide class action Settlement, which makes a non-reversionary common fund of *\$45 million* available for the benefit of Settlement Class Members.<sup>1</sup> ECF No. 75 (Preliminary Approval Order, “PAO”).<sup>2</sup>

Since entry of the PAO, Class Counsel and the Claims Administrator have implemented the Court-approved Notice Plan (PAO ¶¶ 11–16), which included issuing direct Email Notice to over *81 million* email addresses associated with likely Settlement Class Members (*see also* Dkt. 74) and an extensive digital media campaign. Weisbrot Final Approval Decl. (“Weisbrot FA Decl.”), filed herewith, ¶¶ 15–16, 23–25.<sup>3</sup>

The response to the Settlement has been resoundingly positive from Settlement Class Members. The Claims Deadline is not until June 5, 2024, and the Reminder Email campaign is ongoing, nevertheless, as of May 7, the Claims Administrator has received over *3.3 million* claims. *Id.* ¶ 36.<sup>4</sup> One objection, the McHenry Objection, was

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<sup>1</sup> Unless otherwise stated or defined, all capitalized terms used herein have the definitions provided in the Stipulation and Agreement of Settlement (“Agreement” or “SA ¶ \_”).

<sup>2</sup> In the PAO, the Court preliminarily found that the Settlement was reached after “extensive arm’s length and non-collusive negotiations between experienced counsel following mediation under the direction of an experienced mediator” and was fair, reasonable, and adequate; certified the Settlement Class; appointed Plaintiff as the Settlement Class Representative; appointed Kimberly M. Donaldson-Smith, Nicholas E. Chimicles, and Zachary P. Beatty of Chimicles Schwartz Kriner & Donaldson-Smith as Class Counsel. PAO ¶¶ 3–7. The Court also appointed the Angeion Group as the Claims Administrator and directed that notice be issued to the Settlement Class consistent with the Notice Plan. *Id.* ¶¶ 11–16.

<sup>3</sup> The Settlement has also been widely reported upon by nationwide news outlets, including nationwide TV broadcasts—ABC World News Tonight and Good Morning America—and the New York Times. *See* Declaration of Kimberly Donaldson-Smith in support of Final Approval and Fee Request, filed herewith, ¶ 89 (“KDS FA Decl.”).

<sup>4</sup> This is the gross number of claims submitted, which are subject to review and validation by the Claims Administrator. *See* Weisbrot FA Decl. ¶ 37.

received and addressed to the Court, and only 113 Opt-Outs were received. *Id.* ¶¶ 40–41.<sup>5</sup> Under the Settlement, Approved Claimants are eligible to receive, subject to proration, cash payments of up to \$25 without proof of purchase or up to \$500 with documentation of their purchases of Weighted Goods and Bagged Citrus. The Claims Administrator will process, validate, and issue payments for eligible Claims following the Final Approval Hearing, entry of the Judgment and Order of Dismissal (“Judgment”) (*see* SA Ex. 2, ECF No. 71-2 at Page ID 735), and the passing of the Effective Date of the Settlement (SA ¶¶ 2.16, 2.21–2.22, 5.4(d)).

Plaintiff respectfully submits this unopposed motion seeking final approval of the Settlement and entry of the Judgment, which makes final the Court’s preliminary findings in the PAO, overrules any objections, directs the Parties to implement the Settlement according to its terms, and discharges the Settlement Class Member Released Claims against Walmart Released Parties. Judgment ¶¶ 3–11.

## II. SUMMARY OF THE LITIGATION AND SETTLEMENT

### A. Investigation, the Litigation, and Settlement Negotiations

The KDS FA Declaration, filed herewith, recounts the details of Plaintiff’s and Class Counsel’s investigation of the facts and claims, Class Counsel’s efforts in litigating the action and conducting discovery, and work to achieve the proposed settlement, which is the result of over a year of litigation and hard-fought negotiations overseen by a nationally renowned mediator, Robert A. Meyer, Esq.

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<sup>5</sup> The opt-out and objection deadline is May 22, 2024. Pursuant to the PAO ¶ 34, Class Counsel will file a brief on June 5, 2024, updating the Court on opt-outs and addressing any objections.

After a comprehensive investigation and analysis of the facts and legal claims by Class Counsel, in October 2022, Plaintiff filed a detailed Class Action Complaint.<sup>6</sup> KDS FA Decl. ¶¶ 7–11; ECF No. 1. The Action alleged that persons who Purchased Weighted Goods or Bagged Citrus at a Walmart Store during the Settlement Class Period paid more than the lowest in-store advertised price for those products, as follows: (1) With respect to Weighted Goods, Plaintiff alleged that when the per unit price (e.g., the per pound or per ounce price) appearing on a Shelf Tag and/or displayed at checkout was lower than what appeared on the price label on the product, Walmart’s in-store point-of-sale (“POS”) system would instead charge that Person at checkout the price on the label, even if that per unit price was higher (*see* Am. Compl., ECF No. 52, ¶¶ 5, 38–61)<sup>7</sup>; and (2) With respect to Bagged Citrus, Plaintiff alleged that the Shelf Tags in Walmart Stores displayed a weight that was higher than the weight of the Bagged Citrus appearing on its label and that Persons were charged for more Bagged Citrus than purchased (*see id.* ¶¶ 6, 62–71).

Anticipating that this Action—and any class-wide resolution—would be driven by POS system and consumer-transaction data, Class Counsel researched, identified, and consulted with POS industry experts and promptly retained a data and class

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<sup>6</sup> Walmart denies the allegations in the Complaint and Amended Complaint and denies that the claims alleged are amenable to class-wide treatment. Walmart, however, does not oppose certification of the Settlement Class for settlement purposes, nor does Walmart oppose granting of final approval for purposes of effectuating the parties’ Settlement in accordance with the parties’ Agreement. SA ¶¶ 3.9, 4.4, 16.4.

<sup>7</sup> With respect to Weighted Goods that were nearing expiration, Plaintiff alleged that the yellow sticker on the product that advertised the product’s reduced price could state a lower per unit price than what the Person was charged for the product in the store. *See* Am. Compl. ¶¶ 7, 72–88.

expert, Matthew E. Pohl, to assist in, among other things, developing requests for production and conducting damages analyses. KDS FA Decl. ¶¶ 13–16. Plaintiff promptly prepared and served Walmart with extensive requests for production targeting relevant data and documents. *Id.* ¶ 32. The parties then held an in-person meet and confer about the discovery requests, which was followed by remote telephonic conferrals through March 2023. *Id.* ¶ 35. On March 20, 2023, Walmart served 64 pages of objections and narrative-form responses. *Id.* ¶ 36. The parties filed their agreed-to ESI Protocol and Confidentiality Agreement thereafter. *Id.* ¶ 38–39.

Importantly, over several months Walmart produced over 100 gigabytes of data related to Plaintiff’s allegations concerning Weighted Goods and Bagged Citrus. *Id.* ¶ 42. As to Weighted Goods, Walmart produced about half a billion lines of data from over 4,000 Walmart Stores in the United States and Puerto Rico, from which Plaintiff’s expert was able to calculate damages. *Id.*<sup>8</sup> Walmart also produced over four years of aggregate sales and transaction data for each of the Bagged Citrus products. *Id.* Plaintiff’s data and damages expert aided Class Counsel in the interpretation and analysis of the data and calculation of potential damages. *Id.* ¶ 44.

Plaintiff also researched and responded to Walmart’s first motion to dismiss the Action in its entirety, which the Court granted in part and denied in part on July 6, 2023. *See id.* ¶ 23–27. Plaintiff immediately began the preparation of the Amended Complaint, re-alleging claims on behalf of a nationwide class, which was filed

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<sup>8</sup> That data, however, did not contain personally identifiable information, such as contact information of the purchaser in each transaction. KDS FA Decl. ¶ 42.c.

promptly on July 20, 2023. *Id.* ¶ 28. Walmart filed its partial motion to dismiss, to which Plaintiff responded on August 31, 2023. *Id.* ¶¶ 29–30.

While actively litigating this case, the parties began exchanging information in late 2022 that would allow the parties to determine whether an early mediation might be fruitful (*id.* ¶ 19) and continued those exchanges and discussions in earnest in 2023. *Id.* ¶¶ 35, 48. On February 28, 2023, the parties conducted an in-person settlement meeting in Philadelphia. *Id.* ¶ 35. The parties retained the services of Robert Meyer, who is an experienced JAMS mediator. *Id.* ¶ 49. In advance of the mediation sessions, Plaintiff prepared detailed mediation papers and, working with Mr. Pohl, damages models and estimated damages. *Id.* ¶¶ 16, 50–51. On May 24, 2023, the parties attended an all-day mediation at the office of Mr. Meyer in Los Angeles. *Id.* ¶ 52. On June 16, 2023, the parties then conducted another full-day mediation session via Zoom. *Id.* ¶ 53. Prior to and after these sessions, the parties held numerous conferrals and exchanged, verbally and in writing, information relevant to the parties' claims and defenses. *Id.* ¶¶ 50–56. Many of these conferrals were facilitated by the mediator, in which Mr. Meyer communicated jointly and separately with the parties' counsel. *Id.*

The parties reached a settlement in principle the week of September 18, 2023, and promptly notified the Court. *Id.* ¶¶ 57–58. The parties continued to dual track litigation and settlement. *Id.* ¶¶ 59–61. Plaintiff conducted additional discovery, including confirmatory discovery focused on affirming critical information relayed to Class Counsel during settlement negotiations. *Id.* ¶ 64. Walmart provided written

confirmatory discovery to Class Counsel. *Id.* The parties spent extensive time drafting, negotiating, and finalizing the Settlement Agreement and attachments and executed the Agreement on November 15, 2023. *Id.* ¶¶ 62–67. On November 16, 2023, Plaintiff filed a motion for preliminary approval, and on January 9, 2024, Plaintiff filed a supplemental submission updating the Court on the volume of email addresses of likely class members that would receive the Email Notice and requesting scheduling of Settlement-related deadlines. *Id.* ¶¶ 78–81; ECF Nos. 71, 74.

**B. Preliminary Settlement Approval and Implementation of the Court-Approved Notice Plan**

In the PAO, the Court conditionally certified the Settlement Class for settlement purposes;<sup>9</sup> preliminarily approved the settlement as fair, reasonable, and adequate; appointed the Class Representative, Class Counsel, and the Claims Administrator; held that the Notice Plan satisfied Rule 23 and Due Process; and, thus, ordered that notice to the class be issued consistent with the Notice Plan. PAO ¶¶ 4–7; 11–16.

Promptly after and consistent with the Court’s Order, as detailed in the Weisbrot FA Declaration, Class Counsel and the Claims Administrator began implementing the Notice Plan including the following.

**Settlement Website:** After preparation and review by Class Counsel and the

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<sup>9</sup> The Court preliminarily certified the following Settlement Class pursuant to Fed. R. Civ. P. 23(a) and (b)(3): “all persons who Purchased Weighted Goods and/or Bagged Citrus in-person at a Walmart retail store, supercenter, or neighborhood market in the United States or Puerto Rico (“Walmart Store”) during the Settlement Class Period.” PAO ¶ 5. The Settlement Class Period was defined as: “October 19, 2018 through and including the date the Court grants preliminary approval,” which was January 19, 2024. SA ¶ 2.47. Accordingly, Class Counsel and the Claims Administrator updated the various forms of notice to reflect the Settlement Class Period and definition. KDS FA Decl. ¶ 85.

Claims Administrator, on February 16, 2024, the Settlement Website went live. Weisbrot FA Decl. ¶¶ 27; KDS FA Decl. ¶ 86. It included an online claim submission process, a printable version of the Claim Form, a copy of the Notice in English and Spanish, searchable lists of Weighted Goods and Bagged Citrus, and other important documents and features, including a chatbot. *See* <https://www.walmartweightedgroceriesettlement.com/>; Weisbrot FA Decl. ¶¶ 27–30. Evidencing the extensive public awareness of the Settlement, the Settlement Website has been visited over 17 million times by over 11 million unique users. *Id.* ¶ 31. The Final Approval and Fee motions will be promptly posted on the Settlement Website and readily available to Settlement Class Members. SA Ex. 1A, ¶ 16.

**Toll-Free Number:** On February 13, 2024, the Claims Administrator established a toll-free number and an interactive voice response (“IVR”) system in both English and Spanish, which has fielded over 16,000 incoming calls, totaling over 66,000 minutes. Weisbrot FA Decl. ¶¶ 32–33. Potential Class members left over 1,609 voicemails on the IVR. *Id.* ¶ 33.

**Media Notice Campaign:** Beginning on February 20, 2024, the Claims Administrator implemented the digital Media Notice campaign, including banner ads, social media ads, and paid search ads, in accordance with the PAO. *Id.* ¶¶ 23–25; *see* KDS FA Decl. ¶ 87. The Media Notice campaign delivered approximately 256 million impressions to the target audience. Weisbrot FA Decl. ¶¶ 23–25.

**Email Notice:** Walmart sent the Claims Administrator a list of persons it

identified as having likely purchased at least one Weighted Good or Bagged Citrus product during the Settlement Class Period and for whom Walmart had an email address. *Id.* ¶ 6. The data contained 134,131,376 distinct email addresses associated with about 81 million unique records (“Unique Records”) that permitted the Claims Administrator to direct the Email Notice to individual likely Class Members and to track claims submitted by such Persons using the unique notice identification number accompanying the Email Notice. *Id.* ¶ 8. The Claims Administrator processed all 134 million distinct email addresses to cleanse and determine their validity. *Id.* ¶¶ 10–13.<sup>10</sup>

On February 20, 2024, the Claims Administrator began distributing the Email Notice to the Unique Records using best practices, e.g., to “prime” ISPs and prevent them from blocking or applying spam filters to the emails. *Id.* ¶ 14. If the Claims Administrator’s validation process identified that an email address was invalid or if an Email Notice bounced back and there was another valid email address associated with the Unique Record, then the Claims Administrator sent an email notice to the other, valid email address. *Id.* ¶¶ 15–16. Ultimately, the Claims Administrator sent over 81 million Email Notices. *Id.* ¶ 14–16. The Email Notice campaign was completed on April 4, 2024. *Id.* ¶ 17; *see* KDS FA Decl. ¶ 88.

**Reminder Emails:** Beginning on April 8, 2024, the Claims Administrator began issuing the Reminder Emails to all the valid email addresses that were sent an Email

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<sup>10</sup> To avoid Settlement Class Member confusion from receiving multiple emails and administrative burdens and expense, an Email Notice was sent to one email address per Unique Record. ECF No. 74-3 ¶ 12.

Notice, reminding recipients of relevant deadlines. Weisbrot FA Decl. ¶ 18 & Ex. B. As of April 30, the Claims Administrator has sent over 69 million Reminder Emails and will complete the Reminder Email campaign by May 12, 2024. *Id.* ¶ 18.

**Publication in People Magazine:** On March 18, 2024, the Claims Administrator published a half-page color notice in People Magazine. Weisbrot FA Decl. ¶ 22 & Ex. D.

**Press Release & Earned Media:** The Claims Administrator issued the Summary Notice press release on PR Newswire. *Id.* ¶ 20. The press release, along with other forms of notice, led to substantial earned media, i.e., many news outlets picking up and reporting on the Settlement, including articles and live news. KDS FA Decl. ¶ 89.

As of May 8, 2024, approximately \$1.15 million has been spent on the Notice Plan and Claims Administration. *Id.* ¶ 95. Additional costs related to finalizing the Notice Plan, assisting Settlement Class Members with claim submissions and inquiries, and administering the claims received (which includes reviewing for validity, fraud and duplication, review of information and documentation submitted, conducting the deficiency process, and issuing payment to Approved Claimants), for more than 3 million claims, is estimated to range from \$1.3 to \$1.45 million. *See id.*

**C. The Positive Response of the Class to Date**

The deadline to submit a Claim Form is not until June 5, 2024, and the Final Approval Hearing is set for June 12, 2024. PAO ¶¶ 8–9, 25–26. As of May 7, the

Claims Administrator has received over 3.3 million claims. Weisbrot FA Decl. ¶ 35.

Separately, the Opt-out and Objection Deadlines are May 22, 2024, and, to date, there has been one objection received and also addressed to the Court (KDS FA Decl. ¶ 98), and only 113 Settlement Class Members have opted out, *id.* ¶ 97.

### III. KEY TERMS OF THE SETTLEMENT

On February 1, 2024, Walmart paid the Class Settlement Amount of \$45 million into the Class Settlement Fund, which has been accruing interest to the benefit the Settlement Class. *Id.* ¶ 83; SA ¶¶ 2.11, 2.17, 5.1. The Settlement Amount is non-reversionary, which means that upon the Effective Date, none of the Settlement Amount will revert to Walmart. SA ¶ 5.2.

As set forth in ¶ 5.3, the Class Settlement Fund will be used to first pay Notice and Administration Costs, Taxes and Tax Expenses of the Class Settlement Fund, an Award of Attorneys' Fees, Costs, and Expenses to Class Counsel approved by the Court, and, after the Effective Date of the Settlement, the Net Class Settlement Fund (SA ¶ 2.25) will be allocated to Settlement Class Members as set forth in ¶ 5.4 of the Settlement Agreement (the "Plan of Allocation").<sup>11</sup>

The Plan of Allocation is based on the number of Bagged Citrus and/or Weighted Goods that a Settlement Class Member attests to having purchased during the Settlement Class Period. SA ¶ 5.4(a). Without documentation, Settlement Class

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<sup>11</sup> The Settlement provides for supplemental distributions, if necessary, to eligible Class Members until such distributions are no longer economically feasible, at which time Class Counsel would apply to the Court for a *cy pres* distribution. SA ¶ 5.4(b).

Members are eligible to submit a Claim Form attesting to having Purchased up to 50, 75, or 100, or more than 100 Weighted Goods and Bagged Citrus products, making them eligible for payments of \$10, \$15, \$20, and \$25, respectively (subject to pro ration). SA ¶¶ 5.4(a)(i)–(iv). Alternatively, if a Class Member has receipts documenting their Purchases of Weighted Goods and/or Bagged Citrus, such Class Member is eligible to submit a Claim Form to receive 2% of the total price of all of those documented purchases submitted (up to \$500). SA ¶ 5.4(a)(v). As discussed below in § IV.C.1, Class Counsel determined this Plan of Allocation in consultation with and based on the liability and damages’ analyses conducted on Walmart’s data. KDS FA Decl. ¶ 67–72.

Contemporaneously with this Motion, Class Counsel has applied for a fee of 20% of the Class Settlement Amount plus reimbursement of \$114,870.41 in costs and expenses incurred in connection with the action, plus any interest on such fees, costs, and expenses at the same rate and for the same periods as earned by the Class Settlement Fund (until paid). SA ¶ 8.1 & Ex. 1A ¶ 16.<sup>12</sup>

After entry of the Judgment and upon the Effective Date, Releasing Settlement Class Members (SA ¶ 2.42) shall have “fully and forever released, compromised, settled” against Walmart Released Parties (SA ¶ 2.56) each and every Settlement Class Member Released Claim “relating to or arising out of . . . allegations that they paid more than the lowest price advertised in the Walmart Store for Bagged Citrus and/or

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<sup>12</sup> The approval of the Settlement and the Effective Date are not contingent upon the Court’s award of the Motion for Attorneys’ Fees, Costs, and Expenses. SA ¶ 8.5.

Weighted Goods during the Settlement Class Period.” SA ¶¶ 2.45, 2.56, & 12; Judgment ¶ 11.<sup>13</sup>

#### **IV. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT AS IT IS FAIR, REASONABLE, AND ADEQUATE**

The Court should now make final its prior finding that the Settlement is fair, reasonable, and adequate. PAO ¶ 4, 8. Under Rule 23(e), the Court may approve the Settlement after a hearing and upon a finding that the Settlement “is fair, reasonable, and adequate.” Rule 23(e)(2), as amended in 2018, outlines several factors the Court must consider in determining whether a settlement is fair, reasonable, and adequate:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account:
  - (i) the costs, risks, and delay of trial and appeal;
  - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
  - (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and
  - (iv) any agreement required to be identified under Rule 23(e)(3)<sup>14</sup>; and
- (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2). The 2018 Advisory Committee Notes make clear that these factors should be addressed as the “core concerns” but do not displace other “lists of factors” courts have traditionally applied. Courts in the Eleventh Circuit have traditionally evaluated whether a settlement is fair, reasonable, and adequate using the applicable *Bennett* approval factors:

- (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which a settlement is fair,

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<sup>13</sup> In the Settlement Agreement, Plaintiff gives a broader release. SA ¶ 12.9. Plaintiff is not receiving any individual or additional compensation for this release. Neither the Settlement Class or Plaintiff are releasing any claims for personal injury or wrongful death. SA ¶¶ 12.3, 12.9.

<sup>14</sup> Here, there is no additional agreement required to be identified under Rule 23(e)(3). *See supra* n. 13.

adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved.

737 F.2d at 986 (11th Cir. 1984). Given that the Eleventh Circuit “strongly favors the pretrial settlement of class action lawsuits,” *In re United States Oil & Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992), in determining whether to approve a settlement the Court’s “judgment is informed by the strong judicial policy favoring settlement as well as by the realization that compromise is the essence of settlement,” *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984).

Below, Plaintiff addresses all relevant Rule 23(e)(2) factors and notes the *Bennett* factors when applicable. Under all relevant factors, the Settlement is fair, reasonable, and adequate and is in the best interests of the class. *See* KDS FA Decl. ¶¶ 73–77.

**A. Plaintiff and Class Counsel Have Adequately Represented the Class**

Rule 23(e)(2)(A) focuses on “the actual performance of counsel acting on behalf of the class,” including whether plaintiff and class counsel “had an adequate information base” before entering the settlement.<sup>15</sup> 2018 Adv. Comm. Notes. But “early settlements are favored such that vast formal discovery need not be taken.” *Cotter v. Checkers Drive-In Rests., Inc.*, No. 8:19-cv-1386, 2021 U.S. Dist. LEXIS 160592, at \*25–26 (M.D. Fla. Aug. 25, 2021) (cleaned up).

As detailed in the KDS FA Decl., Class Counsel, who has extensive experience prosecuting complex class actions, developed a deep understanding of the legal and

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<sup>15</sup> This factor overlaps with the sixth *Bennett* factor: “the stage of proceedings at which the settlement was achieved.”

factual issues in this case through pre-suit investigation, briefing motions to dismiss, discovery, and consultation with industry and data experts and damages analyses. KDS FA Decl. ¶¶ 7–9, 24, 28–77.

**B. The Settlement is the Result of Arm’s-Length Negotiations**

This factor focuses on whether the settlement negotiations “were conducted in a manner that would protect and further the class interests.” 2018 Adv. Comm. Notes. Here, the Settlement was reached after two all-day sessions with a highly respected independent mediator, Robert A. Meyer of JAMS, with extensive experience in class actions. *Id.* ¶¶ 52–54; *see, e.g., DeSouza v. Aerocare Holdings LLC*, No. 6:22-cv-1047, 2024 U.S. Dist. LEXIS 52076, at \*9 (M.D. Fla. Mar. 25, 2024) (“[T]he proposal was negotiated at arm’s length because there is no evidence of fraud or collusion and this is presumed because the agreement was reached assisted by a skilled mediator.”); *Wilson v. EverBank*, No. 14-cv-22264, 2016 U.S. Dist. LEXIS 15751, at \*16 (S.D. Fla. Feb. 3, 2016).

**C. The Relief Provided for the Class is More Than Adequate**

The \$45 million Settlement provides excellent monetary relief for the class, especially considering the risks of continued litigation.

**1. The Settlement accounts for the costs, risks, and delay of trial and appeals**

“Whether under Rule 23(e)(2)(C) or the *Bennett* factors, it is not the value or nature of the settlement relief alone that is decisive, but whether that relief is reasonable when compared with the relief ‘plaintiffs would likely recover if successful,

appropriately discounted for the risk of not prevailing.’” *Harvey v. Hammel & Kaplan Co., LLC*, No. 3:19-cv-640, 2020 U.S. Dist. LEXIS 229017, at \*17 (M.D. Fla. Dec. 7, 2020) (quoting *Krell v. Prudential Ins. Co. of Am.*, 148 F.3d 283, 322 (3d Cir. 1998)). The monetary relief offered by the nationwide Settlement is more than adequate standing alone but especially when considering the risks of continued litigation.<sup>16</sup>

The risks, expense, and delay of trial and appeals were substantial here. For example, to successfully obtain a judgment on a *nationwide* basis, Plaintiff would have needed to defeat Walmart’s motion to dismiss challenging his nationwide claims, obtain certification of a nationwide class, survive summary judgment, win at trial, and survive lengthy appeals. And Walmart had had colorable arguments at every step, including that: (a) damages classes, and any nationwide class, are not certifiable; (b) claims were barred by a prior settlement and the Court’s July Motion to Dismiss Order; (c) Plaintiff could not overcome hurdles of proof of misrepresentations on the Shelf Tags in over 4,000 Walmart Stores; and (d) Walmart complied with all applicable laws and regulations. *See, e.g., id.* at \*17–18 (noting that the “possibility that Defendant could prevail on the merits or defeat contested class certification” weighs in favor of approval); KDS FA Decl. ¶¶ 73–77.

Especially given the risks of continued litigation, the \$45 million Settlement Amount is an excellent outcome for the Class. Based on Plaintiff’s expert’s data

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<sup>16</sup> This factor overlaps with the first through fourth *Bennett* factors: the likelihood of success at trial; the range of possible recovery; the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable; and the complexity, expense and duration of litigation.

analysis, the Settlement Amount represents between 11% and 14% of a complete nationwide recovery if Plaintiff would have been completely successful in clearing all the obstacles noted above.<sup>17</sup> KDS FA Decl. ¶ 76. This Settlement is well within the range of reasonableness. *See, e.g., In re Health Ins. Innovations Sec. Litig.*, No. 8:17-cv-2186, 2021 U.S. Dist. LEXIS 61051, at \*24 (M.D. Fla. Mar. 23, 2021) (approving a settlement fund of 10% of the estimated total possible recovery).<sup>18</sup>

The Settlement “offers the class a certain and substantial recovery that will be distributed promptly.” *Dorado v. Bank of Am., N.A.*, No. 1:16-cv-21147, 2017 U.S. Dist. LEXIS 219407, at \*12 (S.D. Fla. Mar. 23, 2017). Indeed, each Approved Claimant may be eligible to receive, based on the number of Weighted Goods and Bagged Citrus purchased, \$10, \$15, \$20, \$25, and \$500 (subject to proration). SA ¶ 5.4(a). These amounts were based on Class Counsels’ and Plaintiff’s experts analyses of the data reflecting that the average purchase price of Weighted Goods and Bagged Citrus was \$10.30 and that the alleged wrongdoing caused a 2% overcharge on all Weighted Goods and Bagged Citrus. KDS FA Decl. ¶¶ 67–71.

For example, a Settlement Class Member who purchased an average of 1.5 Weighted Goods every month during the Settlement Class Period, purchased 90 Weighted Goods. She is assumed to have spent approximately \$927 (90 x \$10.30) and

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<sup>17</sup> Walmart disputes the calculations and conclusions made by Plaintiff’s expert as to the maximum potential nationwide recovery.

<sup>18</sup> *See also Gevaerts v. TD Bank*, No. 1:14-cv-20744-RLR, 2015 U.S. Dist. LEXIS 150354, at \*19 (S.D. Fla. Nov. 5, 2015) (same); *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 542 (S.D. Fla. 1988) (“A settlement can be satisfying even if it amounts to a hundredth or even a thousandth of a single percent of the potential recovery.”).

overcharged 2% or **\$18.50**, yet she may submit a Claim Form attesting to having purchased more than 75 Weighted Goods and be eligible for **\$20.00** (subject to proration) without submitting supporting documentation. *See id.* ¶ 71; SA ¶ 5.4(a)(iii). Alternatively, if she purchased more or spent more and has receipts documenting those purchases of Weighted Goods, then she may elect to submit such receipts and is eligible to receive 2% of the total cost of her documented eligible purchases of Weighted Goods and Bagged Citrus, capped at a \$500 payment (subject to proration).<sup>19</sup> *See* KDS FA Decl. ¶ 72; SA ¶ 5.4(a)(v).

Thus, even with the current number of claims, and even if there is a pro rata decrease,<sup>20</sup> Approved Claimants will still receive a substantial recovery of estimated damages. KDS FA Decl. ¶ 68, 71.b–c.; *see, e.g., In re Health Ins. Innovations Sec. Litig.*, 2021 U.S. Dist. LEXIS 61051, at \*24 (approving a settlement fund of 10% of the estimated total possible recovery).

## **2. The Settlement provides for an effective method of processing claims and distributing relief to the Settlement Class Members**

Under this factor, the Court “scrutinize[s] the method of claims processing to ensure that it facilitates filing legitimate claims” and “should be alert to whether the

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<sup>19</sup> A claimant need only submit documentation substantiating each Weighted Good and Bagged Citrus purchased in-store and the amount paid for each—she need not have retained or submitted the product’s packaging. SA ¶ 5.4(v). And as the Notice informed Settlement Class Members, they may be able to look up receipts on Walmart’s website. SA Ex. 1A at 8, ECF No. 71-2.

<sup>20</sup> *See In re Equifax Customer Data Sec. Breach Litig.*, 2020 U.S. Dist. LEXIS 118209, at \*206 (N.D. Ga. Mar. 17, 2020) (N.D. Ga. Mar. 17, 2020), *aff’d in part and rev’d on other grounds*, 999 F.3d 1247 (overruling objections where initial notice informed class members that they may choose up to \$125, but based on volume of claims, the actual, pro rata decreased amount was “substantially less”); 999 F.3d at 1259 n.6.

claims process is unduly demanding.” 2018 Adv. Comm. Notes.

Here, the Claim Form and claims process approved by the Court and implemented by the parties is simple and straightforward. To claim cash payments, Settlement Class Members need only fill out a simple Claim Form. SA Ex. 1B. The Claim Form may be submitted via the Settlement Website, email, or mail. SA ¶ 5.4(c). And here a claim requirement makes sense because not all Settlement Class Members can be identified in Walmart’s records, and notably, given the small dollar amounts at issue for each individual overcharge, it “maximize[s] the opportunity available to each class member” who is willing to “take the minimal step of returning the simple Claim Form to receive [a] larger amount.” *Lee v. Ocwen Loan Servicing, LLC*, 2015 U.S. Dist. LEXIS 121998, at \*57 (S.D. Fla. Sept. 14, 2015).

While a Settlement Class Member may elect to submit documentation to seek more than \$25 and up to \$500, no receipts or documentation are otherwise necessary to submit a Claim. SA ¶ 5.4(a)(i)–(iv).<sup>21</sup> The claims process here is not demanding but is, instead, straightforward and designed to encourage claims. *See Poertner*, 618 F. App’x at 628 (affirming approval of settlement where \$6 “could be claimed without proof of purchase” with a “straightforward” claim form that asked for “class member’s

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<sup>21</sup> Approved Claimants will be able to receive their cash payment from the Net Settlement Fund by electronic means (such as Venmo, ACH, Zelle, or Virtual MasterCard), or, if requested, by mailed check. SA ¶ 5.4(d). There are no restrictions, limitations, or expiration dates attached to the Claimant’s use of the electronic settlement payment. ECF No. 71-4 ¶ 55.

contact information, the number of packages purchased, the type and size of the batteries, the purchase location, and the devices in which the batteries were used”).<sup>22</sup>

Although a “settlement’s fairness is judged by the opportunity created for the class members, not by how many submit claims,” *Wilson*, 2016 U.S. Dist. LEXIS 15751, at \*53-55, to date, the Claims Administrator has received over 3.3 million claims, which represents about 4% of those email addresses issued an Email Notice, which as noted below is within the approvable range. Weisbrot FA Decl. ¶¶ 14–16, 35.

**3. The terms of the proposed award of attorneys’ fees are reasonable**

As discussed in Plaintiff’s Motion for Attorneys’ Fees, Costs, and Expenses, Plaintiff’s request of 20% of the \$45 million Class Settlement Amount is within the range of reasonableness in the Eleventh Circuit. *See, e.g., Camden I Condo. Ass’n v. Dunkle*, 946 F.2d 768, 775 (11th Cir. 1991). The Notice and Email Notice also informed class members that Class Counsel may seek up to 20%, and Settlement Class Members have 14 more days following this filing to object to the request. PAO ¶ 26, 34. Under the Settlement, Final Approval is not contingent on the Court’s decision on Plaintiff’s Motion for Attorneys’ Fees and Expenses. SA ¶ 8.5.

**D. The Proposed Settlement Treats Class Members Equitably Relative to Each Other**

As discussed above, Settlement Class Members may submit a Claim in one of five different tiers that correspond to the number of Weighted Goods and Bagged

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<sup>22</sup> In addition, the Claims Administrator is employing mechanisms to detect fraudulent claims. Weisbrot FA Decl. ¶ 38. Any deficient claim will be given an opportunity to cure. SA ¶ 5.4(f)–(g).

Citrus purchased throughout the Class Period, and the tier amounts were derived from Class Counsel and Plaintiff's expert's data and damages analyses. KDS FA Decl. ¶¶ 67–72. The Settlement satisfies Rule 23(e)(2)(D)'s requirement that class members be treated equitably relative to each other. *See Harvey*, 2020 U.S. Dist. LEXIS 229017, at \*18-19 (approving settlement where class members were to “receive a settlement payment commensurate with their respective amount paid over their discounted Hospital Bill amount”); *Ferron v. Kraft Heinz Foods Co.*, No. 20-cv-62136-RAR, 2021 U.S. Dist. LEXIS 129955, at \*31-32 (S.D. Fla. July 13, 2021) (noting “the two-tier approach adopted in the Settlement Agreement provides a valuable benefit to the Class, because individuals who did not have proof of purchase were still able to benefit under the Settlement”); *Cotter*, 2021 U.S. Dist. LEXIS 160592, at \*23 (approving \$5.00 vouchers for undocumented claims and up to \$5,000 for documented claims). And even if there is a prorated decrease to Approved Claimants, all will still be eligible for proportionate payments. *Cf. In re Equifax*, 999 F.3d at 1277 (11th Cir. 2021) (overruling objection because “there is no risk that any members of the class will have their ability to get settlement benefits reduced to zero because some other members got more relief from the settlement”).

**E. The Substance and Amount of Opposition to the Settlement**

The fifth *Bennett* factor requires evaluation of the opposition to the Settlement. 737 F.2d at 986. Here, the miniscule number of opt-outs and objections weighs in favor of approval. *See, e.g., Perez v. Asurion Corp.*, 501 F. Supp. 2d 1360, 1382 (S.D. Fla. 2007)

(finding that a “miniscule figure” of “100 out of 10.3 million, or 0.001%,” of class members filed objections weighed in favor of approval).

As of April 30, the Claims Administrator has received 113 Opt-Out Requests, which represent about 1/10,000th of 1% of the email addresses that were issued an Email Notice. Weisbrot FA Decl. ¶¶ 14–16, 40; *Grant v. Ocwen Loan Serv., LLC*, No. 3:15-cv-01376, 2019 U.S. Dist. LEXIS 14673, at \*22 (M.D. Fla. Jan. 29, 2019) (finding that the low opt-out rate of 0.1% and three objections weighed in favor of approval). The Claims Administrator will provide Class Counsel with a final list of Opt-Outs on May 29, and Class Counsel will file the list with the Court on June 5, 2024, so that the Court may exclude them. PAO ¶ 25; Judgment ¶ 11.

In the only objection received to date, Ms. McHenry objects because the Settlement does *not* include purchases she made through online platforms. Weisbrot FA Decl. Ex. H. True, the Settlement does not include such online purchases, nor does it *release* claims related to such online purchases.<sup>23</sup> SA ¶¶ 2.44, 2.46, 12. One who makes such online purchases, such as Ms. McHenry, therefore, is not a Settlement Class Member and does not have standing to object on that basis. *See, e.g., Horton v. Metro. Life Ins. Co.*, No. 93-cv-1849, 1994 U.S. Dist. LEXIS 21394, at \*34 (M.D. Fla. Oct. 25, 1994) (“[Objectors] lack standing to raise these objections because they are

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<sup>23</sup> The Settlement covers in-store purchases and does not include or otherwise affect online purchases of the Weighted Goods and Bagged Citrus. *See* SA ¶ 2.37, 2.44. Online purchases were excluded because, among other things, the misconduct alleged occurred inside the Walmart store, including that persons were exposed to and relied on the in-store pricing information (including at the register), and because the online terms and conditions include an arbitration agreement and class action waiver. That is why the action, discovery, and Settlement exclude online purchases. KDS FA Decl. ¶ 98.

not members of the settlement class and do not assert claims covered by the Settlement.”); *Ass’n for Disabled Ams., Inc. v. Amoco Oil Co.*, 211 F.R.D. 457, 473 (S.D. Fla. 2002) (“Under Fed. R. Civ. P. 23(e), non-class members are not permitted to assert objections to a class action settlement.”). Respectfully, the McHenry Objection should be overruled.<sup>24</sup>

As a general matter, objections that demand more money are usually overruled because compromise is the essence of a settlement and opting out is an option. *See, e.g., Braynen v. Nationstar Mortg., LLC*, 2015 U.S. Dist. LEXIS 151744, at \*37 (S.D. Fla. Nov. 9, 2015) (“A generic desire to receive ‘more’ money or a ‘better’ result is not a proper objection.”).<sup>25</sup> And as noted above, the categories of payments were based on a realistic assessment of damages, which Class Counsel derived from their expert’s analysis of transaction data Walmart produced. *See supra* § IV.C.1.<sup>26</sup> In any event, on June 5, 2024, Class Counsel will reply to any objections that may be filed by the

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<sup>24</sup> Hours before this Motion was filed, a purported Class Member, Dana Albrecht filed a “Motion to Appear *Pro Se*, Be Granted Access to CM/ECF Electronic Filing, and For Miscellaneous Relief”, to which Plaintiff will respond promptly. But by way of preview, Plaintiff notes the following: The Albrecht filing is not an objection. In addition, the two principal items of “relief” it seeks are patently unnecessary: first, the Settlement Website, provided all Class members (and, indeed, the public) ready and free access to the Amended Complaint, the Settlement Agreement and exhibits thereto, the full-length Notice, the Court’s preliminary approval Order, and subsequently filed settlement-related papers, including the instant Motion, and further provided instructions on how to retrieve any other docketed filing in this case (none of which were filed under seal); second, the request for an “extension” is based on an apparent speculative notion that Albrecht “*might* desire to file any additional pleadings in this matter...” ECF No. 99 ¶ 9 (italics in original).

<sup>25</sup> *See also Morgan*, 301 F. Supp. at 1260 (cleaned up) (collecting cases that “denied various objectors’ objections because it appears that most of the objectors have simply misread and/or misunderstood the Settlement documents and/or desired to have a better deal”); *Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683, 694 (S.D. Fla. 2014) (overruling 16 objections, including objections to the a claim-form requirement, the content of the claim form, and the instructions).

<sup>26</sup> *Cf. Wilson*, 2016 U.S. Dist. LEXIS 15751, at \*53–54 (overruling objection to a claim requirement because a claim requirement enabled “near-complete relief [that] very likely exceeds what Settlement Class members could have recovered at trial, which is extraordinary for any settlement”).

Objection Deadline, which is May 22. PAO ¶ 34.

## **V. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS**

The Court preliminarily certified the Settlement Class for settlement purposes pursuant to Rules 23(a) and (b)(3). PAO ¶ 5. Now, the Court should order final class certification for purposes of the Settlement. *See* Judgment ¶¶ 3–4.

Class certification under Rule 23 has two primary components. First, the party seeking class certification must establish the four requirements of Rule 23(a): numerosity, commonality, typicality, and adequacy. Second, the Court must find that the class fits within one of the three categories of class actions set forth in Rule 23(b). Certification under Rule 23(b)(3) is appropriate where, as here, common issues predominate and a class settlement is superior to other methods of adjudication.

### **1. The Settlement Class is Numerous and Ascertainable**

The Settlement Class of millions of Purchasers of Weighted Goods and Bagged Citrus easily meets 23(a)(1)'s requirement that the class be “so numerous that joinder of all members is impracticable.” *See* KDS FA Decl. ¶ 45; *Hanley v. Tampa Bay Sports & Entm't Ltd. Liab. Co.*, No. 8:19-cv-00550, 2020 U.S. Dist. LEXIS 89175, at \*3 (M.D. Fla. Apr. 23, 2020) (citing *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986)) (“Numerosity is generally satisfied when there are more than forty putative class members.”). “[A] proposed class is ascertainable if it is adequately defined such that its membership is capable of determination.” *Cherry v. Dometic Corp.*, 986 F.3d

1296, 1304 (11th Cir. 2021).<sup>27</sup> Here, the class is defined with objective criteria that permit class members to determine if they are in the Settlement Class, i.e., Purchasers of Weighted Goods or Bagged Citrus. *See, e.g., Ferron, supra*, at \*51–52.

## 2. There Are Common Questions of Law and Fact

The Settlement Class also satisfies Rule 23(a)(2)’s requirement that there are “questions of law or fact common to the class.” “The threshold for commonality is not high,” *Narvaez v. Law Offices of Antonio Duarte, III, P.A.*, 2015 U.S. Dist. LEXIS 37744, at \*5 (M.D. Fla. Mar. 25, 2015), and “a single common question will do,” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2001). Commonality is established where, as here, “there are allegations of . . . standardized conduct by the defendants directed towards members of the proposed class.” *Narvaez*, 2015 U.S. Dist. LEXIS 37744, at \*5 (citation omitted). As discussed below in connection with the predominance requirement, there are many common questions.

## 3. Plaintiff’s Claims Are Typical of the Settlement Class

Plaintiff’s claims are also typical of the Settlement Class in satisfaction of Rule 23(a)(3)’s requirement that “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” Typicality is met “if the claims or defenses of the class and class representative arise from the same event or pattern or practice and are based on the same theory.” *Northrup v. Innovative Health Ins. Partners*,

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<sup>27</sup> While “ascertainability” is not an explicit requirement of Rule 23(a), the Eleventh Circuit has held that “[a]scertainability is an implied prerequisite of Rule 23.” *Cherry*, 986 F.3d at 1302. Administrative feasibility, however, is not a requirement for class certification. *Id.* at 1304.

*LLC*, 329 F.R.D. 443, 452 (M.D. Fla. 2019). Plaintiff and Class Members have the same claims arising from Walmart’s alleged systemic practices of employing its POS system to overcharge for Weighted Goods and Bagged Citrus. Am. Compl. ¶¶ 5–7.

**4. Plaintiff and Class Counsel Have Fairly and Adequately Protected the Interests of the Class**

In addition, “the representative parties [have and] will fairly and adequately protect the interest of the class,” as required by Rule 23(a)(4). “To assess adequacy of representation, the Court must determine ‘whether plaintiff[] ha[s] interests antagonistic to those of the rest of the class’ and ‘whether plaintiff’s counsel are qualified, experienced, and generally able to conduct the proposed litigation.’” *Narvaez*, 2015 U.S. Dist. LEXIS 37744, at \*7 (citation omitted).

Plaintiff has actively participated in this case and personally investigated the claims on behalf of the Settlement Class. KDS FA Decl. ¶ 6. Plaintiff has no interests antagonistic to those of the Settlement Class, and there is no question that he has been an advocate for the Settlement Class. Class Counsel have decades of experience prosecuting complex class actions, have deep knowledge of the applicable law, and have committed significant time and resources to prosecuting this case. *Id.* ¶ 77. The \$45 million Settlement Fund recovered on behalf of the Settlement Class speaks to the quality and tenacity of Class Counsel. Adequacy is satisfied.

**5. The Requirements of Rule 23(b)(3) Are Met**

Certification is also warranted under Rule 23(b)(3) because “questions of law or fact common to class members predominate over any questions affecting only

individual members” and because “a class action is superior to other available methods for fairly and efficiently” settling the controversy.

First, common issues abound and predominate here. For example, whether (as Plaintiff alleges) Walmart’s POS system falsely inflated the price of Weighted Goods, whether its POS system erroneously calculated “You Pay” prices, and whether Walmart falsely advertised the weight of Bagged Citrus are central to each Class Member’s claims. *See, e.g., Schojan v. Papa John’s Int’l*, 303 F.R.D. 659, 669 (M.D. Fla. 2014) (predominance satisfied where “[p]laintiffs allege[d] that Papa John’s course of conduct commonly, and adversely, affected the entire class.”).

Second, a class action is superior to other methods of resolving this controversy. This requirement focuses on “the relative advantages of a class action suit over whatever other forms of litigation might be realistically available to the plaintiffs.” *Klay v. Humana, Inc.*, 382 F.3d 1241, 1269 (11th Cir. 2004); *see also* Fed. R. Civ. P. 23(b)(3)(A)–(D).<sup>28</sup> Here, given that when there is an overcharge on the affected product it is on average well under \$2.00, Settlement Class Members do not have a strong interest in individually controlling separate actions are unlikely to bring individual lawsuits against Walmart. *See* KDS FA Decl. ¶ 68.c.; Fed. R. Civ. P. 23(b)(3)(A). To Class Counsel’s knowledge, no other Class Members have any pending cases

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<sup>28</sup> The fourth superiority factor, manageability (Rule 23(b)(3)(D)), is not relevant when a court is asked to certify a settlement-only class because the difficulties in managing the trial are extinguished by the settlement. *See, e.g., Amchem Prods.*, 521 U.S. at 620; *Burrow v. Forjas Taurus S.A.*, No. 16-cv-21606, 2019 U.S. Dist. LEXIS 63893, at \*23 (S.D. Fla. Mar. 15, 2019) (*Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 297 (3d. Cir. 2011)) (“[W]hile choice-of-law analyses may have presented manageability problems in resolving claims in contested class and litigation proceedings, it is not a factor in the nationwide settlement context that the Parties propose.”).

concerning the controversy. *See* Fed. R. Civ. P. 23(b)(3)(B). Because there are millions of class members, concentrating the claims in one forum avoids inconsistent ruling and burden on the courts. *See* Fed. R. Civ. P. 23(b)(3)(C).

## **VI. THE BEST PRACTICABLE NOTICE WAS PROVIDED TO THE SETTLEMENT CLASS**

In its Preliminary Approval Order, the Court found that the Notice Plan satisfied all requirements of the Federal Rules of Civil Procedure and the United States Constitution and constituted the best practicable notice under the circumstances. PAO ¶ 12. Because notice has been and will be effectuated according to the Notice Plan, the Court should make final its determination that the best practicable notice was provided to the Settlement Class here. Judgment ¶ 6.

Although “[n]either due process nor Rule 23 requires that class members receive actual notice, and publication notice is appropriate where class members’ names and addresses cannot be determined with reasonable efforts,” *Carter v. Forjas Taurus S.A.*, No. 1:13-cv-24583, 2016 U.S. Dist. LEXIS 96054, at \*21 (S.D. Fla. July 22, 2016), the Email Notice here was a significant Settlement term negotiated and insisted upon by Plaintiff and Class Counsel to identify and send direct notice to likely class members—the first time in a Walmart consumer class action settlement of this magnitude. Indeed, the Email Notice campaign delivered over 81 million emails directly to likely class members. Weisbrot FA Decl. ¶¶ 14–16. Plus, a *second email*, the Reminder Email, has or will be sent to the same email addresses to encourage Settlement Class Members to submit Claims. *Id.* ¶¶ 18–19.

Supplementing the Email Notice, the Claims Administrator also deployed a state-of-the-art digital media campaign, including banner ads, social media ads, and paid search ads, that used industry-standard metrics to target likely class members (i.e., the target audience), which delivered over 256 million impressions. *Id.* ¶¶ 23–25.

Together, the Email Notice and Media Notice campaign are on track to deliver approximately 394 million impressions and reach over 80.15% of the target audience. *Id.* ¶ 26; *see, e.g., Desue v. 20/20 Eye Care Network, Inc.*, No. 21-cv-61275, 2023 U.S. Dist. LEXIS 117355, at \*26 (S.D. Fla. July 8, 2023) (“Courts recognize that notice reaching between 70% and 95% of a class is reasonable, and the median is 87% reach on approved notice plans.”).

In addition to those two critical components, the Summary Notice was published in People Magazine, the press release garnered significant earned media, and the Settlement Website, chatbot, toll-free number, IVR system, and the Claim’s Administrator’s dedicated email address for this Settlement remain available to Class Members. *See generally* Weisbrot FA Decl. All forms of notice issued to the Class directed them to the Settlement Website. *See Cotter, supra*, at \*19 (granting final approval of a notice program that consisted of “targeted digital banner ads, Facebook ads, a printed publication in USA Today, and direct notice via email to the more than 700,000 members of Checkers’ ‘Flav-R-Hood’ loyalty program”).

Although the June 5 Claim Deadline has not yet passed, the Claims Administrator has already received over 3.3 million claims representing 4% of the those issued Email Notice. *See* Weisbrot FA Decl. ¶ 14–16, 35. The current claims rate

here is within the range of approval. *See, e.g., Poertner*, 618 Fed. App'x at 626 & n.1 (approving settlement in consumer-retail case with claims rate of less than 1%); *Desue*, 2023 U.S. Dist. LEXIS 117355, at \*27 (S.D. Fla. July 8, 2023) (claims rate of 0.66% was “within an acceptable range”); *Perez*, 501 F. Supp. 2d at 1377 (approving settlement where 1.1% of class members returned claims forms).<sup>29</sup>

But of course, this is not a claims-made settlement,<sup>30</sup> and upon the Effective Date, the Net Settlement Fund will be distributed pursuant to the Settlement, and *no* funds will revert to Walmart upon the Effective Date. SA ¶¶ 5.2, 5.4; *cf. In re Wawa, Inc. Data Sec. Litig.*, 85 F.4th 712, 723 (3d Cir. 2023) (“In cases where defendants keep any unclaimed funds . . . courts must place greater weight on the claims rate.”).

Moreover, as the Court already held, the forms of Notice complied with Rule 23(c)(2), and apprised Settlement Class Members of all required information. *See* SA Exs. 1A, 1C. The Notices also complied with Rule 23(h)(1) and notified Settlement Class Members that Class Counsel intended to apply to an award of attorneys’ fees up to 20% plus reimbursement of costs and expenses not to exceed \$200,000 and that Class Counsel’s motion will be available on the Settlement Website. SA ¶ 8.1, Ex. 1A ¶ 16, Ex. 1C. Thus, the Notice Plan provided the best notice practicable under the circumstances and includes all content required by Rule 23 and comports with Due Process. *See also* Weisbrot FA Decl. ¶¶ 43–44.

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<sup>29</sup> *Marty v. Anheuser-Busch Cos., LLC*, No. 13-cv-23656, 2015 U.S. Dist. LEXIS 144290, at \*11 (S.D. Fla. Oct. 22, 2015) (noting that courts often grant final approval of settlements before the final amount of claims are even known).

<sup>30</sup> *See Poertner*, 618 F. App'x at 628 n.2.

## **VII. THE COURT SHOULD MAKE FINAL ITS APPOINTMENT OF THE CLASS REPRESENTATIVE AND CLASS COUNSEL**

In granting Preliminary Approval, the Court appointed Plaintiff as Class Representative and appointed Kimberly M. Donaldson-Smith, Nicholas E. Chimicles, and Zachary P. Beatty as Class Counsel. PAO ¶ 7. The Court should make final its appointments. Judgment ¶ 5.

Class Counsel have and will continue to satisfy all the Rule 23(g)(1)(A) criteria. As further detailed in the Motion for Attorneys' Fees, Costs, and Expenses, Class Counsel conducted extensive legal and factual investigations into the alleged claims prior to filing the initial complaint, as evidenced by its detailed allegations. *See* Fed. R. Civ. P. 23(g)(1)(A)(i); KDS FA Decl. ¶¶ 7–8. Class Counsel have decades of experience in prosecuting complex class actions and a deep knowledge of applicable law. KDS FA Decl. ¶ 77. Class Counsel have committed significant time and resources into prosecuting this case, including motion practice, discovery, expert discovery, mediation, negotiating the settlement, and executing the settlement and the Notice Plan. *See generally* KDS FA Decl. And, as noted above, neither Plaintiff nor Class Counsel have any conflicts of interest with the Settlement Class. Thus, the Court should reaffirm its appointment of Plaintiff as Class Representative and Class Counsel.

## **VIII. CONCLUSION**

Plaintiff respectfully requests that the Court make final its decision approving the Settlement as fair, reasonable, and adequate, certifying the Settlement Class, and enter the Judgment.

Dated: May 8, 2024

Respectfully submitted,

/s/ Kimberly M. Donaldson-Smith

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*Attorneys for Plaintiff and the Settlement  
Class*

**LOCAL RULE 3.01(g) CERTIFICATION**

This certifies that Plaintiff's counsel conferred with Walmart's counsel regarding this Motion, and Walmart's counsel does not oppose the relief requested herein.

*/s/ Kimberly M. Donaldson-Smith*  
Kimberly M. Donaldson-Smith

**CERTIFICATE OF SERVICE**

I hereby certify that on May 8, 2024, the foregoing document was served on Defendant's counsel by the Court's electronic filing system.

/s/ Kimberly M. Donaldson-Smith  
Kimberly M. Donaldson-Smith

**CHIMICLES SCHWARTZ KRINER  
& DONALDSON-SMITH LLP**

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**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

VASSILIOS KUKORINIS, on behalf  
of himself and any others similarly  
situated,

Plaintiff,

v.

WALMART INC.,

Defendant.

Case No. 8:22-cv-02402-VMC-TGW

**DECLARATION OF KIMBERLY M. DONALDSON-SMITH  
IN SUPPORT OF PLAINTIFF'S MOTION FOR  
FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT AND  
MOTION FOR ATTORNEYS' FEES, COSTS, AND EXPENSES**

I, Kimberly M. Donaldson-Smith, declare under penalty of perjury, pursuant to  
28 U.S.C. § 1746:

1. I am an attorney duly licensed to practice in the Commonwealth of Pennsylvania, and I am admitted *pro hac vice* to the United States District Court for the Middle District of Florida to appear in this matter.

2. I am a partner of the law firm of Chimicles Schwartz Kriner & Donaldson-Smith LLP (“CSKD” or the “Firm”), counsel of record for Plaintiff Vassilios Kukorinis, and was appointed as Class Counsel pursuant to the Court’s January 19, 2024 order preliminarily approving the proposed Settlement (ECF. No. 75, “Preliminary Approval Order” or “PAO”). PAO ¶¶ 3–7.

3. I respectfully submit this declaration in support of Plaintiff’s Unopposed Motion for Final Approval of the Class Action Settlement and Plaintiff’s Motion for Attorneys’ Fees, Costs, and Expenses.

4. Unless otherwise defined, capitalized terms used herein have the same meaning as set forth in the as set forth in the Stipulation and Agreement of Settlement, dated November 15, 2023 (“Settlement Agreement”), which was filed on November 16, 2023, at ECF No. 71-2.

5. From the investigation stage and through negotiating and entering into the proposed Settlement, Plaintiff and Class Counsel vigorously, efficiently, and effectively investigated and pursued the claims on behalf of purchasers of Weighted Goods and Bagged Citrus in Walmart stores.

6. Plaintiff has actively participated in this case and personally investigated the claims on behalf of the Settlement Class.

*Investigation Performed by Plaintiff and Class Counsel*

7. In early September 2022, Class Counsel began their investigation of the facts and law pertinent to the information provided by Plaintiff concerning differences between the in-store advertised per unit price (e.g., the per pound or per ounce price) appearing on a Shelf Tag or Yellow Sticker and the price he was charged at the register for Weighted Goods, as well as differences between the weight printed on the Shelf Tag and the weight on the label for Bagged Citrus.

8. Among other things, Plaintiff and Class Counsel's rigorous and comprehensive investigation included:

a. Reviewing Plaintiff's documents, photos, videos and receipts, consisting of numerous instances of discrepancies between the in-store advertised per unit price and/or the price displayed at checkout, and the price a Person was charged at the register, for Weighted Goods, and the wrong weight being stated on the Shelf Tag for the Bagged Citrus.

b. Separately and independently, directly, and through agents, observing at various Walmart locations instances of discrepancies between the in-store advertised per unit price and/or the price displayed at checkout, and the price a Person was charged at the register, for Weighted Goods, and the wrong weight being stated on the Shelf Tag for the Bagged Citrus.

c. Identifying, reviewing, and analyzing news stories, press releases, articles, industry reports, and Walmart's corporate filings with the Securities and Exchange Commission (SEC) to identify information relevant to at least

the following subjects: Walmart’s point-of-sale-systems (“POS Systems”); Walmart’s grocery unit sales and share of the grocery market; number of Walmart grocery customers; Walmart store specific information including locations; Walmart’s processes, policies and procedures for pricing; and, relevant public statements and advertising about Walmart’s pricing, including “Rollback” pricing. Some of Class Counsel’s research in this regard is reflected in the Complaint (ECF No. 1) ¶¶ 33-37.

d. Extensive investigation into publicly available information about Walmart’s POS System, and POS systems and related technology generally, including to identify Walmart’s use of a legacy POS and next-gen Cloud Powered Checkout services. Some of Class Counsel’s research in this regard was reflected in the Complaint ¶¶ 93-95.

e. Extensive investigation into the differences observed (and alleged in the Complaint) between, (a) on the one hand, the lower-advertised prices on the Shelf Tag and in Walmart’s POS Systems and the weight on the label of the product, and (b) on the other, the per unit price, total price and/or weight of the Weighted Goods and Bagged Citrus, were charged at the register in Walmart stores, and how and why those differences occurred.

f. Investigation into the type of customer and transaction data that Walmart could have in its possession, including Walmart information databases called “Teradata” and the “Walmart Pay” application. Some of Class Counsel’s research in this regard was reflected in the Complaint ¶¶ 96-98.

g. Investigation into any prior-filed lawsuits involving Walmart that could be relevant or informative as to the Plaintiff's and Class's claims and factual allegations. This included reviewing all pleadings, filings, declarations, court decisions/orders and dockets of such lawsuits that were publicly available. Some of Class Counsel's research in this regard was reflected in the Complaint ¶¶ 98-99.

h. Investigation into governmental actions involving Walmart and the conduct at issue in this Action that could be relevant or informative as to the Plaintiff's claims and factual allegations. This investigation included reviewing news stories, press releases, federal and state governmental agency websites, and all related documents of such investigations and actions that were publicly available. Some of Class Counsel's research in this regard was reflected in the Complaint ¶ 106.

i. Review of the publicly available information on the docket in the lawsuit Plaintiff filed in 2019 against Walmart in the United States District Court for the Southern District of Florida, captioned *Vassilios Kukorinis, et al. v. Walmart, Inc.*, Case No. 1:19-cv-20592-JEM ("*Kukorinis I*"). Class Counsel was not involved in and did not represent Plaintiff in *Kukorinis I*.

j. Investigating and reviewing consumer complaint boards, websites, blogs, and similar social media outlets to identify similar or the same experiences and complaints by Walmart shoppers and Walmart former employees.

k. Investigation into Walmart's online Terms and Conditions.

l. Investigation into Walmart's policies regarding pricing and returns.

m. Investigation, including by researching, identifying, and reviewing technology and grocery industry resources into: (i) the underlying technological and operational causes of a POS system charging a Person at checkout the price on the label, and not a lower advertised price or per unit price in the system, by inflating the weight of the product being scanned; and (ii) relevant grocery store processes and operations, among other things.

n. Investigation, through publicly available information on websites and through Freedom of Information Act (FOIA) or equivalent requests made by Class Counsel, into the inspections conducted by state, county, or city weights and measures departments (as applicable), nationwide, at Walmart stores.

o. Legal research into the scope and applicability, in the context of the facts, of Florida's Deceptive and Unfair Trade Practices Act Florida Statute, Section 501.201, *et seq.* ("FDUTPA") and various states' consumer protection laws (*see, e.g.*, Complaint fn. 13, ¶¶ 123-140, 146-163), the availability of a declaratory judgment under the FDUTPA, and various common law claims including unjust enrichment.

9. Throughout the litigation, Plaintiff and Class Counsel conducted an ongoing investigation (in addition to conducting discovery, as discussed *infra*) into the

facts and claims in a similar manner and scope as described in the foregoing paragraphs.

*Drafting and Filing the Initial Complaint, and Service on Walmart*

10. Utilizing the foregoing information, work, and research, Plaintiff and Class Counsel drafted a detailed 84-page, 176-paragraph Complaint, that contained particularized and detailed documentation, explanations, and proof to support the factual allegations and claims asserted.

11. On October 19, 2022, Plaintiff and Class Counsel filed the Complaint. ECF No. 1. The Complaint asserted claims under the FDUTPA, various states' consumer protection laws, and for unjust enrichment. The Complaint alleged that the following conduct caused a Person who Purchased Weighted Goods or Bagged Citrus at a Walmart Store during the Settlement Class Period to pay more than the lowest in-store advertised price for those products:

a. With respect to Weighted Goods, Plaintiff alleged that when the per unit price (e.g., the per pound or per ounce price) appearing on a Shelf Tag and/or displayed at checkout was lower than what appeared on the price label on the product, Walmart's in-store POS System would instead charge a Person at checkout the price on the label often by inflating the product's net weight and multiplying that by the advertised per unit price as displayed on the receipt<sup>1</sup>; and

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<sup>1</sup> With respect to Weighted Goods that were nearing expiration, Plaintiff alleged that the Yellow Sticker on the product that advertised the product's reduced price could state a lower

b. With respect to Bagged Citrus, Plaintiff alleged that the Shelf Tags in Walmart Stores displayed a weight that was higher than the weight of the Bagged Citrus appearing on its label and that Persons were charged for more Bagged Citrus than purchased.

12. On October 21, 2022, Plaintiff served Walmart with the Complaint.

*Industry Experts*

13. Plaintiff and Class Counsel, promptly after filing the Complaint, began research to identify, and conduct outreach with, industry experts and consultants concerning the factual allegations in the Complaint. Among other things, Class Counsel focused their outreach on industry experts and consultants who had specific knowledge of grocery or retail POS systems and operations.

14. On December 29, 2022, Plaintiff and Class Counsel engaged Mr. Matthew E. Pohl, M.S., of Herculean Litigation Solutions to serve as Plaintiff's data and class expert. Mr. Pohl has extensive experience in complex civil litigation and specializes in class action damages and data. Mr. Pohl's curriculum vitae is available here:

<https://static1.squarespace.com/static/5c0dbe4cb105986c323afa92/t/606760a0275ef479f52d5fd3/1617387681631/M+Pohl+-+HLS+CV.pdf>

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per unit price than what the Person was charged for the product in the store.

15. Particularly pertinent to this action, and to the benefit of the Settlement Class, Plaintiff and Class Counsel specifically identified that Mr. Pohl served as an expert in three other matters involving Walmart (*id.*):

a. *Brandewie v. Wal-Mart Stores Class Action Litigation*: A class of customers filed a lawsuit against a retail store alleging that its refund policy and other state laws were violated when consumers returned an item to a store with lower sales tax rates than the store where the item was purchased. Mr. Pohl was retained as plaintiff's damage expert. Mr. Pohl *developed a methodology using the retail store's data* to determine the amount of under refund. The parties reached settlement in the case a month after Mr. Pohl's report was issued.

b. *Pearlstone v. Walmart Stores*: Mr. Pohl was retained to estimate alleged class damages related to the under-refund of sales tax on multi-receipt transactions.

c. *Farneth v. Walmart Stores*: Mr. Pohl was retained to identify defendant's computer systems to identify data sources with class-relevant data and interact with defendant's IT staff to facilitate the production of relevant data.

16. As also described below, among other things, Mr. Pohl conducted extensive analyses on the data produced by Walmart to aid in the parties' settlement negotiations. Mr. Pohl prepared relevant charts and presentations for Class Counsel's use during the mediation sessions on, among other things, information contained in the data produced by Walmart, damages models, and estimated damages with respect

to both the Weighted Goods and Bagged Citrus transactions. In addition, Mr. Pohl participated in the mediation sessions with Class Counsel.

*Litigation Ensues*

17. On October 25, 2022, the Court entered an Order requiring the Parties to meet and confer, and to submit a Case Management Report by November 25, 2022 (ECF No. 12), which deadline was extended to January 13, 2023 (ECF No. 24).

18. On November 10, 2022, the Court granted Walmart's Unopposed Motion for extension of the deadline to respond to the Complaint, which allowed Walmart until December 14, 2022, to answer or otherwise respond to the Complaint. ECF No. 18.

19. As the parties reported to the Court, subsequent to the filing of the Complaint, the parties began a conferral process about the claims and allegations asserted in the Complaint and were exchanging, and continued to exchange, information to further those discussions and allow the Parties to determine whether an early mediation might be fruitful. ECF No. 23.

20. In addition, the parties also meet and conferred about, prepared, and filed a proposed Case Management Report on January 13, 2023. ECF No. 33. On January 25, 2023, the Court entered a Case Management and Scheduling Order that did not adopt the parties' proposed schedule but instead provided for key events, including all fact and expert discovery, the motion for class certification, motions for summary judgment, judgment on the pleadings, and *Daubert* and *Markman* Motions to be filed by December 29, 2023. ECF No. 34.

*Walmart's Motions to Dismiss, Arguments, and Defenses*

21. From the outset, Walmart has raised several arguments and defenses as to why the action should be dismissed in its entirety and could not proceed as a class action pursuant to Rule 23.

22. Walmart asserted that claims in this Action were precluded and released in the settlement in *Kukorinis I*. Walmart made this argument as early as November 9, 2022, in its request for an extension of its deadline to respond to Plaintiff's Complaint (ECF No. 17), and promptly reiterated it in a November 17, 2022 filing seeking to extend the deadline for the parties to submit the case management report (ECF No. 21).

23. On January 6, 2023, Walmart filed its first Motion to Dismiss the Complaint in its entirety. ECF No. 25. Among other arguments and defenses, Walmart asserted the following:

a. There is no consumer deception because "Even if there is an error on a product's label or on the shelf tag, consumers are given multiple opportunities to ensure that the total prices charged match their expectations, including at checkout."

b. A reasonable consumer would not "ignore the 'total price' featured on shelf tags and product labels, and instead rely exclusively on weight details, perform math—including a conversion of price-per-pound to price-per-ounce—and blindly expect to pay that amount even though the total price shows that the customer will be charged a different amount."

c. Many of the claims were released as part of the Settlement in *Kukorinis I*.

24. Class Counsel researched the various legal and factual issues raised in Walmart's Motion to Dismiss, and on February 3, 2023, filed their opposition detailing why, in all respects, legally and factually, Walmart had not stated bases on which the Complaint should be dismissed in its entirety. ECF No. 37. The Court denied Walmart's motion for leave to file a reply brief in support of its Motion to Dismiss. ECF Nos. 42, 43.

25. On April 5, 2023, Walmart filed a Notice of Supplemental Authority (ECF No. 47), to which Plaintiff and Class Counsel, promptly, on that same day, drafted and filed their response (ECF No. 48).

26. While settlement negotiations and the mediation process were ongoing (discussed *infra*), the parties continued to litigate on a dual-track basis.

27. On July 6, 2023, the Court granted in part and denied in part Walmart's motion to dismiss the Complaint. ECF No. 52. The Court's Motion to Dismiss Order did not dismiss the FDUTPA claim, however, and the Court ordered that:

a. Claims were barred by the settlement in *Kukorinis I*, specifically, claims "that were based on transactions occurring before August 26, 2020, where the deception concerned the total price of sold-by-weight products inaccurately calculating the unit price, are barred by the settlement in the first action." *Id.* at 12.

- b. Count III of the Complaint, which asserted violations of various states' consumer protection statutes, was dismissed without prejudice. *Id.* at 14.
- c. Plaintiff's claim for unjust enrichment was dismissed. *Id.* at 25-26.
- d. The Court's Motion to Dismiss Order granted Plaintiff leave to file an Amended Complaint as to Count III. *Id.* at 26.

28. Upon reviewing the Court's Motion to Dismiss Order, Plaintiff and Class Counsel immediately began the preparation of the Amended Complaint. The detailed 118-page, 250-paragraph Amended Complaint was filed on July 20, 2023, and asserted claims on behalf of a nationwide class and under certain states' consumer protection statutes. ECF No. 56.

29. The parties promptly conducted written and telephonic conferrals (including a Local Rule 3.01(g) conferral on August 1, 2023) with respect to Walmart's anticipated bases for its forthcoming motion to dismiss the Amended Complaint. Among other things, Walmart asserted that: (i) certain allegations and claims referenced in the Amended Complaint included purchases barred pursuant to the Court's Motion to Dismiss Order, and (ii) as a matter of law, Plaintiff cannot assert claims on behalf of a nationwide class under the FDUTPA because the FDUTPA only applies to purchases that occurred in Florida, not nationwide. On August 10, 2023, Walmart moved to dismiss Count III of the Amended Complaint. ECF No. 60.

30. Plaintiff and Class Counsel promptly reviewed, researched, and drafted the brief in opposition to Walmart's motion to dismiss and filed it on August 31, 2023. ECF No. 63. Upon notification that the parties had reached a settlement-in-principle,

the Court denied, without prejudice, Walmart's motion and did not reach the merits of the motion. ECF No. 65.

***First Round of Discovery Requests***

31. Class Counsel began discovery in earnest and contemporaneous with addressing Walmart's first Motion to Dismiss.

32. Informed by Class Counsel's investigation, Class Counsel prepared and on February 8, 2023, served on Walmart forty detailed requests for production. These requests sought, among other things, documents and data relevant to liability, damages, and class certification. For example, Class Counsel sought documents and information concerning: (i) the transactions, products, labels, and receipts detailed in the Complaint; (ii) Walmart's POS Systems; and (iii) Walmart's policies and procedures for labeling and pricing the affected products.

***Initial Disclosures***

33. On February 13, 2023, Plaintiff served detailed initial disclosures, which were prepared based on Class Counsel's research using publicly available information about Walmart, Walmart's POS Systems, and Walmart current and former employees with possible relevant information.

34. On the same day, Walmart also served its initial disclosures. Plaintiff and Class Counsel reviewed the initial disclosures, and thereafter sent written correspondence to, and held telephonic conferrals with, Walmart concerning the completeness of its initial disclosures.

***Dual Tracking Fact and Expert Discovery with Settlement Discussions***

35. On February 28, 2023, the parties held an in-person, all day meeting in Philadelphia during which Class Counsel and Walmart: (a) conducted a detailed conferral concerning each of the Plaintiff's 40 requests for production and Walmart's objections and/or questions as to each; and (b) discussed settlement and exchanged information in anticipation of mediation.

36. Subsequently, Class Counsel drafted and sent several letters and emails concerning discovery generally and Plaintiff's requests for production. On March 20, 2023, Walmart served 64 pages of objections to Class Counsel's requests for production, along with narrative responses, which described, for example, certain functions of and data included in POS System.

37. Contemporaneously, Class Counsel drafted and sent letters and emails concerning the settlement-related information Walmart provided during the February 28, 2024 in-person meeting, including to outline an initial proposed framework, action-items, and subjects to be addressed as part of the parties' settlement discussions.

38. In addition to conducting written and telephonic conferrals with Walmart concerning the documents and information requested, during this time Class Counsel prepared: (i) Confidentiality Agreement; (ii) ESI Protocol; and (iii) drafts of additional discovery requests, interrogatories, and a form of a Rule 30(b)(6) deposition notice.

39. On March 23, 2023, the parties filed their Joint Motion seeking entry of the ESI Protocol by the Court and provided the Court with a copy of the executed Confidentiality Agreement. ECF No. 44.

40. The parties continued to dual track litigation and mediation, for example, on July 27, 2023, Plaintiff served Walmart with a Rule 30(b)(6) deposition notice, which included 17 detailed topics and many with numerous subtopics. Subsequently, the parties conducted written and telephonic conferrals concerning the Rule 30(b)(6) Notice, including to identify potential witnesses and calendar dates for the depositions.

41. In addition, Class Counsel was working on expert discovery, including working with Mr. Pohl with respect to his class and damages expert report. Plaintiff's experts' reports were to be served on Walmart on November 30, 2023 pursuant to the Court's Amended Case Management and Scheduling Order. *See* ECF No. 59.

***Data Production***

42. After significant conferral between the Parties, Walmart produced over 100 gigabytes of data in this Litigation. Descriptions of the various data productions are below in subparagraphs (a)–(e). Walmart initially produced this data pursuant to Federal Rule of Evidence 408, but as the litigation proceeded and at Class Counsel's request, on August 11, 2023, Walmart re-produced them without the Rule 408 designation (but designated as Highly Confidential under the parties' confidentiality agreement).

a. On April 19, 2023, Walmart produced an exemplar of transactions for Weighted Goods.

b. On May 12, 2023, Walmart produced sales data for Bagged Citrus, but excluding Navel Oranges, for Walmart Stores nationwide from October 13,

2018 to April 28, 2023. This data included, for example, the number of Bagged Citrus sold and its actual weight.

c. On May 14, 2023, Walmart produced data for Weighted Goods transaction from over 4,000 Walmart Stores nationwide covering the period from June to December 2022. This included 450 million lines of data. The data did not provide personally identifying or contact information of the purchaser associated with each transaction.

d. On June 5, 2023, Walmart then produced additional data for Weighted Goods transaction from Walmart Stores nationwide covering July 2019, 2020, and 2021 for Walmart Stores nationwide.

e. On June 15, 2023, Walmart produced sales data for Bagged Citrus, this time for navel oranges, for Walmart Stores nationwide from June to October 2019, 2020, 2021, and 2022. This data included, for example, the number of bags of navel oranges sold and their actual weight.

43. Walmart produced over 1,000 pages of documents, plus schedules providing detailed information, *inter alia*, about Walmart Stores and the affected Weighted Goods and Bagged Citrus.

***Estimated Range of Damages***

44. Plaintiff's data and damages expert, Mr. Pohl, aided Class Counsel in the interpretation and analysis of the data and calculation of potential damages.

45. From the data analysis, which reflected billions of transactions, Class Counsel estimates that there are millions of Class Members.

46. The data analysis reflected that during the Settlement Class Period:
- a. there was not an overcharge on every Weighted Good and Bagged Citrus purchase;
  - b. the average purchase price of Weighted Goods and Bagged Citrus was \$10.30;
  - c. the range of average damage was \$1.22 to \$1.78 for each Weighted Good and Bagged Citrus for which there *was* an overcharge; and
  - d. the alleged wrongdoing caused a 2% overcharge on the total amount of Weighted Goods and Bagged Citrus sold by Walmart.

47. From the data, Class Counsel estimated that the maximum recovery, assuming Plaintiff was completely successful through trial and appeals in pursuing a certified nationwide class, ranged between \$331 million and \$421 million for a nationwide class. The \$331 million assumes that the settlement in *Kukorinis I* barred certain of the Settlement Class' claims, and the \$421 million estimate assumes none were barred. *See supra* ¶¶ 22, 23, 27.a., 29.

### ***Mediation***

48. Contemporaneously with actively litigating this case, the parties began settlement discussion in late 2022 and proceeded with exchanging information about Plaintiff's claims in earnest in 2023.

49. The Parties engaged the services of Robert Meyer, Esquire, an experienced and nationally recognized mediator with JAMS, who is based in Southern California. *See* <https://www.jamsadr.com/meyer/>. In addition to extensive

experience mediating settlements of complex litigation, Mr. Meyer has specifically mediated settlements in numerous class actions against retailers and manufacturers of consumer products, including claims of product defects, pricing misrepresentation, and unfair competition. *Id.*

50. In advance of the first mediation session, held in Los Angeles on May 23, 2023, Plaintiff and Class Counsel prepared a detailed mediation statement for the mediator addressing various issues including liability and damages based on work done with Mr. Pohl.

51. The parties did not reach a settlement during the May 23 mediation but agreed to continue discussions with Mr. Meyer's assistance, exchange additional information, and scheduled a second mediation to continue settlement negotiations.

52. On June 16, 2023, the parties held a second mediation with Mr. Meyer by Zoom.

53. In advance of the June 16, 2023 mediation sessions, Plaintiff and Class Counsel prepared a detailed supplemental mediation statement for the mediator addressing various issues including the additional information produced and updates to the liability and damages based on work done with Mr. Pohl.

54. The parties did not reach a settlement during the June 16 mediation, but the parties continued to dual track litigation (as discussed herein) and negotiate terms of a proposed settlement with the assistance of Mr. Meyer for the next three months.

55. Also, after each of the two formal mediation sessions, the parties held numerous conferrals and exchanged, verbally, by Zoom, and in writing, additional

information relevant to the parties' claims and defenses. The negotiations were contentious at times. Many of the conferrals were facilitated by the mediator, during which Mr. Meyer communicated jointly and separately with the parties' counsel.

56. The parties kept the Court apprised of the status of the ongoing mediation and settlement discussions. *See, e.g.*, ECF Nos. 49, 51, 54, 57.

57. During the week of September 18, 2023, through Mr. Meyer, the parties reached an agreement-in-principle to settle all claims asserted in the Action for the non-reversionary payment of \$45 million by Walmart.

58. On September 22, 2023, the parties notified the Court that they reached a settlement-in-principle that would resolve all claims asserted in the Action against Walmart by Plaintiff and on behalf of the Settlement Class. ECF No. 64.

59. In their notification to the Court, the parties also advised the Court that they would promptly work on preparing a formal settlement agreement, and all attendant documentation, and that they intended to file such settlement documentation less than 30-days later, by November 16, 2023. *Id.*

60. The filing also requested that the Court suspend current litigation deadlines set forth in the August 7, 2023 Case Management and Scheduling Order. *Id.* However, the Court denied that request. ECF No. 66.

61. Accordingly, the parties continued to dual-track litigation (discussed *supra*) and documenting the settlement.

***Documenting the Settlement, Confirmatory Discovery, and the Claims Administrator Selection***

62. Plaintiff and Class Counsel promptly drafted a Settlement Agreement that detailed all key terms of the proposed settlement, and all attendant documents, including the Long Form Notice, Summary Notice, Claim Form, Preliminary Approval Order, and Final Approval Order.

63. The parties negotiated, edited, and ultimately finalized the details and terms of the Settlement, as memorialized in the Settlement Agreement and attendant documents, by November 15, 2023.

64. In addition, during this time, Plaintiff prepared and served Walmart with requests for confirmatory discovery focused on affirming critical information relayed to Class Counsel during settlement negotiations. Walmart provided written responses to Class Counsel.

65. Also during this time, Plaintiff and Class Counsel sought, received, and reviewed proposals and bids from several claims administrators with respect to preparing and executing a comprehensive notice plan and conducting all claim administration services for the Settlement and Settlement Class Members.

66. After consideration of competing proposals, Class Counsel selected and proposed the Angeion Group as the Claims Administrator, which the Court approved in the PAO ¶ 11. Angeion, in consultation with Class Counsel, prepared the Notice Plan, which was described in the Declaration of Steven Weisbrot, Esq. Re: Angeion Group Qualifications & The Proposed Notice Plan (“Notice Plan/Weisbrot Decl.”). ECF No. 71-4. As stated in the Notice Plan/Weisbrot Declaration (*id.*), Angeion has

extensive experience in serving as the notice and claims administrator in complex class actions.

***Plan of Allocation***

67. Class Counsel, in consultation with Mr. Pohl and based on the liability and damages' analyses conducted on Walmart's data, derived the plan of allocation, as set forth in the Settlement Agreement at paragraph 5.4(a)(i)–(v).

68. The data analysis reflected that during the Settlement Class Period:

- a. there was not an overcharge on every Weighted Good and Bagged Citrus purchase;
- b. the average purchase price of Weighted Goods and Bagged Citrus was \$10.30;
- c. the range of average damage was \$1.22 to \$1.78 for each Weighted Good and Bagged Citrus *for which there was* an overcharge; and
- d. the alleged wrongdoing caused a ***2% overcharge on the total amount*** of Weighted Goods and Bagged Citrus sold by Walmart.

69. The Plan of Allocation is based on the foregoing data analyses and the number of Bagged Citrus and/or Weighted Goods that a Settlement Class Member attests to having purchased during the Settlement Class Period or can document. SA ¶ 5.4.

70. The Settlement payments that eligible claimants may receive (as shown on the Claim Form and in the SA ¶ 5.4) fall into two categories: Option 1 – receipts not required; and Option 2 – receipted option.<sup>2</sup>

71. With respect to Option 1 (receipts not required), the claim options are based on reasonable assumptions about the number of Weighted Goods and/or Bagged Citrus products purchased over the Class Period and that Settlement Class Members paid on average \$10.30 for each Weighted Good and Bagged Citrus product. *See supra* ¶ 68.

a. Without documentation, under Option 1, Settlement Class Members are eligible to submit a Claim Form attesting to having Purchased up to 50, 75, or 100, or more than 100 Weighted Goods and/or Bagged Citrus products, making them eligible for payments of \$10, \$15, \$20, and \$25, respectively (subject to proration). SA ¶¶ 5.4(a)(i)–(iv).

b. So, for example, if someone attests that they purchased 76-100 Weighted Goods and/or Bagged Citrus, the proposed settlement payment is \$20. The assumptions are applied as follows: 100 products x \$10.30 = \$1,030 x 2% = \$20 (subject to the disclosed pro rata reduction/increase).

c. Based on the data-derived assumptions, the \$20 is an estimate of the claimants' damage, without requiring receipts to document the actual purchases and prices paid.

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<sup>2</sup> The Notice informed Settlement Class Members that they may be able to look up their receipts on Walmart's website. SA Ex. 1A at 8, ECF No. 71-2.

d. Option 1, therefore, in the context of a proposed compromise and settlement, was structured in a way to give Settlement Class Members a reasoned and fair alternative to otherwise requiring that they submit proof of purchases and the prices paid for all Weighted Goods and/or Bagged Citrus products, in order to submit a claim.

72. Alternatively, Option 2 (the receipt option), is based on the data-driven assumption that the alleged wrongdoing caused a 2% overcharge on the total amount of Weighted Goods and Bagged Citrus sold by Walmart. *See supra* ¶ 68.

a. If a Settlement Class Member has receipts documenting purchases of Weighted Goods and/or Bagged Citrus and the amounts paid, such Settlement Class Member is able to submit a Claim Form with such information to receive 2% of the total price of all of those documented purchases submitted, up to \$500 (subject to pro rata increase or decrease). SA ¶ 5.4(a)(v).

b. Therefore, for example, if someone has receipts showing proof of paying \$2,000 in total for the Weighted Goods and/or Bagged Citrus, then under Option 2, the claim submitted would be for 2% of \$2,000, or \$40 (subject to pro rata increase or decrease).

***The Settlement is Fair, Reasonable, Adequate and in the Best Interests of the Settlement Class***

73. The Settlement was reached after Plaintiff and Class Counsel considered, broadly: the substantial benefits provided under the proposed Settlement; the uncertain outcome and the risk of any litigation, especially in complex consumer actions,

including the difficulties and delays inherent in such litigation; and Walmart's defenses and arguments, discussed above, and including with respect to whether a nationwide class, or any class, could be certified in this Action.

74. Further, the Settlement was reached after Class Counsel's extensive investigation into the facts and law underlying the claims, as described herein.

75. Moreover, as described herein, the Settlement resulted from extensive arm's-length negotiations between experienced counsel with an understanding of their respective positions in this litigation, assisted by Mr. Meyer, a highly experienced mediator.

76. The Class Settlement Amount of \$45 million is a substantial and outstanding result. From the data, Class Counsel estimated that the maximum recovery, assuming Plaintiff was completely successful through trial and appeals for a certified nationwide class, ranged between \$331 million and \$421 million. The \$331 million assumes that the settlement in *Kukorinis I* barred certain of the Settlement Class' claims, and the \$421 million estimate assumes none were barred. *See supra* ¶¶ 22, 23, 27.a., 29. The Settlement Amount of \$45 million, therefore, represents a recovery of between 11% and 14% of estimated damages.

77. CSKD has a significant depth of experience and has successfully litigated complex class actions for over 30 years and served as class counsel in actions that achieved substantial recoveries for classes of consumers and investors. *See* <https://chimicles.com/kimberly-donaldson-smith/> ; <https://chimicles.com/nicholas-e-chimicles/> ; <https://chimicles.com/zachary-p->

[beatty/](#). The actions listed here are representative of Class Counsels' efforts in complex litigation:

a. *Orrstown Financial Services, Inc., et al, Securities Litig.*, Case 12-cv-00793 (M.D. Pa) (litigating on behalf of shareholders for nearly ten years, including successful appeals to the Third Circuit, in a manner the court described as “relentless and effective,” and recovering a \$15 million settlement that received final judicial approval in May 2023).

b. *Livingston v. Trane U.S. Inc.*, No. 2:17-cv-06480 (D.N.J.) (securing multimillion-dollar settlement providing repair reimbursements, extended warranty coverage, and free service for hundreds of thousands of owners of defective air conditioners that received final judicial approval in August 2020).

c. *Milliken v. American Realty Capital Hospitality Advisors, LLC et al.*, No. 18-cv-1757 (S.D.N.Y) (recovering a \$15 million settlement that received final judicial approval in June 2020).

d. *In re MyFord Touch Consumer Litig.*, No. 13-cv-03072 (N.D. Cal.) (CSK&D served as court-appointed co-lead counsel in this consumer class action concerning allegedly defective MyFord Touch infotainment systems, which settled for \$17 million shortly before trial and received final judicial approval in December 2019)

e. *Ferrer, et al. v. CareFirst, Inc., et al*, No. 1:16-cv-02162 (D.D.C.) (securing for CareFirst insureds payments on all denied (or partially denied) claims for breastfeeding and lactation support and counseling services, an ACA

preventive service, and changes to CareFirst's coverage policy that received final judicial approval in April 2019).

f. *Roth v. The Phoenix Companies, Inc. and U.S. Bank National Association, in its capacity as Indenture Trustee*, No. 650634/2016 (N.Y. Sup. Ct.) (CSKD secured material benefits for Bondholders, including, most significantly, ongoing access to material financial and corporate information which increased the value of the Bonds by \$17.5 million and secured ongoing liquidity for the Bonds, and in approving the settlement, the Court stated that "I think the plaintiffs were successful in getting everything they could have gotten .... I think it's a great settlement." The settlement received final judicial approval in March 2017).

g. *W2007 Grace Acquisition I, Inc., Preferred Stockholder Litigation*, No. 2:13-cv-2777 (W.D. Tenn.) (recovering a settlement valued at over \$76 million for current and former W2007 Grace preferred stockholders that received final judicial approval in December 2015).

h. *In re Empire State Realty Trust, Inc. Investor Litigation*, No. 650607/2012 (N.Y. Sup. Ct.) (recovering a \$55,000,000 cash settlement fund and \$100 million tax savings for the Empire investors that received final judicial approval in May 2013).

i. *Lockabey v. American Honda Motor Co.*, No. 37-2010-87755 (Superior Ct., San Diego) (recovering a settlement, which received final judicial approval in March 2012, valued at over \$170 million in a consumer action

involving false advertising claims relating to the sale of Honda Civic Hybrid vehicles as well as claims relating to a software update to the integrated motor assist battery system of the HCH vehicles. As a lead counsel, Mr. Chimicles led a case that, in the court's view, was "difficult and risky" and provided "significant public value.").

j. *City of St. Clair Shores General Employees Retirement System v. Inland Western Retail Real Estate Trust, Inc., et al.*, No. 07-cv-6174 (N.D. Ill.) (recovering a \$90 million reduction in fees being paid to affiliates for the benefit of Inland shareholders that received final judicial approval in November 2010).

k. *CNL Hotels & Resorts Inc. Federal Securities Litig.*, No. 04-cv-1231 (M.D. Fla.) (recovering a \$35,000,000 cash settlement fund and a \$225 million savings for the CNL shareholders that received final judicial approval in August 2006). **The Honorable Gregory A. Presnell, United States District Court for the Middle District of Florida**, stated that "Plaintiffs' counsel pursued this complex case diligently, completely and professionally" and "achieved a successful result." "[In settling the federal securities law claims], a substantial benefit [was] achieved (estimated at approximately \$225,000,000)" and "this lawsuit was clearly instrumental in achieving that result."

1. Mr. Chimicles as Lead Trial Counsel assisted by Ms. Donaldson-Smith, , achieved the first and remains the largest sustained jury verdict (of \$185 million) in a securities fraud action and jury trial after the enactment of the Private Securities Litigation Reform Act (PSLRA). *In Re Real Estate Associates*

*Limited Partnership Litigation*, No. 98-cv-7035 (C.D. Cal.). After a six-week-long jury trial in federal court in Los Angeles, the jury returned its verdict of \$185 million (half in compensatory damages; half in punitive damages), which was ranked among the top 10 verdicts in the nation in 2002. After the court reduced the punitive damages award because it exceeded California's statutory limits, the case settled for \$83 million, representing full recovery for the losses of the investors. The Honorable Dean D. Pregerson, United States District Court for the Central District of California, granted final approval of the settlement in November 2003, after a Plaintiffs' verdict at trial, and remarked: "[The verdict and settlement qualified] as an exceptional result" in "a very difficult case ... on a scale of 1 to 10, it would be a 9 or 10." "Certainly, there have been no objections, and I think Plaintiffs' counsel has served the class very well."

***Motion for Preliminary Approval and Supplemental Filing regarding Notice***

78. On November 16, 2023, Plaintiff and Class Counsel filed the Settlement Agreement (ECF Nos. 71-2) with their Motion for Preliminary Approval of the Class Action Settlement (ECF No. 71).

79. As also noted in Plaintiff's Motion for Preliminary Approval, requiring direct Email Notice be sent to Walmart customers who are likely to have purchased Weighted Goods and Bagged Citrus, was a significant Settlement term negotiated and insisted upon by Plaintiff. Its aim, as noted, was and is to maximize Settlement Class Members' participation in the Settlement.

80. On January 9, 2024, Plaintiff filed a Supplemental Submission regarding the Emailed Notice, including Walmart's identification of approximately 81.4 million unique records with emails. *See* ECF No. 74 at 1-2.

81. Plaintiff and Class Counsel also prepared and provided the Court with an updated Preliminary Approval Order that included proposed deadlines and dates for (a) the Claims Administrator to conduct emails cleansing and validation, to begin sending direct Email Notices, to commence the comprehensive Media Notice and launch the Settlement Website, to send Reminder Email Notices, and to publish the Summary Notice over PRNewswire; (b) the submission of Claim Forms; and (c) the Final Approval Hearing. ECF No. 74 at 5-6.

***Entry of the Preliminary Approval Order***

82. On January 19, 2024, the Court entered the Order Preliminarily Approving the proposed Settlement. ECF No. 75.

***Payment of the Class Settlement Amount***

83. On February 1, 2024, Walmart paid the Class Settlement Amount of \$45 million into the Class Settlement Fund, which has been accruing interest to the benefit the Settlement Class. *See* SA ¶¶ 2.11, 2.17, 5.1.

***Notice Plan, Settlement Website, and Responding to and Assisting Settlement Class Member Inquiries***

84. Since the Court entered the Preliminary Approval Order, Class Counsel has undertaken to oversee and effectuate (as applicable) its provisions.

85. The entry of the PAO set the end date for the Class Period, as well as set the dates for key Settlement-related deadlines, such as the deadline to file Claim Forms and the date of the Final Approval Hearing. Accordingly, Class Counsel and the Claims Administrator reviewed and updated the various forms of notice to reflect the Settlement Class Period and the dates for key deadlines and events.

86. Class Counsel reviewed the Settlement Website, which the Claims Administrator posted live by February 20, 2024. *See also* Weisbrot Final Approval Decl. (“Weisbrot FA Decl.”), filed herewith, ¶¶ 27-31.

87. Class Counsel reviewed the banner ads, social media ads, and paid search ads that were part of the state-of-the-art digital Media Notice campaign conducted by the Claims Administrator, beginning on February 20, 2024, in accordance with the PAO. *See also id.* ¶¶ 23-25.

88. Class Counsel also worked with the Claims Administrator to ensure that the Email Notice timely began on February 20, 2024, and to the Reminder Email Notice, thereafter, in accordance with the PAO. *See also id.* ¶¶ 6-17.

89. It is also notable that separate from, and in addition to the Notice Plan, the Settlement has been widely reported upon by nationwide news outlets, including nationwide TV broadcasts—ABC World News Tonight and Good Morning America—and the New York Times.<sup>3</sup>

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<sup>3</sup>*See, e.g.*, USA Today, <https://www.usatoday.com/story/money/2024/02/28/walmart-settlement-weighted-groceries-class-action-lawsuit/72770499007/>; Des Moines Register, <https://www.desmoinesregister.com/story/news/crime-and-courts/2024/03/07/walmart-weighted-goods-bagged-citrus-class-action-lawsuit-how-to-file-claim/72878073007/>; ABC

90. Class Counsel also communicates regularly with and receives weekly reports from the Claims Administrator concerning, among other things, the number of Claim Forms submitted, the number of visits to and unique users of the Settlement Website, and the number of incoming calls to the Claims Administrator.

91. In addition, as the Court is aware, potential Settlement Class Members have also provided Claim Forms to the Court. I provided the Claims Administrator with the Court's March 28, 2024 Order regarding the Claim Forms sent to the Court. Class Counsel consulted with the Claims Administrator on this issue and reviewed all instructions on or associated with the Claim Form to confirm that there was no instruction being given that the Claim Form should be mailed to the Court.

92. Also, as may be expected from a Settlement that has such an extensive Notice Plan and has received media coverage, Class Counsel has had numerous email and telephonic communications with persons identifying as potential Settlement Class Members, responding to their inquiries about the Settlement, the Action, and submitting Claim Forms.

93. Class Counsel will continue to expend substantial time in working with the Claims Administrator throughout the remainder of the Notice period, and in

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27, <https://www.abc27.com/news/consumer/walmart-agrees-to-45-million-settlement-over-weighted-groceries-will-you-qualify/?nxsparm=9>; 10 Tampa Bay News, <https://www.youtube.com/watch?v=8NB69srnEeE>; WKYC Channel 3, <https://www.youtube.com/watch?v=Jg8bon1iP10>; Daytona Beach News Journal, <https://www.news-journalonline.com/story/news/2024/02/29/walmart-weighted-groceries-settlement-eligible-claim-florida/72786628007/>; Fox 29 Philadelphia, <https://www.fox29.com/news/walmart-settlement-could-you-be-eligible-45-million>.

connection with the Claims Administrator's processing, review, and validation of the Claim Forms, and thereafter, in connection with the distribution of the Net Class Settlement Fund.

94. Class Counsel also expects to continue to receive and respond to email and telephonic communications from Settlement Class Members concerning the Settlement, the Claim Form, and the status of the claims review and validation process.

95. As of May 8, 2024, pursuant to PAO ¶ 16, the Claims Administrator has been paid \$1,146,624.90 from the Class Settlement Fund for its efforts to date in effectuating the Notice Plan and Claims Administration to date. Assuming a total of 3.5 million to 4.5 million total claims submitted, Class Counsel estimates that the additional cost of claims administration may range between approximately \$1.1 million and \$1.45 million, respectively.

***Opt-Outs and Objections***

96. The Opt-out and Objection Deadlines are May 22, 2024.

97. To date, only 113 Settlement Class Members have opted out. *See* Weisbrot FA Declaration ¶ 40.

98. To date, there has been only one objection sent to Class Counsel, which also was addressed to the Court (but has not yet been docketed in the Action). *See* Weisbrot FA Decl. Ex. H. The Settlement covers in-store purchases and does not include or otherwise affect online purchases of the Weighted Goods and Bagged Citrus (*see* SA ¶ 2.37, 2.44), because, among other things, (i) the misconduct alleged occurred

inside the Walmart store, including that persons were exposed to and relied on the in-store pricing information (including at the register), and (ii) Walmart's online terms and conditions include an arbitration agreement and class action waiver. That is why the action, discovery, and Settlement exclude Walmart online purchases.

99. Pursuant to the PAO ¶ 34, Class Counsel will file a brief on June 5, 2024, updating the Court on opt-outs and addressing objections.

*Class Counsel's Expenses and Time Incurred*

100. This Declaration has summarized the work undertaken by Plaintiff and Class Counsel and in connection with the initiation, investigation, prosecution and settlement of this case, which supports the proposed fee award.

101. Class Counsel worked vigorously, efficiently, and under tight deadlines and committed significant time and resources of the Firm (including two of the Firm's Senior Partners, myself and Mr. Chimicles) to successfully prosecute this case from pre-suit investigation through settlement. These efforts, as described included researching and drafting the initial and amended complaints, briefing oppositions to motions to dismiss, conducting fact and expert discovery, identifying, engaging and working with Mr. Pohl, engaging a private mediator, conducting settlement negotiations and participating in several mediation sessions, and preparing detailed settlement documentation. Class Counsel also, as expected in a Class Action Settlement of this size, has continued to expend efforts in effectuating the PAO and aiding and addressing questions from Settlement Class Members.

102. Class Counsel has at all times assumed the responsibility of litigating the action on a contingent-fee basis, such that any fee would be paid, and the expenses incurred reimbursed, only upon achieving a recovery for the benefit of the Plaintiff and Settlement Class Members by settlement or judgment. Expense items are billed separately, and such charges are not duplicated in Class Counsel's billing rates.

103. CSKD has incurred a total of \$114,870.41 in litigation expenses through April 30, 2024 (inclusive of travel and lodging already booked and charged to the Firm for the June 12, 2024 Hearing):

<b>Category</b>	<b>Amount</b>
Expert Fees – Pohl/ Herculean Litigation Solutions LLC	\$78,145.00
JAMS Mediation Fees – Robert A. Meyer, Esq.	\$20,640.70
Travel/Lodging/Meals	\$7,290.67
Computer Research – LEXIS & PACER Fees	\$5,487.36
Internal Reproduction/Photocopies	\$1,729.50
Filing & Special Admission Fees	\$852.00
Clerical Overtime	\$225.34
Subpoena Service	\$188.20
Postage/Express Delivery/Messenger	\$187.91
Evidence Purchased by Class Counsels' Agents	\$123.73
<b>Total:</b>	<b>\$114,870.41</b>

104. The expenses incurred by CSKD in this action are reflected on the books and records of my Firm which are prepared from expense vouchers, check records, and other source materials and represent an accurate recordation of the expenses CSKD incurred.

105. Of CSKD’s expenses, the majority of the expenses are associated with (i) expenses incurred for the mediation and (ii) expert fees of Mr. Pohl, which included his extensive review and analysis of the data produced, as discussed *supra*.<sup>4</sup> Likewise, virtually all of the Travel/Lodging/Meal expenses relate to: (i) the February 2023 in person meeting with defense counsel in Philadelphia; (ii) the in -person mediation session in Los Angeles (both discussed *supra*); and (iii) the June 12, 2024 hearing. The expenses do not include any currently unbilled future expenses. The category titled “Evidence Purchased by Class Counsels’ Agents” refers to certain expenses incurred by the individuals referenced in paragraph 8.b., *supra*.

106. CSKD’s expenses incurred and reported are reasonable and were necessary for the successful prosecution of the Action and in achieving the Settlement.

107. The total number of hours expended on this litigation by CSKD as of April 30, 2024, is 3,526.40 hours, consisting of attorneys’ time and other professional staff time, for a lodestar of \$3,418,859.00:

NAME	STATUS	HOURLY RATE	HOURS	LODESTAR
Nicholas E. Chimicles	Partner	\$1,350.00	975.50	\$1,316,925.00
Kimberly M. Donaldson-Smith	Partner	\$1,100.00	1,231.60	\$1,354,760.00
Stephanie E. Saunders	Former Associate	\$750.00	100.1	\$75,075.00
Zachary P. Beatty	Associate	\$700.00	852.40	\$596,680.00

<sup>4</sup> See *In re Mednax Servs., Inc., Customer Data Sec. Breach Litig.*, No. 21-MD-02994-RAR, 2021 WL 10428229, at \*2 (S.D. Fla. Oct. 9, 2021) (recognizing that “discovery in complex class actions has the potential to consume vast resources.”).

Samantha Barrett	Law Clerk	\$210.00	36.00	\$7,560.00
Davon P. Gaskins	Paralegal	\$325.00	69.50	\$22,587.50
Nathan L. Thomas	Former Legal Assistant	\$60.00	181.40	\$10,884.00
Attorneys and Professional Staff with Less Than 30 Hours Each, Aggregated			79.90	\$34,387.50
<b>TOTALS</b>			<b>3,526.40</b>	<b>\$3,418,859.00</b>

108. The foregoing schedule was prepared from contemporaneous, daily time records recorded in tenths of an hour and regularly prepared and maintained by CSKD, which are available at the request of the Court. CSKD's lodestar figures are based upon the firm's current hourly billing rates, set forth above, which rates do not include charges for expense items. For personnel who are no longer employed by CSKD, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment by CSKD.

109. The hourly rates for CSKD's attorneys and professional legal staff are the same as the regular current rates charged for their services in non-contingent matters and/or consistent with rates submitted in other fee applications for complex litigations, including those listed in Paragraph 77, *supra*, and in the following matters: *In re Philips Recalled CPAP, Bi-Level PAP, & Mechanical Ventilator Prods. Litig.*, MDL No. 3014, ECF Nos. 2421-2 & 2735 (W.D. Pa. Apr. 25, 2024) (CSKD's current rates submitted in connection with fee petition, which was awarded); *Alessandro Demarco v. Avalon Bay Communities, Inc.*, No. 2:15-628 (D.N.J. July 11, 2017) ("The court, after

careful review of the time entries and rates requested by Class Counsel (including CSKD), and after applying the appropriate standards required by relevant case law, hereby grants Class Counsel's application for attorneys' fees ..."); *Chambers v. Whirlpool Corp., et al.*, 11-1773-FMO (C.D. Cal. (October 11, 2016) (reviewing the hourly rates of CSKD counsel and holding, over Defendants' objections, that "the hourly rates sought by counsel are reasonable."); *In re Freeport-McMoran Copper & Gold Inc.*, No. 8145-VN (Delaware Chancery 2015); *Henderson v. Volvo Cars of N. Am., LLC*, 2013 U.S. Dist. LEXIS 46291 \*4-47 (D.N.J. Mar. 22, 2013) (CSKD rates "are entirely consistent with hourly rates routinely approved by this Court in complex class action litigation."); *City of St. Clair Shores General Employees Ret. Sys. v. Inland Western Retail Real Estate Trust, Inc., et al.*, Case 07 C 6174 (N.D. Ill. 2011); *In re Freeport-McMoran Sulphur, Inc. Shareholder Litig.*, No. 16729, (Delaware Chancery 2006); *In re CNL Hotels & Resorts, Inc. Sec. Litig.*, Case No. 6:04-cv-1231-Orl-31KRS (M.D. Fla. 2006); *I.G. Holdings Inc., et al. v. Hallwood Realty, LLC, et al.*, No. 20283, (Delaware Chancery 2004); *In re Real Estate Associates Limited P'ship Litig.*, No. CV 98-7035-DDP, (C.D. Cal. 2003).

110. Finally, CSKD's lodestar does not include time incurred after April 30, 2024, and expected to be incurred in connection with preparing for and appearing at the final approval hearing, as well as continued oversight and involvement in the claims and settlement administration process, discussed above, which is expected to involve substantial time by Class Counsel.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 8, 2024.

/s/ Kimberly M. Donaldson-Smith  
KIMBERLY M. DONALDSON-SMITH

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

VASSILIOS KUKORINIS, on behalf of  
himself and any others similarly situated,

Plaintiff,

v.

WALMART INC.,

Defendant.

Case No. 8:22-cv-02402-VMC-TGW

**DECLARATION OF STEVEN WEISBROT, ESQ.  
REGARDING CURRENT STATUS OF THE SETTLEMENT NOTICE PLAN, THE  
SETTLEMENT WEBSITE AND TOLL-FREE NUMBER, CLAIM FORMS RECEIVED,  
OPT-OUTS, AND OBJECTIONS**

I, Steven Weisbrot, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am the President and Chief Executive Officer at the class action notice and claims administration firm Angeion Group, LLC (“Angeion”). Angeion specializes in designing, developing, analyzing, and implementing large-scale, un-biased, legal notification plans.
2. My credentials were provided in my prior declaration describing the proposed notice plan (“Notice Plan Declaration”) (Dkt. No. 71-4).
3. Pursuant to this Court’s Preliminary Approval Order (Dkt. No. 75), Angeion was appointed to serve as the Claims Administrator in connection with the above-captioned litigation. In that role, among other tasks, Angeion is responsible for (1) the implementation and effectuation of the Notice Plan; (2) receiving and processing Claim Forms; (3) receiving and maintaining any requests for exclusion from the Settlement; (4) administering settlement payments; and (5) performing other duties pursuant to the Preliminary Approval Order and the Settlement Agreement.

4. The purpose of this declaration is to provide the Court with the current status of and information regarding the Notice Plan, Claim Forms, exclusions, and objections received to date.

5. In addition, pursuant to ¶ 15 of the Preliminary Approval Order, Angeion will provide Class Counsel with a Declaration regarding the completion of the Notice plan, which Class Counsel shall serve on Walmart’s Counsel and file with the Court by June 5, 2024 (“Supplemental Declaration”).

**SETTLEMENT CLASS MEMBER DATA AND EMAIL NOTICE**

6. On or about December 23, 2023, Angeion received from Walmart the list of persons who Walmart identified as having likely purchased at least one Weighted Good or Bagged Citrus product during the Settlement Class Period and for whom Walmart has an email address. The list contained first name, last name, email address, and a unique customer ID number.

7. On or about January 30, 2024, Angeion received from Class Counsel a list of 15 potential class members who contacted their firm. Angeion was directed to add these individuals to the overall list of potential class members.

8. Angeion analyzed the potential class member data, removing duplicative records. This resulted in a total of 81,429,284 unique records (the “Unique Records”).<sup>1</sup> Each Unique Record was assigned a Notice Identification number for purposes of submitting their claim, and then for tracking their claim, as part of the proposed Settlement (the “Unique Notice ID”).

9. Angeion identified a total of 134,141,561 unique email addresses that are associated with the 81,429,284 Unique Records (“Class Email List”).<sup>2</sup>

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<sup>1</sup> The Supplemental Declaration of Steven Weisbrot Esq. re: Proposed Notice Plan (Dkt. No. 74-3, ¶ 5) described a total of 81,429,269 Unique Records based on Walmart’s customer records. The total number of Unique Records described herein includes the list of fifteen (15) potential class members that was provided by Class Counsel.

<sup>2</sup> The total number of unique email addresses are a result of Walmart customers having more than one (1) email address on file with Walmart. This total also includes the fifteen (15) potential class members who contacted Class Counsel.

10. After the Court entered the Preliminary Approval Order, Angeion subjected the email addresses on the Class Email List to a cleansing and validation process.

11. The email cleansing process removed extra spaces, fixed common typographical errors in domain names, and corrected insufficient domain suffixes (*i.e.*, gmail.com to gmail.com, gmail.co to gmail.com, yahoo.com to yahoo.com, etc.).

12. The email addresses were then subjected to an email validation process whereby each email address was compared to known bad email addresses.<sup>3</sup> Email addresses that were not designated as a known bad address were then further verified by contacting the Internet Service Provider (“ISP”), where possible, to determine if the email address exists.

13. The cleansing and validation process described above identified 13,582,980 invalid email addresses. Angeion flagged these invalid email addresses, resulting in a total of 120,558,581 email addresses that passed the initial validation efforts. It is important to note that the 13,582,980 invalid email addresses identified were all secondary email addresses that were associated with the Unique Records. As a result, each of the 81,429,284 Unique Records had at least one (1) email address that passed the initial validation efforts described above.

14. On February 20, 2024, Angeion began sending the Email Notice to 81,429,284 primary email addresses associated with the Unique Records. Dissemination of the Email Notices was strategically staggered to “prime” the ISPs for the volume of Email Notices to be sent, thus reducing the risk that the Email Notices would be blocked.

15. Of the 81,429,284 Email Notices sent to the primary email address associated with each Unique Record, 6,204,468 Email Notices bounced-back and could not be delivered. For 4,049,642 of

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<sup>3</sup> Angeion maintains a database of email addresses that were returned as permanently undeliverable, commonly referred to as a hard bounce, from prior campaigns. Where an address has been returned as a hard bounce within the last year, that email is designated as a known bad email address.

the bounced Email Notices, the corresponding Unique Records did not have any additional valid email addresses. As such, no further notice attempt could be made for these Unique Records.

16. For the remaining 2,154,826 bounced Email Notices, Angeion caused the Email Notice to be sent to any additional valid email addresses associated with the corresponding Unique Records (up to ten more). This resulted in sending Email Notice to the 3,749,990 additional email addresses that were associated with the Unique Records whose primary email address resulted in a bounce-back.

17. The Email Notice campaign, as described herein, was completed on April 4, 2024. A true and accurate copy of the Email Notice is attached hereto as **Exhibit A**.

#### **REMINDER EMAIL NOTICES**

18. On April 8, 2024, Angeion began disseminating Reminder Email Notices. Angeion has disseminated over 69,989,855 Reminder Email Notices and anticipates that the Reminder Email Notice campaign will be completed on or before May 12, 2024. A true and accurate copy of the Reminder Email Notice is attached hereto as **Exhibit B**.

19. Angeion will report the results of the Reminder Email Notice campaign in its Supplemental Declaration.

#### **PRESS RELEASE**

20. On February 20, 2024, Angeion caused a press release to be issued via PR Newswire. The press release was picked up by a total of 348 media outlets, which have a combined potential audience of approximately 164.2 million.<sup>4</sup> A true and accurate copy of the press release is attached hereto as **Exhibit C**.

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<sup>4</sup> Note: The combined total audience is not de-duped across media platforms.

21. The press release, along with other forms of notice, resulted in a substantial amount of “earned media” (*i.e.*, other media outlets and/or publications will report the story)<sup>5</sup>, which supplemented the comprehensive notice efforts outlined herein, and led to increased awareness and participation amongst members of the Settlement Class.

### **PEOPLE MAGAZINE**

22. On March 18, 2024, Angeion caused notice of the Settlement to be published in *People* magazine.<sup>6</sup> Notice was published in color utilizing a one-half page advertisement size. A true and accurate tear sheet demonstrating the publication is attached hereto as **Exhibit D**.

### **DIGITAL MEDIA CAMPAIGN**

23. On February 20, 2024, Angeion commenced the four-week digital banner ad campaign via desktop and mobile devices to reach the most qualified audience on the websites where potential Settlement Class Members were likely to shop and browse. Settlement Class Members who saw the ads were able to click on the ads to be transferred directly to the Settlement Website. The online digital banner ad program served approximately 181,630,264 impressions<sup>7</sup> with a 0.17% click through rate to the Settlement Website. True and accurate copies of the digital banner advertisements are attached hereto as **Exhibit E**.

24. On February 20, 2024, Angeion commenced the four-week social media ad campaign via Facebook, Instagram, X (formerly Twitter) and Reddit. The social media campaign used an interest-

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<sup>5</sup> See: <https://www.cnet.com/personal-finance/if-youve-shopped-at-walmart-over-the-last-few-years-you-could-claim-up-to-500-in-settlement-cash/>; <https://www.npr.org/2024/04/06/1243257545/walmart-grocery-settlement-cash-payments>; <https://www.washingtonpost.com/business/2024/04/08/walmart-settlement-meat-seafood-do-you-qualify/>; <https://www.nytimes.com/2024/04/05/business/walmart-settlement-overcharge-refund.html>; <https://www.today.com/food/groceries/walmart-weighted-groceries-settlement-rcna146388>; <https://www.cnn.com/2024/04/05/business/walmart-shoppers-class-action-settlement/index.html>; <https://www.cbsnews.com/news/walmart-settlement-claim-how-to-file/>;

<sup>6</sup> As previously reported, *People* magazine has a total audience size of approximately 26.2 million individuals.

<sup>7</sup> One million impressions were geotargeted to Puerto Rico.

based approach which focused on the interests that users exhibit while on these social media platforms. Settlement Class Members who saw the ads were able to click on the ads to be transferred directly to the Settlement Website. The social media ad program delivered 75,682,216 impressions with a 0.21% click through rate to the Settlement Website. True and accurate copies of the social media ads are attached hereto as **Exhibit F**.

25. On February 20, 2024, Angeion commenced the four-week paid search campaign on Google to help drive Settlement Class Members who are actively searching for information about the Settlement to the dedicated Settlement Website. The paid search campaign delivered 115,201 impressions and had a 41.85% click through rate to the Settlement Website.

#### **REACH & FREQUENCY**

26. The comprehensive media notice plan, combined with the direct notice efforts, was designed to deliver an approximate 80.15% reach with an average frequency of 3.25 times each by delivering approximately 394 million impressions. While the final reach percentage and frequency will not be determined until after the Reminder Email Notice efforts are completed, the notice plan remains on pace to meet or exceed the reach percentage it was designed to deliver. Angeion will report the final reach percentage and frequency that is achieved in its Supplemental Declaration.

#### **SETTLEMENT WEBSITE & TOLL-FREE TELEPHONE SUPPORT NUMBER**

27. On February 16, 2024, Angeion established the following website devoted to this Settlement: [www.walmartweightedgroceriesettlement.com](http://www.walmartweightedgroceriesettlement.com) (“Settlement Website”).

28. The Settlement Website was designed to be informative and user-friendly. The Settlement Website prominently identifies and contains: important Settlement-related deadlines and information on the Home page; key documents (including the Notice, Summary Notice and Claim Form (all

available in both English and Spanish), the Preliminary Approval Order, the Settlement Stipulation, and the Amended Complaint); and, answers to a series of “FAQs” (frequently asked questions).

29. The Settlement Website also provides an online claim filing portal whereby Settlement Class Members can complete and submit their Claim Form electronically through the Settlement Website. Settlement Class Members can also download a PDF version of the Claim Form (in both English and Spanish) to complete and submit by mail, in the alternative.<sup>8</sup>

30. In addition, the Settlement Website included examples (*e.g.* FAQ #2) and searchable lists of the Weighted Goods and Bagged Citrus that are the subject of the proposed Settlement. The Settlement Website also features a customized chatbot designed to assist users navigating the Settlement Website and provide assistance with submitting claims. Approximately 16,925 visitors to the website have engaged with the chatbot. The Settlement Website also includes a “Contact Us” page whereby Settlement Class Members can send an email with any additional questions to a dedicated Angeion-monitored email address.

31. Through May 7, 2024, the Settlement Website has had 17,666,468 page views and 13,259,814 sessions by 11,895,809 unique users.

32. On February 13, 2024, Angeion implemented the toll-free hotline devoted to this Settlement. The toll-free hotline apprises Settlement Class Members of their rights and options pursuant to the terms of the Settlement, utilizing an interactive voice response (“IVR”) system that is available in both English and Spanish. Settlement Class Members can listen to responses to frequently asked

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<sup>8</sup> Instruction No. 1 on the Claim Form stated that mailed Claim Forms were to be sent “by U.S. Mail to the following address: *Walmart Weighted Groceries Settlement*, c/o Claims Administrator, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103.” Also, at various places in the Notice, Email Notice, and Settlement Website the Claimants are told not to contact the Court or the Court Clerk about the Notice and Claim Form. Class Counsel provided us with the Court’s March 28, 2024 Order regarding the Claim Forms that were sent to the Court. We reviewed all instructions on or associated with the Claim Form on the Settlement Website and documents to confirm that there was no instruction being given that the Claim Form should be mailed to the Court.

questions and other essential information regarding the Settlement. Settlement Class Members are also able to leave a voicemail to request a call back from a live agent or to request a copy of the Notice or Claim Form be mailed to them.

33. Through May 7, 2024, the toll-free hotline has received over 16,641 incoming calls, totaling over 66,299 minutes. Additionally, potential Settlement Class Members have left over 1,609 voicemails totaling over 1,947 minutes.

### **CLAIM FORM SUBMISSIONS**

34. The deadline for Settlement Class Members to submit a Claim Form is June 5, 2024.

35. Through May 7, 2024, Angeion has received a total of 3,352,493 Claim Form submissions, with 3,349,344 Claim Forms submitted via the Settlement Website and 3,149 Claim Forms received by mail (or through Class Counsel).

36. Additionally, of the 3,352,493 Claim Form submissions received, a total of 390,432 Claim Forms were submitted using the Unique Notice ID from the Emailed Notice, while approximately 526,200 Claim Form submissions have been preliminarily identified by AngeionAffirm as suspected fraud.

37. These Claim Form submissions remain subject to audit and verification by Angeion for (among other things) duplication, validity, completeness, deficiencies, and fraud. Angeion will provide an update regarding the Claim Form submissions received in its Supplemental Declaration.

38. Angeion implemented its proprietary real-time and industry-leading fraud detection system, AngeionAffirm, for this Settlement. AngeionAffirm is a comprehensive solution to identify fraud in real time based on both state-of-the-art technology and analysis of over a decade of historical claims data.<sup>9</sup> AngeionAffirm was developed to combat and overcome the increasingly ever-evolving

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<sup>9</sup> See Notice Plan Declaration, ¶¶ 61 – 64 for additional details regarding AngeionAffirm.

challenge of identifying fraudulent claim submissions while administering class action Settlements.<sup>10</sup> In recent times, cyber criminals and fraudulent actors have utilized a variety of increasingly sophisticated technologies and techniques in their attempt to perpetuate fraud in class action settlements. Many of these criminals may be state-sponsored or otherwise instigated by nefarious domestic or international cartels. Combating and identifying fraudulent claims is necessary to uphold and augment the integrity of the class action claims process, ensuring fair compensation for bona fide claimants, effectively eliminating most meaningful instances of fraud.

39. As a percentage of submitted claims to date, the number of potentially fraudulent claims identified in this matter (approximately 15.8%) is less than what Angeion has seen in other recent settlements it has administered:<sup>11</sup>

Case	Total Claims	Claims Identified as Potentially Fraudulent	Percentage of Potentially Fraudulent Claims	Non-Fraudulent Claims
A	5,310,950	4,965,590	93%	345,360
B	5,402,484	4,846,287	90%	556,197
C	945,536	856,822	91%	88,714
D	8,987,980	8,892,603	99%	95,377
E	3,798,415	3,446,286	91%	352,129
F	668,975	372,207	56%	296,667
G	677,570	323,949	48%	353,621

### **OPT-OUTS AND OBJECTIONS**

40. The deadline for Settlement Class Members to request exclusion from the Settlement is May 22, 2024. As of May 6, 2024, Angeion has received 113 Requests for exclusions (or Opt-Out

<sup>10</sup> See <https://www.law.com/newyorklawjournal/2023/07/26/the-increasing-danger-of-fraudulent-claims-in-class-actionsettlements/>.

<sup>11</sup> If requested, Angeion can provide additional details regarding the identity of the settlements in which AngeionAffirm has been deployed for in camera review or to be submitted under seal, as several of the referenced cases are ongoing at this time.

requests). Attached hereto as **Exhibit G** is a list of the names of the 113 individuals who have requested to be excluded from this Settlement.

41. The deadline for Settlement Class Members to object to the Settlement is May 22, 2024. As of May 7, 2024, Angeion has received 1 timely Objection to the Settlement. The Objection is attached hereto as **Exhibit H**.

### **NOTICE & ADMINISTRATION COSTS**

42. Through March 31, 2024, Angeion has incurred \$1,146,625.06 in costs to provide notice and administration services. Angeion will provide the Court with an update on the notice and administration costs incurred to date in its Supplemental Declaration.

### **CONCLUSION**

43. The Notice Plan implemented in this Settlement provided for direct email notice, dissemination of reminder notices via email, as well as the implementation of a comprehensive media notice campaign. The Notice Plan also included the implementation of a dedicated Settlement Website and toll-free telephone support to further provide Settlement Class Members with information about their rights and options pursuant to the terms of the Settlement.

44. It remains my professional opinion that the Notice Plan described herein provided full and proper notice to Settlement Class Members before the claims, opt-out, and objection deadlines, providing the best notice practicable under the circumstances, fully compliant with due process and Fed. R. Civ. P. 23.

Dated: May 8, 2024

  
STEVEN WEISBROT

# Exhibit A

**From:** Claims Administrator <donotreply@walmartweightedgroceriessettlement.com>  
**Sent:** Tuesday, February 20, 2024 4:01 PM  
**To:**  
**Subject:** Notice of Kukorinis v. Walmart, Inc. Proposed Class Action Settlement

**Notice ID:**

**Confirmation Code:**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA**

***Kukorinis v. Walmart Inc.*, Case No. 8:22-CV-02402-VMC-TGW  
SUMMARY NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

**TO: All Persons who Purchased Weighted Goods and/or Bagged Citrus in-person at a Walmart retail store, supercenter, or neighborhood market in the United States or Puerto Rico (“Walmart Store”) from October 19, 2018 through and including January 19, 2024 (the “Settlement Class Period”).**

**YOU MAY BE ELIGIBLE FOR A CASH PAYMENT FROM A CLASS ACTION SETTLEMENT. YOUR RIGHTS WILL BE AFFECTED BY THE SETTLEMENT.**

**YOU ARE HEREBY NOTIFIED**, pursuant to an Order of the United States District Court for the Middle District of Florida, that a hearing will be held on **June 12, 2024, at 10:00 am**, before the Honorable Virginia M. Hernandez Covington in Courtroom 14B of the Sam M. Gibbons United States Courthouse, 801 North Florida Avenue, Tampa, Florida 33602, for the purpose of determining (1) whether the proposed Settlement of this Action, reached between the parties, consisting of Forty-Five Million Dollars (\$45,000,000) (the “Class Settlement Amount”) in cash, as set forth in the Settlement Agreement dated November 15, 2023, should be approved as fair, reasonable, and adequate to Class Members; (2) whether the release by Class Members of claims as set forth in the Settlement Agreement should be authorized; (3) whether the proposed plan to distribute the Settlement proceeds is fair, reasonable, and adequate; (4) whether to approve Class Counsel’s request for an award of Attorneys’ Fees, Costs, and Expenses seeking fees up to, but not to exceed, 20% of the Class Settlement Amount, plus reimbursement of costs and expenses (which costs and expenses will not exceed \$200,000) incurred in connection with prosecuting the Action, plus any interest on such attorneys’ fees, costs, and expenses at the same rate and for the same periods as earned by the Class Settlement Fund (until paid); (5) whether this Action should be dismissed with prejudice against Walmart Inc.; and, (6) whether the Judgment and Order of Dismissal should be entered. The date, time, and location of the settlement hearing are subject to change without further notice; any change to the date, time or location of the settlement hearing will be posted on the Settlement website at [www.WalmartWeightedGroceriesSettlement.com](http://www.WalmartWeightedGroceriesSettlement.com).

A Settlement was reached in a class action that alleged that persons who purchased in-person at Walmart Stores certain sold-by-weight meat, poultry, pork, and seafood products (called “Weighted Goods”) and certain organic oranges, grapefruit, tangerines, and navel oranges sold in bulk in mesh or plastic bags (called “Bagged Citrus”) paid more than the lowest in-store advertised price for those products. Walmart denies these allegations and that it did anything wrong.

The Settlement website, [www.WalmartWeightedGroceriesSettlement.com](http://www.WalmartWeightedGroceriesSettlement.com), contains product descriptions and a searchable list of UPC Codes for the Weighted Goods and Bagged Citrus, and examples of those products can be viewed in the FAQs and in the Plaintiff’s Amended Complaint on the Settlement website, [www.WalmartWeightedGroceriesSettlement.com](http://www.WalmartWeightedGroceriesSettlement.com).

**ADDITIONAL INFORMATION ABOUT THE CASE AND SETTLEMENT, INCLUDING HOW TO FILE A CLAIM, A COPY OF THE DETAILED NOTICE DISCUSSING THE SETTLEMENT AND YOUR RIGHTS, INFORMATION ABOUT THE WEIGHTED GOODS AND BAGGED CITRUS PRODUCTS, AND A COPY OF THE SETTLEMENT AGREEMENT ARE AVAILABLE AT:**

[www.WalmartWeightedGroceriesSettlement.com](http://www.WalmartWeightedGroceriesSettlement.com) or call toll-free 1-833-987-9998.

If you are a Class Member, in order to share in the distribution of the Net Settlement Fund, you must submit a Claim **online or, if mailed, postmarked, no later than June 5, 2024**. No supporting documentation is required to be eligible to receive a payment: You may submit a claim even if you no longer have receipts. You can submit your Claim online at [www.WalmartWeightedGroceriesSettlement.com](http://www.WalmartWeightedGroceriesSettlement.com). You may also download the Claim Form from the Settlement Website, or call the Claims Administrator toll-free 1-833-987-9998 to get a paper copy of the Claim Form, and mail your Claim Form to the Claims Administrator. Unless the deadline is extended, your failure to submit your Claim by the above deadline will preclude you from receiving any payment from the Settlement.

If you are a Class Member and you desire to be excluded from the Class, you must submit a request for exclusion, such that it is **postmarked no later than May 22, 2024**, in the manner and form explained in the detailed Notice, available at [www.WalmartWeightedGroceriesSettlement.com](http://www.WalmartWeightedGroceriesSettlement.com). All Class Members who do not timely and validly request exclusion from the Class will be bound by any judgment entered in the Action. If you exclude yourself from the Class, you will not receive any payment from the Settlement.

If you are a Class Member and want to object to the Settlement or Class Counsel’s fee and expense application, the objection must be in the form and manner explained in the detailed Notice, which is available at [www.WalmartWeightedGroceriesSettlement.com](http://www.WalmartWeightedGroceriesSettlement.com). Your objection must be mailed to each of the following recipients, such that it is **postmarked no later than May 22, 2024**:

<b>Court Clerk:</b> Clerk, United States District Court Middle District of Florida, Tampa Division	<b>Class Counsel:</b> Kimberly M. Donaldson-Smith Chimicles Schwartz Kriner & Donaldson-Smith, LLP	<b>Defense Counsel:</b> Naomi G. Beer Greenberg Traurig, LLP
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801 North Florida Avenue 361 West Lancaster Avenue Tampa, Florida 33602	361 West Lancaster Avenue Haverford, PA 19041	1144 15th Street, Ste. 3300 Denver, Colorado 80202
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**PLEASE DO NOT CONTACT THE COURT, THE CLERK'S OFFICE, WALMART, OR DEFENSE COUNSEL REGARDING THIS NOTICE.** If you have any questions about the Settlement, you may contact Class Counsel at the address listed above. Additional information about the Settlement can be found at [www.WalmartWeightedGroceriesSettlement.com](http://www.WalmartWeightedGroceriesSettlement.com) or by calling toll-free 1-833-987-9998.

Unsubscribe

# Exhibit B

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**From:** Claims Administrator <donotreply@walmartweightedgroceriessettlement.com>  
**Sent:** Monday, April 8, 2024 10:51 AM  
**To:**  
**Subject:** Reminder Notice: File your Claim in the Kukorinis v. Walmart, Inc. Class Action Settlement

**Notice ID:**  
**Confirmation Code:**

**Claim Deadline Approaching for Walmart Class Action Settlement**

The purpose of this notice is to remind you that if you Purchased Weighted Goods and/or Bagged Citrus in person, at a Walmart Store, in the United States or Puerto Rico, from October 19, 2018 through January 19, 2024, you may be eligible for a cash payment from this class action settlement.

The Settlement website, [www.WalmartWeightedGroceriesSettlement.com](http://www.WalmartWeightedGroceriesSettlement.com), contains product descriptions and a searchable list of UPC Codes for the Weighted Goods and Bagged Citrus and examples of those products can be viewed in the FAQs and in the Plaintiff's Amended Complaint, both on the Settlement website: [www.WalmartWeightedGroceriesSettlement.com](http://www.WalmartWeightedGroceriesSettlement.com).

In order to share in the distribution of the Net Settlement Fund, you **must** timely submit a Claim Form online, or, if mailed, postmarked ***no later than June 5, 2024***.

No supporting documentation is required to be eligible to receive a payment: You may submit a Claim even if you no longer have receipts.

You can submit your Claim online at [www.WalmartWeightedGroceriesSettlement.com](http://www.WalmartWeightedGroceriesSettlement.com). You may also download the Claim Form from the Settlement Website, or call the Claims Administrator toll-free 1-833-987-9998 to get a paper copy of the Claim Form, and mail your Claim Form to the Claims Administrator at the following address: *Walmart Weighted Groceries Settlement, c/o Claims Administrator, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103*. Do not mail your Claim Form to the Court, Counsel or Walmart.

Unless the deadline is extended, your failure to submit your Claim by **June 5, 2024** will preclude you from receiving any payment from the Settlement.

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[Unsubscribe](#)

# Exhibit C

# CHIMICLES SCHWARTZ KRINER & DONALDSON-SMITH LLP ANNOUNCES A CLASS ACTION SETTLEMENT IN KUKORINIS V. WALMART INC., CASE NO. 8:22-CV- 02402-VMC-TGW, SUMMARY NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

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NEWS PROVIDED BY

**Chimicles Schwartz Kriner & Donaldson-Smith LLP →**

Feb 20, 2024, 11:00 ET

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PHILADELPHIA, Feb. 20, 2024 /PRNewswire/ --

**TO: All Persons who Purchased Weighted Goods and/or Bagged Citrus in-person at a Walmart retail store, supercenter, or neighborhood market in the United States or Puerto Rico ("Walmart Store") from October 19, 2018 through and including January 19, 2024 (the "Settlement Class Period").**

**YOU MAY BE ELIGIBLE FOR A CASH PAYMENT FROM A CLASS ACTION SETTLEMENT. YOUR RIGHTS WILL BE AFFECTED BY THE SETTLEMENT.**

**YOU ARE HEREBY NOTIFIED**, pursuant to an Order of the United States District Court for the Middle District of Florida, that a hearing will be held on **June 12, 2024, at 10:00 am**, before the Honorable Virginia M. Hernandez Covington in Courtroom 14B of the Sam M. Gibbons United States Courthouse, 801 North Florida Avenue, Tampa, Florida 33602, for the purpose of determining (1): whether the proposed Settlement of this Action, reached between the parties, consisting of Forty-Five Million Dollars (\$45,000,000)(the "Class Settlement Amount") in cash,<sup>88</sup>

as set forth in the Settlement Agreement dated November 15, 2023, should be approved as fair, reasonable, and adequate to Class Members; (2) whether the release by Class Members of claims as set forth in the Settlement Agreement should be authorized; (3) whether the proposed plan to distribute the Settlement proceeds is fair, reasonable, and adequate; (4) whether to approve Class Counsel's request for an award of award of Attorneys' Fees, Costs, and Expenses seeking fees up to, but not to exceed, 20% of the Class Settlement Amount, plus reimbursement of costs and expenses (which costs and expenses will not exceed \$200,000) incurred in connection with prosecuting the Action, plus any interest on such attorneys' fees, costs, and expenses at the same rate and for the same periods as earned by the Class Settlement Fund (until paid); (5) whether this Action should be dismissed with prejudice against Walmart Inc.; and, (6) whether the Judgment and Order of Dismissal should be entered. The date, time, and location of the settlement hearing are subject to change without further notice; any change to the date, time or location of the settlement hearing will be posted on the Settlement website at [www.WalmartWeightedGroceriesSettlement.com](http://www.WalmartWeightedGroceriesSettlement.com).

A Settlement was reached in a class action that alleged that persons who purchased in-person at Walmart Stores certain sold-by-weight meat, poultry, pork, and seafood products (called "Weighted Goods") and certain organic oranges, grapefruit, tangerines, and navel oranges sold in bulk in mesh or plastic bags (called "Bagged Citrus") paid more than the lowest in-store advertised price for those products. Walmart denies these allegations and that it did anything wrong.

The Settlement website, [www.WalmartWeightedGroceriesSettlement.com](http://www.WalmartWeightedGroceriesSettlement.com), contains product descriptions and a searchable list of UPC Codes for the Weighted Goods and Bagged Citrus, and examples of those products can be viewed in the FAQs and in the Plaintiff's Amended Complaint on the Settlement website, [www.WalmartWeightedGroceriesSettlement.com](http://www.WalmartWeightedGroceriesSettlement.com).

**ADDITIONAL INFORMATION ABOUT THE CASE AND SETTLEMENT, INCLUDING HOW TO FILE A CLAIM, A COPY OF THE DETAILED NOTICE DISCUSSING THE SETTLEMENT AND YOUR RIGHTS, INFORMATION ABOUT THE WEIGHTED GOODS AND BAGGED CITRUS PRODUCTS, AND A COPY OF THE SETTLEMENT AGREEMENT ARE AVAILABLE AT:**

**[www.WalmartWeightedGroceriesSettlement.com](http://www.WalmartWeightedGroceriesSettlement.com) or call toll-free 1-833-987-9998.**

If you are a Class Member, in order to share in the distribution of the Net Settlement Fund, you must submit a Claim **online or, if mailed, postmarked no later than June 5, 2024**. No supporting documentation is required to be eligible to receive a payment: You may submit a Claim even if you no longer have receipts. You can submit your Claim online at **www.WalmartWeightedGroceriesSettlement.com**. You may also download the Claim Form from the Settlement Website, or call the Claims Administrator **toll-free 1-833-987-9998** to get a paper copy of the Claim Form, and mail your Claim Form to the Claims Administrator. Unless the deadline is extended, your failure to submit your Claim by the above deadline will preclude you from receiving any payment from the Settlement.

If you are a Class Member and you desire to be excluded from the Class, you must submit a request for exclusion, such that it is **postmarked no later than May 22, 2024**, in the manner and form explained in the detailed Notice, available at **www.WalmartWeightedGroceriesSettlement.com**. All Class Members who do not timely and validly request exclusion from the Class will be bound by any judgment entered in the Action. If you exclude yourself from the Class, you will not receive any payment from the Settlement.

If you are a Class Member and want to object to the Settlement or Class Counsel's fee and expense application, the objection must be in the form and manner explained in the detailed Notice, which is available at **www.WalmartWeightedGroceriesSettlement.com**. Your objection must be mailed to each of the following recipients, such that it is **postmarked no later than May 22, 2024**:

<b>Court Clerk:</b>	<b>Class Counsel:</b>	<b>Defense Counsel:</b>
Clerk, United States District Court Middle District of Florida, Tampa Division 801 North Florida Avenue Tampa, Florida 33602	Kimberly M. Donaldson-Smith Chimicles Schwartz Kriner & Donaldson-Smith, LLP 361 West Lancaster Avenue Haverford, PA 19041	Naomi G. Beer Greenberg Traurig, LLP 1144 15th Street, Ste. 3300 Denver, Colorado 80202

**PLEASE DO NOT CONTACT THE COURT, THE CLERK'S OFFICE, WALMART, OR DEFENSE COUNSEL REGARDING THIS NOTICE. If you have any questions about the Settlement, you may contact Class Counsel at the address listed above. Additional information about the Settlement can be found at www.WalmartWeightedGroceriesSettlement.com or by calling toll-free 1-833-987-9998.**



DATED: January 19, 2024

BY ORDER OF THE COURT

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

SOURCE Chimicles Schwartz Kriner & Donaldson-Smith LLP

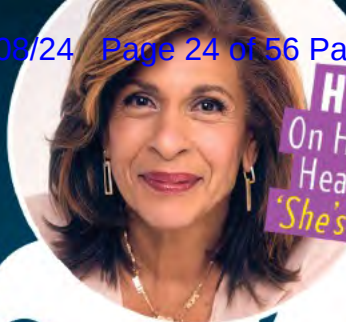
# Exhibit D

JASON KELCE'S  
TEARFUL GOODBYE



## Nightmare in the Caribbean

Virginia Couple Missing  
After Sailboat Hijacking



**EXCLUSIVE**  
**Hoda Kotb**  
On Her Daughter's  
Health Struggle  
'She's So Resilient'

# People

March 18, 2024



New  
Details

# Royals in Turmoil

- Rumors surround Princess Kate's recovery
- King Charles' cancer causes more concern
- Prince William's last-minute absence raises eyebrows
- The rift deepens between Harry and William



IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA

KUKORINIS V. WALMART INC., CASE NO. 8:22-CV-02402-VMC-TGW

**SUMMARY NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**



**TO: All Persons who Purchased Weighted Goods and/or Bagged Citrus in-person at a Walmart retail store, supercenter, or neighborhood market in the United States or Puerto Rico ("Walmart Store") from October 19, 2018 through and including January 19, 2024 (the "Settlement Class Period").**

**YOU MAY BE ELIGIBLE FOR A CASH PAYMENT FROM A CLASS ACTION SETTLEMENT. YOUR RIGHTS WILL BE AFFECTED BY THE SETTLEMENT.**

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A Settlement was reached in a class action that alleged that persons who purchased in-person at Walmart Stores certain sold-by-weight meat, poultry, pork, and seafood products (called "Weighted Goods") and certain organic oranges, grapefruit, tangerines, and navel oranges sold in bulk in mesh or plastic bags (called "Bagged Citrus") paid more than the lowest in-store advertised price for those products. Walmart denies these allegations and that it did anything wrong.

The Settlement website, [www.WalmartWeightedGroceriesSettlement.com](http://www.WalmartWeightedGroceriesSettlement.com), contains product descriptions and a searchable list of UPC Codes for the Weighted Goods and Bagged Citrus, and examples of those products can be viewed in the FAQs and in the Plaintiff's Amended Complaint on the Settlement website, [www.WalmartWeightedGroceriesSettlement.com](http://www.WalmartWeightedGroceriesSettlement.com).

**ADDITIONAL INFORMATION ABOUT THE CASE AND SETTLEMENT, INCLUDING HOW TO FILE A CLAIM, A COPY OF THE DETAILED NOTICE DISCUSSING THE SETTLEMENT AND YOUR RIGHTS, INFORMATION ABOUT THE WEIGHTED GOODS AND BAGGED CITRUS PRODUCTS, AND A COPY OF THE SETTLEMENT AGREEMENT ARE AVAILABLE AT: [www.WalmartWeightedGroceriesSettlement.com](http://www.WalmartWeightedGroceriesSettlement.com) or call toll-free 1-833-987-9998.**

If you are a Class Member, in order to share in the distribution of the Net Settlement Fund, you must submit a Claim **online or, if mailed, postmarked no later than June 5, 2024**. No supporting documentation is required to be eligible to receive a payment: You may submit a claim even if you no longer have receipts. You can submit your Claim online at [www.WalmartWeightedGroceriesSettlement.com](http://www.WalmartWeightedGroceriesSettlement.com). You may also download the Claim Form from the Settlement Website, or call the Claims Administrator toll-free 1-833-987-9998 to get a paper copy of the Claim Form, and mail your Claim Form to the Claims Administrator. Unless the deadline is extended, your failure to submit your Claim by the above deadline will preclude you from receiving any payment from the Settlement.

If you are a Class Member and you desire to be excluded from the Class, you must submit a request for exclusion, such that it is **postmarked no later than May 22, 2024**, in the manner and form explained in the detailed Notice, available at [www.WalmartWeightedGroceriesSettlement.com](http://www.WalmartWeightedGroceriesSettlement.com). All Class Members who do not timely and validly request exclusion from the Class will be bound by any judgment entered in the Action. If you exclude yourself from the Class, you will not receive any payment from the Settlement.

If you are a Class Member and want to object to the Settlement or Class Counsel's fee and expense application, the objection must be in the form and manner explained in the detailed Notice, which is available at [www.WalmartWeightedGroceriesSettlement.com](http://www.WalmartWeightedGroceriesSettlement.com). Your objection must be mailed to each of the following recipients, such that it is **postmarked no later than May 22, 2024**:

**Court Clerk:**  
Clerk, United States District Court Middle District of Florida, Tampa Division  
801 North Florida Avenue  
Tampa, Florida 33602

**Class Counsel:**  
Kimberly M. Donaldson-Smith  
Chimicles Schwartz Kriner & Donaldson-Smith, LLP  
361 West Lancaster Avenue  
Haverford, PA 19041

**Defense Counsel:**  
Naomi G. Beer  
Greenberg Traurig, LLP  
1144 15th Street, Ste. 3300  
Denver, Colorado 80202

**PLEASE DO NOT CONTACT THE COURT, THE CLERK'S OFFICE, WALMART, OR DEFENSE COUNSEL REGARDING THIS NOTICE.** If you have any questions about the Settlement, you may contact Class Counsel at the address listed above. Additional information about the Settlement can be found at [www.WalmartWeightedGroceriesSettlement.com](http://www.WalmartWeightedGroceriesSettlement.com) or by calling toll-free 1-833-987-9998.

DATED: January 19, 2024

ORDER OF THE COURT  
UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA



Kahlo in 1933.

**AMAZON | Frida**

**DOCUMENTARY** The turbulent life of Mexican artist Frida Kahlo (1907-1954) is vividly retold using her own words (sensitively voiced by Fernanda Echevarría Del Rivero) and striking simulations that suggest how her intoxicatingly strange images came together. "The only thing I know," she said, "is that I paint because I need to." (*Launches March 14*)

**Where Were Their Oscar Nominations?**

Four great performances the Academy ignored



**Lupita Nyong'o, Us**  
She was terrifyingly good—twice!—as a woman confronting her killer doppelgänger in the 2019 horror hit. (*Amazon*)



**Lady Gaga, House of Gucci**  
Gaga was bold, funny and gloriously unhinged as a jilted wife in the 2021 fashion-dynasty melodrama. (*Apple TV*)



**Tom Cruise, Top Gun: Maverick**  
He's not Daniel Day-Lewis, but this 2022 blockbuster, a sequel, soared on pure star charisma. (*Apple TV*)



**Eddie Murphy, Dolemite Is My Name**  
As a down-at-the-heels comic, Murphy gave a big, raucous performance—one of his best—in this 2019 film. (*Netflix*)

CLOCKWISE FROM TOP: LUCIENNE BLOCH/COURTESY OLD STAGE STUDIOS; EVERETT; FRANCIS DUHAMEL/NETFLIX; PARAMOUNT PICTURES; EVERETT

# Exhibit E

## Legal Notice:

If you purchased certain **bagged citrus products** in a **Walmart** store, you may be eligible to receive a payment from a class action settlement.

[LEARN MORE](#)



-VMC-TGW Document 100-2 Filed 05/08/24

Page 28

in a Walmart store, you may be eligible to receive a payment  
from a class action settlement.

[LEARN MORE](#)



**Legal Notice:**  
If you purchased certain **bagged citrus products** in a **Walmart** store, you may be eligible to receive a payment from a class action settlement.

[LEARN MORE](#)



## Legal Notice:

If you purchased certain **bagged citrus products** in a **Walmart** store, you may be eligible to receive a payment from a class action settlement.

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Page 31 of 31

in a Walmart store, you may be eligible to receive a payment  
from a class action settlement.

[LEARN MORE](#)



Legal Notice. If you purchased certain bagged citrus products in a Walmart store, you may be eligible to receive a payment from a class action settlement.

[LEARN MORE](#)



## Legal Notice:

If you purchased certain **meat, poultry, pork and seafood** products in a **Walmart** store, you may be eligible to receive a payment from a class action settlement.

[CLICK HERE TO LEARN MORE >>](#)



-VMC-TGW Document 100-2 Filed 05/08/24 Page 34

Legal Notice: If you purchased certain meat, poultry, pork  
and seafood products between 2000 and 2002, you may be eligible  
to receive a payment from a class action settlement.

[CLICK HERE TO LEARN MORE](#)



## Legal Notice:

If you purchased certain **meat, poultry, pork and seafood** products in a **Walmart** store, you may be eligible to receive a payment from a class action settlement.

[CLICK HERE TO LEARN MORE >>](#)



## Legal Notice:

If you purchased certain **meat, poultry, pork and seafood** products in a **Walmart** store, you may be eligible to receive a payment from a class action settlement.

CLICK HERE TO  
LEARN MORE >>



1002-VMC-TGW Document 100-2 Filed 05/08/24 Page 37 of 37

from a class action settlement.

[CLICK HERE TO LEARN MORE >>](#)



Legal Notice: If you purchased certain meat, poultry, pork and seafood products in a Walmart store, you may be eligible to receive a payment from a class action settlement.

[CLICK HERE TO LEARN MORE >>](#)



# Exhibit F



Angela G. D...

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Legal Notice: If you purchased certain bagged citrus products in a Walmart store, you may be eligible to receive a payment from a class action settlement.



WALMARTWEIGHTEDGROCERIESETTLEMENT.COM

**Walmart Weighted Groceries Settlement**

Click here for more information.

[Learn more](#)

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Legal Notice: If you purchased certain bagged citrus products in a Walmart store, you may be eligible to receive a payment from a class action settlement.



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**Walmart Weighted  
Groceries Settlement**

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Legal Notice: If you purchased certain bagged citrus products in a Walmart store, you may be eligible to receive a payment from a class action settlement.



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Walmart Weighted Groceries  
Settlement



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Legal Notice: If you purchased certain meat, poultry, pork and seafood products in a Walmart store, you may be eligible to receive a payment from a class action settlement.



[WALMARTWEIGHTEDGROCERIESETTLEMENT.COM](https://WALMARTWEIGHTEDGROCERIESETTLEMENT.COM)

### Walmart Weighted Groceries Settlement

Click here for more information.

[Learn more](#)



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Legal Notice: If you purchased certain meat, poultry, pork and seafood products in a Walmart store, you may be eligible to receive a payment from a class action settlement.



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## Walmart Weighted Groceries Settlement

[Learn more](#)



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Legal Notice: If you purchased certain meat, poultry, pork and seafood products in a Walmart store, you may be eligible to receive a payment from a class action settlement.



WalmartWeightedGroceriesSettleme...  
Walmart Weighted Groceries  
Settlement



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Angie's List  
Sponsored ·

Legal Notice: If you purchased certain meat, poultry, pork and seafood products in a Walmart store, you may be eligible to receive a payment from a class action settlement.



[WALMARTWEIGHTEDGROCERIESETTLEMENT.COM](http://WALMARTWEIGHTEDGROCERIESETTLEMENT.COM)

### Walmart Weighted Groceries Settlement

Click here for more information.

[Learn more](#)

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Angeloni Group  
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Legal Notice: If you purchased certain meat, poultry, pork and seafood products in a Walmart store, you may be eligible to receive a payment from a class action settlement.



walmartweightedgroceriesset...

## Walmart Weighted Groceries Settlement

[Learn more](#)



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Legal Notice: If you purchased certain meat, poultry, pork and seafood products in a Walmart store, you may be eligible to receive a payment from a class action settlement.



WalmartWeightedGroceriesSettleme...  
Walmart Weighted Groceries  
Settlement



 Promoted

# Exhibit G



## Kukorinis v. Walmart, Inc. Requests for Exclusion

First Name	Last Name
1 JOANN	PERNACI
2 CENTRAL PAINTING & SANDBLASTING INC	
3 DAVID WAYNE	SWORD
4 PETER	MONFREDA
5 JESSICA JADE	LAWSON
6 KATHLEEN B	CIKO
7 PATRICIA C	FRIEL
8 ELEANOR M	CAMPBELL
9 BOAH	LEE
10 JESSICA TALEEN	COLEMAN
11 CURT	CHERRY
12 DIANE	CHERRY
13 JOSEPH	KUBIAK
14 JENNIFER	REED
15 GORDON RICHARD	HAUGLIE
16 CHRIS F	NORDSTROM
17 JOEL	GUILHERME
18 GLENN V	KOWALSKI
19 BRIAN ALAN	EDWARDS
20 GREGORY J	GERBER
21 EDDIE D	SWOPE
22 RUTH A	SWOPE
23 IVAN	PRIKRYL
24 BONITA	SPINNER
25 DAVID	THREADGIL
26 ESTHER	THREADGIL
27 FAITH	PATTRIN
28 STEPHAN P	BRANEKY
29 SUSAN	SACCO
30 MICHAEL	DINKEL
31 MARY E	RABON
32 SYLVIA	HUMPHREY
33 KATHRYN J	BERGERON
34 HECTOR	RUBIO-GARCIA
35 BECKY	ANTOINE
36 DEBORAH MAE	KURZHALS

37 DAVID	KURZHALS
38 MARY M	JAMES
39 CHARLES ANTHONY	PICCIRILLO
40 DIANA	HERNANDEZ
41 VERONICA	WENKUS
42 SHERYL LYNN	CLARK
43 CAROLE	NOSS
44 TROY LEE	STROTHER
45 JUDITH A	GLAZIER
46 DELIO J	FERNANDEZ
47 JESSICA	STECHACHULTE
48 TERRY	ROBINSON
49 EUGENIO	SEDA
50 KALEEN	COOPER
51 LISA	VANWELSENAERS
52 DAVID WAYNE	SICA
53 GARY	AAGESEN
54 JENNIFER M	PORTER
55 MONA	BRYANT
56 KAREN	SHACKLE
57 MILA	SU
58 JANICE	ANDIORIO
59 IVAN	BECERRA JR
60 KAYLA SURANIE	DOODNATH
61 PEGGY	GEMBERLING
62 JOHANNA D	VINER
63 ELLEN	DOUGLASS
64 KELLI	ESTES
65 BEVERLY	GORMAN
66 ROBERT L	SHICK JR
67 TIOSHA	HAYES
68 KATHERINE	JOHNS
69 DARRYL	JOHNS
70 TED	MALDONADO
71 HILDEGARD U	MALDONADO
72 JENNIFER LORENE	PRUITT
73 LYNNE G	CASTRO
74 JASON E	CASTRO
75 GARY	CARLMARK
76 LYNNE G	STARNER
77 GAVIN RANDALL	HITCHINS
78 BRIAN	CONREY
79 MELISSA	CONREY
80 BARI	JARREAU
81 KIMBERLY SUE	STAUBS
82 DAVIN	MORGAN
83 NEIL	NYE

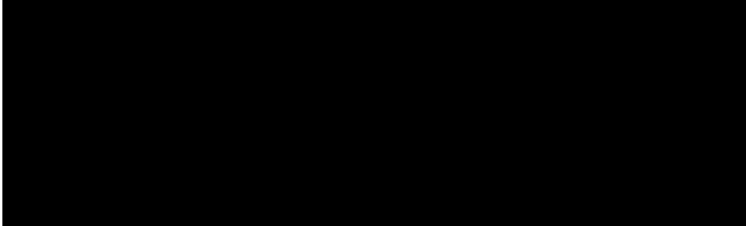
84 AMERICA	GROSCHEL
85 STEVEN	MENDEZ
86 TRACINA	CONWAY
87 MARLA JUDITH	SOTO-GONZALEZ
88 TRISTIAN	STORMS
89 CHRISTOPHER C	NORTH
90 DEANGELO	JOHNSON
91 ANNA MARIE	PARSONS
92 AYANA	LOONEY
93 LONALD TRAVIS	SMALLEN
94 DAWN	RATACZAK
95 CURT	HARTER
96 NANCY	CHAPPEL
97 TANIA CUESTA	WAGNER
98 JAMES J	HARMAN
99 JESSICA RENE	COLEMAN
100 SUEANN	RAYMOND
101 GAIL	MAYARD
102 ZACHARY	SMITH
103 ASHLEY M	PACHECO
104 DARRELL	BRIDGEWATER
105 JASON	FOURIER
106 JOHN D	TOSCANO
107 ALEXANDER	YAKOVLEV
108 HUYNH	VU
109 VIRGINIA	SETLIFF
110 SUANN CAROL	BURGIN
111 PAULA J	NELSON
112 LORI	COLL
113 ERIC	EHMANN

# Exhibit H

**SETTLEMENT CLASS MEMBER**

**8:22-CV-02402-VMC-TGW**

**SHENA MCHENRY**



**05/01/2024**

**CLERK, UNITED STATES DISTRICT COURT**

**MIDDLE DISTRICT OF FLORIDA, TAMPA DIVISION**

**801 NORTH FLORIDA AVENUE**

**TAMPA, FLORIDA 33602**

**TO WHOM IT MAY CONCERN:**

**I'm writing to you today because I feel this lawsuit is unjust and unfair to individuals, like myself. My objection to this lawsuit is concerning in-store submission of receipts which we are allowed to submit. Still, the lawsuit did not reflect the backdrop of the COVID-19 epidemic that impacted consumers, like myself to shop online and obtain**

**online receipts.**

**In the matter of the class action lawsuit against Walmart about alleged misrepresentation of product weight impacting pricing, occurring within the period spanning 2018 to 2024, it is imperative to acknowledge the contextual backdrop of the COVID-19 epidemic, during which consumers experienced lockdown measures hindering access to traditional grocery shopping avenues. This circumstance necessitated a reliance on online platforms for the procurement of essential goods. However, the lawsuit appears to neglect the discriminatory impact on consumers compelled to utilize online shopping channels, thereby potentially excluding certain individuals from the opportunity to assert their claims. Such omission raises pertinent concerns regarding equitable access to legal recourse for affected parties, like myself. I had to hire 3rd party representatives like Instacart, and the main store I shopped at to deliver my groceries. Most of my groceries were delivered by Walmart because of the epidemic during that timeframe.**

**In conclusion: I would like to be able to submit my online receipts during the COVID-19 timeframe which coincides with the settlement timeframe. Could you please clear up this discrepancy of individuals, like myself, to be able to submit receipts from the online walmart platform?**

**Thank You**

**Sincerely,**

**shena mchenry**

A handwritten signature in black ink that reads "Shena Mchenry". The signature is written in a cursive style and is positioned below the typed name.



DENVER CO 802  
2 MAY 2024 PM 2 L



CLASS COUNSEL!

Kimberly M. Donaldson-Smith  
Chimides Schwartz Kriner & Donaldson-Smith, LLP

One Haverford Centre  
361 West Larocaster Avenue

19041 Haverford, PA  
19041 Haverford, PA