

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

Myriam Fejzulai and Monica Moore,)	Civil Action No. 6:14-cv-03601-BHH
individually and on behalf of all others)	
similarly situated,)	
)	
Plaintiffs,)	
)	
v.)	
)	
Sam’s West, Inc.; Sam’s East, Inc.; and)	
Wal-Mart Stores, Inc. (all d/b/a “Sam’s)	
Club” and/or “Sam’s Wholesale Club”),)	
)	
Defendants.)	
_____)	

**PLAINTIFFS’ NOTICE OF FILING REGARDING
SETTLEMENT AGREEMENT**

Plaintiffs, by and through their counsel, file the attached corrected and substituted settlement agreement as outlined to the Court at the preliminary approval hearing of this matter.

Respectfully submitted,

RICHARDSON, PATRICK, WESTBROOK &
BRICKMAN, LLC

/s/ T. Christopher Tuck
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-and-

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of November, 2017, I caused the foregoing document to be electronically filed with the Clerk of the Court using CM/ECF, which will provide electronic notice of such filing to all counsel of record.

s/ T. Christopher Tuck
T. Christopher Tuck

SETTLEMENT AGREEMENT

1. PREAMBLE

1.1 This Settlement Agreement is made and entered into as of the dates of Execution set forth below, individually and on behalf of the Settlement Class Representatives, Settlement Class Members, and Sam's Club.

2. DEFINITIONS

2.1 "**Agreement**" means this Settlement Agreement.

2.2 "**Approved Claimant**" means any Claimant whose Claim is approved by the Claims Administrator.

2.3 "**Attorneys' Fees and Litigation Expenses**" means the attorneys' fees and litigation expenses to be requested by Class Counsel subject to Court approval in accordance with this Agreement.

2.4 "**California Litigation**" means the case of *Morgan Chikosi v. Sam's West, Inc., et al.*, Case No. 15-CV-01675 AG JCG (United States District Court for the Central District of California).

2.5 "**Cash Component**" means the portion of the Floor to be paid in cash in accordance with this Agreement.

2.6 "**Claim**" means a claim submitted by a Settlement Class Member by way of a Claim Form to receive a payment in the form of a Gift Card in accordance with the procedures set forth in this Agreement.

2.7 "**Claim Filing Deadline**" means the date by which Settlement Class Members must submit a Claim Form to the Claims Administrator in accordance with this Agreement in order to be eligible to receive a Gift Card.

2.8 "**Claim Form**" means a form substantially in the form of the Exhibit attached to the Agreement which Settlement Class Members shall use to submit Claims to the Claims Administrator.

2.9 "**Claimant**" means any Settlement Class Member who submits a Claim.

2.10 "**Claims Administrator**" means, subject to Court approval, RG2 Claims Administration LLC, the entity who shall perform certain notice and claims administration functions in accordance with this Agreement.

2.11 "**Class Counsel**" means Terry E. Richardson, Jr., T. Christopher Tuck, William D. Herlong, and Ali Abtahi.

2.12 "**Class Settlement Amount**" means up to \$6,000,000, which shall be the maximum amount of money that Sam's Club will be obligated to pay under this Settlement, as provided for in this

Agreement. Under no circumstances shall Sam's Club be obligated to pay more than the Class Settlement Amount in connection with this Settlement.

2.13 "**Court**" means the South Carolina District Court and any appellate court which may review any orders entered by the South Carolina District Court related to this Settlement.

2.14 "**Days**" as used to calculate dates for events provided herein (unless the date is expressed in terms of "business days") has the same meaning as used when calculating days under the Federal Rules of Civil Procedure.

2.15 "**Execution**" means the signing of this Agreement by all signatories hereto.

2.16 "**Final Judgment and Order of Dismissal**" means the Final Judgment and Order of Dismissal approving the Settlement and dismissing the Litigation with prejudice as against Sam's Club, substantially in the form of the proposed Final Judgment and Order of Dismissal attached hereto as an Exhibit, which this Settlement contemplates will be entered and approved by the Court.

2.17 "**Freshness Guarantee**" means the Freshness Guarantee previously provided by Sam's Club by which Sam's Club members could return certain fresh food products that did not meet the member's expectations with respect to freshness and get either double their money back or a refund of the original purchase price and a replacement item.

2.18 "**Fresh Food Products**" means certain foods in the meat, deli, produce, bakery or seafood departments of Sam's Club that are sold fresh (i.e., fruits, vegetables, meats and seafood) or prepared fresh by Sam's Club or are "farm-to-club" fresh products.

2.19 "**Floor**" means the minimum payment of \$3,000,000 to be made by Sam's Club under this Agreement.

2.20 "**Gift Card**" means a gift card issued by Wal-Mart Stores Arkansas, LLC and redeemable towards purchases at Walmart Retail Locations, Sam's Club Retail Locations or on-line at Walmart.com or Samsclub.com.

2.21 "**Gift Card Component**" means the person of the Class Settlement Amount to be used to pay Approved Claimants.

2.22 "**Litigation**" means the South Carolina Litigation and the California Litigation.

2.23 "**Notice and Administration Costs**" means the costs which Sam's Club has agreed to pay to the Claims Administrator for the purposes of sending Notice, administering the Claims process and performing other settlement administration functions in accordance with this Agreement.

2.24 "**Notice**" means the documents substantially in the form of the documents attached hereto as an Exhibit, which have been agreed to by the Parties subject to Court approval and which shall be used for purposes of giving notice to the Settlement Class Members.

2.25 “**Notice Period**” means the minimum amount of time during which Notice will be made as approved by the Court.

2.26 “**Notice Plan**” means the document describing the various methods by which notice will be provided to Settlement Class Members.

2.27 “**Opt Out Letter**” means a request by a Settlement Class Member to exclude himself or herself from the Settlement Class using the procedures set forth in this Agreement.

2.28 “**Parties**” means the Settlement Class Representatives and Sam’s Club.

2.29 “**QSF**” means the Qualified Settlement Fund to be set up in accordance with this Agreement.

2.30 “**Releasing Settlement Class Members**” means the Settlement Class Representatives, and all Settlement Class Members, other than those who submit Opt-Out Letters.

2.31 “**Sam’s Club**” means Wal-Mart Stores, Inc., Sam’s West, Inc., Sam’s East, Inc. and each of their current or former parents, subsidiaries, affiliates, predecessors, insurers, agents, employees, successors, assigns, officers, officials, directors, partners, employers, attorneys, personal representatives, executors, and shareholders.

2.32 “**Sam’s Club Retail Locations**” means all Sam’s Club retail locations in the fifty United States.

2.33 “**Settlement**” means the compromise and settlement of the Litigation as contemplated by this Agreement.

2.34 “**Settlement Class**” means all those persons who were members of Sam’s Club at any time during the Settlement Class Period and purchased from Sam’s Club certain “Fresh Products” (as defined herein) and returned such product to Sam’s Club.

2.35 “**Settlement Class Member Released Claims**” means the claims, rights, penalties, demands, damages, debts, accounts, duties, costs and expenses (other than those costs and expenses required to be paid pursuant to this Settlement Agreement), liens, charges, complaints, causes of action, obligations, or liabilities that are released, acquitted and discharged by the Settlement Class Members pursuant to this Agreement.

2.36 “**Settlement Class Members**” means the Settlement Class Representatives and all members of the Settlement Class. -

2.37 “**Settlement Class Period**” means the following periods of time:

2.37.1. For Settlement Class Members who reside in the States of Alaska, Arkansas, California, Colorado, Delaware, Florida, Idaho, Kansas, Maryland, Missouri, Nebraska, New Hampshire, North Carolina, Oklahoma, Pennsylvania, South Carolina, Texas and Virginia and in the District of Columbia, the time period from September 11, 2009 up

through and including the date the District Court grants preliminary approval to the Settlement.

2.37.2. For Settlement Class Members who reside in the States of Alabama, Arizona, Connecticut, Georgia, Hawaii, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Nevada, New Jersey, New Mexico, New York, North Dakota, Oregon, South Dakota, Tennessee, Utah, Vermont, Washington and Wisconsin, the time period from September 11, 2008 up through and including the date the District Court grants preliminary approval to the Settlement.

2.37.3. For Settlement Class Members who reside in the States of Montana and Ohio, the time period from September 11, 2006 up through and including the date the District Court grants preliminary approval to the Settlement.

2.37.4. For Settlement Class Members who reside in the States of Illinois, Indiana, Iowa, Louisiana, Rhode Island, West Virginia and Wyoming, the time period from September 11, 2004 up through and including the date the District Court grants preliminary approval to the Settlement.

2.37.5. For Settlement Class Members who reside in the State of Kentucky, the time period from September 11, 1999 up through and including the date the District Court grants preliminary approval to the Settlement.

2.38 **“Settlement Class Representative”** means Myriam Fejzulai, Monica Moore and Morgan Chikosi, the named plaintiffs in the South Carolina Litigation and the California Litigation, and the persons who Class Counsel shall request be appointed by the South Carolina District Court as Settlement Class Representatives for purposes of the Settlement Class. Each of them are also members of the Settlement Class.

2.39 **“Settlement Class Representative Incentive Payment”** means the amounts Class Counsel shall request be paid to the Settlement Class Representatives in accordance with this Agreement.

2.40 **“Settlement Effective Date”** means the first day following the last of the following occurrences:

2.40.1. The date the time to appeal or seek permission to appeal or seek other judicial review of the entry of the Final Judgment and Order of Dismissal approving the Settlement and dismissing this Litigation with prejudice as to Sam’s Club has expired with no appeal or other judicial review having been taken or sought; or

2.40.2. If an appeal or other judicial review has been taken or sought, the latest of: (i) the date the Final Judgment and Order of Dismissal is finally affirmed by an appellate court with no possibility of subsequent appeal or other judicial review therefrom; or (ii) the date the appeal(s) or other judicial review therefrom are finally dismissed with no possibility of subsequent appeal or other judicial review; or (iii) if remanded to the District Court or to a lower appellate court following an appeal or other review, the date the Final Judgment and Order of Dismissal is entered by the District Court after remand and the time to appeal or seek permission to appeal or seek other judicial review of the entry of that Final Judgment

and Order of Dismissal has expired with no further appeal or other judicial review having been taken or sought. If further appeal is sought after a remand, the time periods in this Sub-Section shall apply.

2.40.3. The provisions and deadlines set forth in this Section apply even if there are no objections to the Settlement.

2.41 “*Settlement Website*” means the website created and managed by the Claims Administrator which will provide Settlement Class Members with access to the Notice, the online Claim Form, and other information regarding the Settlement.

2.42 “*South Carolina District Court*” means the United States District Court for the District of South Carolina, Greenville Division.

2.43 “*South Carolina Litigation*” means the case of *Myriam Fejzulai, et al. v. Sam’s West, Inc., et al.*, Case No. 14-CV-03601-BHH (United States District Court for the District of South Carolina, Greenville Division).

2.44 “*Summary Notice*” means short forms of notice, substantially in the form of the attached Exhibit, which have been agreed to by the Parties subject to Court approval and which shall be used for purposes of giving notice to the Settlement Class Members as further described in the Notice Plan.

2.45 “*Walmart Retail Locations*” means all Walmart stores, supercenters, neighborhood markets or other Walmart retail locations in the fifty United States.

3. RECITALS

3.1 Plaintiffs in the South Carolina Litigation and the California Litigation filed suit on behalf of themselves and on behalf of the putative classes alleging that Sam’s Club breached the terms of a “Freshness Guarantee” by not providing its members with a 200 percent refund each time a “fresh product” was returned. Plaintiffs in the South Carolina Litigation sought to certify a class that covered all fifty states except for California and Plaintiffs in the California Litigation sought to certify a California-only class. Sam’s Club denies all of Plaintiffs’ allegations and further denies that the claims alleged are amenable to class-wide treatment.

3.2 On April 10, 2017, the Plaintiffs and Sam’s Club participated in a private mediation with the Honorable Layn R. Phillips. As a result of that mediation session, and as a result of other mediator-facilitated arms-length negotiations that followed the mediation, the Parties reached an agreement to settle the Litigation as set forth in this Agreement.

3.3 The Settlement Class Representatives believe this Litigation is meritorious. Class Counsel represents that they have conducted a thorough investigation into the facts of this case, and have diligently pursued an investigation of the Settlement Class Members’ claims against Sam’s Club, including, but not limited to: (i) reviewing relevant documents; (ii) researching the applicable law and the potential defenses; (iii) conducting depositions; (iv) hiring and consulting with experts; (v) developing the argument for class certification; (vi) advocating for the rights of the putative class; and (vii) preparing for trial. Based on their own independent investigation and evaluation,

Class Counsel are of the opinion that the Settlement is fair, reasonable, and adequate and is in the best interest of the Settlement Class Members in light of all known facts and circumstances, including the risk of significant delay, the defenses asserted by Sam's Club, class certification risk, trial risk, and appellate risk.

3.4 Sam's Club denies any liability or wrongdoing of any kind associated with the claims alleged and contends that this Litigation is not appropriate for class action treatment pursuant to Rule 23 of the Federal Rules of Civil Procedure or any other federal or state rule, statute, law, or provision. Sam's Club continues to assert that the Litigation fails to meet the prerequisites necessary for class action treatment under applicable law, especially, but not solely, with respect to predominance and manageability because the need to determine individualized issues make the Litigation unmanageable consistent with due process. Sam's Club further asserts that it has complied with all applicable provisions of federal or state statutory and common law. Sam's Club further states that despite its good faith belief that it is not liable for any of the claims asserted, and despite its good faith belief that certification is not appropriate, Sam's Club will not oppose the South Carolina District Court's certification of the Settlement Class contemplated by this Agreement solely for purposes of effectuating this Settlement. Other than for purposes of this Settlement, Sam's Club does not waive its objections to certification of the Settlement Class, or any other class, in this Litigation as a litigation class.

3.5 The entry of Final Judgment in this Litigation shall dismiss with prejudice all claims which were or which could have been alleged in the Litigation against Sam's Club, with the exception of any claims which might be retained by Settlement Class Members who exclude themselves from the Settlement, if any, in accordance with the Opt Out process described in this Agreement. Sam's Club shall retain any existing defenses to such excluded claims. The Parties agree to cooperate and take all steps necessary and appropriate to obtain preliminary and final approval of this Settlement, to effectuate its terms, and, to the extent of the obligations set forth herein, to dismiss this Litigation against Sam's Club with prejudice.

3.6 Each of these Recitals is incorporated into this Agreement as if fully set forth herein.

4. CERTIFICATION OF THE SETTLEMENT CLASS

4.1 If necessary to implement the Settlement, Class Counsel shall request that the South Carolina District Court enter an order regarding conditional settlement class certification in this Litigation to cover the Settlement Class Period and all claims and individuals covered by this Settlement. The form of class certification order shall, subject to Court approval, expressly state that the Parties and Class Counsel agree that certification of the Settlement Class is a conditional certification for settlement purposes only, and that Sam's Club retains its right to object to certification of this Litigation, or any other class action, under Federal Rule 23 or any other applicable rule, statute, law, or provision.

4.2 Any certification of the Settlement Class is a conditional certification for settlement purposes only, and if for any reason the South Carolina District Court does not grant final approval of the Settlement, or if final approval is not granted following the appeal of any order by the South Carolina District Court, or if for any reason the Settlement Effective Date does not occur, the certification of the Settlement Class for settlement purposes shall be deemed null and

void, and each Party shall retain all of their respective rights as they existed prior to execution of this Settlement Agreement, and neither this Settlement Agreement, nor any of its accompanying exhibits or any orders entered by the Court in connection with this Settlement Agreement, shall be admissible or used for any purpose in this Litigation.

4.3 Any certification of the Settlement Class for settlement purposes is in no way an admission by Sam's Club that class certification is proper in this Litigation or any other litigation against Sam's Club. Moreover, Sam's Club continues to assert that this Litigation fails to meet the prerequisites necessary for class action treatment under applicable law, especially, but not solely, with respect to predominance and manageability because the need to determine individualized issues make the case unmanageable consistent with due process. The Parties and Class Counsel further agree that, other than to effectuate the Settlement of this Litigation in this jurisdiction, the certification of the Settlement Class for settlement purposes and all documents related thereto, including this Agreement and all accompanying exhibits and all orders entered by the Court in connection with this Agreement, are only intended to be used under the specific facts and circumstances of this case and are not intended to be used in any other judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or other proceeding against Sam's Club.

5. SETTLEMENT CLASS

5.1 The Parties shall request that the South Carolina District Court enter a certification order and certify for settlement purposes only the Settlement Class as defined in this Agreement.

5.2 This Settlement is conditioned on the South Carolina District Court's certifying the Settlement Class for settlement purposes.

5.3 Sam's Club and Class Counsel may request that the Court certify additional settlement subclasses if appropriate.

6. TERMS OF SETTLEMENT

6.1 Subject to the other terms and conditions of this Agreement, and subject to Court approval, Sam's Club agrees to pay a Class Settlement Amount which shall be comprised of a maximum payment of up to \$6,000,000 and a minimum Floor payment of \$3,000,000. Under no circumstances shall Sam's Club be obligated to pay more than the Class Settlement Amount in connection with this Settlement.

6.2 The Class Settlement Amount shall consist of a Cash Component and a Gift Card Component as follows:

6.2.1. Sam's Club agrees to pay a portion of the Floor in cash. This cash payment, called the Cash Component, shall cover the following:

6.2.1.1. Reasonable Attorneys' Fees and Litigation Expenses. Class Counsel shall apply to the South Carolina District Court for an award of reasonable Attorneys' Fees and Litigation Expenses. Sam's Club takes no position on the amounts to be sought by Class Counsel for an award of Attorneys' Fees

and Litigation Expenses, but does not object to a reasonable award of Attorneys' Fees and Litigation Expenses sought in accordance with this Agreement. In the event that the Court does not approve the award of Attorneys' Fees and Litigation Expenses requested by Class Counsel, or the Court awards Attorneys' Fees and Litigation Expenses in an amount less than that requested by Class Counsel, such decision shall not affect the validity and enforceability of the settlement and shall not be a basis for rendering the entire settlement null, void, or unenforceable. Class Counsel retains their right to appeal any decision by the South Carolina District Court regarding its award of Attorneys' Fees and Litigation Expenses.

6.2.1.2. Reasonable Class Representative Incentive Payments. Class Counsel shall apply to the South Carolina District Court for a Class Representative Incentive Payment in the amount not to exceed \$5,000 for each Settlement Class Representative. Sam's Club takes no position on the amounts to be sought by Class Counsel for Class Representative Incentive Payments, but does not object to a reasonable award of Class Representative Incentive Payments sought in accordance with this Agreement. The denial by the South Carolina District Court of any such application by Class Counsel shall not affect the validity and enforceability of the settlement and shall not be a basis for anyone to seek to void the Settlement.

6.2.1.3. The actual Notice and Administration Costs incurred in accordance with Sections 6 and 7 of this Agreement.

6.2.1.4. The payments identified in Sections 6.2.1.1 - 6.2.1.3 of this Agreement shall be paid solely from the Cash Component of the Floor. Any portion of the Floor not used for the Cash Component shall be allocated towards the Gift Card Component.

6.2.2. Payments to Settlement Class Members shall be paid from the Gift Card Component, which shall consist of the amount remaining after the aggregate amount required to be used for the Cash Component has been subtracted from the Class Settlement Amount. The Gift Card Component shall be allocated as follows:

6.2.2.1. The Gift Card Component shall be payable on a claims made basis by way of a Gift Card issued by Wal-Mart Stores, Arkansas, LLC and redeemable toward purchases at Walmart Retail Locations, Sam's Club Retail Locations or on-line at Walmart.com or Samsclub.com.

6.2.2.2. Except as otherwise provided in Section 6.2.2.3, individual Gift Cards shall be in the amount of \$10.

6.2.2.3. In the event that the combined total of the Cash Component plus the aggregate Gift Card Amount claimed by all Settlement Class Members is less than the Floor, the Gift Card Amount available to each claiming Settlement Class Member shall be increased on a pro-rata basis so that the

combined total of the Cash Component plus the aggregate Gift Card Amount claimed by all claiming Settlement Class Members equals the Floor, provided, however, that the maximum value of any single Gift Card shall not exceed \$25. In the event that the amount remaining after such pro-rata increase still does not reach the Floor, the parties shall, subject to Court approval, either agree on a further pro rata increase, or donate the remaining amount to one or more cy pres organizations to be agreed to by the parties.

6.2.2.4. In the event that the combined total of the Cash Component plus the aggregate Gift Card Amount claimed by all Settlement Class Members exceeds the Floor but is less than the Class Settlement Amount, there shall not be any pro-rata increase and the difference remaining after the combined total of the Cash Component, plus the aggregate Gift Card Amount claimed by all Settlement Class members, is subtracted from Class Settlement Amount and shall remain with Sam's Club. In the event that the combined total of the Cash Component plus the aggregate Gift Card Amount claimed by all Settlement Class Members exceeds the Class Settlement Amount, there shall be a pro rata decrease of the Gift Card Amount so that the combined total equals the Class Settlement Amount. Under no circumstances shall Sam's Club pay more than the \$6,000,000 Class Settlement Amount.

6.2.3. The Claims Administrator will manage the claims process in cooperation with Class Counsel and Sam's Club and in accordance with the following parameters:

6.2.3.1.1. A Settlement Class Member who submits an Approved Claim shall be entitled to receive a Gift Card.

6.2.3.1.2. Claims shall be made by submitting a Claim Form online through the Settlement Website, provided, however, that the Claims Administrator will make an alternative Claim submission process available upon request by a Claimant as reasonably practicable, such as by way of a mailed Claim submission.

6.2.3.1.3. A Claim Form shall be approved if it is timely and valid.

6.2.3.1.4. To be timely, a Claim Form must be submitted to the Claims Administrator by the Claim Filing Deadline. The Claim Filing Deadline is 15 days after the close of the Notice Period.

6.2.3.1.5. To be valid, a Claim Form must be completed in full and be signed under the penalty of perjury.

6.2.3.1.6. The Claim Form shall be substantially similar to the form attached as an Exhibit to this Agreement, and include a statement by the Claimant verifying that he or she is a Settlement Class Member.

6.2.3.1.7. A Settlement Class Member may only receive one gift card no matter how many returns the individual Settlement Class Member may have made during the Settlement Class Period.

6.2.3.1.8. Each Gift Card shall be subject to applicable laws, the walmart.com Terms of Use (available at www.walmart.com), and the walmart.com Gift Card Terms and Conditions (available at www.walmart.com), and any other terms of use or terms and conditions governing Gift Cards in effect at the time the Gift Cards are issued. Gift cards that are provided to a Settlement Class Member but not redeemed within the applicable period shall be handled in accordance with applicable law. With respect to transferability, unless an applicable law provides to the contrary, each Gift Card shall be fully transferable but may not be resold unless the Settlement Class Member is a licensed reseller.

6.2.3.1.9. The Claims Administrator shall distribute Gift Cards to Approved Claimants within a reasonable time after the later of the Settlement Effective Date or the Claims Filing Deadline, whichever is later, provided, however, that the Claims Administrator shall cooperate with the Parties to ensure any Gift Card funding or account structure is in place prior to distribution. To the extent practicable, Gift Cards shall be distributed via email to the email address provided by the Claimant in the Claim Form, provided, however, that the Claims Administrator may distribute Gift Cards by mail, or other reasonable and cost-effective process in appropriate circumstances.

7. NOTICE TO THE CLASS

7.1 The Claims Administrator shall provide notice of the Settlement to Settlement Class Members in accordance with the Notice Plan as approved by the Court. Given the difficulties in ascertaining individual class members, the Parties agree that publication notice (including through the internet) is the best practicable notice of this Settlement.

7.2 The Parties shall confer regarding the Notice Plan prior to its submission to the Court and Sam's Club has the right to approve the proposed Notice Plan prior to its submission to the Court, which approval Sam's Club shall not unreasonably withhold. Subject to Court approval, the Notice and Summary Notice to be provided shall be in substantially the form of the attached Exhibits. The Notice shall provide information regarding how to submit a Claim, and regarding the opt-out and objection processes.

7.3 Sam's Club may, in its sole discretion, terminate this settlement if the South Carolina District Court requires individual, direct notice to Settlement Class Members. If Sam's Club exercises its option to terminate due to the Court's requiring individual, direct notice, it shall provide Class Counsel with written notice of its election, at which point the Agreement is void in accordance with Section 18.

7.4 The Notice Period, subject to Court approval, is sixty days.

8. CAFA NOTICE

8.1 Sam's Club shall provide notice to the appropriate governmental authorities in accordance with CAFA.

9. OPT-OUT PROCESS

9.1 A Settlement Class Member who wishes to exclude himself or herself from this Settlement, and from the release of claims pursuant to this Settlement, shall submit an Opt Out Letter. For an Opt Out Letter to be accepted it must be timely and valid. To be timely it must be submitted by the Claim Filing Deadline. To be valid, the Opt Out Letter shall contain a statement that the Settlement Class Member requests to be excluded from the Settlement Class and must also be signed by the Settlement Class Member and dated in accordance with the instructions in the Notice. The Claims Administrator may invalidate mass-generated opt outs upon application to the Court by the Parties and subsequent approval by the Court.

9.2 Settlement Class Members may not submit both an Opt Out Letter and a Claim Form. If a Settlement Class Member submits both an Opt Out Letter and a Claim Form, the Claim Form will govern and the Opt Out Letter will be considered invalid.

9.3 The Claims Administrator shall maintain a list of persons who have submitted Opt Out Letters and shall provide such list to the Parties on a weekly basis.

10. OBJECTION PROCESS

10.1 A Settlement Class Member who wishes to object to the Settlement must notify the South Carolina District Court of his or her objection, in writing, on or before the Claim Filing Deadline.

10.2 The Parties will request that the Court enter an order requiring any Settlement Class Member who wishes to be heard orally at the final approval hearing, or who wishes for any objection to be considered, to file a written notice of objection with the Court by the objection date contained in the Notice, as well as any notice of intention to appear at the final approval hearing. The objection must also be served on counsel of record by the objection date. To state a valid objection to the Settlement, an objecting Settlement Class Member must personally sign the objection and provide the following information in connection with and as part of any objection: (i) full name, current address, and current telephone number; (ii) documentation sufficient to establish membership in the Settlement Class; (iii) a statement of the position the objector wishes to assert, including the factual and legal grounds for the position and objection; and (iv) copies of any other documents that the objector wishes to submit in support of his/her/its position. In addition, the objecting Settlement Class Member must identify any previously filed objections filed by the Settlement Class Member and his/her/its counsel in any state or federal court. This listing must contain (i) the name of the case; (ii) the case number; (iii) the court in which the objection was filed; and (iv) the outcome of the objection. Subject to approval of the Court, any objecting Settlement Class Member may appear in person or by counsel at the final approval hearing held by the Court to show cause why the proposed Settlement should not be approved as fair, reasonable, and adequate, or to object to any petitions for attorneys' fees, incentive awards, and reimbursement of reasonable litigation costs and expenses. In this respect, the objecting Settlement Class Member must file with the clerk of the Court, and serve on all counsel designated

in the Notice, a notice of intention to appear by the objection deadline or on such other date that may be set forth in the Notice. The notice of intention to appear must include copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member (or his/her/its counsel) will present to the Court in connection with the final approval hearing. Any Settlement Class Member who does not provide a notice of intention to appear in complete accordance with the deadlines and other specifications set out in the Notice, and who has not filed an objection in complete accordance with the deadlines and other specifications set forth in this Settlement and the Notice, subject to the approval of the Court, will be deemed to have waived any objections to the Settlement and can be barred from speaking or otherwise presenting any views at the Final Approval Hearing.

10.3 Settlement Class Members who do not file and serve timely written objections in accordance with the procedures set forth in this Agreement have waived any objections to the Settlement and are forever foreclosed from making any objection (whether by appeal or otherwise) to the settlement, or any aspect of the settlement, including, without limitation, the fairness, reasonableness, or adequacy of the proposed settlement, or any award of attorneys' fees or reimbursement of costs and expenses.

11. DISTRIBUTION PROCESS

11.1 The Class Settlement Amount shall be funded through a QSF in accordance with this Agreement. The timing of the payments by Sam's Club to the QSF is:

11.1.1. Within 30 business days following the date on which the South Carolina District Court enters an order granting preliminary approval of the Settlement, or within 30 business days of the date on which the District Court enters an order approving the QSF, whichever is later, Sam's Club shall transfer the Notice and Administration Costs to the QSF, who shall distribute that amount to the Claims Administrator. In the event that the Settlement Effective Date does not occur, any amounts actually used by the Claims Administrator for notice and administration shall not be refundable to Sam's Club. If, however, Sam's Club has paid into the QSF monies for Notice and Administration Costs which have not been used by the Claims Administrator, those amounts not used by the Claims Administrator shall be refunded to Sam's Club.

11.1.2. Subject to Section 11.1.3, within 30 business days following the Settlement Effective Date, Sam's Club shall transfer to the QSF amounts sufficient to cover the remainder of the Class Settlement Amount (or such lesser amount as awarded by the Court), to include the Class Member Payment Amount, Attorneys' Fees and Litigation Expenses awarded by the Court, and Settlement Class Representative Incentive Payments awarded by the Court. Class Counsel shall provide the QSF with the information as to whom the Attorneys' Fees and Litigation Expenses and Class Representative Incentive Payments should be distributed.

11.1.3. In the event of any appeals following the Court's grant of final approval to the Settlement, the amounts to be transferred by Sam's Club for Attorneys' Fees and Litigation Expenses, less any amounts for Settlement Class Representative Incentive Awards approved by the Court, shall be transferred to the QSF within 30 business days following

the Court's entry of an order granting final approval to the Settlement and placed in an interest bearing account. Upon the Settlement Effective Date, Class Counsel shall retain any interest earned with respect to the amounts awarded for Attorneys' Fees and Litigation Expenses. In the event the Settlement is not finally approved following any such appeal, or the Settlement Effective Date does not otherwise occur, the amounts funded by Sam's Club pursuant to this Section including all interest earned, shall be refunded to Sam's Club.

12. QUALIFIED SETTLEMENT FUND

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

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

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

12.4 Following its deposits as described in this Agreement, Sam's Club shall have no responsibility, financial obligation, or liability whatsoever with respect to the notifications to the Class required hereunder, the processing of Claims and Opt-Out Letters, the allowance or disallowance of claims by Claimants, payments to Class Counsel, investment of QSF funds,

payment of federal, state, and local income, employment, unemployment, excise, and other taxes imposed on the QSF or its disbursements, or payment of the administrative, legal, accounting, or other costs occasioned by the use or administration of the QSF, since it is agreed that such deposits shall fully discharge Sam's Club's obligations to Claimants and Class Counsel and for expenses of administration in respect to the disposition of the Class Settlement Amount hereunder. Rather, the Claims Administrator shall have sole authority and responsibility for the administration of such funds and income thereon, disbursement to Claimants and Class Counsel, and payment of taxes and administrative costs in accordance with the provisions hereof, subject only to the rights of Sam's Club or Class Counsel to seek redress for any breach of the terms hereof.

12.5 The Claims Administrator shall cause to be filed, on behalf of the QSF, all required federal, state, and local tax returns, information returns and tax withholdings statements in accordance with the provisions of Treasury Regulation §1.468B-2(k)(1) and Treasury Regulation §1.468B-2(l)(2)(ii). The Claims Administrator may, at the expense of the QSF, retain legal counsel and an independent, certified public accountant to consult with and advise the Claims Administrator or the Trustee with respect to the preparation and filing of such materials and the federal, state and local tax compliance of the QSF. Either Sam's Club or the Claims Administrator, independently or jointly, may, but are not required to, apply to the Internal Revenue Service and/or any applicable state taxing authority for an advance ruling as to any issue pertinent to the qualification of the QSF under Internal Revenue Code §468B and Treasury Regulations promulgated thereunder, its tax status under applicable state law, and/or its tax payment, reporting and withholding duties, so long as Sam's Club and the remaining Parties are reasonably satisfied that such application and ruling will not compromise the confidentiality of settlement evidenced herein as required by this Agreement. Subject to any contrary holdings in any such ruling, Settlement Class Members shall be responsible for payment of appropriate federal, state, and local income taxes on any claim paid out pursuant to this Agreement. The Parties agree that no portion of any distributions from the QSF to the Settlement Class Members is made in satisfaction of any excluded liability as described in Treasury Regulation § 1.468B-1(g), related to Qualified Settlement Funds.

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

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

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

13. COMPREHENSIVE WAIVER, RELEASE, AND DISMISSAL

13.1 Subject to final approval by the Court of the Settlement, and for good and valuable consideration set forth herein, the receipt and sufficiency of which is hereby acknowledged, all Releasing Settlement Class Members irrevocably release, acquit, and forever discharge Sam's Club of and from any and all claims, rights, causes of action, penalties, demands, damages, debts, accounts, duties, costs and expenses (other than those costs and expenses required to be paid pursuant to this Agreement), liens, charges, complaints, causes of action, obligations, or liability of any and every kind that were asserted in the Litigation, or that could have been asserted but were not asserted in the Litigation, or in any other court or forum, whether known or unknown, on the basis of, connected with, arising out of, or related in whole or in part to any or all of the alleged acts, omissions, facts, matters, transactions, circumstances, and occurrences that were directly or indirectly alleged, asserted, described, set forth, or referred to in the Litigation, whether such allegations were or could have been based on common law or equity, or on any statute, rule, regulation, order, or law, whether federal, state, or local.

13.2 The Settlement Class Member Released Claims also includes a release of all claims for Attorneys' Fees and Costs incurred by Releasing Settlement Class Members or by Class Counsel or any other attorney in connection with the Litigation, and this Settlement, and all claims related to conduct in discovery in the Litigation.

13.3 Releasing Settlement Class Members understand and agree that the release of the Settlement Class Member Released Claims is a full and final general release applying to both those Settlement Class Member Released Claims that are currently known, anticipated, or disclosed to Releasing Settlement Class Members and to all those Settlement Class Member Released Claims that are presently unknown, unanticipated, or undisclosed to any Releasing Settlement Class Members arising out of the alleged facts, circumstances, and occurrences underlying the claims set forth in the Litigation. Releasing Settlement Class Members acknowledge that the facts could be different than they now know or suspect to be the case, but they are nonetheless releasing all such unknown claims. In exchange for the good and valuable consideration set forth herein, all Releasing Settlement Class Members further waive any and all rights or benefits that they as individuals or the classes may now have as a result of the alleged facts, circumstances, and occurrences underlying the claims set forth in the Litigation. In exchange for the good and valuable consideration set forth herein, all Releasing Settlement Class Members further waive any and all rights or benefits that they as individuals or as Settlement Class Members may now have as a result of the alleged facts, circumstances, and occurrences underlying the claims set forth in the Litigation under the terms of Section 1542 (a) of the California Civil Code (or similar statute in effect in any other jurisdiction), which provides as follows:

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

13.4 The Parties acknowledge that this Settlement, including the releases provided in this Section, reflects a compromise of disputed claims.

13.5 The Final Judgment and Order of Dismissal shall dismiss the Litigation with prejudice and shall incorporate the terms of this release. Following entry of the Final Judgment and Order of Dismissal, Class Counsel shall file for dismissal of the California Action.

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

14.1 Class Counsel shall apply to the South Carolina District Court for the entry of an order granting preliminary approval of the Settlement substantially in the following form:

14.1.1. Preliminarily approving the Settlement;

14.1.2. Conditionally certify the Settlement Class for settlement purposes in accordance with applicable legal standards and this Agreement;

14.1.3. Approving as to form and content the proposed Notice Plan, including the proposed Notice and Summary Notice;

14.1.4. Scheduling a fairness hearing on the question of whether the proposed Settlement should be finally approved as fair, reasonable, and adequate as to the Settlement Class;

14.1.5. Approving Terry E. Richardson, Jr., T. Christopher Tuck, William D. Herlong, and Ali Abtahi as Class Counsel;

14.1.6. Approving Myriam Fejzulai, Monica Moore and Morgan Chikosi as Class Representatives;

14.1.7. Approving RG2 Claims Administration LLC as Claims Administrator.

14.2 Sam's Club shall cooperate with Class Counsel to obtain preliminary approval.

14.3 The Parties shall continue to take any steps necessary to stay any pending proceedings so as to preserve the status quo until either the Settlement Effective Date occurs or the Settlement Agreement is voided.

15. DUTIES OF THE PARTIES FOLLOWING PRELIMINARY COURT APPROVAL

15.1 Following preliminary approval by the South Carolina District Court of the Settlement, and no later than the filing of the motion for final approval, Class Counsel will submit a proposed Final Judgment and Order of Dismissal substantially in the form of the Final Judgment and Order of Dismissal attached hereto as an Exhibit. The proposed Final Judgment and Order of Dismissal shall:

15.1.1. Approve the Settlement, adjudging the terms thereof to be fair, reasonable, and adequate and directing consummation of its terms and provisions;

15.1.2. Certify the Settlement Class for settlement purposes in accordance with applicable legal standards and this Agreement;

15.1.3. Approve Payment of the Class Settlement Amount pursuant to this Agreement.

15.1.4. Approve Class Counsel's application for an award of Attorneys' Fees and Litigation Expenses pursuant to this Agreement;

15.1.5. Approve the Settlement Class Representative Incentive Payments;

15.1.6. Dismiss the South Carolina Litigation as between the Class Representatives and the Settlement Class Members, on the one hand, and Sam's Club on the other hand, on the merits and with prejudice and permanently bar the Settlement Class Representatives and all Settlement Class Members (other than those who timely filed valid Opt-Out Letters) from further prosecuting any of the Settlement Class Member Released Claims against Sam's Club.

15.2 Sam's Club shall cooperate with Class Counsel to obtain final approval and the dismissal of the Litigation as to Sam's Club.

15.3 Class Counsel shall use best efforts to obtain the issuance by the Court of a good faith settlement bar order, in accordance with this Agreement.

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

16. MUTUAL FULL COOPERATION

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

17. STATEMENT OF NO ADMISSION

17.1 Nothing contained in this Agreement shall be construed against Sam's Club or deemed an admission of liability, culpability, or wrongdoing on the part of Sam's Club, and Sam's Club denies liability for any alleged wrongdoing. Sam's Club expressly denies liability for the claims asserted and specifically denies and does not admit any of the pleaded facts not admitted in its pleadings in the Litigation. Nor shall this Agreement constitute an admission by Sam's Club as to any interpretation of laws or as to the merits, validity, or accuracy of any claims made against it in the Litigation. Likewise, nothing in this agreement shall be construed or deemed an admission by Plaintiffs or the Settlement Class with regards to the validity of any of Sam's Club's defenses or

affirmative defenses. Each of the Parties has entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

17.2 This Agreement, and all related documents, including the Settlement Agreement, the certification for settlement purposes entered pursuant to this Agreement, and any Claims, Requests to Opt-Out, Objections or other materials submitted by Settlement Class Members and all other actions taken in implementation of the Settlement, including any statements, discussions, or communications, and any materials prepared, exchanged, issued, or used during the course of the negotiations leading to this Agreement are settlement documents and shall be inadmissible in evidence and shall not be used for any purpose in this Litigation or in any other judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or proceeding, or any other litigation against Sam's Club, for any purpose, except in an action or proceeding to approve, interpret, or enforce the terms of this Agreement.

17.3 The Claims Forms, Requests to Opt-Out, Objections, and any other evidence produced or created by any Settlement Class Member in connection with the claims resolutions procedures pursuant to this Settlement, and any actions taken by Sam's Club in response to such materials do not constitute, are not intended to constitute, and will not be deemed to constitute an admission by Sam's Club of any violation of any federal, state, or local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law or in equity.

17.4 Any certification of the Settlement Class in accordance with the terms of this Agreement is for settlement purposes only. Nothing in this Agreement will be construed as an admission or acknowledgement of any kind that any class should be certified in this Litigation or in any other action or proceeding. Further, neither this Agreement, nor the Court's actions with regard to this Agreement, will be deemed admissible in this Litigation and are not intended to be admissible (and Plaintiffs and Class Counsel shall not seek their admission), in any other judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or proceeding, or in any other litigation, regarding the propriety of class certification or collective treatment. In the event that this Agreement is not approved by the District Court or any appellate court, or otherwise fails to become effective and enforceable, or is terminated, or the Settlement Effective Date does not occur for any reason, Sam's Club will not be deemed to have waived, limited, or affected in any way any of its objections or defenses in the Litigation. Such objections and defenses include, but are not limited to, Sam's Club's objections and defenses to any class-wide treatment and nothing in this Agreement or any document related to this Agreement shall be construed as a waiver by Sam's Club of its contention that class certification is not appropriate and is contrary to law in this Litigation or any other case or proceeding.

18. VOIDING THE AGREEMENT

18.1 In the event that this Settlement is not approved, or if for any reason the Settlement Effective Date does not occur, the Settlement Agreement shall be deemed null, void, and unenforceable and shall not be used nor shall it be admissible in any subsequent proceedings either in this Court or in any other judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or other proceeding, or other litigation against Sam's Club, and the Parties shall return to their respective positions prior to the Court's consideration of this Settlement.

18.2 In the event that the Court does not approve the Attorneys' Fees and Litigation Expenses in the amount requested by Class Counsel, or in the event that the Attorneys' Fees and Litigation Expenses requested by Class Counsel is reduced, that finding shall not be a basis for rendering the entire Settlement Agreement null, void, or unenforceable. Class Counsel retains their right to appeal any decision by the Court regarding the Attorneys' Fees and Litigation Expenses.

19. SIGNATORIES' AUTHORITY

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

20. NO PRIOR ASSIGNMENTS

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

21. NOTICES

21.1 Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given: (i) on the date given, if given by hand delivery; (ii) within one (1) business day, if sent by overnight delivery services such as Federal Express or similar courier; (iii) on the third business day after mailing by United States registered or certified mail, return receipt requested, or (iv) on the day received for delivery by e-mail. All notices given under this Agreement shall be addressed as follows:

21.1.1. To the Class:

T. Christopher Tuck
RICHARDSON, PATRICK, WESTBROOK & BRICKMAN, LLC
1037 Chuck Dawley Blvd.
Building A
Mt. Pleasant, SC 29464
Tele: (843) 727-6500
Fax: (843) 216-6509
E-mail: ctuck@rpwb.com

21.1.2. To Sam's Club:

Brian L. Duffy
Naomi G. Beer
GREENBERG TRAUIG, LLP

1200 17th Street, Suite 2400
Denver, Colorado 80202-5835
Tele: (303) 572-6500
Fax: (303) 572-6540
Email: DuffyB@gtlaw.com
BeerN@gtlaw.com

22. CONFIDENTIALITY

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

23. PRESS RELEASE

23.1 No Party, nor their counsel, shall initiate any statements to the media regarding the settlement. The Parties shall agree on a statement to be used in the event of press inquiries regarding the settlement. The Parties shall not make any other statements to the media regarding this settlement.

24. DOCUMENTS AND DISCOVERY

24.1 Class Counsel will maintain confidentiality of documents and data produced by Sam's Club in the Litigation pursuant to any protective order entered in the litigation, and within sixty days following the Settlement Effective Date, shall either return such documents and data or certify that such documents and data have been destroyed.

25. MISCELLANEOUS PROVISIONS

25.1 Construction. The Parties agree that the terms and conditions of this Settlement are the result of lengthy, intensive arms-length negotiations between the Parties and that this Settlement shall not be construed in favor of or against any party by reason of the extent to which any party or her or his counsel participated in the drafting of this Settlement.

25.2 Captions and Interpretations. Paragraph titles or captions contained in this Agreement are a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision of this Agreement. Each term of this Agreement is contractual and not merely a recital.

25.3 Modification. This Agreement may not be changed, altered, or modified, except in a writing signed by the Parties and approved by the Court. Notwithstanding the foregoing, the Parties agree that any dates contained in this Agreement may be modified by agreement of the Parties without Court approval if the Parties agree and cause exists for such modification. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

25.4 Integration Clause. This Agreement, the Exhibits hereto, and any other documents delivered pursuant hereto contain the entire agreement between the Parties relating to the resolution of the Litigation, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged in this Agreement. No rights under this Settlement may be waived except in writing and signed by the Party against whom such waiver is to be enforced.

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

25.6 Class Counsel Signatories. It is agreed that because the Settlement Class Members are so numerous, it is impossible or impractical to have each Settlement Class Member execute this Settlement. The notice provided in accordance with the Notice Plan will provide all Settlement Class Members with a summary of the Settlement, and will advise all Settlement Class Members of the binding nature of the release. Excepting only those Settlement Class Members who timely submit a valid Opt-Out Letter, such Notice shall have the same force and effect as if this Settlement were executed by each Settlement Class Member.

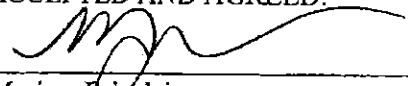
25.7 Counterparts. This Agreement may be executed by facsimile signature and in any number of counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one and the same Agreement, which shall be binding upon and effective as to all Parties.

25.8 Mediate. The Parties agree to mediation with the Honorable Layn R. Phillips to resolve any disagreements over the implementation of the terms of the Settlement, this Agreement, or any other documents necessary to effectuate the Settlement. Unless otherwise ordered by Judge Phillips, the Parties will split the costs of any such mediation and all Parties will bear their own attorneys' fees. If any such mediation is unsuccessful, the dispute shall be decided by the South Carolina District Court.

25.9 Applicable Law. This Agreement shall be governed by South Carolina law without regard to its choice of law or conflicts of law principles or provisions.

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ACCEPTED AND AGREED:



Myriam Feizulai

10/20/17

Date

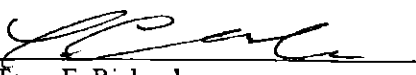
Monica Moore

Date

Morgan Chikosi

Date

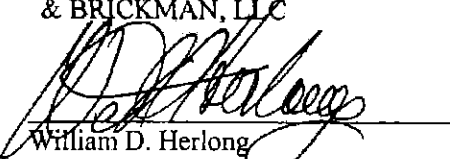
ON BEHALF OF PLAINTIFFS AND SETTLING CLASS MEMBERS:



Terry E. Richardson
T. Christopher Tuck
RICHARDSON, PATRICK, WESTBROOK
& BRICKMAN, LLC

10/20/17

Date



William D. Herlong
THE HERLONG LAW FIRM, LLC

10/20/17

Date

Ali Abtahi
ABTAHI LAW GROUP

Date

ACCEPTED AND AGREED:

Myriam Fejzulai

Date



Monica Moore

10/20/17
Date

Morgan Chikosi

Date

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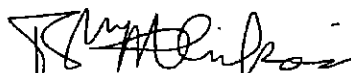
ACCEPTED AND AGREED:

Myriam Fejzulai

Date

Monica Moore

Date



Morgan Chikosi

10/19/2017

Date

ON BEHALF OF PLAINTIFFS AND SETTLING CLASS MEMBERS:

Terry E. Richardson
T. Christopher Tuck
RICHARDSON, PATRICK, WESTBROOK
& BRICKMAN, LLC

Date

William D. Herlong
THE HERLONG LAW FIRM, LLC

Date

Ali Abtahi
ABTAHI LAW GROUP

Date

ACCEPTED AND AGREED:

Myriam Fejzulai

Date

Monica Moore

Date

Morgan Chikosi

Date

ON BEHALF OF PLAINTIFFS AND SETTLING CLASS MEMBERS:

Terry E. Richardson
T. Christopher Tuck
RICHARDSON, PATRICK, WESTBROOK
& BRICKMAN, LLC

Date

William D. Herlong
THE HERLONG LAW FIRM, LLC

Date

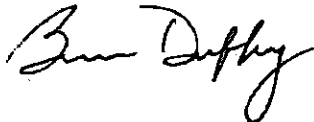


Ali Abtahi
ABTAHI LAW GROUP

October 19, 2017

Date

ON BEHALF OF SAM'S CLUB:



Brian Duffy
GREENBERG TRAURIG, LLP

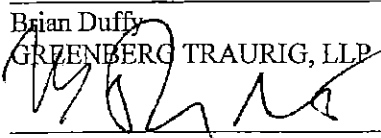
Oct. 20, 2017

Date

B. Rush Smith, III
NELSON MULLINS RILEY
& SCARBOROUGH LLP

Date

ON BEHALF OF SAM'S CLUB:

Brian Duffy
GREENBERG TRAURIG, LLP


Date
10/20/2017

B. Rush Smith, III
NELSON MULLINS RILEY
& SCARBOROUGH LLP

Date