

**IN THE CIRCUIT COURT OF LONOKE COUNTY
THIRD DIVISION**

**KATHY CANAMORE, on Behalf of
Herself and All Others Similarly Situated,**

PLAINTIFF

vs.

Case No. CV-2010-534

WAL-MART STORES, INC.

DEFENDANT

STIPULATION OF SETTLEMENT

This Stipulation of Settlement ("Settlement") is entered into by and between Kathy Canamore ("Canamore" or "Plaintiff") as a representative of a putative defined class of persons ("Settlement Class"), on the one hand, and Wal-Mart Stores, Inc. ("Wal-Mart") and BCBG Max Azria Group, Inc. ("BCBG"), on the other hand, (collectively, the "Parties"). This settlement is made pursuant to Rule 23(e) of the Arkansas Rules of Civil Procedure and is subject to preliminary and final approval by the Court.

A. RECITALS

WHEREAS, in December 2009, Wal-Mart began selling a line of Miley Cyrus-branded jewelry products at its retail stores in Arkansas and elsewhere in the United States (the "Products");

WHEREAS, in January 2010, certain media reports identified concerns about the presence of cadmium in certain other products sold by retailers in the United States, but not including the Products;

WHEREAS, in May 2010, certain media reports identified items of the Products as products that may contain cadmium;

WHEREAS, in May 2010, immediately upon publication of the media reports identifying items of the Products as potentially containing cadmium, Wal-Mart pulled all of the Products from shelves at its stores, ceased offering the Products for sale, and instituted procedures designed to prevent consumer purchases of the Products at its retail stores in Arkansas and anywhere else in the United States;

WHEREAS, in May 2010, immediately upon publication of the media reports identifying items of the Products as potentially containing cadmium, Wal-Mart made public statements concerning the ability of retail customers to return the Products for a refund at Wal-Mart's retail locations;

WHEREAS, on July 2, 2010 Kathy Canamore, on behalf of herself and all others similarly situated, filed a complaint against Wal-Mart, in the case styled Kathy Canamore, on behalf of herself and all others similarly situated, plaintiff v. Wal-Mart Stores, Inc., defendant, pending in Lonoke County, Arkansas Circuit Court as Docket No. CV-2010-534 (the "Litigation"), claiming that she purchased Products for her daughter from Wal-Mart and, had she known that the Products contained cadmium, she would not have purchased them or exposed her child to them (the "Complaint");

WHEREAS, the Complaint sought certification of a putative class of Arkansas plaintiffs under Rule 23 of the Arkansas Rules of Civil Procedure defined as:

All Arkansas residents who purchased the Miley Cyrus Products in the state of Arkansas within the past five years immediately preceding the date of the filing of the Complaint through and including the date of the judgment in this case. Excluded from the class are Defendant, their directors, officers and employees, and the judge presiding over this action and his or her immediate family members.

WHEREAS, the Complaint sought damages for the members of the putative class in the amount of the purchase price collected by Wal-Mart for the Products, along with declaratory judgment and attorneys' fees and costs;

WHEREAS, Wal-Mart filed a motion to dismiss the Complaint and, after hearing, the Court denied the motion to dismiss;

WHEREAS, the Parties in the Litigation have undertaken informal discovery in an effort to resolve the claims in the Litigation by agreement rather than by litigation;

WHEREAS, Wal-Mart has provided Plaintiff's counsel in the Litigation with information relating to the number and retail prices of items of the Products sold at Wal-Mart stores in Arkansas and the United States;

WHEREAS, the Litigation would likely result in extensive and protracted legal proceedings, appeals and uncertainty as to the outcome;

WHEREAS, Wal-Mart and BCBG deny the material allegations raised in the Litigation, deny any wrongdoing whatsoever, and deny any liability in connection with the claims asserted in the Litigation;

WHEREAS, Wal-Mart and BCBG deny that class action certification for purposes of litigation, and that class action certification on a nationwide basis in particular for purposes of litigation, is appropriate in the Litigation, but agree that certification for purposes of settlement only is appropriate in the Litigation, under Rule 23 of the Arkansas Rules of Civil Procedure;

WHEREAS, Plaintiff and her counsel have concluded that resolving the Litigation by an agreement providing substantial benefits to the members of a Settlement Class of plaintiffs would avoid prolonged litigation and risks and uncertainties inherent in litigation and in this Litigation;

WHEREAS, the Parties have negotiated and concluded separately that resolving this action by settlement would be fair, reasonable, adequate, and in the best interests of the Settlement Class;

WHEREAS, the Parties have engaged in several months of protracted, arm's length negotiations including both telephonic and in-person negotiating sessions;

WHEREAS, the Parties have concluded separately that it is in their best interests and in the best interests of the Settlement Class to settle this case on a nationwide basis;

WHEREAS, settling this case on a nationwide basis will be the most efficient resolution of the Litigation for the Court and the Parties;

WHEREAS, settling this Litigation on a nationwide basis will provide the benefits of the Settlement to all members of the Settlement Class across the United States;

WHEREAS, Wal-Mart and BCBG are willing to enter into a Settlement of the Litigation solely to avoid the expense, inconvenience, and inherent risks of litigation;

WHEREAS, nothing in this Stipulation of Settlement shall be construed as an admission or concession by Wal-Mart or BCBG of the truth of any allegations raised in the Litigation or of any fault, wrongdoing or liability of any kind or nature;

WHEREAS, to the fullest extent allowed by applicable law, all communications regarding the settlement of the Litigation or made in the course of Settlement negotiations shall be deemed covered by all applicable settlement and evidentiary rules and privileges allowing the exclusion and suppression of such matter;

WHEREAS, the Parties negotiated the payment of Plaintiff's counsel's attorneys' fees, and an incentive award to the Class Representative, but only after an agreement had been reached between the Parties with respect to the notice, class administration, and relief to be

provided to the Settlement Class;

WHEREAS, payment of Plaintiff's counsel's attorneys' fees shall provide additional consideration for the releases contemplated to be granted by the Settlement Class according to the terms of the Settlement;

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants, promises and undertakings set forth below, the Parties and counsel hereby agree and express their intentions as follows:

B. DEFINITIONS

As used in this Settlement, capitalized terms and phrases not otherwise defined shall have the meanings identified below. Additionally, all definitions agreed to below are for settlement purposes only and for the sole purpose of effectuating the Settlement.

1. "Approved Claims" are claims approved by the Claims Administrator that are timely and properly submitted, and meet the standards of the Claims Administrator to avoid the filing of false or fraudulent claims.

2. "Claims Administrator" shall refer to Garden City Group, Inc.

3. "Court" means the Circuit Court of Lonoke County, Arkansas.

4. "Class Period" means July 1, 2005 through entry of an order finally approving the Settlement and entering judgment based upon such final approval.

5. "Class Representative" means Kathy Canamore.

6. "Effective Date" shall mean the later of:

(a) the date of entry of a Final Judgment and Order dismissing with prejudice all claims against Wal-Mart and BCBG if no objection is filed in accordance with this Settlement or if any such objections are withdrawn;

(b) if an objection was properly filed but no document is filed within 30 days of entry of the Final Judgment and Order seeking appeal, review, rehearing, reconsideration, or any other action regarding the Final Judgment and Order, then 31 days after the Court enters a Final Judgment and Order dismissing with prejudice all claims against Wal-Mart and BCBG; or

(c) if any document is filed within 30 days of entry of the Final Judgment and Order seeking appeal, review, rehearing, reconsideration, or any other action regarding the Final Judgment and Order, then 5 days after the date upon which all appellate and/or other proceedings or potential proceedings resulting from such document have been finally terminated in such a manner as to permit no further judicial action and the Settlement, Preliminary Approval Order, and Final Judgment and Order have been affirmed and approved in all material respects.

7. "Final Approval Hearing" shall mean the hearing before the Court to finally approve this Settlement and the Final Judgment and Order.

8. "Final Judgment and Order" shall mean the entry of an order and final judgment approving this Settlement and the Settlement embodied herein pursuant to Arkansas Rule of Civil Procedure 23(e) in terms not materially different than those set forth below.

9. "Notice Administrator" shall refer to Garden City Group, Inc.

10. "Parties" shall mean Canamore, Wal-Mart, and BCBG.

11. "Preliminary Approval Order" shall mean an order, substantially in the form as provided as Exhibit 1, approving the forms and procedures for providing notice to the Settlement Class, conditionally certifying Canamore as representative of the Settlement Class, establishing a procedure for members of the Settlement Class to follow in order to object or to

opt out of the Settlement, and setting a date for a hearing on the final approval of the Settlement.

12. "Released Claims" shall refer to all claims released by any Party, and as further defined below in Paragraphs 37 through 39 .

13. "Released Parties" shall mean Wal-Mart and BCBG and all of their respective present, former, and future direct and indirect parent companies, affiliates, agents, divisions, predecessors in interest, subsidiaries, officers, employees, shareholders, directors, attorneys, agents, insurers, dealers, distributors, parents, subsidiaries, representatives, managers, members, partners, retailers and their respective predecessors, successors and assignees.

14. "Releasing Parties" shall mean Canamore and each member of the Settlement Class (except for people who have obtained proper and timely exclusion from the Settlement Class), on their own behalf and on behalf of their spouses, former spouses, present, future and former administrators, agents, assigns, attorneys, executors, heirs, partners, predecessors in interest and successors in interest.

15. "Settlement Class" means as follows:

All persons who purchased Miley Cyrus-branded jewelry Products at Wal-Mart retail stores in the United States within the past five years immediately preceding the date of the filing of the Complaint through and including the date of the final approval of the Settlement in the Litigation. Excluded from the class are Defendants Wal-Mart and BCBG, their present and former directors, officers and employees, the judge presiding over this action and their immediate family members, and any member who timely files exclusion with the Court. Also excluded are any members who previously received refunds from Wal-Mart for Miley Cyrus-branded jewelry Products.

16. "Settlement Class Member" means any person falling within the definition of the Settlement Class.

17. "Settlement Class Counsel" shall mean Scott E. Poynter of Emerson Poynter LLP, J. Gerard Stranch IV of Branstetter, Stranch & Jennings, PLLC, and Robert A. Jigarjian of Jigarjian Law Office.

18. "Settlement" means this Stipulation of Settlement and all negotiations, memoranda and understandings incorporated and merged into this Stipulation of Settlement.

19. "Qualifying Member" is a member of the Settlement Class who has provided an Approved Claim.

C. CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS

20. For purposes of this Settlement only, the Parties stipulate to a conditional certification of the Settlement Class and that Canamore is an adequate class representative of the Settlement Class.

21. The Settlement Class will be certified pursuant to Rule 23 of the Arkansas Rules of Civil Procedure solely for purposes of settling the Released Claims of the Settlement Class and the Final Judgment and Order. The Parties and Settlement Class Counsel agree that, if approved, certification of the Settlement Class is a conditional certification for settlement purposes only, and if for any reason the Court does not enter the Final Judgment and Order, or if the Final Judgment and Order is not entered following any appeal, the certification of the Settlement Class for settlement purposes shall be deemed null and void without further action by the Court or any of the Parties, and each Party shall retain all of its respective rights as they existed prior to execution of this Settlement, and neither this Settlement, nor any of its accompanying exhibits or any orders entered by the Court in connection with this Settlement, shall be admissible or used for any purpose in this Litigation. Specifically, the Parties and Settlement Class Counsel agree that in the event that the Final Judgment and Order is not

entered, nothing shall be deemed to waive Wal-Mart's and BCBG's objections and defenses to class certification, including but not limited to predominance, manageability, liability, or entitlement to monetary or equitable relief, or any other issue in the Litigation or any other litigation, and this Settlement shall then be deemed null and void and not admissible in any court regarding the propriety of class certification, liability, or entitlement to monetary or equitable relief, or any other issue in the Litigation or any other litigation. Further, in the event that the Final Judgment and Order is not entered, no Party shall have waived any claims, objections, or defenses in connection with the Litigation.

22. Canamore will be conditionally appointed Class Representative, and Settlement Class Counsel will conditionally be appointed Settlement Class Counsel, solely for purposes of settling the Released Claims of the Settlement Class and obtaining entry of the Final Judgment and Order.

23. The Preliminary Approval Order shall, subject to Court approval, expressly state (i) that the Parties and Settlement Class Counsel agree that certification of the Settlement Class is a conditional certification for settlement purposes only, (ii) that the Preliminary Approval Order and conditional class certification shall be null and void and shall be withdrawn and set aside in its entirety in the event that the Final Judgment and Order is not entered by the Court or following any appeal, and (iii) that Wal-Mart and BCBG retain their rights to object to certification of this Litigation, or any other class action, under Rule 23 of the Arkansas Rules of Civil Procedure or any other rule, statute, law, or provision applicable in any state or federal court.

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

that class certification is proper in this Litigation, or any other litigation, against Wal-Mart or BCBG. Moreover, Wal-Mart and BCBG assert and continue to assert that this Litigation fails to meet the prerequisites necessary for class action treatment under applicable law, especially with respect to predominance and manageability because the need to determine individualized issues and to satisfy due-process requirements make the case unmanageable. The Parties and Settlement Class Counsel further agree that, other than to effectuate the settlement of this Litigation under Ark. R. Civ. P. 23, the certification of the Settlement Class for settlement purposes and all documents related thereto, including this Settlement and all accompanying exhibits and all orders entered by the Court in connection with this Settlement, are not intended to be admissible in any judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or other proceeding, or any other litigation, against Wal-Mart or BCBG.

D. FILING OF AMENDED COMPLAINT TO EFFECTUATE SETTLEMENT

25. Solely in order to effectuate this Settlement, Plaintiff will file or has filed a Settlement Class Action Complaint in the Litigation. The Settlement Class Action Complaint will amend the Complaint in the Litigation as follows.

- a. Add the definition of the Settlement Class in paragraph 16 above in place of the existing alleged class definition in paragraph 54 of the Complaint;
- b. Replace “hundreds” with “thousands” in line three of paragraph 56 of the Complaint;
- c. Replace “state of Arkansas” with “the United States” in line three of paragraph 56 of the Complaint;
- d. Replace “this State” with “the United States in the last line of paragraph 56 of the Complaint;

- e. Add “and comparable deceptive trade practices laws of other states” at the end of paragraph 57(c) of the Complaint;
- f. Change “State of Arkansas” to “the United States” in paragraph 61 of the Complaint;
- g. Add claims under comparable deceptive trade practices laws of other states in Count I of the Complaint;
- h. Add BCBG as an additional defendant; and
- i. Contain all other provisions as set forth in the Amended Complaint attached hereto and incorporated herein as Exhibit B.

26. Wal-Mart and BCBG agree that, solely in order to effectuate this Settlement, Wal-Mart and BCBG will not seek to remove the Settlement Class Action Complaint to federal court.

27. Wal-Mart and BCBG agree to allow their undersigned counsel to accept service of the Settlement Class Action Complaint by electronic mail.

28. Canamore and Settlement Class Counsel agree to stay the Litigation while the Settlement is being considered for preliminary and final approval so that neither Wal-Mart nor BCBG will be required to file or serve a response to the Settlement Class Action Complaint.

E. VACATING SETTLEMENT CERTIFICATION, WITHDRAWAL OF SETTLEMENT CLASS COMPLAINT, AND RESERVATION OF RIGHTS

29. The certification of the Settlement Class shall be binding only with respect to the Settlement, and shall not be admissible as evidence in any proceeding or considered for any other purpose, including purposes of waiver or estoppel, should this Settlement terminate for any reason. In the event this Settlement terminates, the Settlement Class certification shall be vacated, the Settlement Class Action Complaint will be deemed withdrawn (to the extent necessary, the Parties will jointly petition the Court for withdrawal of the Settlement Class Action Complaint) and

the Litigation shall revert to its status as to all other issues as existed prior to the date of the execution of the Settlement, without waiver or prejudice to any right, claim, objection, defense or any other position or contention of the Parties in support of, in opposition to or in mitigation of the Complaint and the Litigation.

F. SETTLEMENT CLASS BENEFITS

30. In consideration for a full, complete and final settlement of this Litigation and in consideration for dismissal of the Litigation with prejudice and for the Release in Paragraphs 37-39, Wal-Mart and BCBG agree to provide the following Settlement Class benefits.

31. Refund for Purchase of Products. Wal-Mart and BCBG will pay Settlement Class Members whose claims are approved pursuant to this Settlement the highest retail price that Wal-Mart received at its retail stores for the Products, as described more particularly in Exhibit A to this Settlement, for each of the Products for Approved Claims submitted by Settlement Class Members.

32. Refund for Mailing Product to Claims Administrator. Wal-Mart and BCBG will pay Settlement Class Members who submit a claim by mailing Products to the Claims Administrator pursuant to Paragraph 43 and whose claims are approved pursuant to this Settlement (a Qualifying Member) an amount to refund or defray the costs of mailing the Products. That amount to each Qualifying Member shall be paid from a separate amount of \$25,000 that Wal-Mart and BCBG shall pay to the Claims Administrator pursuant to paragraph 21, which \$25,000 will be added to the total amount due as a refund for Product purchases for all Approved Claims as set forth in the report of the Claims Administrator pursuant to paragraph 46. The Claims Administrator shall allocate from this \$25,000 an amount that will repay the actual cost of mailing the Product to the Claims Administrator paid by each Qualifying Member, and

the Claims Administrator shall add that amount to the amount of the refund for the Product and remit that amount to each Qualifying Member pursuant to paragraph 48. In the event the \$25,000 amount is not sufficient to pay all costs of mailing the Products, the Claims Administrator shall pay the \$25,000 pro rata to each Qualifying Member based on the actual cost of mailing the Products paid by each Qualifying Member, as determined by the Claims Administrator.

33. Disposal of Product. Wal-Mart will collect all Product returned for refund at the office of the Claims Administrator, aggregate and destroy the Product, and certify that the Product has been destroyed. Wal-Mart and BCBG will pay all costs of collection, aggregation, and destruction of the Product and Wal-Mart will maintain the certificate of destruction as a business record. Wal-Mart will provide a copy of the certificate of destruction to Settlement Class Counsel.

34. Notice and Administrative Expenses. Wal-Mart and BCBG will pay the costs of notice to the Settlement Class and administrative costs of the Settlement as more fully set forth in paragraphs 40 and 41 below.

35. Attorneys' Fees and Expenses, and Class Representative Award. Wal-Mart and BCBG will pay all costs associated with the agreed Attorneys' Fees and Expenses and Class Representative Award as provided in Paragraph 53 below.

36. Joint and Several Responsibility for Settlement Payments. Wal-Mart and BCBG will be jointly and severally responsible for the payments for the Settlement Class benefits pursuant to this Settlement.

G. RELEASES

37. Upon the Effective Date, the Class Representative and the members of the Settlement Class who have not validly and timely opted out of the Settlement shall be deemed to

have, and by operation of the Final Judgment and Order shall have, fully, finally, and forever released, relinquished, and discharged, and shall forever be enjoined from prosecution of the Released Parties for any all rights, duties, obligations, claims, demands, actions, causes of action, liabilities, charges, or other assertions, of any kind or nature, whether arising under local, state, or federal law, whether arising under statute, contract, common law, or in equity, whether known or unknown, whether suspected or unsuspected, whether asserted or unasserted, whether foreseen or unforeseen, whether actual or contingent, whether liquidated or unliquidated, that, as of the date of the Final Judgment and Order in the Litigation, arise out of or relate in any way to (a) all claims that were or that could be asserted in the Litigation; (b) all of the acts, omissions, facts, matters, transactions, representations, sales, refunds, or other occurrences that were directly or indirectly alleged, asserted, described, set forth, or referred to in the Litigation (the “Operative Matters”), regardless of whether such Operative Matters relate to sales in Arkansas or elsewhere in the United States; or (c) any and all oral or written statements, representations, concealments or failures to disclose, including but not limited to all forms of advertising and marketing, whether made on the Internet or in print or any other form of media, interaction or advertising, or at the point of sale, regarding the Products. Released Claims shall not include any claim for personal injury or damages allegedly caused by exposure to the Products, regardless of the legal theory or cause of action asserted.

38. The Releasing Parties may have claims that are currently unknown and that are intended to and that will be fully, finally and forever discharged under this Settlement. If those claims were known, the Releasing Parties acknowledge that those claims may have affected their decision to enter into the release of the Released Claims. Notwithstanding this fact, each Releasing Party shall, by entering into the Settlement, waive and be deemed to have waived any

and all provisions, rights and benefits conferred by any local, state or federal statute, law, principle of common law or equity which governs or limits a person's release of unknown claims. For example, Cal. Civ. Code Section 1542 provides:

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

39. To the extent that any Settlement Class Member may argue that such statutes or principles of common law are applicable here, Plaintiff, on behalf of herself and the Settlement Class Members, agrees that any such statutes, principles of common law or other sources of legal authority of any and all jurisdictions that may be applicable are hereby knowingly and voluntarily waived and relinquished by the Settlement Class Members, and further agrees and acknowledges that this is an essential term of this Settlement. The Settlement Class Members understand the statutory language of Section 1542 of the California Civil Code and nevertheless elect to release the Released Parties from the Released Claims, whether known or unknown, and specifically waive any rights that each may have under said Civil Code Section. In connection with this waiver, the Releasing Parties acknowledge that they may discover facts in addition to or different from those currently known or believed to be true with respect to the subject matter of this release or the Products, but they agree that they have taken that possibility into account in agreeing to release and waive the Released Claims and, notwithstanding the discovery or existence of any possible additional or different fact, the Releasing Parties will fully, finally and forever settle and release any and all Released Claims and waive their rights to assert any remedy that may void, invalidate or in any way alter or diminish the permanence and effectiveness of their release.

H. CLASS NOTICE, CLAIMS ADMINISTRATION, AND OBJECTIONS AND EXCLUSIONS BY SETTLEMENT CLASS MEMBERS

40. Claims Administrator. The Parties agree that the Settlement Class will use Garden City Group, Inc., to administer the claims. The Claims Administrator will work under the direction of the Parties and shall be compensated by Wal-Mart and BCBG pursuant to the terms of the Claims Administration Engagement entered into with the Claims Administrator.

41. Class Notice. Within seven (7) calendar days after entry of the Preliminary Approval Order by the Court, the Claims Administrator shall cause to be published a summary notice of the settlement in a 1/6 page ad in the national edition of *USA Today*, to run once on a day between Monday and Thursday. Additionally, within those same seven (7) calendar days, the Claims Administrator shall cause to be published a banner advertisement, with a link to the project-dedicated settlement website, on a commercial website targeted at the purchasers of the Products which shall remain posted for an appropriate period consistent with the period for Settlement Class Members' submission of claims, and the Claims Administrator shall also establish an Internet website with a copy of the Settlement Class Action Complaint and Class Notice as the settlement website. In addition, upon entry of the Preliminary Approval Order, Settlement Class Counsel shall publish on its websites a summary notice of the Settlement and shall issue a press release, in a form agreed between the Parties, to PR Newswire and other major media outlets announcing the Settlement and settlement website.

42. Claims Period. Plaintiff and members of the Settlement Class shall have a period of one hundred and twenty-seven (127) calendar days from entry of the Preliminary Settlement Approval Order by the Court to submit claims under the Claims Process described in the next paragraph.

43. Claims Process. Plaintiff and members of the Settlement Class will be able to submit claims for refund of the purchase price by one of three methods: (a) return of Product in person or by mail (at the Settlement Class Member's expense subject to reimbursement as described in Paragraph 32 above) to the office of the Claims Administrator; (b) proof of purchase of Product by receipt submitted to the Claims Administrator; or (c) proof of purchase of Product by other means and submitted to the Claims Administrator (as described below).

- a. Return of Products. Plaintiff and Settlement Class Members will be able to return the Products in person or by mail to the office of the Claims Administrator for a refund of the purchase price. The purchase price refunded shall be the highest retail purchase price that was charged by Wal-Mart for the particular item of the Product in the state in which it is returned, as set forth in Exhibit A to this Settlement.
- b. Proof of Purchase of Products by Sales Receipt. Plaintiff and Settlement Class Members will be able to make a claim for refund by providing an original receipt from a Wal-Mart retail store in the United States itemizing the purchase of the Product for which a refund is sought, as well as other information identifying the name, address, and mailing address of the claimant, the date and location of purchase of the Product, and any other identifying information reasonably required by the Claims Administrator in connection with assessing submitted claims or paying Approved Claims.
- c. Proof of Purchase of Products by Other Means. Plaintiff and Settlement Class Members will be able to make a claim for refund by providing proof of purchase of the Product at a Wal-Mart retail store in the United States by means other than

return of the Product for refund to the office of the Claims Administrator or submission of an original sales receipt reflecting purchase of the Product from a Wal-Mart store in the United States to the office of the Claims Administrator. Claims submitted under this paragraph shall require certification from the claimant stating, under penalty of perjury, that (1) the Product for which the claims are submitted have not previously been returned for a refund or other consideration to a Wal-Mart retail store, (2) the Product for which the claims are submitted are not within the custody or control of the claimant, and (3) the claimant does not have a receipt relating to purchase of the Product for which the claims are submitted. In addition, the claimant shall submit all identifying information set forth in the preceding paragraph and reasonably required by the Claims Administrator. In addition, the claimant shall submit all information and evidence relating to the purchase of the Product for which the claims are submitted that may be reasonably required by the Claims Administrator in its sole judgment and discretion. The Claims Administrator shall design a process for proof of claims under this paragraph that seeks to avoid fraudulent or fictitious claims and seeks to verify a bona fide purchase of the Product for which the claims are submitted.

44. Any Settlement Class Member, who, in accordance with the terms and conditions of this Settlement, neither seeks exclusion from the Settlement Class nor submits a Claim as provided herein will not be entitled to receive any refund pursuant to this Settlement, but shall nonetheless be bound by the terms of this Settlement, including but not limited to the terms of the Release contained in paragraphs 37-39.

45. Approval and Denial of Claims. The Claims Administrator shall have final, sole and exclusive authority to determine whether to approve or deny claims submitted to the Claims Administrator (such approved claims are defined herein as “Approved Claims” and such denied claims are “Denied Claims”). The Claims Administrator shall have final, sole and exclusive authority to request additional information from or to correspond or deal with a claimant with respect to a claim submitted to the Claims Administrator. No later than 30 days after submission of a claim to the Claims Administrator, the Claims Administrator shall approve or deny the claim. Settlement Class Members whose claims are denied shall nonetheless be bound by the terms of this Settlement, including but not limited to the terms of the Release contained in paragraphs 37-39.

46. Report of Claims Administrator. Within 15 days after the end of the Claims Period, the Claims Administrator shall provide the Parties a report of all Approved Claims, including the name, address, mailing address, and amount due each claimant for Approved Claims, and stating the total amount due for all Approved Claims. Within 30 days after the Claims Administrator provides the report of all Approved Claims, Wal-Mart and BCBG shall provide the total amount of payment due for Approved Claims to the Claims Administrator. The Claims Administrator shall also maintain a list of all Denied Claims and shall respond to inquiries from claimants and Settlement Class Members concerning Denied Claims.

47. Administration. The Claims Administrator shall develop and maintain a process for identifying all claimants and providing any pertinent tax forms or information to claimants in connection with payment of a claim by the Claims Administrator.

48. Payment to Claimants. The Claims Administrator shall, within 10 days after receiving the payment due for Approved Claims from Wal-Mart and BCBG, remit the payment

due to each claimant for Approved Claims. The Claims Administrator shall be solely and exclusively responsible for making payments to claimants. The Claims Administrator shall keep accurate records of its payment of Approved Claims to claimants and Settlement Class Members.

49. Identification of Claimants who Return Product. The Parties acknowledge that Wal-Mart does not, in the ordinary course of business, keep records of the identity of retail purchasers who return products purchased at a Wal-Mart retail location. Further, the Parties acknowledge that many of the Products have previously been returned, collected and aggregated by Wal-Mart without gathering identifying information concerning the person or entity who returned Product.

50. Right to Object. Any Settlement Class Member who objects to any aspect of this Settlement may appear in person or through counsel, at his or her own expense, at the Final Approval Hearing to present any evidence or argument that may be proper and relevant. No Settlement Class Member shall be heard and no papers, briefs, pleadings, or other documents submitted by any Settlement Class Member shall be received and considered by the Court unless, at least fourteen (14) days before the Final Approval Hearing, the Settlement Class Member files with the Court and mails to Settlement Class Counsel and the Defendants' counsel (at the addresses specified below), written objections that include: (a) a notice of intention to appear; (b) a sworn statement by the Class Member attesting to his/her membership in the Settlement Class and the specific grounds for the objections and any reasons why the Settlement Class Member desires to appear and be heard, (c) provides all copies of documents that the Settlement Class Member desires the Court to consider, (d) provides the identity of the Class Member's counsel representing the objector and/or who will appear at the Final Approval Hearing, (e) a list of all persons who will be called to testify by the objector at the Final Approval Hearing in support of

the objection; and (f) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing. Any Settlement Class Member who fails to object in the manner prescribed herein shall be deemed to lack standing to object having waived his or her objections and will be forever barred from making any such objections in the Litigation or in any other related action or proceeding. Additionally, any Settlement Class Member objecting to the Settlement understands he or she may be required to demonstrate through discovery his or her standing as a Settlement Class Member.

51. Right to Respond to Objections. Class Counsel and the Parties shall have the right to respond to any objection no later than seven (7) days prior to the Final Approval Hearing. The Party so responding shall file a copy of the response with the Court, and shall serve a copy, by regular mail, hand or overnight delivery, to the objector (or counsel for the objector) and to counsel for the Parties.

52. Right to Opt Out of the Settlement. Any Settlement Class Member who wishes to be excluded from this Settlement may do so by filing with the Court and serving upon the parties (at the addresses specified below) a written notice to opt out of the Settlement by fourteen (14) days before the date set for the Final Approval Hearing. If a Settlement Class Member submits an objection and a written notice to opt out, s/he shall be deemed to have complied with the terms of the opt-out procedure and shall not be bound by this Settlement if approved by the Court. However, any objector who has not timely submitted a written notice to opt out will be bound by the terms of this Settlement upon final approval of this Settlement.

I. ATTORNEYS FEES AND INCENTIVE AWARD

53. Class Counsel shall request the Court to award all Plaintiffs' Counsel in the Litigation their attorneys' fees, expenses and costs in an amount up to a total of One Hundred

Seventy-Five Thousand Dollars (\$175,000), in the aggregate, to be paid by Wal-Mart and BCBG in addition to all other relief called for by the Settlement. Wal-Mart and BCBG agree that they will not oppose the Court's awarding of attorneys' fees, costs and expenses up to such sum. The award of attorneys' fees, costs and expenses approved by the Court shall be paid by Wal-Mart and BCBG on the later of: (a) 40 days after the date of entry of the Final Judgment and Order if no document is filed within that time seeking appeal, review, rehearing, reconsideration, or any other action regarding that judgment and order; or (b) if any such document is filed, then 10 days after the date upon which all appellate and/or other proceedings or potential proceedings resulting from such document have been finally terminated in such a manner as to permit no further judicial action, and with the Final Judgment and Order being affirmed and approved in all material respects. Payment shall be made via wire transfer to Emerson Poynter LLP. Wal-Mart and BCBG's payment of the Court's awarded sum to Emerson Poynter LLP shall release Wal-Mart and BCBG from any further liability with respect to any such Court-awarded attorneys' fee, expenses, or costs.

54. In recognition of her effort on behalf of the Settlement Class, Canamore shall, subject to the approval of the Court, be awarded an incentive award of two thousand dollars (\$2,000). Such sum shall be paid to Canamore in recognition of her time and effort serving as the Class Representative. Wal-Mart and BCBG shall pay such amount check, sent care of Emerson Poynter LLP, at the same time as they pay attorneys' fees and expenses.

**J. ENTRY OF FINAL JUDGEMENT, OR TERMINATION OF SETTLEMENT AND
EFFECT OF TERMINATION OF SETTLEMENT**

55. Final Judgment and Order. If the Court preliminarily approves this Settlement, the Parties shall jointly request at the Final Approval Hearing that the Court enter final judgment (the "Final Judgment and Order"). A copy of the proposed Final Judgment and Order agreed to

by the Parties is attached hereto as Exhibit 2. That Final Judgment and Order shall provide:

- (a) The Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class;
- (b) The Class Notice fully complies with the requirements of Rule 23 of the Arkansas Rules of Civil Procedure and due process, constitutes the best notice practicable under the circumstances, and is due and sufficient notice to all persons entitled to notice of the settlement of this Litigation;
- (c) The Settlement provided for herein and any proceedings taken pursuant thereto are not and should not in any event be offered or received as evidence of, a presumption, concession or an admission of liability or of any misrepresentation or omission in any statement or written document approved or made by Defendants or any Released Parties or of the suitability of these or similar claims to class treatment in active litigation and trial; provided, however, that reference may be made to this Settlement in such proceedings as may be necessary to effectuate this Settlement;
- (d) The Litigation is dismissed on the merits and with prejudice and without fees or costs except as provided herein, and the Released Parties are all released and discharged from the Released Claims of the Releasing Parties as of the Effective Date;
- (e) Neither the Final Judgment and Order nor this Settlement constitutes an admission of liability, fault or wrongdoing;
- (f) The Class Representatives and all Settlement Class members are permanently enjoined and barred from commencing or prosecuting any action asserting any of

the Released Claims against Defendants, either directly, representatively, derivatively, or in any other capacity, whether by a complaint, counterclaim, defense, or otherwise, in any local, state, or federal court, or in any agency or other authority, tribunal, or forum wherever located;

- (g) The Court shall retain continuing jurisdiction over this action, the Parties, and all Settlement Class Members to determine all matters relating in any way to the Final Judgment and Order, the Preliminary Approval Order, or the Settlement, including but not limited to their administration, implementation, interpretation, or enforcement;
- (h) For approval and payment of Settlement Class Counsel's fees and expenses of up to \$175,000 in accordance with the terms of this Settlement; and
- (i) Performance of this Settlement is expressly contingent upon Final Approval and entry of the Final Judgment and Order. If entry of the Final Judgment and Order does not occur, or is vacated or modified in any way, this Settlement will be terminated, and shall have no force or effect whatsoever, and shall be considered null and void, *ab initio*, and shall not be admissible as evidence for any purpose in any pending or future litigation (in any jurisdiction or forum) involving any of the Parties and/or Released Parties or considered for any other purpose, including purposes of waiver or estoppel;
- (j) Such orders as are necessary and appropriate to effectuate the terms and conditions of this Settlement.

56. Termination of the Settlement. Wal-Mart and BCBG shall have the right to terminate this Settlement, in their sole discretion, if any of the following events occur:

- (a) If the Court fails to approve this Settlement as written or if on appeal the Court's approval is reversed or modified;
- (b) If any objections to this Settlement are sustained; or
- (c) If there are any modifications to this Settlement (other than the correction of typographical errors) by any court.

57. The Class Representative shall have the right to terminate this Settlement, in her sole discretion, if any of the following events occur:

- (a) If the Court fails to approve this Settlement as written or if on appeal the Court's approval is reversed or modified;
- (b) If any objections to this Settlement are sustained; or
- (c) If there are any modifications to this Settlement (other than the correction of typographical errors) by any court.

58. Effect of Termination. If this Settlement is terminated, it shall have no force or effect whatsoever, and shall be considered null and void, *ab initio*, and shall not be admissible as evidence for any purpose in any pending or future litigation (in any jurisdiction or forum) involving any of the Parties and/or Released Parties or considered for any other purpose, including purposes of waiver or estoppel or the existence, certification or maintenance of any proposed or existing class or the amenability of these or similar claims to class treatment . In the event that any Party, for any reason permitted herein, terminates this Settlement, written notice shall be provided by the terminating Party to counsel for all the other Parties and to the Court. The terminating Party shall concurrently apply to the Court for an Order terminating the Settlement and directing the return of any funds paid or delivered pursuant to this Settlement. Upon determining that the noticed termination is permitted by this Settlement, the Court shall

enter an order terminating this Settlement and ordering the return any funds paid or delivered, including all interest, income and net gains realized thereon, to Wal-Mart and BCBG. Class Counsel shall not refer to or invoke the vacated findings and/or order related to class settlement in the event this Settlement is not consummated and the Litigation is later litigated and contested by Defendants under Rule 23 of the Arkansas Rules of Civil Procedure.

59. Restriction on Public Statements. Class Counsel, Plaintiffs and Defense Counsel hereby agree not to engage in any communications with the media or the press, on the Internet, or in any public forum, orally or in writing, that relate to this Settlement or the Litigation other than statements that are fully consistent with the Notice to the Settlement Class Members.

K. MISCELLANEOUS PROVISIONS

60. Interpretation. This Settlement contains the entire agreement among the Parties and supersedes any prior agreements or understandings among them. All terms are contractual and are not mere recitals.

61. No Admissions. Neither this Settlement nor any documents referred to herein nor any action taken to carry out this Settlement are, or may be construed as, or may be used as, an admission or concession by or against the Released Parties on any point of fact or law, or of any alleged fault, wrongdoing, or liability whatsoever.

62. Non-Admissibility. This Settlement, and all negotiations, correspondence and communications leading up to its execution, shall be deemed to be within the protection of Arkansas and Federal Rules of Evidence 407 and 408 and any analogous state or federal rules or principles. Neither this Settlement, nor any terms, conditions, contents or provisions hereof or exhibits hereto, nor any negotiations, correspondence or communications leading up to the execution of this Settlement, shall constitute a precedent or be admissible for any purpose in any

proceeding; provided, however, that this Settlement shall be admissible in any proceeding related to the approval of this Settlement, to enforce any of its terms and conditions, to support or defend this Settlement in an appeal from an order granting or denying final approval, or to enforce or assert a claim or defense of res judicata, collateral estoppel, claim preclusion, issue preclusion, settlement, release, merger and bar, or any similar claim or defense against the Plaintiff, any Settlement Class Member, or any third party.

63. Reservation of Rights. This Settlement is made without prejudice to the rights of Wal-Mart and BCBG to: (1) oppose class certification in this Litigation should this Settlement not be approved or implemented; (2) oppose or challenge whether Settlement Class Counsel would be entitled to attorneys' fees absent this Settlement; (3) oppose class certification in any other actions or in any other putative or certified class action should those actions not be dismissed; or (4) use the certification of the Settlement Class to oppose certification of any other proposed or existing class arising out of or related to the Released Claims.

64. No Reliance. The Parties hereby acknowledge that they have not relied on any statement, representation, omission, or promise of any other Party in executing this Settlement, except as expressly stated in this Settlement.

65. No Waiver. The waiver by one Party of any provisions or breach of this Settlement shall not be deemed a waiver of any other provision or breach of this Settlement.

66. Successors and Assigns. This Settlement shall be binding upon, and enure to the benefit of, the respective heirs, successors and assigns of the Parties and/or Released Parties hereto.

67. Headings. The headings contained in this Settlement are for reference purposes

only and shall not affect in any way the meaning or interpretation of this Settlement.

68. Amendment. This Settlement may be amended or modified only by a written instrument signed by the Parties (or their respective counsel), or by a document filed with the Court and agreed to or not objected to by the Parties. Amendments and modifications may be made without notice to the Settlement Class unless notice is required by law or the Court.

69. Construction. For the purpose of construing or interpreting this Settlement, the Parties agree that it is to be deemed to have been drafted equally by all Parties hereto and shall not be construed for or against any Party.

70. Integration of Exhibits. The exhibits to this Settlement are an integral and material part of the settlement and are hereby made a part of this Settlement.

71. Jurisdiction. This Court has jurisdiction over the Parties, the Settlement Class members, the claims asserted in the Litigation, and the claims being released pursuant to this Settlement.

72. Governing Law. This Settlement shall be governed by the laws of the State of Arkansas.

73. Notices of Objection or Opt Out of the Settlement. Any objection to or opt out of this Settlement shall be filed with the Court consistent with the requirements of this Settlement, and mailed to counsel for the Parties at the following addresses:

Notice to Plaintiff and Class Counsel:

Scott E. Poynter
Emerson Poynter LLP
The Rozelle-Murphy House
1301 Scott Street
Little Rock, AR 72202

Notice to Wal-Mart:

Jess Askew III
Williams & Anderson PLC
Twenty-Second Floor
111 Center Street
Little Rock, AR 72201

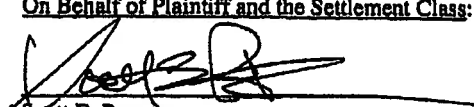
Notice to BCBG:

Erica Alterwitz
BCBG Max Azria Group, Inc.
2761 Fruitland Avenue
Vernon, California 90058

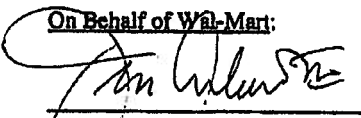
74. Counterparts. This Settlement may be executed in counterparts and may be executed and transmitted via email and so executed shall constitute one agreement.

IN WITNESS WHEREOF, the undersigned have caused this Settlement to be executed as of the 29 of OCTOBER 2013:

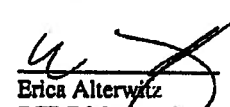
On Behalf of Plaintiff and the Settlement Class:


Scott E. Poynter
EMERSON POYNTER LLP
The Rozelle-Murphy House
1301 Scott Street
Little Rock, AR 72202

On Behalf of Wal-Mart:


Jess Askew III
Williams & Anderson PLC
Twenty-Second Floor
111 Center Street
Little Rock, AR 72201

On Behalf of BCBG:


Erica Alterwitz
BCBG Max Azria Group, Inc.
2761 Fruitland Avenue
Vernon, California 90058

UPC	Primary Description	Highest Retail Price
72594206916	HEART PNDNT NECKLACE	\$4.00
72594206927	DOME RING	\$3.00
72594210283	RHINESTONE HOOP	\$3.00
72594210284	RND FACETED RING	\$3.00
72594221838	HS NECKLACE	\$6.00
72594221839	HS NECKLACE	\$6.00
72594221840	HS NECKLACE	\$6.00
72594221853	HS RING	\$4.00
72594221854	HS RING	\$4.00
72594221855	HS RING	\$4.00
72594221856	HS RING	\$4.00
72594221866	HS BRACELET	\$6.00
72594221869	HS BRACELET	\$4.00
72594221870	HS BRACELET	\$4.00
72594221871	HS BRACELET	\$4.00
72594221872	HS BRACELET	\$4.00
72594221873	HS BRACELET	\$4.00
40320010815	MM 4.00	\$2.00

