UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF ARKANSAS

CITY OF PONTIAC GENERAL EMPLOYEES' RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. WAL-MART STORES, INC., et al., Defendants.	No. 5:12-cv-05162-SOH CLASS ACTION

DECLARATION OF LAYN R. PHILLIPS IN SUPPORT OF LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF SETTLEMENT AND FOR AN AWARD OF ATTORNEYS' FEES

I, LAYN R. PHILLIPS, declare as follows:

1. I was selected by the parties to serve as the Mediator and assist them in efforts to resolve the above-captioned class action pending before the Honorable Susan O. Hickey in the United States District Court, Western District of Arkansas.

2. The parties' negotiations were conducted in confidence and under my supervision. All participants in the mediation and negotiations executed a confidentiality agreement indicating that the mediation process was to be considered settlement negotiations for the purpose of Rule 408 of the Federal Rules of Evidence, protecting disclosure made during such process from later discovery, dissemination, publication and/or use in evidence. By making this declaration, neither I nor the parties waive in any way the provisions of the confidentiality agreement or the protections of Rule 408. While I cannot disclose the contents of the mediation negotiations, the parties have authorized me to inform the Court of the procedural and substantive matters set forth below so the Court can make an informed decision regarding evaluation and approval of the proposed settlement. Thus, without in any way waiving the mediation privilege, I make this declaration based on personal knowledge and I am competent to testify as to the matters set forth herein.

Background and Qualifications

3. I am a former U.S. District Judge, a former United States Attorney, and a former litigation partner with the firm of Irell & Manella LLP. I currently serve as a mediator and arbitrator with my own alternative dispute resolution company, Phillips ADR Enterprises ("PADRE"), which is based in Corona del Mar, California.

4. I earned my Bachelor of Science in Economics as well as my J.D. from the University of Tulsa. I also completed two years of L.L.M. work at Georgetown University Law Center in the area of economic regulation of industry. After serving as an antitrust prosecutor and an Assistant United States Attorney in Los Angeles, California, I was nominated by President Reagan to serve as a United States Attorney in Oklahoma, where I served for approximately four years.

5. I was subsequently nominated by President Reagan to serve as a United States District Judge for the Western District of Oklahoma. While on the bench, I presided over more than 140 federal trials and sat by designation in the United States Court of Appeals for the Tenth Circuit. I also presided over cases in Texas, New Mexico and Colorado.

6. I left the federal bench in 1991 and joined Irell & Manella, where for 23 years I specialized in alternative dispute resolution, complex civil litigation and internal investigations. In 2014, I left Irell & Manella to found my own company, PADRE, which provides mediation and other alternative dispute resolution services.

7. I have over twenty years of dispute resolution experience, having conducted thousands of mediations and settlement conferences in all types of litigation, including complex class actions, securities class actions, and shareholder derivative actions. I also have been appointed Special Master by various federal courts in complex civil proceedings. In addition, I am a Fellow in the American College of Trial Lawyers and have been nationally recognized as a mediator by the Center for Public Resources

Institute for Dispute Resolution (CPR), serving on CPR's National Panel of Distinguished Neutrals.

8. Because of my experience, I am frequently asked by litigants and their attorneys in complex civil cases to serve as a mediator, particularly in complex class actions. Over the past twenty years, I have successfully mediated hundreds of securities class actions and other complex cases pending in various courts across the United States.

The Arm's-Length Settlement Negotiations

9. The parties first engaged me in this matter in August 2015. After they had fully briefed a possible mediation, however, they decided not to proceed at that time. I kept in touch with both sides for years, and in the summer of 2018, the parties informed me that they were ready to mediate the case.

10. On September 11, 2018, the parties participated in a full-day mediation session before me in New York City. The participants included (i) Lead Counsel, Robbins Geller Rudman & Dowd LLP; and (ii) in-house representatives for defendants and defendants' outside counsel at Latham and Watkins LLP, Greenberg Traurig LLP, and Maron Marvel Bradley Anderson & Tardy LLC.

11. In advance of the mediation session, the parties exchanged and provided to me detailed mediation statements and supporting exhibits addressing, among other things, Lead Plaintiff's ability to establish liability, the "build-up" damages methodology, and the potential risks to Lead Plaintiff's ability to obtain a favorable judgment, including defendants' motion for interlocutory appeal to defeat Lead Plaintiff's proposed damages methodology, which was then-pending. Additionally,

during the mediation, Lead Counsel and defendants' counsel presented arguments regarding their clients' positions. The work that went into the mediation submissions and competing presentations and arguments was substantial.

12. Throughout the full-day mediation session on September 11, 2018, I engaged in extensive discussions with the parties in an effort to find common ground between them. I developed an understanding of the full range of disputes, the respective positions of the various participants, and the relative strengths and weaknesses of those positions, as well as the risks, rewards, and costs of continued litigation. The mediation process involved analysis of the strength of Lead Plaintiff's claims, the prospects of recovery based upon the novel "build-up" damage methodology, defendants' defenses to liability, and of the amount of monetary consideration necessary to support a fair and reasonable settlement given the risks of continued litigation

13. During the session, the parties exchanged several rounds of settlement demands and offers. These efforts continued into the evening hours. At the end of the day, the parties still had not reached an agreement to settle the action, but had substantially closed the distance between their respective positions. Accordingly, the parties agreed to, and did, continue negotiations throughout the next 10 days.

14. On September 23, 2018, following further negotiations, I made a recommendation to attempt to move the parties to a monetary sum for which settlement might be achievable. This recommendation suggested that each side agree to settle based upon a specified monetary sum ($160 million) that I thought was fair

and reasonable based on my neutral evaluation of the case and the risks facing both sides at that point in time. I reached this number in part based on my review and consideration of the orders issued by the Court, the evidence and arguments offered by both sides, my experience mediating, among others, complex class actions and securities fraud actions, and also taking into account the substantial risks to both sides that the future litigation landscape presented. I was nonetheless mindful that the settlement amount I proposed was one to which both sides would have difficulty agreeing to, and that it was quite possible that one or both sides would reject the proposal. The recommendation was made to the parties on a double-blind basis, such that neither party would know if the other party had accepted or rejected the proposal unless both sides agreed to accept it.

15. The parties ultimately agreed to accept my recommendation to settle the case. On September 24, 2018, counsel for the parties agreed to a non-binding settlement in principle of $160 million, subject to the necessary client and board approvals required by either side. From my experience and personal involvement as the mediator for this case, I observed first-hand that the parties engaged in hard-fought litigation and negotiation. It is my opinion that the settlement is fair and reasonable and I strongly support its approval in all respects.

16. The entirety of the mediation process was an extremely hard-fought negotiation from beginning to end. Although I cannot disclose specifics regarding the participants' positions, there were many complex issues that required significant

thought and practical solutions. Throughout the mediation process, the negotiations between the parties were vigorous and conducted at arm's-length and in good faith.

The Recovery For Class Members Is Substantial

17. Having mediated hundreds of securities class actions over the past twenty years, I believe the monetary relief obtained by the Lead Plaintiff and Lead Counsel in this case is an excellent result for the benefit of the Class certified by the Court, particularly in light of the significant risks that Lead Plaintiff faced in establishing liability and damages.

18. My experience as a federal judge, a litigator and a mediator has exposed me to hundreds of complex class action cases. I am well aware of the risks facing Lead Plaintiff in a case of this nature. Lead Plaintiff faced a well-funded, sophisticated and respected defendant-entity. Walmart's in-house counsel, litigation counsel and settlement counsel are among the most capable and most respected lawyers in the country.

19. As experienced litigators, the parties' counsel understood that continued litigation promised to be lengthy, expensive and uncertain. Balancing the very real risks and costs of continued litigation against the certain, immediate, and substantial benefits achieved by the proposed settlement further confirms that the proposed settlement represents an exceptional result for the class members taking into account the relative strengths of Lead Plaintiff's allegations and evidence, defendants' denials of wrongdoing and evidence in support of defendants' positions and the risks associated with both liability and calculating damages.

20. This case was unique with many procedural and substantive risks. In particular, Lead Plaintiff faced many ongoing risks in connection with its untested "build up" damages methodology, which sought to measure damages without reference to the market price of Walmart's stock. At the time this case was filed, no court had ever endorsed the 'build up" damages methodology in a securities fraud class action. While the Court agreed that the securities laws do not prohibit recovery under the "build up" damages method, it never explicitly endorsed its use. Accordingly, there was a possibility that Lead Plaintiff ultimately would not be entitled to use the "build up" method to calculate damages, particularly in light of the high hurdle that it faced under *Daubert* and the likelihood of post-trial challenges regarding that method. Despite this fact, many risks associated with the "build up" methodology were overcome by Lead Counsel in the course of this litigation, and Lead Counsel's ability to pursue the "build up" methodology played an important role in securing a substantial recovery on behalf of the class.

21. While Lead Plaintiff was confident in the assembly of evidence and legal theories, as in all cases there is a risk at trial of recovering nothing for the class in light of defendants' defenses to the underlying claims.

22. Based on my review of the pleadings and submissions supplied in advance of the mediations and the quality of the advocacy during the mediations, I can attest that the representation provided by counsel for each of the parties was of the highest caliber. Counsel for the parties not only are highly experienced in this kind of litigation, but also demonstrated their deep knowledge of the specific factual

and legal issues and principles at the heart of the case, the relative strengths and weaknesses of their positions, and in particular, the risks of continued litigation. Based on this documentation, I am confident that counsel for the parties were sufficiently well informed to enter into the proposed settlement.

23. The product of this effort, in my view, is a fair and reasonable compromise and an outstanding recovery that provides an immediate benefit to class members. I further believe it was in the best interests of the parties that they agree on the proposed settlement and avoid the burdens and risks associated with taking a case of this size and complexity further into litigation, including a very real possibility of trial and likely appeals. I strongly support the Court's approval of the settlement in all respects.

24. The issue of an award of attorney's fees is, of course, left to the discretion of the District Court. In this case, I believe the following are among the relevant factors which warrant Lead Counsel's fee request of 30%:

(a) the monetary result achieved through this settlement is excellent and exceeds the median settlement amounts in similar securities cases;

(b) Lead Counsel's pursuit of its novel "build up" damages methodology (*see* ¶20, *supra*);

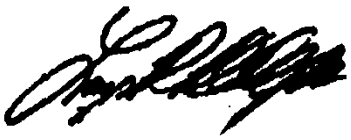
(c) Lead Counsel's unique dedication to this case is evidenced by its filing of the initial complaint and its status as the only law firm to file a lead plaintiff motion, which suggests that other firms did not want to bring or litigate this case against Walmart;

(d) over the course of this litigation, Lead Counsel successfully defended against numerous dispositive motions including two motions to dismiss and two motions to strike, any one of which would have put an end to this litigation;

(e) Lead Counsel was also successful in obtaining class certification shortly after the United States Supreme Court's decisions in *Erica P. John Fund Inc. v. Halliburton Co.*, 134 S. Ct. 2398 (2014) ("Halliburton II") and *Comcast v. Behrend*, 133 S. Ct. 1426, 1433 (2013), as well as the Eighth Circuit's opinion in *IBEW Local 98 Pension Fund v. Best Buy Co.,* 818 F.3d 775 (8th Cir. 2016), all of which significantly raised the bar for plaintiffs' attorneys in obtaining class certification; and

(f) over the course of the last six years, Lead Counsel devoted substantial time, money and resources towards litigating this action on a contingency fee basis with no guarantee of recovery.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 26th day of March, 2019, at Corona del Mar, California.



LAYN R. PHILLIPS

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on March 28, 2019, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

/s/ Jason A. Forge

JASON A. FORGE

ROBBINS GELLER RUDMAN
& DOWD LLP
655 West Broadway, Suite 1900
San Diego, CA 92101-8498
Telephone: 619/231-1058
619/231-7423 (fax)

E-mail: jforgergrdlaw.com

Mailing Information for a Case 5:12-cv-05162-SOH City of Pontiac General Employees' Retirement System v. Wal-Mart Stores, Inc. et al

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Michael Albert**
  malbert@rgrdlaw.com,e_file_sd@rgrdlaw.com,7223240420@filings.docketbird.com
- **H. William Allen**
  hwallen@williamsanderson.com,njackson@williamsanderson.com
- **Jess L. Askew , III**
  jess.askew@kutakrock.com,Suzette.McCasland@KutakRock.com,freda.hoover@kutakrock.com
- **George Edward Barrett**
  gbarrett@barrettjohnston.com
- **Sean M. Berkowitz**
  sean.berkowitz@lw.com
- **Cynthia J. Billings**
  cbillings@swappc.com,
- **Theodore J. Boutrous , Jr**
  tboutrous@gibsondunn.com
- **Austin P. Brane**
  abrane@rgrdlaw.com
- **George H. Brown**
  GBrown@gibsondunn.com
- **Geoffrey P. Culbertson**
  gpc@texarkanalaw.com,4874984420@filings.docketbird.com,3156740420@filings.docketbird.com,sjohnson@texarkanalaw.com,jorr@texarkanalaw.com
- **Jason A. Forge**
  jforge@rgrdlaw.com,e_file_sd@rgrdlaw.com,lmix@rgrdlaw.com
- **Brian T. Glennon**
  brian.glennon@lw.com
- **Andrew R. Gray**
  andrew.gray@lw.com,andrew-gray-3541@ecf.pacerpro.com,#ocecf@lw.com,kristen.fechner@lw.com
- **Ellen Gusikoff Stewart**
  elleng@rgrdlaw.com
- **Willie S. Haley**
  whaley@williamsanderson.com,njackson@williamsanderson.com
- **Douglas S. Johnston , Jr**
  djohnston@barrettjohnston.com,
- **Brian M. Lutz**
  blutz@gibsondunn.com,aarias@gibsondunn.com
- **Jerry E. Martin**
  jmartin@barrettjohnston.com,nchanin@barrettjohnston.com
- **Timothy L. Miles**
  tmiles@barrettjohnston.com,
- **Alexander Mircheff**
  amircheff@gibsondunn.com,lgerdine@gibsondunn.com
- **Danielle Myers**
  danim@rgrdlaw.com,LAndracchio@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Nicholas H. Patton**
  nickpatton@texarkanalaw.com
- **Mark Andrew Perry**
  mperry@gibsondunn.com
- **Marcy C. Priedeman**
  marcy.priedeman@lw.com,sflitigationservices@lw.com,marcy-priedeman-6759@ecf.pacerpro.com

- **Brian H. Ratcliff**
  brian@ppgmrlaw.com,julien@ppgmrlaw.com
- **Darren J. Robbins**
  e_file_sd@rgrdlaw.com,
- **Scott H. Saham**
  scotts@rgrdlaw.com,e_file_sd@rgrdlaw.com,9138481420@filings.docketbird.com
- **Nicholas J. Siciliano**
  nicholas.siciliano@lw.com,tara.villegas@lw.com
- **Colleen C. Smith**
  colleen.smith@lw.com,colleen-c-smith-7786@ecf.pacerpro.com
- **Sarah A. Tomkowiak**
  sarah.tomkowiak@lw.com,caroline.yu@lw.com
- **Peter A. Wald**
  peter.wald@lw.com,sflitigationservices@lw.com,peter-wald-7073@ecf.pacerpro.com,john.eastly@lw.com
- **Teresa M. Wineland**
  teresa.wineland@kutakrock.com,freda.hoover@kutakrock.com,cassy.peters@kutakrock.com
- **Debra J. Wyman**
  Debraw@rgrdlaw.com,karenc@rgrdlaw.com

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

Meghan C. Dougherty
Neal & Harwell
150 Fourth Avenue, N
Suite 2000
Nashville, TN 37219

Aubrey B. Harwell , Jr
Neal & Harwell
150 Fourth Avenue, N
2000 First Union Tower
Nashville, TN 37219-2498

Gerald David Neenan
Neal & Harwell
150 Fourth Avenue, N
2000 First Union Tower
Nashville, TN 37219-2498

David C. Walton
Robbins Geller Rudman & Dowd LLP
655 W Broadway
Suite 1900
San Diego, CA 92101