

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

AMY FISCHER and MORRISON
OMORUYI, individually and on behalf of all
other persons similarly situated,

Plaintiffs,

v.

KMART CORPORATION,

Defendant.

Case No. 3:13-cv-4116 (DEA)

Magistrate Judge Douglas E. Arpert

STIPULATION AND SETTLEMENT AGREEMENT

IT IS HEREBY STIPULATED AND AGREED by and between PLAINTIFFS, as that term is defined herein at Section 1.10, and KMART CORPORATION (“Kmart” or “Defendant”) (collectively with PLAINTIFFS, “the Settling Parties”), as set forth below:

I. RECITALS

WHEREAS, the factual background behind this settlement (“Settlement”) described in this Stipulation is as follows:

- On July 3, 2013, a lawsuit titled *Fischer, et al. v. Kmart Holding Corp., et al.*, Case No. 3:13-cv-04116-AET-DEA (“*Fischer*”) was filed in the United States District Court for the District of New Jersey. Subsequently, on March 27, 2015, a second lawsuit titled *Hautur, et al. v. Kmart Corporation*, Case No. 1:15-cv-00267 (“*Hautur*”), was filed in the United States District Court for the Western District of New York.
- In general, these two pending lawsuits allege that Kmart has improperly denied its Assistant Store Managers, Hardlines and Assistant Store Managers, Softlines (“ASMs”) overtime pay in violation of the Fair Labor Standards Act (“FLSA”) and applicable state laws. In addition, *Fischer* includes related class claims under Maryland and New Jersey labor law and *Hautur* includes related class claims under New York and Ohio labor law. Kmart has adamantly denied all wrongdoing, and maintains that its ASMs have been properly classified and compensated at all times, a position Plaintiffs adamantly dispute.

WHEREAS, the settlement described herein is intended to resolve all claims raised in, and related to, the two pending lawsuits referenced above (collectively, the “Settled Lawsuits”).

WHEREAS, Defendant, through its counsel, and the Plaintiffs, through their counsel, engaged in a series of arms-length negotiations, including with the assistance of an experienced mediator, Hunter R. Hughes III, which culminated in their reaching the conditional agreement reflected herein.

WHEREAS, in connection with the litigation and settlement negotiation process, Defendant’s counsel provided extensive information to Plaintiffs’ counsel concerning the claims at issue and concerning the damages of members of the *Fischer* collective action and the putative state classes, including their workweeks and earnings during the relevant time periods covered by the actions filed against Defendant and any agreements they entered into in arising from or relating to their employment with Defendant, and the nature and size of the putative state classes.

WHEREAS, a full-day mediation session was held in Chicago on December 9, 2015. The mediation did not result in an on-site settlement, but negotiations between counsel for the Settling Parties continued, and on February 18, 2016, the Settling Parties agreed on the amount and general terms of the settlement and thereafter negotiated the terms of this Stipulation and Settlement Agreement and all associated exhibits (collectively, the “Stipulation”).

WHEREAS, the Settling Parties desire to settle fully and finally all claims between them, that are embodied in or related to the Settled Lawsuits.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Settling Parties agree as follows:

II. THE CONDITIONAL NATURE OF THIS STIPULATION

This Stipulation is made for the sole purpose of settling the above-captioned actions on a collective and class-wide basis. This Stipulation and the settlement it evidences are made in compromise of disputed claims. Because these actions were pled as class and collective actions, this Settlement must receive both preliminary and final approval by the Court. Accordingly, the Settling Parties enter into this Stipulation and associated settlement on a conditional basis. In the event the Court does not enter an Order of Final Approval, or in the event the associated Judgment does not become a Final Judgment for any reason, this Stipulation (except for those provisions relating to non-admissibility and non-admission of liability set forth in Sections VI, 2.13.4 and 2.13.5) shall be deemed null and void *ab initio*, shall be of no force or effect whatsoever, and shall not be referred to or utilized by any party for any purpose whatsoever. Further, the negotiation, terms, and entry of this Stipulation shall remain subject to the provisions of Federal Rule of Evidence 408, and any other analogous rules of evidence that are applicable.

Defendant denies all claims as to liability, damages, penalties, interest, attorneys' fees or costs, restitution, injunctive relief and all other forms of relief, as well as the collective and class allegations asserted in the Settled Lawsuits, as that term is defined in Section 1.36. Defendant has agreed to resolve the Settled Lawsuits via this Stipulation, but to the extent this Stipulation is deemed void or the Effective Date does not occur, Defendant does not waive any procedural or substantive defenses but rather expressly reserves all rights to those defenses to challenge such claims and allegations in the Settled Lawsuits upon all procedural and factual grounds, including, without limitation, the ability to challenge class and/or collective action treatment on any grounds, including, as applicable to a particular case, through an opposition to a motion for certification, a motion for decertification, a motion for dismissal of certain claims, plaintiffs and/or opt-ins, and/or a motion for summary judgment as to any claims, plaintiffs and/or opt-ins,

as well as asserting any and all other potential defenses or privileges. Plaintiffs and Plaintiffs' Counsel (as defined in Sections 1.6 and 1.10) agree that Defendant retains and reserves all of these rights and they agree not to take any position to the contrary; specifically, the Plaintiffs and Plaintiffs' Counsel agree not to argue or present any argument, and hereby waive any argument, that based upon this Stipulation, Defendant cannot contest class certification and/or collective action treatment on any grounds or through any means, file motions for dismissal and/or summary judgment as to any claims, plaintiffs, and/or opt-ins, and/or assert any and all other potential defenses and privileges if any of the Settled Lawsuit were to proceed.

Similarly, to the extent this Stipulation is deemed void or the Effective Date does not occur, the Plaintiffs do not waive, but rather expressly reserve, all rights to prosecute all pending claims and allegations in the Settled Lawsuits upon all procedural and factual grounds, including, without limitation, through motions for class certification, motions for final certification, opposing a motion for decertification, and/or motions for summary judgment. Defendant agrees that the Plaintiffs, both individually and on behalf of the purported classes, retain and reserve these rights, and agree not to take any position to the contrary; specifically, Defendant agrees not to argue or present any argument, and hereby waive any argument, that based upon this Stipulation, the Plaintiffs cannot pursue class certification, oppose decertification, or move for summary judgment on any of their pending claims or Defendant's defenses if any of the Settled Lawsuits were to proceed.

III. THE PARTIES TO THIS STIPULATION

This Stipulation is made and entered into by and among the following Settling Parties: (i) the Plaintiffs (on behalf of themselves and each of the Settlement Class Members, as defined in Section 1.38), with the assistance of, and through, Plaintiffs' Counsel; and (ii) Defendant, with the assistance of their counsel of choice. This Settlement is intended by the Settling Parties to

fully, finally, and forever resolve, discharge, and settle the Settled Lawsuit and the Released FLSA Claims and Released Non-FLSA Claims (defined below), upon and subject to the terms and conditions hereof.

IV. THE SETTLED LAWSUITS

On July 3, 2013, Plaintiffs Amy Fischer and Morrison Omoruyi commenced a proposed collective action against Kmart Holding Corporation (“KHC”) and Sears Holdings Corporation (“SHC”) in the United States District Court for the District of New Jersey under the FLSA, seeking alleged unpaid overtime on behalf of a nationwide collective of current and former assistant managers and similarly situated current and former employees holding comparable positions but different titles employed by KHC and SHC on the grounds that they were misclassified as exempt employees under the FLSA. Plaintiff Fischer also asserted a class claim under the New Jersey Wage and Hour Law (“NJWHL”) pursuant to Federal Rule of Civil Procedure (“FRCP”) 23 on behalf of all current and former assistant managers and similarly situated current and former employees holding comparable positions but different titles employed by KHC and SHC within the State of New Jersey, asserting KHC and SHC violated the NJWHL by failing to pay for all hours worked, failing to pay overtime on a timely basis, and failing to pay them overtime compensation required by law for all hours worked over 40 in a workweek. Plaintiff Omoruyi also asserted class claims under the Maryland Wage and Hour Law (“MWHL”) and Maryland Wage Payment and Collection Law (“MWPCCL”) pursuant to FRCP 23 on behalf of all current and former assistant managers and similarly situated current and former employees holding comparable positions but different titles employed by KHC and SHC within the state of Maryland, asserting KHC and SHC violated the MWHL and MWPCCL by failing to pay them for all hours worked, failing to pay them overtime on a timely basis, and

failing to pay them the legally required amount of overtime compensation required by law for all hours worked above 40 in a workweek.

On August 21, 2013, Plaintiffs Fischer and Omoruyi filed an Amended Class and Collective Action Complaint asserting the collective action claim under the FLSA, Plaintiff Fischer's class claim under the NJWHL, and Plaintiff Omoruyi's MWHL class claim, but without Class Representative Omoruyi's MWPCCL class claim.

On November 7, 2013, Plaintiffs Fischer and Omoruyi filed a Second Amended Class and Collective Action Complaint, adding Kmart Corporation as defendant, removing KHC and SHC as defendants, and asserting the collective action claim under the FLSA, Plaintiff Fischer's class claim under the NJWHL, and Plaintiff Omoruyi's MWHL class claim.

On November 19, 2014, Plaintiffs Fischer and Omoruyi filed a Third Amended Class and Collective Action Complaint, asserting the collective action claim under the FLSA, Plaintiff Fischer's class claim under the NJWHL, and Plaintiff Omoruyi's MWHL class claim, and reasserting Plaintiff Omoruyi's MWPCCL class claim. Defendant consented to Plaintiffs filing the Third Amended Class and Collective Action Complaint.

The court in *Fischer* conditionally certified a collective action on August 4, 2014, and notice was issued on or about October 21, 2014 to all persons employed by Kmart as ASMs since August 4, 2011. There are currently a total of 222 opt-in plaintiffs in the *Fischer* case.

On March 27, 2015, Plaintiffs Gina Hautur and Carol Gurnish commenced a separate proposed collective action against Defendant in the Western District of New York under the FLSA, seeking alleged unpaid overtime on behalf of a nationwide collective of ASMs employed by Defendant on the grounds that they were misclassified as exempt employees under the FLSA. Plaintiff Hautur also asserted a class claim under the NYLL pursuant to FRCP 23 on behalf of all

current and former ASMs and other individuals paid by the same compensation method holding comparable positions but different titles employed by Kmart within the State of New York, asserting Kmart violated the NYLL by failing to pay for all hours worked, failing to pay overtime on a timely basis, and failing to pay them overtime compensation required by law for all hours worked over 40 in a workweek. Plaintiff Gurnish also asserted class claims under the Ohio Minimum Fair Wage Standards Act (“OMFWSA”) and Article II, Section 34a of the Ohio Constitution (“Section 34a”) pursuant to FRCP 23 on behalf of all current and former ASMs and other individuals paid by the same compensation method holding comparable positions but different titles employed by Kmart within the state of Ohio, asserting Kmart violated the OMFWSA by failing to pay them for all hours worked, failing to pay them overtime on a timely basis, and failing to pay them the legally required amount of overtime compensation required by law for all hours worked above 40 in a workweek, and violated Section 34a by failing to maintain a record of the hours they worked. To date, three individuals have filed consents to join the *Hautur* action. Defendant sought to have this action dismissed under the “first filed” rule. After extensive briefing before the Magistrate Judge and District Court Judge, the District Court ultimately, on February 17, 2016, denied Defendants’ motion. Plaintiffs Hautur and Gurnish therefore have not yet filed a motion for conditional certification.

The Settlement is intended to resolve all claims against Kmart as described herein and the Settled Lawsuits (*Fischer* and *Hautur*). Within ten (10) days after this Stipulation is filed with the Court, the parties shall jointly seek to transfer the *Hautur* action for settlement purposes only to the District of New Jersey.

V. CLAIMS AT ISSUE AND BENEFITS OF SETTLEMENT

The Plaintiffs and Plaintiffs’ Counsel believe that the claims asserted in the Settled Lawsuits have merit and that evidence developed to date supports their claims. Plaintiffs

specifically and generally make no concession of any kind whatsoever associated with any of the facts or claims alleged in the Settled Lawsuits, and make no concession or admission that the claims asserted lack merit. Plaintiffs maintain that Defendant's ASMs have not been and are not properly classified as exempt employees and that overtime is owed to Kmart ASMs, and that the Settled Lawsuits are suitable and appropriate for class and collective action treatment pursuant to either Federal Rule of Civil Procedure 23 or 29 U.S.C. § 216(b). However, the Plaintiffs and Plaintiffs' Counsel recognize and acknowledge the expense and length of time associated with the need to prosecute the Settled Lawsuits through trial and through appeals. Plaintiffs and Plaintiffs' Counsel have also taken into account the uncertain outcome and the risk associated with any litigation, as well as the difficulties and delays inherent in any litigation. Based upon their evaluation, Plaintiffs and Plaintiffs' Counsel have determined that the Settlement set forth in this Stipulation is in the best interests of the members of the Collective and the Class.

VI. DEFENDANT'S DENIAL OF WRONGDOING OR LIABILITY

Defendant specifically and generally denies all of the claims asserted in the Settled Lawsuits, denies any and all liability or wrongdoing of any kind whatsoever associated with any of the facts or claims alleged in the Settled Lawsuits, and make no concession or admission of wrongdoing or liability of any kind whatsoever. Defendant maintains that all of Defendant's ASMs were and always have been properly classified as exempt employees, that no overtime of any kind is owed to them, and that, for any purpose other than settlement, the Settled Lawsuits are not suitable or appropriate for class or collective action treatment pursuant to either Federal Rule of Civil Procedure 23 or 29 U.S.C. § 216(b). Nonetheless, Defendant has concluded that the further defense of the Settled Lawsuits would be protracted and expensive, and that it is desirable that the Settled Lawsuits be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation. In reaching this conclusion, Defendant has also taken

into account the uncertainty and risks inherent in any litigation. Defendant has, therefore, determined that it is desirable and beneficial for them to settle the Settled Lawsuits in the manner and upon the terms and conditions set forth in this Stipulation.

VII. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT

NOW, THEREFORE, IT IS HEREBY FURTHER STIPULATED AND AGREED by and between the Plaintiffs (on behalf of themselves, and the Settlement Class Members, acting through Plaintiffs' Counsel) and Defendant, with the assistance of their respective counsel of record, that, as among the Settling Parties, including all Settlement Class Members, the Lawsuit and the Released FLSA Claims and Released Non-FLSA Claims shall be finally and fully compromised, settled, and released, except as provided herein, and the Settled Lawsuits shall be dismissed, with prejudice, as to all Settling Parties, upon and subject to the terms and conditions of this Stipulation and the Judgment.

1. Definitions

As used in all parts of this Stipulation, the following terms have the meanings specified below:

1.1. "Administrative Costs" means the amount to be paid to the Claims Administrator for its costs in connection with administering the terms of this Stipulation, including the costs of all notices set forth in Section 2.4 and its subsections. Defendant shall be solely responsible for paying the Administrative Costs, which will be paid separate and apart from the Maximum Settlement Amount.

1.2. "ASM" means the Kmart positions of Assistant Store Managers, Hardlines and Assistant Store Managers, Softlines, which cover the job titles: ASM Hardlines (RLDP); ASM, Hardlines; ASM, Hardlines G; ASM, HL/SL; ASM Softlines (RLDP); ASM, Softlines

Merch; ASM, Softlines, Area Merch G; Hardlines Area Merch Coach; Hardlines Area Merch Coach G; Softlines Area Merch Coach; and Softlines Area Merch Coach G.

1.3. “Claims Administrator” means the third-party claims administration firm of Rust Consulting, or another administrator mutually agreed to by the Settling Parties.

1.4. “Claim and Consent to Join Settlement Form” means Form A to the “Notice of Proposed Class and Collective Action Settlement” attached hereto as Exhibit 1, as approved by both the Settling Parties and the Court, which a Class Member must submit in order to become an eligible Participating Claimant and recover a Settlement Payment pursuant to Section 2.4.6. Plaintiffs and Collective Members shall be deemed Participating Claimants under this Stipulation.

1.5. “Class” means all Class Members as defined in Section 1.7.

1.6. “Plaintiffs’ Counsel” means, collectively, the law firms of Klafter Olsen & Lesser LLP; Winebrake & Santillo, LLC, Whitfield, Bryson & Mason LLP; Migliaccio & Rathod LLP; and Hepworth, Gershbaum & Roth, PLLC, and Plaintiffs’ Counsel warrant and represent that no other law firms or attorneys are serving in any capacity as “Plaintiffs’ Counsel.”

1.7. “Class Member” or “Member of the Class” means a person who was actively employed as an ASM by Kmart in Maryland, New Jersey, New York, and/or Ohio for at least one workweek during the applicable Relevant Period (as defined in Section 1.9) and who: (a) did not sign or is not otherwise subject to or bound by Defendant’s Arbitration Policy/Agreement (“AP/A”), Transition Pay Plan (“TPP”), or any other agreement that has released the claims at issue in the Settled Lawsuits; or (b) has not been dismissed with prejudice from the *Fischer* or *Hautur* actions as of the Preliminary Approval Date (as defined in Section 1.31).

1.8. “Class and Collective Notice” means the “Notices of Proposed Class and Collective Action Settlement” to be submitted to the Court for review and approval, substantially in the forms attached hereto as Exhibits 1 and 2.

1.9. “Relevant Period” means the period running from the beginning of the applicable statute of limitations period for each Collective or Class Member through the Preliminary Approval Date, as follows:

- a. Collective Members: If the Collective Member worked in:
 - (i) Maryland: July 3, 2010 through the Preliminary Approval Date;
 - (ii) New Jersey: The earlier of July 3, 2011 or three (3) years prior to the date he or she opted into the *Fischer* action, through the Preliminary Approval Date;
 - (iii) New York: March 27, 2009 through the Preliminary Approval Date;
 - (iv) Ohio: The earlier of March 27, 2012, or three (3) years prior to the date he or she opted into the *Fischer* or *Hautur* actions, through the Preliminary Approval Date;
 - (v) Any state other than Maryland, New Jersey, New York, or Ohio: Three (3) years prior to the date he or she opted into the *Fischer* or *Hautur* actions through the Preliminary Approval Date; and
 - (vi) For any *Hautur* opt-ins who previously opted into *Fischer* but were dismissed by the Court or withdrew their consents due to an untimely filing, the date of the original filing of their consent form in *Fischer* shall be used for purposes of calculating Weeks Worked.
- b. Class Members: If the Class Member worked in:
 - (i) Maryland: July 3, 2010, through the Preliminary Approval Date;
 - (ii) New Jersey: July 3, 2011, through the Preliminary Approval Date;

(iii) New York: March 27, 2009, through the Preliminary Approval Date; and

(iv) Ohio: March 27, 2012 through the Preliminary Approval Date.

1.10. “Plaintiffs” means Amy Fischer, Morrison Omoruyi, Gina Hautur and Carol Gurnish, the Named Plaintiffs in the Settled Lawsuits. For the purposes of this Stipulation, Plaintiffs are also considered to be Members of the Collective.

1.11. “Plaintiffs’ Released Claims” means any and all claims, obligations, demands, actions, rights, causes of action, and liabilities against Defendant Releasees, of whatever kind and nature, character, and description, whether in law or equity, whether sounding in tort, contract, federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law or contract, whether known or unknown, and whether anticipated or unanticipated, arising at any time up to and including the Final Approval Date, for any type of relief, including without limitation claims for wages, premium and other forms of pay, unpaid/unreimbursed costs, penalties (including waiting time penalties), general damages, compensatory damages, liquidated damages, punitive damages, interest, attorneys’ fees, litigation and other costs, expenses, restitution, and equitable and declaratory relief. The Plaintiffs’ Released Claims include, but are not limited to, the Released FLSA Claims as well as the Released Non-FLSA Claims, and, if the Plaintiffs’ accept an Enhancement Award, also include claims under state and/or federal discrimination statutes, including, without limitation, the United States Constitution; the Age Discrimination in Employment Act (“ADEA”) and the Older Workers Benefit Protection Act; the Uniformed Services Employment and Reemployment Rights Act, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, et seq.; the Family and Medical Leave Act, to the extent not prohibited by law; the Americans with Disabilities Act, 42

U.S.C. § 12101, et seq.; and the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, et seq.; and all of their implementing regulations and interpretive guidelines. The Plaintiffs' Released Claims are intended to reflect a full and general release of claims, and shall be interpreted as broadly as possible consistent with applicable law.

1.12. "Collective Member" or "Member of the Collective" means the Plaintiffs and all other individuals who have filed timely and valid consent to join forms in the *Fischer* or *Hautur* actions as of May 24, 2016 (using a three (3) year FLSA statute of limitations from the date that their consent form was filed with the Court to determine if their dates of employment as an ASM make their consent form timely¹) and who have not been dismissed with prejudice from the *Fischer* or *Hautur* actions as of the Preliminary Approval Date (as defined in Section 1.31). For the purposes of this Stipulation, the Collective Members shall be deemed "Participating Claimants."

1.13. "Court" means the United States District Court for the District of New Jersey.

1.14. "Database of Collective and Class Members" or the "Database" means the electronic file to be provided by Defendant to the Claims Administrator containing a list of each Collective and Class Member, including each person's name, last known address, social security number, state(s) where last employed, and number of Weeks Worked during the applicable Relevant Period described in Section 1.9.

1.15. "Defendant Releasees" means Kmart Corporation, Kmart Holdings Corporation, and Sears Holdings Management Corporation, and their current, former, and future

¹ For *Hautur* opt-ins who originally joined the *Fischer* case but whose consent forms were dismissed from *Fischer* as untimely (and later opted into *Hautur*), the date on which their original consent form was filed in *Fischer* shall be used for purposes of calculating Weeks Worked.

affiliates, including, without limitation, parents, subsidiaries, and related entities, predecessors, successors, divisions, joint ventures and assigns, and each of these entities' past or present directors, officers, employees, partners, members, employee benefit plan administrators and fiduciaries, principals, agents, insurers, co-insurers, re-insurers, managers, shareholders, attorneys, and personal or legal representatives, in their individual and corporate capacities.

1.16. "Effective Date" means the date on which the Judgment becomes Final.

1.17. "Enhancement Award(s)" means an amount approved by the Court to be paid to the Plaintiffs as set forth in Section 2.6.2, in addition to their Settlement Payment as Participating Claimants, in recognition of their efforts in coming forward as Plaintiffs, appearing for deposition, and/or otherwise benefiting the Collective and Class. As a condition of receiving an Enhancement Award, each Plaintiff shall execute an individual general release agreement consistent with the terms of Section 1.11 of this Stipulation.

1.18. "Final Approval and Fairness Hearing" means a hearing set by the Court to take place at the Court's convenience, but at least ninety (90) calendar days after notice of the settlement has been provided in accordance with 28 U.S.C. § 1715 ("CAFA Notice"), for the purpose of (i) finally determining the fairness, adequacy, and reasonableness of this Stipulation and the associated Settlement pursuant to class action procedures and requirements and the standards applicable for approving a settlement of FLSA claims; (ii) determining the good faith of this Stipulation and associated Settlement; (iii) awarding any Plaintiffs' Counsel's attorneys' fees and expenses; (iv) determining the payment of Enhancement Awards to the Plaintiffs; (v) addressing any objections to the Settlement; and (vi) entering an Order of Final Approval and Judgment.

1.19. “Final Judgment” means the latest of: (i) the date of final affirmance on an appeal of the Judgment; (ii) the date of final dismissal, with prejudice, of the last pending appeal from the Judgment; or (iii) if no appeal is filed, the expiration date of the time for the filing or noticing of any form of valid appeal from the Judgment. Notwithstanding the foregoing, any proceeding or order, or any appeal, or petition for a writ pertaining solely to the award of attorneys’ fees, attorneys’ costs, and/or Administrative Costs shall not in any way delay or preclude the Judgment from becoming a Final Judgment.

1.20. “Judgment” means the judgment to be rendered by the Court pursuant to this Stipulation.

1.21. “Last Known Address(es)” means the most recently recorded mailing address for a Collective Member or Class Member as such information is contained in Defendant’ database(s) containing personnel and/or payroll information.

1.22. “Maximum Settlement Amount” shall mean the total maximum amount that Defendant shall pay under the terms of this Stipulation, which is the gross sum of Three Million Eight Hundred Fourteen Dollars (\$3,814,000.00), and includes, without limitation, all Settlement Payments to the Participating Claimants based on Weeks Worked, Plaintiffs’ attorneys’ fees and costs, and Enhancement Awards. As set forth herein, the Claims Administrator will issue all of the above-referenced payments in accordance with the applicable provisions of this Stipulation.

1.23. “Net Settlement Amount” means the Maximum Settlement Amount less the Plaintiffs’ Counsel’s attorneys’ fees and costs and Enhancement Awards.

1.24. “Notices of Proposed Class and Collective Settlement” means “Class and Collective Notice” as defined herein.

1.25. The “Notice Mailing Date” shall be the date on which the Claims Administrator initially mails the Settlement Documents to the Collective Members and Class Members, which will occur following the entry of the Preliminary Approval Order and within fifteen (15) business days after the receipt of the Database of Collective and Class Members from Defendant.

1.26. The “Notice Response Deadline” shall be the date sixty (60) calendar days after the Notice Mailing Date.

1.27. “Opt-Out Request” means a written request to the Claims Administrator, signed by a Class Member requesting exclusion from the Settlement, which must be submitted in the manner and within the time frame set forth herein and in the Class and Collective Notice.

1.28. “Opt-Out(s)” means any Class Member(s) who timely submit a written request to be excluded from the Settlement.

1.29. “Order of Final Approval” or “Final Approval” shall mean an Order to be entered and filed by the Court granting Final Approval of this Stipulation, a proposed Order of which shall be submitted to the Court for review and approval.

1.30. “Participating Claimant(s)” means: (a) the Plaintiffs and Collective Members; and (b) Class Members who submit a valid and timely Claim and Consent to Join Settlement Form in response to the Class and Collective Notice.

1.31. “Preliminary Approval Date” means the date that the Court enters the Preliminary Approval Order.

1.32. “Preliminary Approval Order” means the Order of the Court preliminarily approving the terms of this Stipulation, preliminarily certifying the Class for settlement notice

purposes, and approving the sending of the Class and Collective Notice, substantially in the form attached hereto as Exhibit 3.

1.33. “Reasonable Address Verification Measure” shall mean the utilization of the National Change of Address Database maintained by the United States Postal Service to review the accuracy of and, if possible, to update, a mailing address.

1.34. “Released FLSA Claims” means any and all law claims, obligations, demands, actions, rights, causes of action, and liabilities against Defendant Releasees, of whatever kind and nature, character, and description, whether known or unknown, and whether anticipated or unanticipated arising under the Fair Labor Standards Act of 1938 (“FLSA”), as amended, 29 U.S.C. § 201, *et. seq.*, that accrued during the period ending on the date thirty (30) calendar days after the Preliminary Approval Date, for any type of relief, including without limitation, claims for wages, penalties, liquidated damages, interest, attorneys’ fees, litigation costs, or equitable relief.

1.35. “Released Non-FLSA Claims” means any and all claims, obligations, demands, actions, rights, causes of action, and liabilities against Defendant Releasees, of whatever kind and nature, character, and description, whether known or unknown, and whether anticipated or unanticipated, arising under applicable state and local law, whether in law or equity, whether sounding in tort, contract, statute, common law, or other applicable law or regulation including claims that the Settlement Class Member does not know of or suspect to exist in his/her favor, that accrued during the period ending on the date thirty (30) calendar days after the Preliminary Approval Date, for any type of relief, including without limitation, claims for wages, damages, premium pay, unpaid costs, expenses, penalties (including any applicable late payment penalties), liquidated damages, punitive damages, interest, attorneys’ fees, litigation

costs, restitution, or equitable relief, based on the following categories of allegations: (a) all claims asserted or which could have been asserted in the Settled Lawsuits (as defined above) which arose under the facts alleged and/or applicable state or local wage and hour laws and regulations; (b) all claims under applicable state or local laws and regulations for the failure to pay any type of overtime compensation or other wages (including late payments of wages or business expenses); (c) all claims arising under any applicable state or local laws or regulations for the failure to provide or pay for meal periods and/or rest periods; (d) all claims under applicable state or local laws or regulations, including but not limited to alleged recordkeeping violations, stemming from or based on alleged misclassification; and (e) all claims for penalties or additional damages arising from the claims described in (a) through (d) inclusive above under applicable state or local law. The Released Non-FLSA Claims are the claims meeting the above definition under any and all applicable state and local statutes, regulations or common law, including without limitation, those set forth in the compendium of state specific wage and hour laws attached hereto as Exhibit 4, as well as any federal, state or local claims related to any claim for benefits arising from any Settlement Payment under this Settlement Agreement, including but not limited to the Employee Retirement Income Security Act (“ERISA”).

1.36. The “Settled Lawsuits” mean the actions captioned *Amy Fischer & Morrison Omoruyi, individually and on behalf of all other persons similarly situated v. Kmart Corporation*, Case No. 3:13-cv-04116-AET-DEA, currently pending in the United States District Court for the District of New Jersey, and *Gina Hautur & Carol Gurnish, individually and on behalf of all other persons similarly situated v. Kmart Corporation*, Case No. 1:15-cv-00267, currently pending in the United States District Court for the Western District of New York.

1.37. “Settlement” means the terms and conditions set forth in the “Stipulation” as defined herein.

1.38. “Settlement Class” or “Settlement Class Members” means all of the: (a) Plaintiffs and Collective Members; and (b) Class Members who do not opt out of the Settlement Class by timely submitting an Opt-Out Request Form pursuant to Section 2.4.8. As set forth herein, all Settlement Class Members will be bound by the Released Non-FLSA Claims portion of the Judgment if the Effective Date occurs. In addition, all Collective Members, as well as any Class Members who submit a timely and valid Claim and Consent to Join Settlement Form pursuant to this Stipulation, respectively, shall be bound by the Released FLSA Claims portion of the Judgment if the Effective Date occurs. The Plaintiffs shall also be bound by the Plaintiffs’ Released Claims if the Effective Date occurs.

1.39. “Settlement Documents” means the Class and Collective Notices (substantially in the form attached hereto as Exhibits 1 and 2), the Claim and Consent to Join Settlement Form (substantially in the form attached as Form A to the “Notice of Proposed Class and Collective Action” attached hereto as Exhibit 1), and the Compendium of State Specific Wage and Hour Laws (attached hereto as Exhibit 4) (subject to Court approval).

1.40. “Settling Parties” or the “Parties” means Defendant and the Plaintiffs on behalf of themselves and the Collective Members and Class Members.

1.41. “Settlement Payment(s)” means the portion of the Net Settlement Amount allocated and distributable to each Participating Claimant, based on the number of Weeks Worked by the Participating Claimant as an ASM during the applicable Relevant Period. Only individuals who become Participating Claimants are eligible to receive a Settlement Payment under this Stipulation.

1.42. “Stipulation” means this Stipulation and Settlement Agreement together with all of its attachments and exhibits, which the Settling Parties understand and agree sets forth all material terms and conditions of the Settlement between them, and which is subject to Court approval. It is understood and agreed that Defendant’s obligations for payment under this Stipulation are conditioned on, *inter alia*, the occurrence of the Effective Date.

1.43. “Updated Address” means a mailing address that was updated via a Reasonable Address Verification Measure or via an updated mailing address provided by the United States Postal Service or a Class or Collective Member, or any other source.

1.44. “Weeks Worked” shall mean the total workweeks of the Class or Collective Member during the applicable Relevant Period in which they were actively employed in the position of ASM. The definition of Weeks Worked does not include any full weeks in which a Class or Collective Member worked in a position other than that of ASM.

1.45. “Workweek Amount” means the Net Settlement Amount divided by the Weeks Worked by all Class and Collective Members.

2. The Settlement

2.1. *Transfer of the Hautur Action.* Plaintiffs Hautur and Gurnish and Defendant agree to file a joint motion to transfer the *Hautur* Action for settlement purposes only, to the District of New Jersey within ten (10) days after this Stipulation is filed with the Court.

2.2. Certification of the Class for Settlement Purposes Only

2.2.1. The Settling Parties stipulate, for settlement purposes only, to the certification by the Court of a class pursuant to Federal Rule of Civil Procedure (“Rule”) 23, as to all state law claims asserted in the Settled Lawsuits, which are claims under New Jersey, Maryland, New York and Ohio labor laws, and the appointment of the Plaintiffs as class representatives and the appointment of Plaintiffs’ Counsel as class counsel.

2.2.2. If, for any reason, the Court does not approve this Stipulation, fails to enter the Order of Final Approval, or fails to enter the Judgment, or if this Stipulation is lawfully terminated for any other reason, the Settling Parties' stipulation to the certification of any class for settlement purposes shall be deemed null and void *ab initio*, and Defendant shall retain the absolute right to dispute the propriety of class certification (and the maintenance of the already conditionally certified collective action) on all applicable grounds.

2.3. Court Approval of Class and Collective Notice and a Settlement Hearing.

2.3.1. On or before May 25, 2016, the Plaintiffs, by and through Class Counsel, shall file this Stipulation with the Court and Plaintiffs shall move for preliminary approval of this Stipulation, preliminary certification of the Class pursuant to Rule 23 for the purposes of providing notice of the Settlement, and approval of the Class and Collective Notice and related documents. Plaintiffs' Counsel will prepare and file the preliminary approval motion with the Court, which shall be provided to Defendant's counsel for review and comment prior to filing. Through the motion for preliminary approval, the Class Representatives, through their counsel of record, will request the Court to enter the Preliminary Approval Order approving the terms of this Stipulation, preliminarily certifying the Class for settlement notice purposes only, approve the sending of the Class and Collective Notice, and schedule the Final Approval and Fairness Hearing for the purposes of determining the fairness of the Settlement, awarding any attorneys' fees and expenses to Plaintiffs' Counsel and the Enhancement Awards, determining whether to grant Final Approval of the terms of this Stipulation, and to enter Judgment.

2.3.2. A decision by the Court not to enter the Preliminary Approval Order in its entirety, or a decision by the Court to enter the Preliminary Approval Order with modifications (other than modifications concerning the proposed amount of any attorneys' fees or costs to be

paid to Plaintiffs' Counsel or the amount of any Enhancement Awards) that any Settling Party determines in its reasonable and good faith judgment to be material, will be discretionary grounds for the Settling Party to terminate this Stipulation by providing written notice to all other Settling Parties and the Court so stating, such notice to be filed within fourteen (14) calendar days of receipt of the Court's decision.

2.3.3. If any deadlines related to this Stipulation cannot be met, Plaintiffs' Counsel and counsel for Defendant shall confer to reach agreement on any necessary revisions of the deadlines and timetables set forth in this Stipulation. In the event the Settling Parties fail to reach such agreement, any of the Settling Parties may apply to the Court via a noticed motion for modification of the dates and deadlines in this Stipulation, provided that such a request to the Court may seek only reasonable modifications of the dates and deadlines contained in this Stipulation and no other changes.

2.3.4. If the Court enters the Preliminary Approval Order, then at the resulting Final Approval and Fairness Hearing, the Plaintiffs and Defendant, through their counsel of record, shall seek certification of the Class for settlement purposes, address any timely written objections, if any, from Collective Members (except Plaintiffs) and Class Members who have not filed an Opt-Out Request, as well as any timely stated concerns of any federal or state official who receives a notice under the Class Action Fairness Act ("CAFA"), if any, and any concerns of the Court, if any, and shall and hereby do, unless provided otherwise in this Stipulation, stipulate to Final Approval of this Stipulation and entry of the Judgment by the Court.

2.3.5. Within ten (10) calendar days after the Notice Response Deadline (as defined in Section 2.4.6 below) or ninety (90) days after CAFA Notice is provided, whichever is later, and prior to the Final Approval and Fairness Hearing described in Section 1.18, and

consistent with the rules imposed by the Court, the Plaintiffs shall move the Court for entry of the Order of Final Approval along with the associated entry of Judgment. The Settling Parties shall make all reasonable efforts to secure entry of the Order of Final Approval and the associated entry of Judgment. If the Court rejects this Stipulation, fails to enter the Order of Final Approval, or fails to enter the Judgment, this Stipulation shall be void *ab initio*, and Defendant shall have no obligations to make any payments under this Stipulation, except for payment of half of the Administrative Costs already incurred by the Claims Administrator.

2.4. *Notice to Class and Collective Members; Responses to the Notice.*

2.4.1. Within ten (10) business days after the Court issues the Preliminary Approval Order, Defendant shall provide to the Claims Administrator the Database of Collective and Class Members. The Database shall be based on Defendant's payroll, personnel, and/or other business records and provided in a format acceptable to the Claims Administrator. The Claims Administrator shall maintain the Database, and all data contained within the Database, as private and confidential and shall not disclose such data to any persons or entities other than Counsel for Defendant. The Database is being supplied solely for purposes of the administration of the Settlement set forth in this Stipulation and hence cannot be used by the Claims Administrator for any other purpose. Plaintiffs' Counsel shall not be entitled to the Database, except that Class Counsel shall be entitled to the names, contact information, and Work Weeks of, and the amount to be received by, Participating Claimants.

2.4.2. Within fifteen (15) business days of receipt of the Database, the Claims Administrator will send via first class mail the Court-approved Class and Collective Notice and related Settlement Documents to each Collective and Class Member (the "Notice Mailing Date," as per Section 1.25) to their last known address (based on Kmart data and updated as appropriate

based on the Claims Administrator undertaking address verification) with an enclosed postage pre-paid return envelope addressed to the Claims Administrator. Unless the Settling Parties agree otherwise in writing or the Court so orders, each of the Notices shall be mailed to the Last Known Addresses of the Collective and Class Members no later than the Notice Mailing Date. Any Class and Collective Notice returned as undeliverable shall be traced by the Claims Administrator using reasonable means to obtain a new address of addresses and be re-mailed on time by First Class Mail. The Claims Administrator will also send out reminder postcards 30 days after the Notice Mailing Date.

2.4.3. The Class and Collective Notice will inform the Collective and Class Members of the Settlement Formula for determining Settlement Payment amounts, and shall contain each Collective and Class Member's Settlement Payment (as described in Section 2.7.1) amount and the Weeks Worked upon which it is based should the Class Member timely submit a "Claim and Consent to Join Settlement Form" (attached as Form A to the Notice of Proposed Class and Collective Action attached hereto as Exhibit 1). If any Class Member disputes the Settlement Payment amount listed in their Class and Collective Notice, they must produce written documentation supporting their dispute in connection with submitting their Claim and Consent to Join Settlement Form, and the dispute will be resolved by the Claims Administrator, in consultation with counsel for the Settling Parties. Absent written documentation demonstrating that the Settlement Payment amount was erroneous, Kmart's data will be presumptively valid.

2.4.4. The Class and Collective Notice will also inform the Collective (except for Plaintiffs) or Class Members of their rights to object to the Settlement, the claims to be released and that if the Settlement is approved by the Court, Class Members who submit a timely

Claim and Consent to Join Settlement Form to participate in the Settlement, will be mailed a settlement check in the amount of their Settlement Payment amount (or “Grossed-Up Allocation Amount” as defined in Section 2.7.1.3 below, as applicable), less any required withholdings. The Class and Collective Notice will also inform the Class Members of their right to opt-out of the Settlement.

2.4.5. Plaintiffs and Collective Members shall be deemed Participating Claimants. Provided the Settlement is approved by the Court and the Judgment is entered, they will bound by the Judgment and are subject to the Released FLSA Claims as defined in Section 1.34 and Released Non-FLSA Claims as defined in Section 1.35. Subject to approval of the Settlement by the Court and entry of the Judgment and award of an Enhancement Award, the Plaintiffs’ shall also be bound by the Plaintiffs’ Released Claims as defined in Section 1.11.

2.4.6. Class Members may elect to become Participating Claimants. Class Members who wish to exercise this option and submit a claim for payment under this Stipulation must fully and timely complete, execute, and return, per the instructions therein, the Claim and Consent to Join Settlement Form postmarked within sixty (60) calendar days from the date of mailing of the Class and Collective Notice (the “Notice Response Deadline”). To the extent any mailed Class and Collective Notice is returned to the Claims Administrator as undeliverable within the sixty day period, the Class Member to whom the Class and Collective Notice was addressed must fully complete, execute and return, per the instructions therein, the Claim and Consent to Join Settlement Form postmarked within forty-five (45) days from the date of the re-mailing of the Class and Collective Notice as described in Section 2.4.2 to be deemed as having timely responded. In the case of U.S. Mail, the date of postmark shall be considered the date of submission. Plaintiffs and Collective Members need not submit a Claim and Consent to Join

Settlement Form to receive their respective Enhancement Awards or Settlement Payment amounts.

2.4.6.1. If a valid and properly executed Claim and Consent to Join Settlement Form is not received by the Claims Administrator from a Class Member on or before the Notice Response Deadline (or within the 45-day period for those Class Members whose mailed Class and Collective Notice is returned as undeliverable and subsequently re-mailed), then that individual will have no right to be a Participating Claimant and will have no right to receive payment under this Stipulation, provided that Defendant reserves the right in its sole discretion to accept and resolve late or disputed claims.

2.4.6.2. Unless they timely submit an Opt-Out Request pursuant to section 2.4.8, Class Members shall be subject to the Released Non-FLSA Claims portion of the Judgment even if they do not submit a Claim and Consent to Join Settlement Form in a timely and proper manner.

2.4.6.3. Only Participating Claimants will be subject to the Released FLSA Claims. Consistent with the law, however, the statute of limitations for an FLSA claim shall continue to run until a person affirmatively opts into, or files, an FLSA suit.

2.4.7. Defendant may, in its sole discretion, choose to accept as timely submitted any Claim and Consent to Join Settlement Form received from a Class Member within thirty (30)

days after the Notice Response Deadline (or within the 45-day period for those Class Members whose mailed Class and Collective Notice is returned as undeliverable and subsequently re-mailed), in which case such Class Member will be deemed to have timely submitted the Claim and Consent to Join Settlement Form for purposes of this Stipulation. Absent Defendant's consent, however, any Class Member who fails to return the executed Claim and Consent to Join Settlement Form postmarked by the end of the Notice Response Deadline (or subsequent 45-day period for those whose Class and Collective Notice was re-mailed) will not be eligible to participate in the Settlement or receive their Settlement Payment.

2.4.8. Class Members will have forty-five (45) calendar days from the Notice Mailing Date within which to opt-out of the Settlement set forth in this Stipulation. Class Members who wish to exercise this option must timely submit an Opt-Out Request. The Opt-Out Request must be postmarked on or before forty-five (45) calendar days from the Notice Mailing Date.

2.4.8.1. As noted above, Class Members who do not timely submit an Opt-Out Request shall be bound by the Released Non-FLSA Claims portion of the Judgment even if they do not submit a Claim and Consent to Join Settlement Form in a timely and proper manner.

2.4.8.2. Class Members who timely submit an Opt-Out Request shall have no further role with respect to the settlement set forth in this Stipulation, and for all purposes they shall be regarded as if they never were a Class Member, and thus they shall not be entitled to any payment as a result of this Stipulation and shall not be entitled to or permitted to assert an objection to this Stipulation.

2.4.8.3. The Class and Collective Notice shall advise Class Members of their ability to opt-out of the Settlement and of the consequence thereof. Neither the Settling Parties nor any of their counsel will solicit any Class Member to submit an Opt-Out Request.

2.4.9. Class Members who timely submit both an Opt-Out Request and a Claim and Consent to Join Settlement Form shall be sent a cure letter (in a form similar to that as Exhibit 5 attached hereto) by the Claims Administrator to seek clarification of whether they intend to opt out of the Settlement or become a Participating Claimant. The letter will state that, unless the Class Member clarifies within seven (7) calendar days that he/she intends to opt out, the Class Member will be deemed to be a Participating Claimant.

2.4.10. Class Members who have not filed an Opt-Out Request and Collective Members (except Plaintiffs) will have forty-five (45) calendar days from the Notice Mailing Date within which to file an objection to the Settlement set forth in this Stipulation. No other Collective or Class Members may file an objection. To object, an individual must file a written objection and send such written objection to counsel for each Settling Party and, if the individual intends to appear at the Final Approval and Fairness Hearing, a notice of intention to appear at the Final Approval and Fairness Hearing. The Settling Parties and their counsel agree that they will not solicit, encourage, counsel or advise any individual to object to the Settlement set forth in this Stipulation.

2.5. Defendant's Option to Terminate the Agreement Based on the Opt Out Forms

2.5.1. In the event that the number of Class Members who submit Opt-Out Requests pursuant to Section 2.4.8 is greater than five percent (5.0%) of the total number of Collective and Class Members, Defendant shall have the absolute discretionary right to terminate

this Settlement and Stipulation no later than fourteen (14) days following the Notice Response Deadline and in such case, each and every one of Defendant's obligations under this Stipulation shall cease to be of any force and effect, except for payment of the Administrative Costs already incurred by the Claims Administrator, and this Stipulation and any orders entered into in connection therewith shall be vacated, rescinded, cancelled and annulled, but the Settling Parties' rights and obligations with respect to the use of this Stipulation and the settlement contemplated hereby will be subject to Sections II and 2.12. If Defendant exercises this option, the Settling Parties shall return to the status quo in the Settled Lawsuits as if the Settling Parties had not entered into this Agreement.

2.6. Payment of Attorneys' Fees and Costs and Enhancement Awards.

2.6.1. In advance of the Final Approval and Fairness Hearing, and subject to Court approval, Plaintiffs' Counsel shall apply to the Court for an award of reasonable attorneys' fees not to exceed one-third of the Maximum Settlement Amount (no more than One Million Two Hundred Seventy One Thousand Three Hundred and Thirty-Three Dollars (\$1,271,333.00) and reasonable costs incurred in the prosecution of the Settled Lawsuits in an amount not to exceed One Hundred Ninety-Five Thousand Dollars (\$195,000.00). All attorneys' fees and costs shall be obtained from the Maximum Settlement Amount and under no circumstances shall Defendant be required to pay more than the Maximum Settlement Amount except for its obligation under Section 1.1. Defendant will not oppose Class Counsel's request for attorneys' fees and costs up to the amounts set forth herein. Any Court-approved payments made pursuant to this paragraph shall be made by the Claims Administrator in accordance with Sections 2.7, 2.8 and 2.10 and shall constitute full satisfaction of any claim for attorneys' fees or costs related to the Settled Lawsuits or this Stipulation. The Plaintiffs and Plaintiffs' Counsel, on behalf of

themselves and all Collective and Class Members, agree that they shall neither seek nor be entitled to any additional attorneys' fees or costs under any theory. Plaintiffs' Counsel agree that they shall be responsible for justifying the amount of the attorneys' fees and costs payment to the Court, and they agree to submit, as appropriate, the necessary materials to justify this payment along with the Motion for Final Approval of this Stipulation pursuant to Section 2.3. All amounts awarded by the Court as attorneys' fees and costs will be paid to Plaintiffs' Counsel and will be reported on an IRS Form 1099, and any other reporting deemed necessary. Any attorneys' fees awarded by the Court shall be allocated among Plaintiffs' Counsel in proportion to their relative contributions to the prosecution and resolution of the Settled Lawsuits. The payment of attorneys' fees or expenses to any Plaintiffs' Counsel is contingent on receipt of current, valid W-9s from that Plaintiffs' Counsel by the Claims Administrator

2.6.2. The Enhancement Awards will, subject to Court approval, be paid by the Claims Administrator in amounts not to exceed Seven Thousand and Five Hundred Dollars (\$7,500.00) for each Plaintiff for service and assistance to the prosecution of the Settled Lawsuits. All Enhancement Awards shall be obtained from the Maximum Settlement Amount, and shall only be paid to a Plaintiff on the condition that he or she executes an individual full and general release agreement consistent with the terms of this Stipulation. Because the Enhancement Awards represent payment to the Plaintiffs for service to the prosecution of the Settled Lawsuits and consideration for the Released FLSA Claims, Released Non-FLSA Claims, and Plaintiffs' Released Claims, taxes will not be withheld from the Enhancement Awards. The Claims Administrator will report the Enhancement Awards on a Form 1099, and any other required tax forms, and will provide the required forms to the Plaintiffs and to the pertinent taxing authorities as required by law. The Plaintiffs assume full responsibility for paying all

taxes, federal and state, if any, due as a result of the Enhancement Awards. Any amount of the Enhancement Awards that is not paid to a Plaintiff who fails to execute a full and general release agreement as required herein shall revert to Defendant.

2.6.3. In the event the Court (or any appellate court) awards less than the amount requested for attorneys' fees and/or costs, or less than the amount requested for Enhancement Awards for Plaintiffs, only the awarded amounts shall be paid and shall constitute satisfaction of the obligations of this paragraph and full payment hereunder. Any remaining or unawarded portion of the requested attorneys' fees and costs shall revert to the Net Settlement Amount.

2.6.4. Other than any reporting of the payment of attorneys' fees and costs and Enhancement Awards as required by this Stipulation or by law (which Defendant shall make), Plaintiffs' Counsel and the Plaintiffs shall alone be responsible for the reporting and payment of any federal, state, and/or local income or other form of tax on any payment that they have received pursuant to this Section and all of its subparts.

2.7. Consideration to Collective and Class Members.

2.7.1. The Settlement Payments for Collective and Class Members will be determined by the Claims Administrator using the following Settlement Formula with the anticipated amount to be included in the individual Class and Collective Notices. The anticipated amount will be based on Court approval of Plaintiffs' full request for attorneys' fees, costs and Enhancement Awards, as set forth in Sections 2.6.1 and 2.6.2.

2.7.1.1. First, the Court-approved Plaintiffs' Counsel's fees, costs and Enhancement Awards will be deducted from the Maximum Settlement Amount to create the Net Settlement Amount;

- 2.7.1.2. Second, the Net Settlement Amount will be divided by the Collective Members' and Class Members' total Weeks Worked, and this quotient shall be the "Preliminary Weekly Amount" applicable to each of the Weeks Worked;
- 2.7.1.3. Third, each Collective and Class Member will have his or her individual Weeks Worked multiplied by the Preliminary Weekly Amount. Any Collective or Class Member with an amount of less than \$50.00 will be assigned a Settlement Payment amount of \$50.00 ("Grossed-Up Allocation Amount") as their Allocation Amount. All Grossed-Up Allocation Amounts will be subtracted from the Net Settlement Amount;
- 2.7.1.4. Fourth, the remainder of the Net Settlement Amount will be divided by the total Weeks Worked of only those Collective and Class Members who are not assigned a Grossed-Up Allocation Amount, and this quotient shall be the "Weekly Amount" applicable to each of the Eligible Workweeks;
- 2.7.1.5. Fifth, the Settlement Payment for each Collective and Class Member who does not receive a Grossed-Up Allocation Amount will be calculated by multiplying his or her individual Weeks Worked by the Weekly Amount; and
- 2.7.1.6. Sixth, Participating Claimants will be mailed a settlement check in the amount of their Settlement Payment, less any required

withholdings, within fifteen (15) business days after the close of the Effective Date.

2.7.2. As further detailed in Section 2.10, the Claims Administrator shall issue the Settlement Payments to eligible Participating Claimants, and will report each payment to state and federal government authorities, including the Internal Revenue Service, as required by law.

2.7.3. Any amount of the Net Settlement Amount that is not distributed to Participating Claimants shall remain the property of and/or revert back to Defendant.

2.8. *Taxes.*

2.8.1. The Settlement Payment amounts to the Participating Claimants shall be allocated as follows: (a) 50% shall be reported as wages on a United States Internal Revenue Service (“IRS”) Form W-2 issued by the Claims Administrator (with applicable deductions and withholdings) and such other state or local tax reporting forms as may be required by law; and (b) the remaining 50% shall constitute non-wage payments to be reported on an IRS Form 1099 issued by the Claims Administrator and such other state or local tax reporting forms as may be required by law. Form W-2s shall be issued to the Participating Claimants with his or her taxpayer identification number, and shall be subject to deductions for applicable taxes and withholdings as required by federal, state and local law.

2.8.2. In the event that it is subsequently determined by the IRS or any other applicable taxing authority that any Participating Claimant owes any additional taxes with respect to any payments made pursuant to this Agreement, it is expressly agreed that the determination of any tax liability is between the Participating Claimant and the taxing authority,

and that Defendant Releasees will not be responsible for the payment of such taxes, including any interest and penalties.

2.8.3. Other than the withholding and reporting requirements set forth in Section 2.8.1, Participating Claimants shall be solely responsible for the reporting and payment of the employee's share of any federal, state, and/or local income tax or other tax or any other withholdings, if any, on any of the payments made pursuant to this Stipulation. Defendant will be responsible for paying the employer's share of any applicable payroll taxes, and the Settling Parties expressly agree that such employer payroll taxes are not a part of the Maximum Settlement Amount. Defendant makes no representation, and it is understood and agreed that Defendant has made no representation, as to the taxability to any Participating Claimants of any portion of the Settlement Payments, the payment of any attorneys' fees and costs to Plaintiffs' Counsel, or the payment of any Enhancement Awards. The Class and Collective Notice will advise each Collective and Class Member to seek his/her own personal tax advice prior to acting in response to the Class and Collective Notice, and Defendant, the Plaintiffs, and Plaintiffs' Counsel agree that each Collective and Class Member will have an adequate opportunity to seek tax advice prior to acting in response to the Class and Collective Notice.

2.9. *Funding of the Settlement Proceeds.* Within ten (10) business days after the Effective Date, Defendant shall pay to the Claims Administrator the Court-approved Plaintiff Enhancement Awards, attorneys' fees and costs, and the amount needed to pay the Settlement Payments to the Participating Claimants, calculated pursuant to Section 2.7 above. Defendant shall pay to the Claims Administrator funds equal to the Settlement Payments (which the Claims Administrator will certify complies with the claims process) that have not been challenged as provided above, or that have been challenged and accepted. In the case of disputed claims, if

such claims are not resolved by the Effective Date, then within twenty (20) calendar days of receipt of notice of the final decision with respect to such claims, Defendant shall timely pay or cause to be paid those claims as resolved.

2.10. *Timing of Payment to Participating Claimants.*

2.10.1. Within fifteen (15) business days after Defendant have made the payment to the Claims Administrator set forth in Section 2.9, the Claims Administrator shall mail to each Participating Claimant, his/her individual Settlement Payment pursuant to Section 2.7.1.6 and in accordance with the terms of Sections 2.7 and 2.8.

2.10.2. All checks issued to Participating Claimants pursuant to this Stipulation shall be valid and negotiable for a period of ninety (90) calendar days from the date of mailing. Any checks issued pursuant to this Stipulation that are not cashed or deposited within ninety (90) calendar days from the date of mailing shall become void, the amounts shall revert to Defendant, any applicable taxes reported and/or paid on such amounts shall be corrected with the applicable taxing authorities and requested for remittance, and the applicable Plaintiff, Participating Claimant or Plaintiffs' Counsel shall not be entitled to another check, except for a replacement check, or any other monetary payments as a result of the settlement. The Participating Claimants shall, however, remain bound by this Stipulation, their releases, the applicable dismissal, and/or their Claim and Consent to Join Settlement Form notwithstanding any failure to cash or deposit any check issued to this Paragraph within ninety (90) calendar days from the date of mailing. The Settling Parties may, however, agree to instruct the Claims Administrator to issue reminder postcards thirty (30) calendar days after settlement checks are issued to remind Participating Claimants to negotiate their settlement checks.

2.10.3. Following the mailing of the Settlement Payments to Participating Claimants discussed in Section 2.10.1, the Claims Administrator shall provide counsel for the Settling Parties with a written confirmation of this mailing.

2.11. *Releases.*

2.11.1. Upon the Effective Date, the Plaintiffs and each of the Settlement Class Members, on behalf of themselves and each of their heirs, representatives, successors, assigns, and attorneys, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, dismissed, with prejudice, relinquished, and discharged all Released Non-FLSA Claims as defined in Section 1.35 herein and in Exhibit 4.

2.11.2. In addition, upon the Effective Date, the Plaintiffs and each of the Participating Claimants, on behalf of themselves and each of their heirs, representatives, successors, assigns, and attorneys, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, dismissed, with prejudice, relinquished, and discharged all Released FLSA Claims as defined in Section 1.34 herein.

2.11.3. Upon the Effective Date, the Plaintiffs shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, dismissed, with prejudice, relinquished, and discharged all Plaintiffs' Released Claims as defined in Section 1.11 herein. However, additionally, as a condition of receiving an Enhancement Award as described in Section 2.6.2, each Plaintiff will also execute an individual full and general release agreement consistent with the terms of this Stipulation.

2.11.4. Class Members who do not submit a timely and valid Claim and Consent to Join Settlement Form are not subject to the Released FLSA Claims.

2.11.5. With respect to the Released FLSA Claims, Released Non-FLSA Claims, and Plaintiffs' Released Claims, subject to Sections 2.11.1, 2.11.2 and 2.11.3, any Plaintiffs or Settlement Class Member who worked for Defendant in California shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits they may otherwise have had pursuant to Section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known to him or her must have materially affected his or her settlement with the debtor.

2.11.6. The above releases given are conditional and shall only take effect unconditionally upon the Effective Date.

2.12. *Termination of Settlement.*

2.12.1. In the event that this Stipulation is not approved in its entirety as is by the Court, excluding modifications that Defendant determine in their reasonable and good faith judgment to not be material modifications, or in the event that the Settlement set forth in this Stipulation is terminated, cancelled, declared void, or fails to become effective in accordance with its terms, or if the Judgment does not become a Final Judgment, or if the Effective Date does not occur, no payments shall be made by Defendant to anyone in accordance with the terms of this Stipulation, and the Settling Parties will each bear their own costs and fees with regard to the efforts to obtain Court approval. In such event, this Stipulation (except for those provisions relating to non-admissibility and non-admission of liability set forth in Sections VI, 2.13.4 and 2.13.5, and those provisions relating to the return of documents and discovery set forth in Section 2.14 and the provision regarding the payment of Administrative Costs set forth in Section 1.1) shall be deemed null and void, its terms and provisions shall have no further force and effect

with respect to the Settling Parties and shall not be used in the Settled Lawsuits or in any other proceeding for any purpose, and any Judgment or order entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*. Notwithstanding any other provision of this Stipulation, no order of the Court, or modification or reversal on appeal of any order of the Court, reducing the amount of any attorneys' fees or costs to be paid to Plaintiffs' Counsel, or reducing the amount of any Enhancement Awards paid to the Plaintiffs, shall constitute grounds for cancellation or termination of this Stipulation or grounds for limiting any other provision of the Judgment.

2.12.2. In addition to the terms set forth in Sections 2.5 and 2.12.1, Defendant shall have the absolute discretionary right to terminate this Settlement and the terms set forth in this Stipulation prior to the entry of the Court's Order of Final Approval in the event that any of the following conditions occur in 2.12.2.1 through 2.12.2.4:

2.12.2.1. In the event that this Stipulation is construed in such a fashion that would require Defendant to pay: (i) more than the Maximum Settlement Amount and Administrative Costs set forth in Section 1.1; and/or (ii) any amount(s) not expressly provided for in this Stipulation;

2.12.2.2. In the event that the Court does not certify, for settlement purposes only, a class consistent with Section 2.2.1, or otherwise makes an order materially inconsistent with any of the terms of this Stipulation or the Settlement Documents prepared to effectuate the Settlement;

2.12.2.3. In the event that any court, whether on a conditional basis or not, certifies a class or collective action that involves any claim, whether based on statute, regulation, contract, common law, or otherwise, included in the Released FLSA Claims or Released Non-

FLSA Claims, as those terms are defined in Sections 1.34 and 1.35 herein and Exhibit 4. The Settling Parties agree to cooperate to oppose any attempted effort by any individual to obtain conditional or class certification covering any of the Class Members who are the subject of this Stipulation; or

2.12.2.4. In the event that any Plaintiff or Plaintiffs' Counsel breaches this Stipulation.

2.12.3. To the extent Defendant chooses to exercise the right to terminate this Stipulation established in Section 2.12.2 and its subsections, it must do so through written notice to Plaintiffs' Counsel prior to entry of the Order of Final Approval and within fourteen (14) calendar days of Defendant learning of the occurrence of the operative condition warranting termination.

2.12.4. In the event that the Settlement set forth in this Stipulation is terminated, cancelled, declared void, or fails to become effective in accordance with its terms, or if the Judgment does not become a Final Judgment, or if the Effective Date does not occur, notwithstanding any of the provisions of this Section 2.12.4 and all its subsections, the *Fischer* and *Hautur* actions may proceed without prejudice as if this settlement had not been entered. Further, each Settled Lawsuit shall return to the status it had as of February 18, 2016, including that, if the class action described in Section 2.2 has been certified, the Settling Parties will take whatever steps necessary, if any, as soon as practicable, to decertify without prejudice any class certified for purposes of this Settlement, and if the *Hautur* action has been transferred to the District of New Jersey as described in Section 2.1, the Settling Parties will cooperate in having the *Hautur* action transferred back to the Western District of New York as soon as practicable. Should litigation of the *Fischer* and *Hautur* actions recommence, Defendant expressly reserves

the right to move to decertify any previously conditionally certified actions in accordance with applicable law, and to oppose class certification. Plaintiffs reserve the right to move for final certification of any previously conditionally certified actions in accordance with applicable law.

2.13. *Miscellaneous Provisions.*

2.13.1. The only Collective and Class Members entitled to any Settlement Payment under this Stipulation and the associated Judgment are Participating Claimants, and they shall be entitled to their individual Settlement Payments pursuant to Section 2.3 only.

2.13.2. Defendant's sole obligations to Plaintiffs' Counsel are set forth in this Stipulation. Settlement Class Members, Plaintiffs, and Plaintiffs' Counsel, understand and agree that any payments made under Sections 2.6 will be the full, final, and complete payment of all attorneys' fees and costs and any other payments arising from or relating to the representation of Collective and Class Members, or any other attorneys' fees and costs associated with the investigation, discovery, and/or prosecution of the Settled Lawsuits or any related action or advice provided. As an inducement for Kmart to enter into this Stipulation, and as a material condition thereof, once provided with payments under this Stipulation (whether or not checks are cashed), Collective and Class Members, and Plaintiffs' Counsel, irrevocably and unconditionally release, acquit, and forever discharge, any claim they may have against Kmart or the Defendant Releasees for attorneys' fees, costs, other payments, or remuneration associated with the representation of Collective and Class Members in connection with the Settled Lawsuits and this Settlement. As a further inducement to Kmart to enter into this Stipulation, and a material condition thereof, Collective and Class Members and Plaintiffs' Counsel agree that the fee and cost payments made pursuant to Section 2.6 will be the full, final, and complete payment of all attorneys' fees and costs that are released, acquitted, or discharged under this Paragraph.

2.13.3. The Settling Parties (a) acknowledge that it is their intent to consummate this Stipulation; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Stipulation and to exercise their best efforts to accomplish the foregoing terms and conditions of this Stipulation, including but not limited to obtaining the dismissal, transfer to the Court, or stay of any pending or subsequently-filed class or collective action lawsuit that alleges any of the Released FLSA Claims and Released Non-FLSA Claims.

2.13.4. This Stipulation compromises claims which are contested in good faith, and it shall not be deemed an admission by any of the Settling Parties as to the merits of any claim or any potential defense. The Settling Parties agree that the amounts paid in connection with this Stipulation and the other terms of the settlement were negotiated in good faith by the Settling Parties, and reflect a Settlement that was reached voluntarily after consultation with competent legal counsel.

2.13.5. Defendant specifically and generally denies any and all liability or wrongdoing of any sort with regard to any of the claims asserted in the Settled Lawsuits and make no concessions or admissions of liability of any sort. Neither this Stipulation nor the Settlement, nor any act performed or document executed pursuant to, or in furtherance of, this Stipulation or the Settlement: (a) is, or may be deemed to be, or may be used, as an admission or evidence of the validity of any Released FLSA Claim, Released Non-FLSA Claims, or Plaintiffs' Released Claims, or of any wrongdoing or liability of the Defendant Releasees, or any of them; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of the Plaintiffs or, Defendant Releasees, or any of them, in any civil, criminal or administrative proceeding in any court, administrative agency, or other tribunal for any reason.

2.13.6. All of the exhibits to this Stipulation are material and integral parts hereof and are fully incorporated herein by this reference.

2.13.7. This Stipulation constitutes the entire agreement among the Settling Parties hereto regarding the subject matter discussed herein, and no representations, warranties, or inducements have been made to any party concerning this Stipulation or its exhibits other than the representations, warranties, and covenants contained and memorialized in such documents. Plaintiffs and Plaintiffs' Counsel represent and acknowledge that, in executing this Stipulation, they do not rely and have not relied upon any representation or statement made by Kmart or by any of Kmart's agents, representatives or attorneys with regard to the subject matter, basis, or effect of this Stipulation other than the representations reflected in the Stipulation.

2.13.8. Except as otherwise explicitly provided herein, each Settling Party shall bear its own fees and costs.

2.13.9. Counsel for the Settling Parties represent that they are expressly authorized to take all appropriate action required or permitted to be taken by their respective clients pursuant to this Stipulation to effect its terms, and also are expressly authorized to enter into any modifications or amendments to this Stipulation on behalf of their respective clients which they deem appropriate.

2.13.10. Each counsel or other person executing this Stipulation or any of its exhibits on behalf of any Party hereto hereby warrants that such person has the full authority to do so.

2.13.11. This Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of executed counterparts shall be filed with the Court.

2.13.12. Whenever this Stipulation requires or contemplates that one Party, the Court or the Claims Administrator shall or may give notice to another, notice shall be provided by facsimile and/or next-day (excluding Sundays and Court holidays) express delivery service as follows:

(i) If to Defendant, then to:

Anne Marie Estevez
Morgan, Lewis & Bockius LLP
200 South Biscayne Boulevard
Suite 5300
Miami, FL 33131
Facsimile: 877-432-9652

(ii) If to Plaintiffs, then to:

Jeffrey A. Klafter
Klafter Olsen & Lesser LLP
2 International Drive, Suite 350
Rye Brook, NY 10573
Facsimile: 914-934-9220

2.13.13. This Stipulation shall be binding upon and inure to the benefit of the Settling Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns; but this Stipulation is not designed to and does not create any third party beneficiaries, either express or implied.

2.13.14. The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of this Stipulation, and all Settling Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in this Stipulation. Any action to enforce this Stipulation shall be commenced and maintained only in the Court.

2.13.15. The Settling Parties agree and understand that there shall be no injunctive relief included as part of any Court Order as to them.

2.13.16. This Stipulation and the exhibits hereto shall be considered to have been negotiated, executed, and delivered, and to have been wholly performed, in the State of Illinois, and the rights and obligations of the parties to this Stipulation shall be construed and enforced in accordance with, and governed by, the substantive laws of the State of Illinois without giving effect to that State's choice of law principles.

2.13.17. The language of all parts of this Stipulation shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against either Party. No Party shall be deemed the drafter of this Stipulation. The Settling Parties acknowledge that the terms of this Stipulation are contractual and are the product of arms-length negotiations between the Settling Parties and their counsel. Each Party and their counsel cooperated in the drafting and preparation of this Stipulation. In any construction to be made of this Stipulation, this Stipulation shall not be construed against any party and the canon of contract interpretation set forth in California Civil Code § 1654 shall not be applied.

2.13.18. Other than necessary disclosures made to a court, Plaintiffs, Defendant, and their respective counsel and other agents agree to keep the fact of Settlement, this Stipulation and any attached documents, and their Settlement negotiations confidential and will not disclose that information to any third party (including without limitation inclusion on any websites) until such time as the Settling Parties move to transfer *Hautur* as set forth herein or Plaintiffs move for preliminary approval of this Stipulation or otherwise agree in writing.

2.13.18.1. Plaintiffs' Counsel agree that they shall not initiate directly or indirectly any press release, press conference or other publicity disclosing the monetary terms

of this Stipulation. If Plaintiffs' Counsel is contacted by the media, they shall limit any comments to the statement, "The matter has been resolved. Please review the public filings for additional information." Notwithstanding the foregoing, Plaintiffs' Counsel may disclose information that has been made public through a document filed on the Court's docket concerning the Settled Lawsuits on their respective websites and in their respective promotional materials. In addition, nothing in this Stipulation precludes Plaintiffs' Counsel from otherwise complying with any applicable ethical rules.

2.13.19. Plaintiffs agree that they shall not provide information to the press, there will be no press release, press conference or other publicity initiated or facilitated by the Plaintiffs disclosing anything regarding the terms of this Stipulation. If the Plaintiffs are contacted by the media, they shall limit any comments to the statement, "The matter has been resolved. Please review the public filings for additional information."

2.13.20. Except for any disclosure concerning the Settled Lawsuits that is otherwise expressly permitted by this Stipulation, Participating Claimants may only disclose information that has been made through a document filed on the Court's docket concerning the Settled Lawsuits or the amounts paid to them under this Stipulation to (a) members of their immediate family, their attorneys, or their account or tax advisors, or to any person to whom such disclosures are permitted by law, provided that each such person has been informed of this non-disclosure obligation and has agreed to be bound by its terms, or (b) to the IRS or state or local taxing authorities. Each Participating Claimant's promise in this subsection, however, shall not apply to any judicial or administrative proceeding in which such Participating Claimant is a party or has been subpoenaed to testify under oath by a government agency or any other third party, or to the extent the statements are permitted or protected by law.

2.13.21. Plaintiffs and Settlement Class Members hereby waive any right to any monetary or other recovery of any kind for any claims released pursuant to Section 2.11 against Defendant Releasees in any forum, including in any federal, state or local court or in arbitration, any administrative proceeding with any federal, state or administrative agency, or any applicable dispute resolution procedure. Notwithstanding the foregoing, this Settlement does not limit or exclude the jurisdiction of any federal, state or local agency or self-regulatory organization and nothing in this Agreement shall be construed to prevent Plaintiffs or any Settlement Collective and Class Member from filing a charge with, or participating in an investigation conducted by, the U.S. Equal Employment Opportunity Commission, the National Labor Relations Board, or any other applicable state or local agency.

2.13.22. Plaintiffs' Counsel agrees not to use any Confidential Information (as defined by the Stipulation and Discovery Confidentiality Order so ordered by this Court on November 13, 2013 (the "Confidentiality Order") (Dkt. No. 42)) relating to the Settled Lawsuits obtained from Defendant or their counsel during the Settled Lawsuits, or the settlement thereof, to solicit or encourage, whether directly or indirectly, any other parties or attorneys to commence a claim or proceeding against Kmart.

2.13.23. For a period of three years from the Court's approval of this Settlement, each Participating Claimant shall not make, directly or indirectly, any disparaging, derogatory or denigrating oral or written statements about the Defendant's products or services. Each Participating Claimant's promises in this subsection, however, shall not apply to any judicial or administrative proceeding in which such Participating Claimant is a party or has been subpoenaed to testify under oath by a government agency or by any third party, or to the extent the statements are permitted or protected by law.

2.13.24. The Plaintiffs, by signing this Stipulation, are bound by the terms herein and further agree not to request to be excluded from the Settlement and not to object to any terms of this Stipulation. Any such request for exclusion or objection shall therefore be void and of no force or effect. Defendant, Plaintiff, and Plaintiffs' Counsel waive their rights to file an appeal, writ, or any challenge whatsoever to the terms of this Stipulation, except that Plaintiffs and Plaintiffs' Counsel have the right to appeal any order denying, in whole or in part, an application for the award of attorneys' fees and costs and/or an Enhancement Award.

2.13.25. This Stipulation may not be changed, altered, or modified, except in writing signed by the Settling Parties hereto and approved by the Court. This Stipulation may not be discharged except by performance in accordance with its terms or by a writing used by the Settlement Parties hereto.

2.13.26. Should any clause, sentence, provision, Section, paragraph, or part of this Stipulation be adjudged by any court of competent jurisdiction, or be held by any other competent governmental authority having jurisdiction, to be illegal, invalid, or unenforceable with respect to a Participating Claimant, such judgment shall not affect, impair, or invalidate the remainder of the Stipulation as to that Participating Claimant or the Stipulation as a whole to all other Settlement Class Members, but shall be confined in its operation to the clause, sentence, provision, paragraph, or part of the Stipulation directly involved, and the remainder of the Stipulation shall remain in full force and effect. However, if the releases given by a Participating Claimant are deemed, in whole or in part, illegal, invalid, or unenforceable with respect to that Participating Claimant, the Participating Claimant, as applicable, will execute a substantially similar release that is not illegal, invalid, or unenforceable.

2.13.27. Paragraph titles or captions contained in this Stipulation are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Stipulation, or any provision thereof.

2.14. *Return of All Documents and Other Discovery.*

2.14.1. No discovery materials shall be disseminated or distributed to any person or entity by any Plaintiff or Plaintiffs' Counsel, except that discovery material may be filed with the Court if necessary in connection with proceedings to facilitate the Settlement described herein. All originals or reproductions of any discovery materials obtained from Defendant and/or given to any party, expert, consultant, or other person, designated as Confidential under the terms of the Confidentiality Order, shall be retrieved by Plaintiffs' Counsel and destroyed, and Plaintiffs' Counsel shall certify within thirty (30) calendar days of the Effective Date that they have destroyed all such documents or information and all copies thereof.

2.14.2. This provision and the provisions of Section 2.14.1 are not intended to cover work product produced by Plaintiffs' Counsel, but are intended to cover any documents or other materials described herein that are attached to any work product, and all such documents or materials attached to work product shall be destroyed as set forth above. All such documents, information or materials incorporated into any work product shall be excised as well.

[SIGNATURES BEGIN ON NEXT PAGE]

IN WITNESS WHEREOF, the Settling Parties hereto have caused this Stipulation to be
executed.

Executed this ___ day of May, 2016 by: _____
for Kmart Corporation

Print Name: _____

Title: _____

Executed this ___ day of May, 2016 by: _____
Amy Fischer

Executed this ___ day of May, 2016 by: _____
Morrison Omoruyi

Executed this ___ day of May, 2016 by: _____
Gina Hautur

Executed this ___ day of May, 2016 by: _____
Carol Gurnish

Approved as to form and substance:

Approved as to form and substance:

Jeffrey A. Klafter, Seth R. Lesser, Fran
Rudich, and Michael Reed
Klafter Olsen & Lesser LLP
2 International Drive, Suite 350
Rye Brook, NY 10573
Telephone: (914) 934-9200

Anne Marie Estevez
Sharon A. Lisitzky
Morgan, Lewis & Bockius LLP
200 South Biscayne Boulevard
Suite 5300
Miami, Florida 33131
Telephone: (305) 415-3000

Peter Winebrake and R. Andrew Santillo
WINEBRAKE & SANTILLO, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
Tel: (215) 884-2491

James P. Walsh, Jr.
Morgan, Lewis & Bockius, LLP
502 Carnegie Center
Princeton, NJ 08540-6241
Tel: 609.919.6600
Fax: 609.919.6701

Gary E. Mason
WHITFIELD BRYSON & MASON LLP
1625 Massachusetts Ave., N.W., Suite 605
Washington, DC 20036
Tel: (202) 429-2294

Dated: May __, 2016

Attorneys for Defendant

Nicholas A. Migliaccio and Jason S. Rathod
Migliaccio & Rathod LLP
412 H Street N.E., Suite 302
Washington, D.C. 20002
Tel: (202) 470-3520

Marc S. Hepworth, David A. Roth and Charlie
Gershbaum
HEPWORTH GERSHBAUM & ROTH, PLLC
192 Lexington Avenue
Suite 802
New York, NY 10016
Tel: (212)545-1199

Dated: May __, 2016

Attorneys for Plaintiffs, Collective Members
and the members of the proposed Class

IN WITNESS WHEREOF, the Settling Parties hereto have caused this Stipulation to be executed.

Executed this __ day of May, 2016 by: _____
for Kmart Corporation
Print Name: _____
Title: _____

Executed this __ day of May, 2016 by: _____
Amy Fischer

Executed this __ day of May, 2016 by: _____
Morrison Omoruyi

Executed this __ day of May, 2016 by: _____
Gina Hautur

Executed this 21 day of May, 2016 by: *Carol Ann Gurnish*
Carol Ann Gurnish (May 22, 2016)
Carol Gurnish

IN WITNESS WHEREOF, the Settling Parties hereto have caused this Stipulation to be
executed.

Executed this __ day of May, 2016 by:

for Kmart Corporation

Print Name: _____

Title: _____

Executed this __ day of May, 2016 by:

Amy Fischer

Executed this __ day of May, 2016 by:

Morrison Omoruyi

May 24, 2016

Executed this __ day of May, 2016 by:

gina hautur
gina hautur (May 24, 2016)

Gina Hautur

Executed this __ day of May, 2016 by:

Carol Gurnish

IN WITNESS WHEREOF, the Settling Parties hereto have caused this Stipulation to be executed.

Executed this ___ day of May, 2016 by:

for Kmart Corporation

Print Name: _____

Title: _____

Executed this ___ day of May, 2016 by:

Amy Fischer

Morrison Omoruyi

Executed this ___ day of May, 2016 by:
05/19/2016

Morrison Omoruyi

Executed this ___ day of May, 2016 by:

Gina Hautur

Executed this ___ day of May, 2016 by:

Carol Gurnish

Approved as to form and substance:

Approved as to form and substance:

Jeffrey A. Klafter, Seth R. Lesser, Fran
Rudich, and Michael Reed
Klafter Olsen & Lesser LLP
2 International Drive, Suite 350
Rye Brook, NY 10573
Telephone: (914) 934-9200

Anne Marie Estevez
Sharon A. Lisitzky
Morgan, Lewis & Bockius LLP
200 South Biscayne Boulevard
Suite 5300
Miami, Florida 33131
Telephone: (305) 415-3000

Peter Winebrake and R. Andrew Santillo
WINEBRAKE & SANTILLO, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
Tel: (215) 884-2491

James P. Walsh, Jr.
Morgan, Lewis & Bockius, LLP
502 Carnegie Center
Princeton, NJ 08540-6241
Tel: 609.919.6600
Fax: 609.919.6701

Gary E. Mason
WHITFIELD BRYSON & MASON LLP
1625 Massachusetts Ave., N.W., Suite 605
Washington, DC 20036
Tel: (202) 429-2294

Dated: May __, 2016

Attorneys for Defendant

Jason Rathod

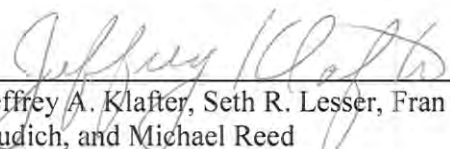
Nicholas A. Migliaccio and Jason S. Rathod
Migliaccio & Rathod LLP
412 H Street N.E., Suite 302
Washington, D.C. 20002
Tel: (202) 470-3520

Marc S. Hepworth, David A. Roth and Charlie
Gershbaum
HEPWORTH GERSHBAUM & ROTH, PLLC
192 Lexington Avenue
Suite 802
New York, NY 10016
Tel: (212)545-1199

Dated: May 16, 2016

Attorneys for Plaintiffs, Collective Members
and the members of the proposed Class

Approved as to form and substance:


Jeffrey A. Klafter, Seth R. Lesser, Fran
Rudich, and Michael Reed
Klafter Olsen & Lesser LLP
2 International Drive, Suite 350
Rye Brook, NY 10573
Telephone: (914) 934-9200

Peter Winebrake and R. Andrew Santillo
WINEBRAKE & SANTILLO, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
Tel: (215) 884-2491

Gary E. Mason
WHITFIELD BRYSON & MASON LLP
1625 Massachusetts Ave., N.W., Suite 605
Washington, DC 20036
Tel: (202) 429-2294

Nicholas A. Migliaccio and Jason S. Rathod
Migliaccio & Rathod LLP
412 H Street N.E., Suite 302
Washington, D.C. 20002
Tel: (202) 470-3520

Marc S. Hepworth, David A. Roth and Charlie
Gershbaum
HEPWORTH GERSHBAUM & ROTH, PLLC
192 Lexington Avenue
Suite 802
New York, NY 10016
Tel: (212)545-1199

Dated: May 16, 2016

²⁴
Attorneys for Plaintiffs, Collective Members
and the members of the proposed Class

Approved as to form and substance:

Anne Marie Estevez
Sharon A. Lisitzky
Morgan, Lewis & Bockius LLP
200 South Biscayne Boulevard
Suite 5300
Miami, Florida 33131
Telephone: (305) 415-3000

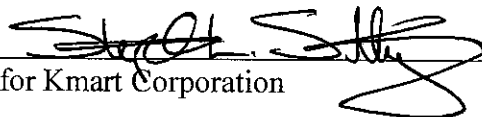
James P. Walsh, Jr.
Morgan, Lewis & Bockius, LLP
502 Carnegie Center
Princeton, NJ 08540-6241
Tel: 609.919.6600
Fax: 609.919.6701

Dated: May __, 2016

Attorneys for Defendant

IN WITNESS WHEREOF, the Settling Parties hereto have caused this Stipulation to be executed.

Executed this 19th day of May, 2016 by:


for Kmart Corporation

Print Name: STEPHEN L SIBLEY

Title: VP & DEPUTY GC

Executed this ___ day of May, 2016 by:

Amy Fischer

Executed this ___ day of May, 2016 by:

Morrison Omoruyi

Executed this ___ day of May, 2016 by:

Gina Hautur

Executed this ___ day of May, 2016 by:

Carol Gurnish

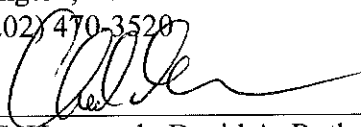
Approved as to form and substance:

Jeffrey A. Klafter, Seth R. Lesser, Fran
Rudich, and Michael Reed
Klafter Olsen & Lesser LLP
2 International Drive, Suite 350
Rye Brook, NY 10573
Telephone: (914) 934-9200

Peter Winebrake and R. Andrew Santillo
WINEBRAKE & SANTILLO, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
Tel: (215) 884-2491

Gary E. Mason
WHITFIELD BRYSON & MASON LLP
1625 Massachusetts Ave., N.W., Suite 605
Washington, DC 20036
Tel: (202) 429-2294

Nicholas A. Migliaccio and Jason S. Rathod
Migliaccio & Rathod LLP
412 H Street N.E., Suite 302
Washington, D.C. 20002
Tel: (202) 470-3520

Marc S. Hepworth, David A. Roth and Charlie  Gershbaum
HEPWORTH GERSHBAUM & ROTH, PLLC
192 Lexington Avenue
Suite 802
New York, NY 10016
Tel: (212)545-1199

Dated: May 16, 2016

Attorneys for Plaintiffs, Collective Members
and the members of the proposed Class

Approved as to form and substance:

Anne Marie Estevez
Sharon A. Lisitzky
Morgan, Lewis & Bockius LLP
200 South Biscayne Boulevard
Suite 5300
Miami, Florida 33131
Telephone: (305) 415-3000

James P. Walsh, Jr.
Morgan, Lewis & Bockius, LLP
502 Carnegie Center
Princeton, NJ 08540-6241
Tel: 609.919.6600
Fax: 609.919.6701

Dated: May 20th 2016

Attorneys for Defendant

IN WITNESS WHEREOF, the Settling Parties hereto have caused this Stipulation to be executed.

Executed this ___ day of May, 2016 by:

for Kmart Corporation

Print Name: _____

Title: _____

Executed this 20th day of May, 2016 by:

Amy Ann Fischer
Amy Ann Fischer (May 20, 2016)

Amy Fischer

Executed this ___ day of May, 2016 by:

Morrison Omoruyi

Executed this ___ day of May, 2016 by:

Gina Hautur

Executed this ___ day of May, 2016 by:

Carol Gurnish

Approved as to form and substance:

Jeffrey A. Klafter, Seth R. Lesser, Fran
Rudich, and Michael Reed
Klafter Olsen & Lesser LLP
2 International Drive, Suite 350
Rye Brook, NY 10573
Telephone: (914) 934-9200

Peter Winebrake and R. Andrew Santillo
WINEBRAKE & SANTILLO, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
Tel: (215) 884-2491

Gary E. Mason
WHITFIELD BRYSON & MASON LLP
1625 Massachusetts Ave., N.W., Suite 605
Washington, DC 20036
Tel: (202) 429-2294

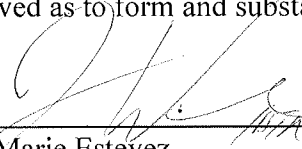
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Migliaccio & Rathod LLP
412 H Street N.E., Suite 302
Washington, D.C. 20002
Tel: (202) 470-3520

Marc S. Hepworth, David A. Roth and Charlie
Gershbaum
HEPWORTH GERSHBAUM & ROTH, PLLC
192 Lexington Avenue
Suite 802
New York, NY 10016
Tel: (212)545-1199

Dated: May 16, 2016

Attorneys for Plaintiffs, Collective Members
and the members of the proposed Class

Approved as to form and substance:



Anne Marie Estevez
Sharon A. Lisitzky
Morgan, Lewis & Bockius LLP
200 South Biscayne Boulevard
Suite 5300
Miami, Florida 33131
Telephone: (305) 415-3000

James P. Walsh, Jr.
Morgan, Lewis & Bockius, LLP
502 Carnegie Center
Princeton, NJ 08540-6241
Tel: 609.919.6600
Fax: 609.919.6701

Dated: May 20, 2016

Attorneys for Defendant

Approved as to form and substance:

Jeffrey A. Klafter, Seth R. Lesser, Fran
Rudich, and Michael Reed
Klafter Olsen & Lesser LLP
2 International Drive, Suite 350
Rye Brook, NY 10573
Telephone: (914) 934-9200



Peter Winebrake and R. Andrew Santillo
WINEBRAKE & SANTILLO, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
Tel: (215) 884-2491

Gary E. Mason
WHITFIELD BRYSON & MASON LLP
1625 Massachusetts Ave., N.W., Suite 605
Washington, DC 20036
Tel: (202) 429-2294

Nicholas A. Migliaccio and Jason S. Rathod
Migliaccio & Rathod LLP
412 H Street N.E., Suite 302
Washington, D.C. 20002
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HEPWORTH GERSHBAUM & ROTH, PLLC
192 Lexington Avenue
Suite 802
New York, NY 10016
Tel: (212)545-1199

Dated: May 16, 2016

Attorneys for Plaintiffs, Collective Members
and the members of the proposed Class

Approved as to form and substance:

Anne Marie Estevez
Sharon A. Lisitzky
Morgan, Lewis & Bockius LLP
200 South Biscayne Boulevard
Suite 5300
Miami, Florida 33131
Telephone: (305) 415-3000

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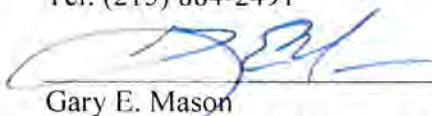
Dated: May __, 2016

Attorneys for Defendant

Approved as to form and substance:

Jeffrey A. Klafter, Seth R. Lesser, Fran
Rudich, and Michael Reed
Klafter Olsen & Lesser LLP
2 International Drive, Suite 350
Rye Brook, NY 10573
Telephone: (914) 934-9200

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WINEBRAKE & SANTILLO, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
Tel: (215) 884-2491



Gary E. Mason
WHITFIELD BRYSON & MASON LLP
1625 Massachusetts Ave., N.W., Suite 605
Washington, DC 20036
Tel: (202) 429-2294

Nicholas A. Migliaccio and Jason S. Rathod
Migliaccio & Rathod LLP
412 H Street N.E., Suite 302
Washington, D.C. 20002
Tel: (202) 470-3520

Marc S. Hepworth, David A. Roth and Charlie
Gershbaum
HEPWORTH GERSHBAUM & ROTH, PLLC
192 Lexington Avenue
Suite 802
New York, NY 10016
Tel: (212)545-1199

Dated: May 16, 2016

Attorneys for Plaintiffs, Collective Members
and the members of the proposed Class

Approved as to form and substance:

Anne Marie Estevez
Sharon A. Lisitzky
Morgan, Lewis & Bockius LLP
200 South Biscayne Boulevard
Suite 5300
Miami, Florida 33131
Telephone: (305) 415-3000

James P. Walsh, Jr.
Morgan, Lewis & Bockius, LLP
502 Carnegie Center
Princeton, NJ 08540-6241
Tel: 609.919.6600
Fax: 609.919.6701

Dated: May __, 2016

Attorneys for Defendant

EXHIBIT 1

NOTICE OF PROPOSED CLASS AND COLLECTIVE ACTION SETTLEMENT

(CLASS MEMBERS)

Notice of Proposed Class and Collective Action Settlement

[This is for Class Members Only]

Fischer, et al. v. Kmart Corporation

United States District Court for the District of New Jersey, Case No. 3:13-cv-04116-AET-DEA

Hautur, et al. v. Kmart Corporation

United States District Court for the District of New Jersey, Case No. _____-AET-DEA

**PLEASE READ THIS NOTICE CAREFULLY, AS IT MAY AFFECT
YOUR LEGAL RIGHTS TO RECEIVE A PAYMENT RELATED TO
YOUR EMPLOYMENT WITH KMART CORPORATION AS A
HARDLINES OR SOFTLINES ASSISTANT STORE MANAGER**

The parties have reached a proposed settlement in the class and collective action lawsuits referred to above (the “Settled Lawsuits”). The Settled Lawsuits alleged that Kmart Corporation (“Kmart”) violated the federal Fair Labor Standards Act (“FLSA”) and state wage-and-hour laws in Maryland, New Jersey, New York and Ohio by misclassifying Hardlines and Softlines Assistant Store Managers as exempt employees and not paying them overtime. Kmart vehemently disputes these allegations, denies any liability and believes that its Hardlines and Softlines Assistant Store Managers have been properly classified as exempt at all times. However, the Parties agreed to resolve the claims in the Settled Lawsuits to avoid the burden, expense and potential risks associated with continued litigation.

The Court has preliminarily approved the parties’ Stipulation and Settlement Agreement (the “Settlement”) and concluded that the Settlement appears to be fair, reasonable, and adequate and to have been the product of serious, informed, and extensive arm’s-length negotiations between the parties. Accordingly, the Court has authorized the dissemination of this Notice. You have received this Notice because Kmart’s records indicate that you were actively employed as an ASM for Kmart for at least one workweek during the Relevant Period (as defined below). This Settlement does not include those Hardlines or Softlines Assistant Store Managers who signed or are otherwise subject to or bound by Kmart’s Arbitration Policy/Agreement (“AP/A”), Transition Pay Plan (“TPP”) or any other agreement that has released the claims at issue in the Settled Lawsuits, or have been dismissed or withdrew from the Settled Lawsuits.

The Court has not found that Kmart did anything wrong and has not yet decided whether it will approve the proposed Settlement. Rather, the Court has preliminarily approved the Settlement for purposes of sending this Notice. This Notice is designed to inform you how you can join the Settlement, exclude yourself from the Settlement, or object to the Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

- (1) **SUBMIT A CLAIM FORM AND RECEIVE MONEY** – If you submit a valid Claim and Consent to Join Settlement Form by [60 days from Notice Mailing Date], you will receive a portion of the Settlement money. If you do, you will give up any right to sue Kmart for the claims released by this Settlement.
- (2) **DO NOTHING** – If you do nothing, you will not receive a portion of the Settlement money. You will retain your right to file your own lawsuit against Kmart under federal law, should you choose, assuming that the time period to sue has not expired. You will not retain your right to sue for any state law claims released by this Settlement.
- (3) **ASK TO BE EXCLUDED** -- If you do not wish to participate in the Settlement, you must ask to be excluded (that is, “opt-out”) by submitting a written request for exclusion by [45 days from Notice Mailing Date], and you will not receive a portion of the Settlement money. You will retain your right to file your own lawsuit against Kmart under federal law and state law, should you choose, assuming that the time period to sue has not expired under the applicable law.
- (4) **OBJECT** – If you do not ask to be excluded, you may file an objection to the Settlement and the request for attorney fees and expenses, or Enhancement Awards, by following the instructions described below and submitting any objection by [45 days from Notice Mailing Date].

These options are further explained in this Notice.

Read On to Answer any Questions.

BASIC INFORMATION

1. Why did I get this Notice?

According to Kmart’s records, you were actively employed as a Hardlines or Softlines Assistant Store Manager for Kmart in Maryland, New Jersey, New York and/or Ohio for at least one workweek during the following relevant time periods (the “Relevant Periods”):

- **Maryland:** July 3, 2010 through May [redacted], 2016
- **New Jersey:** July 3, 2011 through May [redacted], 2016
- **New York:** March 27, 2009 through May [redacted], 2016
- **Ohio:** March 27, 2012 through May [redacted], 2016

If you were employed as a Hardlines or Softlines Assistant Store Manager in any other State,

were actively employed as a Hardlines or Softlines Assistant Store Manager for less than one workweek during the Relevant Periods, signed or are otherwise subject to or bound by the AP/A, TPP, or any other agreement that has released the claims at issue in the Settled Lawsuits, or were dismissed or withdrew from the Settled Lawsuits, this Notice does not apply to you.

This Notice explains that the Court has preliminarily approved a class action settlement that may affect you. You have a legal right and options you may exercise.

2. What are the Settled Lawsuits about?

The Settled Lawsuits involve claims that Kmart violated the FLSA and state wage-and-hour laws in Maryland, New Jersey, New York and Ohio by misclassifying Hardlines and Softlines Assistant Store Managers as exempt employees. As a result, Plaintiffs claim that they are entitled to receive overtime compensation in all weeks within the Relevant Period indicated above in which they worked more than 40 hours.

Kmart denies that it engaged in any wrongful conduct or that it violated the law in any way. Kmart believes that the claims asserted in the Settled Lawsuits have no merit, that its Hardlines and Softlines Assistant Store Managers have been properly classified as exempt at all times, and that Kmart would prevail in the Settled Lawsuits.

The parties have agreed to resolve this matter solely in order to avoid the burden, expense and risks associated with continued litigation.

3. What is a class action and who is involved?

In connection with the Settlement described in this Notice, the Court has preliminarily allowed a class, for settlement purposes only (the “Class”). In a class action lawsuit, one or more people called “Plaintiffs” (in this case Amy Fischer, Morrison Omoruyi, Gina Hautur and Carol Gurnish) sue on behalf of other people whom they believe have similar claims. The people together are a “Class” or “Class Members.” The company they sued (in this case Kmart) is called the Defendant. The court then decides the issues for everyone in the Class – except for those people who choose to exclude themselves from the Class.

Here, the Class consists of all persons actively employed by Kmart as a Hardlines or Softlines Assistant Store Manager position at Kmart for at least one workweek in the state of: (i) Maryland from July 3, 2010 through May [REDACTED], 2016; (ii) New Jersey from July 3, 2011 through May [REDACTED], 2016; (iii) New York from March 27, 2009 through May [REDACTED], 2016; and (iv) Ohio from March 27, 2012 through May [REDACTED], 2016. The Settlement also covers those Hardlines and Softlines Assistant Store Managers who, as of May 24, 2016, filed valid Consents to Join one of the Settled Lawsuits, as long as those consents were not dismissed with prejudice. The individuals who previously filed Consents to Join and who have not been dismissed without prejudice or withdrawn their Consents to Join are referred to as the “Collective.”

The Settlement excludes Hardlines and Softlines Assistant Store Managers who: (a) were employed by Kmart in those positions solely in any other state besides Maryland, New Jersey,

New York and Ohio; (b) were not actively employed in those positions for at least one workweek in Maryland, New Jersey, New York or Ohio; (c) signed or are otherwise subject to or bound by the AP/A, TPP, or any other agreement that has released the claims at issue in the Settled Lawsuits; or (d) were dismissed with prejudice from the Settled Lawsuits.

THE SETTLEMENT

4. What has Kmart agreed to pay?

Kmart has agreed to pay \$3,814,000 to settle the Settled Lawsuits instead of continuing to litigate. The money that Kmart has offered to pay is called the “Maximum Settlement Amount.”

5. What can I receive?

If you participate in the Settlement, you will receive a share of the Maximum Settlement Amount based on a formula developed by Plaintiff’s Counsel and Kmart.

The Maximum Settlement Amount less (i) Plaintiffs’ Counsel’s attorneys’ fees, as awarded by the Court, not to exceed the total amount of \$1,271,333; (ii) Plaintiffs’ Counsel’s costs in prosecuting the Settled Lawsuits, as awarded by the Court, not to exceed \$195,000; and (iii) an Enhancement Award to the Plaintiffs, not to exceed \$7,500 per Plaintiff will be available to distribute to Class and Collective Members. This amount is called the Net Settlement Amount. All costs of the Claims Administrator who will process claim forms and distribute checks will be paid separately by Kmart. The parties have agreed on a formula to calculate potential settlement payments from the Net Settlement Amount that is based upon the number of weeks you and the other Class and Collective Members worked during the Relevant Period (the “Weeks Worked”).

6. How is my settlement amount calculated?

A Workweek Amount will be determined by dividing the Net Settlement Amount by the total Weeks Worked by the Plaintiffs and Class and Collective Members participating in the Settlement. An individual will be paid based on his/her individual Weeks Worked according to the following formula: (Weeks Worked x Workweek Amount = Settlement Payment). Each Settlement Payment will be at least \$50.00.

Based on records maintained by Kmart, your number of Weeks Worked in Maryland, New Jersey, New York or Ohio during the Relevant Period is: [INSERT]

Accordingly, your anticipated Settlement Payment, before necessary tax withholdings, is at least: [INSERT].

If you claim the above number of Weeks Worked during the Relevant Period is inaccurate, you must send a letter to the Claims Administrator with your Claim and Consent to Join Settlement Form, at the address indicated below postmarked by **[INSERT DATE]**, and you must also provide sufficient, written documentation as evidence supporting your claim. Otherwise, your share of the Net Settlement Amount will be based on the above number of Weeks Worked.

Please note that the Weeks Worked does not include any full weeks in which a Class or Collective Member worked in a position other than that of a Hardlines or Softlines Assistant Store Manager.

7. Do the Plaintiffs receive any additional payments?

In addition to the Net Settlement Amount paid under the formula described above, Plaintiffs' Counsel will request that the Court approve Enhancement Awards of \$7,500 to each of the four Plaintiffs in recognition of their efforts in coming forward to commence the Settled Lawsuits, appearing for deposition, and/or taking other action benefiting the Collective and Class. As a condition of receiving an Enhancement Award, each Plaintiff shall execute an individual general release agreement. The Enhancement Awards will be paid from the Settlement Funds.

CLAIMING SETTLEMENT FUNDS

8. How and when will I receive my Settlement Payment?

No payments will be made until the Settlement receives final Court approval, and any appeal or review of that approval has been resolved in favor of the Settlement.

You need to submit a valid Claim and Consent to Join Settlement Form by [60 Days after the Notice Mailing Date] to receive your Settlement Payment. This form is included with this Notice. If you do not submit a valid and timely Claim and Consent to Join Settlement Form, you will not receive your Settlement Payment.

If you submit a valid and timely Claim and Consent to Join Settlement Form, for tax reporting purposes, 50% of your Settlement Payment will be considered a payment of wages and be subject to appropriate deductions and withholdings and will be reported on a Form W-2. The remaining 50% of your Settlement Payment will be considered liquidated damages and not be subject to withholdings or deductions, and will be reported on a Form 1099.

9. What if my address changes before the Settlement Funds are distributed?

If you change your address, or if this Notice was not mailed to your correct address, you should immediately provide your current address to the Claims Administrator by letter or telephone to ensure that you receive future communications about the Lawsuits. If the Claims Administrator does not have your correct address, you might not receive notice of important developments concerning the Settlement and you might not receive your Settlement Payment.

10. How do I contact the Claims Administrator?

You may **TELEPHONE** the Claims Administrator, Rust Consulting, toll free, at [REDACTED].

You may also write to the Claims Administrator at the following address:

Fischer v. Kmart Claims Administrator
c/o Rust Consulting Inc.
PO Box #####
Faribault, MN 55021-1234

YOUR RELEASE OF CLAIMS

Your legal rights may be affected if the Court enters a final order approving the Settlement.

11. Are my legal rights affected if I do nothing?

Yes, if you do nothing, you: (a) will not receive a Settlement Payment; (b) you will retain your right to file any claims against Kmart described below as “Released FLSA Claims”, assuming that the time period to sue has not expired; but (c) you will release any and all claims described below as “Released Non-FLSA Claims,” unless you exclude yourself from the Settled Lawsuits in the manner described below.

12. What claims are included in the Released FLSA Claims?

All of the following claims are included in the term Released FLSA Claims:

any and all law claims, obligations, demands, actions, rights, causes of action, and liabilities against Defendant Releasees, of whatever kind and nature, character, and description, whether known or unknown, and whether anticipated or unanticipated arising under the Fair Labor Standards Act of 1938 (“FLSA”), as amended, 29 U.S.C. § 201, et. seq., that accrued during the period ending on [the date thirty (30) calendar days after the Preliminary Approval Date], for any type of relief, including without limitation, claims for wages, penalties, liquidated damages, interest, attorneys’ fees, litigation costs, or equitable relief.

“Defendant Releasees” means Kmart Corporation, Kmart Holdings Corporation, and Sears Holdings Management Corporation, and their current, former, and future affiliates, including, without limitation, parents, subsidiaries, and related entities, predecessors, successors, divisions, joint ventures and assigns, and each of these entities’ past or present directors, officers, employees, partners, members, employee benefit plan administrators and fiduciaries, principals, agents, insurers, co-insurers, re-insurers, managers, shareholders, attorneys, and personal or legal representatives, in their individual and corporate capacities.

You will only release these FLSA Claims if you submit a valid and timely Claim and Consent to Join Settlement Form to receive your Settlement Payment.

13. What claims are included in the Released Non-FLSA Claims?

any and all claims, obligations, demands, actions, rights, causes of action, and liabilities against Defendant Releasees, of whatever kind and nature, character, and description, whether known or unknown, and whether anticipated or unanticipated, arising under applicable state and local law, whether in law or equity, whether sounding in tort, contract, statute, common law, or other applicable law or regulation including claims that the Settlement Class Member does not know of or suspect to exist in his/her favor, that accrued during the period ending on [the date thirty (30) calendar days after the Preliminary Approval Date], for any type of relief, including without limitation, claims for wages, damages, premium pay, unpaid costs, expenses, penalties (including any applicable late payment penalties), liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or equitable relief, based on the following categories of allegations: (a) all claims asserted or which could have been asserted in the Settled Lawsuits (as defined above) which arose under the facts alleged and/or applicable state or local wage and hour laws and regulations; (b) all claims under applicable state or local laws and regulations for the failure to pay any type of overtime compensation or other wages (including late payments of wages or business expenses); (c) all claims arising under any applicable state or local laws or regulations for the failure to provide or pay for meal periods and/or rest periods; (d) all claims under applicable state or local laws or regulations, including but not limited to alleged recordkeeping violations, stemming from or based on alleged misclassification; and (e) all claims for penalties or additional damages arising from the claims described in (a) through (d) inclusive above under applicable state or local law. The Released Non-FLSA Claims are the claims meeting the above definition under any and all applicable state and local statutes, regulations or common law, including without limitation, those set forth in the compendium of state specific wage and hour laws attached hereto as Exhibit 4, as well as any federal, state or local claims related to any claim for benefits arising from any Settlement Payment under this Settlement Agreement, including but not limited to the Employee Retirement Income Security Act ("ERISA").

You will release these Non-FLSA Claims if the Court approves the Settlement, whether or not you submit a valid and timely Claim and Consent to Join Settlement Form, unless you opt-out of the Class in the manner described below.

THE LAWYERS REPRESENTING YOU

14. Do I have a lawyer in this case?

The following law firms have been appointed by the Court to represent the Class and also represent the Collective ("Plaintiffs' Counsel").

KLAFTER OLSEN & LESSER LLP Two International Drive, Ste. 350 Rye Brook, NY 10573 Tel: (914) 934-9200	WINEBRAKE & SANTILLO, LLC 715 Twining Road, Suite 211 Dresher, PA 19025 Tel: (215) 884-2491
WHITFIELD BRYSON & MASON LLP 1625 Massachusetts Ave., N.W., Suite 605 Washington, DC 20036 Tel: (202) 429-2294	HEPWORTH GERSHBAUM & ROTH, PLLC 192 Lexington Avenue Suite 802 New York, NY 10016 Tel: (212)545-1199
MIGLIACCIO & RATHOD LLP 412 H Street N.E., Suite 302 Washington, D.C. 20002 Tel: (202) 470-3520	

These law firms are experienced in handling these type of cases and believe this Settlement is an excellent result for you and the other Class and Collective Members.

15. Do I need to get my own lawyer?

You do not need to hire your own lawyer because Plaintiffs' Counsel are working on your behalf. If you want your own lawyer, you will have to pay that lawyer. For example, if you want someone other than Plaintiffs' Counsel to speak for you, you can ask another lawyer to appear in Court for you at your own expense.

16. How will Plaintiffs' Counsel be paid?

Plaintiffs' Counsel has prosecuted these Settled Lawsuits on a fully contingent basis and have received no payment for their work. At the Final Approval Hearing, or at such other time as the Court may direct, Plaintiffs' Counsel intends to apply to the Court for an award of attorneys' fees not to exceed one third of the Maximum Settlement Amount, or \$1,271,333. Plaintiffs' Counsel will also move the Court for reimbursement of litigation expenses actually incurred in connection with the Settled Lawsuits, currently estimated to be no more than \$195,000. The Court-approved fees and costs will be paid by the Claims Administrator from the Maximum Settlement Amount.

ALTERNATIVES

17. May I choose not to participate in the Settlement?

Yes, you may **CHOOSE NOT TO BE A MEMBER** of the Class. To do so, you must request to be excluded from the Settled Lawsuits. Your Opt-Out Request must include your name and address, and must state: (1) that you are requesting to be excluded from the Settlement in the case entitled Fischer, et al. v. Kmart Corporation, Case No. 3:13-cv-04116-AET-DEA; (2) that you understand that by excluding yourself from the Lawsuits, you will receive no funds in

conjunction with the Settlement described in this Notice; and (3) that you understand that Plaintiffs' Counsel will no longer be representing you. You must mail your request to the Claims Administrator at the address indicated above, so it is postmarked no later than [45 days from the Notice Mailing Date]. If you opt-out, you will not receive any of the benefits under the Settlement, such as receiving a Settlement Payment, but you will retain any rights you may have to sue the Defendant Releasees for the claims being settled, on your own, should you choose.

18. May I oppose the Settlement without opting-out?

Yes, you may oppose or object to the proposed Settlement of the Lawsuits, or any aspect of it that you think is unfair. **The Court will hold a hearing on [INSERT DATE] at the United States District Court for the District of New Jersey, Clarkson S. Fisher Building & U.S. Courthouse, 402 East State Street, Trenton, NJ 08608, to determine whether the proposed settlement of the Lawsuits should be approved.** If you wish to object to the fairness, reasonableness, or adequacy of the Settlement Agreement, or the proposed settlement, or to the award of Attorneys' Fees and Expenses and/or Enhancement Awards to Plaintiffs, you must send your written objection to Plaintiff's Counsel and Kmart's Counsel, so as to be postmarked no later than [45 days from the Notice Mailing Date], a written statement of the objection, as well as the specific reasons, if any, for each objection, including any legal support you wish to bring to the Court's attention and any evidence you wish the Court to consider in support of any objections. You must also file the objection with the Court by sending by mail or otherwise to the Court so it is received by [45 days from the Notice Mailing Date]. If you also intend to appear at the hearing, you must also include notice of your intent to appear with your objection.

If you request to opt-out of the Class, you may not object to the proposed Settlement or any part thereof.

19. What does my objection need to include?

All written objections must be signed by you and must include: (1) your name, address, and telephone number; (2) a statement of the objection(s) and any supporting evidence and/or legal support you wish the Court to consider; and (3) a case name, *Fischer, et al. v. Kmart Corporation*, United States District Court for the District of New Jersey, Case No. 3:13-cv-04116-AET-DEA.

GETTING MORE INFORMATION

20 Are more details available?

Yes, if you believe that you need more details in order to make a decision, and/or want to review the Settlement Agreement, you can call the Claims Administrator, Rust Consulting, toll-free at [] or visit [www.].

21. Can I examine the Court's file?

Yes, you may **EXAMINE THE COURT'S FILE** in the clerk's office at the United States District Court for the District of New Jersey, Clarkson S. Fisher Building & U.S. Courthouse, 402 East State Street, Trenton, NJ 08608.

PLEASE DO NOT WRITE OR CALL THE COURT ABOUT THIS NOTICE, THE SETTLEMENT, OR THE CLAIMS PROCESS

FOR INFORMATION REGARDING THIS NOTICE, THE SETTLEMENT, OR THE CLAIMS PROCESS, PLEASE CONTACT THE CLAIMS ADMINISTRATOR

FORM A

CLAIM AND CONSENT TO JOIN SETTLEMENT FORM

CLAIM AND CONSENT TO JOIN SETTLEMENT FORM

Fischer, et al. v. Kmart Corporation

United States District Court for the District of New Jersey, Case No. 3:13-cv-04116-AET-DEA

Hautur, et al. v. Kmart Corporation

United States District Court for the District of New Jersey, Case No. [REDACTED]-AET-DEA

UNLESS YOU HAVE PREVIOUSLY JOINED THE *FISCHER* OR *HAUTUR* ACTIONS BY SUBMITTING A CONSENT TO JOIN, YOU MUST COMPLETE AND SIGN THIS CLAIM AND CONSENT TO JOIN SETTLEMENT FORM (“FORM”) TO RECEIVE YOUR SHARE OF THE SETTLEMENT DESCRIBED IN THE ACCOMPANYING NOTICE.

YOU MUST ALSO MAIL THIS FORM, IN THE ENCLOSED ENVELOPE, POSTMARKED ON OR BEFORE [REDACTED], 2016, TO THE CLAIMS ADMINISTRATOR TO RECEIVE YOUR SHARE OF THE SETTLEMENT AMOUNT:

Fischer v. Kmart Claims Administrator
c/o Rust Consulting, Inc.
PO Box #####
Faribault, MN 55021-1234

If you have questions about completing this Form, please contact the Claims Administrator.

Who May File this Claim and Consent to Join Settlement and Release?

All persons actively employed by Kmart as a Hardlines or Softlines Assistant Store Manager for at least one workweek in: (i) **Maryland** from July 3, 2010 through May [REDACTED], 2016; (ii) **New Jersey** from July 3, 2011 through May [REDACTED], 2016; (iii) **New York** from March 27, 2009 through May [REDACTED], 2016; or (iv) **Ohio** from March 27, 2012 through May [REDACTED], 2016. The time periods associated with each state are referred to herein as the “Relevant Periods.”

You may not file a Form if you signed or are otherwise subject to or bound by Kmart’s Arbitration Policy/Agreement (“AP/A”), Kmart Transition Pay Plan (“TPP”), or any other agreement that has released the claims at issue in the *Fischer* or *Hautur* lawsuits, or you have been dismissed with prejudice from either the *Fischer* or *Hautur* lawsuit.

YOU SHOULD NOT SUBMIT THIS FORM IF YOU ARE A CURRENT OPT-IN IN THE *FISCHER* OR *HAUTUR* ACTIONS.

By signing, dating, and submitting this Form, you will be eligible to receive a Settlement Payment calculated based on the number of weeks that you were actively employed by Kmart as a Hardlines or Softlines Assistant Store Manager in Maryland, New Jersey, New York, or Ohio during the Relevant Periods (“Weeks Worked”), as explained in the accompanying Notice. As a member of the Settlement Class, you will also be releasing all of the Released Non-FLSA Claims and Released FLSA Claims described in Sections 12 and 13 of the attached Notice (and further explained in the Stipulation and Settlement Agreement that you can request from the Claims Administrator).

Please type or print in ink the following:

Name (First, Middle, Last)

Telephone number (Day)

Address

Telephone number (Night)

City, State, Zip

E-mail

If this information is incorrect or it changes, please notify the Claims Administrator of your new address by completing the attached Change of Name and/or Address Form and sending it to the Claims Administrator.

As set forth in the attached Notice, according to Company records, your number of Weeks Worked as a Hardlines or Softlines Assistant Store Manager in Maryland, New Jersey, New York, or Ohio during the Relevant Period is: . If you want to challenge this number of Weeks Worked, you must send a letter with this Form and provide written documentation supporting your challenge that is evidence that you worked a different number of weeks during the Relevant Period.

By signing and submitting this Form, I acknowledge that I consent to join the *Fischer* action, I want to participate in the Settlement, and I want to receive a share of the Net Settlement Amount. If the Settlement becomes final, I will also be deemed to have consented to join the claims made in the above actions pursuant to Section 216(b) of the Fair Labor Standards Act, and I will release any Released FLSA Claims and Released Non-FLSA Claims against the Releasees, as defined in the accompanying Notice. I declare that the foregoing is true and correct.

Sign your name here

Print your name here

Date

EXHIBIT 2

NOTICE OF PROPOSED CLASS AND COLLECTIVE ACTION SETTLEMENT

(COLLECTIVE MEMBERS)

Notice of Proposed Class and Collective Action Settlement

[This is for Collective Members Only]

Fischer, et al. v. Kmart Corporation

United States District Court for the District of New Jersey, Case No. 3:13-cv-04116-AET-DEA

Hautur, et al. v. Kmart Corporation

United States District Court for the District of New Jersey, Case No. [REDACTED]-AET-DEA

PLEASE READ THIS NOTICE CAREFULLY, AS IT MAY AFFECT YOUR LEGAL RIGHTS RELATED TO YOUR EMPLOYMENT WITH KMART CORPORATION AS A HARDLINES OR SOFTLINES ASSISTANT STORE MANAGER

The parties have reached a proposed settlement in the class and collective action lawsuits referred to above (the “Settled Lawsuits”). The Settled Lawsuits alleged that Kmart Corporation (“Kmart”) violated the federal Fair Labor Standards Act (“FLSA”) and state wage-and-hour laws in Maryland, New Jersey, New York and Ohio by misclassifying Hardlines and Softlines Assistant Store Managers as exempt employees and not paying them overtime. Kmart vehemently disputes these allegations, denies any liability and believes that its Hardlines and Softlines Assistant Store Managers have been properly classified as exempt at all times. However, the Parties agreed to resolve the claims in the Settled Lawsuits to avoid the burden, expense and potential risks associated with continued litigation.

The Court has preliminarily approved the parties’ Stipulation and Settlement Agreement (the “Settlement”) and concluded that the Settlement appears to be fair, reasonable, and adequate and to have been the product of serious, informed, and extensive arm’s-length negotiations between the parties. Accordingly, the Court has authorized the dissemination of this Notice. You have received this Notice because you previously submitted a Consent to Join one of the Settled Lawsuits.

The Court has not found that Kmart did anything wrong and has not yet decided whether it will approve the proposed Settlement. Rather, the Court has preliminarily approved the Settlement for purposes of sending this Notice. This Notice is designed to inform you how you can join the Settlement, exclude yourself from the Settlement, or object to the Settlement.

YOUR LEGAL RIGHTS AND OPTIONS

- (1) **DO NOTHING AND RECEIVE MONEY** – Since you are already participating in the Settled Lawsuits, you will receive a portion of the Settlement money if the Court approves the Settlement.
- (2) **OBJECT** – You may file an objection to the Settlement and the request for attorney fees and expenses, or Enhancement Awards, by following the instructions described below and submitting any objection by [45 days from Notice Mailing Date].

These options are further explained in this Notice.

Read On to Answer any Questions.

BASIC INFORMATION

1. Why did I get this Notice?

You previously submitted a Consent to Join either the *Fischer* or *Hautur* lawsuits. This Notice explains that the parties have reached a proposed Settlement that includes your claim and the claims of other individuals who filed Consents to Join the Lawsuits. You and the other individuals who filed Consents to Join the Lawsuits make up the “Collective.” You have a legal right and options you may exercise.

2. What are the Settled Lawsuits about?

The Settled Lawsuits involve claims that Kmart violated the FLSA and state wage-and-hour laws in Maryland, New Jersey, New York and Ohio by misclassifying Hardlines and Softlines Assistant Store Managers as exempt employees. As a result, Plaintiffs claim that they are entitled to receive overtime compensation in all weeks within the Relevant Period as defined below in which they worked more than 40 hours.

Kmart denies that it engaged in any wrongful conduct or that it violated the law in any way. Kmart believes that the claims asserted in the Settled Lawsuits have no merit, that its Hardlines and Softlines Assistant Store Managers have been properly classified as exempt at all times, and that Kmart would prevail in the Settled Lawsuits.

The parties have agreed to resolve this matter solely in order to avoid the burden, expense and risks associated with continued litigation.

3. Who does the Settlement cover?

The Settlement covers those Hardlines and Softlines Assistant Store Managers who, as of May 24, 2016, filed valid Consents to Join one of the Settled Lawsuits, as long as those consents were not dismissed with prejudice. The individuals who previously filed Consents to Join, like

yourself, and who have not been dismissed without prejudice or withdrawn their Consents to Join are referred to as the “Collective.”

The Settlement also covers a Class. In connection with the Settlement described in this Notice, the Court has preliminarily certified a class, for settlement purposes only (the “Class”). In a class action lawsuit, one or more people called “Representative Plaintiffs” (in this case Amy Fischer, Morrison Omoruyi, Gina Hautur and Carol Gurnish) sue on behalf of other people with similar claims. The people together are a “Class” or “Class Members.” The companies they sued (in this case Kmart) is called the Defendant. One court resolves the issues for everyone in the Class – except for those people who choose to exclude themselves from the Class. The court then decides the issues for everyone in the Class – except for those people who choose to exclude themselves from the Class.

Here, the Class consists of all persons actively employed by Kmart as a Hardlines or Softlines Assistant Store Manager position at Kmart for at least one workweek in the state of: (i) Maryland from July 3, 2010 through May [REDACTED], 2016; (ii) New Jersey from July 3, 2011 through May [REDACTED], 2016; (iii) New York from March 27, 2009 through May [REDACTED], 2016; and (iv) Ohio from March 27, 2012 through May [REDACTED], 2016.

The Class excludes Hardlines and Softlines Assistant Store Managers who: (a) were employed by Kmart in those positions solely in any other state besides Maryland, New Jersey, New York and Ohio; (b) were not actively employed in those positions for at least one workweek in Maryland, New Jersey, New York or Ohio; (c) signed or are otherwise subject to or bound by the AP/A, TPP, or any other agreement that has released the claims at issue in the Settled Lawsuits; or (d) were dismissed with prejudice from the Settled Lawsuits.

THE SETTLEMENT

4. What has Kmart agreed to pay?

Kmart has agreed to pay \$3,814,000 to settle the Settled Lawsuits instead of continuing to litigate. The money that Kmart has offered to pay is called the “Maximum Settlement Amount.”

5. What can I receive?

If you participate in the Settlement, you will receive a share of the Maximum Settlement Amount based on a formula developed by Plaintiff’s Counsel and Kmart.

The Maximum Settlement Amount less (i) Plaintiffs’ Counsel’s attorneys’ fees, as awarded by the Court, not to exceed the total amount of \$1,271,333; (ii) Plaintiffs’ Counsel’s costs in prosecuting the Settled Lawsuits, as awarded by the Court, not to exceed \$195,000; and (iii) an Enhancement Award to the Representative Plaintiffs, not to exceed \$7,500 per Plaintiff will be available to distribute to Class and Collective Members. This amount is called the Net Settlement Amount. All costs of the Claims Administrator who will process claim forms and distribute checks will be paid separately by Kmart. The parties have agreed on a formula to

calculate potential settlement payments from the Net Settlement Amount that is based upon the number of weeks you and the other Class and Collective Members worked during the Relevant Period (the “Weeks Worked”).

6. How is my settlement amount calculated?

A Workweek Amount will be determined by dividing the Net Settlement Amount by the total Weeks Worked by the Representative Plaintiffs and Class and Collective Members participating in the Settlement. An individual will be paid based on his/her individual Weeks Worked according to the following formula: (Weeks Worked x Workweek Amount = Settlement Payment). Each Settlement Payment will be at least \$50.00. A Collective Member who held the position of Hardlines or Softlines Assistant Store Manager during the Relevant Period, but was not actively employed by Kmart in those positions for at least one workweek during the Relevant Period, will receive a Settlement Payment of \$50.00.

Your Relevant Period was determined as follows: If you worked in:

- (i) Maryland, your Relevant Period is July 3, 2010 through the May __, 2016;
- (ii) New Jersey, your Relevant Period is the earlier of July 3, 2011 or three (3) years prior to the date you opted into the *Fischer* action, through May __, 2016;
- (iii) New York, your Relevant Period is March 27, 2009 through May __, 2016;
- (iv) Ohio, your Relevant Period is the earlier of March 27, 2012, or three (3) years prior to the date you opted into the *Fischer* or *Hautur* actions, through May __, 2016;
- (v) Any state other than Maryland, New Jersey, New York, or Ohio, your Relevant Period is three (3) years prior to the date you opted into the *Fischer* or *Hautur* actions through May __, 2016; and

In addition, if you opted into *Hautur* and previously opted into *Fischer* but were dismissed by the Court or withdrew your consent due to an untimely filing, the date of the original filing of your consent form in *Fischer* shall be used for purposes of calculating Weeks Worked.

Based on records maintained by Kmart, your number of Weeks Worked during the Relevant Period is: [INSERT]

Accordingly, your anticipated Settlement Payment, before necessary tax withholdings, is at least: [INSERT].

If you claim the above number of Weeks Worked during the Relevant Period is inaccurate, you must send a letter to the Claims Administrator at the address indicated below postmarked by [INSERT DATE], and you must also provide sufficient, written documentation as evidence supporting your claim. Otherwise, your share of the Net Settlement Amount will be based on the above number of Weeks Worked.

Please note that the Weeks Worked does not include any full weeks in which a Class or Collective Member worked in a position other than that of a Hardlines or Softlines Assistant Store Manager.

7. Do the Representatives Plaintiffs receive any additional payments?

In addition to the Net Settlement Amount paid under the formula described above, Plaintiffs' Counsel will request that the Court approve Enhancement Awards of \$7,500 to each of the four Representative Plaintiffs in recognition of their efforts in coming forward to commence the Settled Lawsuits, appearing for deposition, and/or taking other action benefiting the Collective and Class. As a condition of receiving an Enhancement Award, each Representative Plaintiff shall execute an individual general release agreement. The Enhancement Awards will be paid from the Settlement Funds.

8. How and when will I receive my portion of the Net Settlement Funds?

No payments will be made until the Settlement receives final Court approval, and any appeal or review of that approval has been resolved in favor of the Settlement.

If the Court approves the Settlement, for tax reporting purposes, 50% of your Settlement Payment will be considered a payment of wages and be subject to appropriate deductions and withholdings and will be reported on a Form W-2. The remaining 50% of your Settlement Payment will be considered liquidated damages and not be subject to withholdings or deductions, and will be reported on a Form 1099.

YOU DO NOT NEED TO SUBMIT ANYTHING IN ORDER TO BE ELIGIBLE TO RECEIVE THESE CHECKS.

9. What if my address changes before the Net Settlement Amount is distributed?

If you change your address, or if this Notice was not mailed to your correct address, you should immediately provide your current address to the Claims Administrator by letter or telephone to ensure that you receive future communications about the Lawsuits. If the Claims Administrator does not have your correct address, you might not receive notice of important developments concerning the Settlement and you might not receive your Settlement Payment.

10. How do I contact the Claims Administrator?

You may **TELEPHONE** the Claims Administrator, Rust Consulting, toll free, at _____.

You may also write to the Claims Administrator at the following address:

Fischer v. Kmart Claims Administrator
c/o Rust Consulting Inc.
PO Box #####
Faribault, MN 55021-1234

YOUR RELEASE OF CLAIMS

Your legal rights may be affected if the Court enters a final order approving the Settlement.

11. What claims are being released if the Settlement is approved by the Court?

If the Settlement is approved by the Court, you will release federal wage and hour claims, described below as “Released FLSA Claims,” and state law claims, described below as “Released Non-FLSA Claims.”

12. What claims are included in the Released FLSA Claims?

All of the following claims are included in the Released FLSA Claims:

any and all law claims, obligations, demands, actions, rights, causes of action, and liabilities against Defendant Releasees, of whatever kind and nature, character, and description, whether known or unknown, and whether anticipated or unanticipated arising under the Fair Labor Standards Act of 1938 (“FLSA”), as amended, 29 U.S.C. § 201, et. seq., that accrued during the period ending on [the date thirty (30) calendar days after the Preliminary Approval Date], for any type of relief, including without limitation, claims for wages, penalties, liquidated damages, interest, attorneys’ fees, litigation costs, or equitable relief.

“Defendant Releasees” means Kmart Corporation, Kmart Holdings Corporation, and Sears Holdings Management Corporation, and their current, former, and future affiliates, including, without limitation, parents, subsidiaries, and related entities, predecessors, successors, divisions, joint ventures and assigns, and each of these entities’ past or present directors, officers, employees, partners, members, employee benefit plan administrators and fiduciaries, principals, agents, insurers, co-insurers, re-insurers, managers, shareholders, attorneys, and personal or legal representatives, in their individual and corporate capacities.

13. What claims are included in the Released Non-FLSA Claims?

any and all claims, obligations, demands, actions, rights, causes of action, and liabilities against Defendant Releasees, of whatever kind and nature, character, and description, whether known or unknown, and whether anticipated or unanticipated, arising under applicable state and local law, whether in law or equity, whether sounding in tort, contract, statute, common law, or other applicable law or regulation including claims that the Settlement Class Member does not know of or suspect to exist in his/her favor, that accrued during the period ending on [the date thirty (30) calendar days after the Preliminary Approval Date], for any type of relief, including without limitation, claims for wages, damages, premium pay, unpaid costs, expenses, penalties (including any applicable late payment penalties), liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, or equitable relief, based on

the following categories of allegations: (a) all claims asserted or which could have been asserted in the Settled Lawsuits (as defined above) which arose under the facts alleged and/or applicable state or local wage and hour laws and regulations; (b) all claims under applicable state or local laws and regulations for the failure to pay any type of overtime compensation or other wages (including late payments of wages or business expenses); (c) all claims arising under any applicable state or local laws or regulations for the failure to provide or pay for meal periods and/or rest periods; (d) all claims under applicable state or local laws or regulations, including but not limited to alleged recordkeeping violations, stemming from or based on alleged misclassification; and (e) all claims for penalties or additional damages arising from the claims described in (a) through (d) inclusive above under applicable state or local law. The Released Non-FLSA Claims are the claims meeting the above definition under any and all applicable state and local statutes, regulations or common law, including without limitation, those set forth in the compendium of state specific wage and hour laws attached hereto as Exhibit 4, as well as any federal, state or local claims related to any claim for benefits arising from any Settlement Payment under this Settlement Agreement, including but not limited to the Employee Retirement Income Security Act (“ERISA”).

THE LAWYERS REPRESENTING YOU

14. Do I have a lawyer in this case?

The following law firms have been appointed by the Court to represent the Class and also represent the Collective (“Plaintiffs’ Counsel”).

<p>KLAFTER OLSEN & LESSER LLP Two International Drive, Ste. 350 Rye Brook, NY 10573 Tel: (914) 934-9200</p>	<p>WINEBRAKE & SANTILLO, LLC 715 Twining Road, Suite 211 Dresher, PA 19025 Tel: (215) 884-2491</p>
<p>WHITFIELD BRYSON & MASON LLP 1625 Massachusetts Ave., N.W., Suite 605 Washington, DC 20036 Tel: (202) 429-2294</p>	<p>HEPWORTH GERSHBAUM & ROTH, PLLC 192 Lexington Avenue Suite 802 New York, NY 10016 Tel: (212)545-1199</p>
<p>MIGLIACCIO & RATHOD LLP 412 H Street N.E., Suite 302 Washington, D.C. 20002 Tel: (202) 470-3520</p>	

These law firms are experienced in handling these type of cases and believe this Settlement is an excellent result for you and the other Class and Collective Members.

15. Do I need to get my own lawyer?

You do not need to hire your own lawyer because Plaintiffs' Counsel are working on your behalf. If you want your own lawyer, you will have to pay that lawyer. For example, if you want someone other than Plaintiffs' Counsel to speak for you, you can ask another lawyer to appear in Court for you at your own expense.

16. How will Plaintiffs' Counsel be paid?

Plaintiffs' Counsel has prosecuted these Settled Lawsuits on a fully contingent basis and have received no payment for their work. At the Final Approval Hearing, or at such other time as the Court may direct, Plaintiffs' Counsel intends to apply to the Court for an award of attorneys' fees not to exceed one third of the Maximum Settlement Amount, or \$1,271,333. Plaintiffs' Counsel will also move the Court for reimbursement of litigation expenses actually incurred in connection with the Settled Lawsuits, currently estimated to be no more than \$195,000. The Court-approved fees and costs will be paid by the Claims Administrator from the Maximum Settlement Amount.

ALTERNATIVES

17. May I oppose the settlement?

Yes, you may oppose or object to the proposed Settlement of the Lawsuits, or any aspect of it that you think is unfair. **The Court will hold a hearing on [INSERT DATE] at the United States District Court for the District of New Jersey, Clarkson S. Fisher Building & U.S. Courthouse, 402 East State Street, Trenton, NJ 08608, to determine whether the proposed settlement of the Lawsuits should be approved.** If you wish to object to the fairness, reasonableness, or adequacy of the Settlement Agreement, or the proposed settlement, or to the award of Attorneys' Fees and Expenses and/or Enhancement Awards to Representative Plaintiffs, you must send your written objection to Plaintiff's Counsel and Kmart's Counsel, so as to be postmarked no later than [45 days from the Notice Mailing Date], a written statement of the objection, as well as the specific reasons, if any, for each objection, including any legal support you wish to bring to the Court's attention and any evidence you wish the Court to consider in support of any objections. You must also file the objection with the Court by sending by mail or otherwise to the Court so it is received by [45 days from the Notice Mailing Date]. If you also intend to appear at the hearing, you must also include notice of your intent to appear with your objection.

17. What does my objection need to include?

All written objections must be signed by you and must include: (1) your name, address, and telephone number; (2) a statement of the objection(s) and any supporting evidence and/or legal support you wish the Court to consider; and (3) a case name, *Fischer, et al. v. Kmart Corporation*, United States District Court for the District of New Jersey, Case No. 3:13-cv-04116-AET-DEA.

GETTING MORE INFORMATION

18 Are more details available?

Yes, if you believe that you need more details in order to make a decision, and/or want to review the Settlement Agreement, you can call the Claims Administrator, Rust Consulting toll-free at [REDACTED] or visit [www.[REDACTED]].

19. Can I examine the Court's file?

Yes, you may **EXAMINE THE COURT'S FILE** in the clerk's office at the United States District Court for the District of New Jersey, Clarkson S. Fisher Building & U.S. Courthouse, 402 East State Street, Trenton, NJ 08608.

PLEASE DO NOT WRITE OR CALL THE COURT ABOUT THIS NOTICE, THE SETTLEMENT, OR THE CLAIMS PROCESS

FOR INFORMATION REGARDING THIS NOTICE, THE SETTLEMENT, OR THE CLAIMS PROCESS, PLEASE CONTACT THE CLAIMS ADMINISTRATOR

EXHIBIT 3

PROPOSED PRELIMINARY APPROVAL ORDER

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

AMY FISCHER and MORRISON
OMORUYI, individually and on behalf of all
other persons similarly situated,

Plaintiffs,

v.

KMART CORPORATION,

Defendant.

Case No. 3:13-cv-4116 (AET)(DEA)

Judge Anne E. Thompson
Magistrate Judge Douglas E. Arpert

GINA HAUTUR and CAROL GURNISH,
individually and on behalf of all other persons
similarly situated,

Plaintiffs,

v.

KMART CORPORATION,

Defendant.

Case No. 1:15-cv-00267

**[PROPOSED] ORDER PRELIMINARILY APPROVING PROPOSED CLASS AND
COLLECTIVE ACTION SETTLEMENT**

This matter comes before the Court on Plaintiffs' Unopposed Motion for Preliminary Approval of the Parties' Stipulation and Settlement Agreement (the "Preliminary Approval Motion"), and after review and consideration of the Stipulation and Settlement Agreement (the "Stipulation"), the papers in support of the Preliminary Approval Motion, and the arguments of counsel, IT IS HEREBY ORDERED as follows:

1. The proposed Settlement, as embodied in the terms of the Stipulation, is hereby preliminarily approved as a fair, reasonable, and adequate settlement of this case in the best interests of the Collective and Class Members (as defined in the Stipulation), in light of the factual, legal, practical, and procedural considerations raised by this case.

2. Solely for the purpose of Settlement (as defined in the Stipulation), the Court hereby preliminarily certifies the following Class, all persons who were or are actively employed as exempt Hardlines or Softlines Assistant Store Managers by Kmart for at least one workweek during the applicable Relevant Period, who have not signed or are otherwise subject to or bound by Kmart's Arbitration Policy/Agreement, Transition Pay Plan, or any other agreement that has released the claims at issue in the Settled Lawsuits, or have been dismissed or withdrew from the Settled Lawsuits, in:

- a. Maryland at any time from July 3, 2010, through the Preliminary Approval Date;
- b. New Jersey at any time from July 3, 2011, through the Preliminary Approval Date;
- c. New York at any time from March 27, 2009, through the Preliminary Approval Date; or
- d. Ohio at any time from March 27, 2012 through the Preliminary Approval Date.

3. If the Settlement does not become final for any reason, the fact that the Parties were willing to stipulate to class action certification for settlement purposes shall have no bearing on, and will not be admissible in connection with, the issue of whether a class action is properly certified in a non-settlement context. The Court's findings are for purposes of preliminarily certifying a Settlement Class and will not have any claim, issue, or evidentiary preclusion or estoppel effect in any other action against the Defendant Releasees (as defined in the Stipulation) or in this litigation if the Settlement is not finally approved.

4. The Court finds that certification of the Class listed above, solely for purposes of Settlement, is appropriate in that: (a) the Class Members are so numerous that joinder of all Class Members is impracticable; (b) there are questions of law and fact common to the Class which predominate over any individual questions; (c) claims of the Plaintiffs (as defined in the Stipulation) are typical of the claims of the Class; (d) the Plaintiffs and Plaintiffs' Counsel (as

defined in the Stipulation) have fairly and adequately represented and protected the interests of the Class; and (e) a class action settlement is superior to other available methods for the fair and efficient adjudication of the controversy.

5. The Court hereby preliminarily appoints Plaintiffs Amy Fischer (NJ), Morrison Omoruyi (MD), Gina Hautur (NY), Carol Gurnish (OH), as Representatives of the Class, and finds that they meet the requirements of Rule 23(a)(4).

6. In accordance with Rules 23(a)(4) and (g), the Court approves the following attorneys as Class Counsel for all of the Class:

KLAFTER OLSEN & LESSER LLP
Two International Drive, Ste. 350
Rye Brook, NY 10573
Tel: (914) 934-9200

WINEBRAKE & SANTILLO, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
Tel: (215) 884-2491

WHITFIELD BRYSON & MASON LLP
1625 Massachusetts Ave., N.W., Suite 605
Washington, DC 20036
Tel: (202) 429-2294

HEPWORTH GERSHBAUM & ROTH, PLLC
192 Lexington Avenue
Suite 802
New York, NY 10016
Tel: (212)545-1199

MIGLIACCIO & RATHOD LLP
412 H Street N.E., Suite 302
Washington, D.C. 20002
Tel: (202) 470-3520

7. The Court finds that the plan for providing notice to the Class and the Collective (as defined in the Stipulation) is the best notice practicable under the circumstances and satisfies the requirements of due process and/or Rule 23. That plan is approved and adopted. This Court further finds that the Collective and Class Notices, attached as Exhibits 1 and 2 hereto, complies with Rule 23(c)(2) and Rule 23(e), and is appropriate as part of the plan for issuing notice set forth in the Stipulation, and thus is approved and adopted.

8. The Court appoints Rust Consulting, Inc. as the Claims Administrator for this settlement.

9. The Court finds and orders that no other notice is necessary.

10. The Court orders that pending final determination as to whether the Settlement should be approved, the Plaintiffs, Collective Members and Class Members, whether or not such persons have appeared in this action, shall not institute or prosecute any claims or actions against the Defendant Releasees that fall within the definition of the claims being released under the terms of the Settlement Agreement. Any other pending actions, including any pending class or collective actions brought pursuant to either Rule 23 of the Federal Rules of Civil Procedure or 29 U.S.C. § 216(b), by Plaintiffs, Collective Members or Class Members against the Defendant Releasees, pending before any state or federal court are stayed on an interim basis as to any claims that fall within the definitions of the Released FLSA Claims and Released Non-FLSA Claims for the Relevant Period.

11. To effectuate the Settlement, the Court hereby establishes the following deadlines and dates for the acts and events as set forth in the Stipulation, and directs the parties to incorporate the deadlines and dates in the Class Notice and required forms attached to the Stipulation as follows:

DESCRIPTION	DEADLINE
Deadline for Defendants to provide to Claims Administrator a Database of all Collective and Class Members, including each person's name, last known address, social security number, state(s) where last employed, and number of Weeks Worked during the applicable class period(s)	Within 10 business days after the Preliminary Approval Order. <i>See</i> Stipulation ¶2.4.1.
Deadline for mailing of Class and Collective Action Notices by Claims Administrator to the Collective and Class Members.	Within 15 business days after receipt of the Database of Collective and Class Members from Defendants. <i>See</i> Stipulation ¶2.4.2.
Deadline for Class Members to submit Opt-Out Request	Within 45 calendar days after the date of initial mailing of Class and Collective Action Notices. <i>See</i>

DESCRIPTION	DEADLINE
	Stipulation ¶2.4.8.
Deadline for Collective or Class Members to file written objections to the Settlement, if applicable	Within 45 calendar days after the date of initial mailing of Class and Collective Action Notices. <i>See</i> Stipulation ¶2.4.10.
Deadline for Class Members to submit Claim and Consent to Join Settlement Form (“Notice Response Deadline”)	Within 60 calendar days after the date of initial mailing of Class and Collective Action Notices. <i>See</i> Stipulation ¶2.4.6.
Deadline for Plaintiffs to file Motion(s) for Final Approval and for an award of attorneys’ fees, costs and Enhancement Awards	Two weeks prior to the Final Approval and Fairness Hearing. <i>See</i> Stipulation ¶2.3.5.
Final Approval and Fairness Hearing	_____ (no earlier than 90 calendar days from the date notice of settlement has been provided in accordance with 28 U.S.C. § 1715)

12. The fairness hearing and hearing for Final Approval set forth in the Class and Collective Action Notices is hereby scheduled for _____ at _____ a.m./p.m. at the Clarkson S. Fisher Building & U.S. Courthouse, 402 East State Street Room 2020, Trenton, NJ 08608.

IT IS SO ORDERED.

DATED: _____

 Honorable Douglas E. Arpert
 United States Magistrate Judge

EXHIBIT 4

COMPENDIUM OF STATE WAGE AND HOUR LAWS

STATE WAGE AND HOUR LAWS COVERED BY RELEASED NON-FLSA CLAIMS

Alaska

- Alaska Wage & Hour Act: Alaska Stat. § 23.10.050 - 23.10.150
- Alaska Stat. § 23.05.140
- Alaska Admin. Code tit. 8, § 15.160 - 15.165

Arizona

- General Wages Statute: Ariz. Rev. Stat. §§ 23-350 to -362

Arkansas

- Minimum Wage Act of Arkansas: Ark. Code Ann. § 11-4-201 et seq.

California

- California Labor Code 96 through 98.2, et seq.
- California Payment of Wages Law, and in particular, California Labor Code §200, et seq., including, but not limited to California Labor Code §§200 through 243 and §§203 and 218 and 218.5
- California Labor Code §300, et seq.
- California Labor Code §400, et seq.
- California Working Hours Law, California Labor Code §500, et seq.
- California Labor Code §1182.12
- California Labor Code §1194
- California Labor Code §1197
- California Labor Code §1198
- California Labor Code §§2802 and 2804
- California Unfair Competition Act, and in particular, California Bus. & Prof. Code §17200, et seq.
- California Labor Code Private Attorneys General Act of 2004, codified at California Labor Code §§2698 through 2699, including without limitation claims asserted under this statute on behalf of the State of California
- IWC Wage Orders 1-2000 through 13-2000

Colorado

- Colorado Wage Claim Act: Colo. Rev. Stat. §§ 8-4-101 et seq. (Specifically Including
- §§ 8-4-105(1)(a)-(e), 8-4-110(2))
- Colorado Minimum Wages of Workers Act: Colo. Rev. Stat. § 8-6- 101 et seq.
- Colorado Minimum Wage Order Number 22, 7 Colo. Code Regs. § 1103-1

Connecticut

- Conn. Gen. Stat. §§ 31-60, 31-66, 31-68,
- Conn. Gen. Stat. §§ 31-70 through 31-74, 31-76 through 31-76m
- Conn. Agencies Regs. §§ 31-60-14 & 31-60-15
- Any and all claims under Chapter 558 of the Connecticut General Statutes and any enabling or implementing regulations

Delaware

- Wage Payment & Collection Act: Del. Code Ann. tit. 19, § 1101 et seq.

District of Columbia

- Minimum Wage Law: D.C. Code § 32-1001, et seq.
- Payment and Collection of Wages Law: D.C. Code § 32-1301 et seq.
- D.C. Mun. Reg. tit. 7, § 915.

Florida

- Fla. Stat. § 448.08

Georgia

- Ga. Code Ann. § 34-7-2
- Ga. Code Ann. § 34-2-11

Idaho

- Idaho Wage Payment Act: Idaho Code Ann. §§ 45-601- 45-621

Illinois

- Illinois Minimum Wage Act: 820 Ill. Compo Stat. § 105 et seq.
- Illinois Wage Payment & Collection Act: 820 Ill. Compo Stat. § 115 et seq.
- Illinois One Day Rest in Seven Act: 820 Ill. Comp. Stat. § 140 et seq.
- 56 Ill. Admin. Code § 210.400 et seq.

Indiana

- Minimum Wage Law of 1965: Ind. Code §§ 22-2-2-2, 22-2-2-13
- Indiana Wage Payment Law: Ind. Code § 22-2-5-1 et seq.
- Ind. Code § 22-2-6-1 et seq.
- Ind. Code § 22-2-8-1 et seq.
- Ind. Code § 22-2-9-1 et seq.

- Ind. Code. § 22-2-7-1 et seq.
- Ind. Code. § 22-2-4-4

Iowa

- Iowa Wage Payment Collection Act: Iowa Code Chapter 91A (including §§ 91A.1 - 91A.14)

Kansas

- Kansas Minimum Wage Law: Kan. Stat. Ann. §§ 44-1201-44-1213; 44-1202(D)
- Kansas Wage Payment Statute: Kan. Stat. Ann. §§ 44-312 - 44-327
- Kan. Stat. Ann. §§ 44-341-44-343
- Kan. Admin. Regs. §§ 49-20-1 - 49-21-4

Kentucky

- Ky. Rev. Stat. § 337.385
- Ky. Rev. Stat. § 337.010 et seq.
- Ky. Rev. Stat. § 337.285
- Ky. Rev. Stat. § 337.320(2)

Louisiana

- La. Rev. Stat. Ann. § 23:631 et seq.
- La. Rev. Stat. Ann. § 23:14

Maine

- Me. Rev. Stat. Ann. tit. 26, § 664
- Me. Rev. Stat. Ann. tit. 26, § 629
- Me. Rev. Stat. Ann. tit. 26, § 635
- Me. Rev. Stat. Ann. tit. 26 § 603
- Me. Rev. Stat. Ann. tit. 26 §§ 662, 665

Maryland

- Md. Code Ann., Lab. & Empl. §§ 3-401 - 3-431
- Md. Code Ann., Lab. & Empl. §§ 3-501 - 3-509

Massachusetts

- Mass. Gen. Laws ch. 151, §§ 1 a, 1 b,
- Mass. Gen. Laws ch. 149, §§ 150a, 150c, 152
- Mass. Gen. Laws ch. 149 §§ 148, 148a, 152A, 52C
- Mass. Code Regs. 2.02(3)

Michigan

- Michigan Minimum Wage Act: Mich. Comp. Laws Ann. § 408.381 et seq.
- Michigan Wages and Fringe Benefits Act: Mich. Comp. Laws Ann, § 408.471 et seq.

Minnesota

- Minnesota Fair Labor Standards Act: Minn. Stat. §§ 177.21 - 177.44
- Minn. Stat. § 181.01 et seq.

Missouri

- Mo. Rev. Stat. §§ 290.010 et seq. (including, but not limited to, §§ 290.080,290.100, 290.110)

Montana

- Montana's Minimum Wage & Overtime Act: Mont. Code Ann. § 39-3-201 et seq.
- Montana Wage Payment Act: Mont. Code Ann. § 39-3-401 et seq.
- Montana's Wages & Wage Protection Act: Mont. Code Ann. § 39-3-101 et seq.

Nebraska

- Nebraska Wage Payment and Collection Act: Neb. Rev. Stat. § 48-1228 et seq.
- Nebraska Wage and Hour Act: Neb. Rev. Stat. §§ 48-1201-48-1209
- Nev. Rev. Stat. §§ 608.018,612.535, 616d.240, 608.110
- Nev. Admin. Code § 608.160
- Nev. Rev. Stat. § 608.100

Nevada

- Nev. Rev. Stat. §§ 608.018,612.535, 616d.240, 608.110
- Nev. Admin. Code § 608.160
- Nev. Rev. Stat. § 608.100

New Hampshire

- N.H. Rev. Stat. Ann. § 275:42 et seq. (including, but not limited to, §§ 275:43-8,275:45, 275:48,275:53 and 275:57)
- N.H. Code Admin. R. Ann. Lab. 803.03

New Jersey

- N.J. Stat. Ann § 34:11-4.1 et seq.
- N.J. Stat. Ann § 34: 11-56a et seq.

- New Jersey Wage Collection Law: N.J. Stat. Ann. § 34:11-66
- N.J. Admin. Code §§ 12:56-4.3, 12:56-4.4

New Mexico

- N.M. Stat. Ann. § 50-4-1 et seq. (including, but not limited to, §§ 50-4-2(B), 50-4-14)
- N.M. Minimum Wage Act: N.M. Stat. Ann. §§ 50-4-19 - 50-4-30 (including, but not limited to, § 50-4-26)

New York

- 12 N.Y.C.R.R. § 142-2.1 et seq. (including, but not limited to, § 142-2.2, § 142-2.4 and § 142-2.14)
- N.Y. Lab. Law. § 160 et seq. (including, but not limited to, § 161 and § 162)
- N. Y. Lab. Law § 190 et seq. (including, but not limited to, § 191, § 193 and § 198)
- New York Minimum Wage and Hour Law: NY. Lab. Law § 650 et seq.
- N. Y. Lab. Law § 160

North Carolina

- North Carolina Wage and Hour Act: N.C. Gen. Stat. § 95-25.1 et seq. (including, but not limited to, §§ 95-25.4, 95-24.6, 95.25.8, 94-25.22)
- 13 N.C. Admin. Code § 12.0305

North Dakota

- Title 34 of the North Dakota Central Code (including, but not limited to, N.D. Cent. Code § 34-14-04.1)
- The North Dakota Minimum Wage and Work Conditions Order
- Title 46 of the North Dakota Administrative Code

Ohio

- Ohio Minimum Fair Wage Standards: Ohio Rev. Code Ann. ch. 4111 (including, but not limited to, § 4111.03)
- Ohio Rev. Code. Ann. §§ 4113.15, 4113.16, 4113.19, 4113.21

Oklahoma

- Oklahoma Payday Act: Okla. Stat. tit. 40, § 165.1 et seq.
- Okla. Admin Code §§ 380.30 1-7,380-1-8

Oregon

- Or. Rev. Stat. §§ 652 et seq. and 653 et seq.
- Or. Admin. Rules 839-020-0000 et seq.

Pennsylvania

- Minimum Wage Act of 1968: 43 Pa. Stat. Ann. § 333.101 et seq.
- Wage Payment and Collection Law: 43 Pa. Stat. Ann. § 260.1 et seq.
- 34 Pa. Code § 231.21, § 231.3 1, § 231.36 and § 231.41

Rhode Island

- Rhode Island Minimum Wage Act: R.I. Gen. Laws § 28-12-1 et seq. (including, but not limited to, §§ 28-12-4.1, -4.2, -4.3, -4.4, -12, -16, -17, -18)
- Rhode Island Payment of Wages Act: R.I. Gen. Laws §§ 28-14-1 et seq. (including, but not limited to, §§ 28-14-3.1, -10, -10.1, -10.2, -18.1)
- Rhode Island Assignment of Future Wages Act: R.I. Gen. Laws § 28-15-1 et seq. (including, but not limited to, § 28-15-9)

South Carolina

- South Carolina Payment of Wages Act: S.C. Code Ann. § 41-10-10 et seq.

South Dakota

- S.D. Codified Laws § 60-11-1 et seq.

Tennessee

- Wage Regulation Act: Tenn. Code Ann. § 50-2-10 1 et seq.

Texas

- Tex. Lab. Code Ann. § 61.001 et seq. (including, but not limited to, § 61.018)
- Texas Civil Practice & Remedies Code ch. 38

Utah

- Utah Payment of Wages Act: Utah Code Ann. § 34-28-1 et seq. (including, but not limited to,
- § 34-28-3(5))

Vermont

- Vt. Stat. Ann. tit. 21, §§ 384(b), 395
- Vermont Wages and Medium of Payment Act: Vt. Stat. Ann. tit. 21 § 341 et seq.

Virginia

- Virginia Assignment of Wages Act: Va. Code Ann. § 40.1-29 et seq.
- Va. Code Ann. § 49.1-455 et seq.

Washington

- Washington Minimum Wage Act: Wash. Rev. Code § 49.46.005 et seq. (including, but not limited to, §§ 49.46.130(1))
- Wash. Rev. Code § 49.48.010 et seq.
- Wash. Rev. Code § 49.52.050-.080
- Wash. Admin. Code 296-126-025
- Wash. Admin. Code 296-126-028

West Virginia

- West Virginia Wage Payment and Collection Act: W.Va. Code § 21-5C-1 et seq. (including, but not limited to, § 21-5C-3)
- West Virginia Minimum Wage and Maximum Hour Act: W. Va. Code § 21-5-1 et seq. (including, but not limited to, §§ 21-5-3,21-5-9(4))

Wisconsin

- Wis. Admin. Code OWO § 274.01
- Wis. Stat. §§ 103.01-103.03, 109.01-109.11
- Wis. Stat. § 103.455
- Wis. Stat. § 103.457

Wyoming

- Wyo. Stat. Ann. § 27-4-101 et seq. (including, but not limited to, § 27-4-101(b))

EXHIBIT 5

CURE LETTER

[CLAIMS ADMINISTRATOR LETTERHEAD]

[DATE]

CLASS MEMBER NAME

Street Address

City, State Zip

Re: Settlement in *Fischer, et al. v. Kmart Holding Corp., et al.*, U.S. District Court for the District of New Jersey; Case No. 3:13-cv-04116; *Hatur, et al. v. Kmart Corporation*, U.S. District Court for the District of New Jersey, Case No. _____

Dear [NAME]:

It appears that you have submitted inconsistent documentation with respect to whether you intend to participate in the above-referenced class and collective action settlement. Specifically, you have submitted both an Opt-Out Request and a Claim and Consent to Join Settlement Form.

Please complete the information below to indicate whether it is your intention to participate in the Settlement, and return this form to:

Fischer v. Kmart Claims Administrator
c/o Rust Consulting, Inc.
PO Box #####
Faribault, MN 55021-1234

If this completed Form is not received by **INSERT DATE**, you will be deemed to have elected to participate in the Settlement.

I. PERSONAL INFORMATION

Name (first, middle and last): _____

Home Street Address: _____

City, State, Zip Code: _____

Home Telephone Number: (____) _____

Social Security Number: _____

II. PLEASE CHOOSE ONE (AND ONLY ONE) OF THE FOLLOWING OPTIONS:

_____ I elect to opt out of participating in the Settlement. I understand this means that I will not be eligible to receive any Settlement Payment under the Settlement.

_____ I elect to participate in the Settlement. I understand that this means I am releasing all claims I have against Kmart Corporation and the Defendant Releasees, which are defined in the Notice of Proposed Class and Collective Action Settlement that I previously have received and read.

III. PLEASE SIGN BELOW

I certify that the foregoing statements made by me are true and correct. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: _____

(Signature)

(Print Name)

Return this form for receipt by INSERT DATE to

Fischer v. Kmart Claims Administrator
c/o Rust Consulting, Inc.
PO Box #####
Faribault, MN 55021-1234