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11 *Attorneys for Plaintiff Rosa Lopez*

12 UNITED STATES DISTRICT COURT  
 13 CENTRAL DISTRICT OF CALIFORNIA

15 ROSA L. LOPEZ, individually, and on  
 16 behalf of other members of the general  
 public similarly situated,

17 Plaintiff,

18 vs.

19 KMART CORPORATION, a Delaware  
 Corporation; and,  
 20 DOES 1 through 10, inclusive,

21 Defendants.

Case No. CV 09-1334 CJC (RNBx)  
 CLASS ACTION

**DECLARATION OF H. SCOTT  
 LEVIANT IN SUPPORT OF  
 PLAINTIFF'S MOTION FOR  
 FINAL APPROVAL OF CLASS  
 ACTION SETTLEMENT AND  
 CERTIFICATION OF  
 SETTLEMENT CLASS AND  
 AWARD OF CLASS  
 REPRESENTATIVE  
 ENHANCEMENT, ATTORNEY'S  
 FEES, AND COSTS**

Date: October 3, 2011  
 Time: 1:30 p.m.  
 Place: Courtroom 9B

Date Action Filed: January 23, 2009  
 Date Removed: February 25, 2009



1 of Labor Code § 226; (3) failed to pay wages due and owing at the time of  
2 termination in alleged violation of Labor Code § 203; and (4) violated the Unfair  
3 Competition Law (“UCL”) set forth at California Business and Professions Code  
4 §§ 17200 *et seq.*

5 6. Defendant removed the action to the United States District Court for  
6 the Central District of California on February 26, 2009.

7 7. On November 12, 2009, the Court issued a Scheduling Order, setting a  
8 Trial for June 8, 2010. On November 30, 2009, by way of the Settlement  
9 Procedure Selection: Request and Notice, the Parties advised the Court that they  
10 would participate in a private mediation.

11 8. The Parties diligently exchanged formal discovery. Plaintiff  
12 propounded four sets of Requests for Production of Documents, three sets of  
13 Interrogatories, deposed two of Defendant’s corporate representatives (one in Los  
14 Angeles and one in Chicago), analyzed documents and responses, and  
15 communicated with thousands of putative class members by letter and/or telephone.  
16 Defendant also propounded several sets of discovery and deposed Plaintiff.

17 9. On March 1, 2010, good cause appearing, the Court ordered the Trial  
18 continued to November 9, 2010 and all trial-related dates were also continued. On  
19 June 14, 2010, Defendant filed a Motion to Deny Class Certification with a  
20 continued hearing date of October 18, 2010. On June 16, 2010, Plaintiff filed a  
21 Joint Stipulation to compel Defendant’s responses to Requests for Production, Set  
22 Three. By Court Order, the Parties filed supplemental briefing, the Parties appeared  
23 for hearing on July 20, 2010, and Plaintiff’s motion was denied.

24 10. During 2010, several events occurred that caused me to conclude that  
25 the class, as originally defined, was unworkable. First, I learned during a  
26 deposition I took that, prior to the “merger” with Sears, Kmart (1) did not maintain  
27 electronic records of vacation or personal leave accrual, (2) made a substantial  
28 number of errors in favor of employees by allowing vacation and leave accrual at

1 too high a rate, and (3) calculated and recorded vacation and leave time at the store  
2 level. Second, during the deposition of Plaintiff, the examination revealed to me  
3 that Plaintiff's counsel misunderstood the vacation and personal leave accrual  
4 system. Under the system, *as it was implemented by Kmart*, Plaintiff was correctly  
5 paid. But, third, while studying the vacation and leave accrual rules, I discovered  
6 an issue with Kmart's paid personal leave accrual policy that potentially resulted in  
7 underpayment to a small sub-class of the class encompassed in the original  
8 complaint.

9 11. The 2006 Associate Handbook states:

10 Hourly Associates – those who are paid an hourly rate, commissions,  
11 or a combination of the two include:

12 - Full Time Associates – those who are classified as such *and* regularly  
13 work 30 hours or more per week.

14 - Part Time Associates – those who are classified as such *and* regularly  
15 work 29 hours or less per week.

16 One possible construction of this language is that the intention was to define full-  
17 time or part-time status by the regular number of hours worked and impose a  
18 reclassification obligation on Kmart when employees' regular hours increased  
19 beyond 30 hours per week. The alternative interpretation is that Kmart intended to  
20 create a situation where it could deny benefits to one employee working 35 hours  
21 per week while providing them to another, identically situated employee, based  
22 solely on a label that Kmart imposed on one of the two employees. Regardless, the  
23 definition creates an ambiguity as to how to treat employees working more than 30  
24 hours per week while classified as Part Time Associates.

25 12. Based on the totality of the information I gathered through formal  
26 discovery, I proposed to Defendant that we would modify the class definition to  
27 focus on individuals classified as Part Time Associates while working for some  
28

1 significant span at a Full Time Associate rate of 30 hours or more per week.

2 Defendant agreed that it would stipulate to the proposed narrowing of the case.

3 13. On September 23, 2010, the Court issued an Order for leave to amend  
4 the complaint to narrow the class definition, set a class certification briefing  
5 schedule with a hearing date of February 7, 2011, and the Trial was continued to  
6 May 10, 2011. On September 28, 2010, Plaintiff filed a First Amended Complaint.  
7 Prior to participation in the mediation, Defendant provided Plaintiff with  
8 preliminary mediation data regarding class size, average wage information, and  
9 vacation accrual calculation policies.

10 14. On September 29, 2010, the Parties participated in a private mediation  
11 with the Honorable Diane Wayne (Ret.), a mediator experienced with wage and  
12 hour class/representative mediations. The Parties were not able to resolve the case  
13 at the conclusion of that mediation; however, they continued months of lengthy  
14 settlement negotiations after the mediation session concluded.

15 15. By November 17, 2010, the Parties agreed to all material terms of a  
16 proposed settlement of Plaintiff's class allegations, and Plaintiff filed a Notice of  
17 Proposed Class Action Settlement. The Parties continued to negotiate settlement  
18 terms through April 2011.

19 16. The mediation data, combined with formal discovery and discussions  
20 between the Parties' counsel, yielded valuable information to the Parties in terms of  
21 class certification issues, ultimate liability and the amount of damages in  
22 controversy.

23 17. Accordingly, I believe Plaintiff was sufficiently familiar with the facts  
24 of this case to negotiate an informed settlement, and the Parties have agreed to an  
25 arms-length Settlement pursuant to the terms set forth in the Settlement Agreement.  
26 The Parties also recognize that the issues presented in the Action are likely only to  
27 be resolved with extensive and costly pretrial proceedings and have taken into  
28 account the risks and uncertainties inherent in any litigation.

1           18.    On May 31, 2011, this Court issued an Order conditionally certifying a  
2 settlement class, preliminarily approving the proposed settlement, approving notice  
3 to the class, and setting the hearing for final approval of the proposed class action  
4 settlement. In compliance with that Order, the key terms of the settlement,  
5 including the aggregate settlement amount, the requested enhancement, the likely  
6 costs and the proposed attorneys' fees were disclosed to the Class Members in the  
7 Notice issued to Class Members.

8  
9                                   SUMMARY OF THE SETTLEMENT TERMS

10           19.    The full terms of the settlement are set forth in the Settlement  
11 Agreement. For the convenience of the Court, the primary material terms are  
12 summarized as follows:

- 13                   (a)    The Settlement Class includes all persons who (1) were  
14                               employed by Defendant in the state of California on or after  
15                               January 23, 2005 to September 30, 2010; and (2) were paid an  
16                               hourly wage as all or part of their compensation; and (3) are no  
17                               longer employed by Defendant; and (4) were employed by  
18                               Defendant for at least one year prior to the end of their  
19                               employment by Defendant; and (5) were classified by Defendant  
20                               as "Part Time Associates;" and (6) worked in excess of 29 hours  
21                               per week for 16 or more consecutive weeks and were not re-  
22                               classified by Defendant as "Full Time Associates."
- 23                   (b)    Defendant will pay up to \$103,655.00 (the "Maximum  
24                               Settlement Fund") on a claims-made basis.
- 25                   (c)    The Settlement Fund will be allocated and disbursed to the  
26                               Settlement Administrator, to Plaintiff as an enhancement award,  
27                               to Class Counsel for fees and costs, and to Settlement Class  
28                               Members as individual payments.

- 1 (d) Class Counsel will not seek an amount greater than 25% of the  
2 Maximum Settlement Fund for attorneys' fees.
- 3 (e) Class Members who submit valid Claim Forms will be eligible  
4 to receive Individual Settlement Payments on a pro-rata basis  
5 based on their Personal Day Exposure Estimate from  
6 Defendant's records.
- 7 (f) Subject to Court approval, Defendant will pay Plaintiff an  
8 enhancement award of \$1,750.00.
- 9 (g) Subject to the Court's approval, the Claims Administrator will  
10 be paid expenses currently estimated at \$14,000.
- 11 (h) Subject to the Court's approval, Defendant will pay Class  
12 Counsel's attorneys' fees equal to 25% of the Settlement Fund  
13 (\$25,913.00) and actual costs in litigating this action.

14  
15 THE SETTLEMENT IS FAIR, JUST AND REASONABLE

16 20. Plaintiff and her counsel have diligently investigated the claims of the  
17 Class Members. Plaintiff and Class Counsel concluded, after taking into account  
18 the disputed factual and legal issues involved in this Action, the substantial risks  
19 attending further prosecution, including risks related to the outcome of a contested  
20 motion for class certification, and the substantial benefits to be received pursuant to  
21 the compromise and settlement of the Action as set forth in the Agreement, that  
22 settlement on the terms agreed to are in the best interest of Plaintiff and the Class  
23 and are fair and reasonable. Plaintiff's counsel brought to bear a great deal of  
24 experience in negotiating the settlement of this case.

25 21. Based on our independent investigation and evaluation, we are of the  
26 opinion that the Settlement documented by the Stipulation is fair, reasonable, and  
27 adequate, and in the best interest of the Settlement Class in light of all known facts  
28 and circumstances, including the risk of significant delay, the risk that the

1 Settlement Class will not be certified by the Court or that it will be decertified, the  
2 defenses asserted by Defendant to the merits and the class action status of this  
3 action, the numerous potential appellate issues, and the risk posed by current  
4 economic conditions. Based upon our investigations, we determined that the scope  
5 of the class originally proposed was overly broad and required revision to conform  
6 with discovered facts. The revised class impacts a class of approximately 909  
7 individuals.

8         22. One fundamental purpose of the class action device is to promote  
9 efficiency. Resolution at this time will forestall the need for additional expensive  
10 and time-consuming litigation that could very well result in an outcome comparable  
11 to that proposed under this settlement. This settlement is therefore objectively  
12 reasonable. The potential for prompt resolution benefits the class members, since  
13 they do not have to wait additional years for a similar recovery. The efficiency of  
14 this litigation benefits the Court, the parties and their counsel. But this result would  
15 not have been possible were it not for the reputation that Plaintiff's counsel has  
16 developed over decades of employment law litigation. Because that experience  
17 was undeniably a factor that contributed to a prompt but efficient resolution of this  
18 action, Plaintiff's counsel should be rewarded for the combination of skill and  
19 discretion that led to this beneficial settlement.

20         23. We have engaged in the necessary investigation in this case that made  
21 it possible for us to exercise informed judgment in those aspects of the settlement  
22 process in which we were involved. Additionally, Dennis Moss brought to bear, in  
23 the mediation and throughout the litigation of this Action, years of experience  
24 dealing with state and federal wage and hour laws and regulations and legal  
25 developments regarding class certification.

26         24. In addition to disputing the merits of Plaintiff's claims, Defendant  
27 would strongly challenge any request for class certification. Defendant believed  
28 that Plaintiff could not certify a class and also denied all liability or wrongdoing.



1 Plaintiff believes that his case is suitable for class certification in that there were  
2 policies and practices that affected certain of Defendant's non-exempt employees in  
3 the proposed class. Plaintiff further believes that those policies and practices could  
4 be established using representative testimony and declarations from class members,  
5 as well as the policies and procedures reflected in the documents produced by  
6 Defendant during discovery. However, while Plaintiff asserts her belief that this is  
7 a legitimate case for certification, Plaintiff realizes that there is always a significant  
8 risk associated with class certification proceedings, and those risks appear to be  
9 very high in this case.

10 25. The Settlement Agreement is the product of arm's-length negotiations  
11 between the Parties occurring throughout the litigation. In light of the uncertainties  
12 of protracted litigation and the state of the law regarding the legal positions of the  
13 Parties, the settlement amount reflects the best feasible recovery for the Class  
14 Members. The settlement amount is, of course, a compromise figure, affected by  
15 many uncertainties. By necessity it took into account risks related to liability,  
16 damages, and all the defenses asserted by the Defendant. Moreover, each Class  
17 Member will be given the opportunity to opt out of the Settlement, allowing those  
18 who feel they have claims that are greater than the benefits they can receive under  
19 this Settlement, to pursue their own claims. For the approximate 909 members of  
20 the class, the average gross recovery is \$108 per class member, which is *75% of the*  
21 *average class member's underpayment of personal leave time*. Given the strong  
22 case that Defendant could bring to bear to defeat certification and challenge the  
23 merits of this action, this is not an inconsequential sum in these challenging  
24 economic times.

25 26. Unlike many settlements, this settlement was negotiated on a per-class  
26 member basis. We were unaware of the exact amount of the aggregate class claim.  
27 Instead, the maximum amount available to the class constitutes about 75% of the  
28 amount that each class member would have accrued in Paid Personal Leave time

1 were they automatically reclassified as Full Time Employees after working more  
2 than 30 hours per week for the requisite number of weeks. By this formulation, the  
3 settlement for these individuals is excellent on a per-employee basis.

4 27. However, turning to Labor Code § 203, which, in theory, could  
5 provide the majority of the theoretical maximum value of the settlement, we  
6 realized that the wilfulness element of a section 203 claim would be nearly  
7 impossible to establish on the basis of an ambiguously worded policy. There is no  
8 reasons to assume that Kmart believed it would do better by creating an ambiguous  
9 classification than it would by issuing a policy that said status is based on whatever  
10 classification Kmart chooses to assign. In other words, Kmart has no obvious  
11 incentive to create a legal exposure when it could have simply reworded the  
12 Employee Handbook to clarify the triggers for a classification or reclassification.

13 28. In addition to the discussion above, the statute of limitation applicable  
14 to Labor Code § 203 claims was recently reduced from a possible 4-year period to  
15 3 years when the California Supreme Court decided *Pineda v. Bank of America*.

16  
17 BY GRANTING PRELIMINARY APPROVAL, THE COURT HAS  
18 PRELIMINARILY DETERMINED THE REASONABLENESS OF THE  
19 REQUESTED INCENTIVE AWARD

20 29. Here, Plaintiff seeks an incentive award that may not exceed \$1,750.  
21 Compared to the Maximum Settlement Amount, the amount of the enhancement  
22 award sought by Plaintiff is relatively small and will not appreciably diminish the  
23 amount of settlement funds available for distribution to class members. Taking that  
24 risk by filing a lawsuit against an employer deserves high reward, especially in  
25 light of the settlement achieved by Plaintiff. Additionally, Plaintiff was actively  
26 involved in the litigation and settlement negotiations of this Action. She sat for a  
27 full day deposition, traveled to and attended the mediation, worked diligently with  
28 counsel to respond to written formal discovery, and conferred with counsel to

1 provide informal information for settlement negotiations. Finally, this fee is well  
2 below the benchmark enhancement award routinely granted in California federal  
3 courts. *Faigman v. AT & T Mobility LLC*, C-06-04622-MHP, 2011 WL 672648, at  
4 \*5 (N.D. Cal. Feb. 16, 2011) (“In this district, incentive payments of \$5,000 are  
5 presumptively reasonable.”), citing *Hopkins v. Hanesbrands, Inc.*, No 08-0844,  
6 2009 WL 928133, at \*10 (N.D.Cal. Apr.3 2009) (LaPorte M.J.).  
7

### 8 THE EXPERIENCE OF CLASS COUNSEL

9 30. Spiro Moss LLP has been engaged in the practice of employment and  
10 labor law since its formation. The firm and its lawyers have handled more than 200  
11 overtime and other wage-related class actions in the past ten years. The firm has  
12 settled over 100 cases during that time. In the summer of 2004, Spiro Moss  
13 handled a wage and hour class action trial, a rarity in this practice area. Spiro Moss  
14 is routinely appointed lead or co-lead class counsel (or counsel for representative  
15 plaintiffs in FLSA representative actions) in federal and state courts in California  
16 and elsewhere, by way of motion for class certification or motion for settlement  
17 approval. Spiro Moss has extensive, specific experience with the process of  
18 certifying and resolving vacation pay calculation class actions.

19 31. Ira Spiro has extensive experience in the field of wage & hour  
20 litigation. Mr. Spiro, and his partner, Dennis Moss, authored an amicus brief to the  
21 California Supreme Court for consideration in landmark case of *Sav-On Drug v.*  
22 *Superior Court*, 34 Cal. 4th 319 (2004), which set the standard at that time for class  
23 certification in wage and hour disputes. Mr. Spiro was appointed by the Board of  
24 Governors of the State Bar of California, to serve a three year term, ending  
25 September 2001, on the State Bar’s ethics committee, the Standing Committee on  
26 Professional Responsibility and Conduct (COPRAC). COPRAC writes the  
27 official ethics opinions of the State Bar.  
28

1           32.     Mr. Dennis Moss, the Spiro Moss partner overseeing this matter, has  
2 been an employment/labor lawyer since 1977 and has handled numerous cases in  
3 all aspects of employment and labor law, including but not limited to numerous  
4 federal and state wage and hour class action cases, National Labor Relations Board  
5 proceedings, wrongful discharge litigation, discrimination cases, administrative  
6 appeals involving wage and hour and other employment issues, numerous  
7 arbitrations, and various other matters involving both traditional labor-law  
8 (union/management law) and employment law issues in the non-union context. Mr.  
9 Moss successfully argued *Ramirez v. Yosemite Water Co.*, 20 Cal. 4th 785 (1999), a  
10 case in which defendants asserted sales exemptions in the California Supreme  
11 Court.

12           33.     As one of the attorneys assigned to this matter at Spiro Moss, I also  
13 bring substantial class action experience to this litigation:

- 14           (a)     During 2010 alone, I negotiated or helped negotiate class action  
15 settlements worth approximately \$8,500,000. During the first  
16 four months of 2011, I negotiated or helped negotiate class  
17 action settlements worth over \$3,200,000.
- 18           (b)     I have been involved in the litigation of class actions since 1997,  
19 working as a law clerk on a number of class action matters.  
20 Since 1999, I have participated as an attorney in the litigation of  
21 well over 100 class actions, in California Superior Courts and in  
22 federal courts in California and Louisiana.
- 23           (c)     Dating back to 1999, some of the earliest cases in which I  
24 contributed to my firm's efforts as co-lead/liaison counsel  
25 include:
- 26                   i.    *In re Paradise Memorial Park Litigation*, Los Angeles  
27 Superior Court Lead Case No. BC130375; and,  
28

1                   ii. *In re Lincoln Memorial Park Litigation*, Los Angeles  
2                   Superior Court Lead Case No. BC133643.

3           (d) I have prosecuted appeals in approximately 20 class action  
4           matters, arguing before the United States Court of Appeals for  
5           the Ninth Circuit Court and several of California's Courts of  
6           Appeal. I have taken several appeals through to Petitions for  
7           Writs of Certiorari to the United States Supreme Court. In  
8           connection with the appeals I have handled, I have participated  
9           in appeals resulting in published appellate decisions concerning  
10          or relating to class actions. Among others, those include:

11                   i. *Ghazaryan v. Diva Limousine, LTD.*, 169 Cal.App.4th  
12                   1524 (2009), Pet. for rev. denied;

13                   ii. *Laliberte v. Pacific Mercantile Bank*, 147 Cal.App.4th  
14                   1 (2007), rev. denied, Pet. for Cert. denied;

15                   iii. *Alvarez v. May Dept. Stores Co.*, 143 Cal.App.4th  
16                   1223 (2006), rev. denied, Pet. for Cert. denied;

17                   iv. *Johnson v. Glaxosmithkline, Inc.*, 166 Cal.App.4th  
18                   1497 (2008), rev. denied.

19                   v. *Howard, et al. v. America Online, Inc.*, 208 F.3d 741  
20                   (9th Cir. 2000), Pet. for Cert. denied.

21          (e) In addition to my work on complex litigation matters and class  
22          actions, I have authored published articles and columns on  
23          issues related to class actions, including:

24                   i. H. Scott Leviant, *Unintended Consequences*, 6 U.C.  
25                   Davis Bus. L.J. 18 (2006), at  
26                   <http://blj.ucdavis.edu/article.asp?id=636> (May 1,  
27                   2006);

28                   ii. H. Scott Leviant, *Arbitration: A Look Back, a Look*



1                   xiii. H. Scott Leviant, *Improving Rule 12(b)(6) survival*  
2                   *odds: Some considerations for effective RICO*  
3                   *pleading*, CIVIL RICO REPORT, Volume 15, Number 22,  
4                   April 26, 2000 (LRP Publications).

- 5                   (f) In addition to publications in industry newspapers, periodicals  
6                   and journals, I am the Supervising Editor, primary author and  
7                   founder of the legal blog The Complex Litigator  
8                   (<http://www.thecomplexlitigator.com>). The Complex Litigator  
9                   reports and comments on news and topics relevant to class  
10                  action and complex litigation practice. My blog has been cited  
11                  to the California Supreme Court in at least one Petition for  
12                  Review.
- 13                  (g) In the December 8, 2008 article “Billable Hours Aren’t the Only  
14                  Game in Town Anymore,” *NATIONAL LAW JOURNAL*, the  
15                  following hourly billing rates were reported by Sheppard Mullin  
16                  Richter & Hampton, a leading firm in the defense of wage-and-  
17                  hour class actions that I have frequently opposed when litigation  
18                  wage-and-hour class actions: Partners: \$475-\$795; Associates:  
19                  1st Year - \$275, 2nd Year - \$310, 3rd Year - \$335, 4th Year -  
20                  \$365, 5th Year - \$390, 6th Year - \$415, 7th Year - \$435, 8th  
21                  Year - \$455.
- 22                  (h) In 2009 I was retained as appellate counsel in the appeal of a  
23                  denial of class certification. For the specialized work on that  
24                  appeal, I charged an hourly rate of \$650.00 per hour, a rate the  
25                  hiring co-counsel accepted.
- 26                  (i) Based upon my experience, my regular hourly billing rate is now  
27                  \$550.00.
- 28                  (j) For the past two years I have served as a member of the Board

1 of Governors of the Consumer Attorneys of California, and I  
2 have been selected to the Board for the third consecutive year.  
3 In that capacity, I have worked to preserve the right of  
4 California's consumers and employees to bring proposed class  
5 actions. For example, I provided assistance to CAOC in its  
6 successful effort to defeat AB 298, which would have  
7 substantially impaired the ability of plaintiffs to prosecute class  
8 actions in California. More recently, on behalf of CAOC I co-  
9 authored several requests for publication of unpublished class  
10 action decisions, including one such request in *Jaimez v. Daiohs*  
11 *USA, Inc.*, 181 Cal. App. 4th 1286 (2010), and authored amicus  
12 briefs for CAOC in the Eighth Circuit matter entitled *Avritt v.*  
13 *Reliastar Life. Ins. Co.*, Case No. 09-2843 and the California  
14 Supreme Court matter entitled *Californians for Disability Rights*  
15 *v. Mervyn's, LLC*, 39 Cal. 4th 223 (2006).

16  
17 BY GRANTING PRELIMINARY APPROVAL, THE COURT HAS  
18 PRELIMINARILY DETERMINED THE REASONABLENESS OF THE  
19 REQUESTED FEE AND COST AWARD

20 34. When this case was taken on a contingent fee basis, with the firm  
21 agreeing to assume responsibility for all litigation costs, the ultimate result was far  
22 from certain. In the course of this litigation, Spiro Moss LLP paid motion filing  
23 fees, copy charges, Westlaw fees, mailing charges, and fees for the mediation  
24 session with Diane Wayne. There was never a guarantee that Spiro Moss LLP  
25 would recoup those expenditures. Nevertheless, this case required substantial firm  
26 resources, including: pre-litigation investigation and research; interviewing Class  
27 Members; reading and analyzing documentary evidence (including company  
28 records and caselaw); engaging in formal and informal discovery; researching the



1 causes of action, particularly those that changed during this litigation; performing  
2 legal and factual analyses in preparation for mediation; and drafting the settlement  
3 materials and Class Notice. As a result of those obligations, Class Counsel was  
4 precluded from other employment.

5 35. Class Counsel's experience in wage and hour class actions was integral  
6 in evaluating the strengths and weaknesses of the case against Defendant and the  
7 reasonableness of the settlement. Practice in the narrow field of wage and hour  
8 litigation requires skill and knowledge concerning the rapidly evolving substantive  
9 law (state and federal), as well as the procedural law of class action litigation.

10 36. In the past 5 years, Spiro Moss LLP has settled many dozens of wage  
11 & hour class actions. Just as the Court in *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th  
12 43, 66, n.11 (2008) observed, it has been the experience at Spiro Moss LLP that  
13 attorney fee awards of one-third of a common settlement fund are the rule, rather  
14 than the exception. Here, Plaintiff's counsel will not seek more than 25% of the  
15 settlement fund for attorney's fees.

16 37. I am one of an attorney involved in the litigation of this action. My  
17 contemporaneously maintained billing records indicate that I spent at least 198.4  
18 hours on this matter to date, taking and defending depositions (and travelling for  
19 same), reviewing data, preparing Plaintiff's mediation materials, reviewing  
20 discovery responses, and participating in certification and settlement strategy  
21 planning. I also believe that I did not record all time spent litigating this matter.  
22 Other attorneys involved in the litigation of this action include Dennis Moss, Greg  
23 Karasik (a Partner at Spiro Moss), and Linh Hua, another associate at Spiro Moss.

24 38. Counsel for Plaintiff in this action have entered into a written fee  
25 sharing agreement. Counsel for Plaintiff will disburse the aggregate attorneys' fees  
26 awarded by the Court pursuant to that agreement.

27 39. Thus far, Spiro Moss has incurred \$12,508.21 in expenses, consisting  
28 of the following: mediation fees of \$3,275, filing fees of \$350, attorney service

1 charges of \$722.71, mileage and parking and travel expenses of \$1,628.60, legal  
2 research expenses of \$188, postage, photocopy and facsimile charges of \$129.64,  
3 deposition costs of \$3,247.26, and a class member mailing costing \$2,950.00. A  
4 final sum will be provided prior to the hearing if any additional expenses are  
5 incurred after the date of this Declaration.

6  
7 EXHIBITS

8 40. A true and correct copy of the Settlement Agreement is attached hereto  
9 as Exhibit "A." The Settlement Agreement includes as Exhibit "1" the Class  
10 Notice, as Exhibit "2" the Claim Form, and as Exhibit "3" the Request for  
11 Exclusion.

12  
13 CERTIFICATION REQUISITES

14 41. To the best knowledge of the Parties and their respective counsel,  
15 other than this Action, there are no other like claims asserted or filed by Class  
16 Members.

17 42. Discovery established that, for a portion of the class period, Plaintiff  
18 was classified as a Part Time Employee while working in excess of 30 hours per  
19 week.

20 43. There are approximately 909 individuals that satisfy the proposed  
21 settlement class definition.

22 I declare under penalty of perjury, under the laws of the United States and  
23 the State of California, that the foregoing is true and correct.

24 Executed this 15th day of July 2011, at Los Angeles, California.

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27 H. Scott Leviant, "Declarant"  
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# **EXHIBIT “A”**

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Attorneys for Plaintiff Rosa Lopez

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ROSA L. LOPEZ, individually and on  
behalf of all others similarly situated,  
  
Plaintiff,  
  
vs.  
  
K MART CORPORATION; and DOES  
1 through 50, inclusive,  
  
Defendants.

Case No.: CV 09-1334 CJC (RNBx)  
  
CLASS ACTION  
  
**STIPULATION OF CLASS ACTION  
SETTLEMENT**  
  
Date Action Filed: January 23, 2009  
Action Removed: February 26, 2009  
Trial Date: May 10, 2011

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**STIPULATION OF CLASS ACTION SETTLEMENT**

IT IS HEREBY STIPULATED, by and among Plaintiff Rosa L. Lopez, on behalf of herself and the Settlement Class Members on the one hand, and Defendant Kmart Corporation, on the other hand, and subject to the approval of the Court, that the Action is hereby being compromised and settled pursuant to the terms and conditions set forth in this Agreement and that the Court shall make and enter judgment, subject to the continuing jurisdiction of the Court as set forth below, subject to the definitions, recitals and terms set forth herein which by this reference become an integral part of this Agreement.

**DEFINITIONS**

- 1. “Action” means *Lopez v. Kmart Corporation*, United States District Court for the Central District of California, case no. CV 09-1334 CJC (RNBx).
- 2. “Claim Form” means the Claim Form to be submitted by Settlement Class Members who wish to participate in this Settlement and to receive a portion of the Net Settlement Amount (substantially in form attached hereto as **Exhibit 2**).
- 3. “Class Counsel” means Spiro Moss LLP and Law Offices of Sahag Majarian II.
- 4. “Class Counsel Award” means attorneys’ fees for Class Counsel’s litigation and resolution of this Action, and their expenses and costs incurred in connection with this Action.
- 5. “Class Information” means information regarding Settlement Class Members that Defendant will in good faith compile from its records and provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include: each Settlement Class Member’s full name; last known address; last known home telephone number; Social Security Number; and Personal Day Exposure Estimate.

1           6.     “Class Period” means the period from January 23, 2005 to September  
2 30, 2010.

3           7.     “Class Representative Enhancement Award” means the amount that  
4 the Court authorizes to be paid to Plaintiff, in addition to her Individual Settlement  
5 Payment, in recognition of her efforts and risks in assisting with the prosecution of  
6 the Action and in return for executing a General Release of Defendant.

7           8.     “Court” means the United States District Court for the Central  
8 District of California.

9           9.     “Defendant” means Kmart Corporation.

10          10.    “Effective Date” means the date upon which the Court grants final  
11 approval of Settlement if no Settlement Class Members file objections to the  
12 Settlement. However, if an objection is filed, the Effective Date shall be the later  
13 of (1) sixty (60) days after the Court grants final approval of the Settlement if no  
14 appeal is initiated by an objector, or (2) the date of termination of such appellate  
15 proceedings.

16          11.    “Final Judgment” means the judgment or order to be rendered and  
17 entered by the Court in the Action upon granting final approval of the Settlement.

18          12.    “Individual Settlement Payment” means the amount payable from the  
19 Net Settlement Amount to each Settlement Class Member.

20          13.    “Maximum Settlement Fund” means \$103,655.00, the total estimated  
21 settlement value for all damages, penalties, interest, Class Counsel Award,  
22 Settlement Administration Costs, and the Class Representative Enhancement  
23 Award.

24          14.    “Net Settlement Amount” means the Maximum Settlement Fund, less  
25 Class Counsel Award, Class Representative Enhancement Award, and Settlement  
26 Administration Costs.

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1           15. “Notice Packet” means the Notice of Proposed Class Action  
2 Settlement (substantially in the form attached as **Exhibit 1**), Claim Form  
3 (substantially in the form attached as **Exhibit 2**), and Request for Exclusion  
4 (substantially in the form attached as **Exhibit 3**).

5           16. “Parties” means Plaintiff and Defendant, collectively, and “Party”  
6 shall mean either Plaintiff or Defendant, individually.

7           17. “Payment Ratio” means the respective Personal Day Exposure  
8 Estimate for each Settlement Class Member divided by the total Personal Day  
9 Exposure Estimate for all Settlement Class Members.

10          18. “Personal Day Exposure Estimate” means an estimate of the wages  
11 based on Defendant’s records to which Settlement Class Members may be  
12 entitled.

13          19. “Plaintiff” means Rosa A. Lopez.

14          20. “Released Claims” means any and all claims, known or unknown,  
15 asserted or that could have been asserted, arising out of, or relating in any way to,  
16 the facts, legal theories and alleged causes of action in the operative Complaint for  
17 (1) violation of Labor Code Section 227.3; (2) failure to provide accurate wage  
18 statements; (3) failure to pay wages upon termination; and (4) unfair competition.  
19 At a minimum, the released claims include all claims for wages, compensation,  
20 bonuses or other remuneration whether sought under statute, tort, contract or as an  
21 unfair business practice, including but not limited to under California Labor Code  
22 Sections 201-203, 226, 227.3, and Business and Professions Code Section 17200  
23 *et seq.* This is a general release of claims known and unknown including a Civil  
24 Code § 1542 release with respect to all claims described above in this paragraph.  
25 The release shall include all the above claims from the period beginning January  
26 14, 2005 through the date of Final Judgment. This release covers all such claims  
27 against Defendant, against its parent or subsidiary corporations, affiliates, and  
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1 each of their owners, officers, directors, employees, attorneys, insurers,  
2 successors, predecessors, and agents.

3 21. "Response Deadline" means the date sixty (60) days after the  
4 Settlement Administrator mails Notice Packets to Settlement Class Members and  
5 the last date on which Settlement Class Members may: (a) postmark or fax stamp  
6 Claims Forms, (b) postmark or fax stamp Requests for Exclusion, or (c) file and  
7 serve Objections to the Settlement.

8 22. "Settlement" means the disposition of the Action pursuant to this  
9 Agreement.

10 23. "Settlement Administration Costs" means the amount to be paid to  
11 the Settlement Administrator from the Maximum Settlement Fund for  
12 administration of this Settlement.

13 24. "Settlement Administrator" means Simpluris, Inc.

14 25. "Settlement Class Members" means all persons who (1) were  
15 employed by Defendant in the state of California on or after January 23, 2005 to  
16 September 30, 2010; and (2) were paid an hourly wage as all or part of their  
17 compensation; and (3) are no longer employed by Defendant; and (4) were  
18 employed by Defendant for at least one year prior to the end of their employment  
19 by Defendant; and (5) were classified by Defendant as "Part Time Associates";  
20 and (6) worked in excess of 29 hours per week for 16 or more consecutive weeks  
21 and were not re-classified by Defendant as "Full Time Associates" (or if any such  
22 person is incompetent or deceased, the person's legal representative or successor in  
23 interest evidenced by reasonable verification).

## 24 **RECITALS**

25  
26 26. Class Certification. The Parties stipulate to class certification for  
27 purposes of settlement only. If the Court does not grant either preliminary or final  
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1 approval of this settlement, the Parties stipulate that class certification will be  
2 revoked.

3       27. Procedural History. The Action was filed by Class Counsel on behalf  
4 of Plaintiff in the Los Angeles County Superior Court on January 23, 2009 (Los  
5 Angeles County Superior Court Case No. BC406180). The Action pleaded class  
6 allegations against Defendant for: (a) failure to pay monies related to Defendant's  
7 vacation pay and paid time off policies and practices; (b) failure to issue proper  
8 itemized wage statements; (c) failure to pay wages upon termination, and (d)  
9 violation of California Business and Professions Code §§ 17200, et seq.

10       28. On February 25, 2009, Defendant filed a Notice of Removal of Civil  
11 Action under 28 U.S.C. §§ 1332, 1441, and 1446. The Action was removed to the  
12 United States District Court for the Central District of California. On June 12,  
13 2009, the Parties filed a Stipulation and Protective Order. On November 12, 2009,  
14 the Court issued a Scheduling Order, setting a trial for June 8, 2011. On  
15 December 2, 2009, by stipulation, the Court ordered Settlement Procedure  
16 Selection No. 3 for a private mediator. The Parties conducted extensive formal  
17 discovery, including exchanging documents and interrogatories, taking Plaintiff's  
18 deposition, and taking the depositions of two of Kmart's employees.

19       29. On June 14, 2010, Defendant filed a Motion to Deny Class  
20 Certification. By Plaintiff's *ex parte* application, the hearing on the motion was  
21 set for October 18, 2010. On September 28, 2010, Plaintiff filed a First Amended  
22 Complaint. On September 29, 2010, Plaintiff and Defendant participated in a  
23 private mediation. As a result of the mediation, the Parties agreed as to all  
24 material terms for this Settlement.

25       30. Benefits of Settlement to Class Members. Plaintiff and Class  
26 Counsel recognize the expense and length of continued proceedings necessary to  
27 litigate their disputes through trial and through any possible appeals. Plaintiff has  
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1 also taken into account the uncertainty and risk of the outcome of further  
2 litigation, and the difficulties and delays inherent in such litigation. Plaintiff and  
3 Class Counsel are also aware of the burdens of proof necessary to establish  
4 liability for the claims asserted in the Action, both generally and in response to  
5 Defendant's defenses thereto (many of which have been shared at the mediation  
6 and in settlement discussions), and the difficulties in establishing damages for the  
7 Settlement Class Members. Plaintiff and Class Counsel have also taken into  
8 account the extensive settlement negotiations conducted. Plaintiff and Class  
9 Counsel have also taken into account Defendant's agreement to enter into a  
10 settlement that confers substantial relief upon the members of the Settlement  
11 Class. Based on the foregoing, Plaintiff and Class Counsel have determined that  
12 the Settlement set forth in this Agreement is a fair, adequate and reasonable  
13 settlement, and is in the best interests of the Settlement Class Members.

14       31. Defendant's Reasons for Settlement. Defendant has concluded that  
15 any further defense of this litigation would be protracted and expensive for all  
16 Parties. Substantial amounts of time, energy and resources of Defendant have  
17 been and, unless this Settlement is made, will continue to be devoted to the  
18 defense of the claims asserted by Plaintiff and Settlement Class Members.  
19 Defendant has also taken into account the risks of further litigation in reaching its  
20 decision to enter into this Settlement. Despite continuing to contend that it is not  
21 liable for any of the claims set forth by Plaintiff in the Complaint, Defendant has,  
22 nonetheless, agreed to settle in the manner and upon the terms set forth in this  
23 Agreement to put to rest the claims as set forth in the Action. Defendant has  
24 claimed and continues to claim that the Released Claims have no merit and do not  
25 give rise to liability. This Agreement is a compromise of disputed claims.  
26 Nothing contained in this Agreement and no documents referred to herein and no  
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1 action taken to carry out this Agreement may be construed or used as an admission  
2 by or against Defendant as to the merits or lack thereof of the claims asserted.

3 32. Settlement Class Members' Claims. Settlement Class Members have  
4 claimed and continue to claim that the Released Claims have merit and give rise to  
5 liability on the part of Defendant. This Agreement is a compromise of disputed  
6 claims. Nothing contained in this Agreement and no documents referred to herein  
7 and no action taken to carry out this Agreement may be construed or used as an  
8 admission by or against the Settlement Class Members or Class Counsel as to the  
9 merits or lack thereof of the claims asserted.

### 10 11 **TERMS OF AGREEMENT**

12 33. Release As To All Class Members. As of the Effective Date, the  
13 Settlement Class Members, including Plaintiff, release Defendant from the  
14 Released Claims for the period beginning January 23, 2005 through the date of  
15 Final Judgment.

16 34. With respect to the Released Claims, the Settlement Class Members  
17 stipulate and agree that, upon the Effective Date, the Settlement Class Members  
18 shall be deemed to have, and by operation of the Final Judgment shall have,  
19 expressly waived and relinquished, to the fullest extent permitted by law, the  
20 provisions, rights and benefits of Section 1542 of the California Civil Code, or any  
21 other similar provision under federal or state law, which Section provides:

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

27 The Settlement Class Members may hereafter discover facts in addition to  
28 or different from those they now know or believe to be true with respect to the  
subject matter of the Released Claims, but upon the Effective Date, shall be

1 deemed to have, and by operation of the Final Judgment shall have, fully, finally,  
2 and forever settled and released any and all of the Released Claims, whether  
3 known or unknown, suspected or unsuspected, contingent or non-contingent,  
4 which now exist, or heretofore have existed, upon any theory of law or equity now  
5 existing or coming into existence in the future, including, but not limited to,  
6 conduct that is negligent, intentional, with or without malice, or a breach of any  
7 duty, law or rule, without regard to the subsequent discovery or existence of such  
8 different or additional facts.

9       35. Tax Liability. The Parties make no representations as to the tax  
10 treatment or legal effect of the payments called for hereunder, and Settlement  
11 Class Members are not relying on any statement or representation by the Parties in  
12 this regard. Settlement Class Members understand and agree that they will be  
13 responsible for the payment of taxes and penalties assessed on the payments  
14 described herein and will hold the Parties free and harmless from and against any  
15 claims resulting from treatment of such payments as non-taxable damages,  
16 including the treatment of such payment as not subject to withholding or  
17 deduction for payroll and employment taxes.

18       36. Circular 230 Disclaimer. Each Party to this Agreement (for purposes  
19 of this section, the “acknowledging party” and each Party to this Agreement other  
20 than the acknowledging party, an “other party”) acknowledges and agrees that  
21 (1) no provision of this Agreement, and no written communication or disclosure  
22 between or among the Parties or their attorneys and other advisers, is or was  
23 intended to be, nor shall any such communication or disclosure constitute or be  
24 construed or be relied upon as, tax advice within the meaning of United States  
25 Treasury Department circular 230 (31 cfr part 10, as amended); (2) the  
26 acknowledging party (a) has relied exclusively upon his, her or its own,  
27 independent legal and tax counsel for advice (including tax advice) in connection  
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1 with this Agreement, (b) has not entered into this Agreement based upon the  
2 recommendation of any other party or any attorney or advisor to any other party,  
3 and (c) is not entitled to rely upon any communication or disclosure by any  
4 attorney or adviser to any other party to avoid any tax penalty that may be  
5 imposed on the acknowledging party; and (3) no attorney or adviser to any other  
6 party has imposed any limitation that protects the confidentiality of any such  
7 attorney's or adviser's tax strategies (regardless of whether such limitation is  
8 legally binding) upon disclosure by the acknowledging party of the tax treatment  
9 or tax structure of any transaction, including any transaction contemplated by this  
10 agreement.

11       37. Preliminary Approval of Settlement. Simultaneous with the filing of  
12 the Settlement and solely for purposes of this Settlement, the Parties will jointly  
13 request the Court to grant preliminary approval of this class action Settlement,  
14 certifying the Settlement Class and the Class Period for settlement purposes only  
15 and setting a date for a Final Approval/Settlement Fairness Hearing. The Order  
16 shall provide for the Notice Packet to be sent to Settlement Class Members as  
17 specified herein.

18       38. Settlement Administration. Within ten (10) calendar days after the  
19 Court grants preliminary approval of this Agreement, Defendant shall provide the  
20 Settlement Administrator with the Class Information for purposes of mailing  
21 Notice Packets to Settlement Class Members.

22           a. Notice By First Class U.S. Mail. Upon receipt of the Class  
23 Information, the Settlement Administrator will perform a search  
24 based on the National Change of Address Database to update and  
25 correct any known or identifiable address changes. Within ten (10)  
26 calendar days after receiving the Class Information from Defendant  
27 as provided herein, the Settlement Administrator shall mail copies of  
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1 the Notice Packet, written in both English and Spanish, to all  
2 Settlement Class Members via regular First Class U.S. Mail. The  
3 Settlement Administrator shall exercise its best judgment to  
4 determine the current mailing address for each Settlement Class  
5 Member. The address identified by the Settlement Administrator as  
6 the current mailing address shall be presumed to be the best mailing  
7 address for each Settlement Class Member.

- 8 i. Undeliverable Notices. Any Notice Packets returned to the  
9 Settlement Administrator as non-delivered on or before the  
10 Response Deadline shall be re-mailed to the forwarding  
11 address affixed thereto. If no forwarding address is  
12 provided, the Settlement Administrator shall promptly  
13 attempt to determine a correct address by use of skip-  
14 tracing, or other search using the name, address and/or  
15 Social Security number of the Settlement Class Member  
16 involved, and shall then perform a re-mailing, if another  
17 mailing address is identified by the Settlement  
18 Administrator. Settlement Class Members who receive a  
19 re-mailed Notice Packet shall have their Response Deadline  
20 extended fifteen (15) days from the original Response  
21 Deadline. If a Settlement Class Member's Notice Packet is  
22 returned to the Settlement Administrator more than once as  
23 non-deliverable on or before the Response Deadline, then  
24 an additional Notice Packet shall not be remailed.
- 25 b. Claims. All Settlement Class Members who submit valid and  
26 timely Claim Forms will receive Individual Settlement Payments  
27 from the Net Settlement Amount. The Claim Form shall include  
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1 instructions on how to submit the form, shall state the estimated  
2 Individual Settlement Payment for each respective Settlement Class  
3 Member, and shall notify Settlement Class Members of the Response  
4 Deadline. The date of the postmark on the return envelope or the  
5 date of the fax stamp on the Claim Form shall be the exclusive means  
6 used to determine whether a Settlement Class Member has timely  
7 returned his/her Claim Form on or before the Response Deadline.  
8 For purposes of this Agreement, a Claim Form shall be deemed valid  
9 only if it is signed by the Settlement Class Member and postmarked  
10 or fax stamped on or before the Response Deadline.

11 i. Cure for Defective Claim Forms. If a Settlement Class  
12 Member's Claim Form is not signed or lacks required  
13 information, the Settlement Class Member shall be given an  
14 opportunity to cure the defect. Any such Claim Form shall be  
15 returned to the Settlement Class Member no later than three (3)  
16 business days with a cure letter stating that the Class Member  
17 has fifteen (15) days from the date of the cure letter or until the  
18 Response Deadline, whichever date is later, to postmark or fax  
19 stamp a revised Claim Form. If the revised Claim Form is not  
20 postmarked or fax stamped within that period, it shall be deemed  
21 untimely and that Settlement Class Member will receive an  
22 Individual Settlement Payment only if the Parties so agree. If a  
23 Settlement Class Member submits both a Claim Form and  
24 Request for Exclusion, the Settlement Class Member will be  
25 given an opportunity to clarify his or her response. The  
26 Settlement Administrator will send a cure letter no later than  
27 three (3) business days of receiving the conflicting response  
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1 stating that the Class Member has fifteen (15) days from the date  
2 of the cure letter or from the Response Deadline, whichever date  
3 is later, to clarify his or her response. If no clarification is  
4 provided, the Request for Exclusion shall be invalidated, the  
5 Settlement Class Member will be bound by the Settlement, and  
6 the Settlement Class Member shall receive an Individual  
7 Settlement Payment. Settlement Class Members who receive  
8 Notice Packets but do not submit a valid and timely Claim Form  
9 may not receive an Individual Settlement Payment; however,  
10 such persons shall nonetheless be deemed Settlement Class  
11 Members and will be bound by all terms of the Settlement and  
12 any Final Judgment entered in this Action if the Settlement is  
13 approved by the Court.

14 ii. Disputes Regarding Individual Settlement Payments.  
15 Settlement Class Members will have the opportunity, should  
16 they disagree with Defendant's records regarding the dates of  
17 employment stated on their Claim Form, to provide  
18 documentation and/or an explanation to show contrary  
19 information. If there is a dispute, the Settlement Administrator  
20 will consult with the Parties to determine whether an adjustment  
21 is warranted. The Settlement Administrator shall determine the  
22 eligibility for, and the amounts of, any Individual Settlement  
23 Payments under the terms of this Agreement. The Settlement  
24 Administrator's determination of the eligibility for and amount  
25 of any Individual Settlement Payment shall be binding upon the  
26 Settlement Class Member and the Parties.  
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1                   iii.       Disputes Regarding Administration of Settlement. Any  
2                   disputes not resolved by the Settlement Administrator  
3                   concerning the administration of the Settlement will be resolved  
4                   by the Court, under the laws of the State of California. Prior to  
5                   any such involvement of the Court, counsel for the Parties will  
6                   confer in good faith to resolve the disputes without the necessity  
7                   of involving the Court.

8                   c.       Exclusions. The Notice Packet shall state that Settlement Class  
9                   Members who wish to exclude themselves from the Settlement must  
10                  submit a Request for Exclusion by the Response Deadline. The  
11                  Request for Exclusion: (1) must contain the name, address, telephone  
12                  number and the last four digits of the Social Security number of the  
13                  person requesting exclusion, (2) must be signed by the Settlement  
14                  Class Member; and (3) must be postmarked or fax stamped by the  
15                  Response Deadline and returned to the Settlement Administrator at  
16                  the specified address or fax telephone number. The Request for  
17                  Exclusion will be deemed valid for exclusion from this Settlement if  
18                  it does not containing a Settlement Class Member's telephone  
19                  number and/or last four digit of the Social Security number. The date  
20                  of the postmark on the return mailing envelope or fax stamp on the  
21                  Request for Exclusion shall be the exclusive means used to determine  
22                  whether a Request for Exclusion has been timely submitted. Any  
23                  Settlement Class Member who requests to be excluded from the  
24                  Settlement Class will not be entitled to any recovery under the  
25                  Settlement and will not be bound by the terms of the Settlement or  
26                  have any right to object, appeal or comment thereon. Settlement  
27                  Class Members who receive a Notice Packet but fail to submit a valid  
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1 and timely Request for Exclusion on or before the Response Deadline  
2 shall be bound by all terms of the Settlement and any Final Judgment  
3 entered in this Action if the Settlement is approved by the Court, even  
4 if Settlement Class Members do not submit a Claim Form. No later  
5 than fourteen (14) calendar days after the Response Deadline, the  
6 Settlement Administrator shall provide counsel for the Parties with a  
7 complete list of all members of the Settlement Class who have timely  
8 submitted Requests for Exclusion. At no time shall any of the Parties  
9 or their counsel seek to solicit or otherwise encourage members of the  
10 Settlement Class to submit Requests for Exclusion from the  
11 Settlement.

12 d. Objections. The Notice Packet shall state that Settlement Class  
13 Members who wish to object to the Settlement must file with the  
14 Court and serve on all Parties a written statement of objection  
15 (“Notice of Objection”) by the Response Deadline. The date of filing  
16 and the date on the proof of service shall be deemed the exclusive  
17 means for determining that a Notice of Objection was filed and  
18 served timely. The Notice of Objection must be signed by the  
19 Settlement Class Member and state: (1) the full name of the  
20 Settlement Class Member; (2) the dates of employment of the  
21 Settlement Class Members; (3) the job title(s) and job location(s) of  
22 the Settlement Class Member; (4) the last four digits of the  
23 Settlement Class Members’ Social Security number and/or the  
24 Employee ID number; (5) the basis for the objection; and, (6) if the  
25 Settlement Class Member intends to appear at the Final  
26 Approval/Settlement Fairness Hearing. Settlement Class Members  
27 who fail to make objections in the manner specified above shall be  
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1 deemed to have waived any objections and shall be foreclosed from  
2 making any objections (whether by appeal or otherwise) to the  
3 Settlement. Settlement Class Members who submit a timely Notice  
4 of Objection will have a right to appear at the Final  
5 Approval/Settlement Fairness Hearing in order to have their  
6 objections heard by the Court. At no time shall any of the Parties or  
7 their counsel seek to solicit or otherwise encourage Settlement Class  
8 Members to file or serve written objections to the Settlement or  
9 appeal from the Order and Final Judgment. Class Counsel shall not  
10 represent any Settlement Class Members with respect to any such  
11 objections.

12 e. No Solicitation of Settlement Objections or Exclusions. The  
13 Parties agree to use their best efforts to carry out the terms of this  
14 Settlement. At no time shall any of the Parties or their counsel seek  
15 to solicit or otherwise encourage Settlement Class Members to submit  
16 either written objections to the Settlement or Requests for Exclusion  
17 from the Settlement, or to appeal from the Court's Final Judgment.

18 39. Funding and Allocation of Maximum Settlement Fund. This is a  
19 claims-made Settlement in which Defendant is required to pay the sum of the  
20 Individual Settlement Payments to Settlement Class Members who submit timely  
21 and valid Claims Forms, the Class Representative Enhancement Award, the Class  
22 Counsel Award and the Settlement Administration Costs, as specified in this  
23 Agreement, up to the Maximum Settlement Fund. Within fourteen (14) days after  
24 the Effective Date, Defendant shall provide up to the Maximum Settlement Fund  
25 to the Settlement Administrator to fund the sum of the Individual Settlement  
26 Payments, the Class Representative Enhancement Award, the Class Counsel  
27 Award and the Settlement Administration Costs, as set forth in this Agreement.  
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1 a. Individual Settlement Payments. Individual Settlement  
2 Payments will be paid from the Net Settlement Amount and shall be  
3 paid pursuant to the settlement formula set forth herein. Individual  
4 Settlement Payments shall be mailed by regular First Class U.S. Mail  
5 to Settlement Class Members' last known mailing address within  
6 fourteen (14) calendar days after Defendant provides funds to the  
7 Settlement Administrator for disbursement under this Agreement.  
8 Individual Settlement Payments will be allocated as follows: twenty-  
9 five percent (25%) as wages; fifty percent (50%) as penalties; and  
10 twenty-five percent (25%) as interest. Any checks issued to  
11 Settlement Class Members shall remain valid and negotiable for one  
12 hundred and twenty (120) days from the date of their issuance. After  
13 that time, any such unclaimed checks will escheat to the State of  
14 California's Bureau of Unclaimed Property.

15 i. Calculation of Individual Settlement Payments.

16 Defendant will calculate the total Personal Day Exposure  
17 Estimates for all Settlement Class Members. The respective  
18 Personal Day Exposure Estimate for each Settlement Class  
19 Member will be divided by the total Personal Day Exposure  
20 Estimates for all Settlement Class Members, resulting in the  
21 Payment Ratio for each Settlement Class Member. Each  
22 Settlement Class Member's Payment Ratio is then multiplied  
23 by the Net Settlement Amount to determine his or her  
24 Individual Settlement Payment. Each Individual Settlement  
25 Payment will be reduced by any legally mandated deductions  
26 (e.g., payroll taxes, etc.), for each Settlement Class Member.  
27 However, Defendant's share of payroll taxes and other  
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1 required withholdings from Individual Settlement Payments,  
2 including but not limited to Defendant's FICA and FUTA  
3 contributions, shall be paid separate and apart from the  
4 Maximum Settlement Fund.

5 ii. Settlement Class Members are not eligible to receive any  
6 compensation other than an Individual Settlement Payment,  
7 and they may only receive an Individual Settlement Payment if  
8 they timely and validly submit a Claim Form, or submit a  
9 Claim Form consistent with the cure provisions for defective  
10 claims set forth in this Agreement.

11 b. Unclaimed Portion of the Net Settlement Amount. Defendant  
12 shall be required to pay Individual Settlement Payments to Settlement  
13 Class Members who submit timely and valid Claims Forms.  
14 Defendant shall not be required to pay Individual Settlement  
15 Payments that are allocated to Settlement Class Members who do not  
16 submit a timely and valid Claim Form or who submit an Exclusion  
17 Form.

18 c. Class Representative Enhancement Award. Subject to Court  
19 approval, in exchange for the release of all Released Claims and for  
20 her time and effort in bringing and prosecuting this matter, Plaintiff  
21 shall be paid up to One Thousand Seven Hundred Fifty Dollars  
22 (\$1,750.00). The Class Representative Enhancement Award shall be  
23 paid to Plaintiff from the Maximum Settlement Fund no later than  
24 fourteen (14) calendar days after Defendant provides funds to the  
25 Settlement Administrator for disbursement under this Agreement.  
26 The Settlement Administrator shall issue an IRS Form 1099 – MISC  
27 to Plaintiff for her Class Representative Enhancement Award.  
28

1 Plaintiff shall be solely and legally responsible to pay any and all  
2 applicable taxes on their respective Class Representative  
3 Enhancement Award and shall hold harmless Defendant from any  
4 claim or liability for taxes, penalties, or interest arising as a result of  
5 the Class Representative Enhancement Award. The Class  
6 Representative Enhancement Award shall be in addition to the  
7 Plaintiff's Individual Settlement Payments as a Settlement Class  
8 Members. Any amount requested by Plaintiff for the Class  
9 Representative Enhancement Award and not granted by the Court  
10 shall return to the Net Settlement Amount and distributed as provided  
11 in this Agreement.

12 i. Plaintiff will also sign a release of any and all claims, known  
13 or unknown, contingent or accrued, including a Civil Code §  
14 1542 release, against Defendant, its parent or subsidiary  
15 corporations, affiliates, owners, officers, directors, employees,  
16 attorneys, insurers, successors, predecessors, and all agents,  
17 arising out of any act or event the occurred prior to execution  
18 of the release, in the form attached hereto as **Exhibit 4**. This  
19 release will include, but will not be limited to, a waiver of all  
20 claims under the Fair Employment and Housing Act,  
21 Americans with Disabilities Act, Age Discrimination in  
22 Employment Act, and Title VII of the Civil Rights Act of  
23 1964.

24 ii. In exchange for the Class Representative Enhancement Award,  
25 Plaintiff agrees not to seek reemployment with Defendant, its  
26 parent or subsidiary corporations, or any Kmart or Sears  
27 affiliated entity.  
28

1 d. Class Counsel Award. Defendant agrees not to oppose or  
2 object to any application or motion by Class Counsel for attorneys'  
3 fees not to exceed twenty-five percent (25%), or Twenty-Five  
4 Thousand Nine Hundred Thirteen Dollars (\$25,913.00), of the  
5 Maximum Settlement Fund. Defendant further agrees not to oppose  
6 any application or motion by Class Counsel for the reimbursement of  
7 any costs associated with Class Counsel's prosecution of this matter  
8 from the Maximum Settlement Fund. So long as there are no  
9 objections, Class Counsel shall be paid any Court-approved fees and  
10 costs, including any interest accrued thereon, no later than  
11 fourteen (14) calendar days after Defendant provides funds to the  
12 Settlement Administrator for disbursement under this Agreement.  
13 Class Counsel shall be solely and legally responsible to pay all  
14 applicable taxes on the payment made pursuant to this paragraph.  
15 The Settlement Administrator shall issue an IRS Form 1099 – MISC  
16 to Class Counsel for the payments made pursuant to this paragraph.  
17 This Settlement is not contingent upon the Court awarding Class  
18 Counsel any particular amount in attorneys' fees and costs. Any  
19 amount requested by Class Counsel for the Class Counsel Award and  
20 not granted by the Court shall return to the Net Settlement Amount  
21 and distributed as provided in this Agreement.

22 e. Settlement Administration Costs. The settlement administrator  
23 shall be paid for the costs of administration of the Settlement from  
24 the Maximum Settlement Fund. The estimate of such costs of  
25 administration for the disbursement of the Maximum Settlement  
26 Fund is Fourteen Thousand Dollars (\$14,000). No fewer than  
27 ten (10) days prior to the Final Approval Hearing, the Settlement  
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1 Administrator shall provide the Parties with a statement detailing the  
2 costs of administration of the Final Settlement Payment. The  
3 Settlement Administrator, on the parties' behalf, shall have the  
4 authority and obligation to make payments, credits and  
5 disbursements, including payments and credits in the manner set forth  
6 herein, to Settlement Class Members calculated in accordance with  
7 the methodology set out in this Agreement and orders of the Court.  
8 The Parties agree to cooperate in the Settlement Administration  
9 process and to make all reasonable efforts to control and minimize  
10 the cost and expenses incurred in administration of the Settlement.

11 i. The Parties each represent they do not have any financial  
12 interest in the Settlement Administrator or otherwise have a  
13 relationship with the Settlement Administrator that could  
14 create a conflict of interest.

15 ii. The Settlement Administrator shall be responsible for:  
16 processing and mailing payments to Plaintiff, Class Counsel,  
17 Settlement Class Members; printing, translating and mailing  
18 the Notice Packets and tax forms to the Settlement Class  
19 Members as directed by the Court; receiving and reporting the  
20 Requests for Exclusion and Claim Forms submitted by  
21 Settlement Class Members; providing declaration(s) as  
22 necessary in support of preliminary and/or final approval of  
23 this Settlement; and other tasks as the Parties mutually agree or  
24 the Court orders the Settlement Administrator to perform. The  
25 Settlement Administrator shall keep the Parties timely apprised  
26 of the performance of all Settlement Administrator  
27 responsibilities.  
28



1           iii. The Settlement Administrator shall be paid the Settlement  
2           Administration Costs no later than fourteen (14) calendar days  
3           after Defendant provides funds to the Settlement Administrator  
4           for disbursement under this Agreement.

5           f. No person shall have any claim against Defendant,  
6           Defendant's Counsel, Plaintiff, Settlement Class Members, Class  
7           Counsel or the Settlement Administrator based on distributions and  
8           payments made in accordance with this Agreement.

9           40. Option to Terminate Settlement. If, after the Response Deadline and  
10          before the Final Approval/Settlement Fairness Hearing, the number of individuals  
11          who submitted timely and valid Requests for Exclusion from the Settlement is  
12          greater than five percent (5%) of all potential Settlement Class Members,  
13          Defendant shall have, in its sole discretion, the option to terminate this Settlement.  
14          If Defendant exercises its option to terminate this Settlement, Defendant shall pay  
15          all Settlement Administration Costs incurred up to the date of termination.

16          41. Final Settlement Approval Hearing and Entry of Final Judgment.  
17          Upon expiration of the Response Deadline, with the Court's permission, a Final  
18          Approval/Settlement Fairness Hearing shall be conducted to determine final  
19          approval of the Settlement along with the amount properly payable for (i) the  
20          Class Counsel Award, (ii) the Class Representative Enhancement Awards, (iii)  
21          Individual Settlement Payments, and (iv) the Settlement Administration Costs.  
22          The Settlement Hearing shall not be held earlier than thirty (30) days after  
23          Response Deadline.

24          42. Nullification of Settlement Agreement. In the event: (i) the Court  
25          does not enter the Order specified herein; (ii) the Court does not finally approve  
26          the Settlement as provided herein; (iii) the Court does not enter a Final Judgment  
27          as provided herein; or (iv) the Settlement does not become final for any other  
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1 reason, this Settlement Agreement shall be null and void and any order or  
2 judgment entered by the Court in furtherance of this Settlement shall be treated as  
3 void from the beginning. In such a case, the Parties and any funds to be awarded  
4 under this Settlement shall be returned to their respective statuses as of the date  
5 and time immediately prior to the execution of this Agreement, and the Parties  
6 shall proceed in all respects as if this Agreement had not been executed, except  
7 that any fees already incurred by the Settlement Administrator shall be paid by  
8 Defendant. In the event an appeal is filed from the Court's Final Judgment, or any  
9 other appellate review is sought, administration of the Settlement shall be stayed  
10 pending final resolution of the appeal or other appellate review, but any fees  
11 incurred by the Settlement Administrator prior to it being notified of the filing of  
12 an appeal from the Court's Final Judgment, or any other appellate review, shall be  
13 paid to the Settlement Administrator by Defendant within thirty (30) days of said  
14 notification, which will offset the total Settlement Administration Costs to be paid  
15 from the Maximum Settlement Amount.

16 43. No Effect on Employee Benefits. Amounts paid to Plaintiff or other  
17 Settlement Class Members pursuant to this Agreement shall be deemed not to be  
18 pensionable earnings and shall not have any effect on the eligibility for, or  
19 calculation of, any of the employee benefits (e.g., vacations, holiday pay,  
20 retirement plans, etc.) of Plaintiff or Settlement Class Members.

21 44. Publicity. Plaintiff and Class Counsel agree not to file a press  
22 release regarding the Settlement, respond to press/media inquiries regarding the  
23 Settlement, or otherwise publicize the terms of this Settlement, except as to direct  
24 communications with Settlement Class Members as appropriate to effectuate the  
25 Settlement.

26 45. No Admission By the Parties. Defendant denies any and all claims  
27 alleged in this Action and deny all wrongdoing whatsoever. This Agreement is  
28

1 not a concession or admission, and shall not be used against Defendant as an  
2 admission or indication with respect to any claim of any fault, concession or  
3 omission by Defendant.

4 46. Disposition of Data. The Parties expressly agree that all data and  
5 information shared by Defendant at and after the Parties' mediation of this matter  
6 is considered confidential settlement communications and includes data analysis  
7 that falls under the attorney work product and attorney client communication  
8 privileges. The Parties further expressly agree that no waiver of these privileges is  
9 intended or implied. If the Settlement is not approved, Plaintiff and her counsel  
10 expressly agree to return this data to Defendant and to destroy and not use any  
11 copies of this data

12 47. Exhibits and Headings. The terms of this Agreement include the  
13 terms set forth in any attached Exhibits 1-4, which are incorporated by this  
14 reference as though fully set forth herein. Any Exhibits to this Agreement are an  
15 integral part of the Settlement. The descriptive headings of any paragraphs or  
16 sections of this Agreement are inserted for convenience of reference only and do  
17 not constitute a part of this Agreement.

18 48. Interim Stay of Proceedings. The Parties agree to stay all  
19 proceedings in the Action, except such proceedings necessary to implement and  
20 complete the Settlement, in abeyance pending the Final Approval/Settlement  
21 Fairness Hearing to be conducted by the Court.

22 49. Amendment or Modification. This Agreement may be amended or  
23 modified only by a written instrument signed by counsel for all Parties or their  
24 successors-in-interest.

25 50. Entire Agreement. This Agreement and any attached Exhibits  
26 constitute the entire Agreement among these Parties, and no oral or written  
27 representations, warranties or inducements have been made to any Party  
28

1 concerning this Agreement or its Exhibits other than the representations,  
2 warranties and covenants contained and memorialized in the Agreement and its  
3 Exhibits.

4       51. Authorization to Enter Into Settlement Agreement. Counsel for all  
5 Parties warrant and represent they are expressly authorized by the Parties whom  
6 they represent to negotiate this Agreement and to take all appropriate actions  
7 required or permitted to be taken by such Parties pursuant to this Agreement to  
8 effectuate its terms, and to execute any other documents required to effectuate the  
9 terms of this Agreement. The Parties and their counsel will cooperate with each  
10 other and use their best efforts to effect the implementation of the Settlement. In  
11 the event the Parties are unable to reach agreement on the form or content of any  
12 document needed to implement the Settlement, or on any supplemental provisions  
13 that may become necessary to effectuate the terms of this Settlement, the Parties  
14 may seek the assistance of the Court to resolve such disagreement. The persons  
15 signing this Agreement on behalf of Defendant represent and warrant that they are  
16 authorized to sign this Agreement on behalf of Defendant. Plaintiff represents and  
17 warrants that she is authorized to sign this Agreement and that she has not  
18 assigned any claim, or part of a claim, covered by this Settlement to a third-party.

19       52. Binding on Successors and Assigns. This Agreement shall be  
20 binding upon, and inure to the benefit of, the successors or assigns of the Parties  
21 hereto, as previously defined.

22       53. California Law Governs. All terms of this Agreement and the  
23 Exhibits hereto shall be governed by and interpreted according to the laws of the  
24 State of California.

25       54. Counterparts. This Agreement may be executed in one or more  
26 counterparts. All executed counterparts and each of them shall be deemed to be  
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1 one and the same instrument provided that counsel for the Parties to this  
2 Agreement shall exchange among themselves original signed counterparts.

3 55. This Settlement Is Fair, Adequate and Reasonable. The Parties  
4 believe this Settlement is a fair, adequate and reasonable settlement of this Class  
5 Action and have arrived at this Settlement after extensive arms-length  
6 negotiations, taking into account all relevant factors, present and potential.

7 56. Jurisdiction of the Court. The Court shall retain jurisdiction with  
8 respect to the interpretation, implementation and enforcement of the terms of this  
9 Agreement and all orders and judgments entered in connection therewith, and the  
10 Parties and their counsel hereto submit to the jurisdiction of the Court for purposes  
11 of interpreting, implementing and enforcing the settlement embodied in this  
12 Agreement and all orders and judgments entered in connection therewith.

13 57. Invalidity of Any Provision. Before declaring any provision of this  
14 Agreement invalid, the Court shall first attempt to construe the provisions valid to  
15 the fullest extent possible consistent with applicable precedents so as to define all  
16 provisions of this Agreement valid and enforceable.

17 58. Waiver of Certain Appeals. The Parties agree to waive appeals and  
18 to stipulate to class certification for purposes of this settlement only provided.  
19 However, Plaintiff or Class Counsel may appeal any reduction in the Class  
20 Counsel Award.

21  
22 [ SIGNATURES CONTINUE ON FOLLOWING PAGE ]  
23  
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# **EXHIBIT “1”**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

*Lopez v. Kmart Corporation*

Case No. CV 09-1334 CJC (RNBx)

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

**To:** All persons who (1) were employed by Kmart in the state of California on or after January 23, 2005 to September 30, 2010; and (2) were paid an hourly wage as all or part of their compensation; and (3) are no longer employed by Kmart; and (4) were employed by Kmart for at least one year prior to the end of their employment by Kmart; and (5) were classified by Kmart as “Part Time Associates”; and (6) worked in excess of 29 hours per week for 16 or more consecutive weeks and were not re-classified by Defendant as “Full Time Associates.”

**You may be entitled to money from this Proposed Settlement. To receive your share, you must take action by [DATE].**

**This Notice is Court Approved. It is not a solicitation from an attorney.**

***PLEASE READ THIS NOTICE CAREFULLY  
AS IT MAY AFFECT YOUR LEGAL RIGHTS***

This notice describes a proposed settlement of the consolidated class action lawsuit of *Lopez v. Kmart Corporation* (the “Lawsuit”). This Notice is being sent to you by order of the United States District Court for the Central District of California (the “Court”), which preliminarily approved the settlement and conditionally certified the class on [date of prelim approval]. You have received this Notice because Defendant Kmart Corporation’s (“Defendant”) records show that you are a member of the class. This Notice informs you of the terms of the proposed settlement, describes your rights in connection with the settlement, and explains what steps you may take to object or exclude yourself from the settlement. Unless you timely submit a Claim Form, you will not receive a share of the Settlement. If you do not timely submit a Claim Form or a Request for Exclusion, the settlement, if finally approved by the Court, will be binding on you, and you will not receive a Settlement Payment.

***For an estimate of what you will receive if you timely submit a Claim Form, see the enclosed Green Claim Form.***

## **BACKGROUND**

The Lawsuit was filed by Plaintiff in the Los Angeles County Superior Court on January 23, 2009 (Los Angeles County Superior Court, case no. BC406180). The Action pleaded class allegations against Defendant for: (a) failure to pay monies related to Defendant's vacation pay and paid time off policies and practices; (b) failure to issue proper itemized wage statements; (c) failure to pay wages upon termination, and (d) violation of California Business and Professions Code §§ 17200, et seq. On February 25, 2009, Defendant filed a Notice of Removal of Civil Action under 28 U.S.C. §§ 1332, 1441, and 1446. The Action was removed to the United States District Court for the Central District of California. The Parties conducted extensive formal discovery, including exchanging documents and interrogatories, taking Plaintiff's deposition, and taking the depositions of two of Kmart's employees. On September 28, 2010, Plaintiff filed a First Amended Complaint that proposed a more narrow class definition.

Defendant denies each and all of the claims and contentions alleged by Plaintiff, has asserted defenses, and has expressly denied and continues to deny any wrongdoing or legal liability arising out of the conduct alleged in the Lawsuit. After engaging in extensive investigation and an all-day mediation before an experienced mediator, in which both sides recognized the substantial risks of an adverse result in the Lawsuit for either side, Plaintiff and Defendant agreed on a class settlement that was preliminarily approved by the Court on [date of prelim approval]. Plaintiff and Class Counsel support the settlement.

### **DEFINITION OF THE SETTLEMENT CLASS**

All persons who (1) were employed by Defendant in the state of California on or after January 23, 2005 to September 30, 2010; and (2) were paid an hourly wage as all or part of their compensation; and (3) are no longer employed by Defendant; and (4) were employed by Defendant for at least one year prior to the end of their employment by Defendant; and (5) were classified by Defendant as "Part Time Associates"; and (6) worked in excess of 29 hours per week for 16 or more consecutive weeks and were not re-classified by Defendant as "Full Time Associates."

### **MATERIAL TERMS OF THE SETTLEMENT**

In exchange for the release of claims in its favor and final judgment on the Lawsuit, Defendant will pay up to One Hundred Three Thousand Six Hundred Fifty-Five Dollars (\$103,655.00, "Maximum Settlement Fund"). After attorneys' fees and costs, enhancement award to the Plaintiff, and settlement administration costs are deducted from the Maximum Settlement Fund, the remaining Net Settlement Amount will be used to distribute payments to Settlement Class Members who submit timely Claim Forms. Settlement Class Members who submit timely, valid written requests for exclusion will not be bound by the Settlement and will not receive payments.





<p><b>THE COURT</b></p> <p>United States District Court  Central District of California  411 West Fourth Street  Santa Ana, CA 92701</p>	<p><b>SETTLEMENT ADMINSTRATOR</b></p> <p>[Address]  [Address]</p>
--	---

The Notice of Objection must be signed by the Settlement Class Member and state: (1) the full name of the Settlement Class Member; (2) the dates of employment of the Settlement Class Members; (3) the job title(s) and job location(s) of the Settlement Class Member; (4) the last four digits of the Settlement Class Members’ Social Security number and/or the Employee ID number; (5) the basis for the objection; and, (6) if the Settlement Class Member intends to appear at the Final Approval/Settlement Fairness Hearing. Settlement Class Members who fail to make objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement. Settlement Class Members who submit a timely Notice of Objection will have a right to appear at the Final Approval/Settlement Fairness Hearing in order to have their objections heard by the Court. You have the right to retain your own attorney, at your own expense, to submit an objection or appear on your behalf at the Final Approval Hearing.

**PROCEDURE FOR DISTRIBUTION OF SETTLEMENT PAYMENTS**

After the Court grants final approval of the settlement and after all rights to appeal or review are exhausted or any appeal or review has been resolved in favor of the settlement, the Settlement Administrator will send an Individual Settlement Payment to the last known address of each Settlement Class Member who submitted a valid, timely Claim Form. Individual Settlement Payments must be cashed or deposited within 120 days after the date printed on the check. After the 120 days period, Individual Settlement Payments will be tendered to the California State Controller’s Office (SCO), Unclaimed Property Division with an identification of the Settlement Class Member. In such event, the Settlement Class Member nevertheless will remain bound by the settlement.

**ATTORNEYS’ FEES AND CLASS REPRESENTATIVE PAYMENT**

At the Final Approval Hearing, Plaintiff will request an enhancement award of up to One Thousand Seven Hundred Fifty Dollars (\$1,750) for serving as a Class Representative. Class Counsel will request an award of up to Twenty-Five Thousand Nine Hundred Thirteen Dollars (\$25,913.00) (25% of Maximum Settlement Fund) for attorneys’ fees plus expenses incurred in litigating the Lawsuit. The Court will determine the actual amounts awarded to the Class Representatives and Class Counsel. Plaintiff’s Motion for Attorneys’ Fees and Costs will be posted on [www.spiromoss.com](http://www.spiromoss.com) or can be obtained from the Court after the Court grants preliminary approval of the Settlement and before the deadline to object to the Settlement.

## **RELEASE AND BINDING EFFECT**

The settlement, if finally approved by the Court, will bind all Settlement Class Members whether or not they receive or timely cash their Individual Settlement Payments. Final approval of the settlement will bar any Settlement Class Member from hereafter initiating a claim or lawsuit which is the same as or related to the claims in this Lawsuit. Specifically, all Settlement Class Members, shall fully and finally release Defendant from any and all claims, known or unknown, asserted or that could have been asserted, arising out of, or relating in any way to, the facts, legal theories and alleged causes of action in the operative Complaint for (1) violation of Labor Code Section 227.3; (2) failure to provide accurate wage statements; (3) failure to pay wages upon termination; and (4) unfair competition. At a minimum, the released claims include all claims for wages, compensation, bonuses or other remuneration whether sought under statute, tort, contract or as an unfair business practice, including but not limited to under California Labor Code Sections 201-203, 226, 227.3, and Business and Professions Code Section 17200 *et seq.* This is a general release of claims known and unknown including a Civil Code § 1542 release with respect to all claims described above in this paragraph. The release shall include all the above claims from the period beginning January 14, 2005 through the date of Final Judgment. This release covers all such claims against Defendant, against its parent or subsidiary corporations, affiliates, and each of their owners, officers, directors, employees, attorneys, insurers, successors, predecessors, and agents.

## **FURTHER INFORMATION**

The foregoing is only a summary of the settlement. If you have any questions about the settlement, you can obtain a copy of the full settlement agreement from the Court, or you can contact Class Counsel listed below:

Dennis F. Moss, Esq.  
H. Scott Leviant, Esq.  
Linh Hua, Esq.  
**SPIRO MOSS LLP**  
11377 W. Olympic Blvd., 5<sup>th</sup> Floor  
Los Angeles, California 90064-1683  
Telephone: (310) 235-2468  
Facsimile: (310) 235-2456  
e-mail: scott@spiomoss.com  
linh@spiomoss.com

You may seek the advice and guidance of your own private attorney at your own expense.

***PLEASE DO NOT TELEPHONE OR CONTACT THE COURT FOR INFORMATION  
REGARDING THIS SETTLEMENT.***

**END OF  
EXHIBIT “1”**

# **EXHIBIT “2”**

**CLAIM FORM**

*Lopez v. Kmart Corporation*

**IF YOU WISH TO RECEIVE AN INDIVIDUAL SETTLEMENT PAYMENT, YOU MUST COMPLETE, SIGN, AND POSTMARK / FAX THIS FORM BY DATE.**

**Return this Claim Form to:  
*Lopez v. Kmart Corporation*  
SETTLEMENT ADMINISTRATOR  
ADDRESS 1  
CITY, STATE, ZIP  
FAX NO.**

**Class Member ID #  
Class Member Name  
Address1  
Address2  
City, State, Zip**

***Correct Information:*  
Name: \_\_\_\_\_  
Address 1: \_\_\_\_\_  
Address 2: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_**

By signing below, I confirm that I was employed by Kmart Corporation (“Kmart”) in California at any time between January 23, 2005 to September 30, 2010 and (1) was paid an hourly wage as all or part of my compensation; and (2) am no longer employed by Kmart; and (3) was employed by Kmart for at least one year prior to the end of my employment by Kmart; and (4) was classified by Kmart as a “Part Time Associate”; and (5) worked in excess of 29 hours per week for 16 or more consecutive weeks and was not re-classified by Kmart as a “Full Time Associate” (“Settlement Class Member”).

Based on Kmart’s records, my estimated Individual Settlement Amount is \$\_\_\_\_\_.

I wish to participate in the settlement of *Lopez v. Kmart Corporation*, United States District Court for the Central District of California, case no. CV 09-1334 CJC (RNBx), and receive an Individual Settlement Payment in accordance with the terms of the Settlement Agreement. By signing and submitting this Claim Form, I understand that I am releasing Kmart from any and all claims, known or unknown, asserted or that could have been asserted, arising out of, or relating in any way to, the facts, legal theories and alleged causes of action in the operative Complaint for (1) violation of Labor Code Section 227.3; (2) failure to provide accurate wage statements; (3) failure to pay wages upon termination; and (4) unfair competition. At a minimum, the released claims include all claims for wages, compensation, bonuses or other

**Questions? Please call 800-\_\_\_\_ - \_\_\_\_  
Settlement Administrator’s Fax Number: 800- \_\_\_\_ - \_\_\_\_**

remuneration whether sought under statute, tort, contract or as an unfair business practice, including but not limited to under California Labor Code Sections 201-203, 226, 227.3, and Business and Professions Code Section 17200 *et seq.* for the period from January 23, 2005 to the date of Final Judgment.

*Please complete the following information to receive an Individual Settlement Payment.*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

Last 4 digits of Social Security Number: \_\_\_\_ - \_\_\_\_ - \_\_\_\_ - \_\_\_\_

**REMEMBER:**

If you wish to receive an Individual Settlement Payment,  
you must complete, sign, and postmark/fax this form by **DATE**.

**Return this completed Claim Form to:**  
*Lopez v. Kmart Corporation*  
**SETTLEMENT ADMINISTRATOR**  
**ADDRESS 1**  
**CITY, STATE, ZIP**  
**FAX NO.**

**Questions? Please call 800-\_\_ - \_\_**  
**Settlement Administrator's Fax Number: 800-\_\_ - \_\_**

**END OF  
EXHIBIT “2”**



# **EXHIBIT “3”**

**REQUEST FOR EXCLUSION**

*Lopez v. Kmart Corporation*

**IF YOU DO NOT WISH TO RECEIVE AN INDIVIDUAL SETTLEMENT PAYMENT, YOU MUST COMPLETE, SIGN, AND POSTMARK / FAX THIS FORM BY [DATE].**

**Return this Request for Exclusion to:**  
*Lopez v. Kmart Corporation*  
**SETTLEMENT ADMINISTRATOR**  
**ADDRESS 1**  
**CITY, STATE, ZIP**  
**FAX NO.**

**Class Member ID #**  
**Class Member Name**  
**Address1**  
**Address2**  
**City, State, Zip**

**Correct Information:**  
**Name:** \_\_\_\_\_  
**Address 1:** \_\_\_\_\_  
**Address 2:** \_\_\_\_\_  
**City, State, Zip:** \_\_\_\_\_

I wish to be excluded from the class action settlement in *Lopez v. Kmart Corporation*, United States District Court for the Central District of California, case no. CV 09-1334 CJC (RNBx). I understand that by requesting to be excluded from the class action settlement, I will receive no money from the settlement. I also understand that if I am excluded from the class action settlement, I will not be bound to the terms of the Settlement Agreement. Any separate claim or lawsuit by me will be undertaken at my own expense and at my own risk. I understand that counsel for the class will not represent my personal interests if I am excluded.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Last 4 digits of Social Security Number: \_\_\_\_ - \_\_\_\_ - \_\_\_\_ - \_\_\_\_

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

**Questions? Please call 800-\_\_ - \_\_**  
**Settlement Administrator's Fax Number: 800-\_\_ - \_\_\_\_**

**END OF  
EXHIBIT “3”**

**END OF  
EXHIBIT “A”**

Spiro Moss llp

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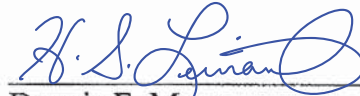
**PLAINTIFF**

Date: 05/08/11

  
Rosa L. Lopez

**CLASS COUNSEL  
SPIRO MOSS LLP**

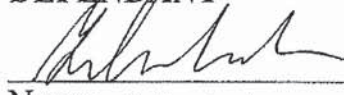
Date: May 9, 2011

  
Dennis F. Moss  
H. Scott Leviant  
Linh Hua

Law Offices of Sahag Majarian II  
Sahag Majarian II

**DEFENDANT**

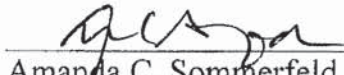
Date: April 21, 2011

  
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