

## **SETTLEMENT AGREEMENT**

This Settlement Agreement and the related document entitled Confidential Addendum to Settlement Agreement (collectively referred to herein as the “Full Agreement”) are entered into as of the Effective Date, as defined below in Section 1.5, by and between the following parties: American Council of the Blind (“ACB”), American Foundation for the Blind (“AFB”), and California Council of the Blind (“CCB”) (collectively, the “Claimants”), and Wal-Mart Stores, Inc. (“Wal-Mart”). Claimants and Wal-Mart are at times referred to collectively herein as the “Parties.”

### **RECITALS**

The Full Agreement is based on the following facts:

A. ACB, a non-profit corporation that provides advocacy services in the United States on behalf of individuals who are blind or have visual impairments, is dedicated to promoting the full integration of persons who are blind or have visual impairments into all aspects of society, and provides information to the general public about the accomplishments, needs and contributions of persons who are blind or visually-impaired. CCB is ACB’s California affiliate serving the needs of blind and visually-impaired persons throughout the State of California. Among ACB’s and CCB’s board, staff and members, and those on whose behalf they advocate and provide services, are many individuals with vision disabilities within the meaning of state and federal law who have shopped and continue to shop at Wal-Mart Stores throughout the United States. ACB is incorporated and has its place of business in Washington, D.C. CCB is incorporated and has its place of business in the State of California.

B. AFB is a national non-profit whose mission is to eliminate the inequities faced by the more than ten million blind and visually impaired persons in the United States. Among other things, AFB is: the leading publisher of professional materials on blindness and low vision through its publishing arm, AFB Press; a pioneer in the development of Talking Books; a national advocate representing the interests of blind or visually impaired people before Congress and government agencies; and home to the Helen Keller Archives. Among AFB’s board, staff and those on whose behalf it advocates and provides services, are many individuals with vision disabilities within the meaning of state and federal law and who have shopped and continue to shop at Wal-Mart Stores throughout the United States.

C. Wal-Mart operates retail facilities in California and other states across the United States, and in Puerto Rico, in various business formats, including Wal-Mart discount stores, SAM'S CLUBS, Supercenters, Neighborhood Markets, and Amigos (collectively, "Wal-Mart Stores").

D. Claimants contend that they and their respective boards, staff, members and clients, and other blind and visually-impaired persons, have been, are being, and continue to be denied full access to the services provided by retail establishments and are therefore being discriminated against due to alleged inaccessibility of certain Point of Sale ("POS") Terminals (defined in Section 1.11 below) found in retail establishments throughout the United States, including in Wal-Mart Stores (the "Claim(s)"). Wal-Mart denies that it discriminates against blind and visually-impaired persons, including Claimants and their respective boards, staff, members and clients, in any way and specifically denies that it discriminates against such blind and visually-impaired persons due to alleged inaccessibility of certain POS Terminals in the Wal-Mart Stores. Wal-Mart contends that it does not and will not tolerate discrimination of its customers on the basis of disability, and that it values its disabled customers and treats them with the utmost respect. Wal-Mart further contends that Claimants brought their concerns to the attention of Wal-Mart after Wal-Mart had already developed alternative facilitation and technology for the POS.

E. The Parties enter into the Full Agreement in order to resolve the Claims and to avoid the burden, expense, and risk of potential litigation. In entering into the Full Agreement, Wal-Mart does not admit, and specifically denies, that it has violated or failed to comply with any provisions of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, *et seq.*, and the Title III implementing regulations, 28 C.F.R., Part 36, and any applicable laws of any state relating to accessibility for persons with disabilities to public accommodations, any regulations or guidelines promulgated pursuant to those statutes, or any other applicable laws, regulations, or legal requirements. Neither the Full Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Wal-Mart of any such violation or failure to comply with any applicable law. The Full Agreement and its terms and provisions shall not be offered or received as evidence for any purpose whatsoever against Wal-Mart in any action or proceeding, other than a proceeding to enforce the terms of the Full Agreement. The Claimants acknowledge their appreciation of Wal-Mart's leadership in providing a rollout of POS Terminals with Integrated Tactually Discernable Keypads, as provided herein.

NOW, THEREFORE, the Parties hereby agree to the following provisions:

1. Definitions. As used in the Full Agreement, the following terms shall be as defined below:

1.1. Access Laws means the Americans with Disabilities Act (as defined below) and any applicable laws of any state, county or municipality relating to accessibility for persons with disabilities to places of public accommodation, any regulations or guidelines promulgated pursuant to those statutes, or any other applicable disability laws, regulations, or legal requirements, including, without limitation, California Civil Code §§ 51 *et seq.* and 54 *et seq.*, California Financial Code § 13082, California Health & Safety § 19955, and Title 24 of the California Code of Regulations.

1.2. Americans with Disabilities Act or ADA means the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, *et seq.*, and the Title III implementing regulations, 28 C.F.R., Part 36.

1.3. Claims means the contention by Claimants and their respective boards, staff, members and clients, and other blind and visually-impaired persons, that they are being, have been and continue to be discriminated against due to alleged inaccessibility of certain POS Terminals in Wal-Mart Stores pursuant to applicable Access Laws.

1.4. Counsel means Goldstein, Demchak, Baller, Borgen and Dardarian, The Law Office of Elaine B. Feingold, and the attorneys practicing law therein.

1.5. Effective Date means October 15, 2005.

1.6. Equivalent Terminal means a POS Terminal that provides a visually impaired user the same or greater level of privacy and ability to perform Functions set forth in Section 1.12, below, as provided with the POS Terminal with Integrated Tactually Discernable Keypad, and which can be rolled out pursuant to the schedules set forth in section 3 of this Agreement.

1.7. Existing Wal-Mart Store means a Wal-Mart Store that was open to the public on or before November 30, 2005.

1.8. New Wal-Mart Store means a Wal-Mart Store that is first opened to the public after November 30, 2005.

1.9. Personal Identification Number, or PIN means a unique numerical code used to identify an individual that must be entered into a POS Terminal before conducting certain transactions on the POS Terminal.

1.10. Point of Sale Terminal, or POS Terminal means a device used by a customer at a point of purchase that allows the customer to pay for items with a debit, credit or cash card. Point of Sale Terminal does not include other equipment that may be used by a customer in conjunction with the Terminal to scan, price, or weigh products.

1.11. POS Terminal Function, or Function means a task related to payment for purchases that can be performed by the customer through the POS Terminal.

1.12. POS Terminal with Integrated Tactually Discernable Keypad means a POS Terminal with a Tactually Discernable Keypad that is an integral part of the terminal, which may be used to perform the following Functions on the integrated keypad: input, correct, cancel and enter PIN and cash-back amounts; select cash back; select debit or credit; submit card data; submit signature; and any Functions that involve inputting, correcting, canceling or entering information that is personal or affects access to personal information or resources, to the extent such Functions are available to sighted persons using the unit.

1.13. Staffed Checkout Aisle means any checkout aisle (including a customer service desk, pharmacy counter, self-checkout aisle and any counter that may use POS Terminals) where a POS Terminal is placed and which is staffed by a Wal-Mart employee (who may be assigned to multiple aisles simultaneously) to assist customers in paying for products or services.

1.14. Tactually Discernable Keypad means a number keypad on which each key is tactually discernable from surrounding surfaces and adjacent keys. Numeric keys shall be arranged in a 12 key ascending telephone keypad layout. The number five key shall be tactually distinct from the other keys by means of a raised dot. The following function keys on the Tactually Discernable Keypad shall be to the right of the number keys: Enter (Accept), marked with a raised circle; Cancel, marked with a raised "X" and Correct, marked with a raised left arrow.

1.15. Wal-Mart Stores means retail facilities operated by Wal-Mart in California and other states across the United States, and in Puerto Rico, in various

business formats, including Wal-Mart discount stores, SAM'S CLUBS, Supercenters, Neighborhood Markets, and Amigos.

2. Duration and Geographic Scope of Agreement. The Full Agreement shall apply to Wal-Mart Stores in every State in the United States and in Puerto Rico in which Wal-Mart operates Wal-Mart Stores. The terms of the Full Agreement shall remain in effect from the Effective Date until December 31, 2009. The only obligations of either party that survive beyond December 31, 2009 are those described in Sections 3, 4 and 6 of the Confidential Addendum, all of which shall at all times remain in effect and enforceable.

3. Provisions Regarding POS Terminals with Integrated Tactually Discernable Keypad.

3.1. Development and Testing. Wal-Mart has been, and currently is, engaged in the process of developing and testing a POS Terminal with Integrated Tactually Discernable Keypad for use in Wal-Mart Stores. Claimants have provided comments and suggestions to Wal-Mart in connection with the development and testing of this terminal. Claimants agree and acknowledge that installation of POS Terminals with Integrated Tactually Discernable Keypads in the manner set forth in this Agreement satisfies their Claims pursuant to any and all Access Laws.

3.2. Initial Rollout to Existing Wal-Mart Stores. By no later than October 30, 2005, Wal-Mart will install a POS Terminal with Integrated Tactually Discernable Keypad in at least three Staffed Checkout Aisles in each Existing Wal-Mart Store in California and Florida. By no later than November 30, 2005, Wal-Mart will install a POS Terminal with Integrated Tactually Discernable Keypad in at least three Staffed Checkout Aisles in each Existing Wal-Mart Store throughout the United States. By no later than December 15, 2006, Wal-Mart will install a POS Terminal with Integrated Tactually Discernable Keypad in at least three Staffed Checkout Aisles in each Existing Wal-Mart Store in Puerto Rico. No more than one of the three POS Terminals with Integrated Tactually Discernable Keypad installed in each Existing Wal-Mart Store pursuant to this section shall be placed at a Staffed Checkout Aisle where a Wal-Mart employee is assigned to more than one open aisle at a time. To the extent practicable, the POS Terminals with Integrated Tactually Discernable Keypad installed pursuant to this section shall be placed in each Store as follows: one at the Express Lane located at the first front-end checkstand, one at the middle front-end checkstand where tobacco products may be purchased, and one at the pharmacy counter. In stores having no pharmacy, and in

Wal-Mart Stores in Florida, the third POS Terminal with Integrated Tactually Discernable Keypad will be located at the last front end checkstand whenever practicable.

3.3. POS Terminals with Integrated Tactually Discernable Keypads in New Wal-Mart Stores. Commencing on November 30, 2005 and continuing throughout the term of this Agreement, Wal-Mart will install POS Terminals with Integrated Tactually Discernable Keypads or any Equivalent Terminal that may then be available in the market, at all Staffed Checkout Aisles in New Wal-Mart Stores.

3.4. Full Rollout of POS Terminals with Tactually Discernable Keypads in Wal-Mart Stores. By no later than June 30, 2009, Wal-Mart shall have installed POS Terminals with Tactually Discernable Keypads, or Equivalent Terminals at ninety percent (90%) of all Staffed Checkout Aisles at each Wal-Mart Store within the geographic scope of this Agreement, or any greater percentage that may be required in a particular state or jurisdiction by any applicable Access Law.

3.5. Rollout Information to Claimants. On November 15, 2005, December 15, 2005, December 31, 2006, and July 15, 2009, Wal-Mart will provide Counsel with written confirmation that POS Terminals with Integrated Tactually Discernable Keypads have been installed pursuant to the terms of Sections 3.2., and 3.4, respectively.

3.6 Maintenance of POS Terminals with Integrated Tactually Discernable Keypads and Staffed Checkout Aisles. For any stores where fewer than all of the Staffed Checkout Aisles have POS Terminals with Integrated Tactually Discernable Keypads (or Equivalent Terminals), Wal-Mart will use its best efforts to maintain such terminals in operable, working condition except for isolated or temporary interruptions in service due to maintenance or repairs. Wal-Mart will use its best efforts to ensure that aisle closures in such stores during off hours or made for the purpose of maintenance, training or other operational needs do not result in the complete absence of a Staffed Checkout Aisle with a functioning POS Terminal with Integrated Tactually Discernable Keypad.

3.7 Feedback from Claimants. On a date during the first quarter of 2006 that is mutually agreed to by the Parties, and periodically thereafter as requested by Claimants, but not more than once each year during the term of this Agreement, Wal-Mart will meet by telephone or in person with representatives of Claimants to elicit input and receive feedback regarding the implementation of this Agreement and any other issue regarding technology used by Wal-Mart customers

and its effect on customers who are blind or visually impaired. Additionally, on a date during the third quarter of 2009 that is mutually agreed to by the Parties, Wal-Mart will meet by telephone with representatives of Claimants to discuss the installation of POS Terminals with Tactually Discernable Keypads (or Equivalent Terminals) at all Checkout Aisles that are not otherwise part of the Full Rollout described in Section 3.4, above.

4. Training of Wal-Mart Personnel. Wal-Mart will develop a training program and train the appropriate personnel regarding, *inter alia*, the roll-out of POS Terminals with Integrated Tactually Discernable Keypads, protocols for complying with Section 3.6 above, and appropriate communications with visually impaired customers regarding use of such terminals. The details of this training will be in the sole discretion of Wal-Mart, but will include features such as announcements as necessary to ensure that appropriate personnel are apprised when POS Terminals with Integrated Tactually Discernable Keypads are introduced to Wal-Mart Stores and where the terminals are located, and integrating into Wal-Mart's Front-End Guides (computer based reference guides for personnel working in the part of the store where POS Terminals are located) information that will assist such personnel in providing effective service to customers with visual impairments. This training will occur in a timely manner to ensure effective implementation of the provisions of the Full Agreement.

5. Procedures in the Event of Disputes.

5.1. Notice of Non-Compliance. If a party believes that the other party has not complied with any provision of the Full Agreement, that party shall provide the other party with Notice of Non-compliance containing the following information:

5.1.1. the alleged act of non-compliance;

5.1.2. a reference to the specific provision(s) of the Settlement Agreement or Confidential Addendum that are involved;

5.1.3. a statement of the remedial action sought by the initiating party;

5.1.4. a brief statement of the specific facts, circumstances and legal argument supporting the position of the initiating party.

5.2. Response. Within forty-five (45) days of receipt of a Notice provided pursuant to section 5.1, the non-initiating party shall respond to the initiating party in writing.

5.3. Meet and Confer. Within two weeks after the response described above, the Parties shall informally meet and confer and attempt to resolve the issues raised in the Notice.

5.4. Submission to Binding Arbitration.

5.4.1. If the matters raised in a Notice provided pursuant to Section 5.1 are not resolved within thirty (30) days of the initial meet and confer required by Section 5.3, either party may submit the unresolved matters to binding arbitration as set forth herein.

5.4.2. The arbitration hearing shall be conducted by an arbitrator affiliated with JAMS, in accordance with the JAMS Streamlined Arbitration Rules & Procedures. However, those Rules will be modified as necessary to ensure that the hearing is held within thirty (30) days of the submission to arbitration, and that a written decision on the matter is rendered within sixty (60) days of the first hearing date.

6. Notice or Communication to Parties. Any notice or communication required or permitted to be given to the parties hereunder shall be given in writing by facsimile or email and United States mail, addressed as follows:

To Claimants:

Linda M. Dardarian  
c/o Goldstein, Demchak, Baller, Borgen & Dardarian  
300 Lakeside Drive, Suite 1000  
Oakland, CA 94612  
Fax No.: (510) 835-1417  
email: [ldar@gdblegal.com](mailto:ldar@gdblegal.com)

Elaine B. Feingold  
Law Office of Elaine B. Feingold  
1524 Scenic Avenue  
Berkeley, CA 94708  
email: [lfeingold@earthlink.net](mailto:lfeingold@earthlink.net)



To Wal-Mart:

ADA Coordinator  
Wal-Mart Stores, Inc.  
702 S.W. 8<sup>th</sup> St.  
Bentonville, AR 72716-0215  
Email: [adacoordinator@wal-mart.com](mailto:adacoordinator@wal-mart.com)

7. Modification in Writing. No modification of the Full Agreement shall be effective unless in writing and signed by authorized representatives of all Parties.

8. No Other Representations. Each party to the Full Agreement warrants that he, she or it is acting upon his, her or its independent judgment and upon the advice of his, her or its own counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other party, other than the warranties and representations expressly made in the Full Agreement.

9. Full Agreement Has Been Read. The Full Agreement has been carefully read by each of the Parties, or their responsible officers, and its contents are known and understood by each of the Parties. The Full Agreement is signed freely by each party executing it.

10. No Assignment. No party to the Full Agreement has heretofore assigned, transferred or granted, or purported to assign, transfer or grant, any of the claims, demands, or cause or causes of action disposed of by the Full Agreement.

11. Agreement Binding on Assigns And Successors. The Full Agreement shall bind any assigns and successors of the Parties. Counsel shall be notified in writing within thirty (30) days of the existence, name, address and telephone number of any assigns or successors of Wal-Mart.

12. Force Majeure. The performance of Wal-Mart under this Settlement Agreement shall be excused during the period and to the extent that such performance is rendered impossible, impracticable or unduly burdensome due to acts of God, strikes or lockouts, unavailability of parts, equipment or materials through normal supply sources. If Wal-Mart seeks to invoke this Section, it shall notify Counsel in writing as soon as reasonably possible, specifying the particular action that could not be performed and the specific reason for the non-performance. Counsel and Wal-Mart will thereafter meet and confer regarding an alternative schedule for completion of the action that could not be performed, or an alternative action. Any dispute regarding the applicability of this Section, or any future action

to be taken, that remains after the meet and confer session will be handled as a dispute pursuant to section 5 of this Settlement Agreement.

13. No Admission of Liability. In entering into the Full Agreement, Wal-Mart does not admit, and specifically denies, that it has violated or failed to comply with any Access Laws.

14. Authority. The persons executing the Full Agreement each represent and warrant that he or she has the authority to enter into the Full Agreement, and to resolve the matters set forth in the Full Agreement, on behalf of the Party for whom he or she is executing the Full Agreement, and that no further approval is necessary in order for the Full Agreement to be binding on the Party for whom he or she is executing.

15. Integrated Agreement. The Full Agreement constitutes the entire agreement relating to the subject matters addressed therein.

16. Rules of Construction. Each party and its legal counsel have reviewed and participated in the drafting of the Full Agreement; and any rule of construction to the effect that ambiguities are construed against the drafting party shall not apply in the interpretation or construction of the Full Agreement. Section titles used herein are intended for reference purposes only and are not to be construed as part of the Full Agreement. The Recitals are integral to the construction and interpretation of the Full Agreement and are therefore incorporated into the Full Agreement in their entirety.

17. Triplicate Originals/Execution in Counterparts. All Parties and their respective counsel shall sign three copies of this document and each such copy shall be considered an original. This document may be executed in counterparts.

PARTIES:

WAL-MART STORES, INC.

APPROVED AS TO FORM:

MANATT, PHELPS AND PHILLIPS

By: \_\_\_\_\_

Carol Mosely  
Sr. Vice President of Information  
Services, Wal-Mart Stores, Inc.

By: \_\_\_\_\_

Matthew P. Kanny

AMERICAN COUNCIL OF THE BLIND

By: \_\_\_\_\_  
Melanie Brunson  
Executive Director

AMERICAN FOUNDATION FOR THE  
BLIND

By: \_\_\_\_\_  
Paul Shroeder  
Director, Government Affairs

CALIFORNIA COUNCIL OF THE  
BLIND

By: \_\_\_\_\_  
Jeff Thorn  
President

GOLDSTEIN, DEMCHAK, BALLER,  
BORGEN & DARDARIAN

By: \_\_\_\_\_  
Linda M. Dardarian, Esq.

LAW OFFICE OF ELAINE B.  
FEINGOLD

By: \_\_\_\_\_  
Lainey Feingold, Esq.

40931040.2