

# Exhibit E

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

Anca Adams, *individually and on behalf of all others similarly situated*,

Plaintiff,

v.

AMERICA’S TEST KITCHEN, LP, a Massachusetts Partnership, AMERICA’S TEST KITCHEN, INC. a Delaware Corporation, and Jackie Ford,

Defendants.

Case No.: 1:22-CV-11309 (AK)

**CLASS ACTION SETTLEMENT AGREEMENT**

This Agreement (“Agreement” or “Settlement Agreement”) is entered into by and among (i) Anca Adams (“Plaintiff”), on behalf of herself and as a representative of the Settlement Class (as defined herein), and (ii) Defendants America’s Test Kitchen, LP, America’s Test Kitchen, Inc. and Jackie Ford (“Defendants”). The Plaintiff and Defendants are collectively referred to herein as the “Parties.” This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined herein), upon and subject to the terms and conditions of this Agreement, and subject to the final approval of the Court.

**RECITALS**

1. On July 13, 2022, Plaintiff filed a complaint in Massachusetts state court alleging a violation of the Video Privacy Protection Act (the “VPPA”) on behalf of a purported class arising out of the operation of a home cooking website operated by certain of the Defendants. Defendants removed the original complaint to the United States District Court for the District of Massachusetts, whereupon Plaintiff amended the complaint (the “Amended Complaint”).

Defendants thereafter moved to dismiss the Amended Complaint or, in the alternative, compel arbitration based on the presence of an arbitration clause in the Defendants' website's terms of use. After a hearing, the trial court denied this motion on June 30, 2023. Defendants noticed an interlocutory appeal of the trial court's order, pursuant to a provision of the Federal Arbitration Act allowing for interlocutory appeals. Neither party has yet submitted briefs in connection with that pending appeal.

2. Counsel to the parties in this litigation have engaged in informal settlement discussions throughout the pendency of the matter. Counsel and party representatives participated in an August 24, 2023 mediation session sponsored by the United States Court of Appeals for the First Circuit's ("Court of Appeals") Office of Settlement Counsel. Following mediation, the parties continued to engage in settlement negotiations, which included the Defendants' provision of limited factual discovery to the Plaintiff in connection with a possible resolution of the Action. On September 27, 2023, the parties participated in a second mediation session sponsored by the Court of Appeals' Office of Settlement Counsel.

3. At all times, Defendants have denied and continue to deny any wrongdoing whatsoever and have denied and continue to deny that they committed, or threatened or attempted to commit, any wrongful act or violation of law or duty alleged in the Action. Nonetheless, taking into account the uncertainty and risks inherent in any litigation, Defendants have concluded it is desirable and beneficial that the Action be fully and finally settled and terminated in the manner and upon the terms and conditions set forth in this Agreement. This Agreement is a compromise, and the Agreement, any related documents, and any negotiations resulting in it shall not be construed as or deemed to be evidence of or an admission or concession of liability or wrongdoing

on the part of Defendants, or any of the Released Parties (defined below), with respect to any claim of any fault or liability or wrongdoing or damage whatsoever.

4. Plaintiff believes that the claims asserted in the Action against Defendants have merit and that she would have prevailed at summary judgment and/or trial. Nonetheless, Plaintiff and Class Counsel recognize that Defendants have raised factual and legal defenses that present a risk that Plaintiff may not prevail. Plaintiff and Class Counsel also recognize the expense and delay associated with continued prosecution of the Action against Defendants through the current interlocutory appeal, class certification, summary judgment, trial, and any subsequent appeals. Plaintiff and Class Counsel have also taken into account the uncertain outcome and risks of litigation, especially in complex class actions, as well as the difficulties inherent in such litigation. Plaintiff has further taken into account other extraneous factors, including Defendants' ability to pay a judgment to the proposed Class if the case were to proceed. Therefore, Plaintiff believes it is desirable that the Released Claims be fully and finally compromised, settled, and resolved with prejudice. Based on their evaluation, Class Counsel have concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate to the Settlement Class, and that it is in the best interests of the Settlement Class to settle the claims raised in the Action pursuant to the terms and provisions of this Agreement.

5. NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiff, the Settlement Class, and Defendants, by and through their undersigned counsel that, subject to final approval of the Court after a hearing or hearings as provided for in this Settlement Agreement, in consideration of the benefits flowing to the Parties from the Agreement set forth herein, that the Action and the Released Claims shall be finally and fully compromised,

settled, and released, and the Action shall be dismissed with prejudice, upon and subject to the terms and conditions of this Agreement.

## **AGREEMENT**

### **1. DEFINITIONS**

As used in this Settlement Agreement, the following terms have the meanings specified below.

**1.1. “Action”** means *Adams v. America’s Test Kitchen, LP, America’s Test Kitchen, Inc. and Jackie Ford*, Case No. 1:22-CV-11309, pending in the United States District Court for the District of Massachusetts.

**1.2. “Class Counsel”** means Hank Bates, Tiffany Oldham, Lee Lowther and Courtney Ross of Carney Bates & Pulliam PLLC.

**1.3. “Class Period”** means the period from July 13, 2020, to and through the date of Preliminary Approval.

**1.4. “Class Representative”** means the named Plaintiff in this Action, Anca Adams.

**1.5. “Court”** means the United States District Court for the District of Massachusetts, the Honorable Angel Kelley presiding, or any judge who shall succeed her as the Judge in this Action.

**1.6. “Defendants”** means America’s Test Kitchen, LP, America’s Test Kitchen, Inc. and Jackie Ford.

**1.7. “Defendants’ Counsel”** means Edward McNicholas and Fran Faircloth of Ropes & Gray.

**1.8. “Effective Date”** means the date on which the Final Judgment becomes Final.

**1.9. “Fee Award”** means the amount of attorneys’ fees and reimbursement of expenses awarded by the Court to Class Counsel, which will be paid by Defendants.

**1.10. “Final”** means one business day following the latest of the following events: (i) the date upon which the time expires for filing or noticing any appeal of the Court’s Final Judgment approving the Settlement Agreement; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee Award, the date of completion, in a manner that finally affirms and leaves in place the Final Judgment without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or *certiorari*, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on *certiorari*.

**1.11. “Final Approval Hearing”** means the hearing before the Court where the Parties will request the Final Judgment to be entered by the Court approving the Settlement Agreement, the Fee Award, and the Service Award to the Class Representative.

**1.12. “Final Judgment”** means the order to be entered by the Court, after the Final Approval Hearing, granting final approval of this Agreement.

**1.13. “Meta Pixel”** means JavaScript code from Meta and/or Facebook that tracks specific actions of website visitors and reports data to Meta and/or Facebook.

**1.14. “Person”** shall mean, without limitation, any individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors,

representatives, or assigns. “Person” is not intended to include any governmental agencies or governmental actors, including, without limitation, any state Attorney General office.

**1.15. “Plaintiff”** means Anca Adams.

**1.16. “Preliminary Approval”** means the Court’s certification of the Settlement Class for settlement purposes, preliminary approval of this Settlement Agreement, and approval of the form and manner of the Notice.

**1.17. “Preliminary Approval Order”** means the order preliminarily approving the Settlement Agreement, certifying the Settlement Class for settlement purposes, and directing notice thereof to the Settlement Class, which will be agreed upon by the Parties and submitted to the Court in conjunction with Plaintiffs’ motion for preliminary approval of the Agreement.

**1.18. “Released Claims”** means any claim, liability, right, demand, suit, matter, obligation, action, or causes of action, of every kind and description, that the Releasing Parties have or could have presented or asserted against Defendants regarding the alleged disclosure of the Settlement Class Members’ personally identifiable information and video viewing behavior to any third party, including all claims that were brought or could have been brought in the Action relating to the alleged disclosure of the Settlement Class Members’ personally identifiable information and video viewing behavior to any third party. “Released Claims” do not include claims for damages or other monetary relief. “Released Claims” do not include the right of any Settlement Class Member or any of the Released Parties to enforce the terms of the settlement contained in this Settlement Agreement. Nothing herein is intended to release any claims any governmental agency or governmental actor has against Defendant.

**1.19. “Released Parties”** means Defendants together with their subsidiaries, affiliates, parent companies, divisions, servants, employees, principals, directors, officers, founders, agents,

and attorneys, and all predecessors, assigns, heirs, transferees, and successors of any of the foregoing persons or entities.

**1.20. “Releasing Parties”** means Plaintiff, Settlement Class Members, and all of their respective present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parent companies, subsidiaries, associates, affiliates, employers, employees, agents, consultants, independent contractors, insurers, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns and companies, firms, trusts, and corporations.

**1.21. “Service Award”** means any amount awarded by the Court to the Class Representative as a service award in recognition of her efforts and commitment on behalf of the Class, which will be paid by Defendants.

**1.22. “Settlement Administrator”** means a reputable administration company that has been selected by the Parties and approved by the Court to oversee the distribution of Notice.

**1.23. “Settlement Class”** means all individuals residing in the United States who were Facebook account holders and subscribers to Defendants’ digital services during the Class Period, and who requested or obtained any videos on any America’s Test Kitchen website while an active Facebook account holder during the Class Period. Excluded from the Settlement Class are (1) any judge presiding over this Action and members of their families; (2) Defendants, their subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendants or their parents have a controlling interest and their current or former officers, directors, agents, attorneys, and employees.



**1.24. “Settlement Class Member”** means a Person who falls within the definition of the Settlement Class as set forth above.

**1.25. “Unknown Claims”** means claims that could have been raised in the Action and that any or all of the Releasing Parties do not know or suspect to exist, which, if known by him or her, might affect his or her agreement to release the Released Parties or the Released Claims or might affect his or her decision to agree, object or not to object to the Settlement. Upon the Effective Date, the Releasing Parties shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of § 1542 of the California Civil Code, which provides as follows:

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

Upon the Effective Date, the Releasing Parties also shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to § 1542 of the California Civil Code, with the exception of claims for damages or other monetary relief. The Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention to finally and forever settle and release the Released Claims, notwithstanding any Unknown Claims they may have, as that term is defined in this Paragraph.

## **2. INJUNCTIVE RELIEF**

**2.1.** As consideration for the complete and final settlement of the Action, the

releases, and other promises and covenants set forth in this Settlement Agreement, and subject to the other terms and conditions herein, Defendants agree to the following injunctive relief listed below in this section: Within 45 days of the Preliminary Approval Order but no earlier than January 12, 2024, Defendants (i) will remove all Meta Pixels embedded in any webpage on Defendants' websites (including [www.americastestkitchen.com](http://www.americastestkitchen.com)) accessible in the United States that includes video content and (ii) will not possess "personally identifiable information" (as that term is defined in the VPPA) of Settlement Class Members generated by Meta Pixels. Defendants shall not resume operation of the Meta Pixel on any webpage of their websites accessible in the United States that includes video content.

**2.2.** Notwithstanding the above, Defendants may seek relief from this injunction upon amendment or repeal of the VPPA or upon implementation of a VPPA-compliant consumer consent form.

**2.3.** Plaintiff may seek from the Court an injunction to enforce the terms of this Agreement.

### **3. DEFENDANTS' WARRANTIES AND REPRESENTATIONS**

**3.1.** Defendants warrant and represent that they have provided Plaintiff's counsel with documents concerning Defendants' financial condition and ability to fund a class action settlement under [Federal Rule of Civil Procedure 23\(b\)\(3\)](#). In addition, during the First Circuit CAMP mediation on August 24, 2023, and during additional conversations, Defendants have responded to a number of questions posed by Plaintiff's counsel regarding their financial condition and ability or lack thereof to fund a class action settlement under [Federal Rule of Civil Procedure 23\(b\)\(3\)](#). Defendants' representations with respect to their financial condition, including the documents and information provided to Plaintiff's counsel, are a good-faith

representation of their current financial state.

**4. NOTICE PROGRAM.**

**4.1.** Plaintiff shall request that the Court approve a class notice program designed to reach the members of the Settlement Class in a manner that complies with the Federal Rules of Civil Procedure (“Notice Program”).

**4.2.** The Notice Program shall include a case-specific settlement website (e.g., [www.ATKSettlement.com](http://www.ATKSettlement.com)) that will include at least the following information: (i) stand-alone descriptions of the injunctive relief and remedial measures; (ii) a summary of the Action and the settlement terms; (iii) a “Contact Us” page with settlement administrator information; (iv) the Settlement Agreement, motions for approval and for attorneys’ fees and any other important documents in the case; (v) important case dates and deadlines, including the objection deadline; (vi) a summary of Settlement Class Member rights, including how to object to the Settlement; and (vii) the date, time, and location of the Final Approval hearing. The notice provided on the website shall be substantially in the form of Exhibit A.

**4.3.** The Notice Program shall publicize notice via email, substantially in the form of Exhibit B, to subscribers to America’s Test Kitchen digital services.

**4.4.** The Notice Program shall include a notification on the America’s Test Kitchen website accessible in the United States for a period of 30 days after the case-specific settlement website is activated. The notification shall include words to the effect of “America’s Test Kitchen Class Action Settlement” and, when clicked, shall direct users to the case-specific settlement website referred to in section 4.2 above.

**4.5.** The Notice Program shall also establish a toll-free telephone line for Settlement Class Members with an interactive voice response (“IVR”) system to provide

Settlement Class Members with responses to frequently asked questions and provide essential information regarding the litigation that is accessible 24 hours a day, 7 days a week.

**4.6.** All forms of notice must be in plain language and easily understandable. The Parties will agree on (i) the final text of the notice before it is published; (ii) all aspects of any advertisements, including, but not limited to, their text and graphics, before publication; and (iii) the domain name of, and all content and language displayed on, the Settlement Website. The Settlement Administrator shall effectuate the Notice Program as approved, and pursuant to the timetable set, by the Court.

**4.7.** Pursuant to terms to be agreed to with the Settlement Administrator and approved by the Parties, Defendants shall pay to the Settlement Administrator all fees and expenses of the Settlement Administrator, including the costs of the Notice Program.

## **5. SETTLEMENT ADMINISTRATOR.**

**5.1.** The Parties will obtain bids, which will include a proposed notice plan consistent with the Notice Program (defined above), from potential settlement administrators with expertise in class action settlement administration. The Parties shall select one settlement administrator from among those who have presented a bid, and Plaintiff shall request in seeking preliminary approval that the Court appoint the selected entity as Settlement Administrator (“Settlement Administrator”). Neither Party shall unreasonably withhold agreement to selection of a Settlement Administrator.

**5.2.** The Settlement Administrator shall be responsible for effectuating the Notice Program (defined above) consistent with the terms of this Settlement Agreement, as approved by the Court. Defendants shall have the sole responsibility to pay for and fund the Notice Program, including all fees and expenses of the Settlement Administrator.

## **6. TERMINATION OF SETTLEMENT.**

**6.1.** Subject to Paragraphs 6.2-6.4 below, Defendants or the Class Representative on behalf of the Settlement Class, shall have the right to terminate this Agreement by providing written notice of the election to do so (“Termination Notice”) to all other Parties hereto within twenty-one (21) days of any of the following events: (i) the Court’s refusal to grant Preliminary Approval of this Agreement in any material respect; (ii) the Court’s refusal to grant final approval of this Agreement in any material respect; (iii) the Court’s refusal to enter the Final Judgment in this Action in any material respect; (iv) the date upon which the Final Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court; or (v) the date upon which an Alternative Judgment, as defined in Paragraph 9.1.4 of this Agreement is modified or reversed in any material respect by the Court of Appeals or the Supreme Court.

**6.2.** The Parties agree that the Court’s failure to approve, in whole or in part, the Fee Award and/or the Service Award shall not prevent the Agreement from becoming effective, nor shall it be grounds for termination. The procedures for any application for approval of attorneys’ fees, expenses, or Service Award are to be considered by the Court separately from the Court’s consideration of the fairness, reasonableness and adequacy of the Settlement.

## **7. PRELIMINARY APPROVAL ORDER AND FINAL JUDGMENT.**

**7.1.** Promptly after the execution of this Settlement Agreement, Class Counsel shall submit this Agreement together with its Exhibits to the Court and shall move the Court for an indicative ruling on Preliminary Approval of the settlement set forth in this Agreement; certification of the Settlement Class for settlement purposes only; appointment of Class Counsel and the Class Representative; and entry of a Preliminary Approval Order. If both Parties view the indicative ruling as positive, the parties shall promptly thereafter seek Preliminary Approval of the

settlement set forth in this Agreement; certification of the Settlement Class for settlement purposes only; appointment of Class Counsel and the Class Representative; and entry of a Preliminary Approval Order, which order shall set a Final Approval Hearing date and approve the Notice Program. The Preliminary Approval Order shall also authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement and its implementing documents (including all exhibits to this Agreement) so long as they are consistent in all material respects with the terms of the Settlement Agreement and do not limit or impair the rights of the Settlement Class. The parties will propose a Preliminary Approval Order substantially in the form of Exhibit C.

7.2. Defendants' agreement as to certification of the Settlement Class is solely for purposes of effectuating the Settlement and no other purpose. Defendants retain all of their objections, arguments, and defenses with respect to class certification and any other issue, and reserve all rights to contest class certification and any other issue if the Settlement set out in this Agreement does not result in entry of the Final Judgment, if the Court's approval is reversed or vacated on appeal, if this Settlement is terminated as provided herein, or if the Settlement set forth in this Settlement otherwise fails to become effective. The Parties acknowledge that there has been no stipulation to any classes or certification of any classes for any purpose other than effectuating the Settlement, and that if the Settlement set forth in this Settlement Agreement is not finally approved, if the Court's approval is reversed or vacated on appeal, if this Settlement Agreement is terminated as provided herein, or if the Settlement set forth in this Settlement Agreement otherwise fails to become effective, the Parties' agreement as to certification of the Settlement Class becomes null and void *ab initio*, and this Settlement Agreement or any other settlement-related statement

may not be cited regarding certification of the Class, or in support of an argument for certifying any class for any purpose related to this Action or any other proceeding.

**7.3.** At the time of the submission of this Agreement to the Court as described above, Class Counsel shall request that, after Notice is given, the Court hold a Final Approval Hearing and approve the settlement of the Action as set forth herein.

**7.4.** Plaintiff agrees to dismiss the action against Defendant Jackie Ford with prejudice promptly after the Preliminary Approval. In recognition of the fact that Defendant Jackie Ford is no longer affiliated with either Defendant America's Test Kitchen, LP or America's Test Kitchen, Inc., the Parties further agree that in no event shall Defendant Jackie Ford be personally liable to perform any of the obligations under the Settlement Agreement, including, without limitation, payment of any sums to any person under the Settlement Agreement.

**7.5.** After Notice is given, the Parties shall request and seek to obtain from the Court a Final Judgment, which will (among other things):

**7.5.1.** find that the Court has personal jurisdiction over all Settlement Class Members and that the Court has subject matter jurisdiction to approve the Agreement, including all exhibits thereto;

**7.5.2.** approve the Settlement Agreement and the proposed Settlement as fair, reasonable, and adequate as to, and in the best interests of, the Settlement Class Members; direct the Parties and their counsel to implement and consummate the Agreement according to its terms and provisions; and declare the Agreement to be binding on, and have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiff and Releasing Parties;

7.5.3. find that the Notice is reasonable and complies with Rule 23 of the Federal Rules of Civil Procedure.

7.5.4. find that the Class Representatives and Class Counsel adequately represent the Settlement Class for purposes of entering into and implementing the Agreement;

7.5.5. dismiss the Action (including all individual claims and Settlement Class Claims presented thereby) on the merits and with prejudice, without fees or costs to any party except as provided in the Settlement Agreement;

7.5.6. incorporate the Release set forth above, make the Release effective as of the date of the Effective Date, and forever discharge the Released Parties as set forth herein;

7.5.7. permanently bar and enjoin all Settlement Class Members from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in, any lawsuit or other action in any jurisdiction based on the Released Claims;

7.5.8. without affecting the finality of the Final Judgment for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement and the Final Judgment, and for any other necessary purpose; and

7.5.9. incorporate any other provisions, as the Court deems necessary and just.

## **8. FEE AWARD AND SERVICE AWARD**

8.1. Pursuant to Fed. R. Civ. P. 23(h), Defendants agree that Class Counsel shall be entitled to an award of reasonable attorneys' fees and costs, to be paid by Defendants, in an amount determined by the Court as the Fee Award. Plaintiff will file a motion with the Court prior to the Final Approval Hearing requesting an award of reasonable attorneys' fees not to exceed \$300,000 and an award of costs not to exceed \$10,000. The Parties will accept, and not appeal, the Court's



order on the Fee Award, provided that it does not exceed the requested amounts. The Fee Award shall be paid by Defendants within thirty (30) days after entry of the Court's Final Judgment, notwithstanding the existence of any timely filed objections or potential for appeal therefrom, or collateral attack on the settlement or any part hereof. Notwithstanding the foregoing, if for any reason the Final Judgment is reversed or rendered void as a result of an appeal(s) then Class Counsel shall return such funds to Defendants.

**8.2.** The Class Representative will apply to the Court as part of this Agreement for a Service Award of \$2,500. Class Counsel shall include any request for the Class Representative Service Award in its Final Approval Motion and the proposed Final Approval Order. Within fourteen (14) calendar days of the Effective Date, Defendants shall pay the Class Representative's Service Award by ACH payment or wiring those funds to Class Counsel's State Bar Attorney Client Trust account. Class Counsel shall cause payment of the Class Representative's Service Award within fourteen (14) calendar days of receipt of the funds from Defendants, with Defendants bearing no responsibility or liability for such distribution after Defendants' transmittal of the applicable funds to Class Counsel.

**8.3.** The Parties agree that the effectiveness of this Settlement Agreement does not require and is not conditioned upon the Court's approval of a Fee Award and/or a Service Award. No decision by the Court, or modification, reversal, or appeal of any decision by the Court, concerning the payment of a Fee Award and/or a Service Award shall be grounds for cancellation or termination of this Settlement Agreement.

**9. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION.**

**9.1.** The Effective Date of this Settlement Agreement shall not occur unless and until each of the following events occurs and shall be the date upon which the last (in time) of the following events occurs:

**9.1.1.** The Parties and their counsel have executed this Agreement;

**9.1.2.** The Court has entered the Preliminary Approval Order;

**9.1.3.** The Court has entered an order finally approving the Agreement, following Notice to the Settlement Class and a Final Approval Hearing, as provided in the Federal Rules of Civil Procedure, and has entered the Final Judgment, or a judgment consistent with this Agreement in all material respects; and

**9.1.4.** The Final Judgment has become Final, as defined above, or, in the event that the Court enters an order and final judgment in a form other than that provided above (“Alternative Judgment”) and that has the consent of the Parties, such Alternative Judgment becomes Final.

**9.2.** If some or all of the conditions specified in Paragraph 9.1 are not met, or in the event that this Agreement is not approved by the Court, or the Settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, then this Settlement Agreement shall be canceled and terminated subject to Paragraph 6.1 unless Class Counsel and Defendants’ Counsel mutually agree in writing to proceed with this Agreement. If any Party is in material breach of the terms hereof and fails to cure such material breach within 30 days of notice, any other Party, provided that it is in substantial compliance with the terms of this Agreement, may terminate this Agreement on notice to all of the Settling Parties.

**9.3.** If this Agreement is terminated or fails to become effective for the reasons set forth in Paragraphs 6.1 and 9.1-9.2 above, the Parties shall be restored to their respective positions in

the Action as of the date of the signing of this Agreement. In such event, any Final Judgment or other order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*, and the Parties shall be returned to the *status quo ante* with respect to the Action as if this Agreement had never been entered into.

**10. MISCELLANEOUS PROVISIONS.**

**10.1.** The Parties (a) acknowledge that it is their intent to consummate this Settlement Agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement, to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Agreement, to secure final approval, and to defend the Final Judgment through any and all appeals. Class Counsel and Defendants' Counsel agree to cooperate with one another in seeking Court approval of the Settlement Agreement, entry of the Preliminary Approval Order, and the Final Judgment, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Agreement.

**10.2.** The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Plaintiff, the Settlement Class and each or any of them, on the one hand, against the Released Parties, and each or any of the Released Parties, on the other hand. Accordingly, the Parties agree not to assert in any forum that the Action was brought by Plaintiff or defended by Defendants, or each or any of them, in bad faith or on a frivolous basis.

**10.3.** The Parties have relied upon the advice and representation of counsel, selected by them, concerning their respective legal liability for the claims hereby released. The Parties have read and understand fully the above and foregoing agreement and have been fully advised as to

the legal effect thereof by counsel of their own selection and intend to be legally bound by the same.

**10.4.** The headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

**10.5.** The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Agreement.

**10.6.** All of the Exhibits to this Agreement are material and integral parts thereof and are fully incorporated herein by this reference.

**10.7.** This Agreement and its Exhibits set forth the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements and undertakings with respect to the matters set forth herein. No representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its Exhibits other than the representations, warranties, and covenants contained and memorialized in such documents. This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

**10.8.** Except as otherwise provided herein, each Party shall bear its own costs.

**10.9.** Plaintiff represents and warrants that she has not assigned any claim or right or interest therein as against the Released Parties to any other Person or Party and that she is fully entitled to release the same.

**10.10.** Each counsel or other Person executing this Settlement Agreement, any of its Exhibits, or any related settlement documents on behalf of any Party hereto, hereby warrants and represents that such Person has the full authority to do so and has the authority to take appropriate

action required or permitted to be taken pursuant to the Agreement to effectuate its terms. Class Counsel in particular warrants that they are authorized to execute this Settlement Agreement on behalf of Plaintiff and the Settlement Class (subject to final approval by the Court after notice to all Settlement Class Members), and that all actions necessary for the execution of this Settlement Agreement have been taken.

**10.11.** This Agreement may be executed in one or more counterparts. Signature by digital means, facsimile, or in PDF format will constitute sufficient execution of this Agreement. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court if the Court so requests.

**10.12.** The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Agreement.

**10.13.** This Settlement Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

**10.14.** Where this Agreement requires notice to the Parties, such notice shall be sent to the undersigned counsel: Hank Bates, Carney Bates & Pulliam PLLC, 519 W. 7th Street, Little Rock, AR 72201; and Edward R. McNicholas, Ropes & Gray LLP, 2099 Pennsylvania Avenue, N.W. Washington, DC 20006-6807.

**IT IS SO AGREED TO BY THE PARTIES:**

Dated: November 29, 2023

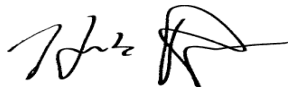


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