

Exhibit F

**UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA
BUTTE DIVISION**

**IN RE: SNOWFLAKE, INC. DATA
SECURITY BREACH
LITIGATION**

Case No. 2:24-MD-03126-BMM

*This document relates to Defendants
Advance Auto Parts, Inc. and
Advance Stores Company,
Incorporated*

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement” or “Agreement”),¹ dated as of May 14, 2025, is entered into between Plaintiffs Emmanuel Chaidez, Stefondra Monroe, Raymond Moule, Raven Richardson, Don Smith, and Raymond Swain, on behalf of themselves and the Settlement Class, on the one hand, and Defendants Advance Auto Parts, Inc. and Advance Stores Company, Incorporated (collectively “Defendant”), on the other hand. The Parties hereby agree to the following terms in full settlement of the Action, subject to a Final Approval Order entered by the Court.

EXHIBIT A

¹ All capitalized terms herein shall have the same meanings as those ascribed to them in Section II below.

I. Background

1. Defendant is an automotive aftermarket parts provider that operates retail stores primarily in the United States.

2. In the course of operating its business, Defendant stores Private Information pertaining to employees and candidates for employment, including, but not limited to, names, email addresses, mailing addresses, dates of birth, driver's license numbers, Social Security numbers, demographic details, and more.

3. On or about May 23, 2024, Defendant became aware that it was the victim of a data incident (the "Data Incident" defined more below) involving its cloud computing software company that housed Private Information belonging to Defendant's job applicants, former employees, and current employees.

4. On July 10, 2024, Defendant began notifying those who sought employment with Defendant, former employees, and current employees that their information may have been involved in the Data Incident. In total, there were about 2.3 million people who, because of their relationship with Defendant as an applicant, former employee, or current employee, were potentially impacted by the Data Incident.

5. Commencing on June 24, 2024, Defendant was named in the first of 11 putative Related Actions that are materially similar, as they have overlapping claims,

seek to represent the same putative class members, and arise out of the same Data Incident.

6. Plaintiffs in the Eastern District of North Carolina in the Related Actions conferred and agreed to move to consolidate the Related Actions and to appoint interim class counsel. After appointment of interim class counsel, Plaintiffs propounded informal discovery requests in advance of mediation. The Parties also exchanged mediation briefs outlining their positions with respect to liability, damages, and settlement-related issues.

7. The Parties began discussing settlement and scheduled a mediation with Bennett G. Picker, Esq., an experienced data breach mediator, on October 1, 2024, in Philadelphia, Pennsylvania. The Parties made substantial progress through the mediation process with Mr. Picker, but were unable to reach a settlement.

8. Thereafter, the Judicial Panel on Multidistrict Litigation centralized the Related Actions, along with other actions against Defendant and also other actions against other defendants, under *In re Snowflake Inc. Data Security Breach Litigation*, No. 2:24-MD-3126-BMM. The Court selected Lead Counsel and an Executive Committee on Nov. 19, 2024.

9. On February 3, 2025, Lead Counsel filed a Representative Class Action Complaint, asserting causes of action against Defendant for (1) negligence; (2)

negligence *per se*; (3) breach of implied contract; and (4) unjust enrichment against Defendant.

10. Counsel for Plaintiffs also consulted with data experts to understand how the Data Incident occurred, the type of information involved, and whether the information was published on the Dark Web.

11. Under the authorization and direction of Lead Counsel in the MDL, the Parties continued to conduct extensive settlement discussions, culminating in a settlement in principle in early March 2025.

12. Thereafter, on March 11, 2025, the Parties filed a Notice of Classwide Settlement.

13. On March 21, 2025, an Amended Representative Class Action Complaint was filed. A Second Amended Representative Class Action Complaint was thereafter filed on April 14, 2025.

14. The Parties now agree to settle the Action entirely, without any admission of liability or wrongdoing, with respect to all Released Claims of the Releasing Parties. Defendant has entered into this Agreement to resolve all controversies and disputes arising out of or relating to the allegations related to Defendant made in the Complaint (and also the allegations against Snowflake, Inc. that are based on the allegations against Defendant), and to avoid the litigation costs and expenses, distractions, burden, expense, and disruption to its business operations

associated with further litigation. Defendant does not in any way acknowledge, admit to, or concede any of the allegations made in the Complaint (and similarly does not concede any of the allegations in the other complaints in the Related Actions), and expressly disclaims and denies any fault or liability, or any charges of wrongdoing that have been or could have been asserted in the Complaint or in the other complaints in the Related Actions. Nothing contained in this Agreement shall be used or construed as an admission of liability, and this Agreement shall not be offered or received in evidence in any action or proceeding in any court or other forum as an admission or concession of liability or wrongdoing of any nature or for any other purpose other than to enforce the terms of this Agreement. Plaintiffs have entered into this Agreement to recover on the claims in the Complaint, and to avoid the risk, delay, and uncertainty of continued litigation. Plaintiffs do not in any way concede that the claims alleged in the Complaint lack merit or are subject to any defenses. The Parties intend this Agreement to bind Plaintiffs, Defendant, and all Settlement Class Members.

NOW, THEREFORE, in light of the foregoing, for good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree, subject to approval by the Court, as follows.

II. Definitions

16. “**Action**” means the lawsuit entitled: *In re: Snowflake, Inc. Data*

Security Breach Litigation, with case number 2:24-cv-03126 filed in the United States District Court for the District of Montana. This Settlement relates only to Defendant's Data Incident and only as to the 2.3 million individuals who were sent notice of the Data Incident.

17. **“Alternative Cash Payment”** means the Settlement Class Member Benefit consisting of cash payment estimated to be \$100 (subject to pro rata increase or decrease) that Settlement Class Members may elect under Section V herein.

18. **“Application for Attorneys' Fees, Costs, and Service Awards”** means the application made with the Motion for Final Approval seeking Service Awards for Class Representatives and Class Counsel's attorneys' fees and reimbursement for costs.

19. **“CAFA Notice”** means the notice required by the Class Action Fairness Act of 2008, 28 U.S.C. § 1715 (“CAFA”).

20. **“California Settlement Class Members”** means all Settlement Class Members who are residents of California.

21. **“California Settlement Subclass”** means those individuals who are California Settlement Class Members and are eligible to receive a CCPA Cash Payment under the Settlement. Plaintiff Raymond Swain is a member of the Settlement Class and California Settlement Subclass because he is and has been a resident of California for the relevant times related to this Settlement and the Data

Incident.

22. “**Cash Payments**” means compensation paid to Settlement Class Members who elected either the Documented Loss Cash Payment, CCPA Cash Payment, and/or Alternative Cash Payment.

23. “**CCPA Cash Payment**” means the cash payment estimated to be \$100 (subject to a pro rata increase or decrease) California Settlement Class Members may elect under Section V herein due to their statutory damages available under the California Consumer Privacy Act (“CCPA”).

24. “**Claim**” means the submission of a Claim Form by a Claimant.

25. “**Claim Form**” means the proof of claim, substantially in the form attached hereto as *Exhibit 4*, which may be modified, subject to the Parties’ approval, to meet the requirements of the Settlement Administrator.

26. “**Claim Form Deadline**” shall be 15 days before the original scheduled Final Approval Hearing and is the last day by which a Claim Form may be submitted to the Settlement Administrator for a Settlement Class Member to be eligible for a Settlement Benefit.

27. “**Claimant**” means a Settlement Class member who submits a Claim Form.

28. “**Class Counsel**” or “**Lead Counsel**” means: Devlan Geddes, Raph Graybill, John Heenan, Amy Keller, and Jason Rathod.

29. “**Class List**” means a list of all individuals in the Settlement Class. Defendant shall prepare and provide the Class List to the Settlement Administrator for Notice using information in its records. Class List shall include the Settlement Class’s names, email addresses (if available), and postal addresses (if available).

30. “**Class Representatives**” means the Plaintiffs.

31. “**Complaint**” means Plaintiffs’ Second Amended Representative Class Action Complaint filed in the Action on April 14, 2025.

32. “**Court**” means the United States District Court for Montana and the Judge(s) assigned to the Action.

33. “**Credit and Identity Monitoring**” means two years of Kroll Essential Monitoring that Settlement Class Members may elect under Section V herein.

34. “**Data Incident**” means the alleged incident that began April 14, 2024, in which unauthorized third parties purportedly gained access to Settlement Class Members’ Private Information.

35. “**Defendant**” means Advance Auto Parts, Inc. and Advance Stores Company, Incorporated, and any of their current or former subsidiaries or related entities.

36. “**Defendant’s Counsel**” means Alfred J. Saikali and Joshua Becker of Shook, Hardy & Bacon, LLP.

37. “**Documented Loss Cash Payment**” means the up to \$5,000 payment Settlement Class Members may elect if they have sufficiently documented out-of-pocket losses incurred as a result of the Data Incident as identified in Section V below.

38. “**Effective Date**” means 30 days after the entry of the Final Approval Order, provided no objections are made to the Settlement. If there are objections to the Settlement, then the Effective Date shall be the later of: (1) 30 days after entry of the Final Approval Order if no appeals are taken from the Final Approval Order; or (2) if appeals are taken from the Final Approval Order, then the earlier of 30 days after the last appellate court ruling affirming the Final Approval Order or 30 days after the entry of a dismissal of the appeal.

39. “**Email Notice**” means the email notice of the Settlement, substantially in the form attached hereto as *Exhibit 1*, that the Settlement Administrator shall disseminate to the Settlement Class by email to those on the Class List for which Defendant maintained an email address.

40. “**Escrow Account**” means the interest-bearing account to be established by the Settlement Administrator consistent with the terms and conditions described herein.

41. “**Final Approval**” means the final approval of the Settlement, which occurs when the Court enters the Final Approval Order, substantially in the form

attached to the Motion for Final Approval.

42. “**Final Approval Hearing**” means the hearing held before the Court during which the Court will consider granting Final Approval of the Settlement and the Application for Attorneys’ Fees, Costs, and Service Awards.

43. “**Final Approval Order**” means the final order that the Court enters granting Final Approval of the Settlement. The proposed Final Approval Order shall be in a form agreed upon by the Parties and shall be substantially in the form attached as an exhibit to the Motion for Final Approval. Final Approval Order also includes the orders, which may be entered separately, determining the amount of attorneys’ fees and costs awarded to Class Counsel and Service Awards.

44. “**Long Form Notice**” means the long form notice of the Settlement, substantially in the form attached hereto as *Exhibit 3*, that shall be posted on the Settlement Website and shall be available to Settlement Class Members by mail on request made to the Settlement Administrator.

45. “**Motion for Final Approval**” means the motion that Plaintiffs and Class Counsel shall file with the Court seeking Final Approval of the Settlement.

46. “**Motion for Preliminary Approval**” means the motion that Plaintiffs shall file with the Court seeking Preliminary Approval of the Settlement.

47. “**Notice**” means the Email Notice, Postcard Notice, Long Form Notice, Settlement Website, and settlement telephone line that Plaintiffs and Class Counsel

will ask the Court to approve in connection with the Motion for Preliminary Approval.

48. “**Notice Program**” means the methods provided for in this Agreement for giving Notice and consists of the Email Notice, Postcard Notice, Long Form Notice, Settlement Website, and settlement telephone line.

49. “**Notice of Deficiency**” means the notice sent by the Settlement Administrator to a Settlement Class member who has submitted an invalid Claim.

50. “**Objection Period**” means the period that begins the day after the earliest day on which the Notice is first distributed, and that ends no later than nine days before the Final Approval Hearing.

51. “**Opt-Out Period**” means the period that begins the day after the earliest day on which the Notice is first distributed, and that ends no later than 30 days before the Final Approval Hearing.

52. “**Party**” means each of the Plaintiffs and Defendant, and “**Parties**” means Plaintiffs and Defendant collectively.

53. “**Plaintiffs**” means Emmanuel Chaidez, Stefondra Monroe, Raymond Moule, Raven Richardson, Don Smith, and Raymond Swain.

54. “**Postcard Notice**” means the postcard notice of the Settlement, substantially in the form attached hereto as ***Exhibit 2***, that the Settlement Administrator shall disseminate to the Settlement Class by mail to the extent a valid

email address does not exist for the relevant Settlement Class Member.

55. **“Preliminary Approval”** means the preliminary approval of the Settlement, which occurs when the Court enters the Preliminary Approval Order, substantially in the form attached to the Motion for Preliminary Approval.

56. **“Preliminary Approval Order”** means the order preliminarily approving the Settlement and proposed Notice Program.

57. **“Private Information”** means Settlement Class members’ sensitive information that may have been exposed in the Data Incident, which may include: names, Social Security numbers, driver’s license/state identification numbers, and other sensitive information.

58. **“Related Actions”** means the following actions that were consolidated into the Action: *Charles McGee v. Advance Auto Parts, Inc.*, No. 5:24-cv-00352; *Emmanuel Chaidez v. Advance Auto Parts, Inc.*, No. 5:24-cv-00354; *Don Smith v. Advance Auto Parts, Inc.*, No. 5:24-cv-00356; *Dylan Joseph Dragone v. Advance Auto Parts, Inc.*, No. 5:24-cv-00357; *Gregory Vogel v. Advance Auto Parts, Inc.*, No. 5:24-cv-00361; *Brian Riley v. Advance Auto Parts, Inc.*, No. 5:24-cv-00397; *Cook v. Advance Auto Parts, Inc.*, No. 5:24-CV-00426; *Moule v. Advance Stores Company, Inc.*, No. 5:24-CV-00419; *Levy v. Advance Auto Parts, Inc.*, No. 5:24-CV-00404; *Carr v. Advance Auto Parts Inc.*, No. 5:24-CV-00445; and *Clark v. Advance Auto Parts, Inc.*, No. 5:24-CV-00429.

59. “**Releases**” means the releases and waiver set forth in Section XIII of this Agreement.

60. “**Released Claims**” means the claims described in Section XIII of this Agreement.

61. “**Released Parties**” means (1) Defendant, and its present and former parents, subsidiaries, divisions, departments, affiliates, predecessors, successors and assigns, and any and all of their past, present, and future directors, officers, executives, employees, officials, principals, stockholders, heirs, agents, insurers, reinsurers, members, attorneys, accountants, actuaries, fiduciaries, advisors, consultants, representatives, partners, joint venturers, licensees, licensors, independent contractors, subrogees, trustees, executors, administrators, predecessors, successors and assigns, and any other person acting on Defendant’s behalf, in their capacity as such and (2) Defendant Snowflake, Inc. (and its present and former: parents, subsidiaries, divisions, departments, affiliates, predecessors, successors and assigns, and any and all of their past, present, and future directors, officers, executives, employees, officials, principals, stockholders, heirs, agents, insurers, reinsurers, members, attorneys, accountants, actuaries, fiduciaries, advisors, consultants, representatives, partners, joint venturers, licensees, licensors, independent contractors, subrogees, trustees, executors, administrators, predecessors, successors and assigns (the “Snowflake Parties”)). It is expressly

understood that to the extent a Released Party is not a party to the Agreement, all such Released Parties (including all Snowflake Parties) are intended third-party beneficiaries of the Agreement and may enforce the Agreement as if they were parties to the Agreement.

62. **“Releasing Parties”** means (1) Plaintiffs and all Settlement Class Members, (2) each of their respective executors, representatives, heirs, predecessors, assigns, beneficiaries, affiliates, successors, bankruptcy trustees, guardians, joint tenants, tenants in common, tenants by the entirety, agents, attorneys, (3) any entities in which a Plaintiff and/or other participating Settlement Class Member has or had a controlling interest or that has or had a controlling interest in him, her, or it, (4) any other person or entity (including any governmental entity) claiming by or through, on behalf of, for the benefit of, derivatively for, or as representative of a Plaintiff and/or any other Settlement Class Member, and all those who claim through them or on their behalf, and (5) the respective past and present directors, governors, executive-committee members, officers, officials, employees, members, partners, principals, agents, attorneys, advisors, trustees, administrators, fiduciaries, consultants, service providers, representatives, successors in interest, assigns, beneficiaries, heirs, executors, accountants, accounting advisors, and auditors of any or all of the above persons or entities identified in (1)-(4).

63. **“Residual Funds”** means all funds remaining in the Settlement Fund

resulting from any uncashed and/or unredeemed Cash Payments after the payment of all Valid Claims for Cash Payments and/or Credit and Identity Monitoring, Attorneys' Fees and Costs, Service Awards, and Settlement Administration Costs.

64. “**Service Awards**” means the payment the Court may award the Plaintiffs for their time and effort serving as Class Representatives, which will be in an amount not to exceed \$2,500 for each Class Representative.

65. “**Settlement Administrator**” means Kroll Settlement Administration, LLC or “Kroll.”

66. “**Settlement Administration Costs**” means all costs and fees of the Settlement Administrator regarding Notice and settlement administration.

67. “**Settlement Class**” means all persons in the United States whose Private Information was potentially compromised as a result of the Data Incident and who were sent notice of the Data Incident. The Settlement Class is estimated to be approximately 2.3 million individuals. Excluded from the Settlement Class are (1) all persons who are governing board members of Defendant; (2) governmental entities; (3) the Court, the Court's immediate family, and Court staff; and (4) any Settlement Class Member who timely and validly requests to opt-out from the Settlement.

68. “**Settlement Class Member**” means any member of the Settlement Class who has not opted-out of the Settlement.

69. “**Settlement Class Member Benefit(s)**” means the Documented Loss Cash Payment, CCPA Cash Payment, and/or Credit and Identity Monitoring, or Alternative Cash Payment selected by Settlement Class Members.

70. “**Settlement Fund**” means the non-reversionary \$10,000,000.00 cash fund that Defendant has agreed to pay or have paid under the terms of the Settlement pursuant to Paragraph 73 below.

71. “**Settlement Website**” means the website the Settlement Administrator will establish as a means for the Settlement Class members to submit Claim Forms and obtain notice and information about the Settlement, including hyperlinked access to this Agreement, the Preliminary Approval Order, Long Form Notice, Claim Form, Motion for Final Approval, Application for Attorneys’ Fees, Costs, and Service Awards, and Final Approval Order, as well as such other documents as the Parties agree to post or the Court orders posted. The Settlement Website shall remain online and operable for four months after Final Approval.

72. “**Valid Claim**” means a Claim Form submitted by a Settlement Class Member that is: (1) submitted in accordance with the provisions of the Settlement; (2) accurately, fully, and truthfully completed and executed, with all of the information requested in the Claim Form, by a Settlement Class Member; (3) signed physically or by e-signature by a Settlement Class Member personally, subject to the penalty of perjury; (4) returned via mail and postmarked by the Claim Form

Deadline, or, if submitted online, submitted by 11:59 p.m. Mountain Time on the Claim Form Deadline; and (5) determined to be valid by the Settlement Administrator. The Settlement Administrator may require additional information from the Claimant to validate the Claim, including, but not limited to, answers related to questions regarding the validity or legitimacy of the physical or e-signature. Failure to respond to the Settlement Administrator's Notice of Deficiency may result in a determination that the Claim is not a Valid Claim.

III. Settlement Fund

73. Within 14 days after Preliminary Approval and receipt of all necessary information required to make payment, including payment funding instructions and a W-9 form, Defendant shall deposit or cause to be deposited \$200,000.00 into the Escrow Account to allow the Settlement Administrator to pay Settlement Administration Costs. Within 30 days after the Effective Date, Defendant shall deposit or cause to be deposited \$9,800,000.00 into the Escrow Account. Once the Settlement Fund is fully funded, Defendant shall not be required to pay any more money under this Settlement. Put another way, all fees, costs, awards, and payments that are made pursuant to this Agreement will be made out of this Settlement Fund.

74. The Settlement Fund shall be used to pay: (1) Settlement Class Member Benefits to those Settlement Class Members who submit a Valid Claim; (2) any Service Awards awarded to Class Representatives; (3) any attorneys' fees and costs

awarded to Class Counsel; and (4) all Settlement Administration Costs.

75. The funds in the Escrow Account shall be deemed a “qualified settlement fund” within the meaning of United States Treasury Reg. § 1.468B-1 at all times since creation of the Escrow Account. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Escrow Account or otherwise, including any taxes or tax detriments that may be imposed on Defendant, Defendant’s Counsel, Plaintiffs, and/or Class Counsel with respect to income earned by the Escrow Account, for any period during which the Escrow Account does not qualify as a “qualified settlement fund” for the purpose of federal or state income taxes or otherwise, shall be paid out of the Escrow Account. Defendant, Defendant’s Counsel, Plaintiffs, and Class Counsel shall have no liability or responsibility for any of the taxes. The Escrow Account shall indemnify and hold Defendant, Defendant’s Counsel, Plaintiffs, and Class Counsel harmless for all taxes (including, without limitation, taxes payable by reason of any such indemnification).

IV. Certification of the Settlement Class

76. Plaintiffs shall propose and recommend to the Court that the Settlement Class be certified for Settlement purposes. Defendant agrees solely for purposes of the Settlement provided for in this Agreement, and the implementation of such Settlement, that this Action shall proceed as a class action; provided however, that if

a Final Approval Order is not issued, then any certification shall be null and void and, for the avoidance of doubt, Defendant shall retain all rights to object to any future requests to certify a class. Plaintiffs and Class Counsel shall not reference this Agreement in support of any subsequent motion for class certification of any class in the Action.

V. Settlement Consideration

77. When submitting a Claim Form, Settlement Class Members may choose a Documented Loss Cash Payment, CCPA Cash Payment, and/or Credit and Identity Monitoring or Alternative Cash Payment. If a Settlement Class Member does not submit a Valid Claim or opt-out, the Settlement Class Member will release his or her claims against Defendant without receiving a Settlement Class Member Benefit.

a. Documented Loss Cash Payment up to \$5,000

Settlement Class Members may submit a claim for a Cash Payment under this section for up to \$5,000.00 per Settlement Class Member upon presentment of documented losses related to the Data Incident. To receive a documented loss Cash Payment, a Settlement Class Member must elect the Documented Loss Cash Payment on the Claim Form attesting under penalty of perjury to incurring documented losses. Settlement Class Members will be required to submit reasonable documentation supporting the losses. Settlement Class Members shall not be

reimbursed for expenses if they have been reimbursed for the same expenses by another source, including compensation provided in connection with the credit monitoring and identity theft protection product offered as part of the notification letter provided by Defendant or otherwise. If a Settlement Class Member does not submit reasonable documentation supporting a loss, or if their Claim is rejected by the Settlement Administrator for any reason, and the Settlement Class Member fails to cure his or her Claim, the Claim will be rejected.

b. CCPA Cash Payment

In addition to electing a Documented Loss Cash Payment and a Credit and Identity Monitoring or an Alternative Cash Payment, California Settlement Class Members may also make a Claim for a CCPA Cash Payment in the amount of \$100, which may be increased or decreased on a pro rata basis.

c. Credit and Identity Monitoring or Alternative Cash Payment

In addition to electing a Documented Loss Cash Payment and/or a CCPA Payment, Settlement Class Members may also submit a claim for either two years of Kroll Essential Monitoring, or an Alternative Cash Payment. The Alternative Cash Payment Amount may increase or decrease depending on the number of Valid Claims for the other Class Member Benefits.

78. Business Practice Changes. As part of their settlement negotiations, and without admitting any wrongdoing, Defendant has made assurances to Plaintiffs

that they have and will undertake reasonable steps to further secure their systems and environments in conjunction with the specific concerns that Plaintiffs raise as part of their allegations. One such action Defendant has undertaken is to update its data retention following the Data Incident. Defendant has provided confidential discovery regarding the number of individuals in the Settlement Class broken down by state of residence, the facts and circumstances of the Data Incident and Defendant's response thereto, and the changes and improvements that have been made or are being made to protect class members' Private Information.

VI. Settlement Approval

79. Upon execution of this Agreement by all Parties and Class Counsel, Class Counsel shall file a Motion for Preliminary Approval. The proposed Preliminary Approval Order shall be attached to the motion as an exhibit and shall be in a form agreed to by Class Counsel and Defendant.

80. The Motion for Preliminary Approval shall, among other things, request the Court: (1) preliminarily approve the terms of the Settlement as being within the range of fair, adequate, and reasonable; (2) provisionally certify the Settlement Class for settlement purposes only; (3) approve the Notice Program set forth herein and approve the form and content of the Notices of the Settlement; (4) approve the Claim Form and Claim process; (5) approve the procedures for individuals in the Settlement Class to opt-out of or object to the Settlement; (6) stay

the Action and Related Actions pending Final Approval of the Settlement; and (7) schedule a Final Approval Hearing for a time and date mutually convenient for the Court, Class Counsel, and Defendant's Counsel.

VII. Settlement Administrator

81. The Parties agree that, subject to Court approval, Kroll shall be the Settlement Administrator. The Parties shall jointly oversee the Settlement Administrator. The Settlement Administrator shall fulfill the requirements set forth in the Preliminary Approval Order and the Agreement and comply with all applicable laws, including, but not limited to, the Due Process Clause of the United States Constitution.

82. The Settlement Administrator shall administer various aspects of the Settlement as described in the next paragraph and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including, but not limited to, effectuating the Notice Program, handling the Claims process, administering the Settlement Fund, and distributing the Cash Payments to Settlement Class Members who submit Valid Claims.

83. The Settlement Administrator's duties include to:

a. Within 10 days of filing the Motion for Preliminary Approval, cause a CAFA Notice to be served upon the appropriate state and federal officials. All expenses associated with CAFA Notice shall be payable from the Settlement

Fund.

b. Complete the Court-approved Notice Program by noticing the Settlement Class by Email Notice or Postcard Notice, sending Long Form Notices and paper Claim Forms on request from individuals in the Settlement Class, reviewing Claim Forms, notifying Claimants of deficient Claim Forms using the Notice of Deficiency, and sending Settlement Class Member Benefits to Settlement Class Members who submit a Valid Claim;

c. Establish and maintain the Settlement Fund in the Escrow Account approved by the Parties;

d. Establish and maintain a post office box to receive opt-out requests from the Settlement Class, objections from Settlement Class Members, and Claim Forms;

e. Establish and maintain the Settlement Website to provide important information about the Settlement and to receive electronic Claim Forms, opt-out requests, and objections, with online opt-out requests and objections requiring Settlement Class Member email validation;

f. Establish and maintain an automated toll-free telephone line for the Settlement Class to call with Settlement-related inquiries, and answer frequently asked questions of individuals in the Settlement Class who call with or otherwise communicate such inquiries;

- g. Respond to any mailed Settlement Class member inquiries;
- h. Process all opt-out requests from the Settlement Class;
- i. Provide weekly reports to Class Counsel and Defendant's Counsel that summarize the number of Claims submitted, Claims approved and rejected, Notices of Deficiency sent, opt-out requests and objections received that week, the total number of opt-out requests and objections received to date, and other pertinent information;
- j. In advance of the Final Approval Hearing, prepare a declaration confirming the Notice Program was completed in accordance with the terms of this Agreement and the Preliminary Approval Order, describing how the Notice Program was completed, indicating the number of Claim Forms received, providing the names of each individual in the Settlement Class who timely and properly requested to opt-out from the Settlement Class, indicating the number of objections received, and other information as may be necessary to allow the Parties to seek and obtain Final Approval;
- k. Distribute, out of the Settlement Fund, Cash Payments by electronic means or by paper check;
- l. Send Settlement Class Members who elect Credit & Identity Monitoring emails instructing how to activate their Credit and Identity Monitoring service;

m. Pay Court-approved attorneys' fees and costs, and Service Awards out of the Settlement Fund;

n. Pay Settlement Administration Costs out of the Settlement Fund following approval by Class Counsel; and

o. Perform any other Settlement Administration function at the instruction of Class Counsel and Defendant's Counsel, including, but not limited to, verifying that the Settlement Fund has been properly administered and that the Cash Payments have been properly distributed.

84. The Notice Program, including the Email Notice, Postcard Notice, Long Form Notice, and Claim Form, will be reviewed and approved by the Settlement Administrator, but may be revised as agreed upon by the Parties prior to submission to the Court for approval. Immaterial revisions to these documents may also be made prior to dissemination of Notice.

VIII. Notice to the Settlement Class

85. Defendant will serve or cause to be served the CAFA Notice no later than 10 days after this Agreement is filed with the Court.

86. Defendant will make available to Class Counsel and the Settlement Administrator the Class List no later than 10 days after entry of the Preliminary Approval Order.

87. Within 20 days following entry of the Preliminary Approval Order, the

Settlement Administrator shall commence the Notice Program provided herein, using the forms of Notice approved by the Court. Email Notice shall be disseminated to all those Settlement Class members for which Defendant maintained email addresses. For those Settlement Class members for which there are no emails, or for those in which emails bounced back or are otherwise unopened (to the extent known) for 7 days after Notice is issued, Postcard Notice shall be disseminated via U.S. Mail to the Settlement Class's mailing addresses, to the extent known. Notice shall also be published on the Settlement Website. Class Counsel and the Settlement Administrator may elect to send one reminder notice either by email and/or by mail within 30 days of the Claim Form Deadline.

88. The Notice shall include, among other information: a description of the material terms of the Settlement; how to submit a Claim Form; the Claim Form Deadline; the last day of the Opt-Out Period for individuals in the Settlement Class to opt-out of the Settlement Class; the last day of the Objection Period for Settlement Class Members to object to the Settlement and/or Application for Attorneys' Fees, Costs, and Service Awards; the Final Approval Hearing date; and the Settlement Website address at which Settlement Class members may access this Agreement and other related documents and information. Class Counsel and Defendant's Counsel shall insert the correct dates and deadlines in the Notice before the Notice Program commences, based upon those dates and deadlines set by the Court in the Preliminary

Approval Order. If the date or time for the Final Approval Hearing changes, the Settlement Administrator shall update the Settlement Website to reflect the new date. No additional notice to the Settlement Class is required if the date or time for the Final Approval Hearing changes.

89. The Settlement Administrator shall establish the Settlement Website no later than the day before Notice is first initiated. The Settlement Administrator shall ensure the Settlement Website makes available the Court-approved online Claims Form that can be submitted directly on the Settlement Website or in printable version that can be sent by U.S. Mail to the Settlement Administrator.

90. The Long Form Notice also shall include a procedure for individuals in the Settlement Class to opt out of the Settlement; and the Email Notice and Postcard Notice shall direct individuals in the Settlement Class to review the Long Form Notice to obtain the opt-out instructions. Individuals in the Settlement Class may opt out of the Settlement Class at any time during the Opt-Out Period by mailing a request to opt-out to the Settlement Administrator postmarked no later than the last day of the Opt-Out Period. The opt-out request must be personally signed by the Settlement Class member and contain the name, address, telephone number, and email address (if any), and include a statement indicating a request to be excluded from the Settlement Class. Any individual in the Settlement Class who does not timely and validly request to opt out shall be bound by the terms of this Agreement

even if he or she does not submit a Valid Claim. “Mass” or “class” requests for exclusion filed by third parties on behalf of a “mass” or “class” of Settlement Class Members or multiple Settlement Class Members, where an opt-out has not been signed by each and every individual Settlement Class Member, will not be allowed.

91. The Long Form Notice also shall include a procedure for the Settlement Class to object to the Settlement and/or Application for Attorneys’ Fees, Costs, and Service Awards, and the Email Notice and Postcard Notice shall direct the Settlement Class to review the Long Form Notice to obtain the objection instructions. Objections may be submitted on the Settlement Website through means established by the Settlement Administrator or mailed to the Settlement Administrator, who will then promptly distribute any objections to counsel. Class Counsel shall be responsible for ensuring that any objections are lodged on the Court docket. For an objection to be considered by the Court, the objection must be submitted no later than the last day of the Objection Period, as specified in the Notice. If submitted by mail, an objection shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (e.g., Federal Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label.

92. For an objection to be considered by the Court, the objection must also

set forth:

- a. the objector's full name, mailing address, telephone number, and email address (if any);
- b. all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel;
- c. the number of times the objector has objected to a class action settlement within the 5 years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and the caption of any appeals related to such objection;
- d. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement and/or Application for Attorneys' Fees, Costs, and Service Awards;
- e. the number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the 5 years preceding the date of the filed objection, the caption of each case in which counsel or the firm has made such objection, and the caption of any appeal related to such objection;
- f. any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector's counsel and

any other person or entity;

g. the identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;

h. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection (if any);

i. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and

j. the objector's signature (an attorney's signature is not sufficient).
Class Counsel and/or Defendant's Counsel may conduct limited discovery on any objector or objector's counsel.

93. The Settlement Administrator shall perform reasonable address traces for those individuals whose emails bounced and or otherwise were unopened within 7 days of the Notice being issued and for those Postcard Notices that are returned as undeliverable. By way of example, a reasonable tracing procedure would be to run addresses of returned postcards through the Lexis/Nexis database that can be utilized for such purpose. No later than 45 days before the original date set for the Final Approval Hearing, the Settlement Administrator shall complete the re-mailing of Postcard Notice to those Settlement Class members whose new addresses were identified as of that time through address traces.

94. The Notice Program shall be completed no later than 45 days before the

original date set for the Final Approval Hearing.

IX. Claim Form Process and Disbursement of Cash Payments

95. The Notice will explain to the Settlement Class that they may be entitled to a Settlement Class Member Benefit and how to submit a Claim Form.

96. Claim Forms may be submitted online through the Settlement Website or through U.S. Mail by sending them to the Settlement Administrator at the address designated on the Claim Form.

97. The Settlement Administrator shall collect, review, and address each Claim Form received to determine whether the Claim Form meets the requirements set forth in this Settlement and is thus a Valid Claim. The Settlement Administrator shall examine the Claim Form before designating the Claim as a Valid Claim to determine that the information on the Claim Form is reasonably complete. The Settlement Administrator shall have the sole authority to determine whether a Claim by any Claimant is a Valid Claim.

98. The Settlement Administrator shall use all reasonable efforts and means to identify and reject duplicate claims. No Settlement Class Member may submit more than one Claim Form. The Settlement Administrator shall identify any Claim Forms that appear to seek relief on behalf of the same Settlement Class Member. The Settlement Administrator shall use its best efforts to determine whether there is any duplication of claims, and if there is, contact the Settlement Class Member in an

effort to determine which Claim Form is the appropriate one for consideration.

99. The Settlement Administrator shall exercise, in its discretion, all usual and customary steps to prevent fraud and abuse and take any reasonable steps to prevent fraud and abuse in the Claim process. The Settlement Administrator may, in its discretion, deny in whole or in part any Claim Form to prevent actual or possible fraud or abuse. By agreement, the Parties can instruct the Settlement Administrator to take whatever steps it deems appropriate if the Settlement Administrator identifies actual or possible fraud or abuse relating to the submission of claims, including, but not limited to, denying in whole or in part any Claim to prevent actual or possible fraud or abuse. If any fraud is detected or reasonably suspected, the Settlement Administrator and Parties may require information from Claimants or deny Claims, subject to the supervision of the Parties and ultimate oversight by the Court.

100. Claim Forms that do not meet the terms and conditions of this Settlement shall be promptly rejected by the Settlement Administrator and the Settlement Administrator shall advise the Claimant or Settlement Class Member of the reason(s) why the Claim Form was rejected. However, if the Claim Form is rejected for containing incomplete or inaccurate information, and/or omitting required information, the Settlement Administrator may send a Notice of Deficiency explaining what information is missing or inaccurate and needed to validate the Claim and have it submitted for consideration. The Settlement Administrator shall

notify the Claimant using the contact information provided in the Claim Form. The additional information and/or documentation can include, for example, answers to questions regarding the validity of the Claimant's physical or e-signature. A Claimant shall have until the Claim Form Deadline, or 15 days from the date the Notice of Deficiency is sent to the Claimant via mail and postmarked or via email, whichever is later, to reply to the Notice of Deficiency and provide the required information. If the Claimant timely and adequately provides the requested information and/or documentation, the Claim shall be deemed a Valid Claim and processed by the Settlement Administrator. If the Claimant does not timely and completely provide the requested information and/or documentation, the Settlement Administrator shall reduce or deny the Claim unless Defendant and Class Counsel otherwise agree.

101. Where a good faith basis exists, the Settlement Administrator may reduce or reject a Claim for, among other reasons, the following:

- a. Failure to fully complete and/or sign the Claim Form;
- b. Illegible Claim Form;
- c. The Claim Form is fraudulent;
- d. The Claim Form is duplicative of another Claim Form;
- e. The Claimant is not a Settlement Class Member;
- f. The Claimant submitted a timely and valid request to opt out of

the Settlement Class;

g. The person submitting the Claim Form requests that payment be made to a person or entity other than the Claimant for whom the Claim Form is submitted;

h. Failure to submit a Claim Form by the Claim Form Deadline; and/or

i. The Claim Form otherwise does not comply with the requirements of this Settlement.

102. The Settlement Administrator's reduction or denial of a Claim is final, subject to the following dispute resolution procedures:

a. The Settlement Administrator shall have 30 days from the Claim Form Deadline to approve or reject Claims based on findings of fraud or duplication.

b. A request for additional information by sending a Notice of Deficiency shall not be considered a denial for purposes of this Paragraph.

c. If a Claim is rejected for fraud or duplication, the Settlement Administrator shall notify the Claimant using the contact information provided in the Claim Form. Class Counsel and Defendant's Counsel shall have the opportunity to be provided with copies of all such notifications to Claimants.

d. The Settlement Administrator's determination as to whether to approve, deny, or reduce a Claim shall be final and binding.

103. The Settlement Administrator shall provide all information gathered in investigating Claims, including, but not limited to, copies of all correspondence and email and all notes of the Settlement Administrator, the decision reached, and all reasons supporting the decision, if requested by Class Counsel or Defendant's Counsel. Additionally, Class Counsel and Defendant's Counsel shall have the right to inspect the Claim Forms and supporting documentation received by the Settlement Administrator at any time upon reasonable notice.

104. No person or entity shall have any claim against Defendant, Defendant's Counsel, Plaintiffs, the Settlement Class, Class Counsel, and/or the Settlement Administrator based on any eligibility determinations, distributions, or awards made in accordance with this Settlement.

105. No later than 75 days after Final Approval or 75 days after the Effective Date, whichever is later, the Settlement Administrator shall distribute the Settlement Class Member Benefits.

106. Cash Payments to Settlement Class Members will be made electronically or by paper check. The Claim Form will provide Settlement Class Members with instructions on selecting the type of payment they wish to receive. Settlement Class Members who do not select an option will default to a payment method determined by the Parties and Settlement Administrator. Settlement Class Members receiving payment by check shall have 90 days to negotiate the check.

107. The Settlement Administrator will send an email to Settlement Class Members with Valid Claims that elected Credit and Identity Monitoring with information on how to enroll in the Credit and Identity Monitoring, including the activation code.

X. Final Approval Order and Final Judgment

108. Plaintiffs shall file their Motion for Final Approval of the Settlement, inclusive of the Application for Attorneys' Fees, Costs, and Service Awards, no later than 45 days before the original date set for the Final Approval Hearing. At the Final Approval Hearing, the Court will hear argument on Plaintiffs' Motion for Final Approval of the Settlement and Application for Attorneys' Fees, Costs, and Service Awards. In the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement and/or to the Application for Attorneys' Fees, Costs, and Service Awards, provided the objectors submitted timely objections that meet all of the requirements listed in the Agreement.

109. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order and final judgment thereon, and whether to grant the Application for Attorneys' Fees, Costs, and Service Awards. Such proposed Final Approval Order shall, among other things:

- a. Determine that the Settlement is fair, adequate and reasonable;

- b. Finally certify the Settlement Class for settlement purposes only;
- c. Determine that the Notice Program satisfies Due Process requirements;
- d. Bar and enjoin all Releasing Parties from asserting any of the Released Claims at any time and in any jurisdiction, including during any appeal from the Final Approval Order; bar and enjoin all Releasing Parties from pursuing any Released Claims against Released Parties at any time and in any jurisdiction, including during any appeal from the Final Approval Order; and retain jurisdiction over the enforcement of the Court's injunctions;
- e. Release Defendant and the Released Parties from the Released Claims; and
- f. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Defendant, Plaintiffs, all Settlement Class Members, and all objectors, to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

XI. Service Awards, Attorneys' Fees and Costs

110. *Service Awards* – In recognition of the time and effort the Class Representatives expended in pursuing this Action and in fulfilling their obligations and responsibilities as Class Representatives, and of the relief conferred on all Settlement Class Members by the Settlement, Class Counsel shall request a Service

Award for the Class Representatives in the amount not to exceed \$2,500.00 each. If approved, the Service Awards shall be paid by the Settlement Administrator out of the Settlement Fund within 35 days of the Effective Date. The Service Award payments to the Class Representatives shall be separate and apart from their entitlement to benefits from the Settlement Fund.

111. ***Attorneys' Fees and Costs*** - Class Counsel shall apply to the Court for an award of attorneys' fees of up to 33.33% of the Settlement Fund, plus reimbursement of costs. The attorneys' fees and cost awards approved by the Court shall be paid by the Settlement Administrator out of the Settlement Fund by wire transfer to an account designated by Class Counsel within 35 days of Effective Date.

112. This Settlement is not contingent on approval of the request for attorneys' fees and costs or Service Awards, and if the Court denies the request or grants amounts other than what was requested, the remaining provisions of the Agreement shall remain in force. The provisions for attorneys' fees and costs and the Service Awards were not negotiated until after all material terms of the Settlement.

XII. Disposition of Residual Funds

113. The Settlement is designed to exhaust the Settlement Fund. To the extent any funds remain in the Settlement Fund from uncashed checks in the Settlement Fund 20 days following the 90-day check negotiation period, all

remaining funds shall be distributed to an appropriate mutually agreeable *cy pres* recipient to be approved by the Court.

XIII. Releases

114. As of the Effective Date, the Releasing Parties shall automatically be deemed to have fully, finally, and irrevocably released and forever discharged the Released Parties of, and shall be forever barred from instituting, maintaining, or prosecuting, any and all liabilities, rights, claims, actions, causes of action, demands, damages, costs, attorneys' fees, losses and remedies, whether known or unknown, asserted or unasserted, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, based on contract, tort or any other theory, whether on behalf of themselves or others, that result from, arise out of, are based upon, or relate to (1) the Data Incident; or (2) any of the alleged violations of laws or regulations cited in the Complaint. Excluded from the scope of the Release, including for Settlement Class Members, is consumer-oriented information that may have been exposed in the Data Incident, including customer profile information, order details, loyalty program data, and sales history.

115. Plaintiffs and Settlement Class Members covenant and agree they will not take any step whatsoever to assert, sue on, continue, pursue, maintain, prosecute, or enforce any Released Claim, directly or indirectly, whether on behalf of themselves or others, against any of the Released Parties in any jurisdiction.

116. Individuals in the Settlement Class who opt-out of the Settlement prior to the Opt-Out Deadline do not release their claims and will not obtain any benefits under the Settlement.

117. With respect to the Released Claims, Plaintiffs and Settlement Class Members, expressly understand and acknowledge it is possible that unknown economic losses or claims exist or that present losses may have been underestimated in amount or severity. Plaintiffs and Settlement Class Members explicitly took that into account in entering into this Agreement, and a portion of the consideration and the mutual covenants contained herein, having been bargained for between Plaintiffs and Defendant with the knowledge of the possibility of such unknown claims for economic loss, were given in exchange for a full accord, satisfaction, and discharge of all such claims. Consequently, Plaintiffs and the Settlement Class Members shall be deemed to have, and by operation of the Settlement shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code (to the extent it is applicable, or any other similar provision under federal, state or local law to the extent any such provision is applicable), which reads:

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

118. Plaintiffs or Settlement Class Members may hereafter discover facts other than or different from those that he or she knows or believes to be true with respect to the subject matter of the claims released herein, or the law applicable to such claims may change. Nonetheless, each of those individuals expressly agrees that, as of the Effective Date, he or she shall have automatically and irrevocably waived and fully, finally, and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, contingent or non-contingent claims with respect to all of the matters described in or subsumed by this Agreement. Further, each of those individuals agrees and acknowledges that he or she shall be bound by this Agreement, including by the release herein and that all of their claims in the Action shall be dismissed with prejudice and released, whether or not such claims are concealed or hidden; without regard to subsequent discovery of different or additional facts and subsequent changes in the law; and even if he or she never receives actual notice of the Settlement and/or never receives a Cash Payment from the Settlement.

119. Upon the Effective Date: (1) this Settlement shall be the exclusive remedy for any and all Released Claims of Plaintiffs and Settlement Class Members; and (2) Plaintiffs and Settlement Class Members stipulate to be and shall be permanently barred and enjoined by Court order from initiating, asserting, or prosecuting any Released Claim against the Released Parties, whether on behalf of

Plaintiffs, any Settlement Class Member or others, in any jurisdiction, including in any federal, state, or local court or tribunal.

XIV. Termination of Settlement

120. This Agreement shall be subject to and is expressly conditioned on the occurrence of all of the following events:

- a. Court approval of the Settlement consideration set forth in Section V and the Releases set forth in Section XIII of this Agreement;
- b. The Court has entered the Preliminary Approval Order;
- c. The Court has entered the Final Approval Order, and all objections, if any, are overruled, and all appeals taken from the Final Approval Order are resolved in favor of Final Approval; and
- d. The Effective Date has occurred.

121. If any of the conditions specified in the preceding paragraph are not met, then this Agreement shall be cancelled and terminated.

122. Defendant shall have the option to terminate this Agreement if more than 1% of the Settlement Class opt-out of the Settlement. Defendant shall notify Class Counsel and the Court of its intent to terminate this Agreement pursuant to this paragraph within 10 days after the end of the Opt-Out Period, or the option to terminate shall be considered waived.

123. In the event that the Class Settlement Agreement is not approved by the

Court or the Class Settlement Agreement is terminated in accordance with any of its terms the Parties will seek in good faith to revise the Agreement as needed to obtain Court approval, provided, however, that no party may use subsequent legal developments or other intervening events, other than decision(s) denying or reversing approval of the Agreement, as justification for renegotiating the Settlement. Failing this, (a) the parties shall be restored to their respective positions in the Action and shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Settling Party or litigant, which extension shall be subject to the decision of the Court; (b) Defendant will still bear any costs of notice and administration through the date of termination, and (c) the terms and provisions of the Class Settlement Agreement shall have no further force and effect with respect to the parties and shall not be used in this litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Class Settlement Agreement, including certification of the Settlement Class for settlement purposes only, shall be treated as vacated, *nunc pro tunc*. Notwithstanding any statement in this Class Settlement Agreement to the contrary, no order of the Court or modification or reversal on appeal of any order reducing the amount of any attorneys' fees and expenses award to Settlement Class Counsel shall constitute grounds for cancellation or termination of this Agreement. To the extent this

Agreement does not become final, Defendant will be entitled to the return of any amounts not already incurred by the Settlement Administrator.

XV. Effect of Termination

124. The grounds upon which this Agreement may be terminated are set forth in Section XIV. In the event of a termination, this Agreement shall be considered null and void; all of Plaintiffs', Class Counsel's, Defendant's, and Defendant's Counsel's obligations under the Settlement shall cease to be of any force and effect; and the Parties shall return to the *status quo ante* in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement rights, claims, and defenses will be retained and preserved.

125. In the event the Settlement is terminated in accordance with the provisions of this Agreement, any discussions, offers, or negotiations associated with this Settlement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose. In such event, all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court.

XVI. No Admission of Liability

126. This Agreement reflects the Parties' compromise and settlement of disputed claims. This Agreement shall not be construed as or deemed to be evidence

of an admission or concession of any point of fact or law. Defendant has denied and continues to deny each of the claims and contentions alleged in the Complaint. Defendant specifically denies that a class could or should be certified in the Action for litigation purposes. Defendant does not admit any liability or wrongdoing of any kind, by this Agreement or otherwise. Defendant has agreed to enter into this Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of any further claims that were asserted or could possibly have been asserted in the Action.

127. Class Counsel believe the claims asserted in the Action have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly, and time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel fully investigated the facts and law relevant to the merits of the claims, conducted discovery, and conducted independent investigation of the alleged claims. Class Counsel concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class.

128. This Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties in connection with the negotiations of this Agreement shall be deemed or construed to be an admission of the truth or falsity of

any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever.

129. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (1) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by the Plaintiffs or the Settlement Class, or of any wrongdoing or liability of the Released Parties; or (2) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any proceeding in any court, administrative agency, or other tribunal.

130. In addition to any other defenses Defendant may have at law, in equity, or otherwise, to the extent permitted by law, this Agreement may be pleaded as a full and complete defense to and may be used as the basis for an injunction against any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of this Agreement or the Releases contained herein.

XVII. Miscellaneous Provisions

131. *Gender and Plurals.* As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

132. *Binding Effect.* This Agreement shall be binding upon, and inure to and for the benefit of, the successors and assigns of the Releasing Parties and the

Released Parties.

133. ***Cooperation of Parties.*** The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, seek Court approval, uphold Court approval, and do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement.

134. ***Obligation to Meet and Confer.*** Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have met and conferred in an attempt to resolve the dispute.

135. ***Integration and No Reliance.*** This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. This Agreement is executed without reliance on any covenant, agreement, representation, or warranty by any Party or any Party's representative other than those expressly set forth in this Agreement. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

136. ***No Conflict Intended.*** Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

137. ***Governing Law.*** Except as otherwise provided herein, the Agreement

shall be construed in accordance with, and be governed by, the laws of the state of North Carolina, without regard to the principles thereof regarding choice of law.

138. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required.

139. **Jurisdiction.** The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Settlement Administrator. As part of the agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose. The Court shall retain jurisdiction over the enforcement of the Court's injunction barring and enjoining all Releasing Parties from asserting any of the Released Claims and from pursuing any Released Claims against the Released Parties at any time and in any jurisdiction, including during any appeal from the Final Approval Order.

140. **Notices.** All notices provided for herein, shall be sent by email with a

hard copy sent by overnight mail to:

If to Plaintiffs or Class Counsel:

John Heenan
Heenan & Cook
1631 Zimmerman Trail
Billings, Montana 59102

If to Defendant or Defendant's Counsel:

Josh Becker
Shook, Hardy & Bacon LLP
1230 Peachtree Street, Suite 1230
Atlanta, Georgia 30309

General Counsel
Advance Auto Parts, Inc.
4200 Six Forks Road
Raleigh, North Carolina 27609

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice Program.

141. ***Modification and Amendment.*** This Agreement may not be amended or modified, except by a written instrument signed by Class Counsel and Defendant's Counsel and, if the Settlement has been approved preliminarily by the Court, approved by the Court.

142. ***No Waiver.*** The waiver by any Party of any breach of this Agreement

by another Party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement. There will be no waiver expect when such waiver is signed by the responsible Party.

143. ***Authority.*** Class Counsel (for Plaintiffs and the Settlement Class), and Defendant's Counsel (for Defendant), represent and warrant that the persons signing this Agreement on their behalf have full power and authority to bind every person, partnership, corporation, or entity included within the definitions of Plaintiffs and Defendant to all terms of this Agreement. Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all the terms and provisions of this Agreement.

144. ***Agreement Mutually Prepared.*** Neither Plaintiffs nor Defendant shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

145. ***Independent Investigation and Decision to Settle.*** The Parties understand and acknowledge they: (1) have performed an independent investigation of the allegations of fact and law made in connection with this Action; and (2) that even if they may hereafter 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 the Action

as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. All Parties recognize and acknowledge they reviewed and analyzed data that they and their experts used to make certain determinations, arguments, and settlement positions. The Parties agree this Settlement is fair, reasonable, and adequate, and will not attempt to renegotiate or otherwise void or invalidate or terminate the Settlement irrespective of what any unexamined data later shows. It is the Parties' intention to resolve their disputes in connection with this Action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

146. ***Receipt of Advice of Counsel.*** Each Party acknowledges, agrees, and specifically warrants that he, she, or it has fully read this Agreement and the Releases contained herein, received independent legal advice with respect to the advisability of entering into this Agreement and the Releases, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases.

Signature Page to Follow

CLASS COUNSEL, ON BEHALF OF PLAINTIFFS



JOHN HEENAN
HEENAN & COOK

DEFENDANT’S COUNSEL

JOSHUA BECKER
SHOOK, HARDY & BACON, L.L.P.