

# Exhibit F

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

THOMAS HODGES, HALEYRAE CANNELL,  
DANIELLE BENEDICT, CHRISTOPHER  
BRITTON, XE DAVIS, AND EMILY HOZA,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

GOODRX HOLDINGS, INC.,

Defendant.

Case No. 1:23-cv-24127-BB

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**CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

This Class Action Settlement and Release (the “Agreement,” “Settlement Agreement,” or “Class Action Settlement Agreement”) is entered into on October 27, 2023 by and among the Class Representatives<sup>1</sup> (also, the “Plaintiffs”), for themselves individually and on behalf of the Settlement Class, and GoodRx Holdings, Inc. (collectively, the “Parties”).

**A. Recitals**

1. There is pending in the United States District Court for the Southern District of Florida, an action captioned *Thomas Hodges et al. v. GoodRx Holdings, Inc.*, No 1:23-cv-24127-BB (S.D. Fla.), in which the Class Representatives have alleged that GoodRx improperly shared their Data including through its use of marketing and analytics vendors (the “Litigation”).

2. Specifically, Plaintiffs allege that Defendant has violated state and federal wiretapping statutes, consumer protection laws, and common law privacy rights by allegedly

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<sup>1</sup> Except as otherwise specified, capitalized terms shall have the meanings set forth in Paragraph B of this Agreement, titled “Definitions.”

intercepting and sharing certain user Data with its vendors. Plaintiffs allege that Defendant did this through its implementation and usage of Internet tracking technologies supplied by third parties, including pieces of code known as SDKs (defined below) and tracking pixels (further defined as “Pixels” herein), and, when using some sites or applications, certain protected personal and health information would purportedly be disclosed in particular circumstances to specific vendors because of the SDKs and Pixels.

3. Defendant denies all claims asserted against it in the Litigation, denies all allegations of wrongdoing and liability, and denies all material allegations of the class action complaint filed on October 27, 2023 (the “Complaint”).

4. Class Counsel have investigated the facts relating to the claims and defenses alleged and the underlying events in the Litigation, have made a thorough study of the legal principles applicable to the claims and defenses asserted in the Litigation, and have conducted a thorough assessment of the strengths and weaknesses of the Parties’ respective positions, including information supplied to Class Counsel in the context of mediation.

5. The Parties desire to settle the claims asserted and that could be asserted, and all claims arising out of or related to the allegations or subject matter of the Complaint, the Litigation, or Defendant’s alleged use of third-party tracking technology on the terms and conditions set forth herein for the purpose of avoiding the burden, expense, risk, and uncertainty of continuing to litigate the Litigation.

6. This Agreement is the result of vigorous and extensive arm’s-length negotiations that took place over the course of several months between Class Counsel and Defendant’s Counsel and were overseen by an experienced and highly reputable mediator, Bennett G. Picker, Senior Counsel of Stradley Ronon. The Parties conducted two separate mediations and multiple

telephonic conferences with Mr. Picker in an effort to resolve their disputes. These efforts, described further in Plaintiffs' motion for preliminary approval of this Agreement, resulted in a settlement in principle, the terms of which are reflected in this Agreement.

7. This Settlement Agreement shall not be deemed or construed to be an admission or evidence of a violation of any statute, law, rule, or regulation or of any liability or wrongdoing by Defendant or of the truth of any of Plaintiffs' claims or allegations, nor shall it be deemed or construed to be an admission or evidence of Defendants' defenses. Without limiting the foregoing in any way, neither this Settlement Agreement nor anything contained herein shall be construed as or deemed to be an admission of any sort by Defendant that any of the claims in the Litigation would be suitable for class treatment in any context other than settlement due to, *inter alia*, the manageability issues that would arise were class treatment allowed.

8. Plaintiffs and Class Counsel, on behalf of the Settlement Class (as defined below), have concluded—based upon their pre-suit investigation, information exchange, mediation, and taking into account the contested issues involved, including the fact that many Settlement Class Members (as defined below) are bound by arbitration agreements, the expense and time necessary to prosecute the Litigation through trial, the risks and costs associated with further prosecution of the Litigation, the uncertainties of complex litigation, the desired outcome from continued litigation, and the substantial benefits to be received pursuant to this Settlement Agreement—that a settlement with Defendant on the terms set forth herein is fair and reasonable and in the best interest of Plaintiffs and the Settlement Class. Plaintiffs and Class Counsel believe that the Settlement reflected in this Settlement Agreement confers substantial benefits upon the Settlement Class.

9. The Parties, by and through their respective duly authorized counsel of record, and intending to be legally bound hereby, agree that, subject to the approval of the Court as provided for in this Agreement, the Litigation, all matters and claims in the Complaint, and all matters and claims arising out of or related to the allegations or subject matter of the Complaint and Litigation, shall be settled, compromised, and dismissed on the merits and with prejudice on behalf of the Settlement Class upon the following terms and conditions.

**B. Definitions**

1. “Agreement” or “Settlement Agreement” means this settlement agreement, including all exhibits hereto.

2. “Attorneys’ Fees and Expenses Award” means the amount awarded by the Court to be paid to Class Counsel from the Settlement Fund, such amount to be in full and complete satisfaction of Class Counsel’s claim or request (and any request made by any other attorneys) for payment of reasonable attorneys’ fees and Litigation Expenses.

3. “Claim Form” means the claim form that will be emailed or otherwise provided or made available to Settlement Class Members whereby they may receive a cash payment under the Settlement, substantially in the form attached hereto as Exhibit A.

4. “Claim Deadline” is the date by which Settlement Class Members must submit a valid Claim Form to receive a cash payment under the Settlement. The Claim Deadline is sixty (60) days after the Notice Date.

5. “Class Counsel” means Patrick Montoya, Gary M. Klinger, Jonathan B. Cohen, Alexandra M. Honeycutt, and Daniel K. Bryson of Milberg Coleman Bryson Phillips Grossman, PLLC.

6. “Class Notice” means the notice of this Settlement Agreement, which shall include the Long-Form Notice and Email Notice, substantially in the forms attached hereto as Exhibits B and C, respectively.

7. “Class Representatives” means those Persons appointed by the Court to represent the Settlement Class for purposes of the Settlement of the Litigation.

8. “Court” or “District Court” means the United States District Court for the Southern District of Florida.

9. “Data” means any data related to a Person’s use of websites, applications, or services made available by or through GoodRx, including GoodRx’s website and app, GoodRx Gold, and GoodRx Care, including but not limited to information that is or could be used, whether on its own or in combination with other information, to identify, locate, recognize, reach, or contact a person or device.

10. “Data Disclosure” means the alleged disclosure of any Data of Plaintiffs and Settlement Class Members to any third party or vendor. This includes, but is not limited to any disclosure to Facebook, Google, Criteo, or other third parties or vendors as a result of any use, including but not limited to the use of Pixels, software development kits (“SDKs”), cookies, application programming interfaces (“APIs”), or any technologies used in relation to websites, applications, or services made available by or through Defendant through the date of execution of this Agreement.

11. “Defendant” means GoodRx, as defined in this Agreement.

12. “Defendant’s Counsel” means Martin L. Roth and Alyssa C. Kalisky, of Kirkland & Ellis LLP, located at 300 North LaSalle, Chicago, IL 60654, and Olivia Adendorff, of Kirkland & Ellis LLP, located at 4550 Travis Street, Dallas, TX 74205.

13. “Effective Date” means the date defined in Section N of this Settlement Agreement.

14. “Email Notice” means the written notice to be sent to Settlement Class Members pursuant to the Preliminary Approval Order substantially in the form attached as Exhibit C to this Settlement Agreement.

15. “Final” with respect to a judgment or order means that the following have occurred: (i) the expiration of all deadlines to notice any appeal; (ii) if there is an appeal or appeals, the completion, in a manner that finally affirms and leaves in place the judgment or order 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, rehearing en banc, 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) final dismissal of any appeal or the final dismissal of any proceeding on certiorari.

16. “Final Approval Hearing” means the hearing to determine whether the Settlement should be given final approval and whether the application of Class Counsel for attorneys’ fees and Litigation Expenses should be approved.

17. “Final Approval Order” means the order of the Court finally approving this Settlement.

18. “Final Judgment” means the dismissing with prejudice of the claims of the Class Representatives and Settlement Class Members against Defendant.

19. “GoodRx” means GoodRx Holdings, Inc., and any and all past, present, and future affiliates, parents, subsidiaries, predecessors, successors, or assignees.

20. “Litigation Expenses” means costs and expenses incurred by Class Counsel in connection with commencing, prosecuting, mediating, and settling the Litigation, and obtaining an order of Final Judgment.

21. “Long-Form Notice” means the written notice substantially in the form of Exhibit B to this Settlement Agreement.

22. “Net Settlement Fund” means the amount of funds that remain in the Settlement Fund after funds are paid from or allocated for payment from the Settlement Fund for the following: (i) Notice and Settlement Administration Costs incurred pursuant to this Settlement Agreement, (ii) any taxes owed by the Settlement Fund, and (iii) any Attorneys’ Fees and Expenses Award approved by the Court.

23. “Notice Date” means the date, within forty five (45) days of the entry of the Preliminary Approval Order, when the Settlement Administrator shall email the Email Notice to all Settlement Class Members for whom Defendant has valid email addresses.

24. “Notice Program” means the notice program described in Paragraph I.1.

25. “Notice and Settlement Administration Costs” means all approved costs incurred or charged by the Settlement Administrator in connection with providing notice to Settlement Class Members, processing claims, and otherwise administering the Settlement.

26. “Objection Deadline” shall have the meaning set forth in Paragraph J.3 or as otherwise ordered by the Court.

27. “Opt-Out” means only persons and entities within the Settlement Class who file a timely and appropriate written Request for Exclusion from the Settlement in accordance with the exact procedures set forth in the Class Notice or who are excluded from the Settlement Class.



28. “Opt-Out Date” means the date by which Settlement Class Members must mail their Request for Exclusion in order for that request to be excluded from the Settlement Class to be effective. The postmark date shall constitute evidence of the date of mailing for these purposes. The Opt-Out Date shall be sixty (60) days after the Notice Date.

29. “Opt-Out Period” means the period commencing on the date of entry of the Preliminary Approval Order and ending on the Opt-Out Date, during which Settlement Class Members may submit a timely Request for Exclusion.

30. “Person” or “Persons” means an individual, corporation, partnership, limited partnership, limited liability company or partnership, 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 respective spouses, heirs, predecessors, successors, representatives, or assignees.

31. “Pixel” means any pixel provided by Meta, Google, or a third party or vendor, and any corresponding analytics or advertising technologies.

32. “Preliminary Approval Order” means the Court order preliminarily approving this Agreement.

33. “Released Claims” means all claims and other matters released in and by Section F of this Settlement Agreement. 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 Agreement.

34. “Released Parties” means jointly and severally, individually and collectively, the Defendant, its predecessors; successors; assigns; insurers; and any and all past, present, and future parents, owners, subsidiaries, divisions, departments, and affiliates, and all of their past, present,

and future heirs, executors, devisees, administrators, officers, executives, directors, stockholders, partners, members, agents, attorneys, advisors, auditors, accountants, contractors, servants, employees, representatives, insurers, and assignees.

35. “Releasing Parties” means Plaintiffs and the Settlement Class Members, and each of their heirs, estates, trustees, principals, beneficiaries, guardians, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors in-interest, and assigns and/or anyone claiming through them or acting or purporting to act for them or on their behalf.

36. “Settlement” means the settlement reflected by this “Settlement Agreement.”

37. “Settlement Administrator” means the class action settlement administrator to be retained by the Settlement Class, through Class Counsel, and approved by the Court, to carry out the Notice Program and administer the distribution process of the Net Settlement Fund.

38. “Settlement Class” means all natural persons in the United States who used any website, app, or service made available by or through GoodRx at any point prior to the execution date of this Agreement. Excluded from the Settlement Class are Defendant and its affiliates, parents, subsidiaries, officers, and directors, the Opt-Outs, as well as the judges presiding over this matter and the clerks of said judges.

39. “Settlement Class Members” means all Persons who are members of the Settlement Class.

40. “Settlement Fund” means the non-reversionary sum of thirteen million dollars and no cents (\$13,000,000), to be paid by Defendant as specified in this Agreement, which shall be used as the only source of payment for all costs of the Settlement. Defendant’s funding obligation under this Settlement Agreement shall under no circumstances exceed the amount of the Settlement Fund.

41. “Settlement Website” means a dedicated website created and maintained by the Settlement Administrator, which will contain relevant documents and information about the Settlement, including the Complaint, Email Notice, the Long-Form Notice, this Settlement Agreement, the Claim Form, and important dates and deadlines, among other things as agreed upon by the Parties and approved by the Court as required.

**C. Certification of the Settlement Class**

1. For settlement purposes only and within the context of the Settlement Agreement only, the Parties will jointly request that the Court certify the Settlement Class.

2. Plaintiffs identified in the Complaint will move to be appointed Class Representatives, and Class Counsel will move to be appointed as counsel to the Settlement Class for settlement purposes only.

3. If this Settlement Agreement is terminated or disapproved in whole or in part, or if the Effective Date should not occur for any reason, then the Parties’ request for certification of the Settlement Class will be withdrawn and deemed to be of no force or effect for any purpose in this or any other proceeding. In that event, Defendant reserves the right to assert any and all objections and defenses to certification of a class, and neither the Settlement Agreement nor any order or other action relating to the Settlement Agreement shall be offered by any Person as evidence in support of a motion to certify a class for a purpose other than settlement.

**D. Settlement Amount**

1. Settlement Amount. Defendant agrees to make a payment of thirteen million dollars and no cents (\$13,000,000) (the “Settlement Amount”) and deposit that payment into the Settlement Fund in accordance with the schedule described in Paragraph D.2 (titled “Payment Timing”), which shall be available to pay Notice and Settlement Administration Costs incurred prior to entry of the Final Approval Order and Final Judgment. For the avoidance of doubt, and

for purposes of this Settlement Agreement only, Defendant's liability under this Agreement shall not exceed thirteen million dollars and no cents (\$13,000,000), inclusive of Class Counsel's reasonable Attorneys' Fees and Expenses Award and Litigation Expenses. The Releasing Parties shall look solely to the Settlement Fund for settlement and satisfaction, as provided herein, of all Released Claims for which the Released Parties are released by the Releasing Parties pursuant to this Agreement.

2. Payment Timing. The Settlement Amount shall be paid in the following installments:

a. Within fourteen (14) days after the entry of the Preliminary Approval Order, GoodRx will pre-fund the Settlement Fund in the amount of five hundred thousand dollars and no cents (\$500,000), which shall be available to pay Notice and Settlement Administration Costs incurred prior to entry of the Final Approval Order and Final Judgment. Such amount will be deducted from the Settlement Fund due after entry of the Final Approval Order in accordance with this Settlement Agreement.

b. An amount of twelve million five hundred thousand dollars and no cents (\$12,500,000), minus the amount of the Attorneys' Fees and Expenses Award that is approved by the Court shall be paid to the Settlement Fund within fourteen (14) days of the entry of the Final Approval Order.<sup>2</sup>

c. The timing set forth in this provision is contingent upon the receipt of a W-9 from the Settlement Administrator for the Settlement Fund by the date that the Preliminary Approval Order is issued. If Defendant does not receive this information by the date that the

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<sup>2</sup> As referenced in Section L below, the Attorneys' Fees and Expenses Award will be paid from the Settlement Fund within fourteen (14) days after entry of the Final Approval Order.

Preliminary Approval Order is issued, the payments specified by this paragraph shall be made within thirty (30) days after Defendant receives this information.

3. Tax Benefits and Consequences. All taxes owed by the Settlement Fund shall be paid out of the Settlement Fund, shall be considered part of the Notice and Settlement Administration Costs, and shall be timely paid by the Settlement Administrator without prior order of the Court. Further, the Settlement Fund shall indemnify and hold harmless the Parties and their counsel for taxes (including, without limitation, taxes payable by reason of any such indemnification payments). The Parties and their respective counsel have made no representation or warranty with respect to the tax treatment by any Class Representative of any payment or transfer made pursuant to this Agreement or derived from or made pursuant to the Settlement Fund. Each Class Representative shall be solely responsible for the federal, state, and local tax consequences to them of the receipt of funds from the Settlement Fund pursuant to this Agreement. Under no circumstances will Defendant have any liability for taxes or tax expenses under the Settlement Agreement.

4. Escrow Account. The Settlement Fund shall be deposited, in accordance with the schedule described in Paragraph D.2 (titled "Payment Timing"), in an appropriate qualified settlement fund established by the Settlement Administrator in an interest-bearing account (as described below) but shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed pursuant to this Agreement or returned to those who paid the Settlement Fund in the event this Agreement is voided, terminated, or cancelled.

a. The Parties agree that the Settlement Fund is intended to be maintained as a qualified settlement fund within the meaning of Treasury Regulation § 1.468 B-1, and that the Settlement Administrator, within the meaning of Treasury Regulation § 1.468 B-2(k)(3), shall be

responsible for filing tax returns and any other tax reporting for or in respect of the Settlement Fund and paying from the Settlement Fund any taxes owed by the Settlement Fund. The Parties agree that the Settlement Fund shall be treated as a qualified settlement fund from the earliest date possible and agree to any relation-back election required to treat the Settlement Fund as a qualified settlement fund from the earliest date possible. Any and all funds held in the Settlement Fund shall be held in an interest-bearing account insured by the Federal Deposit Insurance Corporation (“FDIC”) at a financial institution determined by the Settlement Administrator and approved by the Parties. Funds may be placed in a non-interest-bearing account as may be reasonably necessary during the check-clearing process. The Settlement Administrator shall provide an accounting of any and all funds in the Settlement Fund, including any interest accrued thereon and payments made pursuant to this Agreement, upon request of any of the Parties.

5. Amounts Paid Not a Penalty. It is understood and agreed that no consideration or amount or sum paid, credited, offered, or expended by Defendant in performance of this Agreement constitutes a penalty, fine, punitive damages, or other form of assessment for any alleged claim or offense.

6. Non-Reversionary. This Settlement is non-reversionary. As of the Effective Date, all rights of Defendant in or to the Settlement Fund shall be extinguished, except in the event this Settlement Agreement is voided, cancelled, or terminated, as described in Section M of this Agreement. In the event the Effective Date occurs, no portion of the Settlement Fund shall be returned to Defendant.

7. Limitation of Liability.

a. Defendant and its counsel shall not have any responsibility for or liability whatsoever with respect to (i) any act, omission, or determination of Class Counsel, the Settlement

Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the formulation, design, or terms of the disbursement of the Settlement Fund; (iv) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (v) the payment or withholding of any taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns. Defendant also shall have no obligation to communicate with Settlement Class Members and others regarding amounts paid under the Settlement.

b. The Class Representatives and Class Counsel shall not have any liability whatsoever with respect to (i) any act, omission, or determination of the Settlement Administrator, or any of its respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the formulation, design, or terms of the disbursement of the Settlement Fund; (iv) any losses suffered by or fluctuations in the value of the Settlement Fund; or (v) the payment or withholding of any taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.

**E. Benefits to Settlement Class Members**

1. As set out in Paragraph H.7, the Net Settlement Fund shall be distributed via pro rata cash payments to Settlement Class Members who submit a valid and timely Claim Form.

**F. Release, Discharge, and Covenant Not to Sue**

1. Release. On the Effective Date and in consideration of the promises and covenants set forth in this Settlement Agreement, the Releasing Parties, including Plaintiffs and each Settlement Class Member, will be deemed to have fully, finally, and forever completely released, relinquished, and discharged the Released Parties from any and all past, present, and future claims,

counterclaims, lawsuits, set-offs, costs, expenses, attorneys' fees and costs, losses, rights, demands, charges, complaints, actions, suits, causes of action, obligations, debts, contracts, penalties, damages, or liabilities of any nature whatsoever, known, unknown, or capable of being known, in law or equity, fixed or contingent, accrued or unaccrued, and matured or not matured that arise out of, or are based upon or connected to, or relate in any way to the Data Disclosure or Defendant's use of Pixels, SDKs, cookies, APIs, or any similar technologies, or that were or could have been asserted in the Litigation (the "Release"). The Release shall be included as part of the Final Approval Order and Final Judgment so that all claims released thereby shall be barred by principles of res judicata, collateral estoppel, and claim and issue preclusion. The Release shall constitute and may be pled as a complete defense to any proceeding filed by any Settlement Class Member or Plaintiff arising from, relating to, or filed in connection with the Released Claims. In the event any Settlement Class Member attempts to prosecute an action in contravention of the Final Approval Order and Final Judgment or the Settlement Agreement, counsel for any of the Parties may forward the Settlement Agreement and the Final Approval Order and Final Judgment to such Settlement Class Member and advise such Settlement Class Member of the Release provided pursuant to the Settlement Agreement. If so requested by Defendant or counsel for Defendant, Class Counsel shall provide this notice.

a. Subject to Court approval, as of the Effective Date, Plaintiffs and all Settlement Class Members shall be bound by this Settlement Agreement and the Release, and all of the Released Claims shall be dismissed with prejudice and released.

b. The Released Claims include the release of Unknown Claims. "Unknown Claims" means claims relating in any way to the subject matter of the Complaint that could have been raised in the Litigation and that any of the Plaintiffs and each of their respective heirs,



executors, administrators, representatives, agents, partners, trustees, successors, attorneys, and assigns do not know to exist or suspects to exist, which, if known by him, her or it, might affect his, her, or its agreement to release Defendant and all other Released Parties, or might affect his, her, or its decision to agree to, or object or not to object to the Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, Plaintiffs (on behalf of themselves and each Settlement Class Member) expressly shall have, and by operation of the Final Judgment the Settlement Class Members shall have, released any and all Released Claims, including Unknown Claims. Plaintiffs (on behalf of themselves and each Settlement Class Member) 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 Released Claims, but Plaintiffs (on behalf of themselves and each Settlement Class Member) expressly shall have, and by operation of the Final Approval Order and Final Judgment shall have, upon the Effective Date, fully, finally, and forever settled and released any and all Released Claims, including Unknown Claims.

c. Without in any way limiting the scope of the Release, the Release covers any and all claims for attorneys' fees, costs or disbursements incurred by Class Counsel or any other counsel representing Plaintiffs or Settlement Class Members, or any of them, in connection with or related in any manner to the Litigation (except for the Attorneys' Fees and Expenses Award nothing in the Release shall preclude any action to enforce the terms of this Settlement Agreement, including participation in any of the processes detailed herein to be paid to Class Counsel as specifically provided in Section L and elsewhere in this Agreement), Defendant's use of third-party or vendor technology as alleged in the Litigation, any claims that arise out of, or are based upon or connected to, or relate in any way to the Data Disclosure or Defendant's use of Pixels, SDKs, cookies, APIs, or any similar technologies, or that were or could have been asserted in the

Litigation, the Settlement, the administration of such Settlement and/or the Released Claims. Class Counsel represent and warrant that they have no attorneys' liens with any Class Representative and/or Settlement Class Member.

In addition, the Class Representatives and, by operation of this Settlement Agreement, each Settlement Class Member, is deemed to have waived (i) the provisions of California Civil Code § 1542, which provides that 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, and (ii) any law of any state or territory of the United States that is similar, comparable, or equivalent to California Civil Code § 1542.

2. Covenant Not to Sue. The Releasing Parties covenant not to sue or otherwise seek to establish liability against the Released Parties for any transaction, event, circumstance, action, failure to act, or occurrence of any sort or type arising out of or relating to the Released Claims, including, without limitation, seeking to recover damages relating to any of the Released Claims. This Paragraph shall not apply to any action to enforce this Settlement Agreement.

3. Enforcement of Release. Notwithstanding any other provision of this Agreement, nothing in this Agreement will prevent the Released Parties from pleading this Settlement Agreement as a full and complete defense to any action, suit, or other proceeding that has been or may be instituted, prosecuted, or attempted with respect to any of the Released Claims and may be filed, offered, and received into evidence, and otherwise used for such defense.

#### **G. Settlement Approval Process**

1. Reasonable Best Efforts. Class Counsel and Defendant's Counsel shall use their reasonable best efforts to effectuate this Agreement and the terms of the proposed Settlement set

forth herein, including but not limited to cooperating in seeking the Court's approval for the establishment of procedures to secure the Final Approval Order and Final Judgment.

2. Cooperation. The Parties further agree to defend this Agreement against objections made to the Settlement or the Final Approval Order and Final Judgment at the Final Approval Hearing or in any appeal of the Final Approval Order and Final Judgment or in any collateral attack on this Agreement or the Final Approval Order and Final Judgment.

3. Preliminary Approval. Class Counsel shall prepare and file papers in support of a motion for Preliminary Approval. The Parties shall work together in good faith and take all reasonable actions as may be necessary to obtain Preliminary Approval and certification of the Settlement Class for settlement purposes.

4. Final Approval Hearing.

a. If the Court preliminarily approves this Agreement, Plaintiffs shall request a Final Approval Order and Final Judgment that finds the Settlement Agreement comports with Rule 23 of the Federal Rules of Civil Procedure, the laws of Florida, the United States Constitution, and any other applicable law. Plaintiffs shall file the motion for Final Approval no later than 14 days before the Final Approval Hearing.

b. Any Settlement Class Member who wishes to appear at the Final Approval Hearing, whether pro se or through counsel, must, by the Objection Deadline, either mail, hand deliver to the Court, or file a notice of appearance in the Litigation, take all other actions or make any additional submissions as may be required in the Long-Form Notice, this Settlement Agreement, or as otherwise ordered by the Court, and mail that notice and any other such pleadings to Class Counsel and Defendant's Counsel as provided in the Long-Form Notice.

5. Finality of Settlement. If and when the Settlement becomes Final, through entry of the Final Approval Order and Final Judgment, the Litigation shall be dismissed with prejudice, with the Parties to bear their own costs and attorneys' fees, costs, and expenses not otherwise awarded in accordance with this Settlement Agreement.

6. No Admission.

a. Nothing in this Settlement Agreement constitutes an admission by Defendant as to the merits of the allegations made in the Litigation, or an admission by Plaintiffs or the Settlement Class of the validity of any defenses that have been or could be asserted by Defendant, or an admission by Defendant as to the suitability for class treatment of some or all claims asserted in the Litigation.

b. This Settlement Agreement, and any of its terms, and any agreement or order relating thereto, shall not be deemed to be, or offered by any of the Parties or any Settlement Class Member to be received in any civil, criminal, administrative, or other proceeding, or utilized in any manner whatsoever as, a presumption, a concession, or an admission of any fault, wrongdoing, or liability whatsoever on the part of Defendant or other Released Parties; provided, however, that nothing contained in this provision shall prevent this Settlement Agreement from being used, offered, or received in evidence in any proceeding to approve enforce, or otherwise effectuate the Settlement Agreement or the Order and Final Judgment, or to support the reasonableness, fairness, or good faith of any Party participating in the Settlement Agreement (or any agreement or order relating thereto) in any proceeding in which the reasonableness, fairness, or good faith of any Party participating in the Settlement Agreement (or any agreement or order relating thereto) is in issue, or to enforce or effectuate provisions of this Settlement Agreement or the Order and Final Judgment. This Settlement Agreement may, however, be filed and used in

other proceedings, where relevant, to demonstrate the fact of its existence, including but not limited to Defendant filing the Settlement Agreement and/or the Order and Final Judgment in any other action that has been or may be brought against it in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, waiver, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

#### **H. Settlement Administration**

1. Settlement Administration Costs. All agreed-upon and reasonable Federal Rule of Civil Procedure 23 Notice and Settlement Administration Costs will be paid from the Settlement Fund. Plaintiffs agreed (i) to solicit and did solicit competitive bids for settlement administration, including Notice and Settlement Administration Costs, (ii) to rely upon Email Notice, and (iii) to utilize other appropriate forms of notice where practicable and agreed upon by the Parties, in order to contain the administration costs while still providing effective notice to the Settlement Class Members.

2. Settlement Administrator's Effectuation of Notice Program.

a. The Settlement Administrator will provide written notice by email of the Settlement terms to all Settlement Class Members for whom Defendant provides a valid email address. The Settlement Administrator will also provide publication notice through online banner advertisements. Settlement Class Members shall have sixty (60) days from the Notice Date to object to the Settlement Agreement.

b. The Settlement Administrator will cause the Notice Program to be effectuated in accordance with the terms of the Settlement Agreement and any orders of the Court. The Settlement Administrator may request the assistance of the Parties to facilitate providing

notice and to accomplish such other purposes as may be approved by both Class Counsel and Defendant's Counsel. The Parties shall reasonably cooperate with such requests.

3. Claim Submission. To make a claim, a Settlement Class Member must complete and submit a valid, timely, and sworn Claim Form. A Claim Form shall be submitted online via the Settlement Website or by U.S. mail and must be postmarked no later than the Claim Deadline.

4. Settlement Administrator Review. The Settlement Administrator will review and evaluate each Claim Form for validity, timeliness, and completeness. If, in the determination of the Settlement Administrator, the Settlement Class Member submits a timely but incomplete Claim Form, the Settlement Administrator shall give the Settlement Class Member notice of the deficiencies, and the Settlement Class Member shall have twenty (20) days from the date of the written notice to cure the deficiencies. The Settlement Administrator will provide notice of deficiencies concurrently to Defendant's Counsel and Class Counsel. If the defect is not cured within the 20-day period, then the Claim will be deemed invalid. All Settlement Class Members who submit a valid and timely Claim Form, including a Claim Form deemed defective but timely cured, shall be considered "Claimants."

5. Distribution.

a. No amounts may be withdrawn from the Settlement Fund unless (i) expressly authorized by the Settlement Agreement, or as may be (ii) approved by the Court. The Parties, by mutual agreement, may authorize the periodic payment of actual reasonable Notice and Settlement Administration Costs from the Settlement Fund as such expenses are invoiced without further order of the Court. The Settlement Administrator shall provide Class Counsel and Defendant's Counsel with notice of any withdrawal or other payment the Settlement Administrator

proposes to make from the Settlement Fund before the Effective Date at least seven (7) business days prior to making such withdrawal or payment.

b. The Settlement Fund shall be used by the Settlement Administrator to pay for: (i) reasonable Notice and Settlement Administration Costs incurred pursuant to this Settlement Agreement as approved by the Parties and approved by the Court, (ii) any taxes owed by the Settlement Fund, (iii) any Attorneys' Fees and Expenses Award as approved by the Court, and (iv) payments to Settlement Class Members who submit timely and valid Claims to the Settlement Administrator. The Settlement Administrator will maintain control over the Settlement Fund and shall be responsible for all disbursements.

6. Integrity of Claims.

a. The Parties shall have the right to audit Claim Forms for validity and fraud. In the event that a Party believes that a Claim Form is invalid or fraudulent and should be rejected, it shall bring that to the attention of the other Party, and the Parties shall meet and confer and attempt, in good faith, to resolve any dispute regarding the rejected claim. Following their meet and confer, the Parties will provide the Settlement Administrator with their positions regarding the disputed claim. The Settlement Administrator, after considering the positions of the Parties and, if appropriate, seeking any additional information from the Settlement Class Member, will make a determination, subject to review by the Court.

b. If at any time during the Claims process, the Settlement Administrator has a reasonable suspicion of fraud, the Settlement Administrator shall immediately notify both Class Counsel and Defendant's Counsel of that fact and the basis for its suspicion. Class Counsel and Defendant's Counsel shall endeavor to reach an agreed-upon solution to any suspected fraud and,

if necessary and agreed upon by Class Counsel and Defendant's Counsel, the Parties will promptly seek assistance from the Court.

7. Distribution Process.

a. Subject to the terms and conditions of this Settlement Agreement, forty-five (45) days after the Effective Date, the Settlement Administrator shall mail or otherwise provide a payment, via check or electronic transfer, (a "Claim Payment") to each Claimant for their pro rata share of the Net Settlement Fund, in accordance with the following distribution procedures:

i. The Settlement Administrator shall utilize the Net Settlement Fund to make all Claim Payments.

ii. The amount of each Claim Payment shall be calculated by dividing the Net Settlement Fund by the number of valid Claims.

b. Each Claim Payment shall be mailed to the address provided by the Claimant on his or her Claim Form. All Claim Payments issued under this section shall be void if not negotiated within ninety (90) days of their date of issue and shall contain a legend to that effect. Claim Payments issued pursuant to this section that are not negotiated within ninety (90) days of their date of issue shall not be reissued.

c. For any Claim Payments returned to the Settlement Administrator as undeliverable (including, but not limited to, when the intended recipient is no longer located at the address), the Settlement Administrator shall make reasonable efforts to find a valid address and resend the Claim Payment within thirty (30) days after the check is returned to the Settlement Administrator as undeliverable. If the Settlement Administrator finds a valid address and resends the Claim Payment, the ninety (90) day void period will be waived. The Settlement Administrator shall make only one attempt to resend a Claim Payment.



d. To the extent any money remains in the Net Settlement Fund more than one hundred eighty (180) days after the distribution of Claim Payments to the Claimants, the distribution of the remaining Net Settlement Fund shall be made to the Center for Internet and Society at Stanford Law School.

**I. Class Notice**

1. Notice Program. The Parties agree the following Notice Program provides reasonable notice to the Settlement Class.

a. Direct notice shall be provided via email to all Settlement Class Members for whom the Settlement Administrator has a valid email address. Additional notice will be provided via publication through online banner advertisements (the “Publication Notice”).

b. Within fourteen (14) days of the entry of the Preliminary Approval Order, Defendant shall provide the Settlement Administrator with the names and email addresses known to Defendant for the Settlement Class Members.

c. Within forty-five (45) days following entry of the Preliminary Approval Order (the Notice Date), the Settlement Administrator shall email the Email Notice and the Claim Form to all Settlement Class Members for whom an email address is available.

d. Within forty-five (45) days following the entry of the Preliminary Approval Order (the Notice Date), the Settlement Administration shall also commence the Publication Notice.

e. The Email Notice will be substantially in the form of Exhibit C.

f. No later than thirty (30) days following the entry of the Preliminary Approval Order, and prior to the sending of the Email Notice to all Settlement Class Members, the Settlement Administrator will create a dedicated Settlement Website. The Settlement Administrator shall cause the Complaint, Email Notice, Claim Form, this Settlement Agreement,

and other relevant Settlement and court documents (including the Long-Form Notice) to be available on the Settlement Website. Any other content proposed to be included or displayed on the Settlement Website shall be approved in advance by counsel for the Parties. A link to the Settlement Website shall be included in the Email Notice.

g. The Settlement Website shall be maintained from the Notice Date until one hundred eighty (180) days after the Effective Date.

h. The Notice Program shall be subject to approval by the Court as meeting the requirements of Rule 23(c) of the Federal Rules of Civil Procedure.

i. The Long-Form Notice and Email Notice approved by the Court may be adjusted by the Settlement Administrator in consultation and agreement with the Parties, as may be reasonable and necessary and not inconsistent with such approval.

j. Prior to the Final Approval Hearing, the Settlement Administrator shall provide to Class Counsel to file with the Court an appropriate affidavit or declaration from the Settlement Administrator concerning compliance with the Court-approved Notice Program.

k. The Notice Program shall commence within forty-five (45) days of entry of the Preliminary Approval Order and shall be completed within sixty (60) days of the Preliminary Approval Order, except as otherwise specifically provided above.

2. CAFA Notice. In compliance with the Class Action Fairness Act of 2005, 28 U.S.C. § 1715(b) (“CAFA”), the Settlement Administrator will provide notice to the appropriate state and federal officials. The Settlement Administrator shall cause to be filed with the Court proof of service of the required CAFA notices.

## **J. Objections to Settlement**

1. Any Settlement Class Member who has not excluded themselves and wishes to object to the proposed Settlement Agreement must file with the Court and serve a written objection

to the Settlement (“Objection”) on Class Counsel and Defendant’s Counsel, at the addresses set forth in the Long-Form Notice.

2. Each Objection must (i) set forth the Settlement Class Member’s full name, current address, telephone number, and email address; (ii) contain the Settlement Class Member’s original signature; (iii) contain proof or an attestation that the Settlement Class Member is a member of the Settlement Class; (iv) state whether the objection applies only to the Settlement Class Member, to a specific subset of the Settlement Class, or to the entire Settlement Class; (v) set forth a statement of the legal and factual basis for the Objection; (vi) provide copies of any documents that the Settlement Class Member wishes to submit in support of his/her position; (vii) identify all counsel representing the Settlement Class Member, if any; (viii) contain the signature of the Settlement Class Member’s duly authorized attorney or other duly authorized representative, if any, along with documentation setting forth such representation; and (ix) contain a list, including case name, court, and docket number, of all other cases in which the objecting Settlement Class Member and/or the objecting Settlement Class Member’s counsel has filed an objection to any proposed class action settlement in the past three (3) years.

3. Objections must be filed with the Court and served on Class Counsel and Defendant’s Counsel no later than sixty (60) days after the Notice Date (the “Objection Deadline”). The Objection Deadline shall be included in the Short-Form and Long-Form Notices.

4. Class Counsel and Defendant’s Counsel may, but need not, respond to the Objections, if any, by means of a memorandum of law served prior to the Final Approval Hearing.

5. An objecting Settlement Class Member has the right, but is not required, to attend the Final Approval Hearing. If an objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, he or she must also file a notice of

appearance with the Court (as well as serve the notice on Class Counsel and Defendant's Counsel) by the Objection Deadline.

6. If the objecting Settlement Class Member intends to appear at the Final Approval Hearing through counsel, he or she must also identify: (i) the attorney(s) representing the objecting Settlement Class Member who will appear at the Final Approval Hearing by including counsel's name, address, phone number, email address, the state bar(s) to which counsel is admitted, as well as associated state bar numbers; (ii) any witnesses he or she may seek to call to testify (including the Settlement Class Members) at the Final Approval Hearing; and (iii) all exhibits he or she intends to seek to introduce into evidence.

7. Any Settlement Class Member who fails to timely file and serve an Objection and notice, if applicable, of his or her intent to appear at the Final Approval Hearing in person or through counsel pursuant to this Settlement Agreement, as detailed in the Long-Form Notice, and otherwise as ordered by the Court, shall not be permitted to object to the approval of the Settlement at the Final Approval Hearing, shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means, and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders, and judgments in the Litigation. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions of Section J.

**K. Written Exclusion for Opt-Outs from Settlement Class**

1. Opt-Out Procedure. Subject to Court approval, each Person wishing to opt out of the Settlement Class shall have the right to exclude themselves from the Settlement Class pursuant only to the procedure set forth in this Agreement. Each Person wishing to opt out of the Settlement Class shall individually sign and timely submit written notice of such intent ("Request for Exclusion") to the designated Post Office box established by the Settlement Administrator. The

written notice must clearly identify the individual Person wishing to opt out of the Settlement Class and must manifest the Person's intent to opt out of the Settlement Class. To be effective, written notice must be postmarked no later than the Opt-Out Date.

2. Failure to Properly Exclude. Subject to Court approval, a Request for Exclusion that does not comply with all of the provisions set forth in the applicable Class Notice will be invalid, and the Person serving such an invalid request shall be deemed a Settlement Class Member of the applicable Settlement Class and shall be bound by the Agreement upon entry of the Final Judgment.

3. Identification of Opt-Outs. Within seven (7) days after the Opt-Out Date, the Settlement Administrator shall provide the Parties with a complete and final list of all Opt-Outs who have timely and validly excluded themselves from the Settlement Class and, upon request, copies of all completed Requests for Exclusion. Class Counsel may present to the Court the number of Opt-Outs (if any), no later than ten (10) days before the Final Approval Hearing but may not provide their name and contact information (though Class Counsel should alert the Court that such information is maintained by the Settlement Administrator), except that upon the Court's request, Class Counsel may provide the Court a list of Opt-Outs with such information redacted other than names and cities and states of residence.

4. Opt-Outs. All Persons who submit valid and timely Requests for Exclusion, as set forth in Paragraph K.1, referred to herein as "Opt-Outs," shall not be permitted to file an Objection with the Court or receive any benefits of or be bound by the terms of this Settlement Agreement. Defendant reserves its legal rights and defenses, including, but not limited to, any defenses relating to whether any Opt-Out is a Settlement Class Member or has standing to bring a claim against Defendant. All Persons falling within the definition of the Settlement Class who do not opt out of

the Settlement Class in the manner set forth in Paragraph K.1 shall be bound by the terms of this Settlement Agreement and judgment entered thereon.

**L. Attorneys' Fees, Costs, and Expenses.**

1. Class Counsel shall request the Court to approve an award of attorneys' fees not to exceed 35% or \$4,550,000.00 of the Settlement Fund plus reasonable Litigation Expenses not to exceed \$25,000. The Attorneys' Fees and Expenses Award shall be paid within fourteen (14) days after entry of the Final Approval Order and an order awarding such attorneys' fees and expenses, notwithstanding the existence of any timely filed objections thereto or to the Settlement, or potential for appeal therefrom, or collateral attack on the awarded fees and expenses, the Settlement, or any part thereof. Payment of the Attorneys' Fees and Expenses Award shall be made via wire transfer to an account or accounts designated by Class Counsel after providing necessary information for electronic transfer. The Attorneys' Fees and Expenses Award paid to Class Counsel will be subject to potential repayment pursuant to the terms set forth below. For the avoidance of doubt, the Attorneys' Fees and Expenses Award shall be paid from the Settlement Fund.

2. Each Class Counsel receiving any portion of the Attorneys' Fees and Expenses Award, as a condition of receiving such payment, agrees on behalf of itself and each equity partner and/or shareholder of it that the law firm and its equity partners and/or shareholders are subject to the jurisdiction of the Court for the purpose of enforcing the provisions of this Section. Class Counsel executing this Settlement stipulate, warrant, and represent that they have actual authority to enter into the obligations set forth in this Section on behalf of Milberg Coleman Bryson Phillips Grossman, LLC, and the shareholders, members, and/or partners of that law firm respectively. In the event that the Effective Date does not occur, or the Final Approval Order or the order granting an Attorneys' Fees and Expenses Award is reversed or modified by a final non-appealable order,

or this Settlement Agreement is canceled or terminated for any other reason, and such reversal, modification, cancellation or termination becomes final and not subject to review, and in the event that the Attorneys' Fees and Expenses Award has been paid to any extent, then Class Counsel with respect to the Attorneys' Fees and Expenses Award paid shall within ten (10) business days from receiving notice from Defendant's Counsel or from a court of appropriate jurisdiction, refund to the Settlement Fund such fees and expenses previously paid to them from the Settlement Fund plus interest thereon at the same rate as earned on the Settlement Fund in an amount consistent with such reversal or modification. If the Attorneys' Fees and Expenses Award is reduced on appeal, but all other terms of the Settlement Agreement remain in full effect, Class Counsel shall repay the portion of the Attorneys' Fees and Expenses Award by which it is reduced and any interest earned thereon at the same rate as earned on the Settlement Fund. This partial repayment of the Attorneys' Fees and Expenses Award shall be applied to the Settlement Fund and distributed in accordance with the terms of the Settlement Agreement. If Class Counsel fails to repay any portion of the Attorneys' Fees and Expenses Award as required by this Section, the Court shall, upon application by Defendant and notice to Class Counsel, issue such orders as appropriate to compel compliance by Class Counsel and their law firm, and shall award reasonable attorneys' fees and expenses incurred by Defendant in connection with the enforcement of this Section. Neither the death, incapacitation, personal bankruptcy, or disbarment of any of Class Counsel nor the dissolution, winding up, bankruptcy, merger, acquisition, or other change in the composition or solvency of their law firm shall in any way affect the obligations of Class Counsel in this paragraph. All obligations set forth in this paragraph shall expire upon the Effective Date.

3. Class Counsel will file applications with the Court for the requested Attorneys' Fees and Expenses Award no later than fifteen (15) days prior to the Objection Deadline. Without

the Parties having discussed the issue of attorneys' fees at any point in their negotiations, and with no consideration given or received, Class Counsel has elected to limit its petition for attorneys' fees to no more than thirty-five percent (35%) of the Settlement Fund, plus reimbursement of expenses. Payment of the Attorneys' Fees and Expenses Award shall be made from the Settlement Fund and should Class Counsel seek or be awarded a lesser amount, the difference in the amount sought and/or the amount ultimately awarded to Class Counsel shall remain in the Settlement Fund for distribution to eligible Settlement Class Members. Defendant is not responsible for Class Counsel's allocation of the Attorneys' Fees and Expenses Award amongst themselves.

4. Payment of the Attorneys' Fees and Expenses Award shall be contingent upon Class Counsel posting a bond in the amount of the entire Attorneys' Fees and Expenses Award to secure repayment to the Settlement Fund in a form satisfactory to the Parties and from a surety agreed upon by the Parties should repayment be required for any of the reasons set forth in Paragraph L.2.

5. The Parties agree that the Court's approval or denial of any request for Attorneys' Fees and Expenses Award are not conditions to this Settlement Agreement and are to be considered by the Court separately from the final approval, reasonableness, and adequacy of the settlement. Any reduction to the Attorneys' Fees and Expenses Award shall not operate to terminate or cancel this Settlement Agreement.

#### **M. Termination**

1. Rejection or Alteration of Settlement Terms. Each Party shall have the right to terminate this Settlement Agreement if:

- a. The Court denies preliminary approval of this Settlement Agreement;
- b. The Court denies final approval of this Settlement Agreement;



c. The Court does not certify the Settlement Class in accordance with the specific Settlement Class definition in this Agreement.

d. The Court does not enter the Final Approval Order and Final Judgment.

e. The Final Approval Order and Final Judgment do not become Final by reason of a higher court reversing final approval by the Court, and the Court thereafter declines to enter a further order or orders approving the Settlement on the terms set forth herein; or

f. In addition to the grounds set forth above, if Settlement Class Members properly and timely submit Requests for Exclusion from the Settlement Class as set forth in Section K, thereby becoming Opt-Outs, and are in a number more than indicated in a separate agreement reached by the Parties that the Parties will seek leave to file under seal, then Defendant shall have the sole option to withdraw from and terminate this Settlement Agreement.

2. Notice of Termination. If a Party elects to terminate this Settlement Agreement under this Section M, that Party must provide written notice to the other Party's counsel by hand delivery, mail, or email within seven (7) days of the occurrence of the condition permitting termination. In the event the occurrence permitting termination is the circumstances addressed in Paragraph M.1.f, Class Counsel shall have forty-five (45) days or such longer period as agreed to by the Parties to address the number of Settlement Class Members who have excluded themselves from the Settlement Class in an effort to reduce that number below the number specified in Paragraph M.1.f.

3. Termination of Settlement.

a. If this Settlement Agreement is terminated or disapproved, or if the Effective Date should not occur for any reason, then: (i) this Settlement Agreement, the Preliminary Approval Order, the Final Approval Order and Final Judgment (if applicable), and all

of their provisions shall be rendered null and void; (ii) all Parties shall be deemed to have reverted to their respective statuses in the Litigation as of the date and time immediately preceding the filing of the motion for approval of this Settlement Agreement; (iii) except as otherwise expressly provided or agreed, the Parties shall stand in the same position and shall proceed in all respects as if this Settlement Agreement and any related orders had never been executed, entered into, or filed; and (iv) no term or draft of this Settlement Agreement nor any part of the Parties' settlement discussions, negotiations, communications, or documentation (including any declaration or brief filed in support of the motion for preliminary approval or motion for final approval), nor any rulings regarding class composition or class certification for settlement purposes (including the Preliminary Approval Order and, if applicable, the Final Approval Order and Final Judgment), will have any effect or be admissible into evidence for any purpose in the Litigation or any other proceeding.

b. If the Court does not approve the Settlement or the Effective Date cannot occur for any reason, Defendant shall retain all of its rights and defenses in the Litigation, including but not limited to the right to argue that some or all of the claims asserted are not suitable for class certification. For example, Defendant shall have the right to move to dismiss, to object to the maintenance of the Litigation as a class action, to move for summary judgment, and to assert defenses at trial. Nothing in this Settlement Agreement or other papers or proceedings related to the Settlement shall be used as evidence or argument by any Party concerning whether the Litigation may properly be maintained as a class action, or for any other purpose.

c. In the event that this Agreement does not become Final, or this Agreement otherwise is rescinded or terminated, then this Agreement shall be of no force or effect and any and all parts of the Settlement Fund (other than Notice and Settlement Administration Costs

reasonably and actually incurred), along with any income accrued thereon, shall be returned in full to Defendant. Such payments will be made within ten (10) calendar days of rescission, termination, or a court's final determination denying final approval of the Agreement and/or any of the Settlement Classes, whichever occurs first. The Parties expressly reserve all of their rights if this Agreement is rescinded or does not become final.

**N. Effective Date**

1. Effective Date. The "Effective Date" of this Settlement Agreement shall be the first day after the date when all of the following conditions have occurred:

- a. This Settlement Agreement has been fully executed by all Parties and their counsel;
- b. Orders have been entered by the Court certifying the Settlement Class, granting preliminary approval of this Settlement Agreement, and approving the Notice Program and Claim Form, all as provided above;
- c. The Court-approved Email Notice has been sent, other notice required by the Notice Program has been effectuated as ordered by the Court;
- d. The Court has entered a Final Approval Order and Final Judgment finally approving this Settlement Agreement, as provided above; and
- e. The time for appeal or to seek permission to appeal from the Final Judgment expires, or if appealed, (1) such appeal is finally dismissed prior to resolution by the applicable court; (2) the Final Judgment is affirmed in its entirety by the court of last resort to which such appeal may be taken; or (3) the Final Judgment is modified, the Parties agree to the modifications and withdraw any pending appeals, and such document is finally entered.

**O. Miscellaneous**

1. Recitals. The recitals and exhibits to this Settlement Agreement are integral parts of the Settlement and are expressly incorporated and made a part of this Settlement Agreement.

2. Entire Agreement. This Settlement Agreement, along with the agreement referenced in Paragraph M.1.f, shall constitute the entire agreement between Plaintiffs and Defendant pertaining to the settlement of the Litigation against Defendant and supersedes any and all prior undertakings of the Plaintiffs and Defendant in connection therewith.

3. Inurement. The terms of the Settlement Agreement are and shall be binding upon and enforceable by, to the fullest extent possible, each of the Releasing Parties and the Released Parties, and upon all other Persons, including but not limited to any affiliates, parents, subsidiaries, predecessors, successors, or assignees, claiming any interest in the subject matter hereto through any of the Parties, Releasing Parties, or Released Parties, including any Settlement Class Members.

4. Modification. This Settlement Agreement may be modified or amended only by a writing executed by the Plaintiffs and Defendant, subject (if after preliminary or final approval) to approval by the Court. Amendments and modifications may be made without notice to the Settlement Class unless notice is required by law or by the Court.

5. Choice of Law. This Settlement Agreement shall be construed under and governed by the laws of the State of Florida without regard to its choice of law or conflict of laws provisions or principles.

6. Consent to Jurisdiction. The Parties and each Settlement Class Member irrevocably submit to the exclusive jurisdiction of the Court for any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of the Agreement and its exhibits, but for no other purpose. If for any reason this Settlement Agreement is terminated, or fails to become effective, then, in such event, nothing in this Settlement Agreement or with regard to any conduct

of Defendant or Defendant's Counsel pursuant to any obligation Defendant has pursuant to the Agreement shall constitute or are intended to be construed as any agreement to personal jurisdiction (general or specific) or subject matter jurisdiction so as to confer the jurisdiction of the District Court over Defendant, nor shall it constitute any waiver of any defenses based on personal or subject matter jurisdiction.

7. Notice. Any and all notices, requests, consents, directives, or communications by any Party intended for any other Party related to this Agreement shall be in writing and shall, unless expressly provided otherwise herein, be given by e-mail, to the following persons, and shall be addressed as follows:

All notices to Class Counsel or Plaintiffs shall be sent to:

Gary M. Klinger  
Jonathan B. Cohen  
Daniel K. Bryson  
Alexandra M. Honeycutt  
Patrick Montoya  
**MILBERG COLEMAN BRYSON**  
**PHILLIPS GROSSMAN PLLC**  
gklinger@milberg.com  
jcohen@milberg.com  
dbryson@milberg.com  
ahoneycutt@milberg.com  
pmontoya@milberg.com

All notices to Defendant's Counsel or Defendant shall be sent to:

Martin L. Roth  
Olivia Adendorff  
Alyssa C. Kalisky  
**KIRKLAND & ELLIS LLP**  
martin.roth@kirkland.com  
olivia.adendorff@kirkland.com  
alyssa.kalisky@kirkland.com

8. Construction. This Settlement Agreement shall not be construed more strictly against one Party than another merely because it may have been prepared by counsel for one of

the Parties, it being recognized that because of the arm's-length negotiations resulting in this Settlement Agreement, all Parties hereto have contributed substantially and materially to the preparation of the Settlement Agreement. All terms, conditions, and exhibits are material and necessary to this Settlement Agreement and have been relied upon by the Parties in entering into this Settlement Agreement.

9. Headers. The headings used in this Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Agreement.

10. Counterparts. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original as against any Party who has signed it and all of which shall be deemed a single Settlement Agreement. Scanned signatures or signatures sent by email or facsimile shall be as effective as original signatures.

11. Attorneys' Fees. Defendant shall not be liable for any additional attorneys' fees and expenses of any Settlement Class Members' counsel, including any potential objectors or counsel representing a Settlement Class Member individually, other than what is expressly provided for in this Agreement. Class Counsel agree to hold Defendant harmless from any claim regarding the division of any award of Attorneys' Fees and Expenses Award, and any claim that the term "Class Counsel" fails to include any counsel, Person, or firm who claims that they are entitled to a share of any Attorneys' Fees and Expenses Award in this Litigation.

12. Press Releases. If any press release is to be issued by the Parties, including their respective counsel, concerning the Settlement, it will be a mutually agreed upon joint press release, for which the Parties will agree upon the language therein prior to release. Each Party will have absolute discretion to approve or reject language in such a joint press release. Otherwise, the Parties, and the Parties' counsel, shall not issue any press releases, respond to requests for

comment, or make any postings or commentary on social media or any other platform or outlet about this Litigation or the Settlement. This provision shall not apply to any legally required disclosures, such as those required by securities laws.

13. Severability. In the event that one or more of the provisions contained in this Settlement Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions of the Settlement Agreement, which shall remain in full force and effect as though the invalid, illegal, or unenforceable provision(s) had never been a part of this Settlement Agreement as long as the benefits of this Settlement Agreement to Defendant or the Settlement Class Members are not materially altered, positively or negatively, as a result of the invalid, illegal, or unenforceable provision(s).

14. Authorization. Each signatory below warrants that he or she has authority to execute this Settlement Agreement and bind the Party on whose behalf he or she is executing the Settlement Agreement.

DATED: October 27, 2023

**KIRKLAND & ELLIS LLP**



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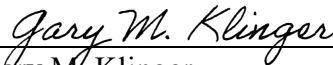
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DATED: October 27, 2023

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