

# Exhibit E

**IN THE UNITED STATES DISTRICT  
COURT FOR THE WESTERN DISTRICT OF  
WASHINGTON AT SEATTLE**

STEPHEN J. TUTTLE, an individual, and  
DUSTIN COLLMAN, an individual, on behalf  
of themselves and persons similarly situated,

Plaintiffs,

v.

AUDIOPHILE MUSIC DIRECT, INC. d/b/a  
MUSIC DIRECT and MOBILE FIDELITY  
SOUND LAB, INC. d/b/a MOBILE FIDELITY  
and/or MOFI,

Defendants.

Case No. 2:22-cv-01081-JLR

Judge James L. Robart

**AMENDED CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

This Amended Class Action Settlement Agreement (the “Settlement Agreement”) is entered into by and between Stephen J. Tuttle and Dustin Collman (individually and collectively, the “Class Representatives” or “Plaintiffs”), on behalf of themselves and the Class Members (as defined herein) (with the assistance and approval of Class Counsel) and Audiophile Music Direct, Inc., a Nevada corporation (“Music Direct”), and Mobile Fidelity Sound Lab, Inc., an Illinois corporation (“MoFi”) (individually and collectively, the “Defendants”). By entering into this Settlement Agreement, the Settling Parties (as defined herein), including all Class Members, intend to fully, finally, and forever release, resolve, discharge, and settle the Released Claims (as defined herein), upon and subject to the terms and conditions of this Settlement Agreement, and subject to the final approval of the Court.

WHEREAS, the Litigation (as defined herein) was commenced by Plaintiffs, individually and on behalf of an alleged nationwide class, and is currently pending;

WHEREAS, in the Litigation, Class Representatives allege that Defendants, *inter alia*, (i) violated the Washington Consumer Protection / Unfair Business Practices Act, RCW 19.86.020 against Washington state Class Members, (ii) committed acts in breach of contract against national Class Members, (iii) committed acts of unjust enrichment against national Class Members, and (iv) violated §§815 ILCS 505/2 and 510/2 of Illinois Consumer Fraud Act against national Class Members;

WHEREAS, Defendants deny Plaintiffs' claims, any liability to Class Representatives or any member of the alleged or proposed Settlement Class (as defined herein), and any wrongdoing of any kind;

WHEREAS, Class Representatives and Defendants agree that it is desirable that the Litigation be settled upon the terms and conditions set forth below to avoid further expense and uncertain, burdensome, and potentially protracted litigation and resolve all claims that have been or could have been asserted; and

WHEREAS, the Defendants have produced data to permit Class Counsel to evaluate the nature and fairness of any settlement terms, and Defendants represent that such data are accurate and reliable and were produced to enable Class Counsel to evaluate and enter into this Settlement Agreement;

WHEREAS, the Settling Parties have engaged in arms-length settlement negotiations and Class Counsel represents that they have otherwise conducted a thorough study and investigation of the law and facts relating to the claims that have been, or might have been asserted in the Litigation and have concluded - taking into account the benefits that the Class Representatives and the Class Members will receive as a result of this Settlement Agreement as well as the risks and delays of further litigation - that this Settlement Agreement is fair,

reasonable, adequate, and in the best interests of Class Representatives and the Class; and

WHEREAS, the Settling Parties executed a Settlement Agreement dated January 14, 2023 and Plaintiffs submitted an Unopposed Motion for Preliminary Approval of Class Action Settlement and Notice Program to the Court on January 15, 2023;

WHEREAS, the Court issued an Order dated January 20, 2023 denying the Unopposed Motion for Preliminary Approval of Class Action Settlement and Notice Program without prejudice, listing several issues that must be corrected before the Court could preliminarily approve the settlement;

WHEREAS, the Settling Parties have modified the January 14, 2023 Settlement Agreement to address the issues identified by the Court in its January 20, 2023 Order; and

NOW, THEREFORE, intending to be legally bound and acknowledging the sufficiency of the consideration and undertakings set forth in this Settlement Agreement, the Settling Parties agree, subject to the approval of the Court and provisions contained in this Settlement Agreement, that the Litigation and Released Claims against Defendants and any Defendants Releasees are fully and finally compromised, settled, and released, and that the Litigation shall be dismissed with prejudice as follows:

1. **Conditional Nature of Settlement Agreement.** This Settlement Agreement, including all associated exhibits and attachments, is made for the sole purpose of attempting to consummate settlement of this Litigation on a Class-wide basis. The Settlement Agreement is made in compromise of disputed claims. The Settlement Agreement is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims upon and subject to the terms and conditions set forth in this Settlement Agreement. Because this Litigation was pled as a class action, this settlement must receive preliminary and final approval

by the Court. Accordingly, the Settling Parties enter into this Settlement Agreement and associated settlement (the “Settlement”) on a conditional basis that is subject to the final approval of the Court.

2. **Effect of Disapproval.** In the event the Court does not execute and file an Order Granting Final Approval of the Settlement (as defined herein), or in the event that such Order does not become Final (as defined herein) for any reason, this Settlement Agreement shall be deemed null and void *ab initio*: it shall be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and any negotiations, terms, and entry of the Settlement Agreement shall remain subject to the provisions of Federal Rule of Evidence 408 and any similar state laws.

3. **Denial of Liability; No Admissions.** Defendants deny all of Plaintiffs’ claims as to liability, damages, penalties, interest, fees, restitution, and all other forms of relief as well as the allegations asserted in the Litigation. Neither this Settlement Agreement, nor any of its terms and provisions, nor any of the negotiations connected with it, shall be construed as any admission or concession by Defendants of any legal violations, any legal requirement, or any failure to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement Agreement, this Settlement Agreement and its terms and provisions shall not be used, offered, or received as evidence in any action or proceeding to establish: any liability or admission on the part of Defendants or any Defendants’ Releasees; any condition constituting a violation of, or non-compliance with, federal, state, local, or other applicable laws; or the propriety of class certification in any proceeding or action. The Settling Parties expressly agree and represent that in the event the Court does not approve the Settlement Agreement or any appellate court disapproves of the Settlement Agreement in any way that prevents the

Settlement from becoming Final, no Party will use or attempt to use any conduct or statement of any other Party in connection with this Settlement Agreement or any effort to seek approval of the Settlement to affect or prejudice any other Party's rights in any ensuing litigation.

Defendants have agreed to resolve this Litigation through this Settlement Agreement, but to the extent this Settlement Agreement is deemed void or the Effective Date does not occur,

Defendants do not waive, but rather expressly reserve, all rights to challenge all such claims and allegations in the Litigation upon all procedural and factual grounds including, without limitation, the ability to challenge class action treatment on any grounds or assert any and all defenses or privileges. Defendants expressly reserve all rights and defenses as to any claims and do not waive any such rights or defenses in the event that the Settlement Agreement is not approved for any reason. The Class Representatives and Class Counsel agree that Defendants and the Defendants' Releasees retain and reserve these rights and agree not to take a position to the contrary. Specifically, the Class Representatives and Class Counsel agree not to argue or present any argument, and hereby waive any argument, that Defendants could not contest class certification on any grounds if this Litigation were to proceed.

**4. Definitions.**

As used in all parts of this Settlement Agreement, the following terms have the meanings specified below:

4.1 "Applicable Period" means the period of time of any retail purchase of a new and unused Applicable Record (as defined herein) made by the original retail consumer purchaser from the date of the first purchase order for the same on March 19, 2007 until July 27, 2022.

4.2 "Applicable Record(s)" means all MoFi

(a) OMR (as defined herein) and One-Step (as defined herein) vinyl recordings sourced from original analog master tapes and which utilized a DSD (as defined herein) transfer step in the mastering chain (including those listed on **EXHIBIT A**, attached hereto and any others meeting the defined criteria), and

(b) which were purchased new and unused at retail in the United States by the original retail consumer purchaser during the Applicable Period, and provided that said purchaser still owns said recordings.

4.3 “Claims Period” means the period ninety (90) days from the Notice Deadline during which Class Members can submit their Settlement Claim Certification Form and Proof to the Settlement Administrator. Settlement Claim Certification Forms received after the Claims Period are untimely and will not be eligible for Settlement Payments.

4.4 “Class Counsel” means Duncan C. Turner, Esq., and the law firm of Badgley Mullins Turner, PLLC, of 19929 Ballinger Way NE, Suite 200, Seattle, Washington 98155.

4.5 “Class Member” means a person who is a member of the Settlement Class who does not submit a valid and timely request for exclusion or “opt-out” from the Settlement Class in accordance with the terms of this Settlement Agreement.

4.6 “Class Notice” or “Notice” means the publication summary notice (“Summary Notice”), full notice (“Full Notice”), direct postal mailed Full Notice (“Direct Mailed Full Notice”), and direct emailed Summary Notice (“Emailed Summary Notice”) to be approved by the Court substantially in the form of **EXHIBITS C and D**, attached hereto.

4.7 “Court” means the United States District Court for the Western District of Washington at Seattle.

4.8 “Defendants’ Releasees” means individually and collectively, MoFi and Music Direct, and each of or their current and former affiliates (including, but not limited to, any parents and subsidiaries); each of the foregoing’s predecessors, successors, divisions, joint ventures, and assigns; and each of any of the foregoing’s past or present directors, officers, employees, partners, members, principals, agents, underwriters, insurers, co-insurers, re-insurers, shareholders, attorneys, accountants or auditors, banks or investment banks, personal or legal representatives, or associates.

4.9 “DSD” means the high resolution direct stream digital encoding format.

4.10 “Effective Date” means the date on which the time to appeal from entry of the Order Granting Final Approval of the Settlement has lapsed with no notice of appeal having been filed, or if an appeal is filed, the date the Order Granting Final Approval of the Settlement is affirmed, all appeals are dismissed, and no further appeals to, or discretionary review in any court remains.

4.11 “Final” means the occurrence of the Effective Date.

4.12 “Litigation” or the “Lawsuit” means the lawsuit captioned *Stephen J. Tuttle, an individual, and Dustin Collman, an individual; on behalf of themselves and persons similarly situated v. Audiophile Music Direct, Inc. d/b/a Music Direct, and Mobile Fidelity Sound Lab, Inc. d/b/a Mobile Fidelity and/or Mofi*, Case No. 2:22-cv-01081-JLR (United States District Court for the Western District of Washington at Seattle).

4.13 “MoFi” means Defendant, Mobile Fidelity Sound Lab, Inc., an Illinois corporation, with its principal place of business at 1811 West Bryn Mawr Avenue, Chicago, Illinois 60660.

4.14 “Music Direct” means Defendant, Audiophile Music Direct, Inc., a Nevada



corporation, with its principal place of business at 1811 West Bryn Mawr Avenue, Chicago, Illinois 60660.

4.15 “Notice Deadline” means the deadline to commence the print and internet publication of Summary Notice, mailing of Direct Mailed Full Notice, and emailing of Emailed Summary Notice, which shall be no later than forty-five (45) days after the Preliminary Approval Date.

4.16 “Notice Response Deadline” means the date sixty (60) days after the Notice Deadline for purposes of opt out of the Settlement Class or serving an objection to the Settlement pursuant to Section 5.4 of the Settlement Agreement.

4.17 “OMR Records” means vinyl record albums produced by MoFi under its “Original Master Recording” series and bearing the Original Master Recording label.

4.18 “One-Step Records” means vinyl record albums produced by MoFi under its “Ultradisc One-Step” series and bearing the Ultradisc One-Step label.

4.19 “Order of Final Approval” or “Order Granting Final Approval of Settlement” means an order to be entered and filed by the Court following the final approval hearing entitled “Order Granting Final Approval of Settlement” substantially in the form attached as **EXHIBIT F**, attached hereto.

4.20 “Participating Claimant(s)” means each member of the Settlement Class who properly and timely submits a Qualifying Settlement Claim Certification Form (as defined herein) in response to the Class Notice.

4.21 “Preliminary Approval Date” means the date on which the Court enters the Preliminary Approval Order.

4.22 “Preliminary Approval Order” means an order to be executed and filed by

the Court entitled “Order Granting Preliminary Approval” substantially in the form attached as **EXHIBIT B**, attached hereto.

4.23 “Proof of Purchase” means

(a) Documentary evidence of the amount paid by the Class Member for the retail purchase of an Applicable Record, the date of the purchase, and the entity to which the Class Member made the payment.

(b) Acceptable Proof of Purchase includes a receipt, credit card statement, or cancelled check referencing the purchase, or such other documentary evidence provided by the Class Member and deemed sufficient by the Settlement Administrator after consulting with Class Counsel and counsel for the Defendants.

(c) For Class Members who purchased an Applicable Record online directly from either (i) Defendant MoFi’s “mofi.com” website, or (ii) Defendant Music Direct’s “musicdirect.com” website (individually and collectively referred to as a “Direct Purchase”) the provision of their name and order number shall suffice as Proof of Purchase.

(d) For Class Members who made a Direct Purchase and who do not have their order number, the provision of their name, email address used, and approximate date of purchase, for each listed Applicable Record shall suffice as Proof of Purchase.

(e) The adequacy of Proof of Purchase is to be evaluated under liberal terms to effect the intent and purpose of the Settlement.

4.24 “Proof of Ownership” means

(a) Documentary evidence that the Class Member submitting a claim under the Settlement purchased an Applicable Record within the Applicable Period and still owns and is still in possession of same.

(b) Acceptable Proof of Ownership, includes, for each Applicable Record: (i) the catalog number appearing on the spine of the record cover or box; and legible photos, photocopies, JPEGs, PDFs, or similar copies of both (ii) the individually stamped or hand-written number from the back cover, and (iii) the front cover of the Applicable Record, or such other documentary evidence deemed sufficient by the Settlement Administrator.

(c) The adequacy of Proof of Ownership is to be evaluated under liberal terms to effect the intent and purpose of the Settlement.

(d) Proof of Purchase and Proof of Ownership are hereinafter individually and collectively also referred to as “Proof.”

4.25 “Qualifying Settlement Claim Certification Form” means a Settlement Claim Certification Form (as defined herein) that is completed, properly executed, and timely returned to the Settlement Administrator by uploading to the Settlement Website (as defined herein) or by email received or mail postmarked within ninety (90) days from Notice Deadline. Class Counsel shall be thereafter apprised of any claim that is challenged by Defendants; and, the Settling Parties, through their counsel, shall meet and confer in good faith in an attempt to resolve any challenged claim.

4.26 “Released Claims” means, individually and collectively, any and all claims which arise out of or are in any way related to Defendants’ marketing, promotion and sale of the Applicable Records during the Applicable Period (including, without limitation, Unknown Claims as defined herein), demands, rights, liabilities, and causes of action of every nature and description whatsoever including, without limitation, statutory, constitutional, contractual, or common law claims, whether known or unknown, whether or not concealed or hidden, whether contingent or vested, against Defendants, the Defendants’ Releasees, or any of them, that

accrued, had accrued, or could have accrued at any time on or prior to the Effective Date for any type of relief whatsoever including, without limitation, compensatory damages, treble damages, unpaid costs, penalties, statutory damages, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, rescission, or equitable relief, based on any and all claims which are or could have been raised in the Litigation either individually or on a class-wide basis related to the Applicable Records.

4.27 "Settlement Claim Certification Form" or "Claim Form" means a claim form substantially in the form attached as **EXHIBIT E**.

4.28 "Settlement Class" means the collective group of those retail consumers who purchased Applicable Records within the Applicable Period. Specifically, the Settlement Class definition, including for purposes of giving notice to the Settlement Class, shall read substantially as follows:

All original retail consumers in the United States who, from March 19, 2007, through July 27, 2022 purchased, either directly from a Defendant or other retail merchants, new and unused Mobile Fidelity Sound Lab, Inc. ("MoFi") vinyl recordings which were marketed by Defendants using the series labeling descriptors "Original Master Recording" and/or "Ultradisc One-Step," that were sourced from original analog master tapes and which utilized a direct stream digital transfer step in the mastering chain, and provided that said purchasers still own said recordings (the "Applicable Records"). Excluded from the Class are persons who obtained subject Applicable Records from other sources.

4.29 "Settlement Hearing" or "Fairness Hearing" means a hearing set by the Court to take place no earlier than ninety (90) days after entry of the Preliminary Approval Order for the purpose of: (i) determining the fairness, adequacy, and reasonableness of the Settlement Agreement and associated Settlement pursuant to class action procedures and requirements; and (ii) entering the Order Granting Final Approval of Settlement. Pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715(d), an order giving final approval of a

proposed settlement may not be issued earlier than ninety (90) days after the dates on which the appropriate Federal official and the appropriate State official are served with the notice required under 28 U.S.C. § 1715(b).

4.30 “Settlement Agreement” or “Agreement” means this Agreement and Release, and all of its attachments and exhibits, which the Settling Parties understand and agree sets forth all material terms and conditions of the Settlement between them and which is subject to Court approval. It is understood and agreed that Defendants’ obligations for payment under this Settlement Agreement are conditioned on the preliminary approval of the Settlement and the distribution of any funds to any Class Member or Class Counsel is conditioned upon the occurrence of the Effective Date.

4.31 “Settlement Administrator” means Kroll Settlement Administration, LLC.

4.32 “Settling Parties” means Defendants and the Class Representatives on behalf of themselves and any and all Class Members.

4.33 “Unknown Claims” means any Released Claims which the Class Representatives or any Class Member do not know or suspect to exist in his, her, or its favor at the time of the entry of the Order Granting Final Approval of Settlement and which, if known by him, her, or it might have affected his, her, or its settlement with and release of Defendants and the Defendants’ Releasees. The Class Representatives and each Class Member may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims, but the Class Representatives and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Order Granting Final Approval of Settlement shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent

or non-contingent, whether or not concealed or hidden, which then exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future including, but not limited to, conduct which is negligent, reckless, intentional, with or without malice, or a breach of any duty, law, regulation, or rule, without regard to the subsequent discovery or existence of such different or additional facts. Each of the Class Representatives and each Class Member expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any similar provision under federal or state law that purports to limit the scope of a general release. Section 1542 provides: 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. The Class Representatives acknowledge, and the Class Members shall be deemed by operation of the Order Granting Final Approval of Settlement to have acknowledged, that the foregoing waivers were separately bargained for and key elements of the Settlement of which these releases are a part.

**5. The Settlement.**

*5.1 Settlement Payments.*

Members of the Settlement Class who submit timely and valid Qualifying Claim Certification Forms, Proof of Purchase, and Proof of Ownership shall be entitled to receive Settlement compensation as follows:

(a) Class Members who elect to return their Applicable Record(s) in their original covers and/or boxes, in complete and undamaged condition except for normal wear

and tear, shall receive a refund of their actual purchase price (not to exceed 110% of the manufacturer's suggested retail list price at the time of purchase ("MSRLP")), plus tax and shipping, in the form of a check or electronic payment (*e.g.*, PayPal, Venmo, etc.) (the "Return Refund). For each Applicable Record purchased online directly from either Defendant MoFi's "mofi.com" website, or Defendant Music Direct's "musicdirect.com" website, the Class Member's actual purchase price will be used in calculating the amount of their Return Refund. For each Applicable Record purchased from retail merchants other than Defendants, the Class Member's actual purchase price not to exceed 110% of the MSLRP at time of purchase will be used in calculating the amount of their Return Refund. A list of MSLRPs by date shall be posted on the Settlement Website.

(b) Class Members who elect to keep their Applicable Record(s), shall have the option of receiving, either (i) payment of five percent (5%) of the actual purchase price (not to exceed 110% of the MSRLP), in the form of a check or electronic payment (*e.g.*, PayPal, Venmo, etc.) (the "5% Payment"), or (ii) a coupon in the amount of ten percent (10%) of the actual purchase price (not to exceed 110% of the MSRLP), redeemable for retail purchase use at Defendant Music Direct's "musicdirect.com" retail website (the "10% Coupon" or "Coupon") (with the Return Refund, 5% Payment, and 10% Coupon being hereinafter individually and collectively referred to as the "Settlement Payment").

(c) Each Coupon will contain a code that may be used to redeem its full value for one or more retail purchases by the Class Member. Each coupon, including any unused amounts will expire one hundred and eighty (180) days after issuance (the "Redemption Period") and shall not be transferable. Coupons may be redeemed in combination on one or more purchases. Any unused amounts will be placed on account for use during the Redemption Period

by the Class Member. All MoFi products currently in stock and available for sale shall be available for Coupon redemption along with any and all other products offered for sale at “musicdirect.com.”

(d) Class Members shall be entitled to designate their preference of a Return Refund, 5% Payment, or 10% Coupon Settlement Payment for each individual Applicable Record on their Claim Form.

(e) For purposes of payment security, all (i) Return Refunds and (ii) 5% Payments to Class Members will be paid by check mailed to the address designated on the Claim Form unless an election for an electronic Return Refund and/or 5% Payment, including the designation of form of electronic payment (*e.g.*, PayPal, Venmo, etc.), is timely made by the Class Member by filling out the Claim Form on the Settlement Website. Class Members can only make the electronic Return Refund or electronic 5% Payment election on the Settlement Website. Class Members must cash their Return Refund and/or 5% Payment checks within one hundred and eighty (180) days after issuance.

## 5.2 *Preliminary Approval and Court Approval of Notice to the Class.*

5.2.1 The Class Representatives and Defendants, through their counsel of record in the Litigation, shall file this Settlement Agreement with the Court, and Class Representatives shall move for (and Defendants shall not oppose) preliminary approval of this Settlement Agreement, conditional certification of the Class, and the form and manner of Class Notice. Through this submission and a supporting motion, the Class Representatives, through their counsel of record, will request (and Defendants shall not oppose) that the Court enter the Preliminary Approval Order thereby scheduling the Fairness Hearing for the purposes of determining the fairness, adequacy, and reasonableness of the Settlement; and entering the Order



Granting Final Approval of Settlement.

5.3 *Notice to Class Members.*

5.3.1. Following the Court's entry of the Preliminary Approval Order, the Settlement Administrator shall provide notice to the Class Members as set forth below. Copies of the proposed Class Notice Summary Notice and Full Notice documents are attached to this Settlement Agreement as **EXHIBITS C and D**.

5.3.2. The Notice Program shall commence by the Notice Deadline and shall include:

(a) Print and internet publication of the Summary Notice in industry niche magazines;

(b) Internet Summary Notice displayed on (i) Defendant MoFi's "mofi.com" retail website and (ii) Defendant Music Direct's "musicdirect.com" retail website (collectively, "Defendants' Websites");

(c) Internet social media advertising, with specific targeting to relevant platforms, sites, newsfeeds and stories; and

(d) Internet display banner advertising; specifically targeted to reach Class Members.

(e) The print and internet publication in industry niche magazines and on Defendants' Websites shall be substantially in the form of the Summary Notice in **EXHIBIT C**.

(f) The internet, Defendants' Websites, social media and display banner advertising notices referenced in this Section 5.3.2 shall also include a hyperlink to the Settlement Website which shall contain the Full Notice and Claim Form.

5.3.3 Both Direct Mailed Full Notice and Emailed Summary Notice shall

be made to approximately 23,000 Class Members who made a Direct Purchase of Applicable Records during the Applicable Period from Defendants and for whom address and email address information is available in Defendants' records or in Defendants' possession, (individually and collectively, "Direct Purchasers"). The Direct Mailed Full Notice shall be substantially in the form of **EXHIBIT D** and shall also include the **EXHIBIT E** Claim Form. The direct Emailed Summary Notice shall be substantially in the form of **EXHIBIT C** and shall include a hyperlink to the Settlement Website which shall contain the **EXHIBIT D** Full Notice and **EXHIBIT E** Claim Form. The Settlement Administrator will send the Direct Purchasers list through the United States Postal Service's ("USPS") National Change of Address ("NCOA") database to obtain updated addresses for Class Members who have submitted a change of address with the USPS in the last 48 months. Direct Mailed Full Notice to Direct Purchasers will be made by First Class Mail and Emailed Notice will be sent to Direct Purchasers on or before the Notice Deadline.

5.3.4 A dedicated Settlement website (the "Settlement Website") administered by the Settlement Administrator shall be established by the Notice Deadline. The Settlement Website will, among other things, provide links to the Settlement Agreement, the Class Notice, the Claim Form, and other relevant documents. In addition, the Settlement Website will provide for online claim filing, allow Class Members to contact the Settlement Administrator with any questions or changes of address, and provide notice of important dates.

5.3.5 *CAFA Notice.* The Settlement Administrator shall send notice of the proposed class action Settlement to the appropriate Federal official and the appropriate State official, if any, pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, no later than ten (10) days after the motion for preliminary approval is filed with the Court.

5.3.6 *Press Release.* The Settlement Administrator shall issue a press

release concerning the Settlement via PR Newswire's USA1 distribution network, which includes thousands of news outlets. The Settlement Administrator will monitor for news mentions and report the results to the Court upon completion of the Notice Program.

5.3.7 *Toll-Free Number.* The Settlement Administrator will establish and administer a toll-free number for the Settlement, which will allow Class Members to call and obtain information about the Settlement through an interactive voice response system and/or by being connected to a live agent. The toll-free number will be available twenty-four hours a day, seven days a week.

5.3.8 The costs of Notice to Class Members and Settlement Administrator shall be paid by Defendants.

5.4 *Claims Processing, Opt-out, Objections; and Motion for Final Approval.*

5.4.1 The Settlement Administrator shall process all Claim Forms, including Proof, submitted by or postmarked by the last day of the Claims Period. For any Claim Form that is deemed untimely or otherwise deficient, the Settlement Administrator shall issue a notice of deficiency to the Class Member setting out the reasons for the deficiency within thirty (30) days of receipt of the Claim Form and provide the Class Member thirty (30) days to cure the deficiency. Within fifteen (15) days of the close of the Claim Period, the Settlement Administrator will issue a report to the Settling Parties detailing the Claim Forms received, the Claim Form deficiencies and cures, as well as a summary of the Participating Claimants' elections for Settlement Payments. This report will be periodically updated for any cured claims received by the Settlement Administrator after the Claims Period. The Settling Parties will each have the right to inspect and verify the Claim Forms, and Proofs prior to the Settlement Administrator's approval of such claims, and before Defendants are obligated to make any

Settlement Payments to the Class Members.

5.4.2 Class Members have the option to participate in this Lawsuit at their own expense by obtaining their own attorney(s). Class Members who choose this option will be responsible for any attorneys' fees or costs incurred as a result of their decision. The Class Notice will advise Class Members of this option.

5.4.3 Class Members (other than Class Representatives) may elect to "opt-out" of the Settlement and, thus, exclude themselves from the Lawsuit and Settlement Class. No opt-out request may be made by a group of Class Members or signed by an actual or purported agent or attorney acting or purporting to act on behalf of a Class Member. Any opt-out request must be mailed to Class Counsel, be personally signed by the Class Member opting-out and include the following information: (i) the name of the Class Member, (ii) the current address of the Class Member, and (iii) the date signed. Any opt-out request must be mailed to Class Counsel and postmarked no later than the Notice Response Deadline. Those Class Members who do not opt out of the Settlement in a manner consistent with the conditions just described will be deemed to have forever waived their right to opt out of the Settlement Class and this Settlement. Class Members who do properly opt-out shall have no further role in the Litigation and, for all purposes, shall be regarded as if they never were a party to this Litigation; thus, they shall not be entitled to any benefit as a result of this Litigation including, without limitation, any tolling of any pertinent statute of limitations. If more than ten percent (10%) of eligible Class Members opt-out of the Settlement, Defendants shall have the option of terminating the Settlement Agreement at their sole discretion. If Defendants exercises this option, the Settlement Agreement shall be deemed null and void *ab initio*.

5.4.4 Class Members may also object to this Settlement Agreement by filing a written objection, together with any supporting papers (hereinafter collectively referred to as the “Notice of Objection”) with the United States District Court for the Western District of Washington at Seattle no later than the Notice Response Deadline. Class Counsel must also be served with copies of the objections, postmarked no later than the Notice Response Deadline. The Class Notice shall advise Class Members of this option. Class Counsel shall immediately provide any such objections to Defendants and, subsequently, the Court in the final approval process. Any Class Member who does not object to the Settlement in the manner just described shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, adequacy, or reasonableness of the proposed Settlement or any provision of this Settlement Agreement.

5.4.5 Prior to the Fairness Hearing and consistent with the rules established by the Court, the Class Representatives shall move (and Defendants shall not oppose) the Court for entry of the Order of Final Approval. Class Representatives and Defendants, through their counsel shall address any written objections from Class Members in their submission to the Court for the Fairness Hearing. Also prior to the Fairness Hearing, Class Counsel may file a Motion for Fees and Costs, consistent with this Settlement Agreement. The Class Representatives and Class Counsel shall be responsible for justifying the agreed upon payments set forth in this Settlement Agreement. The Settling Parties shall take all reasonable efforts to secure entry of the Order of Final Approval. If the Court rejects the Settlement, or fails to enter the Order of Final Approval, this Settlement Agreement shall be void *ab initio*.

5.5 *Returns and Payments to Participating Claimants.*

5.5.1 With respect to those Participating Claimants who have not elected to receive a Return Refund for any Applicable Record identified on their Qualifying Settlement Claim Certification Form, the Settlement Administrator shall issue the 5% Payments and 10% Coupons within thirty (30) days following the Effective Date.

5.5.2 With respect to Participating Claimants who have elected to receive a Return Refund for any Applicable Record identified on their Qualifying Settlement Claim Certification Form, the Settlement Administrator shall issue and send a pre-paid return shipping label with tracking number and return instructions to the physical or email address as designated by the Class Member on the Claim Form within thirty (30) days of and only after the Effective Date.

5.5.3 Participating Claimants who have elected to receive a Return Refund must return their Applicable Records identified on their Qualifying Settlement Claim Certification Form pursuant to the return instructions within ninety (90) days from the issuance of the pre-paid return shipping label with tracking number (“Return Period”).

5.5.4 Within twenty (20) days of the end of the Return Period, the Defendants shall provide a report to the Class Counsel and Settlement Administrator detailing the Applicable Records received within the Return Period, as well as any Records received that are not Applicable Records or whose condition does not satisfy Section 5.1(a) above (“Return Refund Report”).

5.5.5 For those Participating Claimants who have no deficiencies in their return of Applicable Records as set forth in the Return Refund Report, the Settlement Administrator shall no later than ten (10) days after receipt of the Return Refund Report issue

payments for Return Refunds, as well as any 5% Payments and 10% Coupons that those Participating Claimants may have elected for any other (i.e., non-returned) Applicable Record on their Qualifying Settlement Claim Certification Form.

5.5.6 The Settlement Administrator will review the Return Refund Report to identify any Participating Claimants who elected a Return Refund on their Qualifying Settlement Claim Certification Form and who either failed to make a return or whose return was deficient and shall no later than ten (10) days after receipt of the Return Refund Report issue cure notices to such Claimants. These Claimants shall have forty-five (45) days to cure or modify their election to receive a 5% Payment or 10% Coupon. Within ten (10) days after the expiration of the forty-five (45) day cure period, the Settlement Administrator shall issue payments for Return Refunds, as well as any 5% Payments and 10% Coupons for non-returned Records, to those Participant Claimants who cured or modified their election during the cure period.

5.6 *Release.*

Upon the Effective Date, Class Representatives and each of the Class Members (for themselves and their respective heirs, executors, administrators, affiliates, successors, and assigns) shall be deemed to have, and by operation of the Order Granting Final Approval shall have, fully, finally, and forever released, dismissed with prejudice, relinquished, and discharged all Released Claims.

5.7 *Payment of Costs and Attorneys' Fees and to the Class Representatives.*

5.7.1 Subject to Court approval, Class Counsel shall receive \$290,000 from Defendants for all attorneys' fees and allowable Litigation costs and expenses. This amount shall be payable within thirty (30) days of the Effective Date and will be

paid in its entirety by Defendants and will not reduce funds available to pay the Class Members. Payments made pursuant to this Paragraph shall constitute full satisfaction of any claim for fees and/or costs and the Class Representatives and Class Counsel, on behalf of themselves and all Class Members, agree that they shall not seek nor be entitled to any additional attorneys' fees or costs under any theory. The Class Representatives and Class Counsel agree that they shall be responsible for justifying the amount of this cost and fee payment to the Court and submitting the necessary materials to justify this payment along with the motion for final approval of the Settlement Agreement. Class Counsel shall provide counsel for Defendants with the pertinent taxpayer identification number and a Form W-9 for reporting purposes. Other than any reporting of this fee payment as required by this Settlement Agreement or law, which Defendants shall make, Class Counsel and the Class Representatives shall alone be responsible for the reporting and payment of any federal, state, and/or local income or other form of tax on any payment made pursuant to this Paragraph.

5.7.2 On behalf of Plaintiff Stephen J. Tuttle, in his personal capacity only, Class Counsel shall request an incentive payment in the gross amount of \$10,000 for Mr. Tuttle to be paid by Defendants. On behalf of Plaintiff Dustin Collman, in his personal capacity only, Class Counsel shall request an incentive payment in the gross amount of \$10,000 for Mr. Collman to be paid by Defendants. These amounts shall be payable within thirty (30) days of the Effective Date and will be paid in their entirety by Defendants and will not reduce funds available to pay the Class Members. This payment shall be compensation and consideration for Plaintiff Tuttle's and Plaintiff Collman's efforts as the Class Representatives in the Litigation.

5.8 *Claims Administration.*



This Settlement shall be administered by the Settlement Administrator. All fees and costs in payment to the Settlement Administrator shall be borne by the Defendants.

5.9 *Termination of Settlement.*

In the event that the Settlement Agreement is not approved by the Court; the Settlement set forth in the Settlement Agreement is terminated, cancelled, declared void, or fails to become effective in accordance with its terms; the Order Granting Final Approval of Settlement does not become final; or termination, cancellation, or voiding of the Settlement Agreement is otherwise provided, no payments shall be made or distributed to anyone in accordance with the terms of this Settlement Agreement; the Settling Parties will bear their own costs and fees with regard to the efforts to obtain Court approval; and this Settlement Agreement shall be deemed null and void with no effect on the Litigation whatsoever. In such event, the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Settling Parties and shall not be used in this Litigation or in any other proceeding for any purpose, and any Order Granting Final Approval of Settlement or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*.

5.10 *Miscellaneous Provisions.*

5.10.1 The Settling Parties: (i) acknowledge that it is their intent to consummate this Settlement Agreement and (ii) agree to cooperate to the extent reasonably necessary to effect and implement all terms and conditions of the Settlement Agreement and exercise their best efforts to accomplish the foregoing terms and conditions of the Settlement Agreement.

5.10.2 The Settlement Agreement compromises claims which are

contested in good faith and it shall not be deemed an admission by any of the Settling Parties as to the merits of any claim or defense. The Settling Parties agree that the amounts paid in settlement and the other terms of the Settlement were negotiated in good faith by the Settling Parties and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

5.10.3 Neither the Settlement Agreement, nor any act performed or document executed pursuant to, or in furtherance of, the Settlement Agreement is, may be deemed to be, or may be used as an admission of, or evidence of: (i) the validity of any Released Claim or of any wrongdoing or liability of Defendants, the Defendants' Releasees, or any of them; or (ii) any fault or omission of Defendants, the Defendants' Releasees, or any of them, in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal.

5.10.4 All of the exhibits to the Settlement Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

5.10.5 Except as otherwise provided in this Settlement Agreement, each party shall bear its own attorneys' fees and costs. All Class Members will be responsible for paying any and all income taxes that may be due as a result of their participation in the Settlement described in this Settlement Agreement.

5.10.6 The Settlement Agreement constitutes the entire agreement among the Settling Parties hereto and no representations, warranties, or inducements have been made to any party concerning the Settlement Agreement or its exhibits other than the representations, warranties, and covenants contained and memorialized in such documents. This Settlement Agreement supersedes any and all prior oral or written understandings, agreements,

and arrangements between the Parties with respect to the settlement of the Litigation and the Released Claims. Except those set forth expressly in this Settlement Agreement, there are no other agreements, covenants, promises, representations, or arrangements between the Parties with respect to the settlement of the Litigation and Released Claims. This Settlement Agreement may be altered, amended, modified, or waived, in whole or in part, only by a writing signed by all Parties to this Settlement Agreement, and may not be altered, amended, modified, or waived, in whole or in-part, orally or by an unsigned writing of any kind.

5.10.7 Class Counsel, on behalf of the Class, are expressly authorized by the Class Representatives to take all appropriate action required or permitted to be taken by the Class pursuant to the Settlement Agreement to effect its terms, and also are expressly authorized to enter into any modifications or amendments to the Settlement Agreement on behalf of the Class which they deem appropriate. Each Party to this Settlement Agreement warrants that he, she, or it is acting upon his, her, or its independent judgment and/or upon the advice of his, her, or its own counsel, and is not acting in reliance upon any warranty or representation, express or implied, of any nature or kind by any other Party, other than the warranties and representations expressly made in writing in this Settlement Agreement.

5.10.8 Each counsel or other person executing the Settlement Agreement or any of its exhibits on behalf of any party hereto hereby warrants that such person has the full authority to do so.

5.10.9 The Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

5.10.10 This Settlement Agreement shall be binding upon, and inure to

the benefit of, the heirs, administrators, executors, successors, and assigns of the Parties hereto; but otherwise this Settlement Agreement is not designed to and does not create any type of third party beneficiaries.

5.10.11 The Court shall retain jurisdiction with respect to implementing and enforcing the terms of the Settlement Agreement and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the Settlement Agreement.

5.10.12 The Settlement Agreement and the exhibits hereto shall be considered to have been negotiated, executed, delivered, and wholly performed in the State of Washington at Seattle, and the rights and obligations of the parties to the Settlement Agreement shall be construed and enforced in accordance with, and governed by, the internal substantive laws of the State of Washington at Seattle without giving effect to that State's choice of law principles.

5.10.13 The language of all parts of this Settlement Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against either party. No party shall be deemed the drafter of this Settlement Agreement. The parties acknowledge that the terms of the Settlement Agreement are contractual and are the product of negotiations between the parties and their counsel. Each party and their counsel cooperated in drafting and preparing the Settlement Agreement. In any construction to be made of the Settlement Agreement, the Settlement Agreement shall not be construed against any party. Any canon of contract interpretation to the contrary, under the law of any state, shall not be applied.

5.10.14 The Class Representatives and Class Counsel shall not directly

or indirectly cause any aspect of this Lawsuit or the terms of this Settlement Agreement to be reported to the media or news reporting services, except as may otherwise be agreed to by Defendants in writing in the form of an agreed-upon written press release. Notwithstanding the foregoing, Class Counsel shall not be restricted in the use of media in communication with Class Members whether online, via a website or otherwise, provided that such communication accurately describe the terms and provisions of this Settlement Agreement applicable to notice and payment of claims and Defendants' non-admission of liability.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have caused the Settlement Agreement to be executed.

Date: February 2, 2023

**BADGLEY MULLINS TURNER PLL**

By: /s/ Duncan C. Turner

Duncan C. Turner, WSBA No. 20597  
Mark A. Trivett, WSBA No. 46375  
19929 Ballinger Way NE, Suite 200  
Seattle, WA 98155  
Telephone: (206) 621-6566  
Email: [dturner@badgleyturner.com](mailto:dturner@badgleyturner.com)  
**Attorneys For Plaintiffs**

Date: February 2, 2023

**JOSEPH J. MADONIA & ASSOCIATES**

By: /s/ Joseph J. Madonia

Joseph J. Madonia, (*pro hac vice*)  
5757 North Sheridan, Suite 10A  
Chicago, Illinois 60660  
Telephone: (312) 953-9000  
Email: [josephmadonia@gmail.com](mailto:josephmadonia@gmail.com)  
**Attorney For Defendants**

Date: February 2, 2023

**CORR CRONIN LLP**

By: /s/ Emily J. Harris

Emily J. Harris, WSBA No. 35763  
Steven W. Fogg, WSBA No. 23528  
Telephone: (206) 625-8600  
Email: [sfogg@corrchronin.com](mailto:sfogg@corrchronin.com)  
Email: [eharris@corrchronin.com](mailto:eharris@corrchronin.com)  
***Local Counsel for Defendants***