

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT, IN AND  
FOR MIAMI-DADE COUNTY, FLORIDA

MICHELLE MACK CARTER, individually  
and on behalf of all others similarly situated,

Plaintiff,

v.

NEXGEN AIR CONDITIONING AND  
HEATING, LLC.

Defendant.

Case No. 2025-018415-CA-01

**SETTLEMENT AGREEMENT AND RELEASE**

1. This Settlement Agreement and Release (“Settlement” or “Agreement”) is entered into between and among the following parties, by and through their respective counsel: Plaintiff Michelle Mack Carter (“Plaintiff” or “Class Representative”), on behalf of herself and the Settlement Class, and defendant NexGen Air Conditioning and Heating, LLC (“Defendant”). Plaintiff and Defendant may be referred to collectively as the “Parties,” or, individually as a “Party.”

## **I. RECITALS**

2. WHEREAS, Plaintiff filed a class action complaint (the “Action”) on behalf of herself and on behalf of a putative class in the lawsuit styled *Carter v. NexGen Air Conditioning and Heating, LLC*, in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, which asserts claims under the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”) and the Florida Telephone Solicitation Act, Fla. Stat. 501.059 (“FTSA”).

3. WHEREAS, Plaintiff alleges that she and members of the putative class received prerecorded voice messages from and/or advertising Defendant, which allegedly violated the TCPA and FTSA and harmed her and the putative class (together with the allegations of the complaint in the Action and the complaint in the Prior Action, as defined below, the “Allegations”).

4. WHEREAS, Plaintiff alleges that, as a result of the Allegations, she and other similarly situated individuals are entitled to declaratory and injunctive relief, statutory damages, and costs.

5. WHEREAS, the Parties, through Plaintiff’s counsel and Counsel for Defendant, ultimately reached an agreement in principle to resolve the claims raised in the Action after extensive negotiations and a mediation conducted by Judge Herbert Stettin (Ret.).

6. WHEREAS, Plaintiff will request that the Court certify the Settlement Class in the Action for settlement purposes only, and appoint her as Class Representative and her lawyers (Ignacio Hiraldo of IJH Law; Michael Eisenband of Eisenband Law, P.A.; and Manuel S. Hiraldo of Hiraldo, P.A.) as Class Counsel in this case.

7. WHEREAS, based on their investigation and discovery in the Action and the experience of Class Counsel, Plaintiff and Class Counsel have concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate to, and in the best interest of, the Settlement Class.

8. WHEREAS, Plaintiff, on behalf of herself and as the representative of the Settlement Class, and Defendant desire to resolve the dispute between them concerning the Allegations and otherwise.

9. WHEREAS, Plaintiff, on behalf of herself and as the representative of the Settlement Class, and Defendant will execute this Agreement solely to compromise and settle protracted, complicated, and expensive litigation.

10. WHEREAS, Defendant denies the Allegations, and any and all liability or wrongdoing to the Class Representative and to the Settlement Class and generally.

11. WHEREAS, Defendant has nonetheless concluded that further litigation would be protracted and expensive, has accounted for the uncertainty and risks inherent in litigating the Action, and has determined that it is desirable that the Action and the Allegations be fully, completely, and finally settled in the manner and on the terms set forth herein.

12. NOW, THEREFORE, in exchange for the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties and their counsel agree that the Action shall be settled,

compromised, and dismissed on the merits and with prejudice on the terms and conditions in this Agreement, and without costs (except as provided herein), subject to Court approval of this Agreement after a hearing and on finding that it is a fair, reasonable, and adequate settlement.

## **II. DEFINITIONS**

13. In addition to the terms defined above and at other places in this Agreement, the following defined terms have the meaning set forth below, unless this Agreement specifically provides otherwise:

14. “**Administrator**” means Kroll Settlement Administration LLC which, subject to Court approval, shall be responsible for Settlement administrative tasks described herein.

15. “**Agreement**” means this Settlement Agreement and Release and all attachments and exhibits hereto.

16. “**Attorneys’ Fees and Expenses**” means the total recovery that may be awarded to Class Counsel to compensate them for all attorneys’ fees and expenses incurred by Plaintiff and Class Counsel in connection with the Action, which is not to exceed 33% of the Gross Settlement Fund.

17. “**Claim**” means a written request for a Claim Settlement Payment submitted by a Settlement Class Member to the Administrator.

18. “**Claim Deadline**” means the last date by which a Claim submitted to the Administrator by a Settlement Class Member for a Claim Settlement Payment must be postmarked or sent via email to be considered by the Administrator as timely. The Claim Deadline shall be no later than fifteen (15) Days following the later of (a) the Final Approval Hearing date or (b) the date Final Approval is granted by the Court. All Claims postmarked on or before the Claim

Deadline shall be deemed timely, and all Claims postmarked after the Claim Deadline shall be deemed untimely and barred from entitlement to any Claim Settlement Payment.

19. “**Claim Form**” means the form that is substantially the same as **Exhibit 1** attached to this Agreement and/or as ultimately approved by the Court.

20. “**Claim Settlement Check**” means the check containing the Claim Settlement Payment for each Settlement Class Member who submits a valid and timely Claim.

21. “**Claim Settlement Payment**” means the payment to be made to Settlement Class Members who submit a valid and timely Claim Form to the Administrator, and who qualify for such relief under this Agreement.

22. “**Class Counsel**” means: Ignacio Hiraldo, IJH Law, 1200 Brickell Ave., Ste 1950, Miami, FL 33131; Michael Eisenband, Eisenband Law, P.A., 515 E Las Olas Blvd., Ste 3100, Fort Lauderdale, FL 33301; and Manuel S. Hiraldo, Hiraldo, P.A., 401 East Las Olas Boulevard Suite 1400, Fort Lauderdale, FL 33301.

23. “**Class Notice**” means the program of notice described in this Agreement and administered by the Administrator to inform the Settlement Class Members about the details of the Settlement and the Settlement Class Members’ potential entitlement to a Claim Settlement Payment. The E-Mail Notice and Postcard Notice (the latter as necessary) that will be sent by the Administrator to Settlement Class Members, in substantially the form attached as **Exhibit 4** (E-Mail Notice) and **Exhibit 5** (Postcard Notice) to this Agreement, together with the Long-Form Notice and Settlement Website, collectively make up the Class Notice.

24. “**Class Notice Date**” means the last date on which the Administrator can begin effectuating Class Notice, which shall be set by the Court in the Preliminary Approval Order as approximately thirty (30) Days after entry of the Preliminary Approval Order.

25. “**Class Period**” means the time period from October 14, 2020, through the date of entry of the Preliminary Approval Order.

26. “**Confidential Information**” means proprietary, commercially sensitive information, or personal information that the Parties agree in this Agreement to protect from disclosure and dissemination to the public or any third party or entity other than the Administrator.

27. “**Counsel for Defendant**” means: Ari N. Rothman, Esq. of Venable LLP.

28. “**Court**” means the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.

29. “**Days**” means calendar days, except that, when computing any period of time under this Agreement, the day of the act, event, or default from which the designated period of time begins to run shall not be included. Further, when computing any period of time under this Agreement, the last day of the period so computed shall be included, unless it is a Saturday, Sunday, or federal or State of Florida legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

30. “**Effective Date**” means the first date after all of the following events and conditions have been met or have occurred: (a) the Court enters the Preliminary Approval Order; (b) the Objection Deadline and Opt-Out Deadline have passed; (c) the Court enters the Final Approval Order; (d) the deadline has passed for the Parties to terminate the Settlement in accordance with this Agreement without a Party terminating it; and (e) the time to appeal from the Final Approval Order has expired and no notice of appeal has been filed, or, in the event that an appeal is filed, the appellate process is exhausted and the Final Approval Order has remained intact in all material respects.

31. **“E-Mail Notice”** means the e-mail individual notice sent by the Administrator to Settlement Class Members in substantially the form attached to this Agreement as **Exhibit 4**.

32. **“Final Approval”** means the final approval of the Settlement, which occurs when the Court enters the Final Approval Order, substantially in the form approved by the Parties attached to this Agreement as **Exhibit 2** and without material change.

33. **“Final Approval Hearing”** means a hearing set by the Court for the purpose of: (a) determining the fairness, adequacy, and reasonableness of this Agreement and associated settlement in accordance with class action procedures and requirements; and (b) entering the Final Approval Order.

34. **“Final Approval Order”** means the order and judgment entered by the Court, substantially in the form, and without material change to, the order attached hereto as **Exhibit 2**, approving this Agreement as fair, adequate, and reasonable and in the best interests of the Settlement Class as a whole in accordance with the Florida Rules of Civil Procedure, and making such other findings and determinations as the Court deems necessary and appropriate to effectuate the terms of this Agreement, including granting Final Approval to the Settlement, ruling on Class Counsel’s application for attorneys’ fees and expenses and the Service Award for the Class Representative, and dismissing the Action with prejudice. If the Court enters separate orders addressing the matters constituting the matters set forth in this paragraph, then the Final Approval Order includes all such orders.

35. **“Gross Settlement Fund”** means the total agreed upon settlement amount and consideration to be paid by Defendant, of up to Three Million Eight Hundred and Three Thousand and Eight Hundred and Thirty-Five Dollars (\$3,803,835.00), which is inclusive of Notice and

Administrative Costs, Attorneys' Fees and Expenses, Plaintiff's Service Award, and Claim Settlement Payments.

36. **"Long-Form Notice"** means the notice that is made available on the Settlement Website and upon request from the Administrator, in substantially the form attached as **Exhibit 3** to this Agreement.

37. **"Net Settlement Fund"** means the remaining amount of the Gross Settlement Fund after deductions for Notice and Administrative Costs, Attorneys' Fees and Expenses, the Service Award, and taxes and tax expenses permitted to be deducted pursuant to this Agreement.

38. **"Notice and Administrative Costs"** means the reasonable costs and expenses authorized by the Court and approved by Class Counsel and Counsel for Defendant of disseminating the Class Notice in accordance with the Preliminary Approval Order, and all reasonable and authorized costs and expenses incurred by the Administrator in administering the Settlement, including, but not limited to, costs and expenses associated with determining mailing and/or e-mail addresses for Settlement Class Members, assisting Settlement Class Members, setting up the Settlement Website, administering the Class Notice, processing claims, escrowing funds, and issuing and mailing Claim Settlement Payments. Notice and Administrative Costs shall not exceed Two Hundred and Fifty Thousand Dollars (\$250,000.00), and Defendant shall not be required to pay more than this amount but may elect to pay more at its sole and absolute discretion.

39. **"Objection Deadline"** means the date identified in the Preliminary Approval Order and Class Notice by which a Settlement Class Member must serve written objections, if any, to the Settlement to be able to object to the Settlement. The Objection Deadline shall be sixty (60) Days after the Class Notice Date.



40. **“Opt-Out Deadline”** means the date identified in the Preliminary Approval Order and Class Notice by which a Request for Exclusion must be submitted in writing to the Administrator for a Settlement Class Member to be excluded from the Settlement Class. The Opt-Out Deadline shall be sixty (60) Days after the Class Notice Date.

41. **“Postcard Notice”** means the notice sent to Settlement Class Members via postcard if E-Mail Notice fails in substantially the same form as **Exhibit 5**.

42. **“Preliminary Approval Order”** means the order entered by the Court preliminarily certifying, for settlement purposes only, the Settlement Class and granting preliminary approval to the Settlement, substantially in the form attached hereto as **Exhibit 6**, without material change.

43. **“Prior Action”** means the class action complaint in the Central District of California, captioned *Carter v. NexGen Air Conditioning and Heating, LLC*, No. 8:24-cv-02222, which was dismissed by joint stipulation without prejudice on July 10, 2025.

44. **“Released Claims”** means any and all claims, actions, causes of action, rights, demands, suits, debts, liens, contracts, agreements, offsets, or liabilities, including, but not limited to, tort claims, negligence claims, claims for breach of contract, breach of the duty of good faith and fair dealing, breach of statutory duties, actual or constructive fraud, misrepresentations, fraudulent inducement, statutory and consumer fraud, breach of fiduciary duty, unfair business or trade practice, false advertising, restitution, rescission, compensatory and punitive damages, injunctive or declaratory relief, attorneys’ fees, interest, costs, penalties, and any other claims, whether known or unknown, alleged or not alleged in the Action and/or the Prior Action, suspected or unsuspected, contingent or matured, under federal, state, or local law, which Plaintiff and/or any Settlement Class Member had, now have, or may in the future have that could have been

asserted in the Action and/or the Prior Action with respect to any conduct, act, omissions, facts, matters, transactions, or oral or written statements or occurrences on or prior to the date the Court enters the Preliminary Approval Order arising from or relating to the receipt of prerecorded voice messages from Defendant or any Released Party or any claim under the TCPA and FTSA. Defendant is also providing a release of all claims or potential claims it may have against Plaintiff.

45. **“Released Parties”** means Defendant and any vendors, contractors, or agents that were involved in any way with the prerecorded voice messages sent by or on behalf of Defendant. It shall also include all of Defendant’s affiliates, brands, past, present, and future direct and indirect predecessors, successors, assigns, parents, partners, privies, owners, sister companies, subsidiaries, partnerships, limited liability companies, corporations, unincorporated entities, divisions, departments, affiliates, groups, and any and all of their past, present, and future directors, officers, shareholders, executives, officials, principals, members, employees, stockholders, heirs, agents, servants, insurers, reinsurers, members, accountants, actuaries, fiduciaries, advisors, consultants, contractors, trustees, representatives, indemnitors, indemnitees, partners, joint venturers, licensees, licensors, independent contractors, subrogees, trustees, executors, administrators, predecessors, successors, assigns, and attorneys, and any other person acting on their behalf, in their capacity as such, that were involved in any way with the complained of released telephone calls. It is expressly understood that any Released Party that is not a signatory to this Agreement is an intended and express third-party beneficiary of this Agreement, and each may seek to enforce this Agreement.

46. **“Request for Exclusion”** means a written request from a Settlement Class Member that seeks to exclude the Settlement Class Member from the Settlement Class and that contains the information required pursuant to this Agreement.

47. **“Service Award”** means any Court-approved payment to the Class Representative, in her capacity as an individual class representative, which shall not exceed Seven Thousand Five Hundred Dollars (\$7,500.00) and which shall be payable from the Gross Settlement Fund.

48. **“Settlement”** means the settlement set forth in this Agreement.

49. **“Settlement Class”** means:

**All persons in the United States who, within four years prior to the filing of this action, had a call initiated using the Drop Cowboy platform to such person’s phone number using a prerecorded or artificial voice to encourage the purchase or rental of, or investment in, Defendant’s property, goods, or services, and whose number is on the class list.**

The Settlement Class excludes the following: (a) the trial judge presiding over this case; (b) Defendant, as well as any parent, subsidiary, affiliate, or control person of Defendant, and the officers, directors, agents, servants, or employees of Defendant; (c) any of the Released Parties; (d) the immediate family of any such person(s); (e) any member of the Settlement Class who has timely opted out of this proceeding; (f) Class Counsel, their employees, and their immediate family; and (g) the mediator used in this action.

50. **“Settlement Class Claimant”** means any Settlement Class Member who submits a valid and timely Claim in accordance with this Agreement.

51. **“Settlement Class Data”** means the data relating to approximately One Hundred and Eighty-One Thousand and One Hundred and Thirty-Five (181,135) persons who, according to Defendant’s records, are members of the Settlement Class. The Settlement Class Data is and shall be treated as Confidential Information.

52. **“Settlement Class Member”** means any member of the Settlement Class.

53. **“Settlement Website”** means the website prepared by the Administrator in connection with the process of providing Class Notice to Settlement Class Members.

54. The plural of any defined term includes the singular, and vice versa, as made necessary in context.

### **III. SETTLEMENT TERMS**

#### **A. Certification of Settlement Class and Conditional Nature of Agreement**

55. Defendant conditionally agrees and consents to certification of the Settlement Class for settlement purposes only. Defendant's conditional agreement is contingent on (a) the Parties' execution of this Agreement, (b) the Court's entry of the Final Approval Order, and (c) the Effective Date occurring. Except as provided below, if this Agreement, for any reason, does not receive Final Approval, if the Effective Date does not occur, or if the Agreement is otherwise terminated, it shall be null and void, it shall be of no force or effect whatsoever, it shall not be referred to or used for any purpose whatsoever, and the negotiation, terms, and entry of the Agreement shall remain inadmissible under the Florida Rules of Civil Procedure, Florida Rules of Evidence, and any applicable state law or rule of civil procedure or evidence.

56. Defendant denies all claims, liability, damages, losses, penalties, interest, fees, restitution, and all other forms of relief that were or could have been sought in the Action, as well as all Allegations asserted. Defendant has agreed to resolve the Action through this Agreement, but if this Agreement is deemed void or Final Approval does not occur, Defendant does not waive, but rather expressly reserves, all rights to challenge all such claims and Allegations on all legal, procedural, evidentiary, and factual grounds, including, without limitation, the ability to challenge on any grounds whether any class can be certified and to assert any and all defenses or privileges. The Class Representative and Class Counsel agree that Defendant retains and reserves all of these rights and agree not to take a position to the contrary.

**B. Settlement Class Relief**

57. In consideration for the Released Claims set forth in this Agreement, Defendant shall provide the following relief: Defendant shall make the Gross Settlement Fund available for payment of Claim Settlement Payments, Attorneys' Fees and Expenses, Notice and Administrative Costs, and any Service Award.

58. Settlement Class Members must submit a timely, valid, and verified Claim Form by the Claim Deadline in the manner required by this Agreement to receive a Claim Settlement Payment.

59. Each Settlement Class Member who submits a timely, valid, correct and verified Claim Form by the Claim Deadline in the manner required by this Agreement, making all the required affirmations and representations, shall be sent a Claim Settlement Check for Twenty-One Dollars (\$21.00) from the Net Settlement Fund, subject to a *pro rata* reduction if the total monetary amount of valid Claims exceeds the Net Settlement Fund. One (1) Claim is allowed per Settlement Class Member.

60. Except as provided in this Agreement, Defendant shall have no obligation to make any other or further payments to Plaintiff or to any Settlement Class Member.

61. Defendant agrees to adopt policies and procedures to ensure compliance with the TCPA including enhanced policies and procedures related to the maintenance and use of an internal do not call list.

**C. Preliminary Approval**

62. Concurrent with submission of this Agreement for the Court's consideration, Class Counsel shall submit to the Court a motion for preliminary approval of this Settlement, the

substance of which shall be approved by Defendant before submission to the Court. The motion shall request that the Court, among other things:

- a. Preliminarily approve this Settlement;
- b. Preliminarily certify the Settlement Class only for the purposes of this Settlement;
- c. Preliminarily find that the proposed Settlement is fair, reasonable, and adequate to warrant providing notice to the Settlement Class;
- d. Approve Class Notice for settlement purposes only;
- e. Schedule a Final Approval Hearing date;
- f. Appoint the Administrator;
- g. Preliminarily enjoin all Settlement Class Members, unless and until they have timely and properly excluded themselves from the Settlement Class, from (i) filing, commencing, prosecuting, intervening in or participating as plaintiff, claimant, or class member in any other lawsuit, arbitration, or other proceeding in any jurisdiction based on, relating to, or arising out of the claims and causes of action or the facts and circumstances giving rise to the Action, the Prior Action, and/or the Released Claims; (ii) filing, commencing, participating in, or prosecuting a lawsuit, arbitration, or other proceeding as a class action on behalf of any Settlement Class Member who has not timely excluded themselves (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), based on, relating to, or arising out of the claims and causes of action or the facts and circumstances giving rise to the Action, the

Prior Action, and/or the Released Claims; and (iii) attempting to effect opt-outs of a class of individuals in any lawsuit, arbitration, or other proceeding based on, relating to, or arising out of the claims and causes of action or the facts and circumstances giving rise to the Action, the Prior Action, and/or the Released Claims. This Settlement is not intended to prevent Settlement Class Members from participating in any action or investigation initiated by a state or federal agency; and

- h. Enter the Preliminary Approval Order, which shall be in a form agreed upon by Class Counsel and Defendant.

**D. Service Award and Attorneys' Fees and Expenses**

63. **Service Award:** Plaintiff may petition the Court for a Service Award of no more than Seven Thousand and Five Hundred Dollars (\$7,500.00) to be paid from the Gross Settlement Fund. Defendant agrees not to object to such a request. Any Service Award shall be paid to Class Counsel within ten (10) Days of the Effective Date from the Gross Settlement Fund. Class Counsel shall then distribute the Service Award to Plaintiff, and Defendant shall have no responsibility, role, or liability in connection with such distribution.

64. **Attorneys' Fees and Expenses:** Class Counsel may petition the Court for an award of Attorneys' Fees and Expenses of no more than 33% of the Gross Settlement Fund or One Million Two Hundred and Fifty-Five Thousand and Two Hundred and Sixty-Five Dollars and Fifty-Five Cents (\$1,255,265.55) to be paid from the Gross Settlement Fund. Defendant agrees not to object to such a request. Class Counsel shall be responsible for allocating and shall allocate among Class Counsel any awarded Attorneys' Fees and Expenses, and Defendant shall have no responsibility, role, or liability in connection with such allocation. Any Attorneys' Fees and

Expenses shall be paid from the Gross Settlement Fund to Class Counsel within ten (10) Days of the Effective Date.

#### **IV. CLAIMS ADMINISTRATION**

##### **A. Administrator**

65. The Parties have agreed on Kroll Settlement Administration LLC as the Administrator.

66. The Administrator shall administer the Settlement in a cost-effective and timely manner. The Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Administrator shall maintain all such records as required by applicable law in accordance with its normal business practices, and such records will be made available to Class Counsel and Counsel for Defendant upon request. The Administrator shall also provide reports and other information to the Court as the Court may require. The Administrator shall provide Class Counsel and Counsel for Defendant regular reports at weekly intervals containing information concerning Class Notice, administration, and implementation of the Settlement, and requests for exclusion.

67. The Administrator shall provide Class Counsel and Counsel for Defendant with drafts of all administration-related documents, including but not limited to, as applicable, follow-up communications with Settlement Class Members, telephone scripts, Settlement Website postings, and any other communications with the Settlement Class, at least ten (10) Days before the Administrator is required to or intends to publish or use such communications, unless Class Counsel and Counsel for Defendant agree to waive this requirement in writing on a case-by-case basis.



68. Without limiting any of its other obligations as stated herein, the Administrator shall be responsible for, among other things and if and as necessary:

- a. Implementing, distributing, and effectuating Class Notice;
- b. Distributing and processing Claim Forms to and from Settlement Class Members;
- c. Forwarding written inquiries from Settlement Class Members to Class Counsel or their designee and Counsel for Defendant;
- d. Establishing and maintaining the Settlement Website;
- e. Receiving and maintaining on behalf of the Court any correspondence regarding requests for exclusion and/or objections to the Settlement;
- f. Administering Claim Settlement Payments;
- g. Making any electronic and/or physical mailings to Settlement Class Members required under this Agreement; and
- h. Providing all other related support, reporting, and administration as further stated in this Agreement.

69. The Parties may direct the Administrator to assist with various additional administrative tasks in implementing the Settlement as the Parties agree is appropriate.

70. Class Counsel and Counsel for Defendant may, by agreement, substitute a different entity as Administrator, subject to approval by the Court if the Court has previously approved the Settlement preliminarily or finally. In the absence of such an agreement, either Class Counsel or Defendant may move the Court to substitute a different entity as Administrator on a showing of good cause.

71. The Parties will coordinate with the Administrator to provide Class Notice to the Settlement Class, as provided in this Agreement. The Administrator shall administer the Settlement in accordance with the terms of this Agreement and shall treat any and all documents, communications, and other information and materials received in connection with the administration of the Settlement as Confidential Information except as provided for in this Agreement or by Court order.

72. All Notice and Administrative Costs shall be paid by Defendant from the Gross Settlement Fund. Defendant shall not be obligated to compute, estimate, or pay any taxes on behalf of Plaintiff, any Settlement Class Member, Class Counsel, or the Administrator. The Administrator will invoice Defendant directly for start-up and initial Class Notice costs at any time after entry of the Preliminary Approval Order and will bill Defendant monthly for incurred fees and expenses thereafter. The Administrator will complete and provide to Defendant any W-9 forms and invoices necessary for Defendant to pay for the Notice and Administrative Costs. The Parties agree that Administrator costs shall be paid from the Gross Settlement Fund.

73. Defendant, the Released Parties, and Counsel for Defendant shall have no responsibility for, interest in, or liability whatsoever with respect to: (a) any act, omission, or determination by Class Counsel, the Administrator, or any of their respective agents or designees, in connection with the administration of the Settlement or otherwise; (b) the management, investment, or distribution of the Gross Settlement Fund; (c) the allocation of Claim Settlement Payments to Settlement Class Members or the implementation, administration, or interpretation thereof; (d) the determination, administration, or calculation of disbursements from the Gross Settlement Fund; (e) any losses suffered by, or fluctuations in the value of, the Gross Settlement

Fund; or (f) the payment or withholding of any taxes, tax expenses, or costs incurred in connection with the taxation of the Gross Settlement Fund or the filing of any federal, state, or local returns.

74. All taxes and tax expenses shall be paid only out of the Gross Settlement Fund and shall be timely paid by the Administrator pursuant to this Agreement and without further order of the Court. Any tax returns prepared for the Gross Settlement Fund (as well as the election(s) set forth therein) shall be consistent with this Agreement and in all events shall reflect that all taxes on the income earned by the Gross Settlement Fund shall be paid out of the Gross Settlement Fund as provided herein. Defendant, Counsel for Defendant, and Released Parties shall have no responsibility or liability for the acts or omissions of the Administrator or its agents with respect to the payment of taxes or tax expenses.

**B. Class Notice**

75. Class Counsel and Defendant shall insert the correct dates and deadlines in the Notice before Class Notice commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order.

76. Defendant shall, by no later than ten (10) Days after entry by the Court of the Preliminary Approval Order, provide to the Administrator the Settlement Class Data in electronic format, including any email addresses and mailing address Defendant has for each Settlement Class member.

77. Before effecting Class Notice, the Administrator shall review the Settlement Class Data and use methods commonly used in the class administration industry to verify and/or update e-mail addresses and mailing addresses (*e.g.*, reliable sources like LexisNexis and TransUnion) for those whose e-mail address or mailing address is incorrect or unknown.

78. The Administrator shall send Class Notice to Settlement Class Members using the Settlement Class Data. For those Settlement Class Members whose email address are contained in the Settlement Class Data, the Administrator shall send one copy of E-Mail Notice starting on the Class Notice Date. The Administrator shall provide Class Counsel and Defendant a sworn declaration that confirms that the E-Mail Notice program was completed in a timely manner and in accordance with this Agreement and the Preliminary Approval Order. If the Administrator is unable to obtain a valid email address for a Settlement Class Member, or if the E-Mail Notice sent to a Settlement Class Member is bounced back as undeliverable, the Administrator shall send a Postcard Notice to that Settlement Class Member at the last known and valid mailing address.

79. The Settlement Website shall contain all relevant documents and court filings, including the Long-Form Notice. The Long-Form Notice shall be sent to all Settlement Class Members who contact the Administrator by email and request a copy.

80. By no later than the Class Notice Date, the Administrator shall establish and maintain the Settlement Website, which, among other things shall: (a) enable Settlement Class Members to access and download the Claim Form, (b) provide contact information for the Administrator and Class Counsel, and (c) provide access to relevant documents concerning the Action. Such relevant documents to be made available on the Settlement Website shall include this Agreement; the Long-Form Notice; the Preliminary Approval Order; the complaint in the Action; the complaint in the Prior Action; and, when entered by the Court, the Final Approval Order. The Settlement Website shall not go live until all of its contents, including its URL, are approved by Defendant which approval may be provided by Counsel for Defendant. The Administrator shall maintain the Settlement Website until at least sixty (60) Days following the Claim Deadline. The Settlement Website shall have a portal where Claim Forms can be submitted.

81. By the Class Notice Date, the Administrator shall establish and maintain a toll-free number that maintains an IVR (or similar) system to answer questions about the Settlement. The Administrator shall maintain the IVR (or similar) system until at least sixty (60) Days following the Claim Deadline.

**C. Claim Filing, Review, and Approval Process**

82. To submit a Claim, Settlement Class Members must provide the correct information and documentation required by the Claim Form. The Claim Form shall require any Settlement Class Member who submits a Claim to provide the following documentation and information: (a) Settlement Class Member's name, current address, telephone number, and e-mail address (if any); and (b) each Settlement Class Member's telephone number that received a prerecorded voice call from Defendant, a prerecorded voice call advertising Defendant, or a prerecorded voice call made on Defendant's behalf during the Class Period.

83. Settlement Class Members shall be permitted to make a Claim for a Claim Settlement Payment by submitting a Claim Form on the Settlement Website by no later than the Claim Deadline. Only one Claim Form may be submitted per telephone number that received a prerecorded voice call from Defendant, a prerecorded voice call advertising Defendant, and/or a prerecorded voice call made on Defendant's behalf during the Class Period, regardless of how many calls were received by the Settlement Class Member. Claim Forms can also be submitted via email to the Administrator or by mail to the Administrator.

84. Any Settlement Class Member who fails to submit a timely, accurate, and fully completed and correct, valid Claim Form shall not be entitled to receive a Claim Settlement Payment, but shall otherwise be bound by all of the terms in this Agreement, including the terms of the Final Approval Order and the releases as set forth in this Agreement, and shall be

permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against any Released Parties concerning any Released Claims.

85. The Administrator shall confirm that each Claim Form submitted is in the form required; that each Claim Form includes the required affirmations, information, and documentation; that each Claim Form was submitted in a timely fashion; and that the Settlement Class Member is a member of the Settlement Class. Any Settlement Class Member's failure to provide any of the required affirmations or information shall result in the Claim being deemed invalid, and Defendant shall not have any further obligation to process or make any Claim Settlement Payment on such invalid Claim. The Administrator shall not receive any incentive for denying Claims. Valid Claims will result in the Settlement Class Member being approved as a Settlement Class Claimant and entitled to a Settlement Class Payment.

**D. Opt-Out Rights**

86. A Settlement Class Member who wishes to opt out of the Settlement Class must do so in writing. To opt out, a Settlement Class Member must complete and send to the Administrator, at the address listed in the Class Notice, a Request for Exclusion that is postmarked no later than the Opt-Out Deadline, as specified in the Class Notice (or as the Court otherwise requires).

87. The Request for Exclusion must include:

- a. The Action name;
- b. The name, address, and telephone number of the Settlement Class Member;
- c. Each the telephone number at which the Settlement Class Member received a prerecorded voice call from Defendant, a prerecorded voice call advertising Defendant, or a prerecorded voice call made on Defendant's behalf;

- d. A personal signature by the Settlement Class Member requesting exclusion;  
and
- e. A statement reflecting the desire to be excluded from the Settlement Class in the Action, such as: “I hereby request that I be excluded from the proposed Settlement Class.”

88. Any Settlement Class Member who does not opt out of the Settlement in the manner described herein shall be deemed to be part of the Settlement Class, and shall be bound by all subsequent proceedings, orders, releases, and judgments, including the Final Approval Order and the releases set forth herein.

89. A Settlement Class Member who desires to opt out must take timely affirmative written action in accordance with this section, even if the Settlement Class Member desiring to opt out (a) files or has filed a separate action against any of the Released Parties, or (b) is, or becomes, a putative class member in any other class action filed against any of the Released Parties.

90. Any Settlement Class Member who properly opts out of the Settlement Class shall not: (a) be bound by any orders or judgments relating to the Settlement; (b) be entitled to relief under, or be affected by, this Agreement; (c) gain any rights by virtue of this Agreement; or (d) be entitled to object to any aspect of the Settlement.

91. No later than fourteen (14) Days after the Opt-Out Deadline, the Administrator shall provide Class Counsel and Counsel for Defendant with a list of all timely Requests for Exclusion along with copies of such Requests for Exclusion.

92. Except for those Settlement Class Members who timely and properly file a Request for Exclusion, all other Settlement Class Members will be deemed to be Settlement Class Members for all purposes under the Agreement, and upon the Effective Date, will be bound by its terms.

## **E. Objections**

93. Any Settlement Class Member who does not opt out of the Settlement may object to the Settlement. To object, the Settlement Class Member must comply with the objection procedures and deadlines in this Agreement.

94. Any Settlement Class Member who wishes to object to the Settlement must do so in writing on or before the Objection Deadline, as specified in the Class Notice and Preliminary Approval Order. The written objection must be filed with the Court and mailed (with the requisite postmark) to Class Counsel and Counsel for Defendant, no later than the Objection Deadline.

95. The requirements to assert a valid written objection shall be set forth in the Long-Form Notice. To be valid, the written objection must include:

- a. The name of the Action;
- b. The objector's full name, address, and telephone number;
- c. An explanation of the basis on which the objector claims to be a Settlement Class Member;
- d. All grounds for the objection, accompanied by any legal support for the objection known to the objector or his/her counsel;
- e. The number of times in which the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such an objection, and a copy of any orders related to or ruling on the objector's prior such objections that were issued by the trial and appellate courts in each listed case;



- f. The identity of all counsel who represent the objector for purposes of submitting the objection, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or Attorneys' Fee and Expenses application;
- g. A copy of any orders related to or ruling on counsel's or the counsel's law firm's prior objections made by individuals or organizations represented by the objector's counsel that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding five (5) years;
- h. All agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector's counsel and any other person or entity;
- i. The identity of all counsel (if any) representing the objector who will appear at the Final Approval Hearing;
- j. A statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing;
- k. A list of all persons who will be called to testify at the Final Approval Hearing in support of the objection; and
- l. The objector's signature (an attorney's signature is not sufficient).

96. Any Settlement Class Member who fails to object to the Settlement in the manner described in the Class Notice and consistent with this section shall be deemed to have waived any such objection, shall not be permitted to object to any terms or approval of the Settlement at the

Final Approval Hearing, and shall be foreclosed from seeking any review of the Settlement or the terms of this Agreement by appeal or other means.

97. Subject to approval by the Court, any Settlement Class Member who files and serves a written objection in accordance with this section may appear, in person or by counsel, at the Final Approval Hearing held by the Court, to show cause why the Settlement should not be approved as fair, adequate, and reasonable, but only if the objecting Settlement Class Member: (a) files with the Court a notice of intention to appear at the Final Approval Hearing by the Objection Deadline (“Notice of Intention to Appear”); and (b) serves the Notice of Intention to Appear on Class Counsel and Counsel for Defendant by the Objection Deadline.

98. The Notice of Intention to Appear must include: (a) the Action’s name and number; (b) the Settlement Class Member’s name, address, telephone number, and signature, and, if represented by counsel, their contact information; (c) the telephone number where he or she received a call from Defendant; and (d) copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member will present to the Court in connection with the Final Approval Hearing.

99. Any Settlement Class Member who does not file a Notice of Intention to Appear in accordance with the deadlines and other specifications set forth in the Class Notice and this Agreement shall not be entitled to appear at the Final Approval Hearing and raise any objections.

100. The Parties shall have the right to take discovery from any person who claims to be a Settlement Class Member who objects to the Settlement without leave of Court.

**F. Funding & Distribution of the Gross Settlement Fund and Claim Settlement Payment**

101. **Gross Settlement Fund:** As described herein, the Gross Settlement Fund shall be used to provide the exclusive recovery and relief for the Settlement Class. Defendant need not

segregate funds or otherwise create special accounts to hold the Gross Settlement Fund and will not relinquish control of any money until after the Effective Date. Any Attorneys' Fees and Expenses, any Service Award, and all Notice and Administrative Costs will be paid by Defendant out of the Gross Settlement Fund. Any amounts not claimed, and any amounts reduced by the Court, shall remain with Defendant. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall Defendant be required to pay more than Three Million Eight Hundred and Three Thousand and Eight Hundred and Thirty-Five Dollars (\$3,803,835.00) under this Agreement without Defendant's prior express written consent which Defendant may withhold in its absolute direction for any or no reason.

102. **Funding:** Defendant shall, on or by thirty (30) Days after the Effective Date, fund all amounts required by the Administrator for distribution of any Claim Settlement Payments to Settlement Class Members who submit timely and valid Claim Forms along with any Attorneys' Fees and Expenses, any Service Award, and all Notice and Administrative Costs which shall comprise the Gross Settlement Fund.

103. **Distribution:** On or by sixty (60) Days after the Effective Date, the Administrator shall send, by first-class mail, a Claim Settlement Check to each Settlement Class Claimant who submits a timely, valid, correct, and verified Claim Form. Such checks will be valid for sixty (60) Days from the date on the check. Uncashed checks shall be returned to Defendant after six (6) months.

**G. Non-Approval of Agreement**

104. This Agreement is conditioned on Final Approval without material modification by the Court. If the Agreement is not so approved, the Parties shall have the right to withdraw from the Agreement and return to the status quo ante as if no settlement or this Agreement had been

negotiated or executed. Moreover, the Parties shall be deemed to have preserved all of their rights or defenses, and shall not be deemed to have waived any substantive, evidentiary, procedural, or other rights of any kind that they may have as to each other or any member of the Settlement Class. If the Agreement is approved without material modification by the Court, but is later reversed or vacated on appeal, each of the Parties shall have a right to withdraw from the Agreement and return to the status quo ante, for all litigation purposes, as if no Agreement had been negotiated or entered into, and shall not be deemed to have waived any substantive, evidentiary, procedural, or rights of any kind that they may have as to each other or any member of the Settlement Class. If this Agreement is not approved by the Court in all material respects, this Agreement shall not be used by either Party for any purpose.

105. Notwithstanding anything in this Agreement to the contrary, this Agreement shall not be used by any Party for any purpose other than to enforce the Agreement, defend any enforcement action related to this Agreement, and/or to comply with the Agreement's terms.

#### **H. Termination of Agreement**

106. Either Party shall have the right, but not the obligation, in her or its sole discretion, to terminate this Agreement, declare it null and void, and have no further obligations under this Agreement if any of the following conditions occurs: (a) the Court, after the motion for preliminary approval is filed, fails or declines to grant preliminary approval in accordance with the terms of the proposed Preliminary Approval Order; (b) the Court, after granting preliminary approval in accordance with the terms of the Preliminary Approval Order, fails or declines to grant Final Approval in accordance with the terms of the proposed Final Approval Order; (c) an appellate court vacates or reverses the Final Approval Order; (d) the Effective Date does not occur for any reason; or (e) any condition described in this Agreement, including any exhibits, as a basis for

termination or cancellation occurs. If either Party terminates then the Parties shall be deemed to have preserved all of their rights or defenses, and shall not be deemed to have waived any substantive, evidentiary, procedural, or other rights of any kind that they may have as to each other or any member of the Settlement Class. If this Agreement is terminated pursuant to the terms of this Agreement then this Agreement shall not be used by either Party for any purpose.

**I. Retention of Records**

107. The Administrator shall retain all records relating to payment of Claims under this Agreement for a period of five (5) years from the Effective Date. Those records shall be maintained in accordance with this Agreement as Confidential Information.

**V. FINAL APPROVAL; EXCLUSIVE REMEDY; DISMISSAL OF CLAIMS; JURISDICTION**

108. If this Settlement (including any modification thereto made with the consent of the Parties as provided for herein) is approved in all material respects by the Court in its Preliminary Approval Order, Plaintiff, through Class Counsel, shall submit to the Court a motion for Final Approval of this Settlement, the substance of which shall be approved by Defendant before submission to the Court. The motion for Final Approval shall contain the motion for Attorneys' Fees and Expenses and Service Award and the proposed Final Approval Order agreed to by the Parties.

109. The motion for Final Approval shall request that the Court, among other things:

- a. Find that the Court has personal jurisdiction over Plaintiff and all Settlement Class Members and that the Court has subject matter jurisdiction to approve this Settlement and all exhibits thereto;
- b. Finally approve this Settlement;

- c. Finally certify the Settlement Class only for the purposes of this Settlement;
- d. Find that the Settlement is fair, reasonable, and consistent with all requirements of applicable law, as to and in the best interests of all Parties and directs the Parties and their counsel to implement and consummate this Settlement in accordance with its terms and provisions;
- e. Declare the Settlement and the Final Approval Order to be binding on and have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings encompassed by the Released Claims against the Released Parties;
- f. Find that the Class Notice: (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, of their right to object or exclude themselves from the proposed Settlement, of their right to appear at the Final Approval Hearing, and of their right to seek monetary and other relief; (iii) constituted reasonable, due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) met all requirements of Due Process and any other applicable law;
- g. Find that Class Counsel and Plaintiff adequately represented the Settlement Class for purposes of entering into and implementing the Settlement;
- h. Adjudge that Plaintiff and the Settlement Class have conclusively compromised, settled, dismissed, and released any and all Released Claims against Defendant and the Released Parties;

- i. Provide that upon entry of the Final Approval Order, the Settlement Class, whether or not they receive a Claim Settlement Payment, shall be barred from asserting any Released Claims against Defendant and/or any Released Party;
- j. Without affecting the finality of the Final Approval Order for purposes of appeal, reserve jurisdiction over the Administrator, Defendant, Plaintiff, and the Settlement Class Members as to all matters relating to the administration, consummation, enforcement, and interpretation of the terms of the Settlement, the Final Approval Order, and for any other necessary purpose;
- k. Approve the list of the Requests for Exclusion compiled by the Administrator and find it is a conclusive and complete list of all members of the Settlement Class who have timely and effectively requested exclusion from the Settlement Class and, accordingly, shall neither share in nor be bound by the Final Approval Order;
- l. Dismiss the Action with prejudice and enter judgment; and
- m. Authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications, and expansion of this Settlement and all exhibits hereto as (i) shall be consistent in all material respects with the Final Approval Order and (ii) do not limit the rights of the Parties.

110. **Exclusive Remedy; Permanent Injunction:** Upon issuance of the Final Approval

Order:

- a. The Agreement shall be the exclusive remedy for any and all Settlement Class Members, except those who have properly requested exclusion (opted out) in accordance with the terms and provisions hereof;
- b. The Released Parties shall not be subject to liability or expense for any of the Released Claims to any Settlement Class Members;
- c. The Action shall be dismissed with prejudice;
- d. Settlement Class Members who have not opted out shall be permanently barred, enjoined, and precluded from (i) filing, commencing, prosecuting, intervening in or participating as plaintiff, claimant, or class member in any other lawsuit, arbitration, or other proceeding in any jurisdiction based on, relating to, or arising out of the claims and causes of action or the facts and circumstances related to and/or giving rise to the Released Claims including the Action and the Prior Action; (ii) filing, commencing, participating in, or prosecuting a lawsuit, arbitration, or other proceeding as a class action on behalf of any Settlement Class Member who has not timely excluded themselves (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), based on, relating to, or arising out of the claims and causes of action or the facts and circumstances related to and/or giving rise to the Released Claims including the Action and the Prior Action; and (iii) attempting to effect opt-outs of a class of individuals in any lawsuit, arbitration, or other proceeding based on, relating to, or arising out of the claims and causes of action or the facts and circumstances related to and/or giving rise to the Released Claims



including the Action and the Prior Action. This Settlement does not prohibit any of the Settlement Class Members from participating in any action or investigation initiated by a state or federal agency.

111. **Dismissal of Claims in Prior Action:** On or after the Effective Date, Defendant may request in writing through Counsel for Defendant that Plaintiff, through Class Counsel, file all necessary paperwork to convert the dismissal in the Prior Action from without prejudice to a dismissal with prejudice. If Defendant so requests, Plaintiff, through Class Counsel, shall file all necessary paperwork within five (5) Days of Defendant making the request.

112. **Continuing Jurisdiction of Court:** The Court shall retain exclusive and continuing jurisdiction over this Action, the Parties, and this Agreement with respect to the performance of its terms and conditions (and disputes arising out of or relating to this Agreement), the proper provision of all benefits, and the implementation and enforcement of its terms, conditions, and obligations.

## **VI. RELEASES**

113. Upon the Effective Date of this Agreement, the Released Parties shall be released and forever discharged by the Class Representative, and each Settlement Class Member who did not properly exclude himself or herself in accordance with the terms of this Agreement, from all Released Claims including the Action and the Prior Action. The Class Representative, and each Settlement Class Member who did not properly exclude himself or herself in accordance with the terms of this Agreement, covenant and agree that they shall not hereafter seek to establish liability against any of the Released Parties based, in whole or in part, on any of the Released Claims including the Action and the Prior Action. Nothing in this Agreement shall preclude any action to enforce the terms of the Agreement.

114. Upon the Effective Date of this Agreement, Defendant shall release Plaintiff from all Released Claims.

115. The Parties 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 Representative and, each Settlement Class Member who did not properly exclude himself or herself in accordance with the terms of this Agreement, upon the Effective Date, shall be deemed to have, and by operation of the Final Approval Order, shall have, nevertheless, fully, finally, and forever waived, settled, and released any and all Released Claims including the Action and Prior Action, regardless of such subsequent discovery of additional or different facts.

116. As to any Settlement Class Member who is or was a California citizen at any time during the four years prior to the filing of this Action through the Effective Date, such Settlement Class Member represents that they expressly understand and acknowledge that it is possible that unknown economic losses or claims exist or that present losses may have been underestimated in amount or severity but that they took that into account when entering into this Agreement. Consequently, such Settlement Class Member shall be deemed to have, and by operation of the releases of the Agreement herein shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code to the extent it is applicable, and any other such similar provision under federal, state, or local law, which states:

**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.**

117. This Agreement and the releases contained herein do not affect the rights of Settlement Class Members who timely and properly submit a Request for Exclusion from the Settlement in accordance with the terms of this Agreement.

## **VII. MISCELLANEOUS PROVISIONS**

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

119. **Cooperation to Facilitate this Settlement.** The Parties agree that they shall work together in good faith to facilitate this Agreement, as well as undertake any required steps to effectuate the purposes and intent of this Agreement.

120. **Representation by Counsel.** The Parties represent and warrant that they have been represented by, and have consulted with, the counsel of their choice regarding the provisions, obligations, rights, risks, and legal effects of this Agreement and have been given the opportunity to review independently this Agreement with such legal counsel and agree to the particular language of the provisions herein.

121. **No Admission of Liability.** Nothing in this Agreement, or the Parties' willingness to enter into this Agreement, shall be construed as an admission by any person or entity, of any liability or wrongdoing of any Party, or of the truth of any allegations made by the Class Representative, on behalf of themselves or the Settlement Class, against Defendant. Defendant expressly denies and disclaims and denies all liability and wrongdoing. The existence, contents, and terms of Agreement, and any negotiations, statements, or proceedings in connection therewith, shall not be admissible as evidence for any purpose in any proceeding, except solely for purposes

of enforcement of the Agreement's terms; however, this Agreement may be used by either Party or Released Party and pleaded 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.

122. **Contractual Agreement.** The Parties understand and agree that all terms of this Agreement are contractual and are not a mere recital, and each signatory warrants that he or she is competent and possesses the full and complete authority to execute and covenant to this Agreement on behalf of the Party that he or she represents.

123. **Change of Time Periods.** The time periods and/or dates described in this Agreement with respect to the giving of notices and hearings are subject to approval and change by the Court or by written agreement of Class Counsel and Counsel for Defendant, without notice to Settlement Class Members. The Parties reserve the right, by agreement and subject to Court approval, to grant any reasonable extension of time that might be needed to carry out any of the provisions of this Agreement.

124. **Integration.** This Agreement, and any exhibits hereto, constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. This Agreement supersedes all prior representations, agreements, understandings, both written and oral, among the Parties, or any of them, with respect to the subject matter of this Agreement. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein, and no Party is relying on any prior oral or written representations, agreements, understandings, or undertakings with respect to the subject matter of this Agreement.

125. **Costs.** Except as otherwise provided herein, each Party shall bear her/its own legal and other costs incurred in connection with the Released Claims, including the preparation and performance of this Agreement.

126. **Modification or Amendment.** This Agreement may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by the Parties who executed this Agreement or their successors-in-interest.

127. **No Waiver.** The failure of a Party hereto to insist upon strict performance of any provision of this Agreement shall not be deemed a waiver of such Party's rights or remedies or a waiver by such Party of any default by another Party in the performance or compliance of any of the terms of this Agreement. In addition, the waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

128. **Severability.** Should any part, term, or provision of this Agreement be declared or determined by any court or tribunal to be illegal or invalid, the Parties agree that the Court may modify such provision to the extent necessary to make it valid, legal, and enforceable. In any event, such provision shall be separable and shall not limit or affect the validity, legality, or enforceability of any other provision hereunder; provided, however, that the terms of this section shall not apply should any court or tribunal find any part, term, or provision of the release to be illegal or invalid in any manner.

129. **No Violation of Law or Agreement.** The execution, delivery, and performance of this Agreement by the Parties hereto does not and will not conflict with, violate, result in a breach of, or cause a default under: (a) any applicable provision of any federal, state, or local law or

regulation; (b) any provision of any order, arbitration award, judgment, or decree; or (c) any provision of any agreement or instrument applicable to the Parties.

130. **Successors.** This Agreement shall be binding upon and inure to the benefit of the heirs, successors, and assigns of the Parties hereto.

131. **Choice of Law.** All terms and conditions of this Agreement shall be governed by and interpreted according to the laws of the State of Florida, without reference to its conflict of law provisions, except that California law shall apply to section 116 of this agreement and to any section affected by California Civil Code Section 1542 as to any Settlement Class Member who is or was a California citizen at any time during the four years prior to the filing of this Action through the Effective Date. Subject to the foregoing, the adequacy of the Settlement, any determination regarding Class Counsel's Attorneys' Fees and Expenses, and any Service Award shall be governed by Florida law.

132. **Obligation to Meet and Confer.** Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have so consulted in any motion or filing brought as a result.

133. **Fair and Reasonable.** The Parties and their counsel believe that this Agreement is a fair and reasonable compromise of the disputed claims and Allegations, it is in the best interests of the Parties, and have arrived at this Agreement as a result of extensive negotiations.

134. **Headings.** All headings contained herein are for informational purposes only and do not constitute a substantive part of this Agreement. In the event of a dispute concerning the terms and conditions of this Agreement, the headings shall be disregarded.

135. **Exhibits.** The exhibits to this Agreement are expressly incorporated and made part of the terms and conditions set forth herein.

136. **Counterparts.** This Agreement may be executed in one or more counterparts, including through PDF. All executed counterparts, and each of them, shall be deemed to be one and the same instrument.

137. **Facsimile and Electronic Mail.** Transmission of a signed Agreement by facsimile or electronic mail shall constitute receipt of an original signed Agreement by mail.

138. **Warranty of Signature.** Each signatory of this Agreement represents and warrants that he or she is authorized to execute this Agreement in his or her official capacity on behalf of the Party to this Agreement for which he or she is signing, and that this Agreement is binding on the principal represented by that signatory.

139. **No Assignment.** Each Party represents and warrants that such Party has not assigned or otherwise transferred (via subrogation or otherwise) any right, title, or interest in or to any claims, causes of action, or demands which were or could have been, or ever could be asserted against any Party and that are released in this Agreement, or which were, could have been, or ever could be asserted against any Party. Any Party that breaches the representations and warranties set forth in this section shall indemnify and hold harmless each other Party, its parents, subsidiaries, and affiliates, and their respective owners, agents, attorneys, successors, heirs, assigns, administrators, officers, directors, employees, and all other persons acting in concert with them from any and every claim or demand of every kind or character arising out of a breach by any such breaching Party of its representations and warranties in this section.

140. **Confidentiality; Communications to Media and Public.** The Parties agree that the terms of this Settlement shall remain confidential and not be disclosed by any Party until the Agreement is filed in connection with the motion for preliminary approval. The Parties further agree that they will not issue any press releases, initiate contact with the press, respond to any press

inquiry or have any communication with the press about the facts, settlement amount, or terms of the settlement. Class Counsel also agrees that they will not make any statement or post on its website or in social media regarding anything inconsistent with the Class Notice. The Parties will not be prevented from making required disclosures. For the avoidance of any doubt, nothing in this Agreement prevents the Parties from making any disclosures required to effectuate this Agreement or from making any disclosures required by law.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by themselves or by their duly authorized representatives:

Dated: 09/18/25

By:

  
Michelle Mack Carter (Sep 18, 2025 13:07:39 PDT)

**MICHELLE MACK CARTER**

Dated: 09/18/25

  
Manuel Hiraldo (Sep 18, 2025 16:09:12 EDT)

Counsel for Plaintiff and the Settlement Class

Dated: 9/18/2025

By:



Name: Bill Kean

Title: President

Dated: 9/18/2025

  
Counsel for Defendant



# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [\\$3.8M+ NexGen Settlement Ends Class Action Lawsuit Over Alleged Marketing Voice Messages](#)

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