

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

VIDAL MCDOWELL, on behalf of  
himself and on behalf of all  
others similarly situated,

Plaintiff,

v.

Case No: 2:23-cv-12827-RJW-APP

PLUTO ACQUISITION OPCO, LLC  
d/b/a PEOPLEFACTS, LLC

Defendant.

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**JOINT STIPULATION OF CLASS SETTLEMENT**

Plaintiff, Vidal McDowell (“Plaintiff”), individually and on behalf of the putative classes, and Defendant, Pluto Acquisition OPCO, LLC d/b/a PeopleFacts, LLC. (“Defendant”, collectively “Parties”), enter into this Stipulation of Settlement to settle the issues between them asserted in this action.

**I. RECITALS**

1. On November 7, 2023, Plaintiff filed this class action complaint, *McDowell v. Pluto Acquisition OPCO, LLC d/b/a PeopleFacts.*, in the United States District Court Eastern District of Michigan, Southern Division. (Dkt. 1 - the “Action”).

2. Plaintiff asserted several causes of action against Defendant for alleged class-wide violations of the Fair Credit Reporting Act (“FCRA”). Plaintiff alleged, *inter alia*, Defendant violated 15 U.S.C. § 1681b(b)(1)(A)(i)-(ii) by failing to obtain the requisite Injunctive Reliefs from the end-user prior to issuing consumer reports used for employment purposes and 15 U.S.C. §§ 1681k(a)(1) by failing to provide consumers with contemporaneous notice when reporting public record information likely to have an adverse effect on their employment.

3. The Parties have reached a compromise in principle on a class basis, contingent upon the negotiation and execution by the Parties of this final agreement being approved by the Court. The Settlement will resolve the claims of two classes – an “Injunctive Relief Class” and a “K-Notice Payment Class.” (collectively “Settlement Classes”)

4. Defendant denies that it has engaged in any wrongdoing, does not admit or concede any actual or potential fault, wrongdoing, or liability in connection with any facts or claims that have been or could have been alleged against it in the Action, but has agreed to this Settlement Agreement because of the substantial expense of litigation, the length of time necessary to resolve the issues presented, the inconvenience involved, and the disruption to its business operations.

5. Plaintiff, the Settlement Classes, and Class Counsel are aware that Defendant has significant defenses to the allegations in this Action upon which Defendant might prevail and that, as a result, Plaintiff and the Settlement Classes may not receive any benefit or consideration for the claims that have been asserted against Defendant.

6. Based upon its analysis and evaluation of several factors, Class Counsel recognize the substantial risks of continued litigation and delays, including the likelihood that the claims, if not settled now, might not result in any relief whatsoever for the Settlement Classes or prospective injunctive relief for future employment application.

7. Class Counsel have conducted a thorough study and investigation of the law and facts relating to the claims that have been asserted as well as a thorough study and investigation of the scope and identity of the Settlement Classes, and have concluded, considering the benefits of this settlement, as defined below, and the risks and delays of further litigation, that this settlement is fair and reasonable and in the best interests of the Settlement Classes.

8. Subject to the approval of the Court, the Parties wish to settle this Action, effect a compromise, and settle the claims released in Section II, paragraph 25 below.

9. The Parties therefore agree that the claims referenced herein shall be settled, compromised, released, and dismissed subject to the approval of the Court, upon and subject to the following terms and conditions:

## **II. DEFINITIONS**

### **10. Action.**

The above-entitled Action, Case No. 2:23-cv-12827.

### **11. Settlement Agreement and Release.**

This Stipulation of Class Action Settlement (“Stipulation of Settlement”).

### **12. Class Counsel.**

Marc R. Edelman of Morgan & Morgan, P.A., Leonard Bennett and Craig Marchiando of Consumer Litigation Associates. P.C.

### **13. Class Counsel Attorney’s Fees and Costs.**

Class Counsel may seek attorneys’ fees up to one-third of the Settlement Fund, subject to Court approval.

### **14. Class Settlement Administration Costs.**

Defendant shall pay directly to the Settlement Administrator the first fifty thousand dollars (\$50,000.00) of Settlement Administration Costs. Any additional Settlement Administration Costs, including Notice to the Class and Class Action

Fairness Act (“CAFA”) notice, will be paid to the Settlement Administrator from the Settlement Fund, subject to Court approval.

**15. Class Representative or Plaintiff.**

Plaintiff, Vidal McDowell.

**16. Court.**

The United States District Court for the Eastern District of Michigan, Southern Division.

**17. Days.**

All reference to “days” in this Stipulation of Settlement shall refer to calendar days, unless otherwise specified, provided that if a deadline provided for in the Stipulation of Settlement falls on a weekend or holiday, that deadline shall be the next day that is not weekend or holiday.

**18. FCRA State/Local Equivalents.**

Any statute or regulation of any state, U.S. territory, locality/municipality, the District of Columbia, or Puerto Rico, that has a similar purpose or effect as the federal Fair Credit Reporting Act, including regulating the collection or reporting of or use of background checks/consumer information and related actions.

**19. Final Approval Hearing.**

The Court’s hearing following the Settlement Administrator’s work to locate and send Notices to all K-Notice Payment Class Members, determine the amount

payable to each K-Notice Payment Class Member, and perform other settlement-related administrative tasks, to approve final administration and payment of the settlement.

**20. Final Approval Order.**

The Court's Order granting final approval of this Stipulation of Settlement.

**21. Net Settlement Fund.**

The amount remaining after the Settlement Fund is reduced by the following amounts:

- a. Payment of Class Settlement Administration costs above Fifty Thousand Dollars (\$50,000.00), subject to Court approval;
- b. Reimbursement to Class Counsel for the cost of mediation and other expenses incurred in the litigation, subject to Court approval; and
- c. Reimbursement to Class Counsel for attorney's fees and costs in an amount up to one-third of the Settlement Fund, as approved by the Court.
- d. The payment of any service award to Plaintiff approved by the Court.

**22. Notice.**

The post card notice attached hereto as **Exhibit “1”** subject to Court approval, and which the Settlement Administrator will mail, to each K-Notice Payment Class Member to explain the terms of the settlement, including the procedure for objecting to or opting out of the Stipulation of Settlement. The Parties agree that no notice of settlement will be provided to the Injunctive Relief Class members and that should the Court require notice to be provided to the Injunctive Relief Class members that the class settlement shall be deemed to be void and the case will continue in litigation.

**23. Parties.**

Plaintiff and Defendant.

**24. Preliminary Approval Order.**

The Court’s Order granting preliminary approval of this Stipulation of Settlement.

**25. Released Claims.**

All Injunctive Relief Settlement Class Members release all claims for statutory damages, injunctive relief, any possible attorney’s fees or costs arising out of or relating to any alleged conduct of the Released Parties arising out of or relating to Defendant’s alleged issuance of their consumer reports for employment purposes without first obtaining the FCRA-required certifications from the end user. Injunctive Reliefs Class Members waive their right to bring a class action, mass

action, representative or other similar joint or collective claims against the Released Parties under the Fair Credit Reporting Act, FCRA State/Local Equivalents, and any other law related to the issuance of consumer reports for employment purposes. Injunctive Relief Class Members retain the right to bring an action for individual damages. The period of the Released Claims extends to the limits of the Covered Period for the duration of the Class Period.

All K-Notice Payment Class Members release all claims for actual or statutory damages of any kind, injunctive relief, any possible attorney's fees or costs arising out of or relating to any alleged conduct of the Released Parties arising out of any alleged failure to provide notice to K-Notice Payment Class Members when issuing consumer reports used for employment purposes that contained negative public record information likely to have an adverse effect on their employment prospects. All K-Notice Payment Class Members relinquish the ability to bring class action, mass action, representative or other similar joint or collective claims against the Released Parties under the Fair Credit Reporting Act, FCRA State/Local Equivalents, and any other law related to the issuance of consumer reports for employment purposes. The period of the K-Notice Payment Class Released Claims is two years preceding the filing the lawsuit through the date of Preliminary Approval.



Released claims only include claims as to reports sold under the “PeopleFacts” brand or name.

All releases provided for in this section shall include releases of unknown claims pursuant to Cal. Civil Code. § 1542 and any comparable provision of state or local law.

**26. Released Parties.**

Defendant and each of its parents, subsidiaries, administrators, successors, reorganized successors, members, current and former directors, officers, trustees, shareholders, employees, partners, contractors, agents, lenders, investors, attorneys, and insurers. Specifically excluded is any other consumer reporting agency not affiliated directly or indirectly by ownership, and any entity furnishing consumer report information to Defendant or any of Defendant’s customers or clients.

**27. Response Deadlines.**

Members of the K-Notice Payment Class shall have sixty days (60) days after the date the Settlement Administrator mails the Notice to K-Notice Payment Class Members, by which Response Deadline the members of the K-Notice Payment Class must postmark written notice of their intent to opt-out of the settlement and/or a written notice of objection to the preliminarily approved settlement, as applicable.

**28. Settlement Administrator.**

The Settlement Administrator will be Apex Class Action Administration (“Settlement Administrator”). The Settlement Administrator will contract with Class Counsel. The contract between the Settlement Administrator and Class Counsel shall name Defendant as an intended third-party beneficiary, so Defendant has rights against the Settlement Administrator for breach of contract. Accordingly, Class Counsel and Defendant will be responsible for the performance of Settlement Administrator, including its compliance with the terms of this Stipulation of Settlement and other applicable requirements.

The Settlement Administrator shall comply with the CAFA. The Settlement Administrator shall cause notice of the proposed settlement that meets the requirements of CAFA, to be served on the appropriate federal and state officials, as specified in 28 U.S.C. § 1715(a), no later than ten (10) days after the filing of this Stipulation of Settlement with the Court.

## **29. Settlement Classes.**

The Injunctive Relief Class is comprised of “*All employees and job applicants in the United States who were the subject of a consumer report furnished by PeopleFacts for employment purposes that was provided without the user’s written certification of compliance with 15 U.S.C. § 1681b(b)(2) and 15 U.S.C. § 1681b(b)(3), within five years of the filing of this lawsuit through the date of preliminary approval in this action.*” Defendant represents there are approximately

Four Million and Four Hundred Thousand (4,400,000) Injunctive Relief Class Members.

The K-Notice Payment Class is comprised of “*All consumers in the United States who were the subject of a consumer report furnished by PeopleFacts that included criminal history entries of the grade of misdemeanor or higher, that were not provided notice at the time such information was being reported to the user of the consumer report, within two years of the filing of this lawsuit through the date of preliminary approval in this action.*” Defendant represents there are approximately Twenty-One Thousand and Forty-Seven (21,047) K-Notice Payment Class Members.

Excluded from the class definitions above are any employees, officers, or directors of the Defendant, any attorney appearing in this case, and any judge assigned to hear this action, together with their immediate family members and any persons employed by him or her.

**30. Settlement Class Member.**

Any individual who meets the definition of an Injunctive Relief Class Member will be bound by the Stipulation of Settlement. Injunctive Relief Class Members may not exclude themselves from the Settlement because the Injunctive Relief Settlement provides for injunctive relief only and does not affect Injunctive Relief Class Members’ right to bring a claim for damages.

All K-Notice Payment Class Members receiving Notice that do not timely opt out shall be bound by any Orders of the Court about the Stipulation of Settlement or the Settlement.

**31. Settlement Effective Date or Effective Date.**

The seventh day after all the following have occurred:

- a. All Parties, Class Counsel, and Defendant's counsel have executed this Stipulation of Settlement;
- b. The Court has entered without material change the Final Approval Order and Judgment;
- c. The Court has ruled on Class Counsel's application for attorney's fees, costs and other expenses; and
- d. If no timely objectors, seven (7) days of the Final Approval Order.

The Parties intend that the Stipulation of Settlement shall not become effective until the Court's Final Approval Order has become completely final and until any appellant or objector who seeks to contest the settlement has no timely recourse. Thus, if there are objectors to the Settlement, the Effective Date shall be seven (7) days after the time period has run from appeal of the Final Approval Order, or if an appeal is filed, seven (7) days after any appeal is fully and finally resolved and the

Court has received and docketed any resulting mandate upholding the Final Approval Order and Judgment.

**32. Common Fund.**

Defendant shall establish a common fund in the amount of Two Million and Four Hundred Thousand Dollars (\$2,400,000.00), which shall be referred to as the Settlement Fund.

**33. Qualified Settlement Fund.**

The Parties hereto agree that the Settlement Fund is intended to be a “qualified settlement fund” (“Qualified Settlement Fund”) within the meaning of Treasury Regulation § 1.468B-1 and that the Settlement Administrator, within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be responsible for filing any required tax returns for and paying from the Settlement Fund any taxes owed with respect to the Settlement Fund. The Parties hereto agree that the Settlement Fund shall be treated as a “qualified settlement fund” from the earliest date possible, and agree to any relation-back election required to treat the Settlement Fund as a “qualified settlement fund” from the earliest date possible. Defense Counsel agrees to provide promptly to the Settlement Administrator the statement described in Treasury Regulation § 1.468B-3(e). Any and all taxes shall be paid out of the Settlement Fund, shall be paid out of the interest earned on the Settlement Fund, be considered to be a cost of administration of the Settlement, and be timely paid by the Settlement

Administrator without prior order of the Court, and under no circumstance shall Defendant have any liability related thereto.

**34. Settlement Payment.**

“Settlement Payment” means the individualized award equal to a *pro rata* share of the Net Settlement Fund that will be made in the distribution from the Settlement Fund to the K-Notice Payment Class Members that do not opt out of the Settlement. To calculate the amount of the Settlement Payment, the Settlement Administrator shall divide the Net Settlement Fund by the total number of K-Notice Payment Class Members.

**III. RELIEF AND BENEFITS**

**35. Injunctive Relief.**

In exchange for the releases and waivers of claims by the Injunctive Relief Class Members described below, Defendant has agreed to refine its procedures as to the requirements of 15 U.S.C. § 1681b(b)(1)(a)(i)-(ii) to ensure end-users certify compliance as to each consumer report ordered for employment purposes. These procedural changes will be consistent with the terms of a Consent Order to be included with any final judgment in this action. (**Ex. 2 - Proposed Consent Order**).

In exchange for the releases and waivers of claims by the K-Notice Payment Class Members described below, Defendant, in addition to monetary relief, has

agreed to review its procedures for compliance with 15 U.S.C. § 1681k(a)(1) and(2). Additionally, for a period of 90 days, make available by notice within its existing website that consumers have a right to request and receive a copy of their consumer report file.

**36. Process for Payment to K-Notice Payment Class Members**

Settlement Payments will be distributed by the Settlement Class

Administrator to the K-Notice Payment Class Members using the timeline set forth below.

- e. Within fourteen (14) days of the effective date, initial payments to K-Notice Payment Class Members will be paid by the Settlement Administrator in the manner and form directed by the K-Notice Payment Class Member. If the K-Notice Payment Class Member does not designate a method of payment, payments will be made by check. If by check, all initial checks will expire sixty (60) days after they are issued and will state the expiration date on their faces. If any such payment is returned by the U.S. Postal Service as undeliverable, or is uncashed or not negotiated before it expires, neither Defendant nor the Settlement Administrator nor Class Counsel shall have any further obligations to Plaintiff or any Settlement Class Member, except that:

- i. For any check returned by the U.S. Postal Service with a forwarding address before the check's expiration date, the Settlement Administrator will re-mail the check to the forwarding address;
  - ii. If a K-Notice Payment Class Member contacts the Settlement Administrator or Class Counsel to request a replacement check before the initial check is negotiated, the Settlement Administrator will comply with that request by cancelling the initial check and issuing a replacement check.
- f. The Parties agree that all K-Notice Payment Class Members waive and abandon any ownership interest in any such undeliverable, returned, uncashed, or non-negotiated checks and further agree that no obligation has been generated or proven with respect to such undeliverable, returned, uncashed, or non-negotiated checks.

**37. Taxes.**

The Parties agree the payments to each K-Notice Payment Class Members are not wages, that each K-Notice Payment Class Member will be solely responsible for correctly characterizing this payment for tax purposes, and for paying any taxes



owed on this payment. The Parties also agree that the approved Class Representative Service Payment to Plaintiff is not wages, Plaintiff will be solely responsible for correctly characterizing this payment for tax purposes and for paying any taxes owed on this payment, and that the Settlement Administrator on Defendant's behalf will issue to Plaintiff an IRS Form 1099 for this payment.

**38. Class Representative Service Award.**

Defendant agrees to pay Plaintiff \$5,000.00 subject to Court approval.

The Settlement Administrator shall pay any approved Service Award Payment no later than fourteen (14) days after the Effective Date.

**39. Class Counsel Attorney's Fees and Costs.**

Defendant agrees that Class Counsel may apply to the Court for an award of attorney's fees up to 33.33% of the Common Fund (one-third). Additionally, Defendant agrees Class Counsel may also apply separately for reimbursement from the Settlement Fund for the cost of mediation and other incurred costs.

Class Counsel will file the application for approval of Class Counsel Attorney's Fees and Costs no later than thirty (30) days after the hearing on the Motion for Preliminary Approval.

The Settlement Administrator shall pay any approved Class Counsel Attorney's Fees and Costs no later than fourteen (14) days after the Effective Date.

**40. Payments to the Settlement Administrator.**

If required by the Settlement Administrator, Defendant shall make any necessary deposits required by the Settlement Administrator prior to preliminary approval. Thereafter, Defendant shall fund the remainder of the Settlement Fund in full within seven days of the Court issuing the Preliminary Approval Order.

#### **IV. NOTICE, OPT-OUT, OBJECTIONS AND SETTLEMENT APPROVAL**

##### **41. Notice to K-Notice Payment Class Members.**

Not later than seven (7) days after the Court has issued the Preliminary Approval Order, Defendant shall disclose the names and last known addresses associated with the K-Notice Payment Class Members' employment screening reports to the Settlement Administrator. The Settlement Administrator shall keep the class list confidential, including not sharing or disclosing the class list to Class Counsel.

No later than fourteen (14) days after the Court has issued the Preliminary Approval Order, the Settlement Administrator will mail the Notice (attached as **Exhibit "1"**) to all K-Notice Payment Class Members, as updated by using the U.S. Postal Service's database of verifiable mailing addresses (the CASS database) and the National Change-of-Address database. The Notice shall bear the Settlement Administrator's mailing address as the return-mail address. The Notice will include an indication it is a "Court Approved Settlement Notice authorized by the U.S.

District Court for the Eastern District of Michigan” and will include pin code and/or unique identifier.

Not later than seven (7) days after the Court has issued the Preliminary Approval Order, the Settlement Administrator shall post a website containing information about the Settlement, including all relevant dates, pleadings, and claims portal.

**42. Notices Returned as Undeliverable.**

For all Notices returned to the Settlement Administrator without forwarding addresses, the Settlement Administrator will use publicly available databases as practicable to update those K-Notice Payment Class Members’ addresses and will cause the Notice to be re-mailed by the Settlement Administrator to such K-Notice Payment Class Members who can be located.

**43. Toll-Free Telephone Line.**

The Settlement Administrator will establish and staff a toll-free telephone line that members of the Settlement Classes can use to contact the Settlement Administrator with questions about the settlement or to change their addresses.

**44. Payment Options.**

K-Notice Settlement Class Members will be paid automatically and not be required to submit a claim form to receive payment.

**45. Right to Opt Out.**

All members of the K-Notice Settlement Class will have the right to be excluded from, *i.e.*, to “opt out” of, the Settlement Class. On or before the Response Deadline, each member of the K-Notice Settlement Class Member who elects to opt out of the settlement must send, by first-class U.S. mail, written notice addressed to the Settlement Administrator indicating his or her name and address and stating that he or she desires to opt-out of the settlement or otherwise does not want to participate in the settlement. Any opt out notice must be personally signed by the member. K-Notice Settlement Class Members must opt out of the Settlement Class individually. So-called “mass” or “class” opt outs, whether filed by third parties on behalf of a “mass” or “class” of K-Notice Settlement Class Members or multiple K-Notice Settlement Class Members where no personal statement has been signed by each and every individual K-Notice Settlement Class Members, are not allowed. Any member of the K-Notice Settlement Class who does not timely (as measured by the postmark on that individual’s written notice) opt out of the settlement by written notice directed to the Settlement Administrator and containing the requisite information shall remain a member of the K-Notice Settlement Class shall be bound by any Orders of the Court about the Settlement or the K-Notice Settlement Class.

The Injunctive Relief Class shall have no right to opt-out of the Settlement.

#### **46. Objections.**

Any member of the Settlement Classes who wishes to object to the settlement must return by U.S. mail to the Settlement Administrator a timely written statement of objection no later than sixty (60) days after the date the Settlement Administrator mails the Notice of Settlement. The Notice of Objection must state (1) the case name and number; (2) the name, address, telephone number, and email address (if any) of the member of the Settlement Class making the objection; (3) a statement of the objection(s) being asserted; (4) a detailed description of the facts and any legal authorities underlying each objection; (5) a notice of intent to appear at the final Fairness Hearing, if the Settlement Class Member making the objection intends to appear; (6) a list of any witnesses the Settlement Class Member making the objection may call to testify at the Final Approval Hearing, whether in person, by deposition, or affidavit; and (7) a list of any exhibits, and copies of the same, which that such objector may offer at the Final Approval Hearing. Any objection must be personally signed by the objector.

No member of the Settlement Classes shall be entitled to contest in any way the approval of the terms and conditions of this Stipulation of Settlement or the Court's Final Approval Order except by filing and serving written objections in accordance with the provisions of this Stipulation of Settlement. Any Settlement Class Member who fails to make objections in the manner specified above shall be

deemed to have waived any objections and shall be foreclosed from making any objections, whether by appeal or otherwise, to the settlement.

The Settlement Administrator shall provide any objections and backup information to Defendant's Counsel and Class Counsel, who shall file same with the Court at least seven (7) days before the Final Approval Hearing or as otherwise ordered by the Court.

Any member of the K-Notice Settlement Class who submits a timely request for exclusion or opt out may not file an objection to the settlement and shall be deemed to have waived any rights or benefits under this Stipulation of Settlement.

**47. Preliminary Settlement Approval.**

As soon as practicable after the Parties execute this Stipulation of Settlement, Class Counsel will present this Stipulation of Settlement to the Court for preliminary settlement approval and will request by joint motion that the Court enter a Preliminary Approval Order. Should the Court decline to enter a Preliminary Approval Order of the Parties' Settlement under the same terms described herein, the Parties shall negotiate in good faith to adopt any recommended changes the Court indicates is necessary to obtain a Preliminary Approval Order. If the Parties cannot reach an agreement to adopt such recommended changes, the Parties will return to the *status quo ante* as if they had not entered into this settlement.

**48. Final Approval Hearing and Final Approval Order and Judgment.**

The Parties agree to cooperate to work to schedule a Final Approval Hearing as soon as practicable. Should the Court decline to enter a Final Approval Order of the Parties' Settlement under the same terms described herein, the Parties shall negotiate in good faith to adopt any recommended changes the Court indicates is necessary to obtain a Final Approval Order. If the Parties cannot reach an agreement to adopt such recommended changes, the Parties will return to the *status quo ante* as if they had not entered into this settlement.

**V. RELEASE OF CLAIMS**

**49. Release of Claims by the Class Members.**

On the Settlement Effective Date, all members of the Injunctive Relief Settlement Class and all those acting or purporting to act on their behalf including, but not limited to, their successors, assigns, legatees, heirs, and personal representatives, fully and forever release, waive, acquit, and discharge Defendant and the Released Parties from any claims for statutory damages for any alleged failure to obtain the requisite user certifications prior to issuing their consumer report for employment purposes.

On the Settlement Effective Date, all members of the K-Notice Settlement Class and all those acting or purporting to act on their behalf including, but not

limited to, their successors, assigns, legatees, heirs, and personal representatives, fully and forever release, waive, acquit, and discharge Defendant and the Released Parties from any claims for statutory or actual damages for any claims arising out of Defendant's release of their consumer report for an employment purpose.

**50. Prior Releases and Waivers of Claims.**

Defendant agrees that the K-Notice Payment Class Members' or Plaintiff's receipt of funds under this Stipulation of Settlement is not a violation of any prior promises, contracts, agreements, waivers or covenants between Defendant and the Settlement Class Members or Plaintiff.

**VI. OTHER PROVISIONS**

**51. Class Certification.**

The Parties have reached a pre-certification compromise in principle on a class basis, pursuant to the allegations in the Complaint, contingent upon the negotiation and execution by the Parties of this final agreement and this final agreement being approved by the Court. Defendant denies it has engaged in any wrongdoing, does not admit or concede any actual or potential fault, wrongdoing, or liability in connection with any facts or claims that have been or could have been alleged against it in the Action, denies that the claims asserted by Plaintiff are suitable for class treatment other than for settlement purposes, and denies that it has any liability whatsoever, but has agreed to this Stipulation of Settlement because of



the substantial expense of litigation, the length of time necessary to resolve the issues presented, the inconvenience involved, and the disruption to its business operations of continued litigation of this dispute. Nothing in this Stipulation of Settlement shall be construed as an admission by Defendant or any of the Released Parties that this Action or any similar case is amenable to class Injunctive Relief. Furthermore, nothing in this Stipulation of Settlement shall prevent Defendant from seeking decertification of a certified class in the future if the Court does not issue a Final Approval Order.

**52. No Representation of Opt Outs.**

Class Counsel agrees to not represent any members of the K-Notice Settlement Class who opt out in claims against the Released Parties. Because Class Counsel will necessarily present the settlement to the Court as fair and reasonable, Class Counsel shall take no action inconsistent with so presenting the settlement, including representing any party with interests adverse to preliminary or final approval of this Stipulation of Settlement.

**53. Settlement Modification.**

The Parties may agree by stipulation executed by counsel to modify the exhibits to this Agreement to effectuate the purpose of this Agreement or to conform to guidance from the Court about the contents of such exhibits without the need to further amend this Agreement. A stipulation modifying the settlement will be filed

with the Court and subject to the Court's approval.

**54. Communications with Settlement Class Members.**

The Parties agree that Class Counsel may communicate directly with members of the Settlement Classes to ensure as much participation in the settlement as possible.

**55. No Waiver of Privilege.**

Nothing in this Agreement is intended to limit or waive the confidentiality of attorney-client privileged communications between Class Counsel and their current clients and members of the Settlement Classes, nor is anything in this Agreement intended to limit the ability of Class Counsel to make truthful representations to judicial authorities about either its appointment as class counsel or the settlement of this Action. Likewise, nothing in this Agreement is intended to limit Defendant's or its agents' communications with their counsel, to waive the confidentiality of attorney-client privileged communications between Defendant or its agents and their counsel, or their ability to respond to judicial or other government authorities.

**56. Agreement Not Evidence.**

Neither this Stipulation of Settlement nor any related documents, negotiations, statements, or Court proceedings may be construed as, received as, used as, or deemed to be evidence or an admission or concession of any liability or wrongdoing whatsoever on the part of any person or entity, including but not limited to Defendant

and the Released Parties, or as a waiver by Defendant of any applicable defense to the merits of the claims asserted or to Plaintiff's ability to maintain this Action as a class action, except that this Stipulation of Settlement is admissible at hearings necessary to obtain and implement Court approval of the Parties' settlement or in hearings to enforce the terms of this Stipulation of Settlement or any related order of the Court.

**57. No Waiver of Rights.**

A party's failure to exercise any rights under this Stipulation of Settlement shall not constitute waiver of that party's right to exercise those rights later, except as expressly provided in this Stipulation of Settlement. No delay by any party in exercising any power or right under this Stipulation of Settlement will operate as a waiver of that power or right, nor will any single or partial exercise of any power or right under this Stipulation of Settlement preclude other or further exercises of that or any other power or right, except as expressly provided. The waiver by one party of any breach of this Stipulation of Settlement will not be deemed to be a waiver of any prior or subsequent breach.

**58. Authority.**

The signatories below represent they are fully authorized to enter into this Stipulation of Settlement.

**59. Best Reasonable Efforts and Mutual Full Cooperation.**

The Parties agree to fully cooperate with one other to accomplish the terms of this Stipulation of Settlement, including but not limited to, executing such documents and taking such other actions as may be reasonably necessary to implement the terms of this Stipulation of Settlement, including all efforts contemplated by this Stipulation of Settlement and any other efforts that may become necessary or ordered by the Court, or otherwise, to ensure that checks are mailed to Settlement Class Members as soon as practicable under the terms of this Stipulation of Settlement. No party shall undertake any measures adverse to accomplishing the objectives contemplated by the Stipulation of Settlement. As soon as practicable after execution of this Stipulation of Settlement, Class Counsel will, with the assistance and cooperation of Defendant and its counsel, take all necessary steps reasonably necessary to secure the Court's preliminary and final approval of the Parties' settlement.

**60. Entire Agreement.**

This Stipulation of Settlement, with its exhibits, constitutes the full and entire agreement among the Parties concerning the subject matter and supersedes all prior representations, agreements, promises, or warranties, written, oral, or otherwise. No Party shall be liable or bound to any other Party for any prior representation, agreement, promise, or warranty, oral or otherwise, except for those that are expressly set forth in or attached to this Stipulation of Settlement.

**61. Binding.**

This Stipulation of Settlement will be binding upon and will inure to the benefit of the parties and their respective heirs, trustees, executors, administrators, successors, and assigns.

**62. No Prior Assignments.**

The parties represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or rights that are released or discharged in this settlement.

**63. Construction.**

The parties agree that the terms and conditions of this Stipulation of Settlement are the result of lengthy, arms-length negotiations between the Parties and that this Stipulation of Settlement will not be construed in favor of or against any Party because of the extent to which any Party or the Party's counsel participated in the drafting of this Stipulation of Settlement.

**64. Settlement Governed by Michigan Law.**

This Stipulation of Settlement shall be governed and construed in accordance with the internal laws (as opposed to the conflicts of law provisions) of the State of Michigan.

**65. Survival of Agreements.**

All agreements made and orders entered during the course of the litigation of the Action relating to the confidentiality of information shall survive this Stipulation of Settlement.

**66. Construction of Captions and Interpretations.**

Paragraph titles, captions, or headings in this Stipulation of Settlement are inserted as a matter of convenience and for reference and do not define, limit, extend, or describe the scope of this Stipulation of Settlement or any provision in it. Each term of this Stipulation of Settlement is contractual and is not merely a recital.

**67. Use of Facsimile or Electronic Signatures.**

This Stipulation of Settlement may be executed with facsimile or electronic signatures and in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. The date of execution shall be the latest date on which any Party signs this Stipulation of Settlement.

**68. Notices.**

Unless otherwise specifically provided in this Stipulation of Settlement, any notices, demands or other communications required hereunder or after entry of the Court's Final Approval Order and Judgment shall be in writing and addressed as follows:

**If to Plaintiff:**

Marc Reed Edelman, Esquire  
MORGAN & MORGAN, P.A.  
201 N. Franklin Street, #700  
Tampa, FL 33602-5157  
Telephone: 813-223-5505  
[medelman@forthepeople.com](mailto:medelman@forthepeople.com)  
Attorney for Plaintiff

**If to Defendant:**

Jeffrey S. Hengeveld, Esq.  
PLUNKETT COONEY  
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Attorney for Defendant

If mailed, notice will be deemed given as of the third business day after mailing. If sent by overnight delivery or delivered person, notice will be deemed given on the date of delivery.

The parties agree that, because the Settlement Class Members are so numerous, it is impossible and impracticable to have each Settlement Class Member execute this Stipulation of Settlement. Therefore, the Notice will advise all Settlement Class Members of the binding nature of the release and will have the same force and effect as if this Stipulation of Settlement were executed by each Settlement Class Member to the extent applicable law so provides.

**69. Exhibits.**

1 – Proposed Form Mail Notice

## 2 – Proposed Consent Order



IN WITNESS THEREOF, and intending to be legally bound, the Parties hereto have caused this Settlement Agreement and Release to be executed by their duly authorized representative.

<u>/s/ Jeffrey S. Hengeveld, Esq.</u> Jeffrey S. Hengeveld, Esq. PLUNKETT COONEY 38505 Woodward Ste. 100 Bloomfield Hills, MI 48304 <a href="mailto:jhengeveld@plunkettcooney.com">jhengeveld@plunkettcooney.com</a> Attorney for Defendant <i>Attorney for Defendant</i>	Date: May 16, 2025
<u>/s/Marc Edelman</u> Marc R. Edelman, Esq. MORGAN & MORGAN, P.A. 201 N. Franklin Street, Suite 700 Tampa, FL 33602 Telephone 813-223-5505 <a href="mailto:MEdelman@forthepeople.com">MEdelman@forthepeople.com</a> <i>Attorney for Plaintiff</i>	Date: May 16, 2025