

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. RECITALS 1

II. DEFINITIONS..... 4

III. SETTLEMENT CLASS CERTIFICATION 10

IV. SETTLEMENT CONSIDERATION 11

V. SUBMISSION OF SETTLEMENT AGREEMENT TO COURT FOR REVIEW AND APPROVAL 13

VI. RELEASES AND DISMISSAL OF ACTION..... 17

VII. MOTION FOR ATTORNEYS’ FEES AND EXPENSES AND SERVICE AWARDS . 19

VIII. NOTICE AND SETTLEMENT ADMINISTRATION..... 21

IX. PLAN OF ALLOCATION 25

X. OPT-OUTS 25

XI. OBJECTIONS..... 26

XII. MODIFICATION OR TERMINATION OF SETTLEMENT AND RESERVATION OF RIGHTS 28

XIII. NO ADMISSION OF WRONGDOING OR LIABILITY 29

XIV. NO DISPARAGEMENT 30

XV. CAFA NOTICE PURSUANT TO 28 U.S.C. § 1715 30

XVI. TAX MATTERS..... 30

XVII. MISCELLANEOUS PROVISIONS..... 31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT LIST

Exhibit A	Proposed Preliminary Approval Order
Exhibit B	Settlement Administration Protocol & Notice Plan (Declaration of Jeanne C. Finegan of Kroll Settlement Administration LLC)
Exhibit C	Short-Form Notice
Exhibit D	Long-Form Notice
Exhibit E	Claim Form
Exhibit F	Opt Out Form
Exhibit G	Proposed Final Approval Order
Exhibit H	Proposed Final Judgment

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release, including Exhibits A-H hereto (“**Settlement Agreement**”), is made and entered into by, between, and among Plaintiffs Nicholas C. Smith-Washington, Joyce Mahoney, Jonathan Ames, Matthew Hartz¹ and Jenny Lewis (together, “**Settlement Class Representatives**”), on behalf of themselves and the Settlement Classes as defined below, and Defendant TaxAct, Inc. (“**Defendant**” or “**TaxAct**”). This Settlement Agreement is subject to Court approval and is intended by the Settlement Class Representatives, the Settlement Classes, and Defendant (collectively, the “**Parties**”) to effect a full and final settlement, resolution, and dismissal of this action, *Smith-Washington v. TaxAct, Inc.*, Case No. 3:23-CV-00830-VC (the “**Action**”), upon and subject to the terms and conditions hereof.

I. RECITALS

1. WHEREAS, on January 24, 2023, Plaintiff Nicholas C. Smith-Washington filed the Action in the Superior Court of California for the County of Alameda (*see* Dkt. No. 1);

2. WHEREAS, TaxAct is a tax preparation software company that, among other services, offers software to individual tax filers;

3. WHEREAS, this Action pertains to TaxAct’s alleged use of auxiliary services provider technologies;

4. WHEREAS, on February 23, 2023, Defendant timely removed the Action to this Court;

5. WHEREAS, on June 20, 2023, Plaintiffs filed a First Amended Complaint (Dkt. No. 56);

6. WHEREAS, on December 21, 2023, Plaintiffs proposed a Second Amended Complaint (Dkt. No. 101);

7. WHEREAS, on January 3, 2024, Plaintiffs filed a Motion for Protective Order and Corrective Notice (Dkt. No. 103);

8. WHEREAS, this Action was vigorously contested and aggressively litigated,

¹ Mr. Hartz is represented by Spencer Sheehan of Sheehan & Associates, P.C., in *Hartz v. TaxAct, Inc.*, No. 1:23-cv-04591. Mr. Hartz is represented by Settlement Class Counsel in this matter.

1 including that:

- 2 a. The Parties engaged in extensive discovery, including production of documents by
3 TaxAct in response to sixty-four requests for production of documents by Plaintiffs
4 b. Plaintiffs deposed two fact witnesses;
5 c. TaxAct responded to thirteen interrogatories;
6 d. The Parties briefed multiple iterations of TaxAct's Motion to Compel Arbitration and
7 Stay Proceedings in response to the Class Action Complaint and First Amended Class
8 Action Complaint, as well as Plaintiffs' Motion for Leave to File Second Amended
9 Complaint;

10 9. WHEREAS, should Defendant's pending Motion to Compel Arbitration and Stay
11 Proceedings succeed, this matter shall proceed through individual arbitration;

12 10. WHEREAS, on November 20, 2023, the Parties mediated their dispute with Hunter
13 Hughes, Esq., in an arm's-length, full-day, contested session, during which the Parties attempted to,
14 but were unable to, negotiate a settlement of their dispute;

15 11. WHEREAS, following the November 20, 2023 mediation session, the Parties
16 continued to negotiate a settlement of their dispute, and ultimately reached an agreement in principle
17 regarding the terms of this Settlement Agreement, culminating in a Memorandum of Understanding
18 that was executed on January 10, 2024;

19 12. WHEREAS, on January 10, 2024, the Parties submitted a Notice of Settlement and
20 requested the Court to stay this Action to allow the parties to focus on finalizing the settlement and
21 preparing the preliminary approval motion (Dkt. No. 106);

22 13. WHEREAS, on January 10, 2024, the Court granted the Parties' request to stay this
23 Action (Dkt. 107);

24 14. WHEREAS, on February 16, 2024, the Parties stipulated to the filing of a Second
25 Amended Complaint (Dkt. 114);

26 15. WHEREAS, on February 20, 2024, the Court granted the Parties' stipulation for leave
27 to file a Second Amended Complaint (Dkt. 116);

28 16. WHEREAS, on February 20, 2024, Plaintiffs filed a Second Amended Complaint

1 (Dkt. 117);

2 17. WHEREAS, before entering into this Settlement Agreement, Settlement Class
3 Counsel conducted a thorough assessment of the relevant law, facts, and allegations to assess the
4 merits and strengths of Settlement Class Representatives' claims, potential remedies, and all defenses
5 thereto, and, based on that assessment, believe that the Settlement Agreement reflects an excellent
6 result for the Settlement Classes and that it is a fair, reasonable, and adequate resolution of the claims,
7 when balanced against the risks associated with continuing to litigate them and the time it would take
8 to secure recovery for the Settlement Classes;

9 18. WHEREAS, Defendant denies each of the allegations in the pleadings in the Action,
10 denies that it has engaged in any wrongdoing, denies that the Settlement Class Representatives'
11 allegations state valid claims, denies that Plaintiffs can maintain a class action for purposes of
12 litigation, and vigorously disputes that Settlement Class Representatives and the Settlement Classes
13 are entitled to any relief, but Defendant nevertheless agrees to resolve the Action in this forum, solely
14 for purposes of the Settlement, on the terms set forth in this Settlement Agreement in order to
15 eliminate the uncertainties, burden, expense, and delay of further protracted litigation;

16 19. WHEREAS, Defendant has agreed to settlement class action treatment of the claims
17 alleged in this Action pursuant to Fed. R. Civ. P. 23(e) solely for the purpose of compromising and
18 settling those claims on a class-wide basis as set forth herein;

19 20. WHEREAS, the Parties agree that the consideration provided to the Settlement
20 Classes and the other terms of the Settlement Agreement were negotiated at arm's length, in good
21 faith by the Parties, and reflect a settlement that was reached voluntarily, after consultation with
22 competent legal counsel, and with the assistance of an independent, neutral mediator;

23 21. WHEREAS, the Settlement Class Representatives and Settlement Class Counsel have
24 concluded that the Settlement set forth herein constitutes a fair, reasonable, and adequate resolution
25 of the claims that the Settlement Class Representatives asserted against Defendant, including the
26 claims on behalf of the Settlement Classes, and that it promotes the best interests of the Settlement
27 Classes;

28 22. NOW THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND

1 AGREED, by the Settlement Class Representatives, for themselves and on behalf of the Settlement
2 Classes, and by Defendant that, subject to the approval of the Court, the Action shall be settled, and
3 the Released Claims shall be finally and fully settled as to the Released Parties, in the manner and
4 upon the terms and conditions hereafter set forth in this Settlement Agreement.

5 II. DEFINITIONS

6 23. In addition to the terms defined elsewhere in the Settlement Agreement, the following
7 terms used in this Settlement Agreement shall have the meanings specified below.

8 24. “**Attorneys’ Fees and Expenses Award**” means such funds as may be awarded by
9 the Court to Settlement Class Counsel to compensate Settlement Class Counsel for its fees, costs, and
10 expenses in connection with the Action and the Settlement, as described in Section VII.

11 25. “**Authorized Claimant**” means a Settlement Class Member or their authorized legal
12 representative who is approved for payment from the Net Settlement Fund and In-Kind Payment in
13 accordance with the requirements established by the Settlement Agreement and the Court.

14 26. “**Claim Form**” means the proof of claim form substantially in the form attached as
15 Exhibit E.

16 27. “**Claims Submission Deadline**” means the date by which Claim Forms must be
17 postmarked or electronically submitted to be considered timely for participation in any monetary or
18 in-kind benefits of the Settlement. The Claims Submission Deadline shall be 90 days after the Notice
19 Date.

20 28. “**Settlement Class Counsel**” means the law firms HammondLaw, P.C. and Keller
21 Postman LLC, including Julian Hammond of HammondLaw, P.C., and Warren D. Postman of Keller
22 Postman LLC, who have the necessary authority and capacity to execute this Settlement Agreement
23 and bind all of the Settlement Class Representatives.

24 29. “**Class Notice**” means the Notice of Proposed Settlement of Class Action, which shall
25 include the Short-Form Notice and Long-Form Notice, substantially in the forms attached as Exhibits
26 C and D, respectively, as approved by the Court.

27 30. “**Class Period**” means the time period from January 1, 2018, through December 31,
28 2022, during which Settlement Class Representatives and members of the Settlement Class used

1 TaxAct's tax preparation services to prepare a tax return.

2 31. **"Court"** means the United States District Court for the Northern District of California.

3 32. **"Defense Counsel"** means the law firm Sidley Austin LLP and all of Defendant's
4 attorneys of record in the Action.

5 33. **"Effective Date"** means the date on which the Final Approval and Final Judgment
6 become Final.

7 34. **"Final"** means, with respect to any judicial ruling or order granting the final approval
8 order and/or final judgment, that: (a) if no appeal, motion for reconsideration, reargument and/or
9 rehearing, or petition for writ of certiorari has been filed, the time has expired to file such an appeal,
10 motion, and/or petition; or (b) if an appeal, motion for reconsideration, reargument and/or rehearing,
11 or petition for a writ of certiorari has been filed, the judicial ruling or order has been affirmed with
12 no further right of review, or such appeal, motion, and/or petition has been denied or dismissed with
13 no further right of review. Any proceeding or order, or any appeal or petition for a writ of certiorari
14 pertaining solely to any application for attorneys' fees or expenses associated with this Settlement
15 will not in any way delay or preclude the judgment from becoming Final.

16 35. **"Final Approval Hearing"** means the hearing that is to take place after the entry of
17 the Preliminary Approval Order and after the Notice Date for purposes of: (a) entering a Final
18 Approval Order and Final Judgment and dismissing the Action with prejudice; (b) determining
19 whether the Settlement should be approved as fair, reasonable, and adequate; (c) ruling upon an
20 application for a Service Award by the Settlement Class Representatives; and (d) ruling upon an
21 application by Settlement Class Counsel for an Attorneys' Fees and Expenses Award.

22 36. **"Final Approval Motion Deadline"** means the date by which Settlement Class
23 Counsel shall file the motion seeking final approval of the Settlement. The Final Approval Motion
24 Deadline shall be 120 days after the Notice Date, such date being subject to approval or modification
25 by the Court.

26 37. **"Final Approval Order"** means the order finally approving the terms of this
27 Settlement Agreement, without material variation from the terms set forth in the proposed order
28 attached as Exhibit G, absent consent of all Parties.

1 38. **“Final Judgment”** means a separate judgment to be entered by the Court, pursuant to
2 Federal Rule of Civil Procedure 58(a), dismissing the Action with prejudice.

3 39. **“In-Kind Payment”** means the provision of complimentary TaxAct® Xpert Assist
4 (**“Xpert Assist”**) to Authorized Claimants to use in connection with preparing a tax return using any
5 TaxAct online do-it-yourself consumer Form 1040 tax return filing product (including TaxAct’s free
6 product), applied to tax year 2024. TaxAct will make available to each Authorized Claimant
7 complimentary Xpert Assist. Specifically, upon entering their Social Security number into the TaxAct
8 platform, which occurs at the beginning of the tax return form process, Authorized Claimants will
9 receive a pop-up alerting them to their complimentary Xpert Assist and be able to add and use Xpert
10 Assist immediately.

11 40. **“Net Settlement Fund”** means the Qualified Settlement Fund less: (i) the Attorneys’
12 Fees and Expenses Award; (ii) the Service Awards; (iii) any Notice and Administration Costs that
13 are less than Two Million Five Hundred Thousand (\$2,500,000.00) U.S. Dollars and zero cents and
14 (iv) such other costs, expenses, or amounts as may be awarded or allowed by the Court.

15 41. **“Notice”** or **“Notice Plan”** means the dissemination of notice as described in
16 Section VIII and set forth in Exhibits C and D, attached hereto. In no event shall the Settlement
17 Administrator disseminate notice in any manner materially different from that set forth in the Notice
18 Plan, unless the Parties agree in writing to authorize such forms of notice and the Court so approves.

19 42. **“Notice and Administration Costs”** means the reasonable and necessary (i) costs,
20 fees, and expenses that are incurred in connection with providing Notice to the Settlement Class; and
21 (ii) costs, fees, and expenses that are incurred in connection with administering the Claims process
22 and allocating and distributing payments to Settlement Class Members.

23 43. **“Notice Date”** means the date upon which the Summary Notice and Class Notice is
24 first disseminated. Under no circumstances will the Notice Date be prior to April 30, 2024.

25 44. **“Objection Deadline”** means the date identified in the Preliminary Approval Order,
26 Summary Notice, and Class Notice by which a Settlement Class Member must serve a written
27 objection, if any, to the Settlement in accordance with Section XI and the other related terms of this
28 Settlement Agreement. Untimely objections and objections not meeting the terms of Section XI will

1 be deemed overruled. The Objection Deadline shall be 60 days after the Notice Date, such date being
2 subject to approval or modification by the Court.

3 45. **“Operative Complaint”** means the Second Amended Complaint filed on
4 February 20, 2024.

5 46. **“Opt-Out Deadline”** means the date identified in the Preliminary Approval Order,
6 Summary Notice, and Class Notice by which a Request to Opt-Out must be filed in writing with the
7 Settlement Administrator in accordance with Section X and the other related terms of this Settlement
8 Agreement in order for a potential Settlement Class Member to be excluded from the Settlement
9 Class. The Opt-Out Deadline shall be 90 days after the Notice Date, such date being subject to
10 approval or modification by the Court.

11 47. **“Plan of Allocation”** means the proposed plan of allocation of the Net Settlement
12 Fund or such other plan of allocation as the Court may approve.

13 48. **“Preliminary Approval Order”** means the Order by this Court preliminarily
14 approving the Settlement, providing for Notice to the Settlement Class, and other related matters,
15 without material variation from the terms set forth in the proposed order attached as Exhibit A.

16 49. **“Qualified Settlement Fund”** means the non-reversionary cash settlement common
17 fund for the benefit of the Settlement Class in the amount of Fourteen Million Nine Hundred and
18 Fifty Thousand U.S. Dollars and Zero Cents (\$14,950,000), plus up to Two Million Five Hundred
19 Thousand U.S. Dollars and Zero Cents (\$2,500,000) of additional funds set aside to be used towards
20 Notice and Administration Costs with any remainder of unused Notice and Administration Costs
21 funds to be distributed to the Settlement Class.

22 50. **“Releases,” “Released Party,” “Releasing Parties,”** and **“Released Claims”** shall
23 have the meanings as set forth in Section VI.

24 51. **“Request to Opt-Out”** means a written request from a potential Settlement Class
25 Member who seeks to opt out of the Settlement Classes, which is postmarked by the Opt-Out Deadline
26 and complies with all requirements in Section X.

27 52. **“Service Award(s)”** means the incentive/service awards for the Settlement Class
28 Representatives as approved by the Court, as set forth in Paragraph 94.

1 53. “**Settlement**” means the settlement embodied in this agreement, including all attached
2 Exhibits (which are an integral part of this agreement and are incorporated in their entirety by
3 reference).

4 54. “**Settlement Administrator**” means the firm Kroll Settlement Administration LLC,
5 2000 Market Street, Suite 2700, Philadelphia, PA 19103, which shall provide Notice in accordance
6 with the approved Notice Plan and administration services pursuant to the terms of the Settlement
7 Agreement.

8 55. “**Settlement Classes**” include the Nationwide Settlement Class and the Nationwide
9 Married Filing Jointly Class and the associated California subclasses. Excluded from the Settlement
10 Classes are TaxAct, its current, former and/or future parents, subsidiaries, divisions, affiliates and/or
11 departments, and their employees, officers, directors, management, legal representatives, heirs,
12 successors, and wholly or partly owned subsidiaries or affiliated companies during the Class Period
13 or thereafter; counsel for Plaintiffs and their employees, including but not limited to the undersigned
14 counsel for Plaintiffs and the undersigned counsel’s employees; any district judge or magistrate judge
15 to whom this case is or was assigned, as well as those judges’ immediate family members, judicial
16 officers and their personnel, and all governmental entities; customers who only used TaxAct’s
17 download do-it-yourself consumer Form 1040 tax return filing product, TaxAct’s Professional
18 products, or TaxAct’s online do-it-yourself business tax return filing products; and all individuals
19 who have, as of January 9, 2024, filed a demand for arbitration against TaxAct to arbitrate claims that
20 would otherwise be released in accordance with the terms of this Settlement Agreement unless those
21 individuals elect to opt-in to the Settlement Classes by filing a timely Claim Form.

22 a. “**Nationwide Class**” includes all natural persons who used a TaxAct online do-it-
23 yourself consumer Form 1040 tax filing product and filed a tax return using the TaxAct
24 online product during the Class Period, and whose postal address listed on such tax
25 return was in the United States. The Nationwide Class includes the California
26 Subclass.

27 i. “**California Subclass**” is a subclass of the Nationwide Class that includes all
28 natural persons who used a TaxAct online do-it-yourself consumer Form 1040

1 tax filing product and filed a tax return using the TaxAct online product during
2 the Class Period, and whose postal address listed on such tax return was in
3 California.

4 b. **“Nationwide Married Filing Jointly Class”** includes all natural persons whose
5 spouse used a TaxAct online do-it-yourself consumer Form 1040 tax filing product
6 and filed a joint tax return using the TaxAct online product during the Class Period,
7 and whose postal address listed on such joint tax return was in the United States. The
8 Nationwide Married Filing Jointly Class includes the California Married Filing Jointly
9 Subclass.

10 i. **“California Married Filing Jointly Subclass”** is a subclass of the Nationwide
11 Married Filing Jointly Class that includes all natural persons residing in
12 California during the Class Period whose spouse used a TaxAct online do-it-
13 yourself consumer Form 1040 tax filing product and filed a joint tax return
14 using the TaxAct online product during the Class Period, and whose postal
15 address listed on such joint tax return was in California.

16 56. **“Settlement Class Member(s)”** means any and all persons who fall within the
17 definitions of the Settlement Classes.

18 57. **“Settlement Class Representatives”** means Plaintiffs Nicholas C. Smith-
19 Washington, Joyce Mahoney, Jonathan Ames, Matthew Hartz, and Jenny Lewis.

20 58. **“TaxAct”** or **“Defendant”** means TaxAct, Inc., and refers to the named defendant
21 TaxAct, Inc., as well as all of TaxAct’s current and former directors, officers, members,
22 administrators, agents, insurers, beneficiaries, trustees, employee benefit plans, representatives,
23 servants, employees, attorneys, parents, subsidiaries, divisions, branches, units, shareholders,
24 investors, successors, predecessors, and assigns, and all other individuals and entities acting on
25 TaxAct’s behalf.

26 59. **“Taxes”** means all federal, state, or local taxes of any kind imposed on, or measured
27 by reference to or in connection with any income earned by the Qualified Settlement Fund and the
28 expenses and costs incurred in connection with the taxation or tax treatment of the Qualified

1 Settlement Fund (including, in each case and without limitation, interest, penalties, additions to tax
2 and the reasonable expenses of tax attorneys and accountants).

3 60. “**Tax Expenses**” means any tax-related expenses and costs incurred in connection
4 with the operation and implementation of this Settlement Agreement (including, without limitation,
5 expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating
6 to filing (or failing to file) any tax returns or other tax-related documentation (including those
7 described in Section XIV)).

8 61. “**Tax Year 2024**” means January 1, 2025, through October 15, 2025, which is the
9 time period when taxpayers can timely file their tax returns for 2024.

10 62. “**Treas. Reg.**” means the United States Treasury regulations.

11 63. “**Total Cash Settlement Amount**” means the non-reversionary cash settlement
12 common fund for the benefit of the Settlement Class in the amount of Fourteen Million Nine Hundred
13 and Fifty Thousand U.S. Dollars and Zero Cents (\$14,950,000.00) plus up to Two Million Five
14 Hundred Thousand U.S. Dollars and Zero Cents (\$2,500,000) of additional funds set aside to be used
15 towards Notice and Administration Costs with any remainder of unused Notice and Administration
16 Costs funds to be distributed to the Settlement Class.

17 **III. SETTLEMENT CLASS CERTIFICATION**

18 64. For purposes of settlement only, the Parties agree to seek provisional certification of
19 the Settlement Classes for the Class Period, pursuant to Federal Rules of Civil Procedure 23(e) and
20 23(b)(3).

21 65. The Parties further agree that the Court should make preliminary findings and enter
22 the Preliminary Approval Order granting provisional certification of the Settlement Classes subject
23 to the final findings and approval in the Final Approval Order and Final Judgment and appointing the
24 Settlement Class Representatives as the representatives of the Settlement Classes and Settlement
25 Class Counsel as counsel for the Settlement Classes.

26 66. Defendant does not consent to certification of the Settlement Classes (or to the
27 propriety of class treatment) for any purpose other than to effectuate the settlement of this Action.
28 Defendant’s agreement to provisional certification does not constitute an admission of wrongdoing,

1 fault, liability, or damage of any kind to the Settlement Class Representatives or any of the provisional
2 Settlement Class Members, any admission as to the enforceability of any agreement to arbitrate, or
3 the appropriateness of certification of any class for purposes other than this Settlement.

4 67. If this Settlement Agreement is terminated pursuant to its terms, disapproved by any
5 court (including any appellate court), and/or not consummated for any reason, or the Effective Date
6 for any reason does not occur, the Settlement Agreement shall be void, the order certifying the
7 Settlement Classes for purposes of effectuating the Settlement and all preliminary and/or final
8 findings regarding that class certification order shall be automatically vacated upon notice of the same
9 to the Court, the Action shall proceed as though the Settlement Classes had never been certified
10 pursuant to this Settlement Agreement and such findings had never been made, and the Action shall
11 return to the procedural posture on January 9, 2024, in accordance with this Paragraph, including but
12 not limited to reinvigoration of Defendant's Motion to Compel Arbitration, Plaintiff's Motion for
13 Leave to File Second Amended Complaint and Plaintiff's Motion for Protective Order and Corrective
14 Notice. For clarity, should this Settlement Agreement be void, the Parties agree that Defendant has
15 not waived its right to pursue arbitration by entering into this Settlement and Settlement Agreement.
16 No Party nor counsel shall refer to or invoke the vacated findings, order(s), and/or substantive briefing
17 relating to the Settlement or Rule 23 of the Federal Rules of Civil Procedure in connection with the
18 Settlement, if this Settlement Agreement is not consummated and the Action is later litigated and
19 contested by Defendant under Rule 23 of the Federal Rules of Civil Procedure.

20 **IV. SETTLEMENT CONSIDERATION**

21 68. In consideration for the dismissal of the Action with prejudice and the Releases
22 provided in this Settlement Agreement, Defendant agrees to pay the Qualified Settlement Fund,
23 which includes the Notice and Administration Costs), and contribute the In-Kind Payment for the
24 benefit of Settlement Class Members in the manner described in this Section IV of the Settlement
25 Agreement.

26 **A. Qualified Settlement Fund**

27 69. All valid claims paid to Settlement Class Members, Service Awards to the Settlement
28 Class Representatives approved by the Court, the Attorneys' Fees and Expenses Award (in the

1 amount determined by the Court), and any Notice and Administration Costs shall be paid from the
2 Qualified Settlement Fund. In no event shall Defendant be liable under this Settlement Agreement
3 for payment of claims paid to Settlement Class Members, Service Awards to the Settlement Class
4 Representatives, or the Attorneys' Fees and Expenses Award beyond the provision of the In-Kind
5 Payment and the payment of the amount of the Qualified Settlement Fund.

6 70. It is estimated that there are 8,263,789 Nationwide Class Members, 2,042,940
7 Nationwide Married Filing Jointly Class Members (collective, 10,306,729 Class Members), 519,060
8 California Subclass Members, and 109,096 California Married Filing Jointly Subclass Members. If
9 the total number of Class Members exceeds 10,306,729 by 5% or more, then the Qualified Settlement
10 Fund shall increase by the same percent by which the number of Class Members exceeds 5%, e.g., if
11 the total number of Class Members exceeds 10,306,729 by 7%, the Qualified Settlement Fund shall
12 increase by 2%.

13 71. No later than thirty (30) calendar days after the Court's entry of the Final Approval
14 Order, Defendant shall cause to be paid an amount equal to the Qualified Settlement Fund less the
15 sum of the Initial Deposit and any Periodic Payment(s) as set forth in Section IV.B into the Qualified
16 Settlement Fund to be administered by the Settlement Administrator pursuant to the terms of this
17 Settlement Agreement. No appeal shall affect this Paragraph's funding obligation. Aside from the
18 Initial Deposit, the Periodic Payment(s), Taxes, and Tax Expenses, no payments or distributions
19 (whether for claims paid to Settlement Class Members, Service Awards, or Attorneys' Fees and
20 Expenses) will be made from the Qualified Settlement Fund unless and until the Settlement
21 Agreement becomes Final. If this Settlement Agreement is terminated pursuant to its terms,
22 disapproved by any court (including any appellate court), and/or does not become Final for any
23 reason, or the Effective Date for any reason does not occur, then all funds from the Qualified
24 Settlement Fund shall be promptly released and returned to Defendant (along with all accrued
25 interest).

26 **B. Notice and Administration Costs**

27 72. Within 30 days after the entry of the Preliminary Approval Order, Defendant shall
28 cause to be paid a sum to be determined and sufficient to effectuate the Notice Plan to the Settlement

1 Administrator (the “Initial Deposit”). This deadline may be extended by consent of the Parties and
2 the Settlement Administrator.

3 73. Following entry of the Preliminary Approval Order, and after payment of the Initial
4 Deposit, Defendant shall cause to be paid all periodic subsequent amounts for Notice and
5 Administration Costs (as invoiced by the Settlement Administrator and approved by Settlement Class
6 Counsel and Defendant) (the “Periodic Payment(s)”) (with Notice and Administration Costs in excess
7 of Two Million Five Hundred Thousand (\$2,500,000.00) U.S. Dollars and Zero Cents to be deducted
8 from the Net Settlement Fund), within 30 days after the submission of an invoice by the Settlement
9 Administrator. This deadline may be extended by mutual consent of the Parties and the Settlement
10 administrator.

11 **C. In-Kind Payment**

12 74. No later than January 1, 2025, the beginning of tax filing season for tax year 2024,
13 TaxAct will make available to each Authorized Claimant complimentary Xpert Assist. Specifically,
14 upon entering their Social Security number into the TaxAct platform, which occurs at the beginning
15 of the tax return form process, Authorized Claimants will receive a pop-up alerting them to their
16 complimentary Xpert Assist and be able to add and use Xpert Assist immediately.

17 75. Xpert Assist is an add-on feature TaxAct offers to its customers that provides live
18 advice and assistance from tax experts to customers completing a tax return through TaxAct. Xpert
19 Assist is available for all online do-it-yourself consumer Form 1040 tax filing products. TaxAct
20 currently offers Xpert Assist to customers at a value of \$59.99. More information about Xpert Assist
21 can be found on the TaxAct website: <https://www.taxact.com/tax-xpert-assist>.

22 76. The complimentary Xpert Assist will enable the Authorized Claimant to use Xpert
23 Assist in connection with preparing a consumer tax return using any TaxAct online do-it-yourself
24 consumer Form 1040 tax return product, applied to Tax Year 2024.

25 **V. SUBMISSION OF SETTLEMENT AGREEMENT TO COURT FOR REVIEW AND**
26 **APPROVAL**

27 77. Solely for purposes of implementing this Settlement Agreement and effectuating the
28 proposed Settlement, the Parties agree and stipulate that Settlement Class Counsel shall submit to the

1 Court a motion for preliminary approval of the Settlement together with the Preliminary Approval
2 Order (Exhibit A).

3 78. Among other things, Settlement Class Counsel will seek a Preliminary Approval Order
4 that shall:

5 a. Approve the Notice Plan and Class Notice, substantially in the form set forth at
6 Exhibits B-D;

7 b. Find that the requirements for provisional certification of the Settlement Class have
8 been satisfied, appoint the Settlement Class Representatives as the representatives of
9 the provisional Settlement Classes and Settlement Class Counsel as counsel for the
10 provisional Settlement Classes, and preliminarily approve the Settlement as being
11 within the range of reasonableness such that the Class Notice should be provided
12 pursuant to this Settlement Agreement according to the Notice Plan;

13 i. Plaintiffs Nicholas C. Smith-Washington, Joyce Mahoney, and Jonathan Ames
14 shall be appointed as Settlement Class Representatives of the Nationwide
15 Class and the California Subclass.

16 ii. Plaintiff Matthew Hartz shall be appointed as a Settlement Class
17 Representative of the Nationwide Class.

18 iii. Plaintiff Jenny Lewis shall be appointed as Settlement Class Representative of
19 Nationwide Married Filing Jointly Class and the California Married Filing
20 Jointly Subclass.

21 c. Find that the CAFA notice sent by the Settlement Administrator complies with 28
22 U.S.C. § 1715 and all other provisions of the Class Action Fairness Act of 2005;

23 d. Determine that the Notice Plan, as set forth in this Settlement Agreement, complies
24 with all legal requirements, including but not limited to the Due Process Clause of the
25 United States Constitution;

26 e. Appoint the Settlement Administrator;

27 f. Direct that Class Notice shall be given to the Class as provided in Section VIII and the
28 other related terms of this Settlement Agreement;

- 1 g. Provide that Settlement Class Members will have until the Claims Submission
2 Deadline to submit a Claim Form;
- 3 h. Provide that any objections by any Settlement Class Member to the certification of the
4 Settlement Classes and the proposed Settlement contained in this Settlement
5 Agreement, and/or the entry of the Final Approval Order and Final Judgment, shall be
6 heard and any papers submitted in support of said objections shall be considered by
7 the Court at the Final Approval Hearing only if, on or before the Objection Deadline,
8 such objector files with the Court a written objection and notice of the objector's
9 intention to appear, and otherwise complies with the requirements in Section XI and
10 the other related terms of this Settlement Agreement;
- 11 i. Schedule the Final Approval Hearing on a date selected by the Court, to be provided
12 in the Preliminary Approval Order, and in compliance with applicable law, to
13 determine whether the Settlement should be approved as fair, reasonable, and
14 adequate, and to determine whether a Final Approval Order and Final Judgment
15 should be entered dismissing the Action with prejudice except as to such Settlement
16 Class Members who timely file valid written Requests to Opt-Out in accordance with
17 this Settlement Agreement and the Class Notice;
- 18 j. Provide that all Settlement Class Members will be bound by the Final Approval Order
19 and Final Judgment dismissing the Action with prejudice, except Settlement Class
20 Members who timely file valid written Requests to Opt-Out in accordance with this
21 Settlement Agreement and the Class Notice; and
- 22 k. Pending the Final Approval Hearing, stay all proceedings in the Action, other than the
23 proceedings necessary to carry out or enforce the terms and conditions of this
24 Settlement Agreement and Preliminary Approval Order.

25 79. Following the entry of the Preliminary Approval Order, the Class Notice shall be given
26 and published in the manner set forth in Section VIII of the Settlement Agreement and approved by
27 the Court.

28 80. By the Final Approval Motion Deadline, Settlement Class Counsel shall file a motion

1 seeking final approval of the Settlement. Unless otherwise agreed by the Parties, Settlement Class
2 Counsel shall request entry of a Final Approval Order and Final Judgment that shall, among other
3 things:

- 4 a. Find that the Court has personal jurisdiction over all Settlement Class Members, that
5 the Court has subject matter jurisdiction over the claims asserted in the Action, and that
6 the venue is proper;
- 7 b. Finally approve this Settlement Agreement and the Settlement pursuant to Rule 23(e)
8 of the Federal Rules of Civil Procedure;
- 9 c. Certify the Settlement Classes under Federal Rule of Civil Procedure 23(b)(3) and
10 23(e) for purposes of settlement only;
- 11 d. Find that the Class Notice complied with all laws, including, but not limited to, the Due
12 Process Clause of the United States Constitution;
- 13 e. Incorporate the Releases set forth in this Settlement Agreement and make the Releases
14 effective as of the Effective Date;
- 15 f. Authorize the Parties to implement the terms of the Settlement;
- 16 g. Dismiss the Action with prejudice and enter a separate judgment pursuant to Rule 58
17 of the Federal Rules of Civil Procedure;
- 18 h. Determine that the Settlement Agreement and the Settlement provided for herein, and
19 any proceedings taken pursuant thereto, are not, and should not in any event be offered,
20 received, or construed as evidence of, a presumption, concession, or an admission by
21 any Party of liability or nonliability or of the certifiability or non-certifiability of a
22 litigation class, or of any misrepresentation or omission in any statement or written
23 document approved or made by any Party; provided, however, that reference may be
24 made to this Settlement Agreement and the Settlement provided for herein in such
25 proceedings as may be necessary to effectuate the provisions of this Settlement
26 Agreement, as further set forth in this Settlement Agreement;
- 27 i. Retain jurisdiction relating to the administration, consummation, enforcement, and
28 interpretation of this Settlement Agreement, the Final Approval Order and Final

1 Judgment, any final order approving the Attorneys' Fees and Expenses Award and
2 Service Awards, and for any other necessary purpose; and

3 j. Comply with the timing requirement of 28 U.S.C. Section 1715(d).

4 81. The Parties agree that the Notice Plan contemplated by this Settlement Agreement is
5 valid and effective, that, if effectuated, it would provide reasonable notice to the Settlement Classes,
6 and that it represents the best practicable notice under the circumstances.

7 VI. RELEASES AND DISMISSAL OF ACTION

8 82. "**Releases**" mean the releases and waivers set forth in this Settlement Agreement and
9 in the Final Approval Order and Final Judgment.

10 83. "**Released Parties**" means (i) TaxAct; (ii) its current, former and/or future parents,
11 subsidiaries, divisions, affiliates and/or departments; (iii) the current, former and/or future officers,
12 directors, employees, stockholders, partners, members, managers, servants, agents, attorneys,
13 representatives, insurers, reinsurers and/or subrogees of TaxAct and/or any of its current, former
14 and/or future parents, subsidiaries, divisions, affiliates and/or departments; and (iv) all predecessors,
15 successors and/or assigns of any of the foregoing.

16 84. "**Released Claims**" means, with respect to Settlement Class Members, who do not
17 timely opt out of the Settlement Classes, any and all liabilities, rights, claims, actions, causes of
18 action, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses,
19 controversies, costs, expenses, and attorneys' fees of any nature whatsoever, whether based on any
20 law (including but not limited to federal law, state law, common law, contract, rule, or regulation) or
21 equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or
22 unforeseen, actual or contingent, liquidated or unliquidated, that arise during the Class Period and are
23 pled or that could have been pled based on, relating to, or arising out of the identical factual predicate
24 in the Operative Complaint, including but not limited to sharing or otherwise making accessible user
25 data in any form with third-party tracking technology providers. The definition of "Released Claims"
26 shall be construed as broadly as possible under Ninth Circuit law to effect complete finality over this
27 Action. For the avoidance of doubt, the Parties agree that nothing in the Plan of Allocation or any
28 other provision contained herein shall in any way limit the scope of the Release.

1 85. Upon the Effective Date, the Settlement Class Representatives and each of the
2 Settlement Class Members (and each of their heirs, estates, trustees, principals, beneficiaries,
3 guardians, executors, administrators, representatives, agents, attorneys, partners, successors,
4 predecessors-in-interest, and assigns) (collectively, “**Releasing Parties**”) shall be deemed to have,
5 and by operation of the Final Approval Order and Final Judgment in this Action shall have, fully,
6 finally and forever released, relinquished, and discharged each and every Released Claim, and to have
7 covenanted not to pursue any or all Released Claims against any Released Party, whether directly or
8 indirectly, whether on their own behalf or otherwise, and regardless of whether or not such Settlement
9 Class Member submits a Claim Form (except that the foregoing provision shall not apply to any such
10 representative, spouse, domestic partner, trustee, heir, executor, administrator, successor or assign
11 who independently would be a Settlement Class Member and timely excludes himself, herself or
12 itself).

13 86. Nothing in this Settlement Agreement is intended to alter the standard Terms of
14 Service and License Agreement (“Terms”) for the use of Defendant’s products or services by its
15 users, or Defendant’s enforcement of the standard Terms for the use of its products or services. To
16 the extent any conflict exists between the terms and conditions of this Settlement Agreement and the
17 Defendant’s standard Terms, the terms and conditions of the Settlement Agreement shall control.

18 87. Individuals who have timely and validly opted out of the Settlement by the Opt-Out
19 Deadline do not release their claims and will not obtain any benefits of the Settlement.

20 88. After entering into this Settlement Agreement, the Parties may discover facts other
21 than, different from, or in addition to, those that they know or believe to be true with respect to the
22 claims released by this Settlement Agreement. The Released Claims include known and unknown
23 claims as set forth above, and this Settlement Agreement is expressly intended to cover and include
24 all such injuries or damages, including all rights of action thereunder.

25 89. The Parties hereby expressly, knowingly, and voluntarily waive any and all provisions,
26 rights, and benefits conferred by California Civil Code Section 1542 (“Section 1542”) and any statute,
27 rule, and legal doctrine similar, comparable, or equivalent to Section 1542, which provides as follows:

28 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**

1 **THAT THE CREDITOR OR RELEASING PARTY DOES NOT**
2 **KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT**
3 **THE TIME OF EXECUTING THE RELEASE AND THAT, IF**
4 **KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY**
5 **AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR**
6 **OR RELEASED PARTY.**

7 90. In connection with such waiver and relinquishment, the Settlement Class
8 Representatives hereby acknowledge that they are aware that they or their attorneys may hereafter
9 discover claims or facts in addition to or different from those that they now know or believe exist
10 with respect to the Released Claims, but that it is their intention to hereby fully, finally, and forever
11 settle and release all of the Released Claims against the Released Parties.

12 91. In furtherance of such intention, the Release herein given to the Released Parties shall
13 be and remain in effect as a full and complete general release of the Released Claims notwithstanding
14 the discovery or existence of any such additional different claims or facts. The Settlement Class
15 Representatives expressly acknowledge that they have been advised by their attorneys of the contents
16 and effect of Section 1542, and with knowledge, each of the Parties hereby expressly waives whatever
17 benefits he/she/they may have had pursuant to such section. The Settlement Class Representatives
18 acknowledge, and the Settlement Class Members shall be deemed by operation of the Final Approval
19 Order and Final Judgment to have acknowledged, that the foregoing waiver was separately bargained
20 for and a material element of the Settlement of which this Release is a part.

21 92. Upon the Effective Date: (a) the Settlement Agreement shall be the exclusive remedy
22 for any and all Released Claims of Settlement Class Representatives and Settlement Class Members;
23 and (b) Settlement Class Representatives and Settlement Class Members stipulate to be and shall be
24 permanently barred from initiating, asserting, or prosecuting against the Released Parties in any
25 federal or state court or tribunal or arbitral forum any and all Released Claims.

26 **VII. MOTION FOR ATTORNEYS' FEES AND EXPENSES AND SERVICE AWARDS**

27 93. Settlement Class Counsel may apply to the Court for an award of reasonable attorneys'
28 fees incurred in the case as a percentage of the value conferred on the Settlement Classes of no more
 than 25% of the Total Cash Settlement Amount plus 25% of the redeemed value of the In-Kind
 Payment up to a maximum redeemed value of \$5,800,000. Settlement Class Counsel may also apply

1 to the Court for up to \$75,000 for reimbursement of litigation costs and expenses. Defendant reserves
2 the right to oppose the application seeking an Attorneys' Fees and Expenses Award. The Attorneys'
3 Fees and Expenses Award determined by the Court will be paid from the Qualified Settlement Fund.
4 The portion of the Attorneys' Fees and Expenses Award awarded based on the dollar amount of the
5 Total Cash Settlement Amount shall be paid from the Qualified Settlement Fund within 30 days after
6 the Effective Date occurs; and the portion of the Attorneys' Fees and Expenses Award awarded based
7 on the In-Kind Payment shall be paid after the time a reasonable valuation of the redeemed value of
8 Xpert Assist is possible because most Authorized Claimants have had an opportunity to redeem their
9 complimentary Xpert Assist, a time no earlier than May 2025.

10 94. The maximum Attorneys' Fees and Expenses Award based on the In-Kind Payment –
11 which would be \$1,450,000 if the Court awards 25% of the maximum redeemed value of \$5,800,000
12 of the In-Kind Payment – will be held by the Settlement Administrator until such time as a reasonable
13 valuation of the redeemed value of Xpert Assist is possible and the actual amount of attorneys' fees
14 to be based on the basis of the In-Kind Payment can be determined. If any portion of the Attorneys'
15 Fees and Expenses Award based on the In-Kind Payment and held back by the Settlement
16 Administrator is not ultimately distributed as attorneys' fees to Settlement Class Counsel, it will be
17 distributed to National Consumer Law Center as *cy pres* recipient.

18 95. Settlement Class Counsel's application for Attorneys' Fees and Expenses Award is
19 subject to Court approval, and a reduction in Attorneys' Fees, Expenses Award, or other settlement
20 enhancements awarded by the Court is not a basis for the Settlement Class Representatives, on their
21 own behalf or on behalf of the Settlement Classes, or Settlement Class Counsel to void, rescind, or
22 terminate this Settlement Agreement.

23 96. Settlement Class Counsel shall have the sole and absolute discretion, subject to any
24 orders issued by the Court, to allocate the Attorneys' Fees and Expenses Award amongst Settlement
25 Class Counsel and any other attorneys. Defendant shall have no liability or other responsibility for
26 allocation of any such Attorneys' Fees and Expenses Award. The amount ordered by the Court, which
27 shall be paid from the Qualified Settlement Fund, shall be the sole monetary obligation for attorneys'
28 fees and expenses pursuant to this Settlement Agreement.

1 97. The Parties agree that Settlement Class Counsel may apply on behalf of the Settlement
2 Class Representatives to the Court for a Service Award to each of them not to exceed \$10,000 for
3 their services as Settlement Class Representatives. Any Service Award(s) approved by the Court shall
4 be paid from the Qualified Settlement Fund within thirty (30) days after the Effective Date occurs.
5 The Parties agree that the Court has the authority under this Settlement Agreement to issue Service
6 Awards, and that the decision whether or not to award any such payment, and the amount of that
7 payment, rests in the exclusive discretion of the Court. The amount of any such Service Award
8 approved by the Court shall not be grounds for the Settlement Class Representatives to void, rescind,
9 or terminate this Settlement Agreement.

10 98. The Settlement was reached following a vigorously-contested settlement negotiation
11 process, including a full-day mediation conducted before a third-party neutral, Hunter Hughes, Esq.,
12 and via the Parties' respective legal counsels. The Parties did not negotiate the terms of any service
13 award payments or attorneys' fees and expenses until they had negotiated the material terms of the
14 Qualified Settlement Fund and Total Cash Settlement Amount, and during the negotiations of the
15 Qualified Settlement Fund and Total Cash Settlement Amount, they made no agreements in
16 connection with the Settlement Class Representatives' requests for service award payments or
17 Settlement Class Counsel's attorneys' fees and expenses.

18 **VIII. NOTICE AND SETTLEMENT ADMINISTRATION**

19 99. The Settlement Administrator's fees and costs, including the costs of notice, will be
20 paid as described in Section IV.B of this Settlement Agreement.

21 100. The Settlement Administrator will execute a confidentiality and non-disclosure
22 agreement with Defendant and Settlement Class Counsel and will utilize best efforts to ensure that
23 any information provided to it by Settlement Class Members will be kept confidential and secure, and
24 used solely for the purpose of effecting this Settlement.

25 101. For purposes of identifying and providing notice to potential Settlement Class
26 Members, the Preliminary Approval Order shall order Defendant to provide or cause to be provided
27 to the Settlement Administrator within 14 days of the date of entry of the Preliminary Approval Order
28 information about the Settlement Class Members required by the Settlement Administrator to effect

1 the Notice Plan.

2 102. In fulfilling its responsibilities in providing notice to the Settlement Class Members,
3 the Settlement Administrator shall be responsible for, without limitation, consulting on and designing
4 the notice to the Settlement Class with the input and approval of Defendant and Settlement Class
5 Counsel. A preview of the contemplated language and form of that communication (“Short-Form
6 Notice”) is attached as Exhibit C and a preview of the contemplated language and form of the long-
7 form notice to be posted on the settlement website is attached as Exhibit D (“Long-Form Notice”).

8 103. The Settlement Administrator shall commence Class Notice under the Notice Plan
9 30 days after entry of the Preliminary Approval Order, but in no event prior to April 30, 2024
10 (hereinafter the “Notice Date”).

11 104. Settlement Class Members who wish to receive a cash payment and In-Kind Payment
12 will be required to submit a Claim Form. The Claim Form shall, among other things, require the
13 Settlement Class Member to provide current name and contact information (i.e., first and last name,
14 email address, phone number, mailing address), as well as the name and contact information (i.e.,
15 first and last name, email address, phone number, mailing address) associated with their TaxAct
16 account during the time they used the TaxAct services (if different than current name and contact
17 information), and an indication of whether they filed a tax return on their own behalf or their spouse
18 filed a joint tax return on their behalf.

19 105. The Claim Forms shall be submitted to the Settlement Administrator via U.S. mail or
20 electronically. To be valid, Claim Forms must be received by the Settlement Administrator by the
21 Claims Submission Deadline.

22 106. The Class Notice shall set forth the procedure detailed in Section X of the Settlement
23 Agreement whereby members of the Settlement Class may exclude themselves from the Settlement
24 by submitting a Request to Opt-Out to the Settlement Administrator. Requests to Opt-Out must be
25 submitted by the Opt-Out Deadline. Any member of the Settlement Class who does not timely and
26 validly Request to Opt-Out shall be bound by the terms of this Settlement. As soon as practicable
27 after the Opt-Out Deadline, the Settlement Administrator shall provide the Court with a list of the
28 individuals who timely and validly requested to opt-out from the Settlement. Any member of the

1 Settlement Class who submits a timely Request to Opt-Out may not file an objection to the Settlement
2 and shall be deemed to have waived any and all rights and benefits under this Settlement.

3 107. The Class Notice shall set forth the procedure detailed in Section XI of the Agreement
4 whereby Settlement Class Members may object to the Settlement. Objections shall be filed with the
5 Court by the Objection Deadline.

6 108. The Settlement Administrator shall determine whether a submitted Claim Form meets
7 the requirements set forth in this Settlement Agreement. Each Claim Form shall be submitted to and
8 reviewed by the Settlement Administrator, who shall determine whether each claim shall be allowed.
9 The Settlement Administrator shall use best practices and all reasonable efforts and means to identify
10 and reject duplicate and/or fraudulent claims, including, without limitation, indexing all payments
11 provided to the Settlement Class Members. Cash and In-Kind Payment under this Settlement will
12 only be made to Settlement Class Members who submit Valid Claims, defined as claims approved
13 under Paragraphs 101 and 102.

14 109. If a Claim Form does not substantially comply with the formal requirements set forth
15 in this Settlement and/or in the Claim Form instructions, the Settlement Administrator shall promptly
16 notify the claimant of the noncompliance using the contact information provided in the Claim Form.
17 If the claimant fails to cure the noncompliance within 21 days after the Settlement Administrator has
18 notified the claimant of the noncompliance, the Claim Form shall be rejected as not meeting the terms
19 and conditions of this Settlement for receipt of a cash payment from the Qualified Settlement Fund
20 and distribution of In-Kind Payment. Any claimant who does not submit a valid and timely Request
21 to Opt-Out, and whose Claim Form is rejected by the Settlement Administrator, shall be deemed to
22 be a Settlement Class Member upon expiration of the Opt-Out Deadline, and shall be bound by all
23 subsequent proceedings, orders, and Judgments applicable to the Settlement Class(es).

24 110. Where a good faith basis exists, the Settlement Administrator may reject a Claim Form
25 for the following reasons: (a) the Claim Form is fraudulent; (b) the Claim Form is duplicative of
26 another Claim Form; (c) the person submitting the Claim Form is not a Settlement Class Member;
27 (d) the person submitting the Claim Form requests that payment be made to a person or entity other
28 than the Settlement Class Member for whom the Claim Form is submitted; (e) the Claim Form is not

1 timely submitted; or (f) the Claim Form otherwise does not meet the requirements of this Settlement
2 Agreement.

3 111. Claim Forms that do not meet the terms and conditions of this Settlement for payment
4 from the Qualified Settlement Fund shall be rejected by the Settlement Administrator. The Settlement
5 Administrator shall have 30 days from the Claims Submission Deadline to exercise the right of
6 rejection. Settlement Class Counsel and Defendant's Counsel shall be provided with copies of all
7 rejection determinations along with information sufficient to permit the parties to analyze the basis
8 for the rejection. If Settlement Class Counsel and Defendant's Counsel believe that any rejection was
9 inappropriate but cannot agree on a resolution of the claimant's claim, the decision of the Settlement
10 Administrator shall be final. No person shall have any claim against Defendant, Defense Counsel,
11 Settlement Class Representatives, Settlement Class Counsel, and/or the Settlement Administrator
12 based on any eligibility determinations, distributions, or awards made in accordance with this
13 Settlement.

14 112. The Settlement Administrator will provide information as agreed between Settlement
15 Class Counsel and the Settlement Administrator, including weekly written reports on the submissions
16 of claims, objections, and Requests to Opt-Out.

17 113. As soon as reasonably possible after the Claims Submission Deadline, but no later
18 than 7 days from the Claims Submission Deadline, the Settlement Administrator shall provide
19 Settlement Class Counsel and Defense Counsel with a spreadsheet that contains information
20 sufficient to determine: (a) the number of Settlement Class Members that submitted a claim; (b) the
21 number of submitted Claim Forms that are valid and timely, and the number that are not; (c) the
22 number of Valid Claims; and (d) the number of submitted Claim Forms the Settlement Administrator
23 has rejected. The materials that the Settlement Administrator provides to Settlement Class Counsel
24 pursuant to this Paragraph shall not contain the names, email addresses, mailing addresses, or other
25 personal identifying information of the Settlement Class Members.

26 114. Defendant may, in its sole discretion, terminate this Settlement Agreement if more
27 than three percent (3%) of Settlement Class Members submit valid and timely requests to exclude
28 themselves from the Settlement, as agreed to by the Parties and submitted to the Court for in camera

1 review. If Defendant elects to terminate the Settlement pursuant to this provision of the Settlement
2 Agreement, it shall provide written notice within 25 days following the date the Settlement
3 Administrator informs Defendant of the number of Settlement Class Members who have requested
4 to opt out of the Settlement pursuant to the provisions set forth above. If Defendant rescinds the
5 Settlement pursuant to this section of the Agreement, it shall have no further obligations to pay the
6 Qualified Settlement Fund and shall be responsible for only the fees and expenses actually incurred
7 by the Settlement Administrator, for which the Settlement Class Representatives and Settlement Class
8 Counsel are not liable.

9 **IX. PLAN OF ALLOCATION**

10 115. The Plan of Allocation is set forth in a separate document that will be filed by Plaintiffs
11 at the same time as the Settlement Agreement. The Parties shall mutually agree on the disbursement
12 of any amounts not distributed to Settlement Class Members who submit Valid Claims. Defendant
13 shall otherwise have no liability or other responsibility for the Plan of Allocation.

14 116. This is a common fund settlement. There will be no reversion of the Qualified
15 Settlement Fund to Defendant upon the occurrence of the Effective Date irrespective of the number
16 of Claims paid, or the amounts to be paid to Authorized Claimants from the Net Settlement Fund.

17 **X. OPT-OUTS**

18 117. Any individual who wishes to exclude themselves from the Settlement must submit a
19 written opt-out form to the administrator requesting exclusion, which shall be postmarked or
20 electronically submitted no later than the Opt-Out Deadline.

21 118. The Request to Opt-Out must:

- 22 a. Identify the case name of the Action;
- 23 b. Identify the name and current address of the individual seeking exclusion from the
24 Settlement;
- 25 c. Be personally signed by the individual seeking exclusion;
- 26 d. Include a statement clearly indicating the individual's intent to be excluded from the
27 Settlement;
- 28 e. Request exclusion only for that one individual whose personal signature appears on the

1 request;

2 f. Include the contact information (i.e., first and last name, email address, phone number,
3 and mailing address) associated with the TaxAct account of the individual seeking
4 exclusion, or their spouse's TaxAct account if the individual is a Married Filing Jointly
5 Class Member; and

6 g. Verify that the individual seeking exclusion used TaxAct's services during the Class
7 Period and is part of the Settlement Class.

8 119. Opt-out requests seeking exclusion on behalf of more than one individual shall be
9 deemed invalid by the Settlement Administrator.

10 120. Any individual who submits a valid and timely Request to Opt-Out in substantial
11 compliance with the requirements described herein shall not: (i) be bound by any orders or judgments
12 entered in connection with the Settlement; (ii) be entitled to any relief under, or be affected by, the
13 Agreement; (iii) gain any rights by virtue of the Settlement Agreement; or (iv) be entitled to object
14 to any aspect of the Settlement.

15 121. Any individual who does not substantially comply with the requirements of this
16 Settlement Agreement governing Requests for Opt-Out and otherwise meets the definitional
17 requirements of a Settlement Class Member shall be deemed to be a Settlement Class Member upon
18 expiration of the Opt-Out Deadline, and shall be bound by all subsequent proceedings, orders, and
19 judgments applicable to the Settlement Class.

20 122. All signatories and counsel must not encourage opt-outs. Counsel for Plaintiffs and
21 Counsel for Defendant specifically agree not to solicit opt-outs, directly or indirectly, through any
22 means, but rather encourage members of the Settlement Class to participate in the settlement.

23 123. If more than three percent (3%) of the Settlement Class opt out, Defendant shall have
24 the sole and absolute discretion to terminate the Settlement as described above in Paragraph 111.

25 **XI. OBJECTIONS**

26 124. Any Settlement Class Member who wishes to object to the Settlement must timely
27 submit a written objection to the Court on or before the Objection Deadline, as specified in the
28 Preliminary Approval Order.

1 125. The objection must include:

- 2 a. The case name and number of the Action;
- 3 b. The full name, address, telephone number, and email address of the objecting
4 Settlement Class Member and, if represented by counsel, of his/her counsel;
- 5 c. The email address associated with the objector's TaxAct account, or the email address
6 associated with their Spouse's TaxAct account if the objector is a Married Filing Jointly
7 Class Member;
- 8 d. A statement of whether the objection applies only to the objector, to a specific subset
9 of the classes, or to an entire class;
- 10 e. A statement of the number of times in which the objector (and, where applicable,
11 objector's counsel) has objected to a class action settlement, along with the caption of
12 each case in which the objector has made such objection;
- 13 f. A statement whether the objector has sold or otherwise transferred the right to their
14 recovery in this Action to another person or entity, and, if so, the identity of that person
15 or entity;
- 16 g. A statement of the specific grounds for the objection, including any legal and factual
17 support and any evidence in support of the objection;
- 18 h. A statement of whether the objecting Settlement Class Member intends to appear at the
19 Final Approval Hearing, and if so, whether personally or through counsel; and
- 20 i. The objector's signature.

21 126. If an objecting Settlement Class Member intends to speak at the Final Approval
22 Hearing (whether *pro se* or through an attorney), these requirements may be excused by the Court
23 upon a showing of good cause.

24 127. Any Settlement Class Member who fails to substantially comply with the requirements
25 in this Settlement Agreement governing objections shall be deemed to have waived any such
26 objection, shall not be permitted to object to any terms or approval of the Settlement at the Final
27 Approval Hearing, and shall be precluded from seeking any review of the Settlement or the terms of
28 this Settlement Agreement by appeal or any other means.

1 **XII. MODIFICATION OR TERMINATION OF SETTLEMENT AND RESERVATION**
2 **OF RIGHTS**

3 128. This Settlement Agreement may be amended or modified only by a written instrument
4 signed by or on behalf of all Parties or their respective successors-in-interest and approval of the
5 Court; provided, however that, after entry of the Final Approval Order and Final Judgment, the Parties
6 may by written agreement effect such amendments, modifications, or expansions of this Settlement
7 Agreement and its implementing documents (including all Exhibits hereto) without further approval
8 by the Court if such changes are consistent with the Court's Final Approval Order and Final Judgment
9 and do not materially alter, reduce, or limit the rights of Settlement Class Members under this
10 Settlement Agreement.

11 129. This Settlement Agreement and any Exhibits attached hereto constitute the entire
12 agreement among the Parties, and no representations, warranties, or inducements have been made to
13 any Party concerning this Settlement Agreement or its Exhibits other than the representations,
14 warranties, and covenants covered and memorialized in such documents.

15 130. In the event the terms or conditions of this Settlement Agreement are modified by (or
16 are modified to comply with) any court order as described in this Paragraph, any Party in its sole
17 discretion to be exercised within 14 days after such modification may declare this Settlement
18 Agreement null and void. For purposes of this Paragraph, modifications include any material changes
19 including but not limited to (a) the definition of the Settlement Classes, Settlement Class Members,
20 Released Parties, or Released Claims; and/or (b) the terms of the Settlement Consideration described
21 in Section IV; and/or (c) the Notice Plan, including methods of distributing notice, to the Settlement
22 Classes. In the event of qualifying modification by any court, and in the event the Parties do not
23 exercise their unilateral option to withdraw from this Settlement Agreement pursuant to this
24 Paragraph, the Parties shall meet and confer within 21 days of such ruling to attempt to reach an
25 agreement as to how best to effectuate the court-ordered modification.

26 131. In the event that a Party exercises his/her/their option to withdraw from and terminate
27 this Settlement Agreement, then the Settlement proposed herein shall become null and void and shall
28 have no force or effect, the Parties shall not be bound by this Settlement Agreement, and the Parties

1 will be returned to their respective positions existing on January 9, 2024.

2 132. The Parties agree that the effectiveness of this Settlement Agreement is not contingent
3 upon the Court's approval of the payment of any Attorneys' Fees or Expenses or Service Awards. If
4 the Court declines to approve, in whole or in part, a request for Attorneys' Fees or Expenses or Service
5 Awards, all remaining provisions in this Settlement Agreement shall remain in full force and effect.
6 No decision by the Court, or modification or reversal or appeal of any decision by the Court,
7 concerning the payment of Attorneys' Fees or Expenses or Service Awards, or the amount thereof,
8 shall be grounds for cancellation or termination of this Settlement Agreement.

9 **XIII. NO ADMISSION OF WRONGDOING OR LIABILITY**

10 133. Defendant denies the material factual allegations and legal claims asserted in the
11 Action, including any and all charges of wrongdoing or liability arising out of any of the conduct,
12 statements, acts or omissions alleged, or that could have been alleged, in the Action. Similarly, this
13 Settlement Agreement provides for no admission of wrongdoing or liability by any of the Released
14 Parties. This Settlement is entered into solely to eliminate the uncertainties, burdens, and expenses of
15 protracted litigation.

16 134. The Parties understand and acknowledge that this Settlement Agreement constitutes a
17 compromise and settlement of disputed claims. No action taken by the Parties, whether previously or
18 in connection with the negotiations or proceedings connected with the Settlement or this Agreement,
19 shall be deemed or construed to be an admission of the truth or falsity of any allegations, claims, or
20 defenses heretofore made, or an acknowledgment or admission by any party of any fact, fault,
21 liability, or wrongdoing of any kind whatsoever.

22 135. Neither the Settlement, nor any act performed or document executed pursuant to or in
23 furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or
24 evidence of, the validity of any claim made by the Plaintiffs or Settlement Class Members, or of any
25 wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as,
26 an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or
27 in any proceeding in any court, administrative agency or other tribunal; or construed as an admission
28 by Plaintiffs regarding the validity of any allegation or claim asserted in this Action or that Plaintiff

1 has waived any allegation or claim asserted in the Action.

2 **XIV. NO DISPARAGEMENT**

3 136. The Parties agree that they will not make or publish written statements which are
4 disparaging to the reputation of the other or their current or former corporate parents and affiliates.

5 **XV. CAFA NOTICE PURSUANT TO 28 U.S.C. SECTION 1715**

6 137. The Settlement Administrator shall serve notice of the Settlement Agreement that
7 meets the requirements of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, on the appropriate
8 federal and state officials no later than ten days following the filing of this Settlement Agreement
9 and related Preliminary Approval Motion with the Court.

10 **XVI. TAX MATTERS**

11 138. The Released Parties and their counsel shall have no liability or responsibility for any
12 Taxes, Tax Expenses, or tax-related reporting or compliance with respect to the Qualified Settlement
13 Fund or any other matter contemplated by this Settlement Agreement. Without limiting the generality
14 of the preceding sentence, (i) all Taxes and Tax Expenses shall be paid solely out of the Qualified
15 Settlement Fund and (ii) all Taxes and Tax Expenses shall be treated as, and considered to be, a cost
16 of administration of the Qualified Settlement Fund and shall be timely paid as instructed by the
17 Settlement Administrator, out of the Qualified Settlement Fund without the need for any further
18 authorization (including an order from the Court).

19 139. The Settlement Administrator shall comply with all legal requirements regarding tax
20 withholding, tax reporting, and tax compliance (including filing all Tax returns and other returns).
21 Settlement Class Counsel shall provide such assistance as the Settlement Administrator reasonably
22 requests to enable the Settlement Administrator to comply with the preceding sentence. All returns
23 filed by the Settlement Administrator shall be consistent with this Section XIV (including with respect
24 to the election described in Paragraph 138).

25 140. Notwithstanding anything in this Settlement Agreement to the contrary, the Settlement
26 Administrator is hereby authorized and instructed to deduct and/or withhold from distribution to
27 Authorized Claimants any (i) taxes required to be deducted or withheld by law (including under Treas.
28 Reg. §1.468B-2(l)(2), if applicable) and (ii) any funds necessary to pay Taxes or Tax Expenses

1 (including the establishment of adequate reserves for any Taxes and Tax Expenses). Any amount
2 deducted or withheld in accordance with this Paragraph shall be treated as having been paid to the
3 person in respect of whom such deduction or withholding was made.

4 141. The Parties agree to treat the Qualified Settlement Fund at all times as a qualified
5 settlement fund for U.S. federal income tax purposes within the meaning of Treas. Reg.
6 Sections 1.468B-1 through 1.468B-5. The Parties and the Settlement Administrator shall, and shall
7 cause their affiliates to, take any action reasonably necessary to ensure the Qualified Settlement Fund
8 satisfies the requirements of Treas. Reg. Sections 1.468B-1 through 1.468B-5 (including the
9 requirement to ensure that economic performance occurs at the time of the transfer to the Qualified
10 Settlement Fund pursuant to Treas. Reg. Section 1.468B-3(c)). The Settlement Administrator shall
11 be, and hereby is, appointed the “administrator” within the meaning of Treas. Reg. Section 1.468B-
12 2(k)(3). If the Settlement Administrator cannot or will not serve as the administrator in accordance
13 with the preceding sentence, the administrator shall be such other professional settlement
14 administrator firm as the Parties shall reasonably select.

15 142. The Parties agree that TaxAct shall not have any liability or responsibility for the taxes
16 or the tax expenses related to the Qualified Settlement Fund other than those paid from the Qualified
17 Settlement Fund.

18 143. The Parties agree to cooperate with the Settlement Administrator (and any person
19 other than the Settlement Administrator that serves as the administrator of the Qualified Settlement
20 Fund as described in Paragraph 138), each other, and their tax attorneys and accountants to the extent
21 reasonably necessary to carry out the provisions of this Settlement Agreement.

22 **XVII. MISCELLANEOUS PROVISIONS**

23 144. Unless otherwise specifically provided herein, all notices, demands, or other
24 communications given hereunder shall be in writing and shall be deemed to have been duly given as
25 of the third business day after mailing by United States registered or certified mail, return receipt
26 requested, addressed as follows:

27 To the Settlement Class Representatives and the Settlement Class:
28 Julian Hammond

1 Christina Tusan
2 HammondLaw P.C.
3 1201 Pacific Ave, 6th Floor
4 Tacoma, WA 98402

5 To Counsel for TaxAct:

6 James W. Ducayet
7 Sidley Austin LLP
8 One South Dearborn
9 Chicago, IL 60603

10 With a Copy to TaxAct:

11 Willa Kalaidjian
12 Chief Legal Officer and General Counsel
13 3200 Olympus Blvd., Suite 150
14 Dallas, TX 75019

15 145. All of the Exhibits to this Settlement Agreement are an integral part of the Settlement
16 and are incorporated by reference as though fully set forth herein.

17 146. The Parties agree that the Recitals are contractual in nature and form a material part
18 of this Settlement Agreement.

19 147. No extrinsic evidence or parol evidence shall be used to interpret, explain, construe,
20 contradict, or clarify this Settlement Agreement, its terms, the intent of the Parties or their counsel,
21 or the circumstances under which this Settlement Agreement was made or executed. This Settlement
22 Agreement supersedes all prior negotiations and agreements, including the Memorandum of
23 Understanding executed on January 10, 2024. The Parties expressly agree that the terms and
24 conditions of this Settlement Agreement will control over any other written or oral agreements.

25 148. Unless otherwise noted, all references to “days” in this Settlement Agreement shall be
26 to calendar days. In the event any date or deadline set forth in this Settlement Agreement falls on a
27 weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

28 149. The Settlement Agreement, the Settlement, all documents, orders, and other evidence
relating to the Settlement, the fact of their existence, any of their terms, any press release or other
statement or report by the Parties or by others concerning the Settlement Agreement, the Settlement,
their existence, or their terms, any negotiations, proceedings, acts performed, or documents drafted
or executed pursuant to or in furtherance of the Settlement Agreement or the Settlement shall not be
offered, received, deemed to be, used as, construed as, and do not constitute a presumption,

1 concession, admission, or evidence of (i) the validity of any Released Claims or of any liability,
2 culpability, negligence, or wrongdoing on the part of the Released Parties; (ii) any fact alleged,
3 defense asserted, or any fault, misrepresentation, or omission by the Released Parties; (iii) the
4 propriety of certifying a litigation class or any decision by any court regarding the certification of a
5 class, and/or (iv) whether the consideration to be given in this Settlement Agreement represents the
6 relief that could or would have been obtained through trial in the Action, in any trial, civil, criminal,
7 administrative, or other proceeding of the Action or any other action or proceeding in any court,
8 administrative agency, or other tribunal.

9 150. The Parties to this Action and any other Released Parties shall have the right to file
10 the Settlement Agreement and/or the Final Approval Order and Final Judgment in any action that
11 may be brought against them in order to support a defense or counterclaim based on principles of res
12 judicata, collateral estoppel, release, good-faith settlement, judgment bar, reduction, or any other
13 theory of claim preclusion or issue preclusion or similar defense or counterclaim.

14 151. To the extent permitted by law, all agreements made and orders entered during the
15 course of the Action relating to the confidentiality of information shall survive this Settlement
16 Agreement. TaxAct reserves the right to disclose the settlement in connection with its customary
17 engagement with regulators and financial reporting practices.

18 152. The waiver by one Party of any breach of this Settlement Agreement by any other
19 Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement
20 Agreement.

21 153. This Settlement Agreement may be executed in counterparts, each of which shall be
22 deemed an original and all of which, when taken together, shall constitute one and the same
23 instrument. Signatures submitted by email, PDF via DocuSign, or facsimile shall also be considered
24 originals. The date of execution shall be the latest date on which any Party signs this Settlement
25 Agreement.

26 154. The Parties hereto and their respective counsel agree that they will use their best efforts
27 to obtain all necessary approvals of the Court required by this Settlement Agreement, including to
28 obtain a Final Approval Order and Final Judgment approving the Settlement.

1 155. This Settlement Agreement shall be binding upon and shall inure to the benefit of the
2 successors and assigns of the Parties hereto, including any and all Released Parties and any
3 corporation, partnership, or other entity into or with which any Party hereto may merge, consolidate,
4 or reorganize, each of which is entitled to enforce this Settlement Agreement.

5 156. This Settlement Agreement was jointly drafted by the Parties. Settlement Class
6 Representatives, Settlement Class Members, and Defendant shall not be deemed to be the drafters of
7 this Settlement Agreement or of any particular provision, nor shall they argue that any particular
8 provision should be construed against its drafter or otherwise resort to the *contra proferentem* canon
9 of construction. Accordingly, this Settlement Agreement should not be construed in favor of or
10 against one Party as the drafter, and the Parties agree that the provisions of California Civil Code
11 Section 1654 and common law principles of construing ambiguities against the drafter shall have no
12 application.

13 157. This Settlement Agreement shall be governed by and construed in accordance with the
14 laws of the State of California, without regard to any conflict of laws principles that would result in
15 applying the substantive law of a jurisdiction other than the State of California.

16 158. The headings used in this Settlement Agreement are inserted merely for the
17 convenience of the reader and shall not affect the meaning or interpretation of this Settlement
18 Agreement.

19 159. In construing this Settlement Agreement, the use of the singular includes the plural
20 (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).

21 160. The provision of the confidentiality agreement entered into with respect to the
22 mediation process concerning this Action is waived for the limited purpose of permitting the Parties
23 to confirm that they participated in the mediation and that the mediation process was successful in
24 advancing final settlement of this Action.

25 IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have
26 duly executed this Settlement Agreement as of the date set forth below.

1 Dated: February 21, 2024

Dated: February 21, 2024

2 DocuSigned by:
3 By: Julian Hammond
1851F4850DE24E7...

DocuSigned by:
By: Sheila Armbrust
ADD3CD67453C4BC...

4 *On behalf of Plaintiffs and the Putative Classes*

On behalf of TaxAct, Inc.

5 Julian Hammond (SBN 268489)
6 Jhammond@Hammondlawpc.com
7 Christina Tusan (SBN 192203)
8 Ctusan@Hammondlawpc.com
9 Adrian Barnes (SBN 253131)
10 Abarnes@Hammondlawpc.com
11 Ari Cherniak (SBN 290071)
12 Acherniak@Hammondlawpc.com
13 Polina Brandler (SBN 269086)
14 Pbrandler@Hammondlawpc.com
15 HAMMONDLAW, P.C.
16 1201 Pacific Ave, 6th Floor
17 Tacoma, WA 98402
18 Telephone: (310) 601-6766
19 Facsimile: (310) 295-2385 (Fax)

Sheila A.G. Armbrust (SBN 265998)
sarmbrust@sidley.com
SIDLEY AUSTIN LLP
555 California Street, Suite 2000
San Francisco, CA 94104
Telephone: (415) 772 1200
Facsimile: (415) 772 7400

James W. Ducayet (*pro hac vice*)
jducayet@sidley.com
SIDLEY AUSTIN LLP
One South Dearborn
Chicago, IL 60603
Telephone: (312) 853 7000
Facsimile: (312) 853 7036

WARREN D. POSTMAN (SBN 330869)
wdp@kellerpostman.com
KELLER POSTMAN LLC
1101 Connecticut Avenue, N.W., Suite 1100
Washington, DC 20005
Telephone: (312) 741-5220
Facsimile: (312) 971-3502

Michele L. Aronson (*pro hac vice*)
maronson@sidley.com
SIDLEY AUSTIN LLP
1501 K Street NW
Washington, DC 20005
Telephone: (202) 736 8000
Facsimile: (202) 736 8711

Attorneys for Plaintiffs and the Putative Classes

Attorneys for Defendant TaxAct, Inc.