

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“**Agreement**” or “**Settlement Agreement**”) is entered into by and between Plaintiff Benjamin Ruby (“**Plaintiff**”), individually and on behalf of the Settlement Class Members, as defined herein, and Build-A-Bear Workshop, Inc., a Delaware corporation, (“**Defendant**”) (each a “**Party**,” and together, the “**Parties**”). This Settlement Agreement includes the following attached exhibits, which are incorporated by reference as though fully set forth herein:

Exhibit 1 - Preliminary Approval Order

Exhibit 2 - Address Form

Exhibit 3 - Direct Mail Notice

Exhibit 4 - Direct Email Notice

Exhibit 5 - Final Approval Order and Judgment

In consideration of, and subject to, the promises, covenants, terms, and conditions contained in this Settlement Agreement, the Parties hereby agree, subject to approval by the Court pursuant to FED. R. CIV. P. 23, as follows:

RECITALS

WHEREAS, on August 24, 2021, Plaintiff Benjamin Ruby, allegedly on behalf of himself and a putative class, initiated a putative class action in the Circuit Court of St. Louis County, State of Missouri, Twenty-First Judicial Circuit, entitled *Benjamin Ruby, individually, and on behalf of all others similarly situated, v. Build-A-Bear Workshop, Inc.*, Case No. 21SL-CC03859 (the “**State Action**”); and

WHEREAS, on September 24, 2021, Defendant filed a timely Notice of Removal in the United States District Court for the Eastern District of Missouri, resulting in removal of the State

Action to the United States District Court for the Eastern District of Missouri, where it was assigned to the Honorable John A. Ross, Case No. 4:21-CV-01152-JAR, and is currently pending (the “**Action**”); and

WHEREAS, on April 20, 2022, Plaintiff Benjamin Ruby, allegedly on behalf of himself and alleged putative classes, filed a First Amended Class Action Complaint in the Action, asserting claims against Defendant for alleged violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* and certain regulations promulgated thereunder, including 47 C.F.R. §§ 64.1200(c)(2) and 64.1200(d) (collectively, the “**TCPA**”); and

WHEREAS, Defendant vigorously denies all of the claims, allegations, and contentions asserted by Plaintiff, and vigorously denies any and all alleged wrongdoing and liability to Plaintiff and the putative classes; and

WHEREAS, Defendant further contends that the Action would not be amenable to class certification were it to proceed; and

WHEREAS, given the risks, uncertainties, burden, and expense of continued litigation, the Parties agreed to pursue settlement of the Action, subject to Court approval; and

WHEREAS, the Parties, through counsel and over the course of the case, held telephone conferences, correspondence, and a mediation conference with mediator Bradley A. Winters on August 16, 2022; and

WHEREAS, the Parties, through Mr. Winters, engaged in extensive, arm’s-length negotiations at the mediation conference and continuing thereafter, eventually reaching a class-wide settlement of the Action, which is memorialized in this Settlement Agreement; and

WHEREAS, counsel for Plaintiff engaged in discovery and motion practice, reviewed thousands of documents and voluminous electronic data, and conducted a thorough examination

and evaluation of the relevant law and facts to assess the merits of the claims asserted in the Action and how best to serve the interests of the putative classes; and

WHEREAS, based on these actions and the settlement negotiations, taking into account the sharply contested issues involved, the risks, uncertainty, and cost of further prosecution of the Action, and the substantial benefits to be received by Plaintiff and Settlement Class Members, as defined herein, counsel for Plaintiff have concluded that a settlement with Defendant on the terms set forth in this Settlement Agreement is fair, reasonable, adequate and in the best interests of the Settlement Class Members; and

WHEREAS, the Parties state that this Settlement Agreement resulted from vigorous, good-faith, and arm's-length negotiations between counsel for the Parties, including negotiations mediated by third-party neutral, Bradley Winters.

NOW THEREFORE, it is hereby understood, acknowledged, stipulated, and agreed by and between the Parties, through their respective counsel that, pursuant to the terms and conditions of this Settlement Agreement, all of the claims asserted or that could be asserted in the Action will be fully and finally compromised, settled, and released on a class-wide basis, subject to approval by the Court, as set forth herein.

I. DEFINITIONS

1.01. “**Actionable Text Message Solicitation**” means each text message sent by, or on behalf of, Defendant to a Settlement Class Member during the Class Period for the purpose of encouraging the purchase of property, goods, or services after the Settlement Class Member had revoked consent to receiving such text messages from Defendant, including by texting “Stop” or “Quit,” in whole or part, in response to a prior text message from Defendant, but not including the

first such text message sent by Defendant to a Settlement Class Member during the Class Period after the Settlement Class Member had revoked consent.

1.02. “**Administration Costs**” means all costs and expenses incurred by, and all fees charged by, the Settlement Administrator in administering the Settlement, including, without limitation, for the following activities and services: evaluating the final Settlement Class List; ascertaining valid mailing and email addresses; sending Direct Mail Notice and Direct Email Notice to Settlement Class Members; communicating with Settlement Class Members; processing claims and forms; making distributions to Qualified Settlement Class Members; preparing and submitting affidavits and reports; and administering the Settlement Fund.

1.03. “**Class Counsel**” means David T. Butsch and Christopher E. Roberts of Butsch Roberts & Associates LLC, and Shawn J. Wanta and Scott A. Moriarity of Wanta Thome PLC.

1.04. “**Class Period**” means the time period beginning on, and including, September 24, 2017 and ending on, and including, the date the Court enters the Preliminary Approval Order.

1.05. “**Class Counsel’s Expenses**” means reasonable costs and expenses incurred by Class Counsel in connection with the Action, which Class Counsel will seek to be paid from the Settlement Fund with Court approval.

1.06. “**Class Counsel’s Fees**” means attorneys’ fees incurred by Class Counsel in connection with the Action, which Class Counsel will seek to be paid from the Settlement Fund with Court approval.

1.07. “**Class Representative**” means Plaintiff Benjamin Ruby, subject to Court approval.

1.08. “**Class Representative Service Award**” means an incentive award to be paid to Benjamin Ruby as Class Representative, with Court approval.

1.09. “**Court**” means the United States District Court for the Eastern District of Missouri, including the Honorable John A. Ross.

1.10. “**Distributable Funds**” means the amount of money available for distribution to Qualified Settlement Class Members, calculated as the amount of the Settlement Fund minus Administration Costs, Class Counsel’s Expenses, Class Counsel’s Fees, and Class Representative Service Award, as approved by the Court.

1.11. “**Effective Date**” means the date on which each of the following conditions is satisfied: (i) the Court enters Final Approval Order and Judgment consistent with Section XI of this Settlement Agreement; and (ii) either: (a) forty-five (45) days have passed after entry of the Final Approval Order and Judgment and no appeal is taken and no motion or other pleading has been filed with the Court (or with any other court of competent jurisdiction) seeking to set aside, vacate, enjoin, modify, overturn, reconsider, preclude enforcement of, or in any way alter the Final Approval Order and Judgment, or to toll the time for appeal from the Final Approval Order and Judgment; or (b) forty-five (45) days have passed after all appeals, post-judgment motions, and any motions or petitions for reconsideration, rehearing, or other form of review or potential review of the Final Approval Order and Judgment, if any, are exhausted, and the Final Approval Order and Judgment is upheld without any material modification of the terms of this Settlement Agreement.

1.12. “**Final Fairness Hearing**” means a hearing ordered by the Court, to take place after entry of the Preliminary Approval Order and after the Notice Date, to: enter the Final Approval Order and Judgment and dismiss the Action, with prejudice; determine whether the Settlement should be finally approved as fair, reasonable, adequate, and in the best interests of the Settlement Class Members; rule upon any motions filed by Class Counsel as to the awarding of any Class

Representative Service Award; entertain any objections to the Settlement Agreement; and rule upon any motions filed by Class Counsel for an award of Class Counsel's Expenses and Class Counsel's Fees.

1.13. “**Final Approval Order and Judgment**” means an Order from the Court fully and finally approving the Settlement and dismissing the Action, with prejudice, substantially in the form attached hereto as Exhibit 5.

1.14. “**Final Distribution Date**” means the earlier of: (a) the date as of which all the checks to Qualified Settlement Class Members, including any subsequent distributions ordered by the Court, have been cashed; or (b) ninety-five (95) days after the date on which the last check to a Qualified Settlement Class Member, including any subsequent distributions ordered by the Court, was issued.

1.15. “**Funding Date**” means the date within seven (7) days of the Effective Date on which the Settlement Fund is created.

1.16. “**Notice Date**” means the date on which the Settlement Administrator first mails direct mail notice to Settlement Class Members.

1.17. “**Objection Deadline**” means the deadline by which Settlement Class Members must submit any objections to the Settlement Administrator, which shall be sixty (60) days from the Notice Date or the date otherwise set forth in the Preliminary Approval Order entered by the Court.

1.18. “**Opt-Out Deadline**” means the deadline by which Settlement Class Members must submit any request to be excluded from the Settlement, which shall be sixty (60) days from the Notice Date or the date otherwise set forth in the Preliminary Approval Order entered by the Court.

1.19. “**Preliminary Approval Order**” means the Order entered by the Court preliminarily approving the Settlement, substantially in the form attached hereto as Exhibit 1.

1.20. “**Qualified Settlement Class Member**” means a Settlement Class Member who did not timely and validly request exclusion from the Settlement Class, and for whom either: (a) the Settlement Administrator has a valid mailing address; or (b) the Settlement Administrator has a valid email address and the Settlement Class Member timely submits a valid Address Form.

1.21. “**Released Claims**” means those claims released in Section XII of the Settlement Agreement.

1.22. “**Released Parties**” means Defendant and other persons being released in Section XII of the Settlement Agreement.

1.23. “**Releasing Parties**” means Plaintiff and other persons releasing claims in Section XII of the Settlement Agreement.

1.24. “**Settlement**” means the settlement embodied in the terms and conditions of this Settlement Agreement.

1.25. “**Settlement Administrator**” means Atticus Administration, LLC or other qualified third-party selected by the Parties and approved by the Court in the Preliminary Approval Order to administer the Settlement.

1.26. “**Settlement Class**” means all natural persons residing in the United States who received two or more text messages from, or on behalf of, Defendant within a 12-month period during the Class Period for the purpose of encouraging the purchase of property, goods, or services, after revoking consent to receive such text messages from Defendant, including by texting “Stop” or “Quit,” in whole or in part, in response to a prior text message from, or on behalf of, Defendant.

Excluded from the Settlement Class are the following: (i) Defendant's employees; (ii) the Court; and (iii) any member of the Court's staff or immediate family.

1.27. "**Settlement Class List**" means a list of Settlement Class Members, prepared by Defendant, to include the following information for each Settlement Class Member, to the extent available: (i) full name; (ii) last known email address; (iii) last known mailing address; (iv) cellular telephone number; (v) number of Actionable Text Message Solicitations; and (vi) such additional information as Defendant, in consultation with the Settlement Administrator and Class Counsel, deems reasonably necessary for administration of the Settlement.

1.28. "**Settlement Class Member**" means a member of the Settlement Class.

1.29. "**Settlement Website**" means the website created by the Settlement Administrator.

II. BOTH SIDES RECOMMEND APPROVAL OF THE SETTLEMENT

2.01. Defendant's Position on the Merits and Class Certification. Defendant denies any and all liability to Plaintiff and the putative classes, and denies that the claims and allegations against Defendant have any merit whatsoever or that they could be certified as a class action if the Action were to continue in litigation, and Defendant asserts that it has meritorious defenses to Plaintiff's claims. Defendant further contends, among other deficiencies, that a class action would be neither superior nor manageable, and that the putative classes would not meet the requirements of FED. R. CIV. P. 23. However, solely for purposes of avoiding the expense and inconvenience of further litigation, Defendant does not oppose and agrees to certification of the Settlement Class, *for settlement purposes only*, pursuant to FED. R. CIV. P. 23 and the terms and conditions of the Settlement Agreement. Preliminary certification of the Settlement Class *for settlement purposes only* shall not be deemed a concession that certification of a litigation class would be appropriate. Moreover, Defendant expressly reserves the right to challenge class certification in further

proceedings in the Action, or in any other action, if the Settlement Agreement is not finalized or finally approved. If the Settlement Agreement is not finally approved by the Court for any reason whatsoever, or if the Settlement Agreement is terminated pursuant to its terms, Defendant's agreement to certification of the Settlement Class *for settlement purposes only* will be void, and no doctrine of waiver, estoppel, or preclusion will be asserted in any proceedings involving Defendant. No agreements made by, or entered into by, Defendant in connection with the Settlement Agreement may be used by Plaintiff, any member of the putative classes, or any other person to establish any of the elements of class certification in any litigated certification proceedings, whether in the Action or any other judicial proceeding.

2.02. Plaintiff's Belief in the Merits of Case. Plaintiff believes that the claims asserted in the Action have significant merit. This Settlement Agreement shall, in no event, be construed or deemed to be evidence of or an admission or concession on the part of Plaintiff that there is any infirmity in the claims asserted by Plaintiff, or that there is any merit whatsoever to any of the contentions and defenses that Defendant has asserted. If this Settlement is not finally approved by the Court for any reason whatsoever, Plaintiff shall maintain his right to fully litigate this Action, both individually and on behalf of the Putative Class, including, but not limited to, continuing any and all efforts towards class certification.

2.03. All Parties Recognize the Benefits of Settlement. The Parties recognize and acknowledge the expense and amount of time that would be required to continue litigating the Action, as well as the uncertainty, risk and difficulties of proof inherent in prosecuting and defending such claims, and in obtaining certification of the alleged classes absent a settlement. The Parties have concluded that it is desirable that the Action and any Released Claims be fully and finally settled and released as set forth in this Settlement Agreement. Plaintiff and Class

Counsel believe that the terms of this Settlement confer substantial benefits upon Plaintiff and the Settlement Class and are in the best interests of the Settlement Class Members.

III. STAY OF ACTION AND MOTION FOR PRELIMINARY APPROVAL

3.01. Stay of Action. Upon the execution of this Settlement Agreement by all Parties, the Parties agree to seek a stay of pending deadlines and proceedings in the Action, except those proceedings necessary to carry out or enforce the terms and conditions of the Settlement Agreement and to secure a Preliminary Approval Order and a Final Approval Order and Judgment from the Court. The agreed stay shall be lifted if the Settlement is terminated pursuant to the terms of this Settlement Agreement.

3.02. Motion for Preliminary Approval Order. As soon as practicable after the execution of the Settlement Agreement, Plaintiff shall move the Court to preliminarily approve the Settlement and for the entry of a Preliminary Approval Order in substantially the form attached as Exhibit 1. As part of the motion for preliminary approval, Plaintiff will request that the Court:

(i) find that all requirements for preliminary certification of the Settlement Class, as defined by this Settlement Agreement, have been satisfied; (ii) preliminarily approve the Settlement and this Settlement Agreement as fair, adequate, and reasonable, and within the reasonable range of possible final approval such that notice shall be provided pursuant to the terms of this Settlement Agreement; (iii) preliminarily certify the Settlement Class *for settlement purposes only*; (iv) appoint Class Counsel as counsel for the Settlement Class *for settlement purposes only*; (v) appoint Plaintiff Benjamin Ruby as the Class Representative *for settlement purposes only*; (vi) approve appointment of the Settlement Administrator; (vii) find that the notice program set forth in the Settlement Agreement constitutes the best notice practicable under the circumstances and satisfies due process and FED. R. CIV. P. 23; (viii) direct that notice of the Settlement and of the Final

Fairness Hearing be provided to the Settlement Class pursuant to the Settlement Agreement; (ix) approve the form and content of the Address Form, in substantially the form attached hereto as Exhibit 2, the Direct Mail Notice, in substantially the form attached hereto as Exhibit 3, the Direct Email Notice, in substantially the form attached hereto as Exhibit 4; (x) preliminarily approve the form of the Final Approval Order and Judgment substantially in the form attached hereto as Exhibit 5; (xi) set the date and time for the Final Fairness Hearing, which may be continued by the Court from time to time without the necessity of further notice; (xii) set appropriate deadlines, including the Objection Deadline and Opt-Out Deadline, which the Parties agree to request as sixty (60) days after the Notice Date, and deadlines for filing motions in connection with the Final Fairness Hearing; (xiii) stay all proceedings in the Action pending the Final Fairness Hearing, other than proceedings necessary to carry out or enforce the terms of this Settlement Agreement and the Preliminary Approval Order; and (xiv) enjoin all Settlement Class Members from commencing or prosecuting, directly or indirectly, separate actions against Defendant asserting any of the Released Claims.

IV. BENEFITS TO THE SETTLEMENT CLASS.

4.01. Establishment of the Settlement Fund. Within seven (7) days of the Effective Date, Defendant shall cause to be paid into an account specified in writing by the Settlement Administrator the sum of Four Million One Hundred Thousand Dollars (\$4,100,000.00) (the “**Settlement Fund**”). The date on which Defendant causes the Settlement Fund to be paid to the Settlement Administrator is the Funding Date. Notwithstanding any other provision in this Settlement Agreement, in no event shall Defendant’s liability under this Settlement Agreement exceed the \$4,100,000.00 to be paid into the Settlement Fund. The Settlement Administrator shall distribute the Settlement Fund pursuant to the terms and conditions of the Settlement Agreement.

4.02. Settlement Distributions to Qualified Settlement Class Members. After distributing from the Settlement Fund, as appropriate, the amount for Administration Costs and the Court-approved amounts for the Class Representative Service Award and Class Counsel's Fees and Class Counsel's Expenses, the remaining amount in the Settlement Fund, which is referred to herein as the Distributable Funds, shall be used to make settlement distributions to Qualified Settlement Class Members.

4.03. Calculation of the Settlement Distributions.

A. Initial Distributions. Each Qualified Settlement Class Member shall receive a payment from the Distributable Funds equal to a dollar amount calculated pursuant to this Section multiplied by the number of Actionable Text Message Solicitations the Qualified Settlement Class Member received. The dollar amount for each Actionable Text Message Solicitation shall be the lesser of: (i) the amount of Distributable Funds divided by the total number of all Actionable Text Message Solicitations for all Qualified Settlement Class Members; or (ii) \$500.00.

B. Additional Distributions. From any remaining amount in the Distributable Funds after initial settlement distributions are made pursuant to this Section, the Settlement Administrator shall make any additional distributions to Qualified Settlement Class Members that may be ordered by the Court on a *pro rata* basis, provided that: (i) the total amount distributed to each Qualified Settlement Class Member shall not exceed an amount equal to \$500.00 multiplied by the number of Actionable Text Message Solicitation received by the Settlement Class Member; (ii) the total amount to be distributed to all Qualified Settlement Class Members shall not exceed the amount of Distributable Funds; and (iii) the sum of the following shall not exceed the Settlement Fund: total distributions to Qualified Settlement Class Members, Administration Costs, Class Counsel's Fees, Class Counsel's Expenses, and the Class Representative Service Award.

4.04. Cy Pres Distribution. Any remaining amounts in the Settlement Fund, including amounts from unclaimed distributions, after all settlement distributions are complete and all Administration Costs are paid, shall be paid to a *cy pres* recipient to be agreed upon by the Parties and approved by the Court.

V. CLASS COUNSEL’S EXPENSES AND FEES AND CLASS REPRESENTATIVE SERVICE AWARD

5.01. Class Counsel’s Expenses and Fees. Class Counsel will file an appropriate motion with the Court, no later than thirty (30) days prior to the Objection Deadline, seeking approval of an award of Class Counsel’s Expenses and Class Counsel’s Fees to be paid from the Settlement Fund. Class Counsel agree that their request for Class Counsel’s Fees and Class Counsel’s Expenses together shall not exceed One Million Three Hundred Sixty-Six Thousand Five Hundred Thirty Dollars (\$1,366,530.00) (“**Maximum Fees and Expenses**”). Defendant will not object to any request by Class Counsel for Class Counsel’s Fees and Class Counsel’s Expenses in a total amount equal to or less than the Maximum Fees and Expenses. Class Counsel’s Expenses and Class Counsel’s Fees, if approved by the Court, shall be paid from the Settlement Fund pursuant to the terms and conditions of the Settlement Agreement. Class Counsel agree that if the Court awards attorneys’ fees and expenses in an amount greater than the Maximum Fees and Expenses, Class Counsel will not accept any amount greater than the Maximum Fees and Expenses, and the Settlement Administrator shall not distribute to Class Counsel any amount in excess of the Maximum Fees and Expenses, with any excess amount to remain in the Settlement Fund.

5.03. Settlement Independent of Award of Class Counsel’s Fees and Class Counsel’s Expenses. The payments of Class Counsel’s Fees and Class Counsel’s Expenses set forth herein are subject to, and dependent upon, the Court’s approval of these payments as fair, reasonable, adequate, and in the best interests of Settlement Class Members. However, this Settlement is not

dependent upon the Court's approving the requests for Class Counsel's Fees and Class Counsel's Expenses. In the event the Court approves the Settlement but declines to award Class Counsel's Fees and Class Counsel's Expenses in the amount requested by Class Counsel, the Settlement will nonetheless be binding on the Parties and the Settlement Class Members.

5.04 Class Representative Service Award. Defendant shall not oppose a service award of Seven Thousand Five Hundred Dollars (\$7,500.00) to the Class Representative for his services as such, to be paid from the Settlement Fund pursuant to the terms and conditions of the Settlement Agreement.

VI. ADMINISTRATION

6.01. The Settlement Administrator. The Settlement Administrator shall be responsible for all matters relating to notice and administration of the Settlement, as set forth herein. Those responsibilities include, but are not limited to: disseminating notice; establishing and maintaining the Settlement Website and toll-free telephone number; fielding inquiries about the Settlement; processing any exclusion requests and objections; acting as a liaison between Settlement Class Members and the Parties regarding claims information; approving and rejecting claims; making authorized distributions from the Settlement Fund; and any other tasks reasonably required to effectuate the Settlement. The Settlement Administrator shall provide weekly updates on the administration process to counsel for the Parties.

6.02. Payment of Administration Costs. All Administration Costs shall be paid from the Settlement Fund and not in addition thereto. The Settlement Administrator shall maintain detailed records of the amounts spent and charged on administration of the Settlement.

6.03. Distribution of the Settlement Fund. The Settlement Administrator shall distribute the Settlement Fund in accordance with this Section.

A. No later than ten (10) days after the Funding Date, the Settlement Administrator shall make the following payments from the Settlement Fund: (i) payment to the Settlement Administrator of an amount sufficient to cover any and all Administration Costs for the Settlement, including the Administration Costs incurred or assessed as of the date of the payment, and an additional reasonable amount sufficient to pay any reasonably expected additional Administration Costs to complete the administration process; (ii) payment to Plaintiff of an amount equal to the Class Representative Service Award approved by the Court, not to exceed \$7,500.00, upon receipt of written payment instructions provided by Class Counsel; and (iii) Payment to Class Counsel an amount equal to Class Counsel's Fees and Class Counsel's Expenses approved by the Court, not to exceed the Maximum Fees and Expenses, upon receipt of Class Counsel's completed W-9 forms and written payment instructions.

B. No later than thirty (30) days after the Funding Date, the Settlement Administrator shall make settlement distributions to Qualified Settlement Class Members from the Distributable Funds, pursuant to the terms and conditions of this Settlement Agreement.

C. The Settlement Administrator shall make any additional distributions to Qualified Settlement Class Members that may be ordered by the Court pursuant to the terms and conditions of the Settlement Agreement and the Court's order, if any.

D. No later than ten (10) days after the Final Distribution Date, the Settlement Administrator shall use any amount remaining in the Settlement Fund to pay any outstanding Administration Costs, if any.

E. After payment of any outstanding Administration Costs pursuant to this Section, and subject to approval by the Court on motion filed by the Parties, the Settlement Administrator shall pay to the *cy pres* recipient agreed upon by the Parties and approved by the

Court, any amount remaining in the Settlement Fund, including, but not limited to, any uncashed checks issued to Qualified Settlement Class Members.

VII. NOTICES

7.01. Provision of Information to Settlement Administrator and Class Counsel.

A. Within ten (10) days after entry of the Preliminary Approval Order, Defendant shall provide to the Settlement Administrator the Settlement Class List, which shall be designated and treated as “Highly Confidential – Attorneys Eyes Only” under the Stipulation for Protective Order entered in this Action. The Settlement Administrator shall treat and keep all such information within the Settlement Class List as strictly confidential and shall use it solely for purposes of administering the Settlement, all as required by, and consistent with the terms of, the Stipulation for Protective Order entered in this Action.

B. Within five (5) days after the Notice Date, Defendant shall provide to Class Counsel the Settlement Class List, which shall be designated and treated as “Highly Confidential – Attorneys Eyes Only” under the Stipulation for Protective Order entered in this Action. Class Counsel shall treat and keep all such information within the Settlement Class List as strictly confidential and shall use it solely for purposes of responding to inquiries from Settlement Class Members during the Notice period as to their rights under the Settlement, all as required by, and consistent with the terms of, the Stipulation for Protective Order entered in this Action.

C. In addition to and separate from any obligations pursuant to the Stipulation for Protective Order entered in this Action, Settlement Administrator and Class Counsel shall return or destroy the Settlement Class List within ten (10) days following either: (i) the Final Distribution Date, or (ii) the termination of this Settlement Agreement.

7.02. Notice. Within a reasonable time after receipt of the Settlement Class List, not to exceed thirty (30) days, the Settlement Administrator shall provide direct mail notice of the Settlement to Settlement Class Members as set forth in this Section (the “Notice Date”).

A. Direct Mail Notice: For those members of the Settlement Class for whom Settlement Administrator has a valid mailing address either from the Settlement Class List or through other reasonable and appropriate means consistent with accepted industry standards, including, but not limited to, the use of information associated with a Settlement Class Member’s cellular phone number, as provided in the Settlement Class List (provided that the Settlement Administrator shall not, under any circumstances, call or send text messages to Settlement Class Members), the Settlement Administrator shall mail via United States mail the Direct Mail Notice in substantially the form attached hereto as Exhibit 3. For any Direct Mail Notice that is returned as undeliverable within twenty-one (21) days after initial mailing, the Settlement Administrator shall attempt to locate a new mailing address through an address search or any other reasonably available means. If a new address is located, the Settlement Administrator shall promptly re-mail the Direct Mail Notice. If, after a second mailing, the Direct Mail Notice is again returned, no further efforts need be taken by the Settlement Administrator to send the Direct Mail Notice. The Settlement Administrator shall not, under any circumstances, call or send text messages to Settlement Class Members.

B. Direct Email Notice: On or before the Notice Date, for those Settlement Class Members for whom no valid mailing address is reasonably available but where the Settlement Class List includes a valid e-mail address, the Settlement Administrator shall send the Direct Email Notice in substantially the form attached hereto as Exhibit 4 via e-mail using the e-

mail address provided in the Settlement Class List. The Settlement Administrator shall conduct a reverse e-mail address lookup for any invalid or inactive e-mail addresses.

7.03. Settlement Website. On or before the Notice Date, the Settlement Administrator shall create and operate a functioning website that shall contain the information set forth in the Direct Mail Notice and Direct Email Notice, and any reasonable additional information regarding administration of the Settlement agreed upon by the Parties. The Settlement Website shall also contain downloadable copies of this Settlement Agreement and its exhibits, Class Counsel's motions for Class Counsel's Fees and Class Counsel's Expenses, and shall post any subsequent notices or documents agreed to by the Parties or ordered by the Court. The website shall be maintained until the Final Distribution Date.

7.04. Toll Free Telephone Number. On or before the Notice Date, the Settlement Administrator shall establish a toll-free telephone number for receiving toll-free calls related to the Settlement. The toll-free telephone number shall be maintained until the Final Distribution Date.

7.05. CAFA Notice. Defendant shall send any notice as may be required by 28 U.S.C. § 1715(b), within the timeframe required by applicable law.

7.06. Report on Notice to Settlement Class Members. No later than seven (7) days after the Notice Date, the Settlement Administrator shall provide the Parties an affidavit stating that the notice required by the Settlement Agreement has been completed in accordance with the terms of the Preliminary Approval Order, along with a report incorporated therein stating: (i) the total number of Direct Mail Notices sent to Settlement Class Members via U.S. Mail; (ii) the total number of Direct Mail Notices returned as undeliverable and which could not be forwarded as provided by this Settlement Agreement; (iii) the total number of Direct Email Notices sent to Settlement Class Members via email; (iv) the total number of Direct Email Notices which were

returned as undeliverable and which could not be forwarded as provided by this Settlement Agreement; and (v) such other and further information as may reasonably requested by the Parties.

VIII. CLAIMS PROCESS

8.01. Potential Recipients of Settlement Distributions. Each Settlement Class Member who does not timely and validly request exclusion from the Settlement pursuant to the terms and conditions of the Settlement Agreement shall be eligible to receive a settlement distribution in accordance with the terms and conditions of this Settlement Agreement, and shall be bound by the Settlement Agreement, including the release in Section XII.

8.02. No Claim or Form Required for Settlement Class Members With a Valid Mailing Address. Each Settlement Class Member for whom the Settlement Administrator has a valid mailing address, and who does not timely and validly request exclusion from the Settlement, shall receive a settlement distribution without having to submit a claim or any other form to the Settlement Administrator. All other Settlement Class Members must submit a form to the Settlement Administrator, as specified in Section 8.03, to be eligible to receive a settlement distribution.

8.03. Submission of Address Forms. Each Settlement Class Member for whom the Settlement Administrator does not have a valid mailing address but does have a valid email address, and who does not timely and validly request exclusion from the Settlement, must submit an Address Form, substantially in the form attached hereto as Exhibit 2, to the Settlement Administrator no later than the Objection Deadline, verifying the member's identity and providing a current valid U.S. mailing address, in order to be eligible to receive a settlement distribution. Address Forms can be submitted electronically through the Settlement Website, or via U.S. Mail, email, or fax.

IX. CLAIM REVIEW AND PAYMENT PROCESS

9.01. Review of Claims.

A. The Settlement Administrator may consult with counsel for the Parties in evaluating whether any person is a Settlement Class Member eligible to receive a settlement distribution. Counsel for the Parties shall consult in good faith with the Settlement Administrator in evaluating and processing eligibility for settlement distributions.

B. Any dispute regarding the processing of a claim that cannot be resolved after good faith efforts by counsel for the Parties and the Settlement Administrator shall be resolved by the Court pursuant to the terms of the Settlement Agreement.

9.02. Mailing of Settlement Checks. The Settlement Administrator shall mail checks for settlement distributions to Qualified Settlement Class Members via United States Mail pursuant to the terms and conditions of the Settlement Agreement. Each check shall be for an amount calculated pursuant to Section 4.03. Settlement checks shall be valid for ninety (90) days from the date of issuance. Any uncashed check after that time will be void and those funds will remain in the Settlement Fund to be distributed pursuant to the terms of the Settlement Agreement. For any check that is returned undelivered, the Settlement Administrator shall make one attempt to obtain a new address for that Qualified Settlement Class Member through an address search or any other reasonably available means, consistent with accepted industry standards. If a new address is located, the Settlement Administrator shall promptly re-mail the check. If, after a second mailing, the check is again returned, no further efforts need be taken by the Settlement Administrator to resend the check and those funds will remain in the Settlement Fund to be distributed pursuant to the terms of this Settlement Agreement. The Settlement Administrator shall advise Class Counsel

and counsel for Defendant of the names of the Qualified Settlement Class Members whose checks are returned by the postal service as soon as practicable.

X. OPT-OUTS AND OBJECTIONS

10.01 Opting Out of the Settlement. Settlement Class Members may elect to be excluded from the Settlement (*i.e.*, opt-out), thereby relinquishing their rights to benefits under the Settlement. Settlement Class Members wishing to opt-out of the Settlement must send a written request to be excluded from the Settlement to the Settlement Administrator by fax, U.S. Mail, or electronically via the Settlement Website on or before the Opt-Out Deadline. Any request to opt-out sent to the Settlement Administrator by United States mail must be postmarked on or before the Opt-Out Deadline. The Settlement Administrator shall provide counsel for the Defendant with copies of all opt-out requests it receives and shall provide Defendant's counsel a list of all Settlement Class Members who timely and validly opt-out of the Settlement no later than five (5) days after the Opt-Out Deadline. Settlement Class Members who do not properly and timely submit an opt-out request will be bound by this Settlement Agreement and the Court's Final Approval Order and Judgment, including the release in Section XII of this Settlement Agreement.

A. The request to be excluded from the Settlement Class must include the Settlement Class Member's name, address, and cellular telephone number, and provide a clear statement communicating that the Settlement Class Member elects to be excluded from the Settlement Class and does not wish to be a Settlement Class Member.

B. Any Settlement Class Member who submits a valid and timely request for exclusion will not be part of the Settlement and shall not be bound by the terms of this Settlement Agreement.

C. If Defendant determines that any ambiguity exists as to whether a communication constitutes a request to opt out, the Parties shall, if possible, resolve such ambiguity by agreement and shall inform the Court of their position at or prior to the Final Fairness Hearing. Defendant or Class Counsel may dispute an exclusion request, and the Parties shall, if possible, resolve the disputed exclusion request by agreement and shall inform the Court of their position at or prior to the Final Fairness Hearing. The Court shall retain jurisdiction to resolve any disputed exclusion requests.

D. Any Settlement Class Member who does not timely comply with all requirements for opting out contained in this Settlement Agreement shall be bound by this Settlement Agreement, including the release in Section XII.

10.02. Objections. Any Settlement Class Member who intends to object to the fairness, reasonableness, or adequacy of this Settlement must file a written objection with the Court no later than the Objection Deadline and simultaneously serve a copy on Class Counsel and counsel for Defendant at the respective addresses set forth in this Settlement Agreement.

A. In the written objection, the Settlement Class Member must state the Settlement Class Member's full name, current address, cellular telephone number, the reasons for the objection, whether he or she intends to appear at the Final Fairness Hearing on his or her own behalf or through counsel, and a list of all cases in which the objector or objector's counsel has appeared to object to a class-action Settlement in the last five (5) years. Any documents supporting the objection must also be attached to the objection, and if the Settlement Class Member intends to call witnesses at the Final Fairness Hearing, those witnesses must be identified, including providing each witness's name, address, and cellular telephone number in the objection. Any objection must be signed by the Settlement Class Member making it or by his, her, or its counsel.

B. Any Settlement Class Member who has timely filed a written objection, as provided for above, may appear at the Final Fairness Hearing, either in person or through an attorney hired at the Settlement Class Member's own expense, to object to the fairness, reasonableness, or adequacy of the Settlement. A Settlement Class Member or his, her, or its attorney intending to make an appearance at the Final Fairness Hearing must: (i) file a notice of appearance with the Court no later than the Objection Deadline; and (ii) serve a copy of such notice of appearance on counsel for all Parties. The Parties will have the same right to seek discovery from any objecting Settlement Class Member as they would if the objector was a party in the Action, including the right to take the objector's deposition. Such discovery will be conducted on an expedited basis, and the objecting Settlement Class Member is required to respond and must appear for deposition within fourteen (14) days, if a deposition is noticed. Settlement Class Members who fail to timely file and serve written objections, or fail to respond to written discovery or make themselves available for deposition, shall be deemed to have waived any objections and shall be foreclosed from making any objection, whether by appeal or otherwise, to this Settlement Agreement.

C. Any Settlement Class Member who fails to comply with the provisions of this Section shall waive and forfeit any and all rights to appear separately and to object, and shall be bound by all the terms of this Settlement, and by all proceedings, orders, and judgments in the litigation.

XI. FINAL REPORT AND APPROVAL HEARING

11.01. First Affidavit and Report of Settlement Administrator. No later than ten (10) days after the Objection Deadline, the Settlement Administrator shall provide the Parties an affidavit stating that the notice required by the Settlement Agreement has been completed in accordance

with the terms of the Preliminary Approval Order, along with a report stating: (i) the total number of Direct Mail Notices sent to Settlement Class Members via United States Mail; (ii) the total number of Direct Mail Notices returned as undeliverable and which could not be forwarded as provided by this Settlement Agreement; (iii) the total number of Direct Email Notices sent to Settlement Class Members by e-mail; (iv) the total number of Direct Email Notices which were returned as undeliverable and which could not be forwarded as provided by this Settlement Agreement; (v) the total number of valid objections received by the Settlement Administrator, together with a separate exhibit listing for each objection the full name and address of the person who submitted it, and, if different, the full name and address of the person on whose behalf the objection was made; (vi) the total number of valid exclusion requests received by the Settlement Administrator, together with a separate exhibit listing for each exclusion request the full name of the person who submitted it; (vii) the total amount of the Settlement Fund that is expected to be distributed to Qualified Settlement Class Members; (viii) the total amount of the Settlement Fund that is expected to cover Administration Costs; (ix) the total amount of the Settlement Fund that is expected to be distributed to Class Counsel for Class Counsel's Expenses and Class Counsel's Fees; (x) the total amount expected to be distributed to the *cy pres* recipient; and (xi) any further information the Parties may request.

11.02. Second Affidavit and Report of Settlement Administrator. Not later than five (5) days after the Final Distribution Date, and prior to payment of any amounts to the *cy pres* recipient, the Settlement Administrator shall provide the Parties an affidavit updating the information provided in Section 11.01, stating the total amount of the Settlement Fund, if any, that is expected to be distributed to the *cy pres* recipient, and providing any further information the Parties may

request. The Settlement Administrator shall provide the Parties, from time to time, updates to any of the categories of information in Section 11.01 that may be reasonably requested by any Party.

11.03. Motion for Final Approval of Settlement. If the Settlement is preliminarily approved by the Court, as evidenced by the Court's entry of a Preliminary Approval Order, and all other conditions precedent to the Settlement have been satisfied, then no later than twenty-one (21) days prior to Final Fairness Hearing, the Parties shall move the Court for entry of the Final Approval Order and Judgment, with Class Counsel filing a memorandum of points and authorities in support of the motion. The Parties may file a memorandum addressing any objections submitted to the Settlement.

11.04. Final Fairness Hearing. At the Final Fairness Hearing, the Court will consider and determine whether: (i) the provisions of this Settlement Agreement should be approved; (ii) the Settlement should be finally approved as fair, reasonable, and adequate; (iii) any objections to the Settlement should be overruled; (iv) the requests for Class Counsel's Expenses and Class Counsel's Fees should be approved; (v) the Class Representative Service Award should be approved; and (vi) the Final Approval Order and Judgment should be entered dismissing the case with prejudice as to all Settlement Class Members who have not timely and validly opted out of the Settlement.

11.05. Final Approval Order and Judgment. This Settlement Agreement is subject to, and conditioned upon, entry by the Court of an order and judgment that grants final approval of this Settlement Agreement in substantially the form of the Final Approval Order and Judgment, attached hereto as Exhibit 5, which: (i) finds that the notice provided herein satisfies the requirements of due process and FED. R. CIV. P. 23; (ii) finds that Settlement Class Members have been adequately represented by the Class Representative and Class Counsel; (iii) finds that the

Settlement Agreement is fair, reasonable, and adequate to the Settlement Class, that each Settlement Class Member who has not timely and properly opted out of the Settlement shall be bound by this Agreement, including the release of all claims in Section XII, and that this Settlement Agreement should be and is finally approved; (iv) dismisses on the merits and with prejudice the Action, including all claims asserted against Defendant by the Settlement Class Members who have not timely and properly opted out of the Settlement, with each Party waiving all rights to appeal and waiving all rights to seek reimbursement of attorneys' fees or costs, except as expressly ordered by the Court pursuant to the terms of the Settlement Agreement; (v) permanently enjoins each and every Settlement Class Member who has not timely and properly opted out of the Settlement from filing, joining, or continuing to prosecute any Released Claims against Defendant or the Released Parties; and (vi) retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation, and enforcement of the Settlement Agreement.

XII. RELEASE OF CLAIMS

12.01. Released Claims. Plaintiff, individually and on behalf of the Settlement Class Members who have not timely and properly opted out of the Settlement, and each of their respective partners, agents, heirs, executors, personal representatives, beneficiaries, guardians, successors, assigns, and all those who claim through them or on their behalf (the "Releasing Parties"), hereby fully release and forever discharge Defendant, together with its past, present, and future members, shareholders, partners, officers, directors, employees, agents, representatives, attorneys, accountants, insurers, subsidiaries, affiliates, predecessors, successors, assigns, and legal representatives (the "Released Parties") from any and all claims, causes of actions, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses, and attorneys' fees, of any nature and kind whatsoever, actual or potential,

asserted or unasserted, known or unknown, including, without limitation, claims under the TCPA, arising out of or relating to text messages sent by, or on behalf of, Defendant through the date the Preliminary Approval Order is entered by the Court (the “Released Claims”).

12.02. Covenant Not To Sue. The Releasing Parties agree and covenant not to institute any action or cause of action (in law, in equity, or administratively), suit, debt, lien, or claim, known or unknown, fixed or contingent, in state or federal court, in arbitration, or with any state, federal or local government agency or with any administrative or advisory body, that the Releasing Parties have or claim to have against any of the Released Parties arising out of or related to the Released Claims, or assist others in so doing.

12.03. Dismissal of Action with Prejudice. Upon entry of, and pursuant to, the Final Approval Order and Judgment, the Action shall be dismissed with prejudice. Class Counsel shall ensure that the Action is timely dismissed with prejudice in accordance with the terms of this Settlement Agreement.

12.04. Continuing Jurisdiction. The Court shall retain jurisdiction over the Parties to this Settlement Agreement with respect to the future performance of the terms of this Settlement Agreement. In the event that any applications for relief are made arising out of or relating to this Settlement Agreement, such applications shall be made to the Court.

12.05. Settlement is Exclusive Remedy and Bar. Upon the Effective Date, enforcement of the Settlement Agreement shall be the exclusive remedy for any and all Released Claims of the Releasing Parties, and Releasing Parties shall be permanently barred and enjoined from initiating, asserting, or prosecuting any and all of the Released Claims against the Released Parties in any federal or state court or tribunal of any kind.

XIII. TERMINATION OF AGREEMENT

13.01. Termination Based on Number of Opt-Outs. If, after the Opt-Out Deadline, ten (10) percent or more of the Settlement Class Members, or the Settlement Class Members receiving more than ten (10) percent of the Actionable Text Message Solicitations, have opted out of the Settlement, Defendant shall have, in its sole and absolute discretion, the option to terminate this Settlement Agreement by sending written notice of termination to Class Counsel pursuant to this Section within ten (10) days after receiving the number of opt-outs from the Settlement Administrator pursuant to Section 11.01.

13.02. Termination Based on Variance in Settlement Class Members or Actionable Text Message Solicitations. Should the Settlement Class List reveal that the number of Settlement Class Members exceeds 6,211 by more than twenty-five (25) percent and that the number of Actionable Text Message Solicitations exceeds 38,632 by more than twenty-five (25) percent, Plaintiffs shall have, in their sole and absolute discretion, the option to terminate this Settlement Agreement by sending written notice of termination to Defendant's counsel within ten (10) days after the Settlement Class List is provided to the Settlement Administrator.

13.03. Revert to Status Quo. If either Party terminates the Settlement Agreement pursuant to its terms, or the Settlement Agreement is, for whatever reason, not fully and finally approved by the Court, the Settlement Agreement shall be of no force and effect, and the Parties' respective rights and defenses shall be restored, without prejudice, to their respective positions as if this Settlement Agreement had never been executed. In addition, the Preliminary Approval Order and any and all findings and rulings regarding class certification of any kind shall be void, and no doctrine of waiver, estoppel or preclusion will be asserted in any proceedings involving Defendant. If necessary, the Parties shall request that any orders entered by the Court in connection with this

Settlement Agreement shall be vacated as necessary to the Parties' respective positions as if this Settlement Agreement had never been executed.

XIV. NO ADMISSION OF LIABILITY

14.01. No Admissions of Liability. Defendant denies any and all liability or wrongdoing of any kind associated with the alleged claims in the Action. Defendant has denied and continues to deny each and every material factual allegation and all claims asserted against it in the Action. Nothing herein shall constitute an admission by Defendant of wrongdoing or liability, or of the truth of any allegations in the Action. Nothing herein shall constitute an admission by Defendant that the Action is properly brought as a class action, or that a class could be certified in the Action, other than for settlement purposes. To this end, the Settlement of the Action, the negotiation and execution of this Settlement Agreement, and all acts performed or documents executed pursuant to or in furtherance of the Settlement: (i) are not, and shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendant or of the truth of any of the allegations in the Action; (ii) are not, and shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omission on the part of Defendant in any civil, criminal or administrative proceeding in any court, arbitration forum, administrative agency or other tribunal; and (iii) are not, and shall not be deemed to be and may not be used as, an admission of the appropriateness of the claims asserted in the Action.

14.02. Settlement Agreement Not Admissible in Evidence. Pursuant to applicable law, neither this Settlement Agreement, its exhibits, nor any related documents filed or created in connection with this Settlement Agreement, shall be admissible in evidence in any proceeding, except as necessary to approve, interpret, or enforce this Settlement Agreement.

XV. TAXES

15.01. Taxes on Distribution from the Settlement Fund. Any person or entity that receives a distribution from the Settlement Fund shall be solely responsible for taxes or tax-related expenses owed or incurred by that person or entity by reason of that distribution. Such taxes and tax-related expenses shall not be paid from the Settlement Fund. The Settlement Administrator shall provide appropriate tax reporting documents for all distributions from the Settlement Fund, when required under applicable law, including, if so required, a completed Form 1099 when the dollar amount of a distribution meets or exceeds the threshold for issuance of such form under applicable provisions of the Internal Revenue Code and Department of the Treasury Regulations. The Released Parties are not, and will not be, obligated to compute, estimate, or pay any taxes on behalf of any Plaintiff, any Settlement Class Member, Class Counsel, or the Settlement Administrator. Class Counsel are not, and will not be, obligated to compute, estimate, or pay any taxes on behalf of any Plaintiff, Settlement Class Member, or the Settlement Administrator.

XVI. MISCELLANEOUS

16.01. Entire Agreement. This Settlement Agreement and the exhibits hereto constitute the entire, fully integrated agreement between the Parties. No representations, warranties or inducements have been made to any of the Parties, other than those representations, warranties, and covenants contained in this Settlement Agreement. Any and all previous agreements and understandings between or among the Parties regarding the subject matter of this Settlement Agreement, whether written or oral, are superseded by this Settlement Agreement.

16.02. Governing Law. This Agreement shall be governed by the laws of the State of Missouri without regard to choice of law principles.

16.03. Jurisdiction. The Court shall retain continuing and exclusive jurisdiction over the Parties to this Agreement, including Plaintiffs and all Settlement Class Members, for purposes of the administration and enforcement of this Settlement Agreement.

16.04. Recitals. The recitals are contractual in nature and form a material part of this Settlement Agreement.

16.05. No Construction Against Drafter. This Agreement was drafted jointly by the Parties and, in construing and interpreting this Settlement Agreement, no provision of this Settlement Agreement shall be construed or interpreted against any Party based upon the contention that this Settlement Agreement or a portion of it was purportedly drafted or prepared by that Party.

16.06. Headings. Paragraph titles or headings are inserted as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement or any provision hereof.

16.07. Resolution of Disputes. The Parties shall cooperate in good faith in the administration of this Settlement. Any unresolved dispute regarding the administration of this Settlement Agreement shall be decided by the Court, or by a mediator upon agreement of the Parties.

16.08. Limitation of Waiver. The waiver by any Party of a breach of any term of this Settlement Agreement shall not operate or be construed as a waiver of any subsequent breach by any Party. The failure of a Party to insist upon strict adherence to any provision of the Settlement Agreement shall not constitute a waiver or thereafter deprive such Party of the right to insist upon strict adherence.

16.09. Counterparts. This Settlement Agreement may be signed in counterparts and the separate signature pages executed by the Parties and their counsel may be combined to create a

document binding on all of the Parties and together shall constitute one and the same instrument. The Parties agree that electronic signatures may be provided and shall have the full force and effect as handwritten signatures.

16.10. Notices. Unless otherwise stated herein, any notice required or provided for under this Settlement Agreement shall be in writing and may be sent by electronic mail, fax, hand delivery, or U.S. Mail postage prepaid, as follows:

If to Class Counsel:

David T. Butsch
Christopher E. Roberts
Butsch Roberts & Associates LLC
231 S. Bemiston Ave., Suite 260
Clayton (St. Louis), MO 63105
Telephone: (314) 863-5700
butsch@butschroberts.com
roberts@butschroberts.com

Shawn J. Wanta
Scott Moriarity
Wanta Thome PLC
100 S. Fifth St., Suite 1200
Minneapolis, MN 55402
Telephone: (612) 252-3570
samoriarity@wantathome.com
sjwanta@wantathome.com

If to Counsel for Defendant:

Ronald A. Norwood
Philip J. Mackey
Edward T. Pivin
Michael Armstrong
Lewis Rice LLC
600 Washington Ave., Ste. 2500
St. Louis, MO 63101
Telephone: (314) 444-7600
rnorwood@lewisrice.com
pmackey@lewisrice.com
epivin@lewisrice.com
marmstrong@lewisrice.com

16.11. Authority. Each person executing this Settlement Agreement on behalf of any of the Parties hereto represents that such person has the authority to so execute this Agreement.

16.12. No Oral Modifications. This Settlement Agreement may not be amended, modified, altered or otherwise changed in any manner, except by a duly authorized writing signed by the Parties and approved by the Court.

16.13. Successors and Assigns. The rights and obligations of the Parties set forth in this Settlement Agreement, including the releases, will be binding on, and will be of benefit to, each of the Parties' successors, heirs, assigns, and estates.

16.14. Advice of Counsel. All of the Parties warrant and represent that they are agreeing to the terms of this Settlement Agreement based upon the legal advice of their respective attorneys, that they have been afforded the opportunity to discuss the contents of this Settlement Agreement with their attorneys and that the terms and conditions of this document are fully understood and voluntarily accepted.

16.15. Fairness and Adequacy of Settlement. The Parties believe that this Settlement is a fair, adequate, and reasonable Settlement of the Action, and they have arrived at this Settlement through arm's-length negotiations, taking into account all relevant factors, present and potential.

16.16. Confirmation of Information. Defendant shall provide Class Counsel a declaration from a third-party with experience and expertise in data analysis that: (i) confirms that the information provided to the Settlement Administrator pursuant to Section 7.01 contains the information relevant to Actionable Text Message Solicitations for Settlement Class Members for purposes of providing notice and administering the settlement; and (ii) identifies, generally, the method by which that information was derived. Defendant shall provide Class Counsel the declaration within ten (10) days after entry of the Preliminary Approval Order and shall be designated and treated as "Highly Confidential – Attorneys Eyes Only" under the Stipulation for Protective Order entered in this Action.

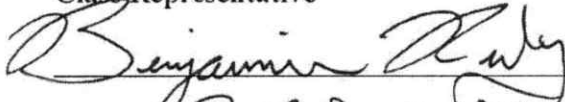
16.17. Cooperation. Defendant and Plaintiff, and their respective counsel, agree to cooperate fully with one another to effect the consummation of this Settlement Agreement and to perform all acts necessary to achieve the Settlement provided for herein.

16.18. Non-Disparagement. Plaintiff agrees not to make, cause to be made, or participate in the making of any disparaging or derogatory statements or communications concerning Defendant or any of the Released Parties.

16.19. Advertisement. Plaintiff and Class Counsel shall not make any public statements or publish any advertisements or other communications discussing this Action, the facts and circumstances underlying this Action, or the terms of this Settlement or Settlement Agreement, including its exhibits.

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed as dated below.

**BENJAMIN RUBY, Plaintiff and
Class Representative**


Date: 3-20-2023

BUILD-A-BEAR WORKSHOP, INC.

By: 

Name: ERIC R. FENCL

Title: Chief Administrative Officer - General Counsel

Date: 3/23/23