

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

Byron Johnson, on behalf of himself and all
others similarly situated,

Case No.: 24-CA-001417

Plaintiffs,

v.

PHP Management Services, LLC dba
Condominium Associates,

Defendant.

_____ /

CLASS ACTION SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement” or “Agreement”), by and between Byron Johnson (“Plaintiff”), on behalf of himself and all others similarly situated, and PHP Management Services, LLC dba Condominium Associates, (“PHP” or “Defendant”). Plaintiff and Defendant collectively shall be the Settling Parties, as more fully defined below. This Settlement Agreement is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle on behalf of the entire class the Released Claims, as defined herein, upon and subject to the terms and conditions herein.

Recitals

WHEREAS, there is currently pending in the Thirteenth Judicial Circuit in and for Hillsborough County, Florida (the “Court”), a putative class action lawsuit styled *Byron Johnson, on behalf of himself and all others similarly situated v. Condominium Associates*, Case No. 24-CA-001417 (the “Lawsuit”) for alleged violations of Florida Statutes § 720.30851(6) and Florida’s Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201, *et. seq.* (“FDUTPA”), arising out of estoppel certificate fees charged to sellers of real properties subject to HOA dues;

WHEREAS, the Lawsuit seeks money damages and injunctive relief;

WHEREAS, by agreeing to the Settlement, Defendant does not admit or concede (but, to the contrary, expressly denies) any wrongdoing, liability, or improper conduct of any nature in connection with any facts or claims that have been or could have been raised against PHP in the Lawsuit, as defined herein, or in any other forum. Defendant considers it desirable for the Lawsuit to be settled and dismissed because the Settlement will: (a) avoid the continued expense of litigation; (b) provide substantial benefits to Plaintiff and the Settlement Class Members; (c) avoid the uncertainties inherent in litigating the issues presented by the Lawsuit; and (d) resolve Plaintiff's claims and the Settlement Class Members' claims, as well as the underlying matters without undue expense to the Settling Parties, and reduce the burdens and uncertainties associated with protracted litigation of those claims including increased attorneys' fees;

WHEREAS, the Settling Parties agree that, notwithstanding the execution of the Settlement Agreement, that Defendant's modification of policies and practices agreed to by the Settling Parties herein, and approved by the Court hereafter, shall not be deemed to be or have been a violation of Florida Statutes § 720.30851(6) or FDUTPA as alleged in the Complaint;

WHEREAS, the Settling Parties have concluded that it is desirable for the Lawsuit to be settled to avoid further inconvenience, delay, and expense, and to dispose of potentially burdensome and protracted litigation and to put to rest all claims that have been or might be asserted by Class Counsel and/or the Class Members arising out of or related to the subject matter of the Complaint;

WHEREAS, the Settling Parties have engaged in extensive arms-length settlement negotiations and have determined that the terms of this Settlement Agreement constitute a fair and reasonable compromise of the claims and defenses of all Settling Parties;

WHEREAS, this Settlement Agreement sets forth the terms and conditions for a proposed settlement of the claims described more fully below;

WHEREAS, Class Counsel recognize that the Lawsuit has an uncertain outcome and that pursuing the Lawsuit through trial would involve substantial cost, risk, and inevitable delay. Based on their evaluation of the facts and law, and a weighing of the risks and benefits, which include, among other things, whether the facts support the alleged violations of Florida Statutes § 720.30851(6) and FDUTPA raised in Complaint, the expense and length of continued proceedings necessary to prosecute the Lawsuit against Defendant through trial and any appeals, the minimal award available to Plaintiff and the Class Members, and the substantial benefits the Settlement confers upon Class Members, Class Counsel have determined that the settlement set forth in this Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Class;

WHEREAS, the Class Representative, through Class Counsel, has conducted an investigation into the relevant facts, law and circumstances and engaged in arm's-length negotiations with Defendant's Counsel, and concluded that it is in the best interests of the Class to settle the Class Members' Claims on the terms set forth herein, which are deemed to be fair, reasonable, and adequate; and

WHEREAS, in consideration of the foregoing and other good and valuable consideration, it is stipulated and agreed by the Parties and between Class Counsel and Defendant's Counsel that the claims of Plaintiff and the Class be and are hereby compromised and settled, subject to the approval of the Court, upon the following terms and conditions.

Definitions

A. Rules of Definitions

Unless otherwise indicated, defined terms include the plural as well as the singular. Any term herein defined by reference to a section of this Settlement Agreement shall have such meaning as set forth in this Settlement Agreement as of the Execution Date, and unless such meaning is expressly amended thereafter, such meaning shall remain in effect. Unless the context otherwise requires a reference to any law or governmental regulation includes any amendment, modification or successor thereto; a reference to any Person includes its successors and assigns, the words “include,” “includes,” and “including,” are not limiting and shall be deemed to be followed by the words “without limitation” whether or not in fact followed by such words or words of like import; and the terms “hereof,” “herein,” “hereunder” and comparable terms refer to this entire Settlement Agreement with respect to which such terms are used, and not to any particular article, section, or other subsection or subdivision thereof.

B. Defined Terms

1. **Parties.** The Parties to this Settlement Agreement and Release are Byron Johnson, individually and on behalf of a class of persons similarly situated (hereinafter referred to collectively as “Plaintiff” or “Class Members,” as defined more fully below), and Defendant, PHP as more fully defined herein.

2. **Lawsuit.** Lawsuit means the above-captioned action, *Byron Johnson, on behalf of himself and all others similarly situated v Condominium Associates*, Case No. 24-CA-001417.

3. **Attorneys’ Fees.** Attorneys’ Fees means the reasonable attorneys’ fees, costs of litigation, and expenses, as awarded by the Court. As set forth in this Settlement Agreement, the Parties have agreed to reasonable attorneys’ fees and costs. The determination of attorneys’ fees

and costs shall be submitted to the Court for approval at the time of the Final Approval Hearing in accordance with the Order of Preliminary Approval. Attorneys' Fees also include the fees and expenses incurred in preparing the settlement documents and proposed orders, attending Preliminary Approval and Final Approval Hearing, and answering questions from members of the Settlement Class. Attorneys' Fees do not include the Class Representative's payment or settlement administration costs and expenses.

4. **Class Counsel.** Class Counsel means counsel for the Class Representative and the Class Members: Brian W. Warwick, Esq. and Jeffrey Newsome, Esq., Varnell & Warwick. 400 N Ashley Drive, Suite 1900 Tampa, FL 33602 and Paul Messina, Jr., Esq., Messina Law Group, 2550 Permit Place, New Port Richey, Florida 34655.

5. **Class Members.** Class Members shall mean: (i) The owner-seller of any property, in a PHP managed community; (ii) who requested and received an estoppel certificate from PHP; (iii) paid amounts for the estoppel certificate between February 16, 2020 and March 17, 2024; and (iv) the total paid fees exceeded \$250 between February 16, 2020 to June 30, 2022 or \$299 between July 1, 2022 to March 17, 2024, by greater than \$10, if PHP's estoppel certificate fee is added together with the third-party convenience fee and the third-party service charge.

6. **Class Representative.** Class Representative means the Plaintiff, Byron Johnson.

7. **Complaint.** Complaint means the Complaint filed in the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, *Byron Johnson, on behalf of himself and all others similarly situated v. PHP Management Services, LLC dba Condominium Associates*, Case No. 24-CA-001417.

8. **Court.** The Court means the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, by the judge now assigned to the Lawsuit, the Honorable Jennifer Gabbard.

9. **Defendant.** Defendant means PHP Management Services, LLC dba Condominium Associates, and any predecessors, affiliates, or other integrated entities that issued the estoppel certificates at issue in this Settlement, including Esplanade Equity, LLC, Precedent Hospitality & Property Management, LLC, PHPM, LLC, Moore Property Management Services, LLC, and Artemis Lifestyle Services, LLC.

10. **Defendant's Counsel.** Defendant's Counsel means: Michael Hanzman, Raquel Fernandez, Guy Topaz, Michael Keats.

11. **Effective Date.** Effective Date means the date on which the last Settling Party or their counsel signs this Agreement.

12. **Final.** Final means the entry of the Final Judgment as defined in Paragraph 13, below, where the following has occurred: (a) if no appeal is filed, the expiration of the date for filing a notice of any appeal; (b) upon entry by the Court of the Final Judgment and the expiration of the applicable period for perfecting an appeal from such Final Judgment without perfecting the appeal; and/or (c) if an appeal is taken, upon entry by a final appellate Court of an order affirming the Final Judgment and the expiration of any right of further appeal, or upon the voluntary dismissal of such appeal.

13. **Final Judgment.** Final Judgment means the Final Approval Order provided for in Section VI, paragraph 14, below.

14. **Notice and Settlement Notice.** Notice and Settlement Notice means the Notice of Proposed Class Action Settlement to be approved by the Court.

15. **Notice Date.** Notice Date means the date that Notice is mailed to Class Members.

16. **Person.** Person (when used in the singular or in the plural form) means an individual, corporation, partnership, limited partnership, association, joint stock company, estate,

legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, any business or legal entity and any other recognizable legal entity.

17. **Preliminary Approval Order.** Preliminary Approval Order means the order certifying the proposed Class for settlement purposes, preliminarily approving this Settlement Agreement, approving the Notice, and setting a date for the Settlement Hearing.

18. **Related Parties.** Related Parties shall mean each Person's past or present officers, directors, trustees, members, employers, employees, partners, member firms, affiliates, principals, agents, shareholders, attorneys, accountants, auditors, advisors, personal and legal representatives, heirs, beneficiaries, assigns, predecessors, successors, parents, subsidiaries, divisions, associates, related or affiliated entities, any members of their immediate families, and all Related Parties' and Settling Parties' insurers and their reinsurers. As it pertains to PHP, "Related Parties" includes Esplanade Equity, LLC, Precedent Hospitality & Property Management, LLC, PHPM, LLC, Moore Property Management Services, LLC, and Artemis Lifestyle Services, LLC.

19. **Released Claims.** Released Claims, means the claims and liabilities released and discharged under Section III, Paragraph 6, below.

20. **Settlement.** Settlement means the terms and conditions set forth in this Agreement, including all Exhibits to the Joint Motion referenced herein.

21. **Settlement Amount.** Settlement Amount means the amounts paid to the Class Members, exclusive of the compensation paid to Class Counsel.

22. **Settlement Checks.** Settlement Checks are the checks used to pay Class Members. Settlement Checks that are returned undeliverable or remain uncashed for 90 days from the date upon which they were mailed to Class Members, shall have no legal or monetary effect.

23. **Settlement Hearing.** Settlement Hearing means the hearing to determine whether the settlement of the Class Action should be given final approval, whether the proposed Plan of Allocation should be approved, and whether the applications of Class Counsel for Attorneys' Fees should be approved.

24. **Settling Parties.** Settling Parties means the Plaintiff, individually and on behalf of the Class Members, and the Defendant.

Terms of the Settlement

NOW THEREFORE, in light of the foregoing recitals and definitions, which are incorporated herein and made a part of this Settlement Agreement, and in consideration of the mutual promises, agreements, and covenants contained herein, the sufficiency and receipt of which are hereby acknowledged, it is hereby stipulated and agreed, by, between and among the Settling Parties, that the Lawsuit, and the matters that were or could have been raised therein, is hereby settled, compromised, and dismissed on the merits and with prejudice on the following terms and conditions, subject to the Court's approval.

Section I. PLAN OF ALLOCATION

1. Relief to Class.

This case is about Estoppel Certificate Fees that are charged by HOA's when a property is sold that may be subject to potential HOA liens. Florida Statutes § 720.30851(6) caps the amount that can be charged at \$250 from February 16, 2020 through July 1, 2022 and at \$299 from July 1, 2022 through March 17, 2024. Defendant charged between \$10 and \$31.95 above the cap during the class period. Plaintiff claims that by charging above the cap, Defendant violated Florida Statutes § 720.30851(6) and Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201, et. seq. ("FDUTPA").

Discovery revealed that the amounts charged during the class period varied among class members based on practices of the Defendant’s various companies. Within Defendant is two entities that charged fees in excess of the cap, Condominium Associates and Artemis. The charges during the class period varied somewhat within Condominium Associates (\$29.95-\$31.95) and significantly with Artemis (\$10-\$29). The class definition includes all persons who were charged between \$10 and \$31.95 over the Statutory Cap. Discovery revealed that \$6.95 of the amount charged over the cap was a convenience fee for paying by credit card, a charge that, according to Defendant, the Class could have avoided by paying with a check. The Parties have negotiated to exclude convenience fees from the amount to be refunded.

To resolve the claim asserted herein, Defendant has agreed to establish a \$280,000 Common Fund (the “Common Fund”), which will provide monetary relief to the class, and pay litigation costs and attorney fees to Class Counsel.

After deducting the convenience fees each Plaintiff will automatically receive a settlement check equal to 72% of the average amount paid above the statutory cap. The Class is broken down into four categories based upon the average amount paid above the statutory cap.

<u>Payment</u>	<u>Refund</u>	<u>Class members</u>	<u>Total Fund</u>
Condo Ass. \$24	\$17.28	2400	\$41,472
Artemis \$7.55	\$5.40	944	\$5,097.60
Artemis \$15.05	\$10.84	7358	\$79,760.72
Artem is \$22.05	\$15.88	3,822	\$60,693.36
			<u>\$187,024</u>

Any Person who timely and effectively requests exclusion from the Settlement shall not be entitled to receive any Settlement Payment. Settlement Checks to the Class Members shall expire 90 days from the date that they are issued.

From the Common Fund, Class Counsel will be paid the sum of Two Thousand Five Hundred Dollars (\$2,500.00), to compensate the Class Representative to compensate his role in this Lawsuit.

Within ten (10) days after entry of an order finally approving the Settlement, Defendant will fund the Common Fund. Any remaining balance or uncashed checks to the Class will be paid to West Palm Beach Legal Aid as a *cy pres* recipient. Within thirty (30) days of the expiration of the Class Member checks, the Class Administrator shall pay or cause to be paid the remaining balance of the Class Members relief to West Palm Beach Legal Aid.

With regard to the fees charged in connection with providing estoppel certificates in the State of Florida, PHP denies that it ever charged more than the applicable statutory cap. Plaintiff argued that if one adds PHP's estoppel certificate fee together with the third-party convenience fee and the third-party service charge, the total of such fees sometimes exceeded the State of Florida statutory cap. PHP confirms that as of March 18, 2024, the total of such fees has not exceeded \$299, which Plaintiff agrees is, as of July 1, 2022, the statutory cap for estoppel certificates on any closing in the State of Florida for which PHP provided an estoppel certificate.

2. Class Counsel's Attorneys' Fees and Expense Award to Class Counsel.

Class Counsel, will file a motion for approval of attorneys' fees and costs fourteen (14) days before the Objection and Opt-Out Deadline or as otherwise ordered by the Court. Class Counsel may apply for attorneys' fees in the amount of up to one-third of the Common Fund, as compensation for all work performed from the inception of the Litigation to its conclusion, including all future work in connection with the implementation of this Settlement Agreement, seeking preliminary and final approval of the Settlement Agreement by the Court, and overseeing the administration of the Settlement Agreement through the final dismissal of the Litigation with

prejudice. Class Counsel's attorneys' fees and costs approved by the Court in the Final Approval Order will be paid out of the Gross Settlement Amount within one week after the Effective Date. The Court's ruling of attorneys' fees and costs shall have no bearing on the viability of the remainder of this Settlement Agreement, subject to appellate rights. Prior to the payment of attorneys' fees and costs, Lead Class Counsel shall provide an executed IRS Form W-9 to the Settlement Administrator.

Section II. ADMINISTRATION

3. Settlement Administration.

(a) **General:** The Class Administrator shall administer the Settlement and shall deliver Settlement Payments along with a letter identifying the date the estoppel certificate was issued, the address of the property that was sold, and the name(s) of the Class Members associated with the specific sale which resulted in the Settlement Payment. Settlement Payments can be combined when multiple estoppel certificates are related to a single Class Member.

(b) **Limitation:** Costs of settlement administration do not include any attorneys' fees, expenses, costs or disbursements incurred by Class Counsel and/or any other counsel representing the Plaintiff, as the Representative Plaintiff, or Class Members, or by Representative Plaintiff or the Class Members, or any of them, in connection with or related in any manner to this Settlement Agreement, the Settlement, and/or the administration of such Settlement, except as provided for herein.

4. **Class Notice and Settlement Checks.** The Class Administrator shall send the Notice in the time provided herein. Settlement Payments must be paid by Defendant to the Class Members through the Settlement Administrator no later than forty-five (45) days entry of an order finally approving the Settlement.

5. Defendant shall pay the cost of Notice and Settlement Administration over and above and separate from the Common Fund.

Section III. RELEASED CLAIMS

6. **General.** It is the agreement and intent of the Settling Parties that this Settlement Agreement be construed and enforced as a mutual release subject to the limitations and exclusions provided herein. Accordingly, it is hereby agreed that upon the Effective Date of this Settlement Agreement, each Class Member and Class Representative not opting out and his, her, or its respective Related Parties, shall hereby be deemed to have, and by operation of this Settlement Agreement, and the terms of the Final Judgement of Approval, shall have fully, finally, and forever released, relinquished, discharged, and waived, against the Defendant, including its respective Related Parties, any and all claims, direct or third-party or otherwise, of whatever kind or nature, including but not limited to, any contract, tort, breach of duty, fiduciary, extra-contractual, punitive, exemplary, statutory, common law, demands, debts, damages, costs, attorneys' fees, expenses, actions, causes of action, suit or suits, controversies, sum or sums of money, liabilities and penalties arising from any act, omission or occurrence from the beginning of time to the Effective Date hereof, on account of any and all loss or damages of any kind whatsoever, known or unknown, allegedly sustained or which may hereafter be sustained allegedly in consequence of, arising out of, resulting from or relating to all allegations, claims, liens or defenses which have been raised in the Complaint, including but not limited to any claims related to the statutory cap under Section 720.30851(6), Florida Statutes, the provisions of FDUTPA, and/or the amounts or reasonableness of Defendant's estoppel certificate charge(s) (including the PHP's estoppel certificate fee, the third-party convenience fee, and the third-party service charge).

7. **Breach of Settlement Agreement.** The Settling Parties agree that the provisions of Paragraph 5, above, shall be construed to exclude, and shall not impair, any right or cause of action

arising from a breach of this Settlement Agreement including, but not limited to, any future claims that may arise with regard to the implementation of this Settlement Agreement. The Settling Parties also understand and agree that the provisions of Paragraph 5, above, shall be construed to exclude, and shall not impair, any right or cause of action currently pending against Plaintiff and/or Class Members in any Court of competent jurisdiction other than the current Lawsuit.

Section IV. PRELIMINARY APPROVAL ORDER AND SETTLEMENT HEARING

8. **Preliminary Approval Motion.** In accordance with the procedures and time schedules below, the Settling Parties shall take such actions, and prepare and file, all appropriate notices, motions, and proposed order forms reasonably necessary to obtain both preliminary and final approval of this Settlement Agreement from the Court. All Settling Parties shall cooperate, and as appropriate, shall join in seeking to accomplish the following:

(a) Within ten (10) days of the Effective Date of this Agreement, the attorneys for the Parties shall file a Joint Motion for Preliminary Approval of this Agreement, including a request that the Court approve the mailing of the Notice within twenty (20) days of the entry of an order granting preliminary approval of this Agreement. All Settling Parties shall join in that motion and shall support any order approving this Agreement through any appeal, if necessary. Without prior approval of any other Settling Party, Class Counsel may file memoranda in support of the preliminary (and final) approval of this Settlement Agreement; and

(b) The Preliminary Approval Order shall require, and the Notice shall set out, that any objections to this Settlement Agreement must be made in writing, filed with the Court, and served on counsel no later than twenty (20) days before the date of the Final Approval Hearing. The Notice shall provide that any objection that is not received within the time set by the Court is deemed waived; and

(c) The Settling Parties shall jointly request a Final Approval Hearing date, which is no more than ninety (90) days after the date of entry of the Preliminary Approval Order.

9. **Preliminary Approval Order.** The proposed Preliminary Approval Order submitted to the Court shall contain the following provisions:

(a) Certification of the Settlement Class pursuant to Florida Rule of Civil Procedure 1.220(a) and (b)(3) for settlement purposes only; and

(b) Preliminary approval of the Settlement Agreement set forth herein and, subject to any objections that may be presented to the Court and served on counsel no later than twenty (20) days before the date of the Final Approval Hearing, enter an initial finding that the Settlement Agreement appears to be fair, adequate, reasonable, and in the best interests of the Class; and

(b) Approval of the form of a Notice of Class Action Settlement, that includes the general terms of the settlement, as set forth in the Settlement Agreement, and the procedures for objections and opt-outs described below. Utilizing the most recent available contact information on the Class Members within Defendant's records, shall be mailed or cause to be mailed by the Settlement Administrator by first class mail the Notice to all Class Members within twenty (20) days from the date of the order; and

(c) A finding that the mailing of the Notice by regular first class mail to all Class Members whose address has been identified constitutes valid, due and sufficient notice to the Class Members and their Related Parties, and constitutes the best notice practicable under the circumstances, complying fully with the requirements of Rule 1.220, Fla. R. Civ. P., due process requirements of the Florida and United States Constitution, and any other applicable law and that no further notice to the Class is required.

(d) Set a hearing (the “Final Approval Hearing”), to accomplish among other things:

(1) Review and determine the merits of any objections to the Settlement;

(2) Determine whether to approve in final this Settlement Agreement pursuant to Rule 1.220, Fla. R. Civ. P. as fair, reasonable, adequate, and in the best interests of the Class, and authorize all acts necessary to consummate and effectuate the terms and conditions of this Settlement Agreement;

(3) Determine whether the Court should enter a Final Order approving the Settlement in final and dismissing the Lawsuit with prejudice;

(4) Determine the reasonableness of the Attorneys’ Fees to be paid to Class Counsel from the Common Fund.

(5) Determine such other matters as the Court may deem necessary and appropriate.

Section V. OBJECTIONS AND EXCLUSIONS

10. **Objection to Settlement.** Any Class Member who objects to the Settlement contemplated by this Agreement shall have a right to appear and be heard at the Settlement Hearing provided that such Person files with the Court and delivers to Class Counsel and Defendant’s Counsel a written statement of reasons for the objection no later than twenty (20) days before the Settlement Hearing date. Settlement Class Counsel and Defendant’s Counsel may, but need not, respond to the objections, if any, by means of a memorandum of law filed and served no later than five (5) business days prior to the Settlement Hearing. The manner in which a notice of objection should be prepared, filed, and delivered shall be stated in detail in the Notice. Only Class Members

who have filed and delivered valid and timely written notices of objection will be entitled to be heard at the Settlement Hearing, unless the Court orders otherwise. Any Class Member who does not make his or her objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the Settlement or the award of Attorneys' Fees to Class Counsel, unless otherwise ordered by the Court.

11. **Exclusion from Class.** Any Class Member may seek to be excluded from the Settlement. Any Class Member so excluded shall not be bound by the Settlement and shall not be entitled to any of its benefits. To be timely excluded from the Class Settlement, the Class Member must submit a written statement requesting to be excluded from the Class Settlement. To be valid, the Written Statement must include the Class Member's full name, address, signature, and date, and the following statement or words to this effect: "*I WANT TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE LAWSUIT Byron Johnson v. PHP Management Services, LLC dba Condominium Associates.*" If the event that within ten (10) days of the expiration of the period for Class Members to exclude themselves from the Class there have been exclusion requests totaling more than 5% of all Class Members, Defendant may void this Agreement by notifying Class counsel in writing, and this Agreement shall be terminated pursuant to Section VII, Paragraph 15 below.

12. **Binding Effect.** All proceedings, orders and judgments, including the Final Order entered in the Lawsuit, will be binding on all Settlement Class Members who have not validly excluded themselves from the Settlement Class, even if such Settlement Class Members have objected to the Settlement. Additionally, the Releases contained in Section III, above, will be

binding on all Settlement Class Members who have not validly excluded themselves from the Settlement Class, even if such Settlement Class Members have objected to the Settlement.

13. **Appearance of Attorney for Settlement Class Member.** If a Settlement Class Member hires an attorney to represent him or her, the attorney must:

(a) File a notice of appearance with the Court no later than twenty (20) days prior to the date of the Approval Hearing; and

(b) Serve a copy of such notice of appearance on counsel for Defendant and the Class Counsel.

Section VI. FINAL JUDGMENT

14. **Final Judgment.** The proposed Final Judgment set forth in the proposed Final Approval Order submitted to the Court prior to the Settlement Hearing shall act as a condition subsequent of this Settlement and shall, at a minimum, include the following provisions:

(a) A finding that the distribution of the Notice fully and accurately informs all Class Members and Related Parties entitled to notice of the material elements of the Settlement, constitutes the best notice practicable under the circumstances, constitutes valid, due, and sufficient notice, and complies fully with Rule 1.220, Fla. R. Civ. P., the Florida and United States Constitutions, and any other applicable law; and

(b) A finding that after proper notice to the Class, and after sufficient opportunity to object, no timely objections to this Settlement Agreement have been made, or a finding that all timely objections have been considered and denied; and

(c) Approval of the Settlement, as set forth in the Settlement Agreement, as fair, reasonable, adequate, and in the best interests of the Class, in all respects under Rule 1.220, Fla.

R. Civ. P., finding that the Settlement is in good faith, and ordering the Parties to perform the Settlement in accordance with the terms of this Settlement Agreement; and

(d) A finding that neither the Final Judgment nor the Settlement Agreement shall constitute an admission of liability by the Settling Parties, or any of them, of any liability or wrongdoing whatsoever; and

(e) Subject to reservation of jurisdiction for matters discussed in subparagraph (h), below, dismissing with prejudice the Complaint; and

(f) In accordance with the Florida Rules of Civil Procedure, finding that there is no just reason for delay, and ordering the entry of a Final Judgment; and

(g) A finding that all Class Members not opting out and their Related Parties shall, as of the entry of the Final Judgment, conclusively be deemed to have released and forever discharged Defendant and its Related Parties from all Released Claims, and forever enjoining and barring all Class Members and their Related Parties from asserting, instituting, or prosecuting in any capacity, before any court or governmental agency, any action or proceedings against Defendant that assert any Released Claims; and

(h) A reservation of exclusive and continuing jurisdiction over the Lawsuit and the Settling Parties for the purposes of, among other things, (i) supervising the implementation, enforcement, construction, and interpretation of the Settlement Agreement, the Preliminary Approval Order, and the Final Judgment; and (ii) supervising the administration and distribution of the relief to the Class and resolving any disputes that may arise with regard to any of the foregoing.

Section VII. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, RECISSION, OR TERMINATION

15. **Conditions of Settlement.** This Settlement Agreement, including the releases herein, shall be null and void, and the provisions of Section VII, Paragraph 16, below, shall apply, if each of the following conditions fails to occur or be satisfied prior to the date that the Final Judgment becomes Final:

(a) All non-settlement related activities regarding the Complaint shall be, and shall remain, stayed by the Court pending Final Judgment approving this Settlement Agreement; and

(b) All Settling Parties shall approve, execute, and perform all such acts or obligations that are required by this Settlement Agreement to be performed prior to the date that the Final Judgment becomes Final; and

(c) A Preliminary Approval Order, in substantially a form as described by Section IV, Paragraph 8, above, shall be entered by the Court; and

(d) At or prior to the Settlement Hearing, no objections to this Settlement Agreement have been received, or if any such objections have been received, all such objections have been considered and denied by the Court; and

(e) A Final Judgment, in a form substantially as described by Section VI, Paragraph 14, above, shall be entered by the Court; and

(f) Subject to the reservation of jurisdiction for matters described in Section VI, Paragraph 14(h), above, the Lawsuit must be dismissed with prejudice.

16. **Voiding of Agreement.** In the event that this Settlement Agreement is finally rejected upon the Settlement Hearing, or in the event a Final Judgment is not entered, or does not become Final, or in the event that the Settlement Agreement is rejected by the mandate of an

appellate court, or voided by Defendant pursuant to Section V, Paragraph 11 above, then the terms of this Agreement shall be null and void; and

(a) The terms of this Agreement shall have no further force and effect with respect to the Settling Parties; and

(b) This Agreement shall not be used in this litigation for any purpose; provided, however, this Agreement may be used for bringing an action for failure of a Settling Party to take steps required by this Agreement or required by such party's position as a fiduciary to secure judicial approval of this Agreement; and

(c) The Settling Parties shall be restored to their respective positions in the litigation as of the date the Settlement Agreement was reached, including but not limited to the fact that there has not been any class certification hearing or process and the Defendant reserves all of its rights to object to class certification and demand an evidentiary hearing regarding all issues relating to class certification; and

(d) Any Judgment or orders entered by the Court in accordance with this Settlement Agreement shall be treated as vacated.

Section VIII. MISCELLANEOUS PROVISIONS

17. **Enforcement.** The Settling Parties acknowledge that violation of the Settlement Agreement or any of the releases will cause immediate irreparable injury for which no remedy at law is adequate. If any Party fails to perform his, her or its obligations hereunder, any other Party shall be entitled to specific performance, including through mandatory preliminary and injunctive relief, in addition to such other remedies as provided herein. Nothing contained herein shall be construed to preclude any party from applying for contempt or other remedies or sanction provided by the Florida Rules of Civil Procedure for breach of this Settlement Agreement.

18. **Agreement to Cooperate.** The Parties: (a) acknowledge that it is their intent to execute the Agreement; and (b) agree to cooperate to the extent necessary to effectuate and implement all terms and conditions of the Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of the Agreement.

19. **Good Faith Settlement and Advice of Counsel.** The Parties agree that the terms of the Settlement reflect a good-faith settlement of the Class Representative and the other Class Members' claims in the Lawsuit, reached voluntarily after consultation with experienced legal counsel.

20. **Incorporation.** All of the Exhibits to the Joint Motion for Preliminary Approval are material and integral parts of the Settlement and are fully incorporated herein by this reference. To the extent any term in an Exhibit to the Joint Motion for Preliminary Approval conflicts with a term of this Settlement Agreement, this Settlement Agreement will control.

21. **Failure to Reserve Notice.** The failure of any Settlement Class Member to receive Notice or any other document as described in this Settlement Agreement shall not be a basis for invalidating the Settlement, this Settlement Agreement, any order entered pursuant thereto, or any of the Exhibits or documents referenced herein, or attached hereto, and the Settlement shall nevertheless be binding and the Final Order effective in accordance with its terms.

22. **No Waiver.** The waiver of one party of any breach of this Settlement Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement Agreement; nor shall such a waiver be deemed a waiver by any other Party of that breach or a waiver by that Party of any other Party's breach.

23. **Modification.** The Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their successors-in-interest.

24. **Headings.** The headings of the paragraphs herein are for convenience only and do not define, limit, or construe the contents of this Agreement.

25. **Entire Agreement.** Except as provided herein, the Agreement and the Exhibits attached to the Joint Motion for Preliminary Approval constitute the entire agreement among the Parties, and no representations, warranties, or inducements have been made to any Party concerning the Agreement or accompanying Exhibits other than the representations, warranties, and inducements contained and memorialized in the Agreement and the accompanying Exhibits.

26. **Authority to Settle.** Class Counsel warrant that they are expressly authorized by the Class Representative to take all appropriate action to effectuate the terms and conditions of the Settlement and also are expressly authorized to enter into any modifications of, or amendments to, the Agreement on behalf of the Class which they deem appropriate.

27. **Authority to Execute.** Each counsel or other person executing the Agreement or any of its Exhibits on behalf of any Party warrants that he or she has the full authority to do so.

28. **Counterparts.** The Agreement may be executed in one or more counterparts, each of which shall be deemed to be one and the same instrument. Counsel for the Parties shall exchange among themselves signed counterparts, and a complete set of executed counterparts shall be filed with the Court.

29. **Binding Effect.** The Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto. All Settling Parties waive the right to appeal or collaterally attack the Final Judgment entered under this Settlement Agreement.

30. **Exclusive Jurisdiction and Venue for Enforcement.** Any dispute relating to this Agreement or Final Judgment shall be resolved exclusively in the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, which Court shall retain exclusive jurisdiction and venue

with respect to the consummation, implementation, enforcement, construction, interpretation, performance, and administration of the Agreement and/or Final Judgment. The Parties agree to submit to the exclusive jurisdiction and venue of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida for the purposes described above.

31. **Choice of Law.** This Agreement and any document executed in furtherance of the Settlement shall be governed by, subject to, and construed in accordance with the laws of the State of Florida, without regard to conflicts-of-laws principles.

32. **Costs and Expenses.** Except as otherwise provided herein, each Party shall bear its own costs and expenses.

33. **Interpretation.** All Settling Parties have participated in the drafting of this Settlement Agreement and, accordingly, any claimed ambiguity should not be presumptively construed for or against any of the Parties.

34. **Subsequent Discovery of Facts.** In connection with this Settlement Agreement, the Representative Plaintiff acknowledges that she is aware that she may hereafter discover facts, action, claims and causes of action presently unknown or unsuspected, or facts in addition to or different from those which she now knows or believes to be true with respect to the matters released herein. Nevertheless, it is the purpose of this Settlement Agreement and the intention of Representative Plaintiff and the Settlement Class Members to settle and release such matters and all actions, causes, causes of action, and claims relating to the Complaint, which exist, or might have existed.

35. **Waiver.** Class Counsel, Plaintiff, as Representative Plaintiff, and Settlement Class Members understand that certain federal or state laws, rights, rules, or legal principles which may be or become applicable may require different or additional modifications than those agreed to

herein. Representative Plaintiff and Settlement Class Members agree that the provision of such laws are knowingly and voluntarily forever waived and relinquished by Representative Plaintiff and Settlement Class Members, and Representative Plaintiff and Settlement Class Members agree and acknowledge that this is an essential term of this Settlement Agreement.

36. **Final Resolution.** Nothing in this Lawsuit or Agreement is intended to limit the generality of the release set forth above. It is the purpose and intent of this Settlement Agreement that all claims, actions and causes of action by the Representative Plaintiff and Settlement Class Members alleging violations of Florida Statutes § 720.30851(6) and FDUTPA as set forth in the Lawsuit shall forever be barred. The doctrines of *res judicata* and collateral estoppel shall apply to all Settlement Class Members with respect to all issues of law and fact and matters of relief within the scope of the Complaint filed in this Lawsuit, the Released Claims, and this Settlement Agreement. If a Person seeks, in a separate action or proceeding, relief that would be inconsistent with or precluded by the terms of the Settlement Agreement, Defendant or any Released Party may by affidavit or otherwise in writing, including through the filing of this Agreement and/or Final Judgment, advise the other Parties and the Court or other forum in which such action or proceeding is brought, that such relief in that action or proceeding is unwarranted and precluded.

37. **No Liability for Joint Settlement Class Members.** Defendant shall not be liable or responsible for allocating or dividing the Settlement Payments among Settlement Class Members who are jointly entitled to Settlement Payments, which shall be resolved solely between the contending Settlement Class Members, and such Settlement Class Members shall be prohibited from joining Defendant's counsel, the Plaintiff or Class Counsel in any action to apportion a distribution made pursuant to the Settlement.

38. **Beneficiaries.** This Settlement Agreement and the Settlement contemplated herein, shall inure to the benefits of the Released Persons and/or Released Parties as well as the Settling Parties. The Settling Parties each acknowledge that this Settlement Agreement is being entered into for the benefit among others of the other above-referenced Released Persons and/or Released Parties and agree that the provisions of this Settlement Agreement may be enforced and relied on by the Released Persons and/or Released Parties in their own right without the aid or participation of Defendant or any other signatory to this Settlement Agreement. The Released Persons and/or Released Parties are intended third party beneficiaries of this Settlement Agreement.

39. **No Other Third-Party Beneficiaries.** Except as set forth in the preceding Section 38, this Settlement Agreement shall not be construed to create rights in, or to grant remedies to, or delegate any duty, obligation, or undertaking established herein to any third party as a beneficiary to this Settlement Agreement.

40. **Captions.** The captions or headings of the sections and paragraphs of this Settlement Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Settlement Agreement.

41. **Computation of Time.** All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Settlement Agreement or by order of Court, the day of the act, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or when the act to be done is the filing of a paper in court, a day in which weather or other conditions have made the office of the Clerk of the Court inaccessible, in which event the period shall run until the

end of the next day that is not one of the aforementioned days. Each of the Parties reserves the right, subject to the Court's approval, to seek any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement, and to modify or supplement any notice contemplated hereunder.

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Class Counsel and Counsel for Plaintiff

Counsel for Defendant

Date: August __, 2024

Date: September 6 2024

PHP Management, dba Condominium Associates

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By: Steve Weckler

Its: CEO

Date: August __, 2024

Class Counsel and Counsel for Plaintiff

Date: August __, 2024

Byron Johnson, *individually and on behalf of the Settlement Class*

Byron Johnson (Aug 27, 2024 09:15 EDT)

Date: August ^{27th} __, 2024








Byron.PHP Final Settlement Agreement

Final Audit Report

2024-08-27

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