

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT  
IN AND FOR OSCEOLA COUNTY, FLORIDA  
CIVIL DIVISION**

**BRENDA LOPEZ,**

**Plaintiff,**

**CASE NO.: 2020-CA-002511-OC**

v.

**OLLIE’S BARGAIN OUTLET, INC.,**

**Defendant.**

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**SETTLEMENT AGREEMENT**

**I. Introduction**

This Settlement Agreement (“Agreement”) is made and entered into by and between Plaintiff, Brenda Lopez (hereinafter “Plaintiff” or the “Class Representative”), on her own behalf and on behalf of the Settlement Class, defined below and described herein, and Ollie’s Bargain Outlet, Inc. (“Ollie’s” or “Defendant”) (collectively, the “Parties”).

**II. Recitals**

A. On October 6, 2020, Named Plaintiff, Brenda Lopez, filed a Class Action Complaint styled *Brenda Lopez, on behalf of herself and on behalf of all others similarly situated, v. Ollie's Bargain Outlet, Inc.*, in the Circuit Court of the Ninth Judicial Circuit in and for Osceola County, Florida (the “FCRA Litigation” or “the Action”), asserting claims against Defendant under the Fair Credit Reporting Act (“FCRA”) on behalf of herself and on behalf of a proposed class of similarly situated individuals. The Parties have since reached an agreement that, if approved by this Court, will resolve all claims of the Named Plaintiff and each of the approximately 3,500 putative class members in Florida.

B. The Action generally alleges that Defendant violated the FCRA by failing to comply with the FCRA’s disclosure and authorization requirements related to consumer reports

procured for “employment purposes.” Specifically, the Action alleges that Defendant’s inclusion of extraneous information in its FCRA Disclosure violated Section 604(b)(2)(A) of the FCRA, 15 U.S.C. § 1681b(b)(2)(A)(i), and, as a result, Defendant lacked authorization to procure consumer reports on the class members in violation of 15 U.S.C. § 1681b(b)(2)(A)(ii). Ollie’s denied Plaintiff’s allegations and denied that it committed any violation of the FCRA with respect to Plaintiff or the Settlement Class.

C. After the lawsuit was filed, Defendant removed the action to the United States District Court for the Middle District of Florida, Orlando Division. Thereafter, the parties extensively litigated this matter, engaged in substantive written discovery and took multiple depositions, fully briefed Defendant’s potentially dispositive motion for summary judgment, and also briefed class certification. After extensive litigation, this case was remanded back to this Court (from which it originated) on standing grounds.

D. On October 25, 2021, the Parties participated in mediation with highly-respected mediator, Carlos J. Burruezo. No settlement was reached at mediation. However, the parties continued their arm’s length negotiations and ultimately reached an agreement which, if approved by the Court, will resolve all claims of Plaintiff and each of the 3,500 Florida-based putative class members for whom criminal background checks were procured for employment purposes by Defendant, and will provide valuable monetary relief and certain other consideration set forth below.

E. Defendant denies it engaged in any wrongdoing, denies any actual or potential fault, wrongdoing, or liability in connection with any facts or claims that have been or could have been alleged against it in the Action, denies that the claims asserted by Plaintiff are suitable for class treatment other than for settlement purposes, denies that it has any liability whatsoever with respect to Plaintiff or the Settlement Class, but enters into this Agreement because of the substantial

expense of litigation, the length of time necessary to resolve the issues presented, the inconvenience involved, and the disruption to its operations. This Agreement is not, and shall not, in any way be deemed to constitute an admission or evidence of any wrongdoing or liability on the part of Defendant, nor of any violation of any federal, state, or municipal statute, regulation, principle of common law or equity.

F. The attorneys representing the Settlement Class defined below (“Class Counsel”) are experienced in litigating class action claims of the type involved in this Action.

G. The Parties and their respective attorneys of record, taking into account the risks, uncertainties, delay, and expense involved in the Action, as well as other relevant considerations, believe that it is in the best interests of all Parties and the putative classes to compromise and fully and finally settle this Action in the manner and upon the terms and conditions hereinafter set forth. The Parties intend that this settlement will end and encompass all pending, threatened, or possible litigation and/or claims against Defendant, and its affiliates, that arise out of or relate to the Action or that could have been brought in this Action, upon entry of a final order approving this settlement and this Agreement.

H. The relief provided to the Class Members and the procedures set forth in this Agreement for the distribution of relief provide fair, flexible, speedy, cost-effective, and assured value to the Class Members. Thus, this Agreement provides considerable benefit to the Class Members while avoiding costly litigation of difficult and contentious issues.

I. Based on Class Counsel’s extensive analysis of the law and facts at issue in this Action, and the fair, flexible, speedy, cost-effective, and assured procedures for providing the settlement benefits to the Class Members, the Class Representative (on advice of Class Counsel) has determined that this settlement with Defendant on the terms set forth below is fair, adequate, and reasonable, and thus in the best interests of the Class Members.

### **III. Definitions.**

For purposes of this Agreement, the following definitions shall apply:

A. The “Action” shall refer to this lawsuit throughout its pendency and including all venues and forums during that pendency.

B. “Agreement” means this Settlement Agreement and Release.

C. “Class Representative” or “Named Plaintiff” means Named Plaintiff, Brenda Lopez.

D. “Class Counsel” means Luis A. Cabassa and Brandon J. Hill of the law firm Wenzel Fenton Cabassa, P.A.

E. “Defendant” means Ollie’s Bargains, Inc. and all affiliated companies and agents.

F. “Class Administrator” means American Legal Claim Services, LLC.

G. “Class Counsel Attorneys’ Fees” means the \$100,000.00 in attorneys’ fees Defendant has agreed to pay directly to Plaintiff’s counsel, in addition to the Settlement Fund paid to Class Members, which Defendant does not oppose, subject to court approval. Defendant will not object to this amount as unreasonable. In the event the court reduces the attorneys’ fees awarded, this Agreement shall remain in full force and effect and the attorneys’ fees shall be reduced to the amount determined by the court. The Parties agree that Plaintiff’s attorneys’ fees were discussed separately and not until after the Settlement Fund was agreed upon.

H. “Class List” means a list of all members of the Florida Disclosure Settlement Class, to be generated by Defendant and provided to the Settlement Administrator not more than ten (10) business days after the Court enters a Preliminary Approval Order. The Class List shall be provided in Excel format and include the following information in a separate field for each class member, as available in Defendant’s records: First Name, Middle Name, Last Name; Street Address 1, Street Address 2, City, State, and Zip Code. Defendant shall provide the last known

mailing address for each class member. Upon request of the Settlement Administrator, Defendant shall provide Dates of Birth if required to identify or locate members of the Settlement Class, and full Social Security Numbers for any member of the Settlement Class for whom the Settlement Administrator requires same for the purpose of tax reporting.

I. “Class Settlement Amount” is comprised of a common fund of \$35,000.00, from which each of the Settlement Class members who timely file a claim pursuant to the claims process set forth herein will be paid a pro rata share based upon claims made against the settlement fund after the deduction of the named Plaintiff’s Incentive Award, and after the deduction of administration expenses, and after the deduction of Plaintiff’s counsel’s litigation costs, from the Settlement Fund. Depending upon the cost of notice, administration, and other expenses approved by the court, the amount of each Settlement Check may be reduced on a pro rata (proportional) basis by the settlement administrator as needed. The Settlement Class is comprised of individuals in the State of Florida to whom Ollie’s provided FCRA disclosure and authorization forms in the same or substantially the same form as those provided to Plaintiff for the period October 6, 2018, through the date of the Final Approval Order, which consists of approximately 3,500 individuals. No funds revert to Defendant. Any funds that are unclaimed (which shall only arise if/when a valid claim is made and a check is mailed but then not cashed) shall revert to a cy pres recipient (Bay Area Legal Services, a non-profit Tampa-based law firm serving indigent clients), subject to Court approval.

J. “Class Settlement Fund” is the \$35,000.00 made available for the payments to Class Members, Class Representative Service Award, Administrative Costs, and Plaintiff’s counsel’s litigation costs.

K. “Final Approval Order” and “Judgment” means the Court’s order granting final approval of this settlement and dismissing with prejudice Plaintiff’s claims and entering a judgment according to the terms set forth in this Agreement.

L. “Notice Date” means the date by which the Notice of Settlement shall be sent by the Settlement Administrator to Settlement Class Members, in substantially the form attached as Exhibit B to this Agreement and/or as ultimately approved by the Court. Notice shall be delivered not less than defined as fifteen (15) business days after entry of Preliminary Approval Order. The notice period shall run sixty (60) days from the date of the initial Notice mailing.

M. “Notice of Settlement” means the short form notice, attached hereto as Exhibit B, subject to Court approval, which the Settlement Administrator will mail, via first-class U.S. mail, to each member of the Settlement Class to explain the terms of the settlement and the claims process. Additionally, the Settlement Administrator will create and maintain a Settlement website containing the Long Form Notice, attached as Exhibit C, along with certain Court documents, including the Second Amended Complaint, the full Settlement Agreement, and the Court’s Preliminary Approval Order. The Settlement Website shall be maintained until the Effective Date.

N. “Net Settlement Fund” means the amount of money remaining after the Settlement Fund is reduced by the following amounts: (a) the Service Award to the Named Plaintiff that the Court approves; (b) the Administrative Costs; and (c) Class Counsel’s litigation costs.

O. “Notice and Administrative Costs” means the reasonable and authorized costs and expenses of disseminating and publishing the Class Notice in accordance with the Preliminary Approval Order, and all reasonable and authorized costs and expenses incurred by the Settlement Administrator in administering the Settlement. This cost is estimated at approximately \$13,748. The first \$5,000 of that amount will be paid by Defendant in addition to the Settlement Fund and

in addition to the other amounts identified herein. The remainder shall be deducted from the Class Settlement Amount.

P. “Objection Deadline” or “Opt-Out Deadline” means the date the Court establishes as the deadline by which members of the Settlement Class must postmark a written notice of their objections to the preliminarily approved settlement or to exclude themselves from the settlement. The Parties shall jointly request that this date be sixty (60) days after the date on which the Notice of Settlement and Release of Claims is to be mailed pursuant to this Agreement.

Q. “Parties” means the Plaintiff and Defendant.

R. “Preliminary Approval Order” means the order in substantially similar form as Exhibit A and providing for, among other things, preliminary approval of the Settlement as fair, reasonable, and adequate; preliminary certification of the Settlement Class for settlement purposes only; dissemination of the Class Notice to the Settlement Class; and finding that the proposed Class Notice is reasonably calculated to apprise the Settlement Class Members of the pendency of the Action, the material terms of the proposed Settlement, and the Settlement Class Members’ options and rights with respect thereto.

S. “Release” or “Releases” means the releases of all Released Claims against the Released Persons, as provided for in Section V of this Settlement Agreement.

T. “Released Claims” means all claims, actions, causes of action, suits, debts, sums of money, payments, obligations, defenses, reckonings, promises, damages, penalties, attorneys’ fees and costs, liens, judgments, demands, and any other forms of liability released pursuant to Section V of this Settlement Agreement.

U. “Released Persons” means Defendant and all its present, former, and future affiliates, parents, subsidiaries, corporate family members, officers, directors, partners, employees, agents, heirs, administrators, executors, members, member entities, shareholders, predecessors,

successors, agents, representatives, trustees, principals, assigns, attorneys, and insurers individually, jointly, and severally.

V. “Service Award” is comprised of up to \$2,500.00, which Defendant does not oppose, to be paid from the Settlement Fund to the Named Plaintiff subject to Court approval, for her participation in this lawsuit, including her participation in all aspects of drafting the complaints, being deposed, attending mediation, reviewing all settlement documents, and otherwise serving as Class Representative.

W. “Settlement Administrator” means American Legal Claim Services, LLC, 8475 Western Way, Jacksonville, FL 32256.

X. “Settlement Class” means the following:

All of Defendant’s employees and job applicants who applied for or worked in a position with the Defendant in Florida, to whom Ollie’s provided FCRA disclosure and authorization forms in the same or substantially the same form as those provided to Plaintiff, within two years of the filing of the Complaint through the date of final judgment.

Y. “Settlement Class Member” generally means any individual who is a member of the Settlement Class who did not timely file an exclusion request. There are approximately 3,500 Settlement Class Members, which is limited to Florida only.

Z. “Settlement Effective Date” means the day after the first date on which all of the following have occurred: (a) all Parties, Class Counsel, and Defendant’s Counsel have executed this Agreement; (b) the Court has preliminarily approved this settlement; (c) reasonable notice has been given to members of the Settlement Classes, including providing them an opportunity to file a claim, or to file an objection to the settlement; (d) the Court has held a final approval hearing, entered a Final Approval Order and Judgment approving the settlement, awarded the Named Plaintiff any Service Award, and awarded Class Counsel its reasonable Class Counsel Attorneys’ Fees; and, (e) only if there are written objections filed before the final approval hearing and those



objections are not later withdrawn, the last of the following events to occur. If no appeal is filed, then the date on which the objector's time to appeal the Final Approval Order and Judgment has expired with no appeal or any other judicial review having been taken or sought. If there is no objection, then there is no waiting period for an appeal and the Effective Date is ten (10) business days after entry of the final order granting final approval.

AA. "Settlement Website" means the Internet site created by the Settlement Administrator pursuant to this Agreement to provide information about the Settlement, which shall have the Uniform Resource Locator of www.[WEBSITE NAME HERE].com.

BB. "Settling Parties" means, collectively, Defendant, Named Plaintiff, and all Settlement Class Members.

#### **IV. Relief and Benefits**

A. Distribution of Settlement Fund. The proceeds of the Settlement Fund will be distributed as follows:

1. Monetary Benefits to Settlement Class. In exchange for the Releases and waivers of claims described below, members of the Settlement Class who submit timely claims shall each be entitled to a pro rata share from the Class Settlement Amount from which the costs of administration, Plaintiff's counsel's litigation costs, and Named Plaintiff's Service Award shall be deducted. All Class Members must submit a claim form, an exemplar of which is included hereto as part of Exhibit B, confirming his or her injury and entitlement to payment.

2. Service Award to Class Representative. Plaintiff's Counsel may petition the Court for a \$2,500.00 service award for Plaintiff as consideration for her efforts on behalf of the Settlement Class. If approved by the Court, the Service Award will be paid to Plaintiff by the Settlement Administrator at the same time as the Settlement Payments are issued to Settlement Class Members.

3. Attorneys' Fees and Costs. Plaintiff's Counsel may apply to the Court for an award attorneys' fees of \$100,000.00, and costs totaling \$1,858.15. Defendant agrees not to oppose Plaintiff's application for fees and costs, which shall be made part of the Parties' Joint Motion for Final Approval of the Class Action Settlement and shall be filed at least fourteen (14) calendar days before the Court's hearing on the Motion for Final Approval of the Parties' Class Action Settlement. By signing this Agreement, the Parties warrant that Class Counsel's attorneys' fees were negotiated only after the amount paid to the class had been agreed upon. Additionally, the \$100,000.00 in attorneys' fees are not part of the Settlement Fund, and will be paid directly by Defendant to Plaintiff's counsel, subject to Court approval, as soon as practicable after the Settlement Effective Date, but in no event later than ten (10) calendar days after that Date. In the event the Court reduces the attorneys' fees awarded, this Agreement shall remain in full force and effect and the attorneys' fees shall be reduced to the amount determined by the court. Finally, the costs totaling \$1,858.15 Plaintiff's counsel is entitled to seek to recover is to be paid from the Settlement Fund, subject to Court approval.

4. Settlement Class Members' Distribution. The Settlement Fund will be distributed in the form of a check to each member of the Settlement Class submitting a timely, valid claim, mailed to his or her last known address, in a pro rata amount determined by the Settlement Administrator, after costs of administration, Plaintiff's counsel's litigation costs, and Service Award are deducted. For the avoidance of doubt, each class member who files a claim form will receive an equal pro rata portion of the net Settlement Fund, determined by taking the total Settlement fund amount – the cost of administration – litigation costs – Service Award = Net Settlement Fund Amount / number of valid claims filed = net settlement payment amounts to class

members. This will result in a likely net settlement of approximately \$62.55 per class member who timely files a claim.<sup>1</sup>

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

6. Payment of Settlement Fund. As soon as practicable after the Settlement Effective Date, but in no event later than ten (10) calendar days after that Date, Defendant will pay, or cause to be paid, by wire transfer, to the Settlement Administrator, the Class Settlement Fund, from which the costs of administration, Plaintiff's counsel's litigation costs, and the Service Award shall first be deducted and paid. Following those deductions, the Settlement Administrator shall distribute the remaining money in the settlement fund on a pro rata basis to all Settlement Class Members who filed a claim as set forth herein. No funds revert to Defendant. Any funds that are unclaimed (which shall only arise if/when a valid claim is made and a check is mailed but then not cashed) shall revert to a cy pres recipient (Bay Area Legal Services, a non-profit Tampa-based law firm serving indigent clients), subject to Court.

7. Service Payment to Plaintiff and Payments to Settlement Class Members.  
All payments to Settlement Class Members will be mailed by the Settlement Administrator by

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<sup>1</sup> This assumes approximately 10% of class members will file claims. (\$35,000-\$8,748 cost of settlement administration - \$1,858.15 litigation costs - \$2,500 service award = \$21,893.85 / 350 timely claims from 10% of 3,500 total class members = \$62.55.

check and delivered by first-class U.S. mail, postmarked within ten (10) calendar days of the Settlement Administrator's receipt of the Class Settlement Fund as set forth above. The Settlement Administrator will include with each check an Internal Revenue Service (IRS) Form 1099 for Plaintiff and any Settlement Class Member for whom a form is required. All checks will expire sixty (60) days after they are issued and will state this on their face. If any such payment is returned by the U.S. Postal Service as undeliverable, or is un-cashed or not negotiated before it expires, neither Defendant nor the Settlement Administrator nor Class Counsel shall have any further obligations to Plaintiff or any Settlement Class Member, except that:

a. for any check returned by the U.S. Postal Service before the check's expiration date with a forwarding address, the Settlement Administrator will mail the check to the forwarding address. If no such forwarding address is available, the Settlement Administrator shall use commercially reasonable means to locate an updated address;

b. if Plaintiff or a Settlement Class Member contacts the Settlement Administrator or Class Counsel to request a replacement check, the Settlement Administrator will comply with that request by cancelling the initial check and issuing a replacement check, but the replacement check shall expire on the same date as the original check; and

c. the Parties agree that all Settlement Class Members waive and abandon any ownership interest in any undeliverable, returned, un-cashed, or non-negotiated checks and further agree that no obligation has been generated or proven with respect to such undeliverable, returned, un-cashed, or non-negotiated checks.

## **V. RELEASE OF CLAIMS.**

A. Releases and Waivers of Claims by the Settlement Classes. On the Settlement Effective Date, for the Settlement Classes' benefits and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, all Settlement Class Members who

have not filed a timely exclusion request to exclude themselves from the Settlement, and each of their respective spouses, heirs, executors, trustees, guardians, wards, administrators, representatives, agents, attorneys (except for Plaintiff's law firms), partners, successors, predecessors and assigns, and all those acting or purporting to act on their behalf, fully and forever release, waive, acquit, and discharge Defendant and its respective parents, subsidiaries, affiliates, officers, directors, employees, agents, attorneys, insurers, and assigns, as well as Sterling Background Services, Inc. ("the Released Parties") from any and all claims that the Settlement Class has or may have arising out of or relating directly or indirectly in any manner whatsoever to the facts alleged or which could have been alleged or asserted in the Action, including broadly any claim that could be asserted against the Released Parties under the FCRA, including but not limited to claims arising under 15 U.S.C. §§ 1681b(b)(2)(A), and any parallel state or common law claims related to background checks.

B. Named Plaintiff's General Release and Waiver of Claims. On the Settlement Effective Date, Plaintiff, on behalf of herself, agents, insurers, representatives, attorneys, assignees, heirs, executors, vendors, and administrators, will release and forever discharge Defendant and the Released Parties, to the fullest extent permitted by law, from any and all claims Plaintiff has by reason of any cause, matter or thing whatsoever, from the beginning of the world to the date on which the final Settlement Agreement is executed, including both known and unknown and suspected and unsuspected claims and causes of action in addition to or different from those which she now knows or believes to be true with respect to the allegations and subject matters in the Action and including but not limited to any claims relating to her employment with, separation from, or failure to be employed by, Defendant. The parties shall enter into a comprehensive agreement relating to Plaintiff's general release. In exchange for this general release, which does not apply to the Settlement Class Members, Defendant agrees to pay Plaintiff

an additional \$7,500.00. For the avoidance of doubt, as a general release payment in exchange for a dismissal with prejudice of her claims in the non-class case, Case No.: 2020 CA 001023 OC, currently pending in state court in Osceola County, Florida. The \$7,500.00 general release payment will be paid within 14 days of the filing of the stipulation for dismissal with prejudice in the non-class case, Case No.: Case No.: 2020 CA 001023 OC, and is not subject to Court approval. The \$2,500.00 incentive payment is subject to final Court approval by the Court presiding over the class action settlement in state court. These amounts (\$2,500.00 and \$7,500.00) will be paid to Ms. Lopez in addition to her pro-rata distribution amount from the Settlement Fund.

## **VI. NO ADMISSION OF LIABILITY**

A. No Admission. Defendant has asserted and continues to assert many defenses in this litigation and have expressly denied and continue to deny any fault, wrongdoing or liability whatsoever arising out of the conduct alleged in the Action. This Settlement constitutes a compromise settlement of disputed claims and shall not be deemed or construed to be an admission or acknowledgment of liability on any allegations or claim asserted in the Action. Any stipulations or statements by Defendant in this Settlement Agreement are made for settlement purposes only.

## **VII. NOTICE, OPT OUT, OBJECTIONS, AND SETTLEMENT APPROVAL**

A. Notice to Disclosure Settlement Class. As soon as practicable but in no event more than fifteen (15) business days after the Court has issued an order preliminarily approving this settlement in substantially the same form as Exhibit A, the Settlement Administrator will send the approved Notice of Settlement short form notice, attached as Exhibit B, to all members of the Settlement Class via first-class U.S. Mail. The Notice shall be mailed to each member of the Settlement Class Members' last known mailing address, as updated by Class Counsel using the U.S. Postal Service's database of verifiable mailing addresses (the CASS database) and the National Change-of-Address database, and any other commercially reasonable means to obtain

valid addresses. The Notice shall bear the Settlement Administrator's mailing address as the return-mail address, and shall include a reference to the Internet site containing the Long-Form Notice, which is attached as Exhibit C.

B. Notices Returned as Undeliverable. For all Notice of Settlements returned without forwarding addresses, the Settlement Administrator will use commercially reasonable means to update members of the Settlement Class Members' address and will re-mail the Notice of Settlement to those class members of the Settlement Class who can be located.

C. Submitting Claims. Settlement Class Members must submit their claims in writing to the Settlement Administrator within 60 days from the date notice is mailed in order to receive a pro rata share of the Class Settlement Amount.

D. Objections. Any Settlement Class Member who wishes to object to the Settlement must file a timely written statement of objection with the Clerk of Court, and mail a copy of that objection with the requisite postmark to Class Counsel and Defense Counsel no later than the Objections Deadline. The Notice of Objection must state the case name and number; the basis for and an explanation of the objection; the name, address, telephone number, and email address of the Settlement Class Member making the objection; and a statement of whether the Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel. Any Settlement Class Member who fails to object in the manner prescribed shall be deemed to have waived and shall be foreclosed forever from raising any objections to the settlement.

E. Right to Opt Out. All members of the Settlement Class will have the right to be excluded from (i.e., to "opt out" of) the Settlement Class. On or before the Opt-Out Deadline established by the Court, each Settlement Class Member who elects to opt out of the settlement must send, by first-class U.S. mail, written notice addressed to the Settlement Administrator indicating his or her name and address and stating that he or she desires to opt-out of the settlement

or otherwise does not want to participate in the settlement. Any member of the Settlement Class who does not timely (as measured by the postmark on that individual's written notice) opt out of the settlement by written notice correctly directed to the Settlement Administrator and containing the requisite information shall become a Settlement Class Member and shall be bound by any Orders of the Court, the Judgment, and the Settlement, including the Release.

F. Preliminary Settlement Approval. As soon as practicable after the Parties execute this Agreement, the Parties will present this Agreement to the Court for preliminary settlement approval and will request by filing a Joint Motion that the Court enter an order preliminarily approving the settlement in substantially the same form as attached Exhibit A.

### **VIII. HEARING ON THE PROPOSED SETTLEMENT**

A. On the date set by the Court for the Fairness Hearing, Plaintiff and Defendant shall jointly request the Court to review any petitions to intervene or objections to the Agreement which have been timely filed and to conduct such other proceedings (including the taking of testimony, receipt of legal memoranda and hearing of arguments from the parties or others properly present at the Fairness Hearing) as the Court may deem appropriate under the circumstances.

B. At the Fairness Hearing, Plaintiff and Defendant shall jointly request the Court to enter an order and final judgment and decree which, among other things:

1. Approves, without material alteration, the proposed settlement, pursuant to the terms of this Agreement;

2. Finds that the terms of this Agreement are fair, reasonable and adequate to the Settlement Class;

3. Provides that each member of the Settlement Class who did not timely exclude himself or herself shall be bound by this Agreement;



4. Finds that the mailing of the Notice of Settlement in the form attached as Exhibit A and the other means of notice required by this Agreement satisfy the requirements of a class action and the requirements of due process;

5. Approves the amount of attorneys' fees and costs to be paid to Class Counsel and the Service Award to Plaintiff; and,

6. Dismisses all claims made in this case on the merits and with prejudice.

#### **IX. MISCELLANEOUS PROVISIONS.**

A. No Public Comment. The Parties agree that Class Counsel will not issue or cause to be issued any press releases or their equivalent and will not conduct or participate in any press conferences about the settlement.

B. Communications with Settlement Class Members. The Parties agree that Class Counsel may communicate directly with members of the Settlement Classes to answer questions, as needed. The Parties also agree that Defendant may communicate with Settlement Class Members who are also customers, employees, or prospective employees, in the ordinary course of business.

C. Authority. The signatories below represent they are fully authorized to enter into this Agreement and to bind the Parties and the Settlement Class Members.

D. Best Reasonable Efforts and Mutual Full Cooperation. The Parties agree to fully cooperate with one other to accomplish the terms of this Agreement, including but not limited to, executing such documents and taking such other actions as may be reasonably necessary to implement the terms of this settlement. The Parties to this Agreement will use their best reasonable efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary or ordered by the Court, or otherwise, to effectuate this Agreement and the terms set forth in it and to ensure that checks are mailed to Settlement Class Members in a timely manner.

As soon as practicable after execution of this Agreement, Class Counsel will, with the assistance and cooperation of Defendant and its counsel, take all necessary steps to secure the Court's final approval of the Parties' settlement.

E. Binding. This Agreement will be binding upon and will inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.

F. No Prior Assignments. The Parties represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or that are rights released or discharged in this settlement except as set forth in this Agreement.

G. Standing. For settlement purposes only, Defendant agrees not to challenge Plaintiff's standing as a class representative in any judicial forum, state or federal.

H. Construction. The Parties agree that the terms and conditions of this Agreement are the result of lengthy, arm's-length negotiations between the Parties and that this Agreement will not be construed in favor of or against any Party by reason of the extent to which any Party or the Party's counsel participated in the drafting of this Agreement.

I. Construction of Captions and Interpretations. Paragraph titles, captions, or headings in this Agreement 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 in it. Each term of this Agreement is contractual and is not merely a recital.

J. Notices. Unless otherwise specifically provided in this Agreement, should any notices, demands or other communications be required after entry of the Court's Final Approval Order and Judgment, they will be in writing and will be deemed to have been duly given as of the

third calendar day after mailing by U.S. registered or certified mail, return receipt requested, addressed as follows:

To Plaintiff:

Luis A. Cabassa, Esq.  
lcabassa@wfclaw.com  
Brandon J. Hill, Esq.  
bhill@wfclaw.com  
Wenzel, Fenton, Cabassa, P.A.  
1110 N. Florida Ave., Suite 300  
Tampa, Florida 33602-3300  
Telephone: 813.224.0431  
Facsimile: 813.229.8712

*Attorneys for Plaintiff  
and the Settlement Classes*

To Defendant:

Matthew R. Simpson  
msimpson@fisherphillips.com  
JonVieve D. Hill  
jhill@fisherphillips.com  
FISHER & PHILLIPS, LLP  
1075 Peachtree Street NE, Suite 3500  
Atlanta, GA 30309  
Telephone: (404) 231-1400  
Facsimile: (404) 240-4249

*Attorneys for Defendant*

K. Communication. Any communication made in connection with this Agreement shall be deemed to have been served when sent by overnight delivery or registered or certified first-class U.S. mail, postage prepaid, or when delivered in person at the addresses designed above.

L. Class Signatories. The Parties agree that because the members of the Settlement Class are so numerous (approximately 3,500 total), it is impossible and impracticable to have each Settlement Class Member execute this Agreement. Therefore, the Notice will advise all Class Members of the binding nature of the release and will have the same force and effect as if executed by each Class Member.

M. Choice of Law. This Agreement shall, in all respects, be interpreted, construed and governed by the laws of the State of Florida without regard to application of the choice of law rules of any jurisdiction.

N. Counterparts. This Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart will be deemed an original, and, when taken together with other signed counterparts, will constitute one Agreement, which will be binding upon and effective as to all Parties, subject to the Court's approval.


O. If Settlement Not Approved. If any court disapproves or sets aside the Parties' Settlement or this Agreement or any material part of either for any reason or refuses to enter or give effect to the Final Approval Order, or holds that any terms of the Settlement or this Agreement or any of the attached exhibits should be modified in any material way, then the Parties may either jointly agree to accept the Settlement or this Agreement as judicially modified or, if they do not agree, either Party may appeal that ruling to the extent possible, or, in the alternative, terminate the Agreement. If the Agreement is terminated pursuant to this provision, or if an appeal is filed and if the Settlement, this Agreement, or the Final Approval Order or its equivalent in all material respects are not in effect after the termination of all proceedings arising out of that appeal, then unless the Parties jointly agree otherwise, this Agreement shall become null and void, the Parties will return to the status quo ante, the Settlement Fund amount shall be returned to Defendant, and the Parties will jointly request that the Action proceed.

**X. EXHIBITS**


- A. Proposed Order Granting Joint Motion for Preliminary Approval.
- B. Short Form Notice.
- C. Long Form Notice.
- D. Claim Form.

**XI. EXECUTION**

The undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on that date upon which it has been executed by all the undersigned.

  
\_\_\_\_\_  
Brenda Lopez  
Plaintiff and Class Representative

12 / 06 / 2021  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Ollie's Bargain Outlet, Inc.  
Defendant

12/8/21  
Date

By: Matthew Ian Wilson  
Its: Corporate Attorney