

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BRANDON SANDERS,)	
)	
Plaintiff,)	
)	
v.)	
)	C.A. NO. 1:2018-CV-10016
MAKESPACE LABS, INC,)	
)	
Defendant.)	
)	
)	
)	
)	

**STIPULATION AND SETTLEMENT AGREEMENT BETWEEN PLAINTIFF AND
DEFENDANT MAKESPACE LABS, INC.**

This Settlement Agreement (“Agreement”) is made and entered into this 31st day of July, 2020 by and between Plaintiff Brandon Sanders (“**Plaintiff**”), on behalf of himself and the Settlement Class defined below and described herein, and Defendant MakeSpace Labs, Inc. (hereinafter referred to as “Defendant” or “**MakeSpace**”) related to claims in *Sanders v. MakeSpace Labs, Inc.*, No. 1:18-v-10016 (S.D.N.Y.) (the “**Action**”). Plaintiff and MakeSpace are collectively referred to herein as the “**Parties.**” This Stipulation is intended by the Parties to fully, finally and forever resolve, discharge and settle the Released Claims (as defined below), upon and subject to the terms and conditions hereof. This Settlement Agreement is intended by the Parties, as represented by Counsel, to settle the class action claims as follows:

I. THE FAIR CREDIT REPORTING ACT CLAIMS

On October 30, 2018, Plaintiff filed a Complaint in the United States District Court for the Southern District of New York. (Doc. 1.) The Action alleges that MakeSpace violated section 1681b(b)(3) of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681a–1681x (“FCRA”), on behalf of

behalf of Plaintiff and a class of individuals. The Action is filed on behalf of the Named Plaintiff, individually, as well as on behalf of consumers residing in the United States who applied for employment subject to a background check, which is referred to as a “consumer report” under the FCRA.¹

Plaintiff alleges that MakeSpace violated the FCRA by failing to comply with the FCRA’s pre-adverse action notification requirement, and failing to provide a copy of the background report it obtained *before* taking adverse action, as required by 15 U.S.C. § 1681b(b)(3). Every year some individuals who have applied to MakeSpace for employment have been similarly aggrieved by the same violation of 15 U.S.C. § 1681b(b)(3). Plaintiff contends that MakeSpace committed materially the same violations of the FCRA as to the Settlement Class Members.

The Action seeks to recover actual and statutory damages, punitive damages, and attorneys’ fees and costs. The Named Plaintiff and Settlement Class Members in the Action are represented by James A. Francis and Lauren KW Brennan of Francis Mailman Soumilas, P.C., Jeffrey B. Sand of Weiner & Sand, LLC, and Adam G. Singer of the Law Office of Adam G. Singer PLLC (“Class Counsel”). MakeSpace is represented by Rebecca W. Embry and Huma Ali of Landman Corsi Ballaine & Ford, P.C. (“Defense Counsel”).

Following the filing of the Action, the Parties engaged in comprehensive discovery through which Class Counsel was provided with information regarding whether MakeSpace provided notice and a copy of the consumer reports it obtained on consumers before determining whether to hire them based upon such consumer report, as well as the number of consumers affected by MakeSpace’s practices. The Parties reached a settlement after jointly retaining the

¹ Plaintiff also asserts an individual claim against MakeSpace for violation of the New York State Human Rights Law, N.Y. Exec. Law § 290 et seq. (“NYSHRL”). Plaintiff and MakeSpace agree that this Settlement Agreement does not affect Plaintiff’s individual claim against MakeSpace under the NYSHRL, and does not release that claim.

services of an experienced mediator, the Hon. Diane M. Welsh (Ret.) and engaging in two days of adversarial, arms-length mediation, which resulted in this Settlement.

II. CLAIMS OF PLAINTIFF AND BENEFITS OF SETTLEMENT

Plaintiff believes that the claims asserted in the lawsuit have merit and that if the case did not settle they would prevail at trial. However, Plaintiff and Class Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the case against MakeSpace through trial and through appeals. Plaintiff and Class Counsel also have taken into account the uncertain outcome and the risk of any litigation, including proceedings involving class certification. Plaintiff and Class Counsel believe that the settlement set forth in this Settlement Agreement confers substantial benefits on the Settlement Class and is fair, reasonable, and adequate, and in the best interests of Plaintiff and the Settlement Class.

III. TERMS OF THE AGREEMENT OF SETTLEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Parties, by and through their respective attorneys, that, subject to the approval of the Court, the Action and the Released Claims shall be finally and fully compromised, settled, and released, and the Action shall be dismissed with prejudice upon and subject to the terms and conditions of the Settlement as follows:

1. Definitions

1.1. “Action” means the case styled *Sanders v. MakeSpace Labs, Inc.*, currently pending in United States District Court for the Southern District of New York, Docket No. 1:18-cv-10016 (S.D.N.Y.).

1.2. “CAFA” means the Class Action Fairness Act of 2005, 28 U.S.C. § 1711, *et seq.*

1.3. “CAFA Notice” means the notice described in section 4.8 below.

1.4. “Claims” means all claims brought or that could have been brought under the Fair Credit Reporting Act section 1681b(b)(3) for statutory, actual and punitive damages.

1.5. “Class Counsel” means James Francis and Lauren KW Brennan of Francis Mailman Soumilas, P.C., Jeffrey B. Sand of Weiner & Sand, LLC, and Adam G. Singer of the Law Office of Adam G. Singer PLLC.

1.6. “Court” means the United States District Court for the Southern District of New York.

1.7. “Defendant” or “MakeSpace” means MakeSpace Labs, Inc.

1.8. “Defense Counsel” means Rebecca W. Embry and Huma Ali of Landman Corsi Ballaine & Ford, P.C.

1.9. “Effective Date” is the date on which this Court’s entry of the Final Approval Order and this Court’s order regarding attorneys’ fees have all become final because the following has occurred: (i) the expiration of three (3) business days after the time to file a motion to alter or amend the Final Approval Order under Federal Rule of Civil Procedure 59(e) has passed without any such motion having been filed; (ii) the expiration of three (3) business days after the time in which to appeal the Final Approval Order has passed without any appeal having been filed (which date shall be deemed to be thirty-three (33) days following the entry of the Final Approval Order, unless the date to take such an appeal shall have been extended by Court order or otherwise, or unless the thirty-third (33rd) day falls on a weekend or a Court holiday, in which case the date for purposes of this Settlement shall be deemed to be the next business day after such thirty-third (33rd) day); and (iii) if such motion to alter or amend is filed, or if an appeal is taken, three (3) business days after a determination of any such motion or appeal that

permits the consummation of the Settlement. For purposes of this definition, the term “appeal” includes all writ proceedings.

1.10. “FCRA” means the Fair Credit Reporting Act, 15 U.S.C. §§ 1681a–x.

1.11. “Final Approval Hearing” means the hearing scheduled to consider final approval of the Settlement and awards to the Class Representative and Class Counsel.

1.12. “Final Approval Order” or “Judgment” means a judgment and order of dismissal entered by the Court in the Action granting final approval of the Settlement and entering a judgment according to the terms set forth in this Settlement, in the form attached hereto as **Exhibit A**.

1.13. “Settlement Class” means all natural persons residing within the United States and its Territories about whom, (i) beginning five (5) years prior to the filing of the Action and continuing through the date of this agreement, (ii) were the subject of a consumer report used by Defendant for employment purposes, (iii) were the subject of an adverse employment action by Defendant, and (iv) were not provided with a copy of the report and/or a written summary of their rights under the FCRA at least five (5) business days prior to the adverse action.

1.14. “Notice” means the form of notice to be provided to the Settlement Class, as further described in section 4.

1.15. “Opt-Out” means to timely request exclusion from the Settlement pursuant to Federal Rule Civil Procedure 23(c)(2)(B) and the procedure set forth in section 5.

1.16. “Order Directing Notice to the Class” means the order proposed and submitted by the Parties as set forth in section 4.1, in the form attached hereto as **Exhibit B**.

1.17. “Person” means an individual, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership,

association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assignees.

1.18. “Plaintiff” or “Class Representative” means Brandon Sanders.

1.19. “Released Claims” means those claims described with specificity in Section 3.

1.20. “Released Parties” means (i) Defendant MakeSpace Labs, Inc.; (ii) Defendant’s past, present and future parents, subsidiaries, affiliates, divisions, joint ventures, licensees, franchisees, and any other legal entities, whether foreign or domestic, that are owned or controlled by Defendant; and (iii) the past, present and future shareholders, officers, directors, members, employees, independent contractors, consultants, representatives, fiduciaries, insurers (including current and former agents), reinsurers, attorneys, legal representatives, predecessors, successors, and assigns of Defendant and the entities listed in (ii).

1.21. “Settlement” means the terms and conditions of settlement as described in this Settlement Agreement.

1.22. “Settlement Class Member” means any member of the Settlement Class.

1.23. “Settlement Fund” means the amounts set forth in section 2.4.

1.24. “Settlement Hearing” means the hearing described in section 7.

1.25. “Terminating Events” shall have the meaning set forth in section 10 below.

1.26. “Termination Notice” shall have the meaning set forth in section 10 below.

2. The Settlement Class Members And Consideration

2.1. For the purposes of effectuating the Settlement only, Plaintiff, Settlement Class Members and MakeSpace agree jointly to request that the Court certify the Settlement Class as set forth herein.

2.2. The **Settlement Class** consists of: All natural persons residing within the United States and its Territories about whom, (i) beginning five (5) years prior to the filing of the Action and continuing through the date of this agreement, (ii) were the subject of a consumer report used by Defendant for employment purposes, (iii) were the subject of an adverse employment action by Defendant, and (iv) were not provided with a copy of the report and/or a written summary of their rights under the FCRA at least five (5) business days prior to the adverse action. The Parties believe that the Settlement Class consists of approximately 143 individual members.

On the Effective Date, the Settlement Class set forth above shall become permanently certified unless the Judgment does not become final.

2.3. In the event the Settlement is not finally approved and implemented, or the Judgment does not become final, the Settlement Class is dissolved without prejudice or inference regarding the appropriateness of class certification and thereafter the issue of class certification will be decided *de novo*, and MakeSpace is not precluded from challenging class certification for any reason and no objections or arguments have been waived by this Settlement Agreement or the proceedings in connection therewith.

2.4. MakeSpace agrees to pay a total of Three Hundred Sixty Thousand Eight Hundred Fifty Dollars (\$360,850.00), exclusive of the costs of notice and administration, to settle the claims set forth by the Settlement Class (the “Settlement Fund”).

2.5. The Settlement Fund shall be disbursed as follows: (a) Automatic payments of \$950.00 to the Settlement Class Members, and (b) attorneys’ fees and expenses subject to court approval.

2.6. Subject to court approval, amounts remaining in the Settlement Fund after all payments described in section 2.5 will go to The Legal Action Center as *cy pres* recipient. There shall be no reverter of funds.

2.7. MakeSpace shall deposit or arrange to deposit the Settlement Fund into an interest-bearing account with the financial institution designated by Class Counsel, subject to reasonable approval by MakeSpace. MakeSpace shall complete deposit of the \$360,850.00 by five (5) days after the Effective Date.

2.8. The amounts payable from the Settlement Fund for the court-approved for Class Counsel's attorneys' fees and costs shall be payable within seven (7) days after the Effective Date.

2.9. Within seven (7) days after the Effective Date, the Settlement Administrator shall mail checks to Settlement Class Members who have not opted out of the Settlement, which checks shall become void 60 days after issuance.

2.10. All checks paid pursuant to this Settlement shall become stale and void after sixty (60) days of mailing. Upon receipt of any undelivered check, the Settlement Administrator shall take commercially reasonable efforts to identify mailing addresses and re-mail any checks returned as undeliverable. The Settlement Administrator shall not mail checks to addresses it has already confirmed are incorrect or to whom a class member's notice was undeliverable. All funds not disbursed because the checks were not cashed within the sixty (60) day period shall subject to court approval, go to the Parties' agreed-upon *cy pres* recipient pursuant to section 2.4.4.

2.11. Settlement Class Members shall be solely responsible for the taxes, interest, and penalties due and owing, if any, should the payment of Settlement Funds, or any portion thereof, be determined to be taxable.

2.12. Any costs and/or fees that are necessary for the Settlement Administrator to prepare and/or deliver or otherwise administer forms W-9 and 1099 as may be required for any Settlement Class Member shall be included in the costs of notice and administration.

3. Releases

Upon entry of final judgment dismissing the Complaint with prejudice, Plaintiff and all Settlement Class members shall release the Released Parties from all Claims arising under the Fair Credit Reporting Act, 15 U.S.C. § 1681b(b)(3), up to and including the Effective Date.

4. Notice of Order and Settlement Hearing

4.1 On execution of this Settlement, Plaintiff shall move the Court for an Order Directing Notice to the Class of the terms of this Settlement Agreement with MakeSpace's consent. It is contemplated that the consent motion for an Order Directing Notice to the Class will be filed contemporaneously with the filing of this Settlement Agreement. The Parties shall submit to the Court the Settlement Agreement, together with its Exhibits, and shall apply for an Order Directing Notice to the Class, substantially in the form and content of **Exhibit B** hereto, requesting, *inter alia*, (a) approval for the distribution of the Notices substantially in the form and content of Exhibits C, D, and E hereto; and (b) a time and date for the Final Approval Hearing.

4.2 No later than ten (10) calendar days after entry of the Order Directing Notice to the Class, MakeSpace shall provide to the Settlement Administrator, in a mutually agreeable electronic format, a list of names and addresses of the individuals that comprise the Settlement

Class (the “Class List”). The Settlement Administrator will have three (3) business days to note any objections to the content or format of the Class List, which will otherwise be deemed acceptable and approved for use by the Settlement Administrator.

4.3 The primary form of notice to Settlement Class Members shall be via electronic mail. Defendant represents that it maintains electronic mail addresses for the Settlement Class Members and communicates with consumers via electronic mail in the ordinary course of its business. The Parties agree that notice via electronic mail is most practicable method available.

4.3.1 The Settlement Administrator shall send, via electronic mail, a notice in the form of **Exhibit C** to members of Settlement Class. The Settlement Administrator shall send these notices no later than twenty (20) calendar days after the entry of the Order Directing Notice to the Class.

4.3.2 For Settlement Class Members for whom no electronic mail address is available, or whose electronic mail notices were returned as undeliverable after the second attempt, the Settlement Administrator shall send the postcard notices described herein. Prior to sending postcard notice to any Settlement Class Member, the Settlement Administrator shall update mailing addresses through the USPS National Change of Address database and utilize an address verification resource to identify missing addresses. If the Settlement Administrator receives address change notifications from the U.S. Postal Service within thirty (30) calendar days of mailing of any postcard notice, the Settlement Administrator will re-mail the postcard notice. Where applicable, the Settlement Administrator shall send, via U.S. Mail, a notice in the form of **Exhibit D**.

4.4 All Settlement Class Members who do not opt out pursuant to section 5 below within sixty (60) days from the date of sending of the notices, as described in the notices, shall be considered Settlement Class Members and shall be bound by the terms of the Settlement.

4.5 The Settlement Administrator will establish a website containing detailed information about the Settlement Agreement, including the Long Form Notice in the form of **Exhibit E**, frequently asked questions and answers, pleadings, relevant litigation documents, and contact information for Class Counsel. The Settlement Administrator will terminate the websites sixty (60) calendar days after the later of either (a) one year after the Effective Date or (b) the date on which the Settlement Agreement is terminated.

4.6 The Settlement Administrator shall establish a Telephone Assistance Program, including a toll-free telephone number, which will have recordings that answer questions from the Settlement Class Members. The Settlement Administrator shall make reasonable efforts to provide all information available through the toll-free numbers in Spanish as well as English. The Settlement Administrator shall provide periodic updates to Class Counsel regarding the total number of calls Settlement Class Members make to the toll-free number.

4.7 The Settlement Administrator shall cause notice of the proposed settlement that meets the requirements of the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715, to be served on the appropriate federal and state officials no later than ten (10) days after the filing of this Settlement with the Court (“CAFA Notice”).

5. Procedure to Opt-Out of the Settlement:

5.1 Settlement Class Members may request to opt out of any class of which they are a member by sending a written request to the Settlement Administrator either electronically via the electronic mail address provided on the settlement website and in the class notices, or to the

address provided on the settlement website and in the class notices. All opt out requests must be directed to “Opt out Requests – *Sanders v. MakeSpace* Settlement Administrator” and must contain the Settlement Class Member’s full name, current mailing address and telephone number, and a specific statement that the Settlement Class Member want to be excluded from the settlement. Opt out requests must be sent via electronic mail or postmarked no later than sixty (60) calendar days after the date of notice. In no event shall persons who purport to opt out of any Settlement Class as a group, aggregate, or class involving more than one Settlement Class Member, be considered valid opt-outs. Opt out requests that do not comply with the provisions of this paragraph, shall be invalid.

5.2 No later than seven (7) business days after the deadline for submission of a request to opt out, the Settlement Administrator shall provide Class Counsel and Defense Counsel with a complete list of all persons who have properly Opted Out of the Settlement together with copies of the opt-out requests. The Settlement Administrator’s judgment as to whether an Opt-Out is valid shall control and be binding.

6. Procedure to Object to the Settlement

6.1 Any Settlement Class Member who does not opt out, but who instead wishes to object to the Settlement or any matters as described in the Notices, may do so by filing with the Clerk of Court, and serving on Class Counsel and Defense Counsel, a notice of their intention to object, which shall include the following: the caption of the Litigation; the full name, address and telephone number of the Class Member objecting to the Settlement; a detailed statement of each objection asserted, including the grounds for objection and reasons for appearing and being heard, together with any documents such Class Member wishes to be considered in support of the objection; the identity of all counsel who represent the objector, including any former or

current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or Fee Petition; any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector’s counsel and any other person or entity; the identity of all counsel representing the objector who will appear at the Final Approval Hearing; and, all relief sought. Objections must be mailed so that they are postmarked no later sixty (60) calendar days after the date of the notice. Objections to Settlement Class Counsel’s attorneys’ fees may be supplemented up to seven (7) days after the filing of a motion for such fees to address additional information or materials in the motion. The objection and any supplement must indicate whether the Class member and/or his attorney(s) intends to appear at the Final Approval Hearing. Any attorney who intends to appear the Final Approval Hearing must enter a written Notice of Appearance of Counsel with the Clerk of Court no later than ten (10) business days before the Final Approval Hearing.

6.2 Unless otherwise allowed by law, only Settlement Class Members to object to the Settlement pursuant to the terms set forth above and in compliance with the deadlines set forth above and in the Order Directing Notice to the Class shall have their objections considered by the Court, be heard during the Final Approval Hearing, or have the right to appeal any Final Judgment or ruling on Class Counsel’s request for attorneys’ fees.

7. Final Approval Hearing Judgment and Notice

7.1 The Final Approval Hearing, as established in the Order Directing Notice to the Class, shall be for the purpose of consideration of final approval of the Settlement set forth in this Settlement Agreement.

7.2 No later than ten (10) calendar days before the Final Approval Hearing, the Settlement Administrator will certify to the Court that it has fully complied with the notice provisions set forth herein.

8. Administration and Supervision of the Settlement Fund

8.1 A Settlement Administrator will be selected by Class Counsel unless MakeSpace has grounds for reasonable objection, in which case the Parties will mutually agree upon the Settlement Administrator. The Settlement Administrator shall serve as a neutral third party to provide notice to the Class and class administration services. The Settlement Administrator will be approved by and responsible to the Court, and shall directly administer the Notice of the Settlement, the claims process and shall control the Settlement Fund, subject to court approval. The Settlement Administrator shall administer and oversee the sending of the court-approved Notices and distribution of funds from the Settlement Fund only with mutual approval of both MakeSpace and Class Counsel. All funds shall be maintained in a bank account unless the Parties jointly agree otherwise. Costs of settlement administration shall be paid by Defendant. On completion of the administration of the Settlement, the Settlement Administrator shall provide or cause to be provided to the Court a final report on its administration of the Settlement. The Settlement Administrator shall have and shall provide to Class Counsel and Defense Counsel reasonable access to documents relating to compliance and administration of the Settlement, with the right, but not the obligation, to review and audit the documents to determine full compliance with the terms of the Settlement. The Settlement Administrator shall hold all documents and information received regarding Settlement Class Members and potential Settlement Class Members in confidence, and not use such information for any purpose apart from administering the settlement. Notwithstanding the foregoing, absent express written

permission of Defense Counsel, the Settlement Administrator shall not share any personally identifying information of Settlement Class Members or potential Settlement Class Members with Plaintiff or Class Counsel.

8.2 No person shall have any claim against the Settlement Administrator, Plaintiff, Class Counsel, Defense Counsel and/or MakeSpace based on the monetary payments made substantially in accordance with this Settlement Agreement, or further order(s) of the Court or stipulations of the Parties on the record.

9. Plaintiff's Counsel's Attorneys' Fees and Reimbursement of Expenses

9.1 Class Counsel shall make an application to the Court for an award from the Settlement Fund for attorneys' fees, costs, and other expenses in an amount not to exceed Two Hundred Twenty-five Thousand Dollars (\$225,000.00). MakeSpace shall not oppose or object to this application provided that the request for an award of fees and costs is consistent with this Settlement. The Court's award of fees and costs shall be payable from the Settlement Fund within seven (7) days after the Effective Date. Any amount requested but not awarded by the Court shall be returned to Defendant.

10. Conditions of Settlement, Effect of Disapproval, Cancellation or Termination

10.1 Plaintiff or MakeSpace, at any of their sole discretion, shall each have the right to terminate the Settlement and this Settlement Agreement, including dissolution of the Settlement Class, if any of the following conditions subsequently occurs ("Terminating Events"):

(a) the Court's refusal to direct notice to the class or permanently approve this Settlement or any material part of it;

(b) the Court requires a notice program in addition to or substantially different from that set forth herein;

- (c) the Court declines to enter the Judgment in any material respect;
- (d) the potential members of the Settlement Class exceeds 143 individuals;
- (e) the Judgment is reversed, vacated or modified in any material respect by the Second Circuit Court of Appeals, the United States Supreme Court, or adverse action being taken by any other trial court or appellate court in any jurisdiction.

10.2 The failure of the Court or any appellate court to approve in full the request by Class Counsel for attorneys' fees, costs and other expenses shall not be grounds for Plaintiff, the Settlement Class Members, or Class Counsel to terminate this Settlement.

10.3 If any Party exercises its respective rights to terminate this Settlement and Settlement Agreement pursuant to section 10.1 herein, the Party shall terminate the Settlement, including dissolving the Settlement Class, by delivering written notice of the election to terminate ("Termination Notice") to all other parties and their counsel hereto within thirty (30) days of the Terminating Event. In the event that a Termination Notice is so provided, then the Settlement shall be canceled and terminated unless and until Class Counsel and Defense Counsel mutually agree in writing to proceed with the Settlement.

10.4 In the event that the Settlement is terminated as provided for herein, then (a) this Settlement shall be null and void and of no further force and effect, including voiding the Settlement Class; (b) the Settling Parties shall be restored to their respective positions as of June 8, 2020, including without waiver of any objections, defenses, or arguments; (c) any portion of the Settlement Fund not used to fund notice and administration as of the time of the Terminating Event shall be returned to MakeSpace; (d) this Settlement shall not be used in the Action or in any other proceeding for any purpose; and; (e) any judgment or order entered by the Court in accordance with the terms of the Stipulation shall be treated as vacated, *nunc pro tunc*.

10.5 Upon the filing of the proposed Settlement with the Court, all proceedings shall be stayed until further order of the Court, except such proceedings as may be necessary either to implement the proposed Settlement or to comply with or effectuate the terms of this Settlement Agreement.

11. Final Judgment

The Parties shall jointly seek entry by the Court of a Final Judgment that includes provisions:

- (a) granting final approval of this Settlement, and directing its implementation pursuant to its terms and provisions;
- (b) ruling on Class Counsel's application for attorneys' fees, costs and other expenses;
- (c) discharging and releasing MakeSpace from the Released Claims as defined herein;
- (d) directing that the Action be dismissed with prejudice, and,
- (e) reserving to the Court continuing and exclusive jurisdiction over the parties with respect to the Settlement and the Final Judgment.

12. Miscellaneous Provisions

12.1 The Parties (a) acknowledge that it is their intent to consummate this agreement; (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement; and (c) agree to exercise their best efforts to accomplish the foregoing terms and conditions of this Settlement.

12.2 Class Counsel, Plaintiff, Defense Counsel and MakeSpace shall make no media or press statements with regard to the Action or the Settlement Agreement and the settlement proceedings except that they may place on their law firm websites general anonymous

information about their handling of the case no earlier than sixty (60) days after the Court enters the Final Approval Order in the Action.

12.3 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Settlement Agreement.

12.4 This Settlement Agreement may be executed in counterparts, including by signature transmitted by facsimile or electronic mail. Each counterpart, when so executed, shall be deemed to be an original, and all such counterparts together shall constitute the same instrument.

12.5 Before entry of the Final Approval Order, the Settlement may be modified or amended only by written agreement signed by or on behalf of all Parties with notice to be given to the Court of the agreed modification or amendment, or by stipulations made on the record. Following entry of the Final Approval Order, the Settlement may be modified or amended only by written agreement signed by or on behalf of all Parties and approved by the Court.

12.6 The provisions of this Settlement Agreement may be waived only by an instrument in writing executed by the waiving party. The waiver by any of the Parties of any breach of this Settlement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Settlement.

12.7 This Settlement binds and inures to the benefit of the Parties, their assigns, affiliates, heirs, administrators, executors, and successors.

12.8 Except as otherwise expressly stated herein, the Settlement is not intended to confer any benefits upon any non-party. For avoidance of doubt, the Released Persons other than MakeSpace are intended third-party beneficiaries.

12.9 This Settlement Agreement constitutes the entire agreement among the Parties pertaining to the settlement of the Action and supersedes any and all prior and contemporaneous undertakings of the Parties in connection therewith. In entering into this Settlement, the Parties have not relied upon any representation or promise made by the other Party not contained in this document.

12.10 The headings in this document are included for convenience only and shall not be deemed to constitute part of this Settlement or to affect its construction.

12.11 Where this Settlement requires any party to provide notice or any other communication or document to any other party, such notice, communication, or document shall be provided by electronic mail or overnight delivery to:

12.12 For the Class:

James A. Francis
FRANCIS MAILMAN SOUMILAS, P.C.
1600 Market Street, Suite 2510
Philadelphia, PA 19103

12.13 For Defendant:

Rebecca W. Embry
LANDMAN CORSI BALLAINE & FORD P.C.
120 Broadway 13th Floor
New York, NY 10271

12.14 This Settlement Agreement is made under the laws of New York without regard to otherwise applicable principles of conflicts of laws, whether of the State of New York or any other jurisdiction.

12.15 The Parties agree that a copy of this Settlement Agreement is binding and valid just as the signed original would be binding and valid.

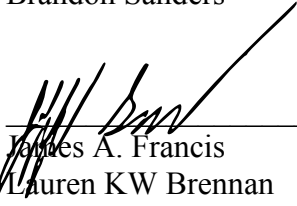
12.16 Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement, subject to Court approval.

AGREED:

BRANDON SANDERS, Plaintiff



Brandon Sanders



James A. Francis

Lauren KW Brennan

FRANCIS MAILMAN SOUMILAS PC

1600 Market Street, 25th Floor

Philadelphia, PA 19103

Jeffrey B. Sand

WEINER & SAND LLC

800 Battery Ave, Suite 100

Atlanta, GA 30339

Adam G. Singer

Law Office of Adam G. Singer, PLLC

60 E 42nd Street, Suite 4600

New York, NY 10165

Counsel for Plaintiff

MAKESPACE LABS, Inc., Defendant

By: 

Its: CEO



Rebecca W. Embry
LANDMAN CORSI BALLAINE & FORD P.C.
120 Broadway 13th Floor
New York, NY 10271

*Attorneys for Defendant,
MakeSpace Labs, Inc.*