

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

MOHAMMAD HARAKE, on behalf of  
himself and on behalf of all others  
similarly situated,

**Case No.: 8:19-cv-00243-CEH-CPT**

Plaintiff,

v.

TRACE STAFFING SOLUTIONS, LLC,

Defendant.

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**JOINT STIPULATION OF CLASS SETTLEMENT**

Plaintiff, MOHAMMAD HARAKE (“Plaintiff”), individually and on behalf of the putative class, and Defendant, TRACE STAFFING SOLUTIONS, LLC, for itself and for the benefit of all other past and present related entities, direct or indirect affiliates, parent companies and subsidiaries (collectively, “Defendant”), individually and on behalf of other related parties, enter into this Settlement Agreement and Release to settle the issues between them asserted in this action.

**I. RECITALS.**

1. On February 20, 2019, Plaintiff filed his First Amended Class Action Complaint in this action, in the United States District Court for the Middle District of Florida, Tampa Division (the “Action”).

2. Plaintiff asserted a cause of action against Defendant for alleged violations of the Fair Credit Reporting Act (“FCRA”) relating to Defendant’s alleged procurement of consumer reports regarding employees or prospective employees without complying with its obligations under the FCRA. Specifically, Plaintiff alleged a claim for relief for Defendant’s

purported violation of 15 U.S.C. § 1681b(b)(2)(A)(i) alleging that Defendant procured or caused to be procured a consumer report regarding Plaintiff and a claim for relief for Defendant's purported violation of 15 U.S.C. § 1681b(b)(2)(A)(ii) by procuring or causing to be procured consumer reports for employment purposes regarding Plaintiff and other class members without making the required disclosure "in a document that consists solely of the disclosure."

3. In a Motion for Class Certification, filed in this case on August 9, 2019, Plaintiff defined the putative class affected by Defendant's alleged violations of the FCRA as:

Background Check Class: All natural persons in the United State who: (1) were the subject of a consumer report that was procured by Trace Staffing (or caused to be procured by Trace Staffing) from Employment Screening Service for an employment purpose; (2) to whom Trace Staffing presented the disclosure form attached to Plaintiff's First Amended Class Action Complaint before procuring that report; (3) within two years of the filing of this lawsuit through the date the Class list is prepared.

4. The Parties have reached a compromise in principle on a class basis, contingent upon the negotiation and execution by the parties of this final agreement and this final agreement being approved by the Court.

5. Defendant denies that it has engaged in any wrongdoing, does not admit or concede 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, and denies that it has any liability whatsoever, but has agreed to this Settlement Agreement and Release 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 business operations that could result from ongoing litigation of this matter.

6. Plaintiff, the Settlement Class, and Class Counsel are aware that Defendant has significant defenses to the allegations in this Action upon which Defendant might prevail and that, as a result, Plaintiff and the Settlement Class may not receive any benefit or consideration for the claims that have been asserted against Defendant.

7. Based upon their analysis and evaluation of several factors, Class Counsel recognize the substantial risks of continued litigation and delays, including the likelihood that the claims, if not settled now, might not result in any recovery whatsoever for the Settlement Class.

8. Class Counsel have conducted a thorough study and investigation of the law and facts relating to the claims that have been asserted, as well as a thorough study and investigation of the scope and identity of the Settlement Class, and have concluded, considering the benefits of this settlement, as defined below, and the risks and delays of further litigation, that this settlement is fair and reasonable and in the best interests of the Settlement Class.

9. Subject to the approval of the Court, the Parties wish to settle this Action, effect a compromise, and settle the claims asserted in the Action against Released Parties.

10. The Parties therefore agree that the claims referenced herein shall be settled, compromised, and released, subject to the approval of the Court, upon and subject to the following terms and conditions:

## **II. DEFINITIONS**

### **11. Action or Litigation.**

The above-entitled action, Case No.: 8:19-cv-00243-CEH-CPT.

**12. Agreement.**

This Stipulation of Class Action Settlement.

**13. Claim Form.**

The document substantially in the form attached as Exhibit “1” that will be mailed to Class Members’ last known addresses and must be signed and returned, or properly submitted online, by the Response Date for the Class Member to receive his or her share of the Net Settlement Fund.

**14. Class Counsel.**

Brandon J. Hill, Luis A. Cabassa, and Matthew K. Fenton of Wenzel Fenton Cabassa, P.A.

**15. Class Counsel Attorney’s Fees and Costs.**

Class Counsel Attorney’s Fees shall be \$158,331.75 (approximately 33.3% of the Settlement Fund), which sum will be paid from the Settlement Fund and which Defendant has agreed not to oppose, subject to Court approval, plus reasonable litigation costs. Additionally, Class Counsel shall also be entitled to reimbursement from the Settlement Fund for litigation-related costs and expenses (including but not limited to the cost of filing, service and mediation), subject to Court approval. Defendant agrees not to oppose Class Counsel’s Attorney’s Fees request.

**16. Class Settlement Administration Costs.**

The aggregate sum of the Settlement Notice and Settlement Administration Costs, which sum will be paid from the Settlement Fund, subject to Court approval.

**17. Class Representative or Plaintiff.**

Plaintiff, Mohammad Harake.

**18. Class Representative Service Payment.**

A sum not to exceed \$2,500.00 payable to Plaintiff as consideration for his service as the

named class representative, which sum shall be paid from the Settlement Fund, subject to Court approval.

**19. Court.**

The United States District Court for the Middle District of Florida, Tampa Division.

**20. Covered Period.**

The period from January 8, 2017 through the date of approval of Stipulation of Settlement.

**21. FCRA State/Local Equivalents.**

Any statute or regulation of any state, U.S. territory, locality/municipality, the District of Columbia, or Puerto Rico, that has a similar purpose or effect as the federal Fair Credit Reporting Act, including regulating the collection or reporting of background checks/consumer information and related actions.

**22. Final Approval Hearing.**

The Court's hearing following the Settlement Administrator's work to locate and send Notices to all Settlement Class Members, determine the amount payable to each Settlement Class Member, and perform other settlement-related administrative tasks, to approve final administration and payment of the settlement.

**23. Final Approval Order.**

The Court's Order granting final approval of this settlement.

**24. Net Settlement Fund.**

The amount of money remaining after the Settlement Fund is reduced by the following amounts:

- a. Class Representative Service Payment approved by the Court;
- b. Class Counsel Attorney's Fees and Costs approved by the Court; and

- c. Class Settlement Administration Costs approved by the Court, including an amount reserved to complete the Settlement Notice and an amount reserved to complete the Settlement Administration after the initial Settlement Payment checks are distributed.

**25. Notice.**

The notice attached hereto as Exhibit “B,” subject to Court approval, and which the Settlement Administrator will mail, via first-class U.S. mail, to each Settlement Class Member to explain the terms of the settlement, including the procedure for objecting to or opting out of the settlement.

**26. Parties.**

Plaintiff and Defendant.

**27. Preliminary Approval Order.**

The Court’s Order granting preliminary approval of this Settlement, which the Parties will draft and attach to this agreement as Exhibit C to be filed with the Court.

**28. Released Claims.**

All claims alleged in the Action (including Plaintiff’s Complaint) and any known or unknown claims that were or could have been alleged based on the specific facts and/or legal theories alleged in the Plaintiff’s Complaint and/or related to the current Action, including ones under the Fair Credit Reporting Act and any FCRA State/Local Equivalents, including but not limited to background check or consumer report disclosure notices and forms, the procurement and use of any background check or consumer reports (including but not limited to any claims under California Business & Professions Code section 17200), whether such factual basis is known or unknown at the time the release is approved by the Court. The period of the Released Claims

extends to the limits of the Covered Period.

**29. Released Parties.**

Defendant and its past and present related entities, direct or indirect affiliates, parent companies and subsidiaries and assigns, and any and all of their past, present and future directors, officers, shareholders, trustees, employees, attorneys, insurers, agents, servants and representatives, whether in their individual or official capacities, excluding Employment Screening Services, Inc.

**30. Response Deadlines.**

Members of the Settlement Class shall have sixty (60) days after the date the Settlement Administrator mails the Notice to Settlement Class Members, by which Response Deadline the members of the Settlement Class must postmark written notice of their intent to opt-out of the settlement and/or a written notice of objection to the preliminarily approved settlement, as applicable. Members of the Settlement Class shall have sixty (60) days to postmark a proper Claim Form in compliance with all terms and conditions of this Settlement Agreement and Release.

**31. *Cy Pres* Donation.**

Any uncashed settlement funds from settlement checks actually sent out by the Settlement Administrator in response to a proper and timely Claim Form, but not cashed or negotiated within the 90-day period for negotiating checks, shall be aggregated by the Settlement Administrator after expiration of the 90-day period and forwarded as a contribution to Bay Area Legal Services.

**32. Settlement Administrator.**

The settlement administrator will be American Legal Claims (“Settlement Administrator”). Class Counsel, Defendant, and Defendant’s Counsel will communicate with the Settlement Administrator to draft instructions to the Settlement Administrator whereby the Settlement

Administrator will comply with the terms of this Agreement and other applicable requirements, in exchange for an amount up to the Total Class Settlement Administration Costs. The Total Class Settlement Administration Costs shall be payable by Defendant to the Settlement Administrator periodically, when invoiced, to cover ongoing costs of the Settlement Administrator, up to the Total Class Settlement Administration Costs, and any balance of the Total Class Settlement Administration Costs shall be paid by Defendant to the Settlement Administrator within ten (10) days of the date of the Final Approval Order.

**33. Total Class Settlement Administration Costs.**

The aggregate costs incurred by the Settlement Administrator in administering the settlement are not to exceed \$25,000.00. The aggregate costs include an amount reserved to complete the Settlement Notice and an amount reserved to complete the Settlement Administration after the initial Settlement Payment checks are distributed.

**34. Settlement Class.**

Background Check Class: All natural persons in the United State who: (1) were the subject of a consumer report that was procured by Trace Staffing (or caused to be procured by Trace Staffing) from Employment Screening Service for an employment purpose; (2) to whom Trace Staffing presented the disclosure form attached to Plaintiff's First Amended Class Action Complaint before procuring that report; (3) within two years of the filing of this lawsuit through the date the Class list is prepared.

**35. Settlement Class Member.**

Any individual who is a member of the Settlement Class who is not validly excluded from the Settlement Class and who timely submits a proper Claim Form in compliance with all terms and conditions of this Settlement Agreement and Release.

**36. Settlement Effective Date or Effective Date.**

The fifth business day after all the following have occurred:



- a. All parties, Class Counsel, and Defendant's counsel have executed this Agreement;
- b. The Court has entered without material change the Final Approval Order and Judgment; and
- c. The final disposition of any related appeals, and in the case of no appeal or review being filed, the expiration of the applicable appellate period.

The Parties intend that the settlement shall not become effective until the Court's Final Approval Order has become completely final and until there is no timely recourse by an appellant or objector who seeks to contest the settlement. The Parties may waive any applicable appeals periods by mutual agreement. If there are no objections filed, the Effective Date shall be 30 days after entry of the Court's final Order granting final approval of this settlement.

**37. Settlement Fund.**

The gross sum of \$475,000.00. The Settlement Fund includes the Class Representative Service Payment, Class Counsel Attorney's Fees and Costs, and Class Settlement Administration Costs in connection with this Settlement.

**38. Settlement Payment.**

"Settlement Payment" means the individualized *pro rata* share of the Net Settlement Fund that will be made in the first distribution from the Settlement Fund to the Settlement Class Members who do not timely and validly opt out of the settlement after the payment of the Class Representative Service, Class Counsel Attorney's Fees and Costs, and Class Settlement Administration Costs. The Settlement Payment will be calculated by dividing the Net Settlement Fund by the total number of individuals in the Settlement Class. The Settlement Payment will be distributed to each Settlement Class Member who timely submits a proper Claim Form in

compliance with all terms and conditions of this Settlement Agreement and Release.

**39. Defendant's Settlement Funding**

"Defendant's Settlement Funding" means Defendant, within ten (10) days after the date of the Final Approval Order, will deposit with the Settlement Administrator the amount necessary to cover Settlement Payment for those Settlement Class Members who have not timely and validly opted out of the settlement and who have submitted a proper Claim Form in compliance with all terms and conditions of this Settlement Agreement. Defendant will retain and not deposit with the Settlement Administrator the amount of any unclaimed funds from the Net Settlement Fund.

**III. RELIEF AND BENEFITS.**

**40. Monetary Benefits to Settlement Class Members.**

In exchange for the releases and waivers of claims described below, Defendant will pay the amount up to the Settlement Fund in settlement of all claims asserted against it in this Action, from which Settlement Fund the Settlement Class Members will be paid and the Court-approved Class Counsel Attorney's Fees and Costs, Class Representative Service Payment, and Class Settlement Administration Costs will be paid. Within ten (10) days after the date of the Final Approval Order, Defendant will deposit with the Settlement Administrator the amount necessary to cover the Court-approved Class Counsel Attorney's Fees and Costs, Class Representative Service Payment, and the Settlement Payment for those Settlement Class Members who have not timely and validly opted out of the settlement and who have submitted a proper Claim Form in compliance with all terms and conditions of this Settlement Agreement. As indicated above, within ten (10) days after the date of the Final Approval Order, Defendant will deposit with the Settlement Administrator any balance of the Total Class Settlement Administration Costs not already paid or deposited with the Settlement Administrator.

The Net Settlement Fund will be distributed to the Settlement Class Members *pro rata* based on the total number of class members as follows, using the timeline set forth below.

- a. Initial payments to Settlement Class Members will be mailed by the Settlement Administrator by check and delivered by first-class U.S. mail, postmarked within ten (10) business days of the Effective Date. All initial checks will expire ninety (90) days after they are issued and will state the expiration date on their faces. If any such payment is returned by the U.S. Postal Service as undeliverable, or is uncashed 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:
  - i. For any check returned by the U.S. Postal Service with a forwarding address before the check's expiration date, the Settlement Administrator will re-mail the check to the forwarding address;
  - ii. If a Settlement Class Member contacts the Settlement Administrator or Class Counsel to request a replacement check before the initial check is negotiated and before the initial check's expiration date, the Settlement Administrator will comply with that request by cancelling the initial check and issuing a replacement check.
- b. The Parties agree that all Settlement Class Members waive and abandon any ownership interest in any such undeliverable, returned, uncashed, or non-negotiated checks and further agree that no obligation has been generated or proven with respect to such undeliverable, returned, uncashed, or non-

negotiated checks.

- c. After the initial 90-day period for negotiating checks (which total uncashed first check remainder will be calculated by the Settlement Administrator no later than 30 days following the 90-day check expiration date), any unclaimed funds from any uncashed or unnegotiated settlement checks actually sent out by the Settlement Administrator in response to a proper and timely Claim Form shall be sent to Bay Area Legal Services, as indicated above. Any other unclaimed funds in the possession of the Settlement Administrator after the initial 90-day period for negotiating checks has expired shall automatically revert back to Defendant as part of the Defendant's Reversion Total Amount, and shall be returned by the Settlement Administrator to Defendant.

**41. Taxes.**

The Parties agree the payments to each Settlement Class Member are not wages, that 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. The Parties also agree that the approved Class Representative Service Payment 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 that the Settlement Administrator on Defendant's behalf will issue to Plaintiff an IRS Form 1099 for this payment.

**42. Class Representative Service Payment.**

Defendant agrees that Plaintiff may apply to the Court for a Class Representative Service Payment in an amount not to exceed \$2,500.00. Plaintiff will file his request for approval of Class

Representative Service Payment no later than fourteen (14) days before the hearing on the Motion for Final Approval. Defendant agrees not to oppose the motion for such service payment.

The Settlement Administrator shall pay any approved Class Representative Service Payment no later than seven (7) days after the Effective Date.

**43. Class Counsel Attorney's Fees and Costs.**

Defendant agrees that Class Counsel may apply to the Court for an award of attorney's fees to be paid from the Settlement Fund in the amount of \$158,331.25 (approximately 33.3% of the Settlement Fund), plus reasonable litigation costs. Defendant agrees not to oppose Plaintiff's entitlement to attorneys' fees to the extent that they are consistent with these limitations. Additionally, Defendant agrees Class Counsel may also apply for reimbursement of litigation related costs and expenses, including but not limited to mediation expenses and filing fees. Class Counsel agrees that they will accept a lesser amount in fees if the Court rejects Class Counsel's application and will accept that amount deemed reasonable by the Court. Additionally, Defendant agrees Class Counsel may also apply for reimbursement of litigation related costs and expenses, including but not limited to mediation expenses and filing fees.

Class Counsel will file the application for approval of Class Counsel Attorney's Fees and Costs no later than fourteen (14) days before the hearing on the Motion for Final Approval.

The Settlement Administrator shall pay any approved Class Counsel Attorney's Fees and Costs no later than seven (7) days after the Effective Date.

**44. Payments to the Settlement Administrator.**

The Settlement Administrator shall pay any approved Class Settlement Administration Costs not previously paid no later than seven (7) days after the Effective Date.

**IV. NOTICE, OPT-OUT, OBJECTIONS AND SETTLEMENT APPROVAL**

**45. Notice to Settlement Class Members.**

Not later than seven (7) calendar days after the Court has issued the Preliminary Approval Order, Defendant shall disclose the names and last known addresses of members of the Settlement Class to the Settlement Administrator.

No later than seven (7) calendar days after receipt of such information, the Settlement Administrator will mail the Notice (attached as Exhibit “B”) to all Settlement Class Members via first-class U.S. Mail, postage prepaid and return service requested to such Settlement Class Member’s last known mailing address, as updated by using the U.S. Postal Service’s database of verifiable mailing addresses (the CASS database) and the National Change-of-Address database. The Notice shall bear the Settlement Administrator’s mailing address as the return-mail address. The Notice will include an indication it is a “Court Approved Settlement Notice authorized by the U.S. District Court for the Middle District of Florida” and may also include a bar code.

A Claim Form (Exhibit “A”) will also be included as part of the mailing.

Not later than seven (7) calendar days after the Court has issued the Preliminary Approval Order, the Settlement Administrator shall post a website containing information about the Settlement, including all relevant dates and pleadings.

**46. Notices Returned as Undeliverable.**

For all Notices returned to the Settlement Administrator without forwarding addresses, the Settlement Administrator will use publicly available databases as practicable to update those Settlement Class Members’ addresses and will cause the Notice to be re-mailed by the Settlement Administrator to such Settlement Class Members who can be located.

**47. Toll-Free Telephone Line.**

The Settlement Administrator will establish and staff a toll-free telephone line that

members of the Settlement Class can use to contact the Settlement Administrator with questions about the settlement or to change their addresses.

**48. Claim Form Procedures.**

To receive a portion of the Net Settlement Fund, all members of the Settlement Class must submit a timely Claim Form by the Response Deadline. Claim forms may be submitted through a claims filing portal on the settlement website, by fax, or by mail. The date of the postmark on the return mailing envelope or the timestamp on the fax or claims filing portal will be the exclusive means to determine whether a Claim Form has been timely submitted. However, it is not the intention of the Parties to exclude Class Members from participating in the Settlement for technical reasons that do not interfere with the orderly administration of the Settlement. Therefore, the Settlement Administrator will compile a list of claims rejected for failure to cure an unsigned Claim Form.

If the Settlement Class Member's Claim Form or Request for Exclusion is defective as to the requirements listed herein, that Class Member will be given an opportunity to cure the defect(s). The Settlement Administrator will mail the Class Member a cure letter ("Cure Letter") within three (3) business days of receiving the defective submission to advise the Class Member that his or her submission is defective and that the defect must be cured to render the Claim Form or Request for Exclusion valid. The Class Member will have until the later of (a) the Response Deadline or (b) fifteen (15) calendar days from the date of the cure letter, to postmark, fax, or electronically submit a revised Claim Form or Request for Exclusion. If a Class Member responds to a Cure Letter by filing a defective claim, then the Settlement Administrator will have no further obligation to give notice of a need to cure. If the revised Claim Form is not postmarked, received by fax, or electronically submitted within the later of (a) the Response Deadline or (b) fifteen (15)

calendar days from the date of the cure letter, it will be deemed untimely.

**49. 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 Response Deadline, each member of the Settlement Class 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 directed to the Settlement Administrator and containing the requisite information shall remain a member of the Settlement Class and shall be bound by any Orders of the Court about the Settlement or the Settlement Class. Any member of the Settlement Class who fails to timely and validly opt out of the Settlement shall be bound by the terms of this Settlement. If more than 1,305 members of the Settlement Class (approximately 15%) validly, timely, and individually opt out of the class, then Defendant may in its sole discretion exercise its right to void the Settlement, in which case this Agreement will be vacated, rescinded, cancelled, and annulled, and the Parties will return to the status quo ante as if they had not entered into this settlement. In that event, the settlement and all negotiations and proceedings related to the settlement will be without prejudice of the rights of the Parties, and evidence of the settlement, negotiations, and proceedings will be inadmissible and will not be discoverable.

**50. Objections.**

Any member of the Settlement Class who wishes to object to the settlement must return to the Settlement Administrator a timely written statement of objection no later than thirty days after



the date the Settlement Administrator mails the Notice of Settlement. The Notice of Objection must state (1) the case name and number; (2) the name, address, telephone number, and email address (if any) of the member of the Settlement Class making the objection; (3) a statement of the objection(s) being asserted; (4) a detailed description of the facts and any legal authorities underlying each objection; (5) a notice of intent to appear at the Final Fairness Hearing, if the Settlement Class Member making the objection intends to appear; (6) a list of any witnesses the Settlement Class Member making the objection may call to testify at the Final Approval Hearing, whether in person, by deposition, or affidavit; and (7) a list of any exhibits, and copies of the same, which that objector may offer at the Final Approval Hearing. Any objection must be personally signed by the objector.

No member of the Settlement Class shall be entitled to contest in any way the approval of the terms and conditions of this Agreement or the Court's Final Approval Order except by filing and serving written objections in accordance with the provisions of this Settlement Agreement and Release. Any member of the Settlement Class who fails to make objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objections, whether by appeal or otherwise, to the settlement.

The Settlement Administrator shall provide any objections and backup information to Defendant's Counsel and Class Counsel, who shall file same with the Court at least seven (7) days before the Final Approval Hearing or as otherwise ordered by the Court.

**51. Preliminary Settlement Approval.**

As soon as practicable after the Parties execute this Agreement, Class Counsel will present this Agreement to the Court for preliminary settlement approval and will request by unopposed motion that the Court enter a Preliminary Approval Order. Class Counsel will draft the Motion for

Defendant's review.

**52. Final Approval Hearing and Final Approval Order and Judgment.**

The Parties agree to cooperate to work to schedule a Final Approval Hearing as soon as practicable.

**V. RELEASE OF CLAIMS.**

**53. Release of Claims by the Class Members**

On the Settlement Effective Date, all members of the Settlement Class who have not timely and properly opted out of the settlement, and all those acting or purporting to act on their behalf including, but not limited to, their successors, assigns, legatees, heirs, and personal representatives, fully and forever release, waive, acquit, and discharge Defendant and the Released Parties to the fullest extent permitted by law from any and all Released Claims.

**54. Prior Releases and Waivers of Claims**

Defendant agrees that the Settlement Class Members' or Plaintiff's receipt of funds under this Agreement is not a violation of any prior promises, contracts, agreements, waivers or covenants between Defendant and the Settlement Class Members or Plaintiff.

**VI. OTHER PROVISIONS.**

**55. No Admission of Liability.**

The Parties acknowledge and agree that neither the fact of, nor any provision contained in, this Agreement, nor the implementing documents or actions taken under them, nor Defendant's willingness to enter into this Agreement, nor the content or fact of any negotiations, communications, and discussions associated with the settlement shall constitute or be construed as an admission by or against Defendant or any of the Released Parties of any fault, wrongdoing, violation of law, or liability whatsoever, the validity of any claim or fact alleged in this Action, or

any infirmity of any defenses asserted by Defendant in this Action.

**56. 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. The amount of the Settlement Fund is agreed by the Parties to be a material term of this Agreement.

**57. Settlement Modification.**

The Parties may agree by stipulation executed by counsel to modify the exhibits to this Agreement to effectuate the purpose of this Agreement or to conform to guidance from the Court about the contents of such exhibits without the need to further amend this Agreement. A stipulation modifying the settlement will be filed with the Court and subject to the Court's approval.

**58. Class Certification.**

The Parties have reached a pre-certification compromise in principle on a class basis,

pursuant to the allegations in the Complaint, contingent upon the negotiation and execution by the Parties of this final agreement and this final agreement being approved by the Court. Defendant denies it has engaged in any wrongdoing, does not admit or concede 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 claim asserted by Plaintiff is suitable for class treatment other than for settlement purposes, and denies that it has any liability whatsoever, but has agreed to this Settlement Agreement and Release 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 business operations of continued litigation of this dispute. Nothing in this Agreement shall be construed as an admission by Defendant or any of the Released Parties that this Action or any similar case is amenable to class certification. Furthermore, nothing in this Agreement shall prevent Defendant from seeking decertification of a certified class in the future if the Court does not issue a Final Approval Order. Defendant agrees not to challenge Plaintiffs Article III Standing for Settlement and Court approval purposes.

**59. Communications with Settlement Class Members.**

The Parties agree that Class Counsel may communicate directly with members of the Settlement Class to ensure as much participation in the settlement as possible.

**60. No Waiver of Privilege.**

Nothing in this Agreement is intended to limit or waive the confidentiality of attorney-client privileged communications between Class Counsel and their current clients and members of the Settlement Class, nor is anything in this Agreement intended to limit the ability of Class Counsel to make truthful representations to judicial authorities about either its appointment as class counsel or the settlement of this Action. Likewise, nothing in this Agreement is intended to limit

Defendant's or its agents' communications with their counsel or their ability to respond to judicial or other government authorities or to waive the confidentiality of any attorney-client privileged communications between Defendant and its counsel.

**61. Agreement is Not Evidence.**

Neither this Agreement nor any related documents, negotiations, statements, or Court proceedings may be construed as, received as, used as, or deemed to be evidence or an admission or concession of any liability or wrongdoing whatsoever on the part of any person or entity, including but not limited to Defendant and the Released Parties, or as a waiver by Defendant of any applicable defense to the merits of the claims asserted or to Plaintiff's ability to maintain this Action as a class action, except that this Agreement is admissible at hearings necessary to obtain and implement Court approval of the Parties' settlement or in hearings to enforce the terms of this Agreement or any related order of the Court.

**62. No Waiver of Rights.**

A Party's failure to exercise any rights under this Agreement shall not constitute waiver of that Party's right to exercise those rights later, except as expressly provided in this Agreement. No delay by any Party in exercising any power or right under this Agreement will operate as a waiver of that power or right, nor will any single or partial exercise of any power or right under this Agreement preclude other or further exercises of that or any other power or right, except as expressly provided. The waiver by one Party of any breach of this Agreement will not be deemed to be a waiver of any prior or subsequent breach.

**63. Authority.**

The signatories below represent they are fully authorized to enter into this Agreement.

**64. Best Reasonable Efforts and Mutual Full Cooperation.**

The Parties agree to fully cooperate with one another 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 Agreement, including all efforts contemplated by this Agreement and any other efforts that may become necessary or ordered by the Court, or otherwise, to ensure that checks are mailed to Settlement Class Members as soon as practicable under the terms of this Agreement. As soon as practicable after execution of this Agreement, Class Counsel will, with the assistance and cooperation of Defendant and its counsel, take all steps reasonably necessary to secure the Court's preliminary and final approval of the Parties' settlement.

**65. Entire Agreement.**

This Agreement, with its exhibits, constitutes the full and entire agreement among the Parties concerning the subject matter described herein and supersedes all prior representations, agreements, promises, or warranties, written, oral, or otherwise. No Party shall be liable or bound to any other Party for any prior representation, agreement, promise, or warranty, oral or otherwise, except for those that are expressly set forth in or attached to this Agreement.

**66. Modification.**

This Agreement may not be changed, altered, or modified except in a writing signed by the Parties. This Agreement may not be discharged except by performance in accordance with its terms or in accordance with any written amendment hereto by a writing signed by the Parties.

**67. 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.

**68. 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 rights that are released or discharged in this settlement.

**69. Construction.**

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

**70. Construction of Captions and Interpretations.**

Paragraph titles, captions, or headings in this Agreement are inserted as a matter of convenience and for reference and do not 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.

**71. Notices.**

Unless otherwise specifically provided in this Agreement, any notices, demands or other communications required hereunder or after entry of the Court's Final Approval Order and Judgment shall be in writing and addressed as follows:

**If to Plaintiff:**

Brandon J. Hill, Esq.  
**WENZEL FENTON CABASSA, P.A.**  
1110 N. Florida Avenue, Suite 300  
Tampa, Florida 33602  
Telephone: 813-224-0431  
Facsimile: 813-229-8712  
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**If to Defendant:**

Jose I. Leon, Esquire  
**Gordon & Rees Scully Mansukhani**  
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Email: [jleon@grsm.com](mailto:jleon@grsm.com)

If mailed, notice will be deemed given as of the third business day after mailing. If sent by overnight delivery or delivered person, notice will be deemed given on the date of delivery.

The Parties agree that, because the Settlement Class Members are so numerous, it is impossible and impracticable to have each Settlement Class Member execute this Agreement. Therefore, the Notice will advise all Settlement Class Members of the binding nature of the release and will have the same force and effect as if this Agreement were executed by each Settlement Class Member to the extent applicable law so provides.

**72. Exhibits.**

- A – Claim Form
- B – Proposed Form Mail Notice
- C – Proposed Order

IN WITNESS THEREOF, and intending to be legally bound, the Parties hereto have caused this Settlement Agreement and Release to be executed by their duly authorized representative.

Dated this 22<sup>nd</sup> day of January, 2020.

*s/ Brandon J. Hill*  
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