

### **STIPULATION AND AGREEMENT OF SETTLEMENT**

This Settlement Agreement is made between plaintiffs Payam Ahdoot (“Ahdoot”) and Brandon Clark (“Clark”) (collectively “Plaintiffs”) for themselves and on behalf of the Settlement Class (defined below), on the one hand, and Defendant Babolat VS North America, Inc., on the other hand, to settle Ahdoot v. Babolat VS North America, Inc., CV13-02823 GAF (VBKx) (the “Ahdoot Action”) and Clark v. Babolat VS North America, Inc., CV13-7898 GAF (VBKx) (the “Clark Action”), which actions were consolidated into one action, proceeding under the title and civil action number of the Ahdoot Action (hereinafter the “Action”), subject to final approval by the District Court.

**WHEREAS**, Babolat VS North America, Inc. distributes and sells tennis equipment and related products, including various racquet models in the Pure Drive, AeroPro, Aero Storm, Pure Storm and Pure Control racquet lines;

**WHEREAS**, Ahdoot commenced Ahdoot v. Babolat VS North America, Inc., CV13-02823 GAF (VBKx) on April 22, 2013, by filing a Complaint;

**WHEREAS**, Ahdoot filed his First Amended Complaint on June 24, 2013, seeking certification of a nation-wide class and alleging causes of action against Babolat VS North America, Inc. for violation of California Business and Professions Code Sections 17200 et seq., and 17500, et seq., California Civil Code sections 1750, et seq., as well as breach of express warranty, fraud, negligent misrepresentation, and restitution/unjust enrichment based on averments that Babolat VS North America, Inc. made false claims in advertising on the internet, in magazines and other publications, and on television that certain tennis professionals who endorse Babolat racquets played with the same racquets available for sale to the public in the United States when the tennis professionals’ racquets are allegedly different from the retail

versions available in the United States. Ahdoot further alleged that Babolat painted and otherwise disguised these professionals' racquets so that they appeared identical to the retail racquets available for sale to the public in the United States;

**WHEREAS**, on October 25, 2013, Clark filed his Complaint seeking certification of a nationwide class and alleging causes of action against Babolat VS North America, Inc. for violation of California Business and Professions Code Sections 17200 et seq., and 17500, et seq., California Civil Code sections 1750, et seq., as well as breach of express warranty, fraud, and negligent misrepresentation based on averments that Babolat VS North America, Inc. made false claims in advertising on the internet, in magazines and other publications, and on television that tennis professional Andy Roddick ("Roddick") played with the same Pure Drive Roddick racquet available for sale to the public in the United States when Roddick's racquets were allegedly different from the retail version of the Pure Drive Roddick available in the United States. Clark further alleged that Babolat painted and otherwise disguised Roddick's racquets so that they appeared identical to the Pure Drive Roddick racquets available for sale to the public in the United States;

**WHEREAS**, on December 19, 2013, the District Court consolidated the Ahdoot Action and the Clark Action for all purposes into the Action;

**WHEREAS**, Ahdoot and Clark will file a Second Amended Complaint (the "Second Amended Complaint") in the Action as more fully set forth in Section II.B. below, seeking certification of a nationwide class and reasserting their original claims against Babolat VS North America, Inc. and adding claims on behalf of a putative nationwide class under California Business and Professions Code Sections 17200 et seq., and 17500, et seq., California Civil Code sections 1750, et seq., as well as breach of express warranty, fraud, and negligent

misrepresentation based upon allegations that Babolat VS North America, Inc. falsely advertised and labeled its racquets with GT Technology from January 1, 2009 to the present as containing tungsten when the racquets allegedly did not contain tungsten;

**WHEREAS**, Babolat VS North America, Inc. denies all liability or wrongdoing with respect to any and all of the claims asserted or that will be asserted in the Action and asserts that it has numerous defenses to those claims;

**WHEREAS**, extensive discovery has been conducted and voluminous documents have been exchanged in the Action;

**WHEREAS**, the Parties engaged in a full day mediation before Antonio Piazza in San Francisco on May 15, 2014, in an attempt to negotiate a settlement of the Action and that mediation resulted in this proposed Agreement;

**WHEREAS**, Class Counsel (defined below) has determined that this Settlement Agreement is fair, reasonable, adequate, and in the best interests of Plaintiffs and the Settlement Class (defined below); and

**WHEREAS**, notwithstanding its view that Plaintiffs' claims are meritless, Babolat VS North America, Inc. desires to settle the Action because a settlement will avoid the risk, expense and distraction of continued litigation, and therefore believes settlement is appropriate without admitting liability;

**NOW THEREFORE**, the Parties agree as follows:

**I. DEFINITIONS**

- A. "Babolat's Counsel" means Brent E. Johnson, of Holland & Hart LLP.
- B. "Babolat Releasees" means: (a) Babolat VS North America, Inc.; (b) Babolat VS North America, Inc.'s past, present, and future direct and indirect owners, shareholders,

investors, parents (including, without limitation, Babolat VS SA), subsidiaries, websites, other corporate affiliates; suppliers, vendors, wholesalers, distributors, dealers, retailers, and advertisers; (c) Babolat VS North America, Inc.'s successors and predecessors and their past, present, and future direct and indirect owners, shareholders, investors, parents, subsidiaries, websites, other corporate affiliates, suppliers, vendors, wholesalers, distributors, dealers, retailers, and advertisers; (d) all suppliers, distributors, wholesalers, vendors, dealers, retailers, advertisers, manufacturers, and suppliers of any Qualifying Racquet (as defined below) or any of their components; and (e) for each of the foregoing Persons, each of their past, present, or future officers, directors, shareholders, owners, investors, employees, contractors, lawyers, accountants, advisors, representatives, agents, principals, partners, affiliates, members, administrators, legatees, executors, heirs, estates, predecessors, successors, and assigns.

C. "Claim Form" means the claim form attached hereto as Exhibit A.

D. "Claim Period" means the period beginning on November 11, 2014, which is the date that Tennis Magazine has set for publication of its November/December issue that will contain the Short Form Publication Notice (defined below) as set forth in Section IV.A., below, and ending on March 11, 2015. If the actual publication date for Tennis Magazine's November/December issue is later than November 11, 2014, the last day of the Claim Period will be adjusted so that the Claim Period is comprised of one-hundred twenty (120) days, commencing on the date of actual publication of Tennis Magazine's November/December issue of Tennis Magazine.

E. "Class Counsel" means Hamner Law Offices, APC; Law Offices of Christopher A. Olsen; and Wootton Law Group, LLP.

F. “Class Counsel Fees and Costs” means the aggregate of any attorneys’ fees and costs awarded by the District Court to Class Counsel.

G. “Class Period” means the period beginning on January 1, 2009, and ending on November 11, 2014, or, if later, the actual date of publication of the November/December issue of Tennis Magazine containing the Short Form Publication Notice as set forth in Section IV.A. below.

H. “Class Recovery” means the aggregate amount of all payments made to Settlement Class Members who submit Valid Claims.

I. “Class Representatives” means Payam Ahdoot and Brandon Clark and "Class Representative" means each of them separately.

J. “District Court” means the United States District Court for the Central District of California.

K. “Fee and Cost Application” means that written motion or application by which Class Representatives and/or Class Counsel request that the District Court award attorneys’ fees and costs to Class Counsel and incentive awards to Class Representatives.

L. “Final Approval Hearing” means the hearing at which the District Court shall: (a) determine whether to grant final approval to this Settlement Agreement and certify the Settlement Class; (b) consider any timely objections to this Settlement and responses thereto; and (c) rule on the Fee and Cost Application.

M. “Final Approval Order and Judgment” means the order and judgment, substantially in the form of Exhibit B attached hereto, in which the District Court, among other things set forth in Exhibit B, grants final approval of this Settlement Agreement, certifies the

Settlement Class, and authorizes the entry of a final judgment and dismissal of the Action with prejudice.

N. “Final Effective Date of the Settlement” means the date on which the last of the following occurs: (a) the day after the time to appeal the Final Approval Order and Judgment expires without any such appeal having been filed; (b) in the event of an appeal of the Final Approval Order and Judgment, the day after a final resolution, affirming in all material respects the Final Approval Order and Judgment; (c) in the event of the filing of a petition for certiorari to the United States Supreme Court, the day after the denial of that petition or, if granted, the day after a final resolution by the Supreme Court in favor of and affirming in all material respects the Final Approval Order and Judgment.

O. “Gross Settlement Fund” means four million five hundred thousand U.S. dollars (\$4,500,000). The entire amount of the Class Recovery, Class Counsel Fees and Costs, Class Representatives’ incentive awards that may be awarded by the District Court, Settlement Administration Expenses, and any other costs or expenses assessable hereunder against Babolat VS North America, Inc. (other than its own legal fees and associated costs and expenses of its representation), shall be paid from the Gross Settlement Fund in accordance with the provisions of this Settlement Agreement. The Gross Settlement Fund represents the absolute, capped amount of Babolat VS North America, Inc.’s liability for the entire Settlement.

P. “GT Technology” means that certain carbon fiber/fiberglass layup of Babolat’s Pure Drive, AeroPro, Aero Storm, Pure Storm, and Pure Control racquet lines that was first introduced in 2009.

Q. “Net Settlement Fund” means the total funds remaining in the Gross Settlement Fund after payment of the entire amount of Class Counsel Fees and Costs, Class

Representatives' incentive awards that may be awarded by the District Court, and Settlement Administration Expenses.

R. "Parties" means Plaintiffs Payam Ahdoot and Brandon Clark and defendant Babolat VS North America, Inc.

S. "Person" means any natural person, firm, corporation, unincorporated association, partnership, or other firm of legal entity or government body, including its agents and representatives.

T. "Preliminary Approval Hearing" means the hearing at which the District Court shall: (a) grant Plaintiffs' Stipulated Motion for Leave to File the Second Amended Complaint; (b) determine whether to grant preliminary approval of this Settlement Agreement; (c) preliminarily certify the Settlement Class; (d) authorize Publication Notice to the Settlement Class; and (e) appoint the Settlement Administrator.

U. "Preliminary Approval Order" means the order, substantially in the form attached as Exhibit C hereto, whereby the District Court, among other things set forth in Exhibit C, grants Plaintiffs' Stipulated Motion for Leave to File the Second Amended Complaint, grants its preliminary approval of this Settlement Agreement and preliminarily certifies the Settlement Class, authorizes dissemination of Publication Notice to the Settlement Class, and appoints the Settlement Administrator.

V. "Publication Notice" means the Short Form and Long Form notices, substantially in the form of Exhibits D and E, respectively, attached hereto.

W. "Qualifying Racquet" means the following Babolat tennis racquets: Pure Drive, Pure Drive +, Pure Drive 107, Pure Drive Roddick, Pure Drive + Roddick, Pure Drive Roddick Junior, Pure Drive Lite, Pure Drive French Open, Pure Drive Lite French Open, Pure Drive 260

French Open, Pure Drive Junior 26 French Open, Pure Drive Lite Pink, Pure Drive Wimbledon, Pure Drive Junior Wimbledon, Pure Drive Play, AeroPro Drive, AeroPro Drive +, AeroPro Drive Junior, AeroPro Team, AeroPro Lite, AeroPro Drive French Open, AeroPro Drive Junior French Open, AeroPro Lite French Open, AeroPro Team Wimbledon, Aero Storm, Aero Storm Tour, Pure Storm, Pure Storm Limited, Pure Storm Limited +, Pure Storm Tour, Pure Storm Tour +, Pure Storm Team, Pure Control, Pure Control Tour, Pure Control Tour +, Pure Control 95 and Pure Control 95 +.

X. “Qualifying Transaction” means a purchase of a Qualifying Racquet(s) for personal use, and not for resale during the Class Period.

Y. “Released Claims” means the claims released as set forth in Section VII.B. of this Settlement Agreement.

Z. “Request for Exclusion” means a request for exclusion from being a Settlement Class Member by a Person in the Settlement Class. To be valid, a request for exclusion must: (i) be submitted by a Person in the Settlement Class; (ii) be submitted to the Settlement Administrator and postmarked by a date not later than twenty-one (21) days before the Final Approval Hearing; (iii) contain the submitter’s name, address and telephone number; and (iv) otherwise comply with the instructions set forth in the Publication Notice.

AA. “Settlement Account” means an escrow account at a reputable financial institution in the name of Babolat VS North America, Inc. and the Settlement Class, into which Babolat VS North America, Inc. will deposit money over time to fund this Settlement and from which the entire amount of Class Counsel Fees and Costs, Class Representatives' incentive awards and other amounts hereunder that may be awarded by the District Court, Settlement Administration Expenses, and the Class Recovery shall be paid.



BB. “Settlement Administrator” means Rust Consulting, Inc., or in the event that Rust Consulting cannot perform as Settlement Administrator, such settlement administrator mutually agreeable to the Parties.

CC. “Settlement Administration Expenses” means the fees and costs charged and incurred by the Settlement Administrator, including, but not limited to, the fees and costs associated with the banking and escrow charges for the Settlement Account, required notices under the Class Action Fairness Act, 28 U.S.C. §1715, the Publication Notice as set forth in Section IV.A. below, the Settlement website, the banner advertisement on Tennis.com, the toll-free Settlement telephone number with recorded messages, the Settlement Administrator’s review of claims to determine whether they are Valid Claims, all reports and declarations required to be submitted by the Settlement Administrator under this Settlement Agreement, the fulfillment of all Valid Claims (not including the Class Recovery) and such other costs and expenses of the Settlement Administrator as required and approved by the Court pursuant to the Settlement Administrator’s services agreement.

DD. “Settlement Agreement,” “Settlement,” or “Agreement” means this Stipulation and Agreement of Settlement, including the attached exhibits.

EE. “Settlement Class” means all Persons who engaged in a Qualifying Transaction with the exception of employees, principals, officers, directors, agents, affiliated entities, legal representatives, successors, or assignees of Babolat VS North America, Inc.; distributors, dealers, and retailers of Babolat VS North America, Inc. or its parent, Babolat VS SA, to the extent the Qualifying Racquets were purchased by the distributors, dealers, and retailers for resale and not for personal use; and the District Court and any other judges who may be assigned to the Action and any members of their immediate families.

FF. “Settlement Class Member” means any Person within the Settlement Class who does not submit a valid Request for Exclusion.

GG. “Valid Claim” means a claim for reimbursement by a Settlement Class Member that is made by the Settlement Class Member submitting a fully completed Claim Form signed under penalty of perjury and supplying all documents and information required for the claim as set forth in the Claim Form and submitted electronically through the Settlement website on or before the final day of the Claim Period or postmarked on or before the final day of the Claim Period. To be a Valid Claim, the claim must also meet any and all additional criteria established by the Parties’ counsel and the Settlement Administrator.

## **II. PROCEDURE FOR SETTLEMENT**

### **A. Preliminary Approval Order.**

Within ten (10) court days following the execution of this Settlement Agreement by all Parties, the Class Representatives shall move the District Court for entry of the Preliminary Approval Order in the form of Exhibit C. The Class Representatives shall apply to the District Court for entry of the Final Approval Order and Judgment, in the form of Exhibit B, not later than fourteen (14) days prior to the date set by the District Court for the Final Approval Hearing. Babolat VS North America, Inc. shall support these motions in such manner as the Parties may agree.

### **B. Second Amended Complaint.**

Within ten (10) court days of the date set by the District Court for the Preliminary Approval Hearing, Plaintiffs will file a Stipulated Motion for Leave to File a Second Amended Complaint in the Action (the Second Amended Complaint in the form attached as Exhibit F hereto), seeking certification of a nationwide class and reasserting their original claims against

Babolat VS North America, Inc. and adding claims on behalf of a putative nationwide class under California Business and Professions Code Sections 17200 et seq., and 17500, et seq., California Civil Code sections 1750, et seq., as well as breach of express warranty, fraud, and negligent misrepresentation based upon allegations that Babolat VS North America, Inc. falsely advertised and labeled its racquets with GT Technology from January 1, 2009 to the present as containing tungsten when the racquets allegedly did not contain tungsten. The Preliminary Approval Order shall, among other things, grant Plaintiffs' Motion for Leave to File a Second Amended Complaint and permit the filing of the Second Amended Complaint prior to the stay of the Action taking effect. Plaintiffs will file the Second Amended Complaint on the same day of the District Court's entry of the Preliminary Approval Order.

### **III. SETTLEMENT CLASS RELIEF**

In consideration of the full, complete, and final settlement of the Action, including but not limited to the claims set forth in the Second Amended Complaint, pursuant to the terms of this Settlement Agreement, dismissal of the Action with prejudice, and the Releases in Section VII.B. below, and subject to the District Court's approval, the Parties agree to the following relief:

#### **A. Gross Settlement Fund.**

In the month that the District Court approves and enters the Preliminary Approval Order, Babolat VS North America, Inc. shall open the Settlement Account as an escrow account with a reputable financial institution (which institution shall be subject to escrow instructions regarding the release of funds therefrom as approved by the Parties and the Settlement Administrator), and deposit three hundred thousand U.S. dollars (\$300,000) into such Settlement Account in escrow. Babolat VS North America, Inc. shall thereafter make additional deposits of two hundred

thousand U.S. dollars (\$200,000) into the Settlement Account in escrow in each of the following six months. Babolat VS North America, Inc. shall deposit sufficient funds in the eighth month from the approval and entry of the Preliminary Approval Order to bring the total of deposits and accrued interest to four million five hundred thousand U.S. dollars (\$4,500,000). Babolat VS North America, Inc. shall not be liable for payment of any fees, costs, expenses, awards, Class Recovery, or any other sums authorized under this Agreement beyond its deposits into the Settlement Account, totaling \$4,500,000, including accrued interest, as set forth in this paragraph. Once Babolat VS North America, Inc. deposits funds into the Settlement Account, the risk of loss for such funds shall pass from Babolat VS North America, Inc. to the financial institution operating the Settlement Account unless otherwise agreed by the Parties. Unless this Settlement Agreement is terminated pursuant to Section V.D. below, Babolat VS North America, Inc. shall not withdraw or otherwise utilize the funds in the Settlement Account other than to pay them into the Gross Settlement Fund within five (5) business days after the Final Effective Date of the Settlement, or to pay the Settlement Administrator's costs and expenses in accordance with the terms of the Settlement Administrator's services agreement and applicable escrow instructions. The Settlement Administrator shall provide copies of the Settlement Account's monthly statements to Class Counsel and Babolat's Counsel no later than the fifteenth (15th) day of each month between the date the District Court approves and enters the Preliminary Approval Order and the Final Effective Date of the Settlement. Except for the payment of the Settlement Administrator's costs and expenses in accordance with the terms of the Settlement Administrator's services agreement and applicable escrow instructions, all funds in the Settlement Account shall be held in escrow for the benefit of the Settlement Class or the payment

of such other fees, costs and expenses as may be approved by the Court in its Preliminary Approval Order or its Final Approval Order and Judgment.

B. Distribution of the Gross Settlement Fund.

The entirety of the Class Recovery, Class Counsel Fees and Costs, incentive awards to the Class Representatives that may be awarded by the District Court, and Settlement Administration Expenses shall be paid from the Gross Settlement Fund in accordance with the approved escrow instructions and the Court's Final Approval Order and Judgment.

C. Class Recovery.

1. The Net Settlement Fund shall be available to pay Valid Claims in accordance with the escrow instructions and the Court's Final Approval Order and Judgment. Distribution of funds from the Net Settlement Fund to Settlement Class Members who submitted Valid Claims shall be completed within twenty one (21) days after the Final Effective Date.

2. A Settlement Class Member who submits a Valid Claim will be entitled to a reimbursement of fifty U.S. dollars (\$50) for each adult racquet and twenty five U.S. dollars (\$25) for each junior racquet for each Qualifying Transaction, upon submission of a proof of purchase (i.e., a copy of the original sales receipt that identifies the Qualifying Racquet(s) and shows the amount paid, the seller, and date of purchase), up to a maximum of ten (10) Qualifying Racquets per person. If no proof of purchase is available but the Qualifying Racquet's serial number, which is two (2) letters followed by six (6) numerals printed on a label on the throat of the racquet, can be provided, a Settlement Class Member who submits a Valid Claim will also be entitled to a reimbursement of fifty U.S. dollars (\$50) for each adult racquet for each Qualifying Transaction, upon submission of the Qualifying Racquet's serial number (i.e. a picture that identifies the Qualifying Racquet and shows the Qualifying Racquet's serial number) up to a

maximum of ten (10) Qualifying Racquets per Person. If no proof of purchase is available and no Qualifying Racquet serial number can be provided (junior racquets have no serial numbers and some adult racquets have no serial numbers), a Settlement Class Member who submits a Valid Claim will be entitled to a reimbursement of twenty U.S. dollars (\$20) for each adult racquet and ten U.S. dollars (\$10) for each junior racquet obtained through a Qualifying Transaction up to a maximum of three (3) Qualifying Racquets per Person. The Settlement Administrator shall have the right to, and may make reasonable requests for information to a Person who submits a Claim Form for the purpose of determining whether the Person has made a Valid Claim. If the Person submitting the Claim Form does not timely comply and/or is unable to produce information or documents requested by the Settlement Administrator to substantiate and/or verify the information related to a claim that is submitted, the claim shall be disqualified.

3. If the aggregate value of Valid Claims exceeds the amount of the Net Settlement Fund, the amount of reimbursement to Settlement Class Members will be adjusted downward on a per Qualifying Racquet *pro rata* basis.

4. If any funds remain in the Net Settlement Fund after payment of all Valid Claims, such funds shall be distributed *cy pres* as follows: (a) fifty percent (50%) to St. Jude's Children's Research Hospital, a pediatric treatment and research facility dedicated to finding cures for children with cancer and other catastrophic diseases through research and treatment; and (b) fifty percent (50%) to USTA Serves, the National Charitable Foundation of the United States Tennis Association, Inc. dedicated to improving the quality of life among youth and people with disabilities in the United States by, among other things, supporting organizations that use tennis as a vehicle to help at-risk children finish high school and qualify for college

scholarships. Both St. Jude's Children's Research Hospital and USTA Serves are chartered as 501(c)(3) tax-exempt organizations under IRS regulations.

5. Settlement Class Members will be able to obtain a Claim Form by requesting one by mail at the address of the Settlement Administrator or by downloading the Claim Form from the Internet website established by the Settlement Administrator. Settlement Class Members may submit Claim Forms online or by mail to the Settlement Administrator at the address provided.

#### **IV. PUBLICATION NOTICE AND REQUESTS FOR EXCLUSION**

##### **A. Publication Notice.**

Because the identities of the Persons in the Settlement Class are unknown, notice to the Settlement Class shall be by publication. Publication Notice shall be provided in the forms attached as Exhibit D (Short Form) and Exhibit E (Long Form). The Short Form Publication Notice shall be published in the November/December 2014 issue of Tennis Magazine. In addition, a banner advertisement referencing the Settlement shall be published on the United States version of the Internet website Babolat.com and the Internet website Tennis.com contemporaneously with the Short Form Publication Notice's first appearance in Tennis Magazine and shall remain on the two referenced websites until the day after the last day of the Claim Period. The banner advertisement on the United States version of Babolat.com and Tennis.com shall contain a link to the Settlement website, contemplated to be [Babolatsettlement.com](http://Babolatsettlement.com) to be established by the Settlement Administrator. The Settlement website shall be operational on or before the first day the Short Form Publication Notice appears in Tennis Magazine and will be disabled immediately upon the conclusion of the Claim Period.

The Settlement website shall include the Short Form Publication Notice, the Long Form Publication Notice, the Claim Form, the Settlement Agreement (without exhibits), the Second Amended Complaint, and the Preliminary Approval Order. The publication of the Short Form Publication Notice in Tennis Magazine, the placement of the banner advertisement regarding the Settlement on Tennis.com, and the creation, operation, maintenance, and cessation of the Settlement website shall be administered by the Settlement Administrator.

B. Declaration of Compliance.

The Settlement Administrator shall prepare a declaration affirming compliance with the notice requirements set forth above, which shall be provided to Babolat's Counsel and Class Counsel no later than fourteen (14) days prior to the Final Approval Hearing. Class Counsel shall file this declaration of compliance with the District Court no later than ten (10) days prior to the Final Approval Hearing.

C. Best Notice Practicable.

The Parties agree, and the Preliminary Approval Order shall state, that compliance with the notice provisions herein is the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Class of the pendency of the Action and the terms of the Settlement and shall satisfy the requirements of all applicable local and court rules, the Federal Rules of Civil Procedure, the United States Constitution, and any other applicable law.

D. Report on Requests for Exclusion.

Not later than fourteen (14) days before the Final Approval Hearing, the Settlement Administrator shall prepare and deliver to Babolat's Counsel and Class Counsel a report stating the total number of Persons who submitted valid Requests for Exclusion from the Settlement



Class and the names and contact information of such Persons as well as the quantity and type of the Qualifying Racquets each such Person purchased. Such Persons will not be entitled to the relief under this Settlement Agreement and will not be bound by the releases contained herein. Not later than ten (10) days before the Final Approval Hearing, Class Counsel shall file the Settlement Administrator's report with the District Court.

E. Inquiries from Settlement Class Members.

It shall be the sole responsibility of Class Counsel to respond to inquiries from Settlement Class Members. Babolat VS North America, Inc. and Babolat's Counsel may, but are not required to, respond to such inquiries.

F. Reporting by Settlement Administrator.

The Settlement Administrator shall provide periodic updates to Class Counsel and Babolat's Counsel regarding Claim Form submissions beginning not later than one week after the commencement of the Claim Period and continuing on no less than a monthly basis thereafter.

G. List of Class Members.

Within thirty (30) days of the completion of distribution of all payments to Settlement Class Members who submitted Valid Claims by the Settlement Administrator, the Settlement Administrator shall provide to Babolat VS North America, Inc. or to such other Persons as Babolat VS North America, Inc. may direct, an electronically searchable alphabetical list of the Settlement Class Members who were paid out of the Net Settlement Fund, their contact information, and the amount paid to them.

**V. COURT APPROVAL OF SETTLEMENT**

**A. Preliminary Approval Order.**

Class Counsel shall apply for entry of the Preliminary Approval Order in the form of Exhibit C hereto pursuant to the schedule set forth in Section II above. The Preliminary Approval Order shall include provisions: (i) granting Plaintiffs' Stipulated Motion for Leave to File the Second Amended Complaint, the Second Amended Complaint in the form attached hereto as Exhibit F; (ii) preliminarily certifying the Settlement Class for settlement purposes only; (iii) preliminarily approving this Settlement Agreement and finding the Settlement sufficiently fair, reasonable and adequate to allow notice to be disseminated to the Settlement Class; (iv) approving the form, content, and manner of notice to the Settlement Class; (v) setting a schedule for proceedings with respect to final approval of the Settlement; (vi) providing that, pending entry of the Final Approval Order and Judgment, no Settlement Class Member (either directly, in a representative capacity, or in any other capacity) shall commence or continue any action against Babolat VS North America, Inc. or any other Babolat Releasees asserting any claims related in any way to the Released Claims; and (vii) staying the Action, other than the filing of the Second Amended Complaint and subsequent proceedings related to this Settlement.

**B. Objections to Settlement.**

Any Settlement Class Member wishing to object to this Settlement and/or the Fee and Cost Application shall file a written objection (with a statement of reasons), either on the Settlement Class Member's own or through an attorney retained at the Settlement Class Member's expense with the District Court and serve it on Babolat's Counsel and Class Counsel at least twenty-one (21) days before the Final Approval Hearing. Such objection must include a proof of purchase for one or more Qualifying Racquet(s), or, if no proof of purchase is available,

either an identification of the serial number(s) for the Qualifying Racquet(s) or a declaration under penalty of perjury that the Settlement Class Member purchased one or more Qualifying Racquet(s) and identifying the Qualifying Racquet(s) by model. Such objection must also include the Settlement Class Member's home address. Any Settlement Class Member who fails to provide the information required by this paragraph shall be foreclosed from making such objection.

Class Representatives and Class Counsel will file with the District Court their brief in support of the Final Approval Order and Judgment and in response to any objections at least seven (7) days before the Final Approval Hearing. Any Settlement Class Member who fails to file a timely written objection and to appear and argue, either personally or through personally retained counsel, at the Final Approval Hearing shall have no right to file an appeal relating to the approval of this Settlement Agreement, and shall be bound by all the terms of this Settlement Agreement and by all proceedings, orders and judgments, including but not limited to the releases as set forth in Section VII herein.

C. Final Approval Hearing.

The Parties shall request that the District Court, on the date set forth in the Preliminary Approval Order, or on such other date that the District Court may set, conduct a Final Approval Hearing to: (i) determine whether to grant final approval to this Settlement Agreement and certify the Settlement Class; (ii) consider any timely objections to this Settlement and Class Counsel's responses to such objections; and (iii) rule on the Fee and Cost Application. At the Final Approval Hearing, the Parties shall ask the Court to give final approval to this Settlement Agreement. If the Court grants final approval of this Settlement Agreement, the Parties shall ask the Court to enter a Final Approval Order and Judgment, substantially in the form of Exhibit B

hereto, which approves this Settlement Agreement, certifies the Settlement Class, authorizes entry of a final judgment, and dismisses the Action with prejudice.

D. Termination of Settlement.

1. Each Party shall have the right to terminate this Settlement Agreement if:

(a) the District Court does not enter the Preliminary Approval Order or Final Approval Order and Judgment substantially in the forms attached as Exhibits C and B hereto; or (b) the Final Approval Order and Judgment does not become final by reason of a higher court reversing final approval by the District Court and the District Court thereafter declines to enter a further order or orders approving the Settlement Agreement. If a Party elects to terminate this Settlement Agreement under this paragraph, that Party must provide written notice to the other Party within thirty (30) days of the occurrence of the condition permitting termination. Such written notice shall be provided by electronic delivery and/or next day (excluding Saturdays, Sundays and legal holidays) express delivery service to the other Party's counsel.

2. Babolat VS North America, Inc. shall have the right, but not be obligated to, terminate this Settlement Agreement if, prior to entry of the Final Approval Order and Judgment, the total number of Persons who have submitted valid Requests for Exclusion from the Settlement Class exceeds seven hundred fifty (750). If Babolat VS North America, Inc. elects to terminate this Settlement Agreement under this paragraph, Babolat VS North America, Inc. must provide written notice to Class Counsel on or before the date of the Final Approval Hearing by electronic delivery and/or next day (excluding Saturdays, Sundays and legal holidays) express delivery service.

3. If the Settlement Agreement is terminated pursuant to this Section, then:

(a) this Settlement Agreement shall be null and void; (b) this Settlement Agreement and all

negotiations and proceedings relating hereto shall be of no force or effect and without prejudice to the rights of the Parties (and except for documents filed with the Court and of public record, all settlement and negotiation documents and communications shall remain confidential), (c) all Parties shall be reverted to their respective status in the Action as of the date of the execution of the Settlement Agreement; (d) the Parties shall stand in the same position as if the Settlement Agreement and all related orders had never been executed or entered; (e) the Parties shall not seek to recover from one another any fees or costs associated with this Settlement; and (f) all monies paid by Babolat VS North America, Inc. into the Settlement Account as set forth in Section III.A., including accrued interest and minus applicable Settlement Administration Expenses paid to the date of termination, shall be immediately returned to Babolat VS North America, Inc.

**VI. ADMINISTRATIVE EXPENSES, ATTORNEYS' FEES AND COSTS**

A. Settlement Administration Expenses.

The Settlement Administration Expenses shall be fully paid from the Gross Settlement Fund.

B. Fee and Cost Application.

Class Counsel may make a Fee and Cost Application to be heard at the Final Approval Hearing seeking an award of attorneys' fees not to exceed twenty-five percent (25%) of the Gross Settlement Fund and reimbursement of costs and expenses actually incurred not to exceed \$150,000 to be paid out of the Gross Settlement Fund. The Fee and Cost Application may also seek an incentive award to each Class Representative not to exceed \$5,000 per Class Representative to be paid out of the Gross Settlement Fund. Babolat VS North America, Inc. will not oppose the Fee and Cost Application to the extent that it complies with the terms of this

paragraph. Attorneys' fees, attorneys' costs and expenses, and Class Representative incentive awards shall be paid out of the Gross Settlement Fund within seven (7) business days of the Final Effective Date. Payments under this paragraph shall be made as one combined payment to the Hamner Law Office, APC and the Hamner Law Office, APC shall be solely responsible for further distributing any payments required by this paragraph. Class Counsel indemnifies and holds harmless Babolat VS North America, Inc. and the Babolat Releasees and their legal counsel from and against any and all claims for payments due from Class Counsel as provided in this Settlement Agreement or as otherwise due from Class Counsel with respect to the Action.

C. Effect on Settlement.

The Parties agree that the rulings of the District Court regarding the amount of attorneys' fees, attorneys' costs and expenses, and any Class Representative incentive awards, and any claim or dispute relating thereto, shall be considered by the District Court separately from the remaining matters considered at the Final Approval Hearing and any determinations regarding those matters will be made in a separate order. Any order regarding attorneys' fees, attorneys' costs and expenses, and any Class Representative incentive awards, including any appeals from or modifications or reversals of any order related thereto, shall not operate to modify, reverse, terminate, or cancel the Settlement Agreement, affect the releases contained in the Settlement Agreement, or affect whether the Final Approval Order and Judgment is final as set forth herein.

**VII. RELEASES**

A. Stay of the Action.

The Parties agree to request the District Court, in connection with the Preliminary Approval Order, issue an immediate stay of the Action, with the exception of Plaintiffs filing the Second Amended Complaint and proceedings relating to this Settlement Agreement, and an

injunction prohibiting any Settlement Class Member (either directly, in a representative capacity, or in any other capacity) from prosecuting any other action relating in any way to the Released Claims.

B. Releases.

In consideration for the Settlement benefits described in this Agreement, and effective upon the Final Effective Date of the Settlement, the Class Representatives and each and every Settlement Class Member (including any of their past, present or future agents, successors, assigns, legal representatives, trustees, estates, heirs, executors and administrators) shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have fully, finally, and forever released, relinquished and discharged each and all of the Babolat Releasees from any and all of the Class Representatives' and each and every Settlement Class Member's (including any of their past, present or future agents, successors, assigns, legal representatives, trustees, estates, heirs, executors and administrators) respective claims, actions, demands, suits, and causes of action, whether class, individual or otherwise in nature, damages whenever incurred, liabilities of any nature whatsoever, including costs, expenses, penalties and attorneys' fees, known or unknown, suspected or unsuspected, direct or indirect, contingent or absolute, existing or potential, in contract or in tort, in law or equity, that the Class Representatives and each and every Settlement Class Member (including any of their past, present or future agents, successors, assigns, legal representatives, trustees, estates, heirs, executors and administrators), and whether or not they objected to the Settlement, ever had, now has, or hereafter can, will or may have, arising out of (i) advertising, marketing and conduct of whatever kind by the Babolat Releasees related to any and all professional athletes and their connection with, affiliation with, association with or endorsement of the Qualifying Racquets and any components thereof; (ii) the

use of the term “GT Technology” and “tungsten” in the Babolat Releasees’ advertising, marketing materials, labeling, and any other communication or information of whatever kind related to the Qualifying Racquets, (iii) factual allegations or claims made in the Second Amended Complaint, and (iv) any violation or alleged violation of any federal or state law and any federal or state statute, including but not limited to California Business & Professions Code §§ 17200, et seq., 17500 et seq., and California Civil Code §1750, predicated on (i), (ii) or (iii) (the “Released Claims”). Each Settlement Class Member (including their past, present or future agents, legal representatives, trustees, parents, estates, heirs, executors and administrators) is hereby barred from hereafter asserting any claim, demand, action, suit or cause of action, whether class or individual, against the Babolat Releasees based, in whole or in part, upon any Released Claim. This release shall be without limitation, shall be construed broadly to fulfill its intent, and shall inure to the benefit of all Persons including, but not limited to, the Babolat Releasees.

Plaintiff Ahdoot and Plaintiff Clark each represents and warrants that he is the sole and exclusive owner of all claims that he personally is releasing under this Agreement, and each of Plaintiff Ahdoot and Plaintiff Clark further acknowledges that he has not assigned, pledged, or in any manner whatsoever sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Action, and that each of Plaintiff Ahdoot and Plaintiff Clark is not aware of anyone other than himself claiming any interest, in whole or in part, in the Action or in any benefits, proceeds or values under the Action on his behalf.

Without in any way limiting its scope and except to the extent otherwise specified in this Agreement, this Release covers, by way of example and without limitation, any and all claims



for attorneys' fees, costs, expert fees, or consultant fees, interest, or litigation fees, costs or any other fees, costs and/or disbursements incurred by Class Counsel, or by Plaintiff Ahdoot or Plaintiff Clark, for which the Babolat Releasees may be liable.

The claims released herein expressly include those claims covered by any statute or common law that provides, in sum or substance, that a general release does not extend to claims which the party does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her, would have materially affected his or her settlement with any other party. In particular, but without limitation, the Class Representatives and each Settlement Class Member (including any of their past, present or future agents, legal representatives, trustees, estates, heirs, executors and administrators) waive the provisions of California Civil Code § 1542 and do so understanding the significance of that waiver. California Civil Code § 1542 provides:

**“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”**

The Parties shall be deemed to have agreed that the release set forth herein will be and may be raised as a complete defense to and will preclude any action or proceeding based on the Released Claims by and through this Settlement Agreement, regardless of whether such party knew or suspected a claim to exist which if known by such party, would have materially affected his settlement with Babolat VS North America, Inc. or the Babolat Releasees.

C. Third Party Beneficiaries.

Those Persons released from claims in Section VII.B. above including, but not limited to, the Babolat Releasees who are not Parties to this Agreement, are released without regard to the absence of any consideration from them, and they are intended to be third party beneficiaries of

this Agreement, and it is acknowledged that the release of all of the Babolat Releasees is a material part of the consideration to Babolat VS North America, Inc. for its entering into this Settlement Agreement. Such third party beneficiaries may seek enforcement of this Agreement in the same manner as the Parties including, but not limited to, asserting this Agreement as a complete bar and defense to any Released Claim and seeking specific performance of this Agreement.

D. Assumption of Risk.

In entering into this Settlement Agreement, each of the Parties assumes the risk of any mistake of fact or law. If any of the Parties should later discover that any fact which the Party relied upon in entering into this Settlement Agreement is not true, or that the Party's understanding of the facts or law was incorrect, the Party shall not be entitled to modify, reform, or set aside the Settlement Agreement, in whole or in part, by reason thereof. The Parties acknowledge that, at the time the Settlement Agreement was executed, there were unsettled issues of law, and the Parties agree to adhere to the terms of this Settlement Agreement regardless of developments in the law after execution.

**VIII. NON-MONETARY RELIEF**

A. Professional Endorsements.

Babolat VS North America, Inc. agrees that its print and internet advertising in the United States which features a still image of a professional tennis player with a Babolat racquet will include a disclaimer that states, "Team Babolat Pro Players may play with a customized or different model than the equipment depicted" or words to like effect. The Parties agree that Babolat VS North America, Inc. and any of the Babolat Releasees (including specifically but without limitation Babolat VS SA), may continue to have their professional endorsers play with

equipment that is cosmetically rendered to be consistent in appearance with the retail version of the model of equipment the professional endorses and that written statements in Babolat VS North America, Inc.'s and the Babolat Releasees advertising, marketing, and communications in the United States may refer to the equipment the professional endorses in words that suggest or state that the professional plays with the equipment regardless of whether the statements suggest that the professional plays with the retail version of the equipment.

B. Tungsten.

Babolat VS North America, Inc. has ceased, as of June 18, 2014, making reference to any of its racquets containing tungsten in its new advertising in the United States, including on its website. No racquets shipped by Babolat after August 1, 2014, will be labeled as containing tungsten.

C. GT Technology.

The Parties agree that Babolat VS North America, Inc. and its parent, Babolat VS SA, may continue to use and reference "GT Technology" in their advertising, marketing, communications and labeling in the United States as long as tungsten is not referenced in connection therewith.

**IX. NO ADMISSION OF LIABILITY; RESERVATIONS**

Neither the Settlement Agreement nor any of the negotiations or proceedings related thereto constitutes an admission of wrongdoing, liability, or the merits of the claims in the Action by Babolat VS North America, Inc. or by any of the other Babolat Releasees. Babolat VS North America, Inc. denies any wrongdoing of any kind related to the claims in the Action. This Settlement Agreement shall not be offered, or received into evidence in any matter other than in

the Action to enforce or to finalize the terms of the Settlement Agreement and/or to seek the Preliminary Approval Order and the Final Approval Order and Judgment.

The Parties and their counsel agree to keep the contents of this Settlement Agreement confidential until the date on which Class Representatives move the District Court for entry of the Preliminary Approval Order and file the Settlement Agreement with the Court.

**X. MISCELLANEOUS PROVISIONS**

A. No Assignment.

Each of the Parties represents, covenants, and warrants that he or it has not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber any portion of any liability, claim, demand, cause of action, or rights that he or it herein releases.

B. Binding on Assigns.

This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, successors, and assigns.

C. Captions.

The captions used herein are for convenience and reference only and do not define, limit, extend or describe the scope of this Settlement Agreement or any provision hereof.

D. Class Member Signatures.

Because the Settlement Class Members are so numerous, it is agreed that it is impractical to have each Settlement Class Member execute this Settlement Agreement. The Publication Notice will advise all Settlement Class Members of the binding nature of the Releases and of the Settlement Agreement. In the absence of a valid Request for Exclusion, the Publication Notice shall have the same force and effect as if each Settlement Class Member executed this Settlement Agreement.

E. Construction of Settlement Agreement.

The Parties agree that this Settlement Agreement is the result of arms-length negotiations between the Parties and that it shall not be construed in favor of or against a Party based upon the extent to which the Party or his or its counsel participated in the drafting of it.

F. Counterparts.

This Settlement Agreement may be executed by the Parties in one or more counterparts. A facsimile or pdf signature shall be deemed an original for all purposes.

G. Governing Law.

Construction and interpretation of the Settlement Agreement shall be determined in accordance with the laws of the State of California, without regard to choice of law principles thereof.

H. Entire Agreement.

This Settlement Agreement, including the exhibits referenced herein, contains the entire agreement of the Parties with respect to the subject matter contained herein. There are no promises, representations, warranties, covenants, or undertakings governing the subject matter of this Settlement Agreement other than those expressly set forth herein. This Settlement Agreement supersedes all prior agreements and understandings between the Parties with respect to the Settlement of this Action. This Settlement Agreement may not be changed, altered or modified, except in writing signed by the Parties and approved by the District Court.

I. Jurisdiction.

The District Court shall retain jurisdiction, after entry of the Final Approval Order and Judgment, with respect to the enforcement of the terms of the Settlement Agreement, and all Parties and Settlement Class Members submit to the exclusive jurisdiction of the District Court

with respect to the enforcement of the Settlement Agreement and any dispute with respect thereto.

J. No Collateral Attack.

This Settlement Agreement shall not be subject to collateral attack by any Settlement Class Member at any time after the Final Effective Date of the Settlement. Prohibited collateral attacks include, but are not limited to, claims that the Settlement Class Member's claim was improperly denied or calculated and/or the Settlement Class Member failed to receive timely or proper notice.

K. Parties' Authority.

The signatories to this Settlement Agreement represent and warrant that they have full authority to enter into this Settlement Agreement and bind the Parties to the terms and conditions contained herein.

L. Receipt of Advice of Counsel.

The Parties acknowledge, agree and warrant that they have read this Settlement Agreement, have received legal advice with respect to the advisability of entering into this Settlement Agreement, and fully understand its legal effect.

Without limiting the generality of the foregoing, each of Plaintiff Ahdoot and Plaintiff Clark represents and certifies that : (i) he has agreed to serve as Class Representative; (ii) he is willing, able and ready to perform all of the duties and obligations of Class Representative; (iii) he has read the operative complaint or has had the contents of such pleading described to him; (iv) he has read this Agreement or has received a detailed description of it from Class Counsel and he has agreed to its terms; (v) he has consulted with Class Counsel about the Action and this Agreement and the obligations imposed on the Class Representatives; (vi) he has authorized

Class Counsel to execute this Agreement on his behalf; and (vii) he shall remain and serve as Class Representative until the terms of this Agreement are effectuated, this Agreement is terminated in accordance with its terms, or the Court at any time determines that he cannot represent the Class.


M. Notices.

Whenever this Agreement requires or contemplates that one of the Parties shall or may give notice to the other, notice shall be provided by e-mail and/or next day (excluding Saturdays, Sundays and legal holidays) express delivery service as follows:

1. If to Babolat VS North America, then to :  
Brent E. Johnson, Esq.  
Holland & Hart LLP  
222 South Main Street  
Suite 2200  
Salt Lake City, UT 84101  
Tel: (801) 799-5800  
Fax: (801) 799-5700  
Email: [bjohnson@hollandhart.com](mailto:bjohnson@hollandhart.com)
2. If to Plaintiff Ahdoot or Plaintiff Clark, then to:  
Amy T. Wootton, Esq.  
Hamner Law Offices, APC  
555 West 5<sup>th</sup> Street  
Los Angeles CA 90013  
Tel: (213) 533-4160  
Fax: (213) 533-4167  
Email: [awootton@hamnerlaw.com](mailto:awootton@hamnerlaw.com)

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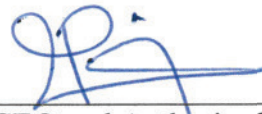
Dated: 07 / 28 / 2014

  
Payam Ahdoot  
For himself individually and on behalf of the  
Settlement Class

Dated: \_\_\_\_\_

\_\_\_\_\_  
Brandon Clark  
For himself individually and on behalf of the  
Settlement Class

Dated: 07/25/2014


  
Jerome Pin, CEO and Authorized Signer  
BABOLAT VS NORTH AMERICA, INC.



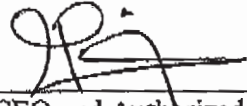
Dated: \_\_\_\_\_

\_\_\_\_\_  
Payam Ahdoot  
For himself individually and on behalf of the  
Settlement Class

Dated: 8/3/14

  
\_\_\_\_\_  
Brandon Clark  
For himself individually and on behalf of the  
Settlement Class

Dated: 07/25/2014

  
\_\_\_\_\_  
Jerome Pin, CEO and Authorized Signer  
BABOLAT VS NORTH AMERICA, INC.

APPROVED AS TO FORM:

HAMNER LAW OFFICES, APC

Dated: \_\_\_\_\_

\_\_\_\_\_  
Amy T. Wootton  
Class Counsel

LAW OFFICES OF CHRISTOPHER A.  
OLSEN

Dated: \_\_\_\_\_

\_\_\_\_\_  
Christopher A. Olsen  
Class Counsel

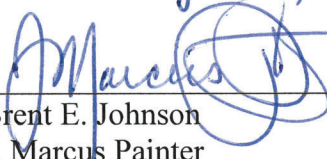
WOOTTON LAW GROUP, LLP

Dated: \_\_\_\_\_

\_\_\_\_\_  
Chad B. Wootton  
Class Counsel

HOLLAND & HART LLP

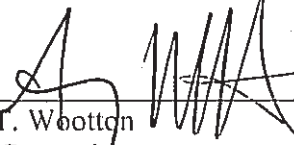
Dated: July 25, 2014

  
\_\_\_\_\_  
Brent E. Johnson  
J. Marcus Painter  
Attorney for Defendant, Babolat VS North  
America, Inc.

APPROVED AS TO FORM:

HAMNER LAW OFFICES, APC

Dated: 8-8-2014

  
\_\_\_\_\_  
Amy T. Wootton  
Class Counsel


LAW OFFICES OF CHRISTOPHER A.  
OLSEN

Dated: \_\_\_\_\_

\_\_\_\_\_  
Christopher A. Olsen  
Class Counsel

WOOTTON LAW GROUP, LLP

Dated: August 8, 2014

  
\_\_\_\_\_  
Chad B. Wootton  
Class Counsel

HOLLAND & HART LLP

Dated: \_\_\_\_\_

\_\_\_\_\_  
Brent E. Johnson  
Attorney for Defendant, Babolat VS North  
America, Inc.

APPROVED AS TO FORM:

HAMNER LAW OFFICES, APC

HOLLAND & HART LLP

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Amy T. Wootton  
Class Counsel

\_\_\_\_\_  
Brent E. Johnson  
Attorney for Defendant, Babolat VS North  
America, Inc.

LAW OFFICES OF CHRISTOPHER A.  
OLSEN

Dated: 8/8/2014

\_\_\_\_\_  
Christopher A. Olsen  
Class Counsel

WOOTTON LAW GROUP, LLP

Dated: \_\_\_\_\_

\_\_\_\_\_  
Chad B. Wootton  
Class Counsel

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