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 AUDIBLE, INC., AMAZON.COM, INC. and
 9 AMAZON SERVICES LLC

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA
 12 WESTERN DIVISION

FENWICK & WEST LLP
 ATTORNEYS AT LAW

14 GRANT MCKEE, ERIC WEBER, and
 MICHAEL ROGAWSKI, individually
 15 and on behalf of all other similarly
 situated,

16 Plaintiffs,

17 v.

18 AUDIBLE, INC.,

19 Defendant.

21 ERIC WEBER and BRYAN REES,
 individually and on behalf of all other
 22 similarly situated,

23 Plaintiffs,

24 v.

25 AMAZON.COM, INC. and AMAZON
 SERVICES LLC,

26 Defendants.

27 [This document relates to all cases]
 28

Case Nos.: 2:17-cv-01941 GW (Ex) &
 2:17-cv-08868 GW (Ex)

**STIPULATION OF CLASS
 ACTION SETTLEMENT AND
 RELEASE**

1 1. This Stipulation of Settlement and Release is entered into by plaintiffs
2 Grant McKee, Eric Weber, Seth Beals, Michael Rogawski, Taylor Fisse and Bryan
3 Rees, individually and on behalf of all others similarly situated (collectively
4 “Plaintiffs”), and defendants Audible, Inc., Amazon.com, Inc., and Amazon Services
5 LLC (collectively “Defendants”), subject to the approval of the Court. In addition to
6 the above-captioned cases, this Agreement relates to the following actions: *Seth*
7 *Beals v. Audible, Inc.*, Case No. 1:17-cv-09838-AJN (S.D.N.Y.), and *Taylor Fisse,*
8 *et al. v. Audible, Inc.*, Case No. 5:18-CV-00211-D (E.D.N.C.).

9 **DEFINITIONS**

10 2. As used in this Settlement Agreement, the following terms will have the
11 following meanings:

12 a. The “Action” or “Lawsuits” refers to the lawsuits resolved by this
13 Settlement: *Grant McKee, Eric Weber, and Michael Rogawski v. Audible, Inc.*, Case
14 No. 2:17-cv-01941 (C.D. Cal., Judge Wu) (including pending appeals from that
15 matter) (the “McKee Lawsuit”); *Eric Weber and Bryan Rees v. Amazon.com, Inc.,*
16 *and Amazon Services LLC*, Case No. 2:17-cv-08868 (C.D. Cal., Judge Wu) (the
17 “Weber Lawsuit”) (which has been consolidated with the McKee Lawsuit for
18 purposes of settlement); *Seth Beals v. Audible, Inc.*, Case No. 1:17-cv-09838
19 (S.D.N.Y., Judge Nathan) (the “Beals Lawsuit”); and *Taylor Fisse and Bryan Rees*
20 *v. Audible, Inc.*, Case No. 5:18-cv-00211 (E.D.N.C., Judge Dever) (the “Fisse
21 Lawsuit”).

22 b. “Agreement” or “Settlement Agreement” or “Settlement” or
23 “Stipulation” means this Stipulation of Settlement and Release.

24 c. “Amazon” refers to defendants Amazon.com, Inc. and Amazon
25 Services LLC.

26 d. “Audible” refers to defendant Audible, Inc.

27 e. “CAFA Notice” means the notice to be sent by Defendants to
28 appropriate federal and state officials pursuant to the requirements of the Class

1 Action Fairness Act of 2005, 28 U.S.C. § 1715(b) (“CAFA”), within ten (10) days
2 after the Motion for Preliminary Approval is filed with the Court.

3 f. “Claim” means a claim submitted to Audible pursuant to this
4 Agreement.

5 g. “Class Counsel” means Soderstrom Law PC.

6 h. “Class Member” means all Persons within the definition of the
7 Regular Member Class, the Gift Member Class, or the Payment Card Class.

8 i. “Class Notice” means the Notice of Class Action Settlement as
9 approved by the Court in its Preliminary Approval Order. Audible, in consultation
10 with Class Counsel, will prepare the Class Notice, the proposed form of which is
11 attached as Exhibit A.

12 j. “Class Notice Date” means the date that the Class Notice is first
13 disseminated, as certified by Audible.

14 k. “Class Period” for the Regular Class and the Payment Card Class
15 is March 10, 2013 through August 17, 2018. The class period for the Gift Class is
16 August 11, 2011 through August 17, 2018.

17 l. “Court” means the United States District Court for the Central
18 District of California, the Honorable George H. Wu presiding, or any other district
19 judge who presides over Case Nos. 2:17-cv-01941 and 2:17-cv-08868.

20 m. “Defendants” means Audible, Inc., Amazon.com, Inc. and
21 Amazon Services LLC.

22 n. “Defense Counsel” is Fenwick & West LLP.

23 o. “Concluding Date” means the later of: (a) the date of the Order
24 of Final Approval of this Agreement by the Court, if no objections are timely filed;
25 (b) the expiration date of the time for filing notice of any appeal from the Order of
26 Final Approval by the Court if any timely objections are filed but no appeal is filed;
27 or (c) if an appeal is filed, the latest of (i) the date of final affirmance of that Order
28 of Final Approval; (ii) the expiration of the time for a petition for writ of certiorari to

1 review the Order of Final Approval if affirmed and, if the certiorari is granted, the
2 date of final affirmance of the Order of Final Approval following review pursuant to
3 that grant; or (iii) the date of final dismissal of any appeal from the Order of Final
4 Approval or the final dismissal of any proceeding on certiorari to review the Order
5 of Final Approval that has the effect of confirming the Order of Final Approval.

6 p. “Final Approval Hearing” means the hearing to be requested by
7 the Parties and conducted by the Court, following appropriate notice to the Class and
8 an opportunity for Class Members to exclude themselves from the Class and/or
9 submit objections, at which time Plaintiffs will request the Court to finally approve
10 the fairness, reasonableness, and adequacy of the terms and conditions of this
11 Agreement and to enter an Order of Final Approval and Final Judgment. The Final
12 Approval Hearing will be no earlier than ninety (90) days after the CAFA Notice
13 date.

14 q. “Final Approval Motion” or “Motion for Final Approval” means
15 Plaintiffs’ motion seeking final approval of this Agreement.

16 r. “Final Judgment” means the judgment dismissing with prejudice
17 all claims asserted against Defendants in the Action, which will be entered following
18 the Final Approval Hearing.

19 s. “Gift Class Member” means any person in the Gift Member
20 Class.

21 t. “Gift Member Class” means all individual consumers of Audible
22 in the United States who, between August 11, 2011 and August 17, 2018, purchased
23 or redeemed an Audible Gift Membership that resulted in one or more unredeemed
24 Audible gift membership credits being lost.”

25 u. “Notice of Proposed Class Action Settlement” means the Court-
26 approved written notice to Class Members.

27 v. “Notice Plan” means the notice plan set forth and described in
28 paragraphs 31-32 to this Settlement Agreement, which program will be effected

1 following issuance of the Preliminary Approval Order by the Court.

2 w. "Objection Deadline" means the date forty-five (45) days after
3 the Class Notice Date.

4 x. "Opt-Out Deadline" means the date forty-five (45) days after the
5 Class Notice Date.

6 y. "Order of Final Approval" means the order issued by the Court in
7 response to the Final Approval Motion following the Final Approval Hearing,
8 granting final approval of this Agreement.

9 z. "Paid Membership Credit" means a credit received as part of a
10 paid Audible membership but does not include a credit received for free, as part of a
11 gift membership, or as a part of any action taken by Audible or Amazon customer
12 service units in the ordinary course of business to address one or more customer
13 complaints.

14 aa. "Parties" means the Named Plaintiffs and the Defendants.

15 bb. "Payment Card Class" means all individual consumers of Audible
16 in the United States who, between March 10, 2013 and August 17, 2018, incurred
17 charges from Audible to a credit or debit card other than the card originally
18 designated as the primary payment card for the customer's Audible membership.

19 cc. "Payment Card Class Member" refers to any person in the
20 Payment Card Class.

21 dd. "Plaintiffs" or "Named Plaintiffs" refers to the lead class
22 representatives, Plaintiffs Grant McKee, Seth Beals, Eric Weber, Michael Rogawski,
23 Taylor Fisse and Bryan Rees.

24 ee. "Preliminary Approval Date" means the date of the Preliminary
25 Approval Order.

26 ff. "Preliminary Approval Motion" or "Motion for Preliminary
27 Approval" means the Named Plaintiffs' motion seeking preliminary approval of this
28 Agreement, which will include a copy of this Settlement Agreement.

1 gg. “Preliminary Approval Order” means the Court’s Order
2 preliminarily approving this Agreement, setting a date for the Final Approval
3 Hearing, and providing for notice of the Settlement Agreement to be sent to the Class
4 Members.

5 hh. “Qualified Payment Card Expense” means an overdraft fee or
6 similar fee for exceeding an available balance incurred by a Payment Card Class
7 Member between March 10, 2013 and August 17, 2018 as a direct result of Audible
8 having charged a backup payment card instead of the Payment Card Class Member’s
9 primary payment card.

10 ii. “Regular Class Member” means any person in the Regular
11 Member Class.

12 jj. “Regular Member Class” means all individual consumers of
13 Audible in the United States who, between March 10, 2013 and August 17, 2018, lost
14 any unredeemed Paid Membership Credits.

15 kk. “Released Claims” refers to all claims released by Releasing
16 Parties as described in paragraphs 41–42 below.

17 ll. “Released Parties” means the Defendants and each and all of their
18 respective past, present, and future parents, subsidiaries, and affiliated entities of any
19 type, and each and all of their respective past, present, and future agents, employees,
20 partners, officers, shareholders, directors, employees, attorneys, insurers,
21 subsidiaries, divisions, successors, and assigns.

22 mm. “Releasing Parties” means Named Plaintiffs and all Class
23 Members who do not validly and timely request to be excluded from the proposed
24 Settlement, and each of their respective successors, assigns, legatees, heirs, and
25 personal representatives.

26 nn. “Settlement Award” means the free audiobook(s) from the
27 Settlement Catalog to which a Class Member will be entitled as is finally determined
28 by Audible pursuant to the terms of this Agreement.

1 oo. “Settlement Catalog” refers to the selection of hundreds of
2 thousands of free audiobooks available to qualifying Class Members. The Settlement
3 Catalog will, at all times, comprise a minimum of 200,000 titles that have the same
4 general list pricing as Audible’s overall library, and will include certain celebrity
5 narrations, exclusive content, award winners, and best sellers.

6 pp. “Settlement Website” refers to the website described in paragraph
7 29 below.

8 RECITALS

9 3. This Settlement Agreement relates to the four Lawsuits defined above.
10 The Named Plaintiffs were plaintiffs in the Lawsuits.

11 4. The litigation started when Plaintiff McKee filed a putative class action
12 in the Central District of California on March 10, 2017 against both Audible and
13 Amazon. McKee had signed up for a free trial Audible membership in June 2016,
14 which became a paid membership after 30 days. McKee cancelled his paid
15 membership in December 2016. McKee lost two unredeemed credits automatically
16 when he cancelled before he redeemed those credits. McKee brought claims under
17 certain federal and California statutes and under common law concerning allegedly
18 unlawful advertisements, incomplete disclosures, and expiration of credits. Audible
19 and Amazon both moved to compel arbitration. The Court granted Amazon’s motion
20 and dismissed all claims against Amazon, but denied the motion as to Audible after
21 finding that the particular mobile webpages and user flows that McKee encountered
22 did not create assent to Audible’s Conditions of Use.

23 5. Plaintiff filed an Amended Complaint adding Seth Beals as a named
24 plaintiff. Beals based his claim on the expiration of credits he had received through
25 a gift membership. Audible moved to compel arbitration as to Beals and moved to
26 dismiss McKee’s claims for failure to state a claim and for lack of standing. With
27 respect to the motion to compel arbitration, the Court held that—while the
28 membership sign-up flow that Beals had used failed to create assent—the pages on

1 the Amazon desktop website that Beals used to redeem credits put him on adequate
2 notice of Audible's Conditions of Use. The Court further found that Audible's
3 Conditions of Use incorporated terms relating to gift memberships, which at that time
4 did not include an arbitration provision. Accordingly, the Court compelled certain
5 of Beals' claims to arbitration, and transferred Beals' claims relating to a gift
6 membership to the Southern District of New York pursuant to a venue clause in the
7 gift terms, resulting in the Beals Lawsuit.

8 6. The Court dismissed a number of McKee's claims without prejudice,
9 including for lack of Article III standing. In particular, the Court found that McKee
10 lacked standing to assert claims based on losing credits due to rollover limits or the
11 charging of back-up payment methods.

12 7. Following the transfer of Beals' claims, McKee filed a Second
13 Amended Complaint which added four new plaintiffs: Eric Weber, Michael
14 Rogawski, Taylor Fisse, and Bryan Rees. Weber's claims were based in part on
15 Audible's charging of his employer's card for an Audible membership. Rogawski's
16 claims were based in part on losing credits due to rollover limits. Fisse and Rees
17 were a couple, each of whom had separate Amazon accounts but, for at least one
18 transaction, Rees had used Fisse's Amazon account to complete a purchase using his
19 personal debit card. Based on Rees's purchase made on Fisse's Amazon account,
20 one of the cards on file on Fisse's Amazon account belonged to Rees and was charged
21 twice for Fisse's Audible membership. Fisse additionally lost an unredeemed credit
22 when she cancelled her Audible membership before redeeming that credit. Fisse's
23 claims were based in part on losing a credit upon cancellation, and Rees's claims
24 were based on having his debit card stored on Fisse's Amazon account charged by
25 Audible.

26 8. Audible moved to dismiss as to Fisse and Rees—both North Carolina
27 residents—for lack of personal jurisdiction, and moved to compel arbitration as to
28 Weber and Rogawski. The Court granted the motion to dismiss for lack of personal

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1 jurisdiction, and transferred Fisse and Rees’s claims to United States District Court
2 in the Eastern District of North Carolina, resulting in the Fisse Lawsuit. The Court
3 denied Audible’s motion to compel as to Weber, and Audible has appealed from that
4 ruling. Audible also brought a motion to stay proceedings as to Weber pending that
5 appeal, which the Court tentatively granted. The Court tentatively granted the motion
6 to compel arbitration as to Rogawski, which ruling Rogawski would appeal if it were
7 adopted.

8 9. Plaintiffs Weber and Rees separately filed the Weber Lawsuit against
9 Amazon in the Central District of California based on allegations of unauthorized
10 charges of payment methods that had not been initially designated for payments to
11 Audible. Amazon brought a motion to dismiss for lack of personal jurisdiction as to
12 Rees and a motion to compel arbitration as to Weber. The Court tentatively granted
13 these motions. Rees and Weber would appeal such rulings if they were adopted.

14 10. Audible has also appealed from two orders in the McKee Lawsuit to the
15 Ninth Circuit Court of Appeals, including an order taking corrective action under
16 Federal Rule of Civil Procedure 23(d) related to revisions to Audible’s disclosures.

17 11. At all times, the Parties have negotiated vigorously with each other and
18 at arm’s length. The Parties have investigated the facts relating to the claims alleged
19 in each of the Lawsuits and have made a thorough study of the legal principles
20 applicable to the claims asserted against Defendants, as well as settlements of other
21 class action lawsuits. Based upon Class Counsel’s and Defense Counsel’s
22 investigation, legal evaluation, and taking into account the contested legal and factual
23 issues involved, including the Parties’ assessment of the uncertainties of litigation,
24 the existing and tentative Court orders and related or anticipated appeals, and the
25 relative compensatory and non-compensatory benefits conferred upon the Class
26 Members pursuant to this Agreement, Class Counsel and Defense counsel have
27 concluded that this Settlement on the terms set forth in this Agreement is fair,
28 reasonable, adequate, and in the best interests of the Class Members.

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1 12. The Parties acknowledge that notice to the Class Members of the
2 material terms of this Agreement, as well as Court approval of the Agreement, are
3 required to effectuate the Agreement, and that the terms of the Agreement will not
4 become operative unless and until the Court grants final approval and the Agreement
5 becomes effective on the Concluding Date.

6 13. The Defendants have asserted, or would assert, numerous defenses to
7 the claims alleged in the Lawsuits, and they expressly deny each of the claims and
8 allegations asserted against them and any and all liability arising out of the conduct
9 alleged in the Lawsuits. Defendants assert that all of Plaintiffs' claims are subject to
10 arbitration under Defendants' respective terms of use. Defendants assert that their
11 advertisements and related representations, their disclosures concerning payment
12 card cycling, and practices concerning rollover credits, membership credits, and gift
13 membership credits during the Class Period did not violate any law, and they deny
14 that either the Named Plaintiffs or Class Members suffered any cognizable injury as
15 a result of their conduct. By entering into this Agreement, Defendants do not admit
16 any wrongdoing, and this Agreement, therefore, does not, and may not be deemed to,
17 constitute an admission of liability by any of the Defendants. Rather, Defendants are
18 settling this matter solely to avoid the cost and burden of continued litigation.

19 14. NOW THEREFORE, IT IS HEREBY AGREED, BY AND BETWEEN
20 the undersigned Parties, that this Action will be settled, subject to the approval of the
21 Court, pursuant to the following terms and conditions:

22 **CERTIFICATION OF SETTLEMENT CLASS**

23 15. The Parties agree that this Action will be certified and proceed as a class
24 action solely for purposes of settlement under Fed. R. Civ. P. 23(e), in accordance
25 with the requirements of Fed. R. Civ. P. 23(b)(2) and Fed. R. Civ. P. 23(b)(3) as to
26 all Defendants. The Settlement Class consists of all Class Members, with the Named
27 Plaintiffs as the Settlement Class representatives and Class Counsel as counsel for
28 the Settlement Class.

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1 16. This Agreement and certification of the Settlement Class is for
2 settlement purposes only, and neither the fact of, nor any provision contained in, this
3 Agreement or its Exhibits, nor any action taken hereunder, constitutes, may be
4 construed as, or is admissible in evidence as, any admission of the validity of any
5 claim or defense, the appropriateness of class certification other than for settlement
6 purposes, or any fact alleged by Plaintiffs in this Action or in any other pending or
7 subsequently filed action or proceeding of any wrongdoing, fault, violation of law,
8 or liability of any kind on the part of any of the Defendants, or admission by any of
9 the Defendants of any claim or allegation made in this Action or in any other action
10 or proceeding. This Agreement is, however, admissible in any other action or
11 proceeding to enforce the terms of the Agreement.

12 17. Any certification of a conditional, preliminary, or final Settlement Class
13 pursuant to the terms of this Agreement does not constitute, and may not be construed
14 as, an admission on the part of any of the Defendants that this Action, or any other
15 proposed or certified class action, is appropriate for class treatment pursuant to Fed.
16 R. Civ. P. 23 or any similar state or federal class action rule or statute outside the
17 settlement context. This Agreement is without prejudice to the rights of the
18 Defendants to: (1) oppose final certification in this Action should this Settlement not
19 be approved or implemented for any reason; (2) oppose certification in any other
20 proposed or certified class action; or (3) use the certification of this Settlement Class
21 to oppose certification of any other proposed class action arising out of the issues and
22 claims that are asserted herein.

23 18. In the event this Agreement is terminated pursuant to its own terms, or
24 a Final Approval of the Settlement for any reason does not occur, the Settlement
25 Class defined herein will cease to exist and the Action will proceed as if no
26 Settlement Class or Agreement had ever existed, and Defendants will not have
27 waived any and all rights they might have to oppose class certification, and to defend
28 themselves against Plaintiffs allegations in the Lawsuits.

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SUBMISSION FOR PRELIMINARY APPROVAL

19. Following execution of this Agreement, at a time to be mutually agreed upon by the Parties, or as ordered by the Court, Class Counsel must submit this Agreement to the Court by way of a Motion for Preliminary Approval.

RELIEF TO THE CLASS

INJUNCTIVE RELIEF TO THE CLASS BY DEFENDANTS

20. Audible has made or will make changes to its disclosures as follows, which will remain in effect for a period of at least one year from the Concluding Date:

a. Rollover Disclosures. In marketing copy where Audible mentions the ability to roll over credits, Audible will mention rollover limits. In the welcome email that Audible sends to new members, Audible will disclose rollover limits.

b. Cancellation Disclosures. In the welcome email that Audible sends to new members, Audible will state that unused credits will be lost upon cancellation.

c. Audible will continue to inform users upon sign up that Audible may charge other cards on file. In the welcome email that Audible sends to new members, Audible will provide a link to manage payment options and a link to the Audible Service Conditions of Use (the “COUs”).

d. Audible has improved the locations and clarity of the language requiring members to accept the COUs during sign ups and will ensure that such improvements will also exist on any future sign-up webpages or flows for at least the one-year period from the Concluding Date.

COMPENSATORY RELIEF FROM AUDIBLE

21. As provided below, Audible will (1) offer Payment Card Class Members reimbursement of Qualified Payment Card Expenses, and (2) offer qualifying Class Members audiobooks from the Settlement Catalog. The Settlement Catalog will at

1 all times consist of at least 200,000 titles that have the same general list pricing as
2 Audible’s overall library, and will include certain celebrity narrations, exclusive
3 content, award winners, and best sellers.

4 a. Credit Lost from Rollover Limit. Every Regular Class Member
5 who lost one or more Paid Membership Credit from March 10, 2013 through August
6 17, 2018 due to rollover limits will be eligible to select one audiobook from the
7 Settlement Catalog.

8 b. Credit Lost from Cancellation. Every Regular Class Member
9 who lost one or more Paid Membership Credit from March 10, 2013 through August
10 17, 2018 due to cancellation of the member’s Audible membership will be eligible to
11 select one audiobook from the Settlement Catalog.

12 c. Lost Gift Membership Credit. Every Gift Class Member who
13 redeemed an Audible gift membership and lost one or more credits from that gift
14 membership from August 11, 2011 through August 17, 2018 will be eligible to select
15 one audiobook from the Settlement Catalog.

16 d. Aggregate Limits. Qualifying Class Members may select one
17 audiobook from the Settlement Catalog for each of the categories (a) through (c)
18 above. For example, a Regular Class Member who lost two credits from rollover
19 limits and one credit from cancellation would be eligible to select two audiobooks. If
20 the same Regular Class Member also lost one or more additional credits from a gift
21 membership and qualified as a Gift Class Member, that person would be eligible to
22 select another audiobook, for a total of three audiobooks. In addition to the above,
23 any qualifying Class Member who lost five or more qualifying credits in the
24 aggregate under any of the circumstances identified in categories (a) through (c)
25 above will be eligible to receive one additional audiobook, for a total of up to four
26 audiobooks. For example, a Regular Class Member who lost six credits from rollover
27 limits would be eligible for two audiobooks. As a further example, a Regular Class
28 Member who lost four credits from cancellation and is also a Gift Class Member who

1 lost one credit due to expiration of a gift membership credit would be eligible for
2 three audiobooks. Audible will inform Class Members of how many audiobooks
3 they are eligible to select from the Settlement Catalog. Audible will cause a reminder
4 email to be sent between 15 and 30 days before the one-year period ends for any
5 Class Members who have remaining audiobook selections.

6 e. Settlement Catalog Offering Period and Composition. Audible
7 will make its Settlement Catalog offering available to Class Members for a period of
8 not less than one year from the date Audible first makes the Settlement Catalog
9 available to Class Members to select their audiobooks. During the one-year offering
10 period, Audible is permitted to remove titles and replace them with substitute titles,
11 provided that the Settlement Catalog will continue to have at least 200,000 titles at
12 all relevant times, the same general list pricing as Audible’s overall catalog, and
13 include celebrity narrations, exclusive content, award winners, and best sellers.

14 f. Reimbursement of Qualified Payment Card Expenses. Audible
15 will reimburse Payment Card Class Members for Qualified Payment Card Expenses.
16 To be eligible for reimbursement, a Payment Card Class Member must submit
17 documentation to Audible sufficient to confirm that the expenses submitted for
18 reimbursement are Qualified Payment Card Expenses.

19 **NOTICE AND DISTRIBUTION OF COMPENSATORY RELIEF**

20 22. The compensatory relief set forth in this Agreement will be made
21 available to eligible and qualifying Class Members after the Concluding Date of this
22 Agreement.

23 a. Within 30 days of the Concluding Date, Audible will cause a
24 Notice of Final Settlement Approval to be sent by email to each Class Member who
25 has not opted out by the Opt-Out Deadline, using current or last known Audible email
26 address information as discussed in Paragraph 32. The Notice of Final Settlement
27 Approval will contain (1) information about eligibility to receive audiobooks from
28 the Settlement Catalog once the Settlement Catalog is opened to class members, and

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1 (2) instructions to Payment Card Class Members on how to submit documentation of
2 Qualified Payment Card Expenses in order to receive reimbursement under the terms
3 set forth in paragraph 21 *above*. Payment Card Class Members will be given at least
4 60 days from the date of the email to submit that documentation.

5 b. Within 90 days of the Concluding Date, Audible will cause an
6 email to be sent to all Class Members who are eligible to receive one or more
7 audiobooks from the Settlement Catalog and have not opted out by the Opt-Out
8 Deadline, which will contain one or more links to the Settlement Catalog, where the
9 eligible Class Members can select the audiobook(s) they are eligible to select, under
10 the terms set forth in paragraph 21 *above* with instructions on how to complete their
11 audiobook selections.

12 c. Audible will cause a reminder email regarding audiobook
13 selections to be sent between 15 and 30 days before the one-year period ends to all
14 Class Members who have remaining audiobook selections.

15 **PAYMENTS**

16 23. Within ten (10) business days following the Concluding Date, and
17 subject to the Court's Order of Final Approval, Audible will make payments for:
18 (a) the service awards as set forth herein and approved by the Court for the Named
19 Plaintiffs for their efforts in bringing and prosecuting this matter, and (b) attorneys'
20 fees, costs, and expenses as set forth herein and approved by the Court (and to be
21 distributed by Class Counsel in their sole discretion).

22 24. Service Award to Named Plaintiffs. Subject to the Court's approval, the
23 Named Plaintiffs will each receive a service award not to exceed \$5,000 for their
24 time and efforts in bringing and prosecuting this matter. The Parties acknowledge
25 that approval of payment of service awards will be considered separately by the Court
26 from its consideration of the overall fairness and adequacy of this Settlement
27 Agreement, and it is the Parties' intention that any order with respect to this payment
28 will not affect or delay the approval of the Settlement Agreement. Within ten (10)

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1 business days after the Concluding Date, Audible will pay the Named Plaintiffs the
2 amount approved by the Court up to \$5,000 for each Named Plaintiff. Plaintiffs are
3 solely responsible for any taxes due based on the Incentive Awards.

4 25. Attorneys' Fees, Costs, and Expenses. No later than the date ordered by
5 the Court, Class Counsel will file a Motion for Attorneys' Fees, Costs, and Expenses
6 and seek Court approval of an award totaling no more than \$1.5 million in accordance
7 with Fed. R. Civ. P. 23(h). The Parties' acknowledge that approval of Class
8 Counsel's Motion for Attorneys' Fees, Costs, and Expenses will be considered
9 separately by the Court from its consideration of the overall fairness and adequacy
10 of this Settlement Agreement, and it is the Parties' intention that any order with
11 respect to this separate motion will not affect or delay the approval of the Settlement
12 Agreement, provided, however, that in no event will Defendants be required to pay
13 attorneys' fees, costs, and expenses totaling more than \$1.5 million in the aggregate.
14 Defendants agree not to oppose an award of attorneys' fees, costs, and expenses up
15 to \$1.5 million, inclusive of costs and expenses incurred by Class Counsel and
16 Named Plaintiffs. These amounts will compensate counsel, at Class Counsel's sole
17 discretion, for work already performed in this case and all of the work remaining to
18 be performed in this case, including but not limited to documenting the Settlement,
19 securing Court approval of the Settlement, responding to and settling any objections,
20 ensuring that the Settlement is fairly administered and implemented, and obtaining
21 dismissal of the Action. Within three business days after the Concluding Date,
22 Audible will pay to Class Counsel the amounts approved by the Court for attorneys'
23 fees, costs, and expenses of up to \$1.5 million in the aggregate. The money paid
24 pursuant to paragraphs 21(f) and 23-25 is the only payment for which Defendants are
25 responsible. Class Counsel is solely responsible for any taxes due based on the
26 receipt of fees, costs, and expenses.

27 **NOTICE OF SETTLEMENT**

28 26. Notice of this Settlement will be provided to Class Members as set forth

1 in paragraphs 31 and 32. The Parties will request that the Court determine that the
2 proposed procedures for notice constitute the best practicable notice to Class
3 Members.

4 27. Audible will be responsible for effecting the Notice Plan. As soon as
5 reasonably practicable after the Court issues the Preliminary Approval Order, per the
6 terms of the Notice Plan, Audible will send the Court-approved Class Notice to all
7 Class Members. The Class Notice will provide instructions and information to Class
8 Members concerning the Settlement, their objection rights and opt-out rights, their
9 right to request reimbursement of Qualified Payment Card Expenses on the terms set
10 forth herein at paragraph 21(f) if the Settlement is approved and they do not opt out,
11 and their right to select free audiobook(s) from the Settlement Catalog on the terms
12 set forth herein at paragraph 21 if the Settlement is approved and they do not opt out.

13 28. During the Settlement Catalog Offering Period defined in paragraph
14 21.e., Audible will provide its customer service group with information necessary to
15 respond to questions from Class Members and to assist Class Member's with the
16 selection of free audiobooks from the Settlement Catalog. For at least 60 days
17 following delivery of the Notice of Final Settlement Approval described in paragraph
18 22, Audible will provide its customer service group with information necessary to
19 assist Payment Class Members with the reimbursement of Qualified Payment Card
20 Expenses.

21 29. Effective on the Class Notice Date, Audible will also make active the
22 Settlement Website, which will describe the terms of the Settlement and from which
23 Class Members can download relevant forms such as the Class Notice; the Settlement
24 Agreement; the Court's Preliminary Approval Order; and Class Counsel's Motion
25 for Final Approval and Motion for Attorneys' Fees and Expenses, when they become
26 available. The Settlement Website will remain active until such time as distributions
27 of the compensatory relief set forth in paragraph 21 *above* are completed to eligible
28 Class Members.

1 30. No later than ten days before the deadline set by the Court for filing the
2 Motion for Final Approval, Audible will provide Class Counsel with a declaration
3 setting forth: (a) the details of execution and performance of the Notice Plan; (b) the
4 total number of Class Members who were sent the Class Notice; and (c) the total
5 number of Class Members who sent timely requests for exclusion or objections to the
6 Settlement, along with the complete copies of all requests for exclusion and
7 objections received, including the postmark dates for each request for exclusion or
8 objection. Class Counsel will file such declaration with the Court.

9 **NOTICE PLAN**

10 31. Audible will send each Class Member the Class Notice by email. The
11 date the Class Notice is sent is the Class Notice Date, which triggers the Opt-Out
12 Deadline and Objection Deadline.

13 32. The email containing the Class Notice will contain a link to the
14 Settlement Website and will be sent to the current or last known Audible email
15 address of every current or former Audible account holder who qualifies as a Class
16 Member as reflected in Defendants’ business records. Audible has maintained and
17 continues to maintain records in the ordinary course of business that reflect the
18 Audible account history of all current and past Audible members in the United States
19 during the relevant time period. This includes information about whether an Audible
20 member account lost any credits due to cancellation, rollover limits, or expiration of
21 a gift membership, and whether a member incurred charges from Audible to a credit
22 or debit card other than the card originally designated as the primary payment card
23 for the customer’s Audible membership.

24 **OPT-OUTS AND OBJECTIONS**

25 33. Requests for Exclusion. All forms of the Class Notice will provide that
26 Class Members who wish to exclude themselves from the Settlement must submit a
27 written statement requesting exclusion from the Settlement (“opt-out”), postmarked
28 no later than the Opt-Out Deadline. Such written request for exclusion must contain

1 the name, address, telephone number, and email address associated with the Audible
2 membership of the Class Member requesting exclusion, and be personally signed by
3 the Class Member who seeks to opt out. No opt-out request may be made on behalf
4 of a group of Class Members. The opt-out request must be sent by mail to KCC LLC,
5 P.O. Box 404099, Louisville, KY 40233-4099 and must be timely postmarked as set
6 forth above. The postmark date of the mailing envelope will be the exclusive means
7 used to determine whether an opt-out has been timely submitted. Any Class Member
8 who requests exclusion from (i.e., who opts out of) the Settlement will not be entitled
9 to any Settlement Award and will not be bound by the Settlement Agreement or have
10 any right to object to, appeal from, or comment thereon. KCC LLC shall keep and
11 maintain all opt-out requests and shall forward them to Defense Counsel no later than
12 five days after the Opt-Out Deadline.

13 34. Objections. The Class Notice will provide that any Class Members who
14 wish to object to the Settlement Agreement must send to the Court a written statement
15 of objection filed or postmarked no later than the Objection Deadline. The written
16 statement of objection must state the basis for the objection and include any
17 supporting papers. Such objection must contain the name, address, telephone
18 number, and email address of the Class Member making the objection and be
19 personally signed by the Class Member or that Class Member's counsel. Any
20 objection and supporting papers must be timely filed with the Court, either by mailing
21 them to the Clerk of the United States District Court for the Central District of
22 California, or by filing them in person at any location of the United States District
23 Court for the Central District of California, except that any objection made by a Class
24 Member represented by counsel must be filed through the Court's Case
25 Management/Electronic Case Filing (CM/ECF) system under the case number for
26 the McKee Case as set forth above. Class Members who fail to make objections in
27 the manner specified above will be deemed to have waived any objections and will
28 be foreclosed from making any objection (whether by appeal or otherwise) to the

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1 Settlement Agreement. Anyone wishing to appear at the final approval hearing to
2 object to the Settlement must expressly indicate this in his or her written objections.
3 The filing of an objection will not affect such Class Member’s right to obtain the
4 benefits of the Settlement.

5 **ORDER OF FINAL APPROVAL AND FINAL JUDGMENT**

6 35. Final Approval Motion. On or before the deadline set by the Court,
7 Plaintiffs will file a Motion for Final Approval requesting that the Court grant final
8 approval of the Settlement Agreement, with Class Counsel filing a memorandum of
9 points and authorities in support of the motion and addressing any timely submitted
10 objections to the Settlement.

11 36. Matters to be Considered at Final Approval Hearing. At the Final
12 Approval Hearing, the Court will consider and determine whether provisions of this
13 Agreement should be approved; whether the Settlement should be finally approved
14 as fair, reasonable, and adequate; whether any objections to the Settlement should be
15 granted or overruled; whether the service awards referenced in paragraph 24 should
16 be approved; whether Class Counsel’s separate Motion for Attorneys’ Fees, Costs
17 and Expenses referenced in paragraph 25 should be approved; and whether an Order
18 of Final Approval and Final Judgment should be entered.

19 37. This Agreement is subject to and conditioned upon the issuance by the
20 Court of an Order of Final Approval which grants final approval of this Agreement;
21 approves the Settlement Class pursuant to Fed. R. Civ. P. 23 and its relevant subparts;
22 and:

23 a. Finds that the Class Notice satisfies the requirements of due
24 process and Fed. R. Civ. P. 23(e)(1);

25 b. Finds that the Agreement is fair, reasonable, and adequate as to
26 the Class, and that each Class Member (except those who submit a timely and valid
27 request for exclusion from the Class) is bound by this Agreement;

28 c. Dismisses on the merits and with prejudice all claims asserted in

1 the Action against Defendants; and

2 d. Retains jurisdiction of all matters relating to the interpretation,
3 administration, implementation, effectuation, and enforcement of this Settlement.

4 **TERMINATION OF AGREEMENT**

5 38. The Named Plaintiffs, on behalf of the Class Members, by Class
6 Counsel, and any of the Defendants, by that Defendant’s counsel, each have the right
7 to unilaterally terminate this Agreement by providing written notice of their election
8 to do so to all other Parties hereto within ten business days of: (a) the Court’s refusal
9 to grant Preliminary Approval of this Agreement; (b) the Court’s refusal to grant final
10 approval of this Agreement; or (c) the date upon which the Final Judgment is
11 modified or reversed in any material respect by the Ninth Circuit Court of Appeals
12 or the U.S. Supreme Court. The above notwithstanding, the Parties agree that should
13 the Court modify the Agreement in any respect, or condition preliminary or final
14 approval of the Agreement on modification in any respect, then the Parties will,
15 within the above-indicated period, meet and confer in a good-faith attempt to reach
16 agreement and preserve the Agreement.

17 39. Any Defendant may terminate this agreement if, following the Opt-Out
18 Deadline, Defendant determines that the number of Settlement Class members who
19 have timely and validly submitted requests for exclusion exceeds a number agreed to
20 by the Parties in the Confidential Supplemental Agreement (the “Opt-Out
21 Threshold”). Requests for exclusion from persons or entities who would not
22 otherwise meet the Settlement Class definition do not count toward the Opt-Out
23 Threshold. The Parties agree to take steps to keep the Opt-Out Threshold
24 confidential. In the event that the Court directs that the Confidential Supplemental
25 Agreement be filed under seal prior to the deadline for submitting Requests for
26 Exclusion, no party will have any right to any relief by reason of such disclosure. In
27 the event of a termination of this Settlement pursuant to the Confidential
28 Supplemental Agreement, this Stipulation will become null and void. In order to

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1 terminate this Agreement pursuant to this paragraph, a Defendant must give Class
2 Counsel and counsel of record for each Defendant written notice of such election by
3 email no later than 5:00 p.m. Pacific Standard Time within ten days of the Opt-Out
4 Deadline, followed by mailed notice postmarked the same date. Class Counsel may
5 request copies of each opt out on which the Defendant is relying to exercise its
6 termination right within two days of receipt of such termination notice, and such
7 copies must be mailed within thirty days of such request. If a Defendant elects to
8 terminate this Agreement pursuant to this paragraph, it will file a notice with the
9 Court within five business days of such election.

10 40. If this Settlement Agreement is terminated pursuant to paragraph 38 or
11 39 it will be deemed null and void ab initio. In that event: (i) the Preliminary
12 Approval Order and all of its provisions will be vacated; (ii) the Action will revert to
13 the status that existed before the Settlement Agreement's execution date; and (iii) no
14 term or draft of this Settlement Agreement, or any part or aspect of the Parties'
15 settlement discussions, negotiations, or documentation (including any declarations
16 and briefs filed in support of the motion for preliminary or final approval) will have
17 any effect or be admissible into evidence, for any purpose, in this Action or any other
18 proceeding.

19 **RELEASES**

20 41. Release by Releasing Parties. Upon the Concluding Date, and in
21 consideration of the benefits and other consideration set forth above, the Releasing
22 Parties will be deemed to have, and by operation of the Final Judgment will have,
23 fully, finally, and forever released, relinquished, and discharged each of the Released
24 Parties from any and all claims, known or unknown, alleged or asserted in the
25 Lawsuits or that could have been alleged or asserted related to the advertisement,
26 purchase, receipt, charges for, or loss of an Audible membership, Audible gift
27 membership, Audible credits or other Audible membership benefits, or the use of an
28 alternative payment method in connection with Audible services through August 17,

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1 2018.

2 42. Release by Named Plaintiffs. Upon the Concluding Date, and in
3 consideration of the benefits and other consideration set forth above, the Named
4 Plaintiffs will be deemed to have, and by operation of the Final judgment will have,
5 fully, finally, and forever released, relinquished and discharged each of the Released
6 Parties from any and all claims whatsoever, known or unknown through November
7 28, 2018.

8 43. Waiver of Known and Unknown Claims. The releases in paragraphs 41
9 and 42 of this Agreement extend to claims the Releasing Parties do not know or
10 suspect to exist in their favor, which, if known by them, would have materially
11 affected their decisions to enter into this Agreement. The Parties and the Releasing
12 Parties understand and acknowledge that they are familiar with California Civil Code
13 § 1542, which provides as follows:

14
15 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
16 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
17 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
18 EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR
19 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
20 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY..

19 Upon the Concluding Date, the Releasing Parties will be deemed to have, and by
20 operation of this Agreement will have, expressly waived and relinquished any rights
21 they may have under California Civil Code § 1542 or any other statute or common
22 law principle with a similar effect as to all releases set forth in paragraphs 41 and 42
23 of this Agreement. In connection with such waiver and relinquishment, the Releasing
24 Parties acknowledge that they are aware that, after executing this Agreement, they or
25 their legal counsel or agents may discover Released Claims or facts in addition to, or
26 different from, those which they now know or believe to exist with respect to the
27 subject matter of this Agreement or the Parties hereto, but that it is Plaintiffs' and
28

1 Releasing Parties' intention hereby to fully, finally, and forever settle and release all
2 of the Released Claims, whether known or unknown, suspected or unsuspected,
3 which now exist, may exist, or heretofore may have existed against the Released
4 Parties.

5 **MISCELLANEOUS**

6 44. Acknowledgment. Each of the Parties acknowledges and represents that
7 such Party: (a) has fully and carefully read this Agreement prior to execution; (b) has
8 been fully apprised by counsel of the legal effect and meaning of the terms of this
9 Agreement; (c) has had the opportunity to undertake whatever investigation or
10 inquiry is necessary or appropriate in connection with this Agreement; (d) has been
11 afforded the opportunity to negotiate any and all terms of this Agreement; and (e) is
12 executing this Agreement voluntarily and free from any undue influence, coercion,
13 or duress of any kind.

14 45. Agreement To Cooperate. The Parties and their respective counsel will
15 cooperate with each other in good faith and use their best efforts to effect the
16 implementation of the Agreement.

17 46. Authority. Each person executing this Settlement Agreement on behalf
18 of any of the Parties represents that such person has the authority to execute this
19 Agreement.

20 47. Binding Upon Successors and Assigns. This Agreement is binding
21 upon, and inure to the benefit of, the successors or assigns of the Released Parties
22 and the Parties, as previously defined.

23 48. Construction. The Parties believe that the terms of this Agreement are
24 a fair, adequate, and reasonable settlement of this Action, and have arrived at this
25 Settlement Agreement after arms-length negotiations, taking into account all relevant
26 factors, present and potential. This Agreement has been drafted jointly by counsel
27 for the Parties. Hence, in any construction or interpretation of this Agreement, it may
28 not be construed against any of the Parties.

1 49. Counterparts. This Agreement may be executed in one or more
2 counterparts. All executed copies of this Agreement and photocopies thereof
3 (including facsimile, electronically signed, and/or emailed copies of the signature
4 pages), have the same force and effect and are as legally binding and enforceable as
5 the original.

6 50. Entire Agreement. This Agreement constitutes the entire, fully
7 integrated agreement among the Parties relating to the Settlement. All prior or
8 contemporaneous agreements, understandings and statements, whether oral or
9 written, and whether by a party or its counsel, are merged herein. No oral or written
10 representations, warranties or inducements of any kind have been made to any Party
11 concerning this Agreement, other than as set forth herein.

12 51. Limitation of Agreement. This Agreement may not be relied upon for
13 any purpose by, and does not create any rights in, any person(s) or entity other than
14 Named Plaintiffs, the Settlement Class, and the Defendants.

15 52. Governing Law. This Agreement is governed by the laws of the State
16 of California.

17 53. Headings and Captions. The headings and captions in this Agreement
18 are for convenience only and in no way define, limit, or otherwise describe the scope
19 or intent of this Agreement, or any term of this Agreement.

20 54. No Oral Modifications. This Agreement may be amended or modified
21 only by a written instrument signed by counsel for all Parties or their successors-in-
22 interest. No rights hereunder may be waived except in writing. No oral amendment
23 or modification is permitted or effective.

24 55. Publicity. The Parties, Class Counsel, and counsel for any Defendant
25 may not make any public statements about the Parties' settlement except: (a) as
26 reasonably necessary to fulfill the obligation to provide Class Notice; (b) to refer to
27 the fact that the case settled; (c) to discuss the terms of the settlement in papers filed
28 or discussions with the Court in this Action; and (d) to advocate before the Court for

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1 preliminary and final approval of the settlement in this Action. Other than the Court-
2 approved Class Notice, or other statements as to which the Parties agree in writing,
3 the Parties and their counsel agree not to make any public statements about the
4 Lawsuits or the Settlement. In response to media inquiries, unless otherwise agreed
5 in writing (including by email), the Parties and their counsel may not make any
6 comment about the Lawsuits or the Settlement other than stating that the case has
7 been settled on mutually agreeable terms.

8 56. No Waiver. The failure of any party to enforce at any time any provision
9 of this Agreement may not be construed to be a waiver of such provision, or any other
10 provision, nor in any way to affect the validity of this Agreement or any part hereof,
11 or the right of any party thereafter to enforce that provision or each and every
12 provision. No waiver of any breach of this Agreement constitutes or may be deemed
13 a waiver of any other breach.

14 57. Notices. Unless otherwise agreed in writing, all notices to the Parties or
15 counsel required by the Agreement must be made in writing and communicated by
16 first class mail and email to the following:

17 If to the Named Plaintiffs or Class Counsel:

18 Jamin Soderstrom
19 SODERSTROM LAW PC
20 3 Park Plaza, Suite 100
21 Irvine, CA 92614
22 Telephone: (949) 667-4700
23 Facsimile: (949) 424-8091
 jamin@soderstromlawfirm.com

24 If to Defendants or its counsel:

25 Jedediah Wakefield
26 FENWICK & WEST LLP
27 555 California Street, 12th Floor
28 San Francisco, CA 94104
 Telephone: (415) 875.2300
 Facsimile: (415) 281.1350

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jwakefield@fenwick.com

Any party may change the address to which requests, demands, claims, or other communications hereunder are to be delivered by giving the other Parties notice in the manner herein set forth.

58. Time Periods. The time periods and/or dates described in this Agreement with respect to the giving of Notice and the hearings are subject to approval and change by the Court with the approval of the Parties, or by agreement of the Parties.

59. Exclusive Remedy and Jurisdiction of the Court. This Agreement is the sole and exclusive remedy for any and all Released Claims. Upon entry of the Order of Final Approval and Final Judgment, each Class Member may not initiate, assert, or prosecute any Released Claims against any Released Party. If any Class Member who does not opt-out in accordance with the procedures set forth in this Settlement Agreement attempts to prosecute an action asserting a Released Claim, counsel for any affected Party must forward this Agreement and the Order of Final Approval and Final Judgment to such Class Member and advise the Class Member of the releases provided under this Settlement Agreement.

60. This Court retains exclusive and continuing jurisdiction over the Consolidated Action and all Parties and Class members to interpret and enforce this Settlement Agreement.

61. No provision in this Agreement precludes any action to enforce the terms of this Agreement.

62. The Parties agree to treat this agreement as confidential unless and until the Settlement is preliminarily approved by the Court, at which point it will become public. The Parties agree to cooperate to file this Agreement and the Motion for Preliminary Approval under seal, and take all efforts to maintain its confidentiality unless and until the Settlement is preliminarily approved by the Court. Prior to

1 preliminary approval, a party may only share this Agreement with third parties with
2 the consent of counsel for all other Parties, and only so long as any third parties who
3 are to receive this agreement also agree to maintain its confidentiality.

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READ AND AGREED TO:

PLAINTIFFS:

2/27/2019

Dated: _____, 2019

Dated: _____, 2019

Dated: _____, 2019

Dated: _____, 2019

Dated: _____, 2019


Dated: _____, 2019

DEFENDANTS:

Dated: _____, 2019

Dated: _____, 2019

Dated: _____, 2019

DocuSigned by:

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Grant McKee, Plaintiff

Seth Beals, Plaintiff

Eric Weber, Plaintiff

Michael Rogawski, Plaintiff

Taylor Fisse, Plaintiff

Bryan Rees, Plaintiff

Audible, Inc., Defendant

By: _____

Its: _____

Amazon.com, Inc., Defendant

By: _____

Its: _____

Amazon Services LLC, Defendant

By: _____

Its: _____

1 **READ AND AGREED TO:**

2

3 **PLAINTIFFS:**

4 Dated: _____, 2019

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2/28/2019

6 Dated: _____, 2019

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8 Dated: _____, 2019

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10 Dated: _____, 2019

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12 Dated: _____, 2019

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14 Dated: _____, 2019

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16 **DEFENDANTS:**

17 Dated: _____, 2019

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21 Dated: _____, 2019

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25 Dated: _____, 2019

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Grant McKee, Plaintiff

DocuSigned by:

Seth Beals

Seth Beals, Plaintiff

Eric Weber, Plaintiff

Michael Rogawski, Plaintiff

Taylor Fisse, Plaintiff

Bryan Rees, Plaintiff

Audible, Inc., Defendant

By: _____

Its: _____

Amazon.com, Inc., Defendant

By: _____

Its: _____

Amazon Services LLC, Defendant

By: _____

Its: _____

FENWICK & WEST LLP
ATTORNEYS AT LAW

1 **READ AND AGREED TO:**

2

3 **PLAINTIFFS:**

4 Dated: _____, 2019

Grant McKee, Plaintiff

5

6 Dated: _____, 2019

Seth Beals, Plaintiff

7

2/27/2019

8 Dated: _____, 2019

DocuSigned by:
Eric Weber

Eric Weber, Plaintiff

9

10 Dated: _____, 2019

Michael Rogawski, Plaintiff

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12 Dated: _____, 2019

Taylor Fisse, Plaintiff

13

14 Dated: _____, 2019

Bryan Rees, Plaintiff

15

16 **DEFENDANTS:**

17 Dated: _____, 2019

Audible, Inc., Defendant

18

19 By: _____

20 Its: _____

21 Dated: _____, 2019

Amazon.com, Inc., Defendant

22

23 By: _____

24 Its: _____

25 Dated: _____, 2019

Amazon Services LLC, Defendant

26

27 By: _____

28 Its: _____

FENWICK & WEST LLP
ATTORNEYS AT LAW

1 **READ AND AGREED TO:**

2

3 **PLAINTIFFS:**

4 Dated: _____, 2019

Grant McKee, Plaintiff

5

6 Dated: _____, 2019

Seth Beals, Plaintiff

7

8 Dated: _____, 2019

Eric Weber, Plaintiff

9

2/27/2019

10 Dated: _____, 2019

DocuSigned by:
Michael A. Rogawski

Michael Rogawski, Plaintiff

11

12 Dated: _____, 2019

Taylor Fisse, Plaintiff

13

14 Dated: _____, 2019

Bryan Rees, Plaintiff

15

16 **DEFENDANTS:**

17 Dated: _____, 2019

Audible, Inc., Defendant

18

19 By: _____

20 Its: _____

21 Dated: _____, 2019

Amazon.com, Inc., Defendant

22

23 By: _____

24 Its: _____

25 Dated: _____, 2019

Amazon Services LLC, Defendant

26

27 By: _____

28 Its: _____

FENWICK & WEST LLP
ATTORNEYS AT LAW

1 **READ AND AGREED TO:**

2

3 **PLAINTIFFS:**

4 Dated: _____, 2019

Grant McKee, Plaintiff

5

6 Dated: _____, 2019

Seth Beals, Plaintiff

7

8 Dated: _____, 2019

Eric Weber, Plaintiff

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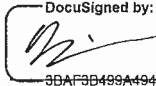
10 Dated: _____, 2019

Michael Rogawski, Plaintiff

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2/27/2019

12 Dated: _____, 2019

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Taylor Fisse, Plaintiff

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14 Dated: _____, 2019

Bryan Rees, Plaintiff

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16 **DEFENDANTS:**

17 Dated: _____, 2019

Audible, Inc., Defendant

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19 By: _____

20 Its: _____

21 Dated: _____, 2019

Amazon.com, Inc., Defendant

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23 By: _____

24 Its: _____

25 Dated: _____, 2019

Amazon Services LLC, Defendant

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ATTORNEYS AT LAW

FENWICK & WEST LLP
ATTORNEYS AT LAW

1 **READ AND AGREED TO:**

2

3 **PLAINTIFFS:**

4 Dated: _____, 2019

Grant McKee, Plaintiff

5

6 Dated: _____, 2019

Seth Beals, Plaintiff

7

8 Dated: _____, 2019

Eric Weber, Plaintiff

9

10 Dated: _____, 2019

Michael Rogawski, Plaintiff

11

12 Dated: _____, 2019

Taylor Fisse, Plaintiff

13

2/27/2019

14 Dated: _____, 2019

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Bryan Rees, Plaintiff

15

16 **DEFENDANTS:**

17 Dated: _____, 2019

Audible, Inc., Defendant

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By: _____

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Its: _____

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21 Dated: _____, 2019

Amazon.com, Inc., Defendant

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By: _____

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Its: _____

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25 Dated: _____, 2019

Amazon Services LLC, Defendant

26

By: _____

27

Its: _____

28

1 **APPROVED AS TO FORM AND CONTENT:**

2 Dated: February 28, 2019

SODERSTROM LAW PC

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By: 
Jarhin Soderstrom
Attorneys for Plaintiffs

5

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7 Dated: February 28, 2019

FENWICK & WEST LLP

8

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By: 
Jedediah Wakefield
Attorneys for Defendants

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EXHIBIT A: Draft Settlement Notice

If you have used Audible services, your rights could be affected by a class action settlement. **Please read this notice carefully. Your legal rights could be affected depending on whether or not you act in response to this notice.** This is not a solicitation from a lawyer.

This notice relates to a class action settlement preliminarily approved by the Court in the following lawsuits: *Grant McKee et al. v. Audible, Inc.*, Case No. 2:17-cv-01941 (C.D. Cal.), and *Eric Weber and Bryan Rees v. Amazon.com, Inc., and Amazon Services LLC*, Case No. 2:17-cv-08868 (C.D. Cal.). These two lawsuits, as well as two similar lawsuits pending in other courts, challenge the sufficiency of information provided to Audible customers about how membership credits work, claiming that customers may not understand that unredeemed credits are lost upon cancellation of a membership plan or upon reaching rollover limits and, for gift memberships, that credits expire following the end of the gift membership term. The lawsuits also challenge the adequacy of information provided to Audible customers related to Audible's practice of charging other credit or debit cards on file with a customer's Amazon account if a customer's primary card is declined. Audible and its parent company, Amazon, dispute the claims by the Plaintiffs in each of the lawsuits and believe that their business practices, and the information provided about them, are clear and understandable to customers and comply with all applicable laws.

Why is there a settlement? No court has decided in favor of either side in any of the lawsuits. Plaintiffs and their lawyers believe that the claims they have made against Audible and Amazon have merit, but that the proposed settlement is fair and in the best interest of the class because it provides appropriate recovery for class members now, while avoiding the risk, expense, uncertainty, and delay of continuing to pursue the lawsuits. In reaching this conclusion, Plaintiffs and their lawyers considered the possibility that one or more of the Plaintiffs and many of the class members might be required to bring their claims individually in arbitration, and the possibility that the lawsuits might ultimately result in no recovery whatsoever. Audible and Amazon do not believe that the claims against them have merit. They are settling because they believe that it is in the best interests of both the Audible business and Audible's customers to enter into the proposed settlement.

Who is in the settlement class? In the preliminary approval of the settlement, the Court has decided that everyone in the United States who fits one or more of the following descriptions is a class member for purposes of the proposed settlement, defined as follows:

- "Regular Class Member" means any individual consumer of Audible in the United States who, between March 10, 2013 and August 17, 2018, lost any unredeemed Paid Membership Credits based on rollover or cancellation. A "Paid Membership Credit" means any credit received as part of a paid Audible membership but does not include a credit received for free, as part of a gift membership, or as a part of any action taken by Audible or Amazon customer service units in the ordinary course of business to address one or more customer complaints.
- "Gift Class Member" means any individual consumer of Audible in the United States who, between August 11, 2011 and August 17, 2018, purchased or redeemed an Audible Gift Membership that resulted in unredeemed Audible gift membership credits being lost.

- “Payment Card Class Member” means any individual consumer of Audible in the United States who, between March 10, 2013 and August 17, 2018, incurred charges from Audible to a credit or debit card other than the card originally designated as the primary payment card for the customer’s Audible membership.

The settlement will result in additional disclosures from Audible regarding how credits work and its payment processes. In addition, Regular Class Members and Gift Class Members (as defined above) are eligible to receive one or more audiobooks from a settlement catalog of audiobook selections, according to the following:

- Credit(s) Lost from Rollover Limit. Every Regular Class Member who lost one or more Paid Membership Credit(s) from March 10, 2013 through August 17, 2018 due to rollover limits will be eligible to select one audiobook from the settlement catalog.
- Credit(s) Lost from Cancellation. Every Regular Class Member who lost one or more Paid Membership Credit(s) from March 10, 2013 through August 17, 2018 due to cancellation of the member’s Audible membership will be eligible to select one audiobook from the settlement catalog.
- Lost Gift Membership Credit(s). Every Gift Class Member who lost one or more Audible gift membership credit(s) from August 11, 2011 through August 17, 2018 will be eligible to select one audiobook from the settlement catalog.

In addition, any class member who lost five or more credits in the aggregate under any of the circumstances identified above will be eligible to select one additional audiobook, for a total of up to four audiobooks. The settlement catalog will have at least 200,000 audiobook titles, will consist of titles that have the same general list pricing as Audible’s overall library, and will include certain celebrity narrations, exclusive content, award winners, and best sellers.

Additionally, Payment Card Class Members may be eligible to receive reimbursement for any Qualified Payment Card Expense that they submit to Audible along with proper documentation within 60 days of the notice of final approval of settlement. A “Qualified Payment Card Expense” means an overdraft fee or similar fee for exceeding an available balance incurred by a Payment Card Class Member between March 10, 2013 and August 17, 2018 as a direct result of Audible having charged a backup payment card instead of the Payment Card Class Member’s primary payment card. To be eligible for reimbursement, a Payment Card Class Member must submit documentation sufficient to confirm that the expenses submitted for reimbursement are Qualified Payment Card Expenses. If you are a Payment Card Class Member, you will receive an email from Audible after final approval informing you of how to request reimbursement for documented Qualified Payment Card Expenses.

Compensation for class representatives and class counsel: As an award for the work performed on your behalf by each of the class representatives in these two lawsuits and two related lawsuits, Defendants have agreed to pay each Class Representative \$5,000, with the final approval of that payment to be decided by the court. Jamin Soderstrom of Soderstrom Law PC has been approved by the court as class counsel for the settlement class. You will not be charged for this lawyer. If you want to be represented by your own lawyer, you may hire one at your own expense, but it is

not necessary. Class counsel will ask the court for payment of attorneys’ fees and the expenses that they have incurred in this Lawsuit, of up to \$1,500,000.00. Defendants have agreed to pay up to this amount, which will not reduce the benefits made available to the Class under the Settlement. The court, however, may award class counsel less than this amount.

Additional information and documents related to the Settlement and the several lawsuits that are being settled are available at [URL TO BE DETERMINED].

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

The purpose of the notice is to inform you of the proposed settlement agreement and, if you are a class member (as defined above), of your options. Each option has consequences, which you should consider carefully before making your decision. Your options as a class member are summarized below:

DO NOTHING



If you do nothing in response to this Notice, you will give up your right to object to the settlement or be excluded from the settlement if it is approved. However, if the settlement is approved, you will automatically become a class member. If you are a Regular Class Member or Gift Class Member, you will receive an email from Audible within 90 days of approval indicating whether you are eligible to select audiobooks from the settlement catalogue as part of the settlement, and if so, the number of audiobooks you are eligible to select and providing instructions on how to select them and Audible will also send you an email between 15 and 30 days before the settlement catalogue closes (which will be at least one year after you receive the original email) to remind you about your selection rights. If you are a Payment Card Class Member, you will receive an email from Audible within 90 days of approval informing you of how to request reimbursement for documented Qualified Payment Card Expenses.

OBJECT

You may write to the Court about why you object to (i.e., don’t like) the settlement and think it should not be approved. Filing an objection does not exclude you from the settlement. Even if you object, you will still become a class member if the settlement is approved. To object to the settlement, you must send a letter saying that you object to the Audible settlement in the McKee class action. Be sure to include your name, address, telephone number, signature, and the reasons you object to the settlement. Any objection and supporting papers must be filed with the Court no later than [DEADLINE TBD], either by (1) mailing them to the Clerk of the United States District Court for the Central District of California and sending a copy by fax, U.S. mail, or email to Class Counsel and Defense Counsel at the addresses listed below; or (2) by

Deadline:

[REDACTED]

	<p>filing them in person at any location of the United States District Court for the Central District of California, except that if you are represented by counsel you must file your objection through the Court’s Case Management/Electronic Case Filing (CM/ECF) system under the case number for the McKee Case as set forth above. If you fail to object in the manner specified above you will be deemed to have waived any objections and will be prohibited from later making any objection (whether by appeal or otherwise) to the settlement agreement.</p>	
<p>EXCLUDE YOURSELF</p>	<p>You may exclude yourself from the settlement, if it is approved, by submitting a written request for exclusion to KCC LLC, P.O. Box 404099, Louisville, KY 40233-4099. Your request for exclusion must include your name; your current address; the email address associated with the Amazon.com account you used to sign up for your Audible membership; a statement indicating that you would like to be excluded from the settlement in <i>McKee v. Audible, Inc.</i>, Case No. 2:17-cv-01941 (C.D. Cal.); and your signature. If you exclude yourself from the settlement and it is approved, you will not receive any audiobooks under the settlement and you will retain your right to file your own claims in arbitration or court against Audible or Amazon.</p>	<p>Deadline: </p>
<p>GO TO THE “FAIRNESS HEARING”</p>	<p>The Court will hold a “Fairness Hearing” to consider the settlement, the request for attorneys’ fees and costs by the lawyers who brought the lawsuits, and the Plaintiffs’ request for incentive awards for bringing the Litigation.</p> <p>You may, but are not required to, speak at the Fairness Hearing about any objection you filed to the settlement. If you intend to speak at the Fairness Hearing, you must also submit a “Notice of Intention to Appear” to the Court and the parties’ attorneys, indicating your intent to do so. To do so, you must send a letter saying that it is your “Notice of Intention to Appear in the McKee v. Audible, Inc. Class Action Settlement Fairness Hearing.” Be sure to include your name, address, telephone number, signature, and the reasons you object to the settlement. Mail the notice to the Court, and send a copy by fax, U.S. mail, or email to Class Counsel and Defense Counsel at the addresses listed below.</p>	<p>Hearing Date: </p>

COURT
 Clerk of the Court

United States Courthouse for the Central District of California
350 West First Street
Los Angeles, CA 90012

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