

AMENDED CLASS ACTION SETTLEMENT AGREEMENT

This Amended Class Action Settlement Agreement is entered into this ___th day of September, 2019, between Plaintiff, individually and on behalf of the Class he seeks to represent, on the one hand, and Defendants, on the other hand, subject to both the terms and conditions hereof and the approval of the Court.

I. RECITALS

1.1. On May 4, 2018, Plaintiff through his counsel Gutride Safier LLP and Migliaccio & Rathod LLP filed a Class Action Complaint in Alameda County Superior Court against Defendants alleging claims for violations of the California Consumer Legal Remedies Act, Civil Code § 1750, *et seq.*; the Magnuson-Moss Warranty Act, 15 U.S.C. 2301, *et seq.*; the Song-Beverly Consumer Warranty Act, California Civil Code § 1790, *et seq.*; false advertising under California Business and Professions Code § 17500, *et seq.*; and unfair business practices under California Business and Professions Code § 17200 *et seq.*; breach of express warranty; breach of implied warranty of merchantability; deceit and fraudulent concealment; and unjust enrichment, and seeking damages, an injunction and other relief. Plaintiff sought to pursue these claims on behalf of himself and all purchasers of the Laptops in the United States.

1.2. On June 7, 2018, Defendant ASUS Computer International (“ACI”) timely removed the Litigation to the United States District Court for the Northern District of California and answered the Complaint, denying Plaintiff’s allegations and asserting several affirmative defenses. The Litigation was assigned to the Honorable Magistrate Donna Ryu.

1.3. On February 27, 2019, Plaintiff served the Complaint on ASUSTeK Computer Inc. (“ASUSTeK”).

1.4. Plaintiff alleges in the Complaint that Defendants marketed the Laptops as powerful, portable machines ideal for gaming and video editing and represented that the Laptops' independent cooling system "maximizes cooling efficiency" to give the Laptops "stability required for intense gaming sessions." Plaintiff further alleges that the Laptops are not suitable for their ordinary and advertised purpose of gaming and video editing because they uniformly suffer from a defect that causes the Laptops' batteries to drain even when the Laptops are connected to, and drawing power from, electrical outlets. Plaintiff also alleges that contrary to Defendants' marketing representations, the Laptops' cooling system uses a unitary set of heatsinks to dissipate heat from the graphics processing unit ("GPU") and computational processing unit ("CPU"). Plaintiff alleges that heat generated by computationally or graphically demanding programs overloads the unitary cooling system's ability to dissipate heat from the CPU and GPU and causes the Laptop to overheat to the point of causing physical discomfort and/or diminishing the Laptops' performance and durability. Plaintiff additionally alleges that Defendants failed to honor their warranties for the Laptops because Defendants responded to requests for warranty repairs by replacing the Laptops' defective components with identical and equally defective components.

1.5. Plaintiff's Counsel and Defendants' Counsel conducted a thorough examination and investigation of the facts and law relating to the matters in the Litigation. Such investigation and discovery included the retention and consultation of an electrical engineering expert by Plaintiff's Counsel, requesting and receiving written discovery responses by Plaintiff from ACI, Plaintiff examining Defendants' documents, Plaintiff questioning Defendants about their documents, and Defendants deposing Plaintiff.

1.6. On March 19, 2019, the Parties participated in an all-day mediation conducted by Martin Quinn, Esq. at JAMS in San Francisco, California. That mediation resulted in a term sheet and the settlement memorialized in this Agreement. This Agreement was arrived at after extensive arm's length negotiations conducted in good faith by counsel for the Parties, and is supported by Plaintiff. The Parties did not discuss or negotiate Attorneys' Fees and Costs until after relief had been fashioned for the Settlement Class.

1.7. Defendants deny all of Plaintiff's Allegations and charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Litigation. Defendants also deny that Plaintiff, the Class, any Class Members, the Settlement Class, or any Settlement Class Member have suffered damage or harm by reason of any alleged conduct, statement, act or omission of Defendants. Defendants further deny that the Litigation meets the requisites for certification as a class action under Rule 23 of the Federal Rules of Civil Procedure, except for purposes of settlement, or that the evidence is sufficient to support a finding of liability on any of Plaintiff's claims in the Litigation.

1.8. Plaintiff's Counsel has analyzed and evaluated the merits of the Parties' contentions and this Settlement as it impacts all the Parties and the Class Members. Among the risks of continued litigation for Plaintiff are the risks of failing to prove liability or restitution and damages on a class-wide or individual basis. In particular, there may be difficulties establishing: (1) that all the Laptops uniformly experienced the Power Defect and Overheating Issues, (2) that Defendants' marketing materials were likely to deceive reasonable consumers, (3) that omissions in the marketing materials were material to reasonable consumers, (4) the amount of damages or restitution due to the class or to any class member, and (5) that common questions predominate

over individual issues such that a class may be certified. Plaintiff and Plaintiff's Counsel, after taking into account the foregoing along with other risks and the costs of further litigation, are satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate and equitable, and that a settlement of the Litigation and the prompt provision of effective relief to the Class are in the best interest of the Class Members.

1.9. Defendants agree that the Settlement is fair and reasonable in light of the merits and risks of the case. While continuing to deny all allegations of wrongdoing and disclaiming any liability with respect to any and all claims, Defendants consider it desirable to resolve the Litigation on the terms stated herein, in order to avoid further burden, expense, uncertainty, inconvenience, and interference with its ongoing business operations in defending the Litigation and put to rest the Released Claims. Therefore, Defendants and Defendants' Counsel have determined that settlement of this Litigation on the terms set forth herein is in Defendants' best interests.

1.10. This Agreement reflects a compromise between the Parties, and shall in no event be construed as or be deemed an admission or concession by any Party of the truth of any allegation or the validity of any purported claim or defense asserted in any of the pleadings in the Litigation, or of any fault on the part of Defendants, and all such Allegations are expressly denied. Nothing in this Agreement shall constitute an admission of liability or be used as evidence of liability, by or against any Party hereto.

1.11. The undersigned Parties agree, subject to approval by the Court, that the Litigation between Plaintiff, on the one hand, and Defendants, on the other hand, shall be fully and finally compromised, settled and released on the terms and conditions set forth in this Agreement

1.12. This Agreement modifies, amends, and supersedes the Class Action Settlement Agreement dated June 21, 2019.

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, and of the releases and dismissals of claims described below, the Parties agree to this Settlement, subject to Court approval, under the following terms and conditions.

II. DEFINITIONS

A. Capitalized terms in this Agreement shall be defined as follows:

2.1. “Administration Costs” means the actual and direct costs reasonably charged by the Claim Administrator for its services as provided for in this Agreement or as otherwise agreed to by the Parties and the Claim Administrator or as ordered by the Court.

2.2. “Agreement” means this Amended Class Action Settlement Agreement, including all exhibits thereto.

2.3. “Allegations” means the allegations described in Sections 1.1 and 1.4 above and claims that could be pursued under the laws of the United States or any state on the basis of one or more of those allegations.

2.4. “Attorneys’ Fees and Expenses” means such funds as may be awarded by the Court based on the Settlement described herein to compensate Plaintiff’s Counsel as determined by the Court and described more particularly in Section 8 of this Agreement. Any such award will also include a reimbursement of costs and expenses incurred by Plaintiff’s Counsel, arising from their representation in the Litigation, as determined and awarded by the Court. In no event shall the Attorneys’ Fees and Expenses exceed Seven Hundred Eighty Seven Thousand Five Hundred Dollars (\$787,500.00).

2.5. “Cash Payment” means a check, which shall be made payable and delivered to a Claimant, as required by this Agreement.

2.6. “Claim” means a request for relief pursuant to this Settlement submitted on a Claim Form by a Class Member to the Claim Administrator in accordance with the terms of this Settlement.

2.7. “Claimant” means a Class Member who submits a Claim seeking a Settlement Benefit under this Agreement.

2.8. “Claim Administrator” means the independent third-party administrator to be retained by Defendants to provide services in the administration of this Settlement, including providing Class Notice to the Class Members, the processing and evaluation of Claims, and the processing of other documents or tasks as provided for in this Agreement or as otherwise agreed to by the Parties or as ordered by the Court.

2.9. “Claim Filing Deadline” means sixty (60) days after the Notice Date.

2.10. “Claim Form” means a claim form in substantially the same form as Exhibit A and/or Exhibit A1.

2.11. “Claim Period” means the period beginning on the Notice Date and continuing until the Claim Filing Deadline.

2.12. “Class” or “Class Members” means all persons in the United States who purchased a new ASUS Rog Strix GL502VS or ASUS Rog Strix GL502VSK laptop computer from Defendants or an authorized retailer of Defendants between May 4, 2014 and the date Preliminary Approval is entered. Excluded from the Class are (a) the Honorable Magistrate Donna Ryu and any member of her immediate family; (b) any government entity; (c) Martin Quinn and any member of his immediate family; (d) Defendants; (e) any entity in which

Defendants have a controlling interest; (f) any of Defendants' parents, affiliates, and officers, directors, employees, legal representatives, heirs, successors, or assigns; (g) any person whose purchase of a Laptop was for resale purposes; (h) any person who timely opts out of the Settlement; (i) any person who received a full refund of a Laptop's entire purchase price from ASUS or a retailer in connection with the Power Defect, Overheating Issue, or heat-related issues alleged in the Lawsuit; (j) any person who received a replacement Laptop that did not suffer from the Power Defect or Overheating Issue; and (k) any person who signed a release regarding their Laptop.

2.13. "Class Notice" means all types of notice that will be provided to Class Members pursuant to Federal Rule of Civil Procedure 23(c)(2) and 23(e), the Preliminary Approval Order, and this Agreement, including Email Notice, Postcard Notice, Long Form Notice, Published Notice, Online Notice, the Settlement Website, and any additional notice the Court may order.

2.14. "Class Period" means the period between May 4, 2014 and the date Preliminary Approval is entered.

2.15. "Class Representative" means Plaintiff Joseph Carlotti.

2.16. "Court" means the United States District Court for the Northern District of California.

2.17. "Credit Certificate" means a certificate that a Class Member who submits a timely and proper Claim can elect to receive via email from the Claim Administrator, and a certificate that a member of Group B can automatically receive without the need to file a Claim, that can be redeemed towards the purchase of any one or more products at <https://store.asus.com/us>, not including shipping costs or taxes, consistent with the terms and

conditions of this Agreement. Credit Certificates are fully transferrable and are stackable, meaning that more than one Credit Certificate may be used towards any purchase. No minimum purchase is required to redeem a Credit Certificate. If the total amount of the purchase (before shipping and taxes) is less than the amount of the Credit Certificate(s) redeemed during the purchase transaction, the Credit Certificates shall have no residual value. The Credit Certificate shall be capable of being combined with any other credit, voucher, coupon, sale, or other discount of any kind and shall expire no less than two (2) years after issuance. Credit Certificates have no cash value and cannot be used for any purpose other than as stated in this Agreement.

2.18. “Defendants” means ACI and ASUSTeK, collectively.

2.19. “Defendants’ Counsel” means the law firm of Sacks, Ricketts & Case LLP.

2.20. “Defendants’ Website” means all digital content and webpages hosted by Defendants at the domain name, <https://www.asus.com>.

2.21. “Effective Date” means the latest of the following: (a) thirty-one (31) days after the entry of the Final Approval Order and Judgment if no objections are filed or if objections are filed and overruled and no appeal is taken from the Final Approval Order and Judgment; or (2) if a timely appeal is made, three (3) business days after the date of the final resolution of that appeal (i.e., the issuance of remittitur) and any subsequent appeals or petitions for certiorari from Final Approval of the Settlement.

2.22. “Email Notice” means a notice by email in substantially the same form as Exhibit B2.

2.23. “Extended Warranty” means the warranty extension as further described in Section 5 of this Agreement.

2.24. “Final Approval Hearing” means the final hearing to be conducted by the Court on such date as the Court may order to determine the fairness, adequacy, and reasonableness of the Settlement in accordance with applicable jurisprudence, to be held after notice has been provided to Class Members in accordance with this Settlement, and where the Court will: (a) determine whether to grant Final Approval to the Settlement and enter the Final Approval Order and Judgment; (b) determine whether to approve an Incentive Award and in what amount; (c) rule on Plaintiff’s Counsel’s application for Attorneys’ Fees and Expenses; and (d) consider the merits of any objections to this Agreement and/or any aspect of the Settlement itself.

2.25. “Final Approval” or “Final Approval Order” means an order, substantially in the form of Exhibit D, granting final approval of this Settlement as binding upon the Parties.

2.26. “Group A Valid Claim” means a claim in compliance with Section 6.1(a) of this Agreement.

2.27. “Group B Valid Claim” means a claim in compliance with Section 6.1(b) of this Agreement.

2.28. “Group C Valid Claim” means a claim in compliance with Section 6.1(c) of this Agreement.

2.29. “Incentive Award” means any award sought by application to and approval by the Court that is payable to Plaintiff to compensate him for his efforts in bringing this Litigation and/or achieving the benefits of this settlement on behalf of the Settlement Class, as further discussed in Section 8. In no event shall the Incentive Award exceed Five Thousand Dollars (\$5,000.00).

2.30. “Judgment” means the final judgment dismissing the Litigation against Defendants with prejudice.

2.31. “Laptop” and “Laptops” means the ASUS Rog Strix GL502VS and the ASUS Rog Strix GL502VSK laptop computers at issue in the Litigation.

2.32. “Laptop Proof of Purchase” means a receipt or other documentation from any Defendant or a third-party commercial source that reasonably establishes the fact and date of purchase of a Laptop by a Class Member during the Class Period in the United States.

2.33. “Litigation” means *Carlotti v. Asus Computer International Inc., et al.*, United States District Court for the Northern District of California, Case No. 4:18-cv-03369-DMR.

2.34. “Long Form Notice” means a notice in substantially the same form as Exhibit B1 that the Claim Administrator shall make available on the Settlement Website.

2.35. “Notice Date” means the day on which the Claim Administrator initiates the Notice Plan, which shall be no later than forty-five (45) days following provision of the information required under Section 7.2 by Defendants to the Claim Administrator.

2.36. “Notice Plan” means the procedure for providing notice to the Settlement Class, as set forth in Section 7.

2.37. “Objection/Exclusion Deadline” means the deadline by which Class Members must submit objections to the Settlement or requests to be excluded from the Settlement, subject to the terms set forth in the Preliminary Approval Order, which is the date sixty (60) days after the Notice Date or such date otherwise ordered by the Court.

2.38. “Online Notice” means notice to Class Members in substantially the same form as Exhibit B3.

2.39. “Overheating Issue” refers to Plaintiff’s allegations in the Litigation that the Laptops produce excessive heat such that the Laptop becomes hot to the touch during use.

2.40. “Parties” means the Class Representative and Defendants, collectively.

2.41. “Party” means either the Class Representative or Defendants.

2.42. “Plaintiff” means Joseph Carlotti.

2.43. “Plaintiff’s Counsel,” “Class Counsel” or “Settlement Class Counsel” mean the law firms of Gutride Safier LLP and Migliaccio & Rathod LLP who are counsel for the Class Representative and who seek to be appointed as counsel for the Class Members in this Litigation.

2.44. “Power Defect” refers to Plaintiff’s allegations in the Litigation that the Laptops’ power supply unit does not provide sufficient power to the Laptops such that the Laptops’ batteries drain during use even when the Laptops are plugged into electric outlets; the Laptops experience reductions in computational performance when they are low on battery power or when the battery is removed, even when the Laptops are connected to an electrical outlet; and that there is accelerated degradation of the Laptops’ batteries.

2.45. “Postcard Notice” means a notice substantially in the form of Exhibit B5.

2.46. “Preliminary Approval” or “Preliminary Approval Order” means an order entered by the Court, substantially in the form of Exhibit C, preliminarily approving the terms and conditions of this Agreement and the Settlement.

2.47. “Published Notice” means the public notice of this Settlement that is contemplated by this Agreement, substantially in the form of Exhibit B4.

2.48. “Qualifying Repairs” means repairs to and/or replacement of the motherboard and/or AC power adaptors to resolve the Power Defect.

2.49. “Released Claims” include each Settlement Class Member’s release of Defendants and the Released Parties from any and all injuries, demands, losses, damages, costs, loss of service, expenses, compensation, claims, suits, causes of action, obligations, rights, liens, and liabilities of any nature, type, or description, whether known or unknown, contingent or vested, in law or in equity, based on direct or vicarious liability, and regardless of legal theory, that: (a) relate to, are based on, concern, or arise out of the Allegations; (b) were asserted or could have been asserted (whether individually or on a class-wide basis) in the Litigation or any other action or proceeding relating to the Power Defect and/or Overheating Issue and/or the labeling, marketing, advertising, sale, or servicing of the Laptops arising out of relating in any way to the Allegations that was brought or could have been brought on or prior to the date hereof including, but not limited to, claims that Defendants engaged in unfair and/or deceptive business practices and/or violated applicable consumer protection statutes or other common laws or statutes of all fifty (50) states and the United States; (c) for breach of contract and breach of the covenant of good faith and fair dealing arising out of relating in any way to the Allegations; (d) for breach of express warranty and breach of implied warranty arising out of relating in any way to the Allegations; and/or, without limiting the foregoing, (e) are based, in any way, on which the facts and claims asserted in the Litigation are based upon and depend upon. The Released Claims shall not release any Settlement Class Member’s claims for personal injury allegedly arising out of use of the Laptops or rights to enforce this Agreement. The Released Claims shall be accorded the broadest preclusive scope and effect permitted by law against the Settlement Class Members and this definition of Released Claims is a material term of this Agreement.

2.50. “Released Parties” include Defendants and each of their respective current and former parent companies, subsidiaries, divisions, and current and former affiliated

individuals and entities, legal successors, predecessors (including companies they have acquired, purchased, or absorbed), assigns, joint ventures, and each and all of their respective officers, partners, directors, owners, stockholders, servants, agents, shareholders, members, managers, principals, investment advisors, consultants, employees, representatives, attorneys, accountants, lenders, underwriters, benefits administrators, investors, funds, and insurers, past, present and future, and all persons acting under, by, through, or in concert with any of them.

2.51. “Serial Number” means the serial number of the Laptop; the following webpage on Defendants’ Website provides information about how to determine the Laptop’s Serial Number: <https://www.asus.com/us/support/article/566/>.

2.52. “Settlement” means the terms and conditions of this Agreement.

2.53. “Settlement Benefit” means a Credit Certificate or Cash Payment, as further described in Section 6 of this Agreement.

2.54. “Settlement Class” or “Settlement Class Members” means all Class Members excepting persons who properly excluded themselves from the Settlement pursuant to the terms of this Agreement and the Preliminary Approval Order.

2.55. “Settlement Fund” means the total of (a) Administration Costs, in an amount not to exceed \$200,000.00; (b) any Incentive Award the Court approves to be paid to Plaintiff, in an amount not to exceed \$5,000.00; (c) any Attorneys’ Fees and Expenses the Court approves to be paid to Class Counsel, in an amount not to exceed \$787,500.00; and (d) the total of Cash Payments to be made to Settlement Class Members who submit a Valid Claim for Cash Payments.

2.56. “Settlement Website” means an internet website created and maintained by the Claim Administrator consistent with the entry of the Preliminary Approval Order to

provide information regarding the Settlement and where Class Members can obtain information concerning requesting exclusion from or objecting to the Settlement and/or can submit a Claim. The URL of the Settlement Website shall be agreed to by the Parties.

2.57. “Valid Claim” means Group A Valid Claims, Group B Valid Claims, and Group C Valid Claims.

B. Conventions. All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders and the singular shall include the plural and vice versa except where expressly provided to the contrary. All references herein to sections, paragraphs, and exhibits refer to sections, paragraphs, and exhibits of and to this Agreement, unless otherwise expressly stated in the reference. The headings and captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision thereof.

III. CONSIDERATION FROM DEFENDANTS

3.1. In full, complete and final settlement and satisfaction of the Litigation, and all Released Claims, and subject always to all of the terms, conditions and provisions of this Agreement, including Court approval, Defendants agree to provide the following consideration:

(a) Within ten (10) days after the Effective Date, Defendants shall fund the Settlement Fund. The Settlement Fund shall be established by the Claim Administrator as a Qualified Settlement Fund pursuant to Section 468B(g) of the Internal Revenue Code, and all regulations promulgated thereunder for the purpose of administering the Settlement.

(b) In the event the Settlement is cancelled pursuant to this Agreement, the Court denies Final Approval, or an appeal leaves the Settlement unenforceable, the Parties shall be returned to the same positions as existed at the time of this Agreement, and all

funds in the Settlement Fund provided for in this Section shall be returned to Defendants, with the exception of amounts paid or owing to the Claim Administrator for Administration Costs actually incurred for services already performed.

IV. CONDITIONAL CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY

4.1. The Parties reached this Agreement before Plaintiff filed a motion for class certification. Accordingly, Plaintiff shall include a request for conditional certification as part of his motion for Preliminary Approval that seeks certification of the Class for settlement purposes only.

4.2. As a material part of this Settlement, Defendants, while reserving all defenses if this Agreement is not finally approved, hereby stipulate and consent, solely for purposes of and in consideration of the Settlement, to provisional certification of the Class. Defendants' stipulation and consent to class certification is expressly conditioned upon the entry of a Preliminary Approval Order, a Final Approval Order and Judgment, and as otherwise set forth in this Agreement. As part of their provisional stipulation, Defendants further consent to the appointment of Class Counsel and the Class Representative to represent the Class. The provisional certification of the Class, the appointment of the Class Representative, and the appointment of Class Counsel shall be binding only with respect to this Settlement and this Agreement. If the Court fails to enter a Preliminary Approval Order or a Final Approval Order and Judgment, or if this Agreement and the Settlement proposed herein is terminated, canceled, or fails to become effective for any reason whatsoever, or the Court enters any order that increases the cost or burden of the Settlement on Defendants beyond what is set forth in this Agreement, the class certification, to which the Parties have stipulated solely for the purposes of

this Settlement, this Agreement, and all of the provisions of any Preliminary Approval Order or any Final Approval Order shall be vacated by their own terms and the Litigation will revert to its status as it existed prior to the date of this Agreement with respect to class certification, the appointment of the Class Representative, and the appointment of Class Counsel. In that event, Defendants shall retain all rights they had immediately preceding the execution of this Agreement to object to the maintenance of the Litigation as a class action, the appointment of the Class Representative, and the appointment of Class Counsel and, in that event, nothing in this Agreement or other papers or proceedings related to this Settlement shall be used as evidence or argument by any of the Parties concerning whether the Litigation may properly be maintained as a class action under applicable law, whether the Class Representative is an adequate or typical class representative, or whether Class Counsel is adequate or may be appointed to represent the Class or any Class Members.

V. EXTENDED WARRANTY FOR QUALIFYING REPAIRS

5.1. Defendants will extend the warranty on all ASUS Rog Strix GL502VS laptops to cover all Qualifying Repairs until the later of: (i) three (3) years from the date of purchase; (ii) ninety (90) days from Final Approval and Judgment; or (iii) one-hundred eighty (180) days from the date of a prior replacement of the internal power supply and/or AC power adaptor by Defendants. This extended warranty shall not apply to the ASUS Rog Strix GL502VSK laptops.

5.2. To obtain a Qualifying Repair, the Class Member must contact Defendants' technical support toll free number to be stated in the Class Notice, and follow Defendants' protocol for shipping the ASUS Rog Strix GL502VS laptop to a repair facility for repairs. If the ASUS Rog Strix GL502VS laptop is determined at the repair facility to be entitled

to a Qualifying Repair, Defendants will repair the laptop at no charge. If the ASUS Rog Strix GL502VS laptop is determined at the repair facility not to be entitled to a Qualifying Repair, and the laptop is not eligible for other repairs under any existing warranty, Defendants will offer to repair the laptop at the Class Member's expense.

5.3. A Class Member shall be entitled to the Extended Warranty as described in this Section 5 whether or not the Class Member files a Claim as set forth in Section 6.

VI. SETTLEMENT BENEFITS

6.1. In full, complete, and final settlement and satisfaction of the Litigation and all Released Claims, and subject always to all of the terms, conditions, and provisions of this Agreement, including Court approval, Defendants agree to cause the following settlement benefits to be provided as follows:

(a) **Group A.** A Claimant who submits a Group A Valid Claim shall have the option to select either a \$210 Credit Certificate or a \$110 Cash Payment. In order to submit a Group A Valid Claim, Claimant must comply with the requirements in Section 6.6 and must either: (1) provide the Laptop's Serial Number and have registered the Laptop with Defendants prior to the Notice Date, as reflected by Defendants' records; (2) provide the Laptop's Serial Number and have purchased the Laptop from the ASUS Website; or (3) submit a Laptop Proof of Purchase.

(b) **Group B.** Class Members who submitted a complaint about the Power Defect and/or Overheating Issue prior to March 19, 2019 to Defendants' customer service department and for whom Defendants possess contact information shall automatically receive a \$210 Credit Certificate, without the necessity of filing a Claim. If such a Class Member prefers a \$110 Cash Payment instead of a \$210 Credit Certificate, then they must submit a Group B Valid

Claim using the Claim Form attached as Exhibit A1. A Claimant who submits a Group B Valid Claim shall receive a \$110 Cash Payment. In order to submit a Group B Valid Claim, the Claimant must comply with the requirements in Section 6.6 except as otherwise stated.

(c) **Group C.** A Claimant who submits a Group C Valid Claim shall have the option to select either a \$105 Credit Certificate or a \$55 Cash Payment. In order to submit a Group C Valid Claim, Claimant must comply with the requirements in Section 6.6 and must provide the Laptop's Serial Number.

6.2. Any Class Member who submits an otherwise Valid Claim without electing a Settlement Benefit will receive the applicable Credit Certificate. Any Class Member who does not meet the requirements for a Group A Valid Claim, but does meet the requirements for a Group C Valid Claim will receive the Group C Settlement Benefit.

6.3. For Group A Valid Claims only, Defendants have the right to demand inspection of the Laptop to verify whether it suffers from the Power Defect and/or Overheating Issue. No inspection may be demanded by Defendants if Claimant made a posting on Defendants' Website, forums, or chat room (collectively, "Postings") prior to March 19, 2019 and submits a copy of such Postings with the Claim Form.

(a) The inspection referred to in Section 6.3 must be conducted by Defendants, unless both Defendants and the Claimant agree to a third-party to conduct the inspection.

(b) At the election of Defendants, the inspection shall be conducted either (1) at the home or business of the Claimant or (2) at an alternative inspection site, so long as Defendants pay any shipping costs incurred in delivering the Laptop.

(c) The inspection must be conducted within twenty (20) days of Defendants' demand for the inspection, unless otherwise agreed by Claimant.

(d) Any demand for inspection must be accompanied by instructions informing the Claimant of the conditions set forth herein and of the right to refuse the inspection entirely. If the Claimant refuses the request for inspection, the Claim will be treated as a Group C Valid Claim.

6.4. If a Class Member does not timely submit a Valid Claim to the Claim Administrator, the Class Member is not entitled to any Settlement Benefit, except as otherwise provided in Sections 6.1(b).

6.5. A Claim shall be deemed to be a Valid Claim only if submitted on the Claim Form pursuant to the procedures set forth herein. At the election of the Class Member, Claim Forms may be submitted in paper via first class mail or online at the Settlement Website. Claim Forms to be mailed must be postmarked, and Claim Forms to be submitted online through the Settlement Website must be submitted, no later than the Claim Filing Deadline. Claim Forms that are postmarked or submitted online after that date will not be Valid Claims. For Claim Forms that are submitted online, the Class Member shall have the opportunity to upload Laptop Proof of Purchase and Postings image files (e.g. jpg, tif, pdf).

6.6. On the Claim Form, the Class Member must certify the truth and accuracy of each of the following under the penalty of perjury, unless otherwise stated, including by signing the Claim Form physically or by e-signature, or the claim will not be considered a Valid Claim by the Claim Administrator:

(a) The Class Member's name and mailing address;

- (b) The Class Member's email address, if the Class Member selects a Credit Certificate or otherwise elects to provide the information;
- (c) That the claimed purchase was not made for the purpose of resale;
- (d) That the Laptop suffered from the Power Defect and/or experienced the Overheating Issue (except for members of Group B that choose a Cash Payment);
- (e) That any additional information provided by the Claimant to demonstrate membership in Group A, as set forth above in this Section, is true and correct; and
- (f) That any documentation provided by the Claimant, i.e., Laptop Proof of Purchase or Postings, is a true and correct copy of the original.

6.7. Cash Payment. The Claim Administrator shall mail a check sixty (60) days after the Effective Date to the mailing address provided for each Settlement Class Member who timely submits a Valid Claim for a Cash Payment. Any check issued to any Settlement Class Member shall remain valid and negotiable for ninety (90) days from the date of its issuance, but will thereafter automatically be canceled if not cashed by the Settlement Class Member within that time, in which case the Settlement Class Member's claim will be deemed null and void and of no further force and effect and the funds represented by such check shall be returned to Defendants.

6.8. Credit Certificate. The Claim Administrator shall email the Credit Certificate sixty (60) days after the Effective Date to the email address provided for each Class Member who timely submits a Valid Claim for a Credit Certificate and to Group B Settlement

Class Members who do not file a Claim to receive a Cash Payment. Any Credit Certificate shall conspicuously state its expiration date.

6.9. No Settlement Class Member shall have any claim against Defendants, Defendants' Counsel, the Class Representative, Class Counsel, or the Claim Administrator based on the mailings, distributions, or process of awarding a Settlement Benefit made in accordance with this Agreement or any order of the Court.

6.10. Each Settlement Class Member is solely responsible for any tax consequence, including but not limited to penalties and interest, relating to or arising out of the receipt of any benefit under this Settlement.

VII. CLASS NOTICE AND SETTLEMENT ADMINISTRATION

7.1. Subject to Court approval, the Parties have agreed that providing Long Form Notice, Email Notice, Postcard Notice, Published Notice and Online Notice to the Class Members in the manner described herein is the best and most fair and reasonable notice practicable under the circumstances. Class Counsel will not of their own initiative advocate for content or methods of Class Notice beyond that to which the Parties have agreed in this Section 7 of the Agreement.

7.2. The Parties agree to the following procedures for giving notice of this Settlement to the Class Members:

(a) Within thirty (30) days of entry of the Preliminary Approval Order or on such date otherwise ordered by the Court, Defendants shall provide the Claim Administrator with an electronic list that includes the following information with respect to each Class Member for which Defendants have information: (i) first and last name; (ii) email address; (iii) last known mailing address (if available); (iv) phone number (if available); (v) whether the

Class Member registered the Laptop with Defendants prior to the Notice Date; (vi) whether the Class Member purchased the Laptop from the ASUS Website; and (vii) whether the Class Member submitted a complaint about the Power Defect and/or Overheating Issue prior to March 19, 2019 to Defendants' customer service department. Defendants agree to utilize reasonable efforts to provide accurate data to the Claim Administrator, which the Claim Administrator will rely upon in sending Class Notice and administering this Settlement as described herein and will provide a sworn declaration with the motion for Final Approval of the Settlement that Defendants utilized reasonable efforts to provide accurate data (and a description of those efforts) to the Claim Administrator.

(b) No later than the Notice Date, the Claim Administrator shall send Direct Notice to Class Members as follows: the Claim Administrator shall send: (i) a copy of the Email Notice in the form approved by the Court to those Class Members for whom an email address is available, and (ii) a copy of the Postcard Notice in the form approved by the Court to those Class Members for whom a physical mailing address is available.

(c) The Claim Administrator shall utilize the national change of address database to update the mailing list of the Class Members for whom a mailing address is available prior to sending Postcard Notice via First Class U.S. Mail.

(d) If no physical address is available in the list provided to the Claim Administrator, the Claim Administrator shall perform a single skip trace using information identifying the Class Member, as necessary, to identify the Class Member's mailing address to allow Postcard Notice to be sent using an industry-accepted source such as Accurant, and shall send the Postcard Notices to the mailing address identified by the skip tracing.

(e) Any mailed Postcard Notices returned to the Claim Administrator as undelivered and bearing a forwarding address shall be re-mailed by the Claim Administrator within five (5) business days following receipt of the returned mail. Further, if no forwarding address is available, the Claim Administrator shall perform a single skip trace using an industry-accepted source such as Accurint, to conduct an address update and send the Postcard Notices to the mailing addresses identified by the skip-tracing.

(f) No later than the Notice Date, the Claim Administrator also shall launch the Settlement Website, which shall contain the Long Form Notice in both downloadable PDF format and HTML format with a clickable table of contents; answers to frequently asked questions; a contact information page that includes the address for the Claim Administrator and addresses and telephone numbers for Plaintiff's Counsel and Defendants' Counsel; the Agreement; the signed Preliminary Approval Order and the publicly filed motion papers and declarations in support thereof; a downloadable and online version of the Claim Form; a downloadable and online version of the form by which Class Members may exclude themselves from the Settlement Class; and (when they become available) the publicly filed motion for Final Approval of the Settlement, Plaintiff's request for Attorneys' Fees and Expenses and Incentive Award, and supporting declarations. The Claim Administrator shall provide Plaintiff's Counsel and Defendants' Counsel with the opportunity to review the Settlement Website at least five (5) days prior to the scheduled launch date and the Claim Administrator will make any revisions requested by counsel. The Settlement Website shall remain accessible until one-hundred eighty (180) days after all Settlement Benefits are distributed. When the Settlement Website is taken down, the Claim Administrator shall immediately transfer ownership of the URL for the

Settlement Website to Defendants. Defendants will not thereafter add any content or otherwise revise the Settlement Website or use the URL for the Settlement Website for any other purposes.

(g) No later than the Notice Date, the Claim Administrator also shall distribute the Online Notice. The Online Notice shall be distributed utilizing methods such as internet banner advertising, social media sponsored posts, and/or paid search placements and shall be designed to reach 80% of the Class consistent with other effective court-approved notice programs and the Federal Judicial Center's (FJC) Judges' Class Action Notice and Claims Process Checklist and Plain Language guide.

(h) No later than the Notice Date, Defendants shall post the Online Notice on Defendants' Website, social media accounts, and the ASUS ROG online forms. The online Notice shall link to the Settlement Website.

(i) On the Notice Date, the Claim Administrator shall cause the Published Notice to be published in the manner ordered by the Court.

(j) CAFA Notice. The Claim Administrator shall serve notice of this Settlement to appropriate state and federal officials pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715. The Claim Administrator shall be responsible for drafting and preparing the notice in conformity with 28 U.S.C. § 1715 and for identifying the appropriate state and federal officials to be notified.

(k) The Claim Administrator shall provide any information or declaration requested by the Parties to assist with seeking Preliminary Approval and Final Approval.

(l) The Parties each represent that he or it does not and will not have any financial interest in the Claim Administrator ultimately appointed and otherwise will not

have a relationship with the Claim Administrator ultimately appointed that could create a conflict of interest.

(m) The Parties acknowledge and agree that the Claim Administrator is not an agent of the Class Representative, Class Counsel, Defendants, or Defendants' Counsel and that the Claim Administrator is not authorized by this Agreement or otherwise to act on behalf of the Class Representative, Class Counsel, Defendants, or Defendants' Counsel.

(n) If a Class Member requests that the Claim Administrator and/or its agent or employee refer him/her to Class Counsel, or if a Class Member requests advice beyond merely ministerial information regarding applicable deadlines or procedures for submitting a Claim Form or other Settlement-related forms for which the Claim Administrator does not have an approved response, then the Claim Administrator and/or its agent or employee shall promptly refer the inquiry to Class Counsel and Defendants' Counsel.

- (o) The Claim Administrator is responsible for:
- (1) Sending the Email Notice approved by the Court;
 - (2) Printing and distributing the Postcard Notice approved by the Court;
 - (3) Causing the Published Notice to the Class Members approved by the Court to be published;
 - (4) Causing the Online Notice to the Class Members approved by the Court to be published;
 - (5) Performing physical mailing address and email address updates and verifications prior to the distribution of the Postcard Notice;

- (6) Performing a single skip trace to identify Class Members' addresses and to follow up on any returned Postcard Notices;
- (7) Creating and maintaining the Settlement Website and a toll-free number that Class Members can contact to request a copy of this Agreement, a Long Form Notice, and/or a Claim Form, and/or to obtain any other information concerning this Settlement or this Agreement;
- (8) Consulting with Defendants' Counsel and/or Class Counsel concerning any relevant issues, including (without limitation) distribution of the Class Notice and processing of Claim Forms;
- (9) Processing and recording timely and proper requests for exclusion from or objections to the Settlement;
- (10) Processing and recording Claim Forms;
- (11) Preparing, drafting, and serving the CAFA Notice;
- (12) Emailing Credit Certificates to Class Members who submit a timely and proper Claim Form requesting a Credit Certificate;
- (13) Emailing Credit Certificates to Class Members in Group B that do not file a Claim for a Cash Payment;

(14) Mailing Cash Payments to Class Members who submit a timely and proper Claim Form requesting a Cash Payment; and

(15) Such other tasks as the Parties mutually agree or the Court orders the Claim Administrator to perform in connection with this Agreement.

(p) The Parties shall supervise the Claim Administrator in the performance of the notice functions set forth in this Section.

(q) At least fourteen (14) days prior to the Final Approval Hearing, the Claim Administrator shall certify to the Court that it has complied with the notice requirements set forth herein.

(r) Defendants shall be responsible for paying all reasonable costs of notice as set forth in this Section and all costs of the Claim Administrator in processing objections and exclusion requests in an amount not to exceed \$200,000.00.

(s) Within two hundred and ten (210) days after the Effective Date, the Claim Administrator shall destroy all Class Member's identifying information received from Defendants and otherwise in connection with the implementation and administration of this Settlement.

(t) Upon completion of the implementation and administration of the Settlement, the Claim Administrator shall provide written certification of such completion to Class Counsel and Defendants' Counsel.

VIII. ATTORNEYS' FEES AND EXPENSES AND INCENTIVE AWARDS

8.1. Plaintiff's Counsel may make application to the Court for an award of Attorneys' Fees and Expenses as compensation for the time and effort, undertaken in and risks of pursuing this Litigation, but agree that, combined, the requested Attorneys' Fees and Expense Award shall not aggregately exceed \$787,500.00. Plaintiff's Counsel shall not be permitted to petition the Court for any additional payments for fees, costs or expenses from Defendants. Attorneys' Fees and Expenses shall be for all claims for attorneys' fees, costs and expenses, past, present, and future incurred in the Litigation in connection with claims against Defendants.

8.2. Defendants covenant and agree on behalf of themselves and the Released Parties that, provided Plaintiff's application for Attorneys' Fees and Expenses is consistent with Section 8.1 and does not collectively exceed \$787,500.00, they and the Released Parties shall not (a) oppose or submit any evidence or argument challenging or undermining Plaintiff's application for Attorneys' Fees and Expenses; (b) encourage or assist any person to oppose or submit any evidence or argument challenging or undermining Plaintiff's application for Attorneys' Fees and Expenses; or (c) encourage or assist any person to appeal from an order awarding Attorneys' Fees and Expenses.

8.3. Any Attorneys' Fees and Expenses awarded by the Court which does not exceed \$787,500.00 shall be paid by the Claim Administrator to Class Counsel within ten (10) days after Defendants fund the Settlement Fund.

8.4. Payment of any Attorneys' Fees and Expenses to Plaintiff's Counsel shall constitute full satisfaction by Defendants of any objection to pay any amounts to any person, attorney or law firm for attorneys' fees, expenses, or costs in the Litigation incurred by any attorney on behalf of Plaintiff, the Class, or the Settlement Class, and shall relieve Defendants

and Defendants' Counsel of any other claims or liability to any other attorney or law firm for any attorneys' fees, expenses, and/or costs to which any of them may claim to be entitled on behalf of Plaintiff, the Class, and/or the Settlement Class.

8.5. Any Attorneys' Fees and Expenses paid to Plaintiff and Plaintiff's Counsel under this Section shall be paid separate and apart from the Valid Claims and shall not take away from or otherwise reduce the monetary relief available to the Settlement Class.

8.6. Plaintiff's Counsel may also make application to the Court for an Incentive Award for Plaintiff in an amount not to exceed \$5,000.00, as compensation for Plaintiff's time and effort undertaken in and risks of pursuing this Litigation, including preparing for and participating in a nearly 7-hour deposition.

8.7. The Incentive Award shall be the total obligation of Defendants to pay money to Plaintiff, in connection with the Litigation and this Settlement, other than amounts due to Plaintiff for any Valid Claim he submits pursuant to Section 6 of this Agreement.

8.8. Defendants covenant and agree on behalf of themselves and the Released Parties that, provided Plaintiff's application for an Incentive Award is consistent with Section 8.6, they and Released Parties shall not (a) oppose or submit any evidence or argument challenging or undermining Plaintiff's application for an Incentive Award; (b) encourage or assist any person to oppose or submit any evidence or argument challenging or undermining Plaintiff's application for an Incentive Award; or (c) encourage or assist any person to appeal from an order making an Incentive Award.

8.9. Any Incentive Award awarded by the Court which does not exceed \$5,000.00 shall be paid by the Claim Administrator to Plaintiff within ten (10) days after

Defendants fund the Settlement Fund provided Plaintiff has executed the General Release substantially in the form attached as Exhibit E.

8.10. Plaintiff's Counsel and Plaintiff agree that the denial of, reduction or downward modification of, or failure to grant any application for Attorneys' Fees and Expenses or Incentive Award shall not constitute grounds for modification or termination of this Agreement, including the Settlement and releases provided for herein.

8.11. Except as set forth in this Agreement, each Party shall bear his or its own fees, costs, and expenses.

IX. CLASS SETTLEMENT PROCEDURES

9.1. Preliminary Approval. As soon as practicable after the signing of this Agreement, Plaintiff shall move, with the support of Defendants, solely for purposes of this Settlement, for a Preliminary Approval Order, substantially in the form of Exhibit C. The Parties shall seek to schedule a Final Approval Hearing to occur four (4) weeks after the Objection Deadline.

9.2. Exclusions and Objections. The Preliminary Approval Order and Class Notice shall advise prospective Class Members of their rights to exclude themselves from the Settlement, forego the benefits of this Settlement and reserve the right to pursue an individual claim; to object to this settlement individually or through counsel; and to appear at the Final Approval Hearing.

(a) Exclusions. Class Members and persons purporting to act on their behalf who decide to be excluded from this Settlement must submit to the Claim Administrator a written statement requesting exclusion from the Settlement by the Objection/Exclusion Deadline or by such date otherwise ordered by the Court. Such written request for exclusion must (i)

contain the name and address of the person requesting exclusion, (ii) be made by submitting the online form on the Settlement Website or by mailing a valid exclusion request by First Class U.S. Mail to the Claim Administrator at the specified address as described in the Class Notice, and (iii) be submitted online or postmarked on or before the Objection/Exclusion Deadline in order to be valid. For exclusion requests that are submitted online, the Class Member shall have the opportunity to print a page immediately after submission showing the information entered and the date and time the request for exclusion was received. Settlement Class Members shall be encouraged, but not required, to provide their email addresses in their requests for exclusion.

(b) Class Members who fail to submit a timely and valid written request for exclusion consistent with this Section shall be deemed to be a member of the Settlement Class and as such shall be bound by all terms of the Settlement and the Final Approval Order and Judgment if the Settlement is approved by the Court.

(c) A Class Member who is excluded from this Settlement shall not be bound by this Settlement or any Final Approval Order entered by the Court approving this Settlement, shall not be permitted to object to this Settlement, and shall not be entitled to receive any of the benefits of the Settlement.

(d) If a Class Member submits both a Claim Form and an exclusion request, the Claim Form shall take precedence and be considered valid and binding, and the exclusion request shall be deemed to have been sent by mistake and rejected.

(e) Within fifteen (15) days following the Objection/Exclusion Deadline, the Claim Administrator shall provide in writing to Defendants' Counsel and Class Counsel the names of those Class Members who have requested exclusion from the Settlement in

a valid and timely manner, and Plaintiff's Counsel shall file that list with the Court, with service on Defendants' Counsel.

(f) The Class Representative acknowledges and agrees that he will not exclude himself from this Settlement.

9.3. Objections. Class Members and persons purporting to act on their behalf who wish to object to the fairness, reasonableness, or adequacy of the Settlement or this Agreement, any request for Attorneys' Fees and Expenses, or any request for an Incentive Award shall submit a written notice of objection in accordance with the following procedures:

(a) Class Members who wish to object must submit a written statement of objection to the Class Action Clerk, United States District Court for the Northern District of California, postmarked on or before the Objection/Exclusion Deadline.

(b) To be valid, an Objection must include: (a) a reference at the beginning to this case, *Carlotti v. Asus Computer International Inc., et al.*, Case No. 4:18-cv-03369-DMR, and the name of the presiding judge, the Hon. Donna Ryu, United States District Court for the Northern District of California; (b) the name, address, telephone number, and, if available, the email address of the Person objecting, and if represented by counsel, of his/her counsel; (c) a written statement of all grounds for the Objection, accompanied by any legal support for such Objection; (d) whether he/she intends to appear at the Final Approval Hearing, either with or without counsel; (e) a statement of his/her membership in the Class, including all information required by the Claim Form; and (f) a detailed list of any other objections submitted by the Class Member, or his/her counsel, to any class actions submitted in any court, whether state or otherwise, in the United States in the previous five (5) years. If the Class Member or his/her counsel has not objected to any other class action settlement in any

court in the United States in the previous five (5) years, he/she shall affirmatively state so in the written materials provided in connection with the Objection to this Settlement. Failure to include this information and documentation may be grounds for overruling and rejecting the Objection.

(c) Subject to the Court's approval, any objecting Class Member may appear, in person or by counsel, at the Final Approval Hearing to show cause why this Settlement and this Agreement should not be approved as fair, adequate, and reasonable or to object to any request for a Attorneys' Fees and Expenses or Incentive Award. To appear in person or by counsel at the Final Approval Hearing, fourteen (14) days prior to the Final Approval Hearing, the objecting Class Member must file with the Court and serve upon Class Counsel and Defendants' Counsel a Notice of Intention to Appear. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting Class Member (or his/her counsel) will present to the Court in connection with the Final Approval Hearing.

(d) Any Class Member who fails to submit a proper Notice of Intention to Appear prior to fourteen (14) days before the Final Approval Hearing, along with copies of any papers, exhibits, or other evidence that the objecting Class Member (or his/her counsel) will present to the Court in connection with the Final Approval Hearing, will not be heard during the Final Approval Hearing.

(e) Any Class Member who fails to timely submit a written objection prior to the Objection/Exclusion Deadline will not be heard during the Final Approval Hearing and the Class Member's objection(s) shall be waived and will not be considered by the Court.

(f) Any Class Member who submits a timely written request for exclusion from the Settlement shall not be permitted to object to the Settlement. Any written

objection submitted by a Class Member who has submitted a timely written request for exclusion from the Settlement will not be heard during the Final Approval Hearing and the Class Member's objection(s) shall be waived and shall not be considered by the Court at the Final Approval Hearing.

(g) The agreed-upon procedures and requirements for filing objections in connection with the Final Approval Hearing are intended to ensure the efficient administration of justice in accordance with each Class Member's due process rights. Such procedures are designed to identify whether any person making an objection has standing to do so and to identify "professional objectors."

(h) Any Class Member who submits a written objection in accordance with this Section shall be entitled to all of the benefits of the Settlement and this Agreement, provided the objecting Class Member complies with all the requirements set forth in this Agreement for submitting a timely and valid Claim, and shall be bound by all terms of the Settlement and the Final Approval Order and Judgment if the Settlement is approved by the Court.

(i) Class Counsel shall serve on Defendants' Counsel and file with the Court any written objections to the Settlement received within fifteen (15) days following the Objection/Exclusion Deadline.

9.4. Conditions Impacting Finality of Settlement.

(a) If more than 1,000 Class Members submit a timely and valid request to exclude themselves from the Settlement, Defendants shall have the unilateral right to terminate and withdraw from the Settlement in its entirety; provided, however, that Defendants must notify Class Counsel and the Court that it is exercising such option within seven (7)

business days of the filing with the Court of the opt-out list described in Section 9.2 of this Agreement. Furthermore, except for changes to the time periods set forth in Section 6.3, all other terms and limitations set forth in this Agreement and in the documents referred to or incorporated herein (including but not limited to the Long Form Notice, the Published Notice, the Online Notice and the Claim Form) shall be deemed material to the Parties' agreement, and in the event any such other term is altered or amended by the Court (including if the Court refuses to certify the Settlement Class and/or modifies the definition of the class), or any other court, or if any federal or state authority objects to or requires modifications to the Agreement, any Party whose rights or obligations are affected by the alteration or amendment may terminate this Agreement upon written notice to the other Party.

(b) The Parties expressly agree that in the event of any of the following conditions: (i) the Court does not preliminarily approve the Settlement; (ii) the Court does not finally approve the Settlement; (iii) the Court does not enter the Final Approval Order and Judgment; (iv) Defendants withdraw and cancel the Settlement pursuant to Section 9.4(a); and/or (v) this Settlement does not become final for any reason; then this Agreement shall be null and void *ab initio* and any order entered by the Court in furtherance of this Settlement shall be treated as withdrawn or vacated by stipulation of the Parties (subject to Court approval) and Defendants shall have no further obligation under this Agreement; provided, however, that in the event of the denial of Preliminary Approval or Final Approval, the Class Representative and/or Defendants may seek appellate review through a writ or pursue any other available appellate remedy in support of the Settlement or this Agreement. Nothing herein is intended to restrict or limit the rights of either Defendants or the Class Representative to appeal any order of this Court in the event the Settlement is not finally approved for any reason. During the pendency of any

appeal of the denial of Preliminary Approval or Final Approval, this Agreement shall remain valid and binding.

(c) If any of the conditions outlined in Section 9.4(b) occur such that this Settlement does not become final, the Parties shall proceed in all respects as if this Agreement had not been executed; provided, however, that Defendants shall be responsible for the payment of reasonable Administration Costs actually incurred for services already incurred up to such time. Notwithstanding the foregoing, neither the denial of, an appeal of, a modification of, nor a reversal on appeal of any Attorneys' Fees and Expenses or Incentive Award shall constitute grounds for cancellation or termination of this Agreement.

(d) If Preliminary Approval is denied, the Parties shall be returned to their respective statuses as of the date immediately prior to the execution of this Agreement on the latest of the following events (i) the thirty-first (31st) day following the denial of Preliminary Approval; or (ii) the conclusion of any appeal or writ of mandamus from the denial of Preliminary Approval. In either of these events, within thirty (30) days, the Parties will jointly file a stipulation regarding a revised proposed schedule for briefing Plaintiffs' motion for class certification and for class-related discovery.

(e) If Final Approval is denied, the Parties shall be returned to their respective statuses as of the date immediately prior to the execution of this Agreement on the latest of the following events: (i) the thirty-first (31st) day following the denial of Final Approval; or (ii) the conclusion of any appeal or writ of mandamus from the denial of Final Approval. In either of these events, within thirty (30) days, the Parties will file a joint stipulation regarding a revised proposed schedule for briefing on Plaintiffs' motion for class certification and for class-related discovery.

9.5. Effect if Settlement Not Approved or Agreement is Terminated. This Agreement is entered into only for purposes of settlement. In the event that Preliminary Approval or Final Approval of this Agreement does not occur for any reason, including without limitation termination of this Agreement pursuant to Section 9.4, or if Final Approval is reversed on appeal, then no term or condition of this Agreement, or any draft thereof, or discussion, negotiation, documentation, or other part or aspect of the Parties' settlement discussions shall have any effect, nor shall any such matter be admissible in evidence for any purpose in the Litigation, or in any other proceeding; the Litigation may continue as if the Settlement had not occurred; and any orders conditionally certifying or approving certification of the Settlement Class shall be vacated, and the Parties returned to their pre-Settlement litigation posture. The Parties agree that all drafts, discussions, negotiations, documentation or other information prepared in relation to this Agreement, and the Parties' settlement discussions, shall be treated as strictly confidential and may not, absent a court order, be disclosed to any person other than the Parties' counsel, and only for purposes of the Litigation.

9.6. Final Approval and Judgment. After Preliminary Approval, Class Notice is provided to the Class Members, and the expiration of the Objection/Exclusion Deadline, a Final Approval Hearing shall be held on a date set by the Court. The Parties shall request that the Court enter the Final Approval Order, substantially in the form of Exhibit D.

X. RELEASES

10.1. Releases Regarding Settlement Class Members and Released Parties.

As of the Effective Date, the Class Representative and Settlement Class Members hereby expressly fully release and forever discharge the Released Parties and further expressly agree that they shall not now or thereafter institute, maintain, or assert against the Released Parties, either directly or indirectly, on their own behalf or on behalf of any class or other person or entity, in any action, regulatory action, arbitration, or court or other proceeding of any kind, any causes of action, claims, damages, equitable, legal and administrative relief, interest, demands, rights, or remedies, including, without limitation, claims for injunctive relief, declaratory relief, damages, mental anguish, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, disgorgement, or equitable relief against the Released Parties, whether based on federal, state, or local law, statute, ordinance, regulation, constitution, contract, common law, or any other source, that relate to the Released Claims.

(a) The Class Representative and Settlement Class Members expressly agree that this release is, and may be raised as, a complete defense to and precludes any claim, action, or proceeding encompassed by the release against the Released Parties. It is the intention of the Class Representative in executing this release on behalf of himself and the Settlement Class to fully, finally, and forever settle and release all matters and all claims relating to the Released Claims in every way.

(b) Without limiting the foregoing, nothing in this Agreement shall release, preclude, or limit any claim or action by the Parties to enforce the terms of this Agreement.

(c) To the fullest extent permitted by law, the Class Representative and the Settlement Class Members agree not to commence or participate in any claim, demand, grievance, action, or other proceeding against any of the Released Parties based on, concerning, or arising out of any of the Released Claims.

10.2. Waiver of Provisions of California Civil Code Section 1542. The Class Representative and Defendants shall, by operation of Final Approval and Judgment, be deemed to have waived the provisions, rights and benefits of California Civil Code Section 1542, and any similar law of any state or territory of the United States or principle of common law. In addition, Settlement Class Members shall, by operation of Final Approval and Judgment, be deemed to have waived the provisions, rights and benefits of California Civil Code Section 1542, and any similar law of any state or territory of the United States or principle of common law, but only with respect to the matters released as set forth Section 10.1 above. Section 1542 provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

10.3. Effectuation of Settlement. None of the above releases include releases of claims to enforce the terms of the Settlement provided for in this Agreement.

10.4. No Admission of Liability. This Agreement reflects, among other things, the compromise and settlement of disputed claims among the Parties hereto, and neither this Agreement nor the releases given herein, nor any consideration therefor, nor any actions taken to carry out this Agreement are intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or the validity of any claim, or defense, or of any point of fact or law (including but not limited to matters respecting class certification) on the part of any Party. Defendants expressly deny the Allegations. Neither this Agreement, nor the fact of

settlement, nor the settlement proceedings, nor settlement negotiations, nor any related document, shall be used as an admission of any fault or omission by the Released Parties, or be offered or received in evidence as an admission, concession, presumption, or inference of any wrongdoing by the Released Parties in any proceeding, except that this Agreement may be offered or received in evidence in such proceedings as may be necessary to consummate, interpret, or enforce this Agreement.

XI. ADDITIONAL PROVISIONS

11.1. Defendants' Representation. Defendants represent and warrant that they ceased sales and distribution of the Laptops prior to the Settlement in the ordinary course of business because the Laptops reached the end of their life.

11.2. Non-Disparagement. The Parties, Plaintiffs' Counsel, and Defendants' Counsel agree that they will not make or cause to be made any statements that disparage Plaintiff, Defendants or their employees, or any of the other Released Parties. The Parties, Plaintiffs' Counsel, and Defendants' Counsel also agree that they will not encourage any person to disparage Plaintiff, Defendants or their employees, or any of the other Released Parties. Disparagement includes, but is not limited to, statements made by any internet posting or use of social media. Disparagement does not include statements that recite or refer to the Allegations of the Lawsuit or terms of the Agreement, nor does it include any good faith claim or allegation of a legal violation in the future.

11.3. Cooperation. All of the Parties, their successors and assigns, and their attorneys agree to work reasonably and cooperatively in order to obtain Court approval of this Agreement and to effectuate the Settlement, and to provide declarations to facilitate the Court's Preliminary Approval and Final Approval of the Settlement. The Parties further agree to

cooperate in the Settlement administration process and implementation of the Settlement and to make all reasonable efforts to control and minimize the costs and expenses incurred in the administration and implementation of the Settlement.

11.4. Change of Time Periods. The time periods and/or dates described in this Agreement with respect to the giving of notices and hearings are subject to approval and change by the Court or by the written agreement of Plaintiff's Counsel and Defendants' Counsel, without notice to Class Members.

11.5. Time for Compliance. If the date for performance of any act required by or under this Agreement falls on a Saturday, Sunday or court holiday, that act may be performed on the next business day with the same effect as if it had been performed on the day or within the period of time specified by or under this Agreement.

11.6. Governing Law. This Agreement is intended to and shall be governed by the laws of the State of California, without regard to conflicts of law principles.

11.7. Entire Agreement. The terms and conditions set forth in this Agreement and its exhibits constitute the complete and exclusive statement of the agreement between the Parties hereto relating to the subject matter of this Agreement, superseding all previous negotiations and understandings, and may not be contradicted by evidence of any prior or contemporaneous agreement. The Parties further intend that this Agreement constitute the complete and exclusive statement of its terms as between the Parties, and that no extrinsic evidence whatsoever may be introduced in any agency or judicial proceeding, if any, involving the interpretation of this Agreement. In executing this Agreement, the Parties acknowledge that they have not relied upon any oral or written understandings, negotiations, agreements, statements, or promises that are not set forth in this Agreement. The Parties also acknowledge

and agree that each has been represented by its own counsel with respect to the negotiating and drafting of this Settlement and this Agreement. All exhibits to this Agreement as set forth herein are integrated herein and are to be considered terms of this Agreement as if fully set forth herein.

11.8. Modifications. Any amendment or modification of the Agreement must be in writing signed by all of the Parties to this Agreement or their counsel. The Parties agree that nonmaterial amendments or modifications to this Agreement may be made in writing after Preliminary Approval without the need to seek the Court's approval. If the Court indicates, prior to Preliminary Approval or Final Approval, that the Settlement will not be approved unless certain changes are made, the Parties will attempt in good faith to reach an agreement as to any such changes prior to withdrawing from this Agreement. However, if no such agreement can be reached within thirty (30) days after the Court indicates that the Settlement will not be approved unless certain changes are made, then the Class Representative or Defendants may terminate and withdraw from this Agreement. If this Agreement is terminated under such circumstances, the Class Representative, Defendants, and the Class Members shall be deemed to be in the same position as existed prior to its execution, with the same *status quo ante* rights and interests as they may have had absent the entry by Defendants and the Class Representative into this Agreement and any and all other understandings and agreements between the Parties and their respective counsel relating to the Settlement shall be deemed to be null and void and of no force and effect. Upon termination under this Section of the Agreement, within thirty (30) days of the Agreement's termination, the Parties will file a joint stipulation regarding a revised proposed schedule for briefing on the Plaintiffs' motion for class certification and for class-related discovery. Without further order of the Court, the Parties may agree in writing to reasonable

extensions of time to carry out any of the provisions of this Agreement or the Preliminary Approval Order.

11.9. No Admissions. If this Agreement does not become effective or is cancelled, withdrawn, or terminated for any reason, it shall be deemed negotiation for settlement purposes only and will not be admissible in evidence or usable for any purposes whatsoever in the Litigation or any proceedings between the Parties or in any other action related to the Released Claims or otherwise involving the Parties or any Released Party. Nothing in this Agreement may be construed as, or may be used as, an admission by the Class Representative that any of his claims are without merit. Nothing in this Agreement may constitute, may be construed as, or may be used as an admission by Defendants of any fault, wrongdoing, or liability whatsoever or that class certification is appropriate. Defendants continue to affirmatively deny all liability and all of the claims, contentions, Released Claims, and each and every allegation made by the Class Representative in the Litigation.

11.10. Advice of Counsel. The determination of the terms of, and the drafting of, this Agreement have been by mutual agreement after extensive arm's-length, bilateral negotiations, with consideration by and participation of all Parties and their counsel. The presumption found in California Civil Code section 1654 that uncertainties in a contract are interpreted against the party causing an uncertainty to exist is hereby waived by all Parties.

11.11. No Tax Advice. Neither Class Counsel nor Defendants' Counsel intends anything contained herein to constitute legal advice regarding the tax consequences of any amount paid hereunder nor shall it be relied upon as such.

11.12. Conflicts. In the event of a conflict between this Agreement and any other document prepared pursuant to the Settlement, the terms of this Agreement supersede and control.

11.13. No Waiver. Any failure by any Party to insist upon the strict performance by any other Party of any provision of this Agreement shall not be deemed a waiver of any provision of this Agreement and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

11.14. Warranties. Each signatory to this Agreement hereby warrants that he/it has the authority to execute this Agreement and thereby bind the respective Party. The Class Representative warrants and represents that he is the sole and lawful owner of all rights, title, and interest in and to all of the Released Claims and that he has not heretofore voluntarily, by operation of law or otherwise, sold, assigned, or transferred or purported to sell, assign, or transfer to any other person or entity any Released Claims or any part or portion thereof.

11.15. Binding Effect of the Agreement. This Agreement shall be valid and binding as to the Parties and their respective heirs, legal representatives, executors, administrators, successors, and assigns upon signing by all Parties.

11.16. Execution in Counterparts. This Agreement shall become effective upon its execution by all of the undersigned. The Parties may execute this Agreement in counterparts and/or by fax or electronic mail, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument.

11.17. Enforcement of this Agreement. The Court shall retain jurisdiction to enforce, interpret, and implement this Agreement.

11.18. Notices. All notices to the Parties or counsel required by this Agreement, shall be made in writing and communicated by mail and fax or email to the following addresses:

If to Plaintiff or Plaintiff's Counsel:

Seth Safier, Esq.
Gutride Safier LLP
100 Pine Street, Suite 1250
San Francisco, CA 94111
Telephone: (415) 639-9090
Fax: (415) 449-6469
Email: asuspower@gutridesafier.com

If to Defendants or Defendants' Counsel:

Luanne Sacks
Sacks, Ricketts & Case LLP
177 Post Street, Suite 650
San Francisco, CA 94108
Telephone: (415) 549-0581
Fax: (415) 549-0640
Email: lsacks@srclaw.com

11.19. Confidentiality. The Parties, Plaintiff's Counsel, and Defendants' Counsel agree to keep the existence and contents of the term sheet, Agreement, and all related settlement communications confidential until the filing of the motion for Preliminary Approval. This provision will not prevent the disclosure of such information prior to the filing of the motion for Preliminary Approval with the Court to: (1) regulators, rating agencies, independent accountants, advisors, financial analysts, agents, existing or potential insurers or reinsurers, experts, courts, co-counsel, the Released Parties, any existing or potential investor of or any existing or potential lender to any of the Released Parties, the Claims Administrator as may reasonably be required to effectuate the Settlement, and/or as otherwise required to comply with any applicable law or regulation; (2) any person or entity to whom the Parties agree in writing disclosure must be made

to effectuate the Settlement; and/or (3) Defendants or any of the Released Parties as necessary for any reasonable commercial purpose.

(a) If contacted by a Class Member, Class Counsel may provide advice or assistance regarding any aspect of the Settlement requested by the Class Member. At no time shall any of the Parties or their counsel or their agents seek to solicit Class Members or any other persons to submit written objections to the Settlement, requests for exclusion from the Settlement, or to encourage Class Members or any persons to appeal from the Preliminary Approval Order and/or the Final Approval Order and Judgment.

(b) The Class Representative and Class Counsel agree that the discussions and the information exchanged in the course of negotiating this Settlement and Agreement are confidential and were made available on the condition that they not be disclosed to third parties (other than experts or consultants retained by the Class Counsel in connection with the Litigation), that they not be the subject of public comment, and that they not be publicly disclosed or used by the Class Representative or Class Counsel in any way in the Litigation should it not settle or in any other proceeding.

11.20. Confidential Documents. All of the Parties agree to cooperate and to work with one another to protect any confidential materials produced in discovery in the Action. This includes, but is not limited to, promptly complying with all aspects of the Stipulated Protective Order (Dkt. 24) regarding such information and stipulating that any confidential information submitted, whether in the past or in the future, to any court in the Litigation will be sealed. Class Counsel are entitled to retain an archival copy of the entire file (paper and/or electronic), including all pleadings, motion papers, transcripts, legal memoranda, correspondence, discovery, expert reports and exhibits thereto, or attorney work product, even if such materials contain

material designated as confidential, provided Class Counsel complies with all aspects of the Stipulated Protective Order (Dkt. 24). Said archival copy will not be used or disclosed for any purpose other than: (1) in this Litigation (including the Settlement approval process and/or Settlement administration), (2) in responding to or defending against any objection or complaint by or on behalf of any Class Member as to the adequacy of Class Counsel's representation of the Settlement Class, or (3) in response to a court order or legal process requiring disclosure of such materials. Prior to disclosing any such materials to any third party, Class Counsel will provide written notice to Defendants' Counsel as early as feasible, and no later than three (3) business days after receipt of such order or legal process, so as to permit Defendants to seek appropriate relief and otherwise comply with all aspects of the Stipulated Protective Order (Dkt. 24). Class Counsel shall destroy the foregoing electronic and paper archival copy on the date six (6) years after the Effective Date, unless during that time period a Settlement Class Member or other person entitled to or potentially entitled to relief under this Settlement, or a legally authorized representative acting on their behalf, asserts any claim of malpractice or otherwise challenges the adequacy of Class Counsel's representation of the Settlement Class in this Litigation, in a lawsuit, or otherwise. If such a claim is asserted, Class Counsel may retain an archival copy until the date (i) six (6) years after the Effective Date, (ii) such claim is finally resolved, or (iii) five (5) years after the assertion of such a claim, whichever is latest, provided Class Counsel otherwise complies with all aspects of the Stipulated Protective Order (Dkt. 24). The Parties agree that if there is anything inconsistent in this Section and the Stipulated Protective Order (Dkt. 24), the provisions of the Stipulated Protective Order (Dkt. 24) shall control.

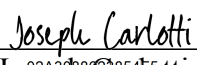
11.21. Exhibits. The Exhibits to the Agreement are an integral part of the Settlement and are hereby incorporated and made part of the Agreement.

11.22. Complete Resolution. The Parties intend for this Agreement to be a complete and final resolution of all disputes between them with respect to the Litigation.

APPROVED AND AGREED:

DATED: September __, 2019
9/12/2019

JOSEPH CARLOTTI

DocuSigned by:

Joseph Carlotti

DATED: September __, 2019

ASUS COMPUTER INTERNATIONAL

By: _____

Name: _____

Its: _____

DATED: September __, 2019

ASUSTEK COMPUTER, INC.

By: _____

Name: _____

Its: _____

APPROVED AND AGREED:

DATED: September __, 2019

JOSEPH CARLOTTI

Joseph Carlotti

DATED: September 13, 2019

ASUS COMPUTER INTERNATIONAL

By: Steve Chang

Name: STEVE CHANG

Its: PRESIDENT

DATED: September __, 2019

ASUSTEK COMPUTER, INC.

By: _____

Name: _____

Its: _____

APPROVED AND AGREED:

DATED: September __, 2019

JOSEPH CARLOTTI

Joseph Carlotti

DATED: September __, 2019

ASUS COMPUTER INTERNATIONAL

By: _____

Name: _____

Its: _____

DATED: September __, 2019

ASUSTEK COMPUTER, INC.

By: _____ *[Handwritten Signature]*

Name: _____ *[Handwritten Signature]*

Its: _____ *GENERAL MANAGER*

APPROVED AS TO FORM:

DATED: September 12, 2019

GUTRIDE SAFIER LLP



Adam Gutride, Esq.
Seth Safier, Esq.
Attorneys for Plaintiff

DATED: September ____, 2019

MIGLIACCIO & RATHOD LLP

Jason Rathod, Esq.
Nicholas A. Migliaccio, Esq.
Esfand Nafisi, Esq.
Attorneys for Plaintiff

DATED: September ____, 2019


SACKS, RICKETTS & CASE LLP

Luanne Sacks, Esq.
Michele Floyd, Esq.
Robert B. Bader, Esq.
Jacqueline Young, Esq.
Attorneys for Defendants

APPROVED AS TO FORM:

DATED: September 12, 2019

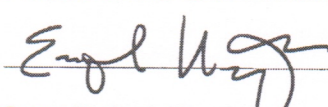
GUTRIDE SAFIER LLP



Adam Gutride, Esq.
Seth Safier, Esq.
Attorneys for Plaintiff

DATED: September 12, 2019


MIGLIACCIO & RATHOD LLP



Jason Rathod, Esq.
Nicholas A. Migliaccio, Esq.
Esfand Nafisi, Esq.
Attorneys for Plaintiff

DATED: September 12, 2019

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Jacqueline Young, Esq.
Attorneys for Defendants