

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE INTUIT FREE FILE LITIGATION

Case No. 3:19-cv-02546-CRB

Honorable Charles R. Breyer

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into by and between Plaintiffs Andrew Dohrmann, Joseph Brougher, and Monica Chandler (collectively, “Plaintiffs”), on behalf of themselves and the proposed Settlement Class,¹ and Intuit Inc. (“Intuit” or “Defendant”). Subject to the terms and conditions set forth herein, and to the Court’s approval pursuant to Rule 23 of the Federal Rules of Civil Procedure, the settlement embodied in this Settlement Agreement is intended by the Parties to: (a) be a full and final disposition of the Action with respect to Defendant and (b) fully, finally, and forever resolve, discharge, dismiss, and settle the Released Claims against the Released Parties. Plaintiffs and Defendant are each a “Party” to this Settlement Agreement and are referred to collectively herein as the “Parties”.

WHEREAS, in May 2019, several plaintiffs began filing lawsuits against Intuit relating to its participation in the IRS’s Free File Program. *See, e.g.,* Complaint, *Sinohui et al. v. Intuit Inc.*, No. 3:19-cv-02546 (N.D. Cal. May 12, 2019), Dkt. No. 1.

WHEREAS, individual plaintiffs ultimately filed ten separate putative nationwide class-action lawsuits against Intuit in federal court. *See Sinohui v. Intuit Inc.*, N.D. Cal. Case No. 3:19-cv-02546-CRB (the “*Sinohui* complaint”); *Dohrmann v. Intuit Inc., et al.*, N.D. Cal. Case No. 3:19-

¹ All capitalized words or terms not otherwise defined herein have the meaning set forth in Paragraph 1 of this Settlement Agreement, entitled “Definitions”.

cv-02566-CRB (the “*Dohrmann* complaint”); *Allwein v. Intuit Inc.*, N.D. Cal. Case No. 3:19-cv-02567-CRB (the “*Allwein* complaint”); *Nichols v. Intuit Inc.*, N.D. Cal. Case No. 3:19-cv-02666-CRB (the “*Nichols* complaint”); *Kehiaian v. Intuit Inc.*, N.D. Cal. Case No. 3:19-cv-02742-CRB (the “*Kehiaian* complaint”); *Leon v. Intuit Inc.*, N.D. Cal. Case No. 3:19-cv-02878-CRB (the “*Leon* complaint”); *Cook v. Intuit Inc.*, N.D. Cal. Case No. 3:19-cv-03460-CRB (the “*Cook* complaint”); *McConnaughey v. Intuit Inc.*, N.D. Cal. Case No. 3:19-cv-03745-CRB (the “*McConnaughey* complaint”); *Ostrovsky v. Intuit Inc.*, N.D. Cal., Case No. 3:19-cv-05823-CRB (the “*Ostrovsky* complaint”); *Williams v. Intuit Inc.*, N.D. Cal., Case No. 3:20-cv-01908-CRB (the “*Williams* complaint”).

WHEREAS, these lawsuits collectively alleged that as Intuit customers, plaintiffs were deceived into paying Intuit fees for filing tax returns because they were either (a) not made aware of the existence of software that Intuit donates to the IRS Free File program (IRS Free File Program delivered by TurboTax), which Intuit offers through a federal program created and overseen by the IRS; or (b) led to believe that they were not eligible for any free TurboTax product when Intuit informed them that they were ineligible for TurboTax’s free commercial product (Free Edition). The lawsuits allege that Intuit engaged in an aggressive and misleading marketing and advertising campaign relating to the TurboTax Free Edition product. These lawsuits further alleged that when TurboTax told consumers that they were not eligible for the “TurboTax Free Edition,” a reasonable consumer would have believed that they were not eligible for any free filing offered by TurboTax. Furthermore, these lawsuits alleged that the availability of the Free File product was a material fact to consumers that TurboTax did not adequately disclose in connection with its sale of commercial products.

WHEREAS, the *Sinohui* complaint alleged that Intuit was liable for: (1) Breach of Contract; (2) Violation of California’s Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*; (3) Violation of California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*; (4) Violation of New York’s General Business Law; and (5) Violation of Pennsylvania’s Unfair Trade Practices and Consumer Protection Law. The *Sinohui* complaint sought the following: (1)

certification of a plaintiff class and appointment of plaintiffs as class representatives and their counsel as class counsel; (2) a finding that Intuit's conduct was unlawful; (3) an injunction enjoining Intuit from unlawful conduct; (4) damages, including punitive damages, excepting monetary relief for violations of the Consumer Legal Remedies Act; (5) statutory damages and penalties; (6) pre- and post-judgment interest; (7) attorneys' fees and costs; and (8) other relief as deemed just and proper by the court.

WHEREAS, the *Dohrmann* complaint alleged that Intuit was liable for: (1) Intentional Misrepresentation; (2) Unjust Enrichment; (3) Breach of Contract; (4) Violations of the False Advertising Law, Cal. Bus. & Prof. Code § 17500, *et seq.*; (5) Violations of the Unfair Competition Law; and (6) Violations of the Consumers Legal Remedies Act. The *Dohrmann* complaint sought the following: (1) certification of a plaintiff class and appointment of plaintiffs as class representatives and their counsel as class counsel; (2) damages and restitution; (3) pre- and post-judgment interest; (4) an injunction enjoining Intuit from unlawful conduct and omissions; (5) attorneys' fees and costs; and (6) other relief as deemed just and proper by the court. The amended *Dohrmann* complaint added an additional claim for Restraint of Trade in Violation of the Sherman Act, 15 U.S.C. § 1, alleging, *inter alia*, that "Intuit and H&R Block entered into a continuing combination or conspiracy to unreasonably restrain trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1) by artificially reducing or eliminating competition in the market for do-it-yourself online tax preparation and filing services." *See* Dkt. No. 7 at 25 of 36 (Para. 113). The amended *Dohrmann* complaint sought the following: (1) certification of a plaintiff class and appointment of plaintiffs as class representatives and their counsel as class counsel; (2) a joint and several judgment against Intuit and H&R Block; (3) damages and restitution, including treble damages or punitive damages; (4) pre- and post-judgment interest; (5) an injunction enjoining Intuit from unlawful conduct; (6) attorneys' fees and costs; and (7) other relief as deemed just and proper by the court.

WHEREAS, the *Allwein* complaint alleged that Intuit was liable for: (1) Fraud or Fraudulent Concealment; (2) Unjust Enrichment; (3) Violations of the California Unfair

Competition Law; (4) Violations of the California Consumers Legal Remedies Act; (5) Violations of the California False Advertising Law; and (6) Violations of the Maryland Consumer Protection Act (Md. Code Com. Law § 13-101, *et seq.*). The *Allwein* complaint sought the following: (1) certification of a plaintiff class and appointment of plaintiffs as class representatives and their counsel as class counsel; (2) declaratory relief and an injunction enjoining Intuit from unlawful conduct; (3) injunctive relief in the form of notifying eligible taxpayers, a direct link on the TurboTax website advertising Freedom Edition, and full reimbursement for costs to Intuit and economic losses; (4) a declaration that Intuit is responsible for Class Notice and the administration of class relief; (5) costs, restitution, disgorgement, punitive damages, and exemplary damages, and compensatory damages for economic loss and out-of-pocket costs; (6) statutory and civil penalties; (7) a declaration that Intuit is required to engage in corrective advertising; (8) pre- and post-judgment interest; (9) costs, expenses and attorneys' fees; and (10) other relief as deemed just and proper by the court.

WHEREAS, the *Nichols* complaint alleged that Intuit was liable for: (1) Breach of Contract; (2) Unjust Enrichment; (3) Violation of California's Consumer Legal Remedies Act; and (4) Violation of California's Unfair Competition Law. The *Nichols* complaint sought the following: (1) certification of a plaintiff class and appointment of plaintiffs as class representatives and their counsel as class counsel; (2) a finding that Intuit's conduct was unlawful; (3) an injunction enjoining Intuit from unlawful conduct; (4) damages, including punitive damages, excepting monetary relief for violations of the Consumer Legal Remedies Act; (5) statutory damages and penalties; (6) pre- and post-judgment interest; (7) attorneys' fees and costs; and (8) other relief as deemed just and proper by the court.

WHEREAS, the *Kehiaian* complaint alleged that Intuit was liable for: (1) Breach of Contract; (2) Violation of California's Consumer Legal Remedies Act; and (3) Violation of North Carolina's Unfair and Deceptive Trade Practices Law. The *Kehiaian* complaint sought the following: (1) certification of a plaintiff class and appointment of plaintiffs as class representatives and their counsel as class counsel; (2) a finding that Intuit's conduct was unlawful; (3) an

injunction enjoining Intuit from unlawful conduct; (4) damages, including punitive damages, excepting monetary relief for violations of the Consumer Legal Remedies Act; (5) statutory damages and penalties; (6) pre- and post-judgment interest; (7) attorneys' fees and costs; and (8) other relief as deemed just and proper by the court.

WHEREAS, the *Leon* complaint alleged that Intuit was liable for: (1) Intentional Misrepresentation; (2) Fraud or Fraudulent Concealment; (3) Unjust Enrichment; (4) Breach of Contract; (5) Violations of the California False Advertising Law; (6) Violations of the California Unfair Competition Law; and (7) Violations of the California Consumers Legal Remedies Act. The *Leon* complaint sought the following: (1) certification of a plaintiff class and appointment of plaintiffs as class representatives and their counsel as class counsel; (2) damages and restitution; (3) pre- and post-judgment interest; (4) an injunction enjoining Intuit from unlawful conduct; (5) attorneys' fees and costs; and (6) other relief as deemed just and proper by the court.

WHEREAS, the *Cook* complaint alleged that Intuit was liable for: (1) Violation of the California Consumer Legal Remedies Act; (2) Violation of the California False Advertising Law; (3) Violation of the California Unfair Competition Law; (4) Negligent Misrepresentation; and (5) Intentional Misrepresentation. The *Cook* complaint sought the following: (1) certification of a plaintiff class and appointment of plaintiffs as class representatives and their counsel as class counsel; (2) a decree that Intuit's conduct was wrongful and violated the consumer protection statutes described in the complaint; (3) imposition of a constructive trust and and/or disgorgement of Intuit's ill-gotten gains and restitution; (4) distribution of any monies recovered on behalf of members of the Classes via fluid recovery or cy pres recovery; (5) recovery of the amounts by which Intuit has been unjustly enriched; (6) a temporary, preliminary and/or permanent order for injunctive relief requiring Intuit to: (i) discontinue its false and/or misleading statement/s; and (ii) undertake an immediate public information campaign to inform members of the proposed class as to their prior practices; (7) that Intuit be enjoined from continuing the wrongful conduct alleged herein and be required to comply with all applicable laws; (8) pre-judgment interest; and (9) costs.

WHEREAS, the *McConnaughey* complaint alleged that Intuit was liable for: (1) Fraud or Fraudulent Concealment; (2) Negligence; (3) Violations of the California Unfair Competition Law; (4) Violations of the California Consumers Legal Remedies Act; (5) Violations of the California False Advertising Law; (6) Violation of New Jersey Consumer Fraud Act, N.J. STAT. ANN. § 56:8-1, *et seq.*; and (7) Violation of Pennsylvania Unfair Trade Practices and Consumer Protection Law, 72 Pa. Cons. Stat. §§ 201-2 & 201-3, *et seq.* The *McConnaughey* complaint sought the following: (1) an order enjoining Intuit from engaging in the wrongful conduct alleged herein concerning the unlawful, deceptive, fraudulent, harmful, and unfair business conduct and practices; (2) an order compelling Intuit to notify eligible taxpayers, provide a direct link on the TurboTax website to properly advertise Freedom Edition to eligible participants, and fully reimbursing and making whole Plaintiff and all members of the Classes for all costs paid to Intuit and economic losses; (3) disgorgement of wrongfully obtained profits; (4) compensatory, statutory, and punitive damages; (5) reasonable attorneys' fees costs and litigation expenses; (6) interest on all amounts awarded; and (7) other and further relief as the court may deem just and proper.

WHEREAS, the *Ostrovsky* complaint alleged that Intuit was liable for: (1) Breach of Contract; (2) Breach of Implied Covenant; (3) [Breach of] Quasi-Contract; (4) Rescission; (5) Reformation; (6) Conversion; (7) Violation of the Arizona Consumer Fraud Act, A.R.S. §44-1521, *et seq.*; and (8) Violation of California Unfair Competition Law. The *Ostrovsky* complaint sought the following: (1) certification of a plaintiff class and appointment of plaintiffs as class representatives and their counsel as class counsel; (2) a finding that Intuit's conduct was unlawful as alleged herein; (3) an order enjoining Intuit from engaging in further unlawful conduct as alleged; (4) rescission or reformation; (5) nominal, actual, restitution, compensatory, and consequential damages; (6) statutory damages and penalties; (7) pre-judgment and post-judgment interest; (8) reasonable attorneys' fees, costs, and expenses; and (9) other relief as the Court deems just and proper.

WHEREAS, the *Williams* complaint alleged that Intuit was liable for: (1) fraudulent Inducement; (2) Unjust Enrichment; (3) Deceptive Acts or Practices, New York Gen. Bus. Law §

349; (4) False Advertising (under New York Gen. Bus. Law § 350); and (5) Breach of Contract. The *Williams* complaint sought the following: (1) certification of a plaintiff class and appointment of plaintiffs as class representatives and their counsel as class counsel; (2) a determination that any purported arbitration clause or class action waiver, as well as the other terms of use, are voidable due to fraudulent inducement, thereby permitting plaintiff and the class to rescind any such purported agreement; (3) an order enjoining Intuit from engaging in the wrongful conduct alleged concerning the unlawful, deceptive, fraudulent, harmful, and unfair business conduct and practices; (4) an order compelling Intuit to notify eligible taxpayers, provide a direct link on the TurboTax website to properly advertise Freedom Edition to eligible participants, and fully reimburse and make whole plaintiff and all members of the class for all costs paid to Intuit; (5) disgorgement of wrongfully obtained profits; (6) compensatory, statutory, and punitive damages, in an amount to be determined; (7) reasonable attorneys' fees costs and litigation expenses; (8) interest; and (9) such other and further relief as the court deems just and proper.

WHEREAS, in June 2019, the federal class action lawsuits were consolidated before the Honorable Judge Breyer in the U.S. District Court for the Northern District of California ("this Court" or "the Court"). See *In re Intuit Free File Litigation*, Master File No. 3:19-cv-02546-CRB (N.D. Cal.), Dkt. No. 42. Pursuant to Rule 23(g)(3), the Court appointed Settlement Class Counsel as co-lead interim class counsel (*see id.* at Dkt. No. 72), tasked with "responsibility for protecting the interests of the class during precertification activities, such as making and responding to motions, conducting any necessary discovery, moving for class certification, and negotiating settlement." *Manual for Complex Litigation (Fourth)* § 21.11 (2004) (p. 246).

WHEREAS, on September 13, 2019, the federal class action plaintiffs filed an amended consolidated complaint. Dkt. No. 80. The consolidated complaint alleges a nationwide class of consumers who "during the applicable limitations period were eligible to file a federal tax return pursuant to the IRS Free File Program on Intuit's TurboTax Freedom Edition website but paid a fee to TurboTax to file such return". Consolidated Class Action Complaint, Dkt. No. 80 at ¶ 99. The consolidated complaint asserts claims for unfair competition under California Unfair

Competition Law and unjust enrichment. Consolidated Class Action Complaint, Dkt. No. 80 at ¶¶120-153. Although certain named Plaintiffs originally sued Intuit for damages and injunctive relief, the operative consolidated complaint reframes Plaintiffs’ monetary demands as “claims in equity for restitution.” *Compare* amended *Dohrmann* complaint, Dkt. No. 7, *Dohrmann* complaint, Dkt. No. 1, *with* Consolidated Class Action Complaint, Dkt. No. 80 at ¶¶102-107. The operative complaint further states that: “Plaintiffs assert only claims for equitable and injunctive relief at this time.” *Id.* at 42 of 43 (Demand for Jury Trial).

WHEREAS, on October 28, 2019, Intuit moved to compel arbitration under the arbitration provision in the TurboTax Terms of Service (“Terms”). Motion to Compel Arbitration, Dkt. No. 97. The Court stayed the action pending a decision on the motion to compel arbitration on the condition that Intuit provide Plaintiffs with the documents produced in *People of the State of California v. Intuit Inc.*, No. 19STCV15644 (Cal. Super. Ct. Los Angeles County May 6, 2019). Intuit produced over 21,000 documents, totaling over 100,000 pages, including the following categories of documents: (a) marketing materials; (b) internal emails and presentations; (c) blog posts; (d) screen captures; and (e) customer complaints.

WHEREAS, on March 12, 2020, this Court denied the motion to compel arbitration. Order Denying Motion to Compel Arbitration, Dkt. No. 141. Intuit noticed an appeal and sought an emergency stay pending appeal from the United States Court of Appeals for the Ninth Circuit. Defendant Intuit Inc.’s Notice of Appeal, Dkt. No. 142; 20 Civ. 15466, Dkt. Nos. 2-1. The Ninth Circuit granted the stay motion and *sua sponte* expedited the appeal. *Id.*, Dkt. No. 12. The Ninth Circuit subsequently ruled in Intuit’s favor, finding that the consumers’ claims must be arbitrated. *See Dohrmann v. Intuit Inc.*, 823 Fed. Appx. 482, 483–85 (9th Cir. 2020).

WHEREAS, on October 29, 2020, Plaintiff Dohrmann filed a demand for arbitration with the AAA against Intuit asserting claims virtually identical to those asserted in the consolidated amended complaint and seeking, in part, “an order with the primary purpose and effect of benefiting the public by enjoining Intuit from engaging in all manner of unfair, unlawful, deceptive,

misleading or otherwise wrongful acts, omissions or practices, in connection with its participation in the Free File Program, that threaten future injury to Claimant and/or the general public.”

WHEREAS, the instant settlement is the product of the extensive and ongoing settlement discussions between Defendant’s counsel and Court-appointed interim class counsel beginning in September 2019 and continuing through November 2020. The Parties first met and discussed settlement at the Rule 26(f) conference on September 25, 2019, and held settlement discussions on an ongoing basis thereafter, including factual presentations and exchanges of information, and held an initial mediation with the Hon. Edward A. Infante (Ret.) of JAMS on June 22, 2020. Although the parties did not settle at the first mediation, the parties continued to exchange factual presentations and written submissions, and continued to discuss potential approaches to a class settlement, including several follow up conferences with Judge Infante. On November 11, 2020, the parties held a second formal mediation with Judge Infante and agreed to the terms set forth in this Settlement.

WHEREAS, the Parties agree that the Monetary Consideration to be paid and the Non-Monetary Benefits terms of the Settlement set forth herein were negotiated at arm’s length and in good faith and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

WHEREAS, Plaintiffs believe that the claims asserted in the Action have merit and that the evidence developed to date supports the claims asserted. However, Plaintiffs recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Action against Defendant. Plaintiffs have also taken into account the Ninth Circuit’s ruling in Intuit’s Motion to Compel Arbitration, the uncertain outcome and the risk of any litigation and arbitration, especially in complex actions such as the Action here, as well as the difficulties and delays inherent in such litigation. Settlement Class Counsel is also mindful of the inherent issues relating to proof and the possible defenses to the claims alleged in the Action. Based on their evaluation, Plaintiffs and Settlement Class Counsel believe that the Settlement set forth in this Settlement Agreement

confers meaningful benefits on the Settlement Class and is in the best interests of Plaintiffs and the Settlement Class.

WHEREAS, Defendant denies all material allegations in the Action and denies any fault, wrongdoing, or liability whatsoever arising out of or related to their business practices; Defendant also affirmatively state that their practices have been lawful and proper. Defendant denies that trial of the Action is suitable for class treatment, and further denies liability to Plaintiffs or to others similarly situated, including all Settlement Class Members. Execution of this Settlement Agreement is not, and shall not be construed as, an admission of wrongdoing or liability by Defendant, an admission that Defendant violated any provision of federal or state law, or an admission that Defendant concedes that class treatment of the Action is appropriate. Defendant is mindful, however, that defending the Action and related actions would expose it to continuing risks of litigation and require it to expend significant time and money. Defendant therefore has decided that it is in its best interest to resolve the Action on the terms set forth in this Settlement Agreement and thereby avoid the further expense and inconvenience that continuing the litigation would entail;

WHEREAS, this Settlement Agreement, whether or not consummated, any proceedings relating to any settlement, or any of the terms of any settlement, whether or not consummated, shall in no event be construed as, or deemed to be evidence of, an admission or concession on the part of Defendant with respect to any fact or matter alleged in the Action, or any claim of fault or liability or wrongdoing or damage whatsoever, or any infirmity in any claim or defense that has or could have been asserted. Defendant is entering into this Settlement solely to eliminate the significant burden, expense, and distraction of further litigation.

NOW THEREFORE, without any concession by Plaintiffs, on behalf of themselves and the Settlement Class Members, that the Action lacks merit, and without any concession by Defendant of any liability or wrongdoing or the lack of merit of any of their defenses, it is hereby **AGREED** by and between Plaintiffs, on behalf of themselves and the Settlement Class Members, and Defendant, through their undersigned counsel, subject to approval by the Court pursuant to

Rule 23 of the Federal Rules of Civil Procedure, that in consideration of the benefits flowing to the Parties, all Released Claims as against all Released Parties shall be fully, finally, and forever settled, released, discharged, and dismissed with prejudice, and without costs, as follows:

I. DEFINITIONS

As used in this Settlement Agreement and its exhibits, the following capitalized terms shall have the meanings set forth below. In the event of any inconsistency between any definition set forth below and any definition in any other document related to the Settlement, the definition set forth below shall control.

(a) “Action” means the civil action captioned *IN RE INTUIT FREE FILE LITIGATION*, Case No. 3:19-cv-02546-CRB (N.D. Cal.), and all cases consolidated into that action, including: *Sinohui v. Intuit Inc.*, N.D. Cal. Case No. 3:19-cv-02546-CRB; *Dohrmann v. Intuit Inc., et al.*, N.D. Cal. Case No. 3:19-cv-02566-CRB; *Allwein v. Intuit Inc.*, N.D. Cal. Case No. 3:19-cv-02567-CRB; *Nichols v. Intuit Inc.*, N.D. Cal. Case No. 3:19-cv-02666-CRB; *Kehiaian v. Intuit Inc.*, N.D. Cal. Case No. 3:19-cv-02742-CRB; *Leon v. Intuit Inc.*, N.D. Cal. Case No. 3:19-cv-02878-CRB; *Cook v. Intuit Inc.*, N.D. Cal. Case No. 3:19-cv-03460-CRB; *McConnaughey v. Intuit Inc.*, N.D. Cal. Case No. 3:19-cv-03745-CRB; *Ostrovsky v. Intuit Inc.*, N.D. Cal., Case No. 3:19-cv-05823-CRB; and *Williams v. Intuit Inc.*, N.D. Cal., Case No. 3:20-cv-01908-CRB.

(b) “CAFA Notice” means the notice required pursuant to the Class Action Fairness Act, 28 U.S.C. §§ 1715 et seq. (“CAFA”).

(c) “Cash Award” means a cash payment to an eligible Settlement Class Member.

(d) “Claim Deadline” means the date set by the Court for Settlement Class Members to submit a valid Claim Form, which shall be set forth in the Preliminary Approval Order.

(e) “Claim Form” means the document, agreed upon by the Parties and approved by the Court, that Settlement Class Members must submit to be eligible for a cash payment from the Settlement Fund. The Claim Form will be available online at the Settlement Website. The Claim Form shall be substantially in the form attached as Exhibit 2 to the [Proposed] Order Granting Plaintiffs’ Motion for Preliminary Approval.

(f) “Court” means the United States District Court for the Northern District of California.

(g) “Defendant” means Intuit Inc. and Intuit Consumer Group LLC.

(h) “Digital Publication Notice” means digital advertisements used to supplement the actual direct Notice to be provided to the Settlement Class and to notify Settlement Class Members of the pendency of this Action and Settlement. A minimum of 15 million impressions shall be delivered by the Settlement Class Administrator using the known contact information and demographics of the Settlement Class, and the digital banner advertisements will be targeted to Settlement Class Members and potential Settlement Class Members. The digital banner advertisements to be used in connection with the Digital Publication Notice shall be in a form determined by the Settlement Class Administrator in consultation with the Parties and approved by the Court.

(i) “Effective Date” means the first day on which each of the conditions specified in Section IX of this Settlement Agreement shall have occurred or been waived.

(j) “Email Notice” means the summary of the Long Form Notice to be provided to each Settlement Class Member and for whom Defendant has an email address. The Settlement Class Administrator shall send the Email Notice to Settlement Class Members in accordance with the notice procedures described in Section VI herein.

(k) “Escrow Account” means one or more separate escrow account(s) maintained by the Escrow Agent(s) into which the Monetary Consideration will be deposited for the benefit of the Settlement Class until such time as the Monetary Consideration is transferred pursuant to the terms of this Settlement Agreement. All funds held in the Escrow Account shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be disbursed pursuant to the terms of this Settlement Agreement and/or further order of the Court. The Escrow Agent shall invest the funds in the Escrow Account in instruments or accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a U.S. Treasury Fund or a bank

account that is either (a) fully insured by the Federal Deposit Insurance Corporation (“FDIC”) or (b) secured by instruments backed by the full faith and credit of the United States Government. Defendant and Defendant’s counsel shall have no responsibility for, interest in, or liability whatsoever with respect to investment decisions executed by the Escrow Agent. All risks related to the investment of the Settlement Fund shall be borne solely by the Settlement Fund. In the event this Settlement Agreement fails for any of the reasons identified in Section XI, below, the contents of the Escrow Account will revert to Defendant in accordance with the terms of that Section.

(l) “Escrow Agent” means the financial institution selected by the Settlement Class Administrator to with the approval of the Parties to receive and hold the Monetary Consideration under the terms of this Settlement Agreement.

(m) “Final” with respect to a court order, means the latest of (i) if there is an appeal from that court order, the date of final affirmance on appeal and the expiration of the time (including on a showing of excusable neglect or good cause) for any further judicial review whether by appeal, reconsideration, or a petition for a writ of certiorari and, if certiorari is granted, the date of final affirmance of the order following review under the grant; (ii) the date of final dismissal of any appeal from the order or the final dismissal of any proceeding on certiorari to review the order; or (iii) the expiration of the time for filing or noticing of any appeal or petition for a writ of certiorari from the order (or, if the date for taking an appeal or seeking review of the order shall be extended beyond this time by order of the issuing court, by operation of law or otherwise, or if such extension is requested, the date of expiration of any extension if any appeal or review is not sought). No appeal or proceeding seeking subsequent judicial review pertaining solely to the Court’s award of attorneys’ fees and reimbursement of costs shall in any way delay or affect the time set forth above for the Judgment to become Final, or otherwise preclude the Judgment from becoming Final.

(n) “Final Approval Hearing” means the hearing held by the Court to determine whether to enter the Final Approval Order and Judgment.

(o) “Final Approval Order and Judgment” or “Judgment” means the Court order (i) finally approving the Settlement; and (ii) dismissing the Action with prejudice.

(p) “Long Form Notice” means the Notice of Class Action, Proposed Settlement, Motion for Attorneys’ Fees, Reimbursement of Costs, and Service Awards, and Settlement Hearing which, subject to approval of the Court, shall be substantially in the form attached as Exhibit 1 to the [Proposed] Order Granting Plaintiffs’ Motion for Preliminary Approval, that the Settlement Class Administrator shall post in downloadable form on the Settlement Website and provide to potential Settlement Class Members, upon request, in accordance with the notice procedures described in Section VI herein.

(q) “Monetary Consideration” means the cash sum of Forty Million Dollars (\$40,000,000) that shall be paid by Defendant to settle the Action in accordance with the terms of this Settlement Agreement, as identified in Section III(d).

(r) “Net Monetary Consideration” means the Monetary Consideration less: (i) Court-awarded attorneys’ fees, reimbursement of costs, and Service Awards; (ii) Notice and Administration Expenses; (iii) Taxes; and (iv) any other costs, fees, or expenses approved by the Court.

(s) “Non-Monetary Benefits” means the relief to Settlement Class Members as identified in Section III(a).

(t) “Notice” means the Email Notice, the Long Form Notice, the Digital Publication Notice, and the Settlement Website.

(u) “Notice and Administration Expenses” means all costs, fees, and expenses incurred in connection with providing Notice to the Settlement Class and the administration of the Settlement, including but not limited to: (i) providing Notice of the proposed Settlement by electronic mail, digital publication, and other means to Settlement Class Members; (ii) providing CAFA Notice; (iii) determining the amount of Cash Awards to be paid to eligible Settlement Class Members; (iv) communicating with Settlement Class Members regarding the proposed Settlement

and the administration process; and (v) distributing the Net Monetary Consideration to Settlement Class Members.

(v) “Objection Deadline” shall be the date set by the Court for Settlement Class Members to return notice of their objection to this Settlement, which shall be at least forty-five (45) days after entry of the Preliminary Approval Order and at least thirty (30) days before the Final Approval Hearing.

(w) “Opt-Out Deadline” shall be the date set by the Court for Settlement Class Members to return notice of their desire to opt out of this Settlement, which shall be at least forty-five (45) days after entry of the Preliminary Approval Order and at least thirty (30) days before the Final Approval Hearing.

(x) “Preliminary Approval Order” means the order by the Court granting preliminary approval of this Settlement Agreement, substantially in the form attached hereto as Exhibit A.

(y) “Released Claims” means any and all claims, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses, refunds, reimbursements, restitution, and attorneys’ fees of any nature whatsoever, whether arising under federal law, state law, local law, common law or equity, state or federal antitrust laws, any state’s consumer protection laws, unjust enrichment, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), or any other law, including Unknown Claims, whether suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, punitive or compensatory, as of the date of the Final Fairness Approval Order and Judgment, that relate to or arise out of any claims that were or could have been alleged by a member of the Settlement Class in the Action as of the date of entry of the Preliminary Approval Order (with the exception of claims to enforce the Settlement or the Judgment).

(z) “Released Parties” means Defendant, its parents, subsidiaries and affiliates and each of its current and former, officers, directors, managers, employees, affiliates, consultants,

vendors, attorneys, creditors, accountants, insurers, and shareholders. Released Parties also includes the Settlement Class Representatives and their attorneys.

(aa) “Releasing Parties” means each and all of the Plaintiffs, Settlement Class Counsel, and each and every Settlement Class Member. Releasing Parties also includes Defendant.

(bb) “Service Award” shall have the meaning ascribed to it in Section IV.

(cc) “Settlement” means the resolution of the Action in accordance with the terms and provisions of this Settlement Agreement.

(dd) “Settlement Agreement” means this Settlement Agreement, including any exhibits or attachments hereto.

(ee) “Settlement Class” means all persons within the United States who, from January 1, 2015 to November 1, 2020, paid to use TurboTax online in a year in which they were eligible to file for free with the TurboTax Free File Program (known from 2015-2018 as “TurboTax Freedom Edition,” known in 2019 as “TurboTax Free File Program,” and known in 2020 as “IRS Free File Program Delivered by TurboTax”).

(ff) “Settlement Class Administrator” means JND Legal Administration (“JND”), the neutral third party selected by Settlement Class Counsel that will, subject to Court approval, administer the settlement of claims by the Settlement Class and effectuate Notice and otherwise administer the Settlement.

(gg) “Settlement Class Counsel” means the law firms of Girard Sharp LLP and Stueve Siegel Hanson LLP.

(hh) “Settlement Class List” means the list of individuals in the Settlement Class that Defendant will provide to the Settlement Class Administrator within twenty-one (21) business days of entry of the Preliminary Approval Order.

(ii) “Settlement Class Members” means those persons who are members of the Settlement Class, and who do not timely and validly request exclusion from the Settlement Class.

(jj) “Settlement Class Period” means the period from January 1, 2015 to November 1, 2020.

(kk) “Settlement Class Representatives” means Plaintiffs Andrew Dohrmann, Joseph Brougher, and Monica Chandler.

(ll) “Settlement Fund” means the Monetary Consideration deposited in the Escrow Account.

(mm) “Taxes” means all (i) taxes on any income earned on the Monetary Consideration; (ii) taxes imposed on payments of the Monetary Consideration, including withholding taxes; and (iii) reasonable expenses and costs incurred in connection with the taxation of the Monetary Consideration (including, without limitation, interest, penalties, and the reasonable expenses of tax attorneys and accountants).

(nn) “TurboTax Free File Program” means TurboTax Freedom Edition (2015-2018), TurboTax Free File Program (2019), or IRS Free File Program Delivered by TurboTax (2020).

(oo) “Unknown Claims” means any and all Released Claims that Plaintiffs and/or any other Settlement Class Member does not know or suspect to exist in her, his, or its favor at the time of the release of the Released Parties, which if known by him, her, or it might have affected her, his, or its decision(s) with respect to the Settlement, including the decision to seek exclusion from or object to the Settlement.

II. CERTIFICATION OF THE SETTLEMENT CLASS

(a) Plaintiffs shall seek, and the Defendant shall not oppose, the certification, for settlement purposes only, of the Settlement Class under Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure. If the Settlement Agreement is not finally approved by the Court for any reason whatsoever, the certification of the Settlement Class will be void, and no doctrine of waiver, estoppel or preclusion will be asserted in any litigated certification proceedings in this Action. No agreements made by or entered into by Defendant in connection with the Settlement Agreement may be used by Plaintiffs, any person in the Settlement Class or any other person to establish any of the elements of liability or class certification in any litigated certification proceedings, whether in the Action or any other judicial proceeding.

(b) For settlement purposes only, Plaintiffs shall also seek, and Defendant shall not oppose, the appointment of Settlement Class Counsel and the appointment of Plaintiffs to serve as Settlement Class Representatives, to represent the Settlement Class.

III. SETTLEMENT TERMS AND BENEFITS TO THE SETTLEMENT CLASS

(a) Non-Monetary Benefits: For so long as it participates in the IRS Free File Program, up to a maximum of three years, and so long as permissible under the IRS' rules for the program, Intuit will implement and maintain the following business practice commitments, to be incorporated in the Final Approval Order and Judgment:

i. Intuit is prohibited from engaging in any practice that would cause the Landing Page for IRS Free File Program Delivered by TurboTax (<https://freefile.intuit.com>) to be "de-indexed" from organic internet search results.

ii. Intuit agrees to disclose the existence of the IRS Free File Program and qualifications to file for free under the IRS Free File Program on one or more webpages maintained as part of, and accessible from the homepage of, the intuit.turbotax.com domain, and provide information on how to participate in the IRS Free File Program, and to maintain a publicly-available webpage on the same domain setting forth the forms and schedules not covered in TurboTax Free Edition.

iii. Intuit will create a minimum of 3 blog posts each tax filing season (January 15-April 15) on its commercial website informing consumers about the IRS Free File Program and linking thereto.

iv. Until a customer files their taxes or voluntarily unsubscribes from receiving such emails, Intuit will send a minimum of six (6) email reminders to returning IRS Free File Program Delivered by TurboTax customers.

v. When marketing TurboTax Free Edition on its commercial website, intuit.turbotax.com, Intuit will adhere, to the fullest extent practicable, to the Federal Trade Commission's guidelines for online marketing set forth in *.com Disclosures: How to Make*

Effective Disclosures in Digital Advertising, available at <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf>.

(b) Prior to pursuing any remedy for failure to comply with Paragraph III(a), Plaintiffs agree to give Intuit written notice of the alleged failure to comply, including the specific term(s) at issue and a reasonably detailed description of the conduct Plaintiffs believe to be out of compliance. Intuit shall have forty-five (45) days from receipt of such notice to cure the alleged failure, to the extent practicable and technologically feasible. During the forty-five (45) day period, the Parties shall meet and confer to resolve any disputes regarding the issue or to otherwise explore a joint resolution. If Intuit requires additional time to cure any alleged failure, the parties may agree to extend the forty-five (45) day cure period, and consent from the Plaintiffs shall not be unreasonably withheld.

(c) The Long Form Notice shall also advise Settlement Class Members that they may be eligible to use the IRS's Free File Program to file their taxes for free in 2021.

(d) Monetary Consideration. In addition to the Non-Monetary Benefits set forth above, in consideration of the releases, covenants, and other agreements set forth in this Settlement Agreement, Intuit shall pay Monetary Consideration totaling Forty Million Dollars (\$40,000,000) into the Escrow Account as follows: (i) Two Million Dollars (\$2,000,000) within fourteen (14) days of entry of the Preliminary Approval Order; and (ii) Thirty-Eight Million Dollars (\$38,000,000) within fourteen (14) days of entry by the Court of a final and non-appealable Final Fairness Approval Order and Judgment.

(e) Other than the Monetary Consideration, Defendant shall owe no additional monies of any kind under this Settlement Agreement.

IV. PAYMENT OF ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS

(a) Defendant agrees not to oppose or object to Settlement Class Counsel's request for an award of attorneys' fees and reimbursement of costs to be paid from the Monetary

Consideration, provided that the total amount of any such request does not exceed twenty-five percent (25%) of the Monetary Consideration.

(b) Within thirty (30) days of entry of the Final Approval Order and Judgment, any award of attorneys' fees and costs shall be paid to Settlement Class Counsel from the Escrow Account. Any payment of attorneys' fees and costs pursuant to this Paragraph shall be subject to Settlement Class Counsel's joint and several obligation to make refunds or repayments to the Escrow Account of any paid amounts, plus accrued earnings at the same net rate as is earned by the Escrow Account, if: (a) as a result of any appeal or further proceedings on remand or successful collateral attack, the fee or cost is reduced, vacated, or reversed by a Final, non-appealable court order; (b) this Settlement is terminated or cancelled for any reason; or (c) the Settlement is not approved or is reversed or modified by any court. If any one or more of the events described in this Paragraph occur, Settlement Class Counsel shall make the appropriate refund or repayment in full no later than fifteen (15) calendar days after receiving notice of the event(s). Defendant may request such additional written undertakings on the part of Settlement Class Counsel concerning repayment of any funds owed pursuant to this paragraph prior the payment of an award of attorneys' fees and costs from the Escrow Account as it may in the exercise of its reasonable discretion determine.

(c) Defendant agrees not to oppose or object to Plaintiffs' request for Service Awards from the Monetary Consideration, provided such awards do not exceed \$10,000 to each of the Settlement Class Representatives in the Action. The Parties recognize and agree that the Service Award to Settlement Class Representatives is solely to compensate the Settlement Class Representatives for work done on behalf of the Settlement Class. The Service Awards will be paid upon the Effective Date. Each Settlement Class Representative's damages as alleged in the Action will be compensated on a pro rata basis and on the same payment formula as all Settlement Class Members.

(d) With the sole exception of Defendant causing the payment of the Monetary Consideration into the Escrow Account as provided for in Section III(b), Defendant shall have no

responsibility for, shall take no position with respect to, and have no liability whatsoever with respect to, any payment whatsoever to Settlement Class Counsel in the Action that may occur at any time. The sole source of any payment of attorneys' fees shall be the Monetary Consideration deposited into the Escrow Account.

(e) Defendant shall have no responsibility for, and no liability whatsoever with respect to, any allocation of attorneys' fees or litigation expenses between Settlement Class Counsel in this Action.

(f) The payment of attorneys' fees, costs, and any Service Awards are subject to and dependent upon the Court's approval of the Settlement Agreement as fair, reasonable, adequate, and in the best interests of Settlement Class Members. However, this Settlement Agreement is not dependent or conditioned upon the Court's approving Plaintiffs' or Settlement Class Counsel's requests for such payments or awarding the particular amounts sought. In the event the Court declines Plaintiffs' or Settlement Class Counsel's requests or awards less than the amounts sought, this Settlement Agreement shall continue to be effective and enforceable by the Parties.

V. PRELIMINARY APPROVAL

(a) Plaintiffs shall move the Court for entry of the Preliminary Approval Order. Pursuant to the motion for preliminary approval, Plaintiffs shall request that:

i. the Court certify the Settlement Class for settlement purposes only, appoint Plaintiffs as the Settlement Class Representatives for settlement purposes only, and appoint Settlement Class Counsel as counsel for the Settlement Class for settlement purposes only;

ii. the Court preliminarily approve the Settlement Agreement as fair, adequate and reasonable, and within the reasonable range of possible final approval;

iii. the Court approve the form of Notice and find that the notice program set forth constitutes the best notice practicable under the circumstances, and satisfies due process and Rule 23 of the Federal Rules of Civil Procedure;

iv. the Court order that all proposed Settlement Class Members be enjoined from commencing, prosecuting, or participating in any way in any other lawsuit or legal action

against Defendant based on the facts and circumstances at issue in this case in any court or arbitral tribunal unless and until they have validly opted out of the Settlement Class, approval of the Settlement Agreement is denied, or the Settlement Agreement is otherwise terminated, except any matters necessary to implement, advance, or further the approval of the Settlement Agreement, to the full extent agreeable with the usages and principles of law, as set forth in 28 U.S.C. section 1651(a);

v. the Court set the date and time for the Final Approval Hearing, which may be continued by the Court from time to time without the necessity of further notice; and,

vi. the Court set the Objection Deadline and the Opt-Out Deadline.

(b) No bond shall be required for the injunction set forth in Paragraph V(a)(iv). Except with respect to those Settlement Class Members who have been deemed to have validly opted out of the Settlement pursuant to the process set forth in Section VII, the stay and injunction shall remain in place until the entry by the Court of a final and non-appealable Final Fairness Approval Order and Judgment.

(c) Other than actions taken for purposes of effectuating this Settlement Agreement, the Parties agree to stay the Action and any related appeals within ten (10) days of the filing of the motion for preliminary approval.

VI. ADMINISTRATION AND NOTIFICATION PROCESS

(a) Subject to Court approval, Plaintiffs have selected JND Legal Administration (“JND”), to serve as Settlement Class Administrator, who shall be responsible for all matters relating to notice and administration of this Settlement.

(b) The Settlement Class Administrator’s responsibilities shall include, but are not limited to, giving notice pursuant to the Notice program; obtaining new addresses for returned email; setting up and maintaining the Settlement Website, www.turbotaxclasssettlement.com, a toll-free telephone number with Spanish-language telephone support; initiating and administering the Digital Publication Notice component of the Notice program; fielding inquiries about the Settlement; receiving and processing claims submitted by Settlement Class Members;

implementing distribution of the Cash Awards to Settlement Class Members in accordance with the Court's order(s); maintaining records of all its activities relating to Notice and Administration of this Settlement; and any other tasks reasonably required to effectuate the foregoing. Before the Effective Date, without further Order of the Court, up to five hundred thousand Dollars (\$500,000) of the Monetary Consideration may be transferred from the Escrow Account to the Settlement Class Administrator to pay Notice and Administration Expenses actually and reasonably incurred by the Settlement Class Administrator.

i. The Settlement Class Administrator, at the direction of Settlement Class Counsel, shall make an initial distribution of payments to Settlement Class Members eligible to receive a Cash Award within sixty (60) days of the Effective Date. The Settlement Class Administrator shall not make any distributions to Settlement Class Members who make a timely request to exclude themselves from the Settlement Class.

ii. Settlement Class Members that submit a valid Claim Form to the Settlement Administrator by the Claim Deadline shall receive a *pro rata* Cash Award from the Net Monetary Consideration. The *pro rata* Cash Award to each Settlement Class Member will equal the quotient of the Net Monetary Consideration divided by the total number of Settlement Class Members that submit valid Claim Forms to the Settlement Administrator by the Claim Deadline.

iii. The Settlement Class Administrator shall attempt to distribute all of the Net Monetary Consideration that is distributable to Settlement Class Members eligible for a Cash Award who submit valid Claim Forms to the Settlement Class Administrator by the Claim Deadline. Any unclaimed distributions to such Settlement Class Members shall be distributed in additional distribution(s) to Settlement Class Members who accepted or elected to receive a *pro rata* payment amount (*e.g.*, cashed their checks or otherwise opted for alternative electronic funds distribution in a manner to be provided by the Settlement Class Administrator). Redistributions of available funds shall continue, at the discretion of the Settlement Class Administrator, in consultation with Settlement Class Counsel, until such time as the Settlement Class Administrator believes that further distributions would not be economically feasible. In cases where a Settlement

Class Member opts to receive payment by a mailed paper check, the Settlement Class Administrator shall not be required to make a *pro rata* distribution in an amount less than Ten Dollars (\$10.00).

iv. Any Net Monetary Consideration balance that remains after distributions to Settlement Class Members (until further distributions are no longer economically feasible), payment of Notice and Administration Expenses, Taxes, attorneys' fees and costs, and Service Awards, if any, shall be disposed of as determined by the Court. No portion of the Net Monetary Consideration shall revert to Defendant.

(c) Defendant shall provide the following information concerning the Settlement Class to the Settlement Class Administrator, to the extent available: (i) consumer name, (ii) consumer address (last known mailing address); (iii) the last four digits of Social Security number (or some other unique number that can be used to verify identity during administration); (iv) consumer email address; and (vii) information needed to calculate the *pro rata* distribution described above. To the extent information needed to calculate the *pro rata* distribution for a Settlement Class Member in a particular year is not readily available, the Parties shall develop a reasonable proxy to compensate Settlement Class Members for payments made in that year, and any Settlement Class Member that otherwise believes he or she was eligible shall be permitted to submit information supporting a claim. Settlement Class Counsel shall also have the Settlement Class Administrator execute a confidentiality agreement in a form acceptable to all Parties that requires the Settlement Class Administrator to maintain the data above as confidential and use such information only for the purposes of effectuating this Settlement. Defendant consents to Settlement Class Counsel's receiving access to this data in anonymized and aggregated form for purposes of effectuating this Settlement. Class Counsel is precluded from using the data for Settlement Class Members for any other purpose.

(d) Subject to approval by the Court, Notice shall be provided to all persons in the Settlement Class in accordance with the notice procedures approved by the Court. The form of the Long Form Notice and Claim Form are attached to the [Proposed] Order Granting Plaintiffs'

Motion for Preliminary Approval as Exhibits 1 and 2. Notice will be sent in accordance with Fed. R. Civ. P. 23(c) in the manner approved by the Court in its Preliminary Approval Order. The Settlement Class Administrator shall also establish a case specific Settlement Website (described below) at which copies of the Long Form Notice shall be available for download and where a potential Settlement Class Member may request hard copies of the Notice. The Settlement Class Administrator shall attempt to locate alternate addresses for any returned email, and shall promptly re-mail the Settlement Class Notice.

(e) The Settlement Class Administrator shall create and maintain a website that will be activated within seven (7) days following entry of the Preliminary Approval Order (the “Settlement Website”). The Settlement Website will post the Settlement Agreement, the Long Form Notice, the Preliminary Approval Order, the proposed Final Approval Order and Judgment, and, if not included in the Preliminary Approval Order, any court order setting a date and time for the Final Approval Hearing, and any other information required by the Court or agreed to by the Parties. Any information appearing on the Settlement Website in addition to the above-listed documents and upcoming court deadlines shall be subject to approval of the Parties. The Settlement Website also will offer a Spanish-language translation option. The Settlement Website shall have the standalone domain www.turbotaxclasssettlement.com. The Settlement Website will include a portal through which a Settlement Class Member can determine if he or she is eligible to receive a Cash Award. That portal shall be available at least thirty-five (35) days prior to the Objection Date and the Opt-Out Deadline. The Settlement Website will also provide a mechanism for submission of a completed Claim Form. The Settlement Website shall be taken down within ninety (90) days of the last payment to a Settlement Class Member.

(f) All costs of Notice and administration of the Settlement Agreement shall be paid from the Monetary Consideration.

(g) The Settlement Class Administrator shall assist Defendant’s counsel in preparing the CAFA Notice and will serve those materials within ten (10) days of the filing of the motion for

preliminary approval, in conformance with the time limitations set forth in 28 U.S.C. § 1715(b). The costs of the CAFA notice shall be paid from the Escrow Account.

(h) No later than twenty-one (21) calendar days prior to the Final Approval Hearing, the Settlement Class Administrator shall file with the Court an affidavit or a declaration stating that the Notice and CAFA Notice required by the Settlement Agreement have been completed in accordance with the terms of the Preliminary Approval Order.

VII. OPT-OUTS AND OBJECTIONS

(a) Any member of the Settlement Class who wishes to exclude herself or himself from the Settlement Class must advise the Settlement Class Administrator in writing of that intent, and the opt-out request must be postmarked no later than the Opt-Out Deadline. The Settlement Class Administrator shall provide counsel to the Parties with copies of all opt-out requests it receives in weekly status reports to the Parties and shall provide a list of all Settlement Class Members who timely and validly opted out of the Settlement in its declaration filed with the Court concurrent with Settlement Class Counsel's motion for final approval of the Settlement Agreement. The Settlement Class Administrator's declaration shall include the names of persons who have excluded themselves from the Settlement, but it shall not include their addresses or any other personal identifying information. Settlement Class Members who do not properly and timely submit an opt-out request will be bound by this Agreement and the judgment, including the releases.

i. In a written request for exclusion, the Settlement Class Member must state: (a) the Settlement Class Member's full name; (b) the Settlement Class Member's address, telephone number, and email address; (c) the unique identification number for the Settlement Class Member assigned by the Settlement Administrator; (d) a statement indicating that they are a member of the Settlement Class and wish to be excluded from the Settlement; and (e) if the Settlement Class Member has filed a lawsuit or arbitration against Intuit, the case name and case number relating to the Settlement Class Member. Opt-outs must bear original or PDF copy of class member's hand-written signature. An opt-out may not be signed by a lawyer or anyone acting on a Settlement Class Member's behalf.

ii. Any member of the Settlement Class who submits a valid and timely request for exclusion will not be a Settlement Class Member and shall not be bound by the terms of this Settlement Agreement.

iii. “Mass” or “class” opt-outs filed by third parties on behalf of a “mass” or “class” of Settlement Class Members will not be valid. Each opt-out request must be submitted on an individual basis.

(b) If there is no challenge to the validity of an opt out request by Defendant within five (5) business days of Defendant receiving notice from the Settlement Administrator of the opt-out request, the stay and/or injunction set forth in Paragraph V(a)(iv) shall be immediately lifted as to that Settlement Class Member. In the event of a challenge, the stay shall remain in place until the Court resolves the challenge and determines the request for exclusion is valid.

(c) Any Settlement Class Member who intends to object to this Settlement Agreement and/or to Settlement Class Counsel’s application for attorneys’ fees, reimbursement of costs, or Service Awards to Settlement Class Representatives must file with the Court a written objection signed by the Settlement Class Member by the Objection Deadline.

(d) For an objection to be considered by the Court, the objection must include the following:

i. the Settlement Class Member’s full name, address, email address, and telephone number;

ii. an explanation of the basis upon which the objector claims to be a Settlement Class Member;

iii. whether the objection applies only to the objector, to a specific subset of the class, or to the entire class, and the reasons for his or her objection, accompanied by any legal or factual support for the objection;

iv. the name of counsel for the objector (if any), including any former or current counsel who may seek compensation for any reason related to the objection to the Settlement, the

attorneys' fees application, the reimbursement of costs application, or the application for Service Awards;

v. the case name and civil action number of any other objections the objector or his or her counsel have made in other class action cases in the last four (4) years; and

vi. whether the objector intends to appear at the Final Approval Hearing on his or her own behalf or through counsel. Counsel for any objector must enter a Notice of Appearance no later than fourteen (14) days before the Final Approval Hearing.

(e) A Settlement Class Member may not both opt out of the Settlement and object. If a Settlement Class Member submits both a request for exclusion and objection, the request for exclusion will control. A Settlement Class Member who opts out of the Settlement may not object to the fairness of this Settlement Agreement. A Settlement Class Member who objects to the Settlement may withdraw that objection. A Settlement Class Member who opts out of the Settlement Agreement may opt back in by making a claim so long as the claim is received prior to the Opt-Out Deadline. A Settlement Class Member who opts out after making a claim will be treated as a valid opt out so long as the opt out is received prior to the Opt-Out Deadline.

(f) Any Settlement Class Member who does not make an objection in the time and manner set forth herein shall be deemed to have waived any objections and be forever foreclosed from making any objection to the fairness or adequacy of the Settlement, including but not limited to the compensation to Settlement Class Members, the award of attorneys' fees and reimbursement of costs, the Service Awards, or the Final Approval Order and Judgment.

(g) Only Objections filed in the Court shall be considered as Objections.

(h) Any Settlement Class Member who timely and properly objects may appear at the Final Approval Hearing, either in person or through an attorney hired at the Settlement Class Member's own expense, to object to the fairness, reasonableness, or adequacy of this Settlement Agreement or the Settlement.

VIII. FINAL APPROVAL ORDER AND JUDGMENT

(a) After the Settlement Agreement is approved preliminarily by the Court, Plaintiffs shall move for Final Approval of the Settlement no later than twenty-one (21) days prior to the Final Approval Hearing. Plaintiffs' motion shall attach a proposed Final Approval Order and Judgment.

(b) The proposed Final Approval Order and Judgment shall:

a. approve this Settlement Agreement without modification (except insofar as the Parties have agreed to such modification) as fair, reasonable and adequate to the Settlement Class and direct its consummation according to its terms;

b. find that the form and manner of notice implemented pursuant to this Settlement Agreement constitutes the best notice practicable under the circumstances; constitutes notice that is reasonably calculated, under the circumstances, to apprise the members of the Settlement Class of the pendency of Plaintiffs' claims, the terms of the proposed Settlement, the right to object to or exclude themselves from the proposed Settlement, and the right to appear at the Final Approval Hearing; constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and meets the requirements of due process, and the applicable rules of civil procedure;

c. find that all members of the Settlement Class (except those who have properly excluded themselves) shall be bound by this Settlement Agreement, including the release provisions and covenant not to sue;

d. direct that upon the Effective Date, judgment be entered immediately dismissing the Action with prejudice;

e. incorporate the release and covenant not to sue set forth in the Settlement Agreement, and forever bar any claims or liabilities related to any Released Claims;

f. approve payment of the Service Awards and Attorneys' Fees and Costs; and

g. retain jurisdiction solely of matters relating to the interpretation, administration, implementation, and enforcement of this Settlement Agreement.

IX. EFFECTIVE DATE OF SETTLEMENT

(a) The Effective Date of this Settlement shall be the first day on which all of the following shall have occurred or been waived:

- i. Payment in full of the Monetary Consideration into the Escrow Account;
- ii. Final Approval by the Court of the Settlement, following Notice to the Settlement Class and the Final Approval Hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure;
- iii. A Judgment, which shall be substantially in the form of the Final Approval Order and Judgment, has been entered by the Court and has become Final; and
- iv. Expiration of the time for Defendant to exercise their termination rights.

(b) Once all of the events listed in Paragraph IX(a) have occurred, the Parties will jointly file a “Notice of Effective Date” with the Court, identifying the Effective Date.

X. RELEASE OF CLAIMS AND COVENANT NOT TO SUE

(a) As of the Effective Date, Releasing Parties shall be deemed to have fully, finally and forever released and discharged the Released Parties from the Released Claims.

(b) With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date, the Releasing Parties expressly have, and by operation of the Judgment shall have, to the fullest extent permitted by law, expressly waived and relinquished any and all provisions, rights, and benefits conferred by any law or any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code § 1542, which 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.

Releasing Parties understand and acknowledge the significance of these waivers of California Civil Code Section 1542 and/or of any other applicable law relating to limitations on releases. In connection with such waivers and relinquishment, Releasing Parties acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they now know or believe to be true with respect to the subject matter of the Settlement Agreement, but that they release fully, finally, and forever all Released Claims, and in furtherance of such intention, the release will remain in effect notwithstanding the discovery or existence of any such additional or different facts. Plaintiffs and Defendant acknowledge, and other Settlement Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Claims was separately bargained for and was a material element of the Settlement.

(c) Plaintiffs and each Settlement Class Member further covenant and agree that they will not sue or bring any action or cause of action, or seek restitution or other forms of monetary relief, including by way of third-party claim, crossclaim, or counterclaim, against any of the Released Parties in respect of any of the Released Claims; they will not initiate or participate in bringing or pursuing any class action against any of the Released Parties in respect of any of the Released Claims; if involuntarily included in any such class action, they will not participate therein; and they will not assist any third party in initiating or pursuing a class action suit in respect of any of the Released Claims.

(d) The releases set forth in this section may be raised as a complete defense and bar to any action or demand brought in contravention of this Settlement Agreement.

(e) It is expressly understood and acknowledged by the Parties that the release and covenant not to sue set forth in this section together constitute essential and material terms of the Settlement Agreement to be included in the proposed Final Approval Order and Judgment.

XI. RIGHT TO TERMINATE THE SETTLEMENT

(a) Plaintiffs and Defendant shall each individually have the right to terminate the Settlement and this Settlement Agreement by providing written notice of his, her, or its election to

do so (“Termination Notice”), through counsel, to all other Parties hereto within fourteen (14) calendar days of any of the following occurrences:

i. Subject to (d)(ii) of this Section, the Court declines to preliminarily or finally approve, or the Court (or any other court) requires material modifications of the Settlement Agreement, and the Parties do not jointly agree to accept the Settlement Agreement as judicially modified or are unable to jointly agree to modify the Settlement Agreement for resubmission to the Court for approval; or

ii. any other grounds for termination provided for elsewhere in this Settlement Agreement occur.

(b) Defendant shall have the right to terminate the Settlement and this Settlement Agreement by providing written notice of its election to do so (“Termination Notice”), through counsel, to all other Parties hereto within fourteen (14) calendar days of any of the following occurrences:

i. the Court declines to implement the stay and injunction set forth in Paragraphs V(a)(iv) and VII(b) or any other court reverses or modifies the Court’s order implementing the stay or injunction set forth in Paragraphs V(a)(iv) and VII(b); or

ii. If the amount of Settlement Class Members that submit a request for exclusion that is determined to be valid and timely exceeds an amount agreed upon between Settlement Class Counsel and Defendant in a confidential side letter executed contemporaneous with this Settlement Agreement. The parties further agree that the confidential side letter will be shared with the Court in camera, upon request.

(c) If either Plaintiffs or Defendant terminate this Settlement Agreement, the Settlement Agreement shall be of no force and effect and the Parties’ rights and defenses shall be restored, without prejudice, to their respective positions as if this Settlement Agreement had never been executed, and any orders entered by the Court in connection with this Settlement Agreement shall be vacated.

(d) If the Settlement is terminated or not approved by the Court, the Effective Date does not occur, or the Settlement otherwise fails for any reason:

i. The Monetary Consideration (including the accrued interest thereon), less any Notice and Administration Expenses actually incurred or paid, and less any Taxes paid or due or owing, shall be refunded to Defendant in accordance with instructions provided by Defendant to Settlement Class Counsel no later than five (5) business days after the Settlement is terminated, the Settlement is not approved by the Court, the Effective Date does not occur, or the Settlement otherwise fails for any reason;

ii. The Parties agree to work collaboratively to effectuate this Settlement. If for some reason it is not possible to do so, the Parties will work together in good faith to modify the terms herein as necessary to effectuate the Settlement Agreement. In the event the Court (or any other court) disapproves or sets aside this Settlement Agreement or any material part hereof for any reason, then the Parties will either jointly agree to accept the Settlement Agreement as judicially modified or engage in negotiations in an effort to jointly agree to modify the Settlement Agreement for resubmission to the Court for approval. The Parties may agree by stipulation executed by counsel to modifications of the Exhibits to this Settlement Agreement to effectuate the purpose of this Settlement Agreement and/or to conform to guidance from the Court with regard to the contents of such Exhibits without need for further amendment of this Settlement Agreement. Any such stipulation shall be filed with the Court.

XII. USE AND TAX TREATMENT OF THE MONETARY CONSIDERATION

(a) The Monetary Consideration shall be applied as follows and only as follows: (i) to pay any attorneys' fees, reimbursement of costs, and Service Awards awarded by the Court; (ii) to pay Notice and Administration Expenses; (iii) to pay any Taxes; (iv) to pay any other costs, fees, or expenses approved by the Court; and (v) to pay the Net Monetary Consideration to eligible Settlement Class Members.

(b) All funds held in the Escrow Account shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be

disbursed or returned, pursuant to the terms of this Settlement Agreement, or further Order of the Court.

(c) The Parties agree that the Escrow Account is intended to be maintained as a “qualified settlement fund” within the meaning of Treasury Regulation § 1.468B-1. The Settlement Class Administrator shall timely make, or cause to be made, such elections as necessary or advisable to carry out the provisions of this Paragraph, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such election shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the sole responsibility of the Settlement Class Administrator to timely and properly prepare and deliver, or cause to be prepared and delivered, the necessary documentation for signature by all necessary parties, and thereafter take all such actions as may be necessary or appropriate to cause the appropriate filing(s) to occur.

i. For the purposes of Section 468B of the Internal Revenue Code of 1986, as amended, and Treasury Regulation § 1.468B promulgated thereunder, the “administrator” shall be the Settlement Class Administrator, who shall be responsible for timely and properly filing, or causing to be filed, all informational and other federal, state, or local tax returns necessary or advisable with respect to the earnings on the funds deposited in the Escrow Account (including without limitation the returns described in Treas. Reg. § 1.468B-2(k)). Those tax returns (as well as the election described above) shall be consistent with this subparagraph and in all events shall reflect that all Taxes (including any estimated taxes, earnings, or penalties) on the income earned on the funds deposited in the Escrow Account shall be paid out of those funds as provided in subparagraph (b) of this Paragraph.

ii. All Taxes shall be paid by the Escrow Agent out of the Settlement Fund.

iii. Taxes shall be treated as, and considered to be, a cost of administration of the Settlement and shall be timely paid, or caused to be paid, by the Escrow Agent out of the Net Monetary Consideration without prior order from the Court, and the Escrow Agent and the Settlement Class Administrator shall be obligated (notwithstanding anything herein to the contrary)

to withhold from distribution to eligible Settlement Class Members any funds necessary to pay such amounts (as well as any amounts that may be required to be withheld under Treasury Regulation § 1.468B-2(1)(2)).

iv. Settlement Class Members shall provide any and all information that the Settlement Class Administrator may reasonably require or that is required by applicable law regarding Taxes and filings and reporting for Taxes, before any distributions are made to Settlement Class Members as contemplated hereby, and the Settlement Class Administrator may, without liability to the Settlement Class Members, delay those distributions unless and until such information is provided in the form required by the Settlement Class Administrator.

XIII. MISCELLANEOUS

(a) This Settlement Agreement and the exhibits hereto constitute the entire agreement between the Parties to resolve the Action. Any previous memoranda between the Parties regarding settlement of the Action are superseded by this Settlement Agreement. No representations, warranties or inducements have been made by any of the Parties regarding settlement of the Action, other than those representations, warranties, and covenants contained in this Settlement Agreement.

(b) None of this Settlement Agreement, any document prepared in connection with the Settlement, or any negotiations, statements and proceedings in connection with the Settlement may be cited or used in any way in any proceeding as an admission by any Defendant, Released Party, or Plaintiff, including any admission as to the propriety of class treatment, except that any and all provisions of the Settlement Agreement may be admitted into evidence and otherwise used in a proceeding to enforce any or all terms of the Settlement Agreement, or in defense of any claims released or barred by this Settlement Agreement.

(c) No Party or counsel for a Party shall make or cause to be made any disparaging remarks or derogatory statements concerning any other Party or counsel for any other Party.

(d) Settlement Class Counsel and Plaintiffs agree to destroy all materials produced by any Defendant in the Action within sixty (60) days of the Effective Date pursuant to the Stipulated Protective Order dated September 19, 2018 (ECF 194).

(e) This Settlement Agreement shall be governed by the laws of the State of California, except to the extent that federal law requires that federal law govern.

(f) The Court shall retain continuing and exclusive jurisdiction over the Parties to this Settlement Agreement, including the Plaintiffs and all Settlement Class Members, for the express and limited purposes of the administration and enforcement of this Settlement Agreement. As part of its agreement to render services in connection with this Settlement Agreement, the Settlement Class Administrator shall also consent to the jurisdiction of the Court for this purpose.

(g) This Settlement Agreement was drafted jointly by the Parties and, in construing and interpreting this Settlement Agreement, no provision of this Settlement Agreement shall be construed or interpreted against any Party based upon the contention that this Settlement Agreement or a portion of it was purportedly drafted or prepared by that Party.

(h) The Parties shall cooperate in good faith in the administration of this Settlement Agreement and agree to use their best efforts to promptly execute all documents, seek and defend Court approval of this Settlement Agreement, and to do all other things reasonably necessary to complete and effectuate the Settlement described in this Settlement Agreement.

(i) This Settlement Agreement may be hand signed in counterparts, and the separate signature pages executed on behalf of the Parties by their counsel may be combined to create a document binding on all Parties and together shall constitute one and the same instrument. Original signatures are not required. Any signature submitted by facsimile or as a .pdf file by email shall be deemed an original.

(j) The time periods and dates described herein are subject to Court approval and may be modified upon order of the Court or written stipulation of the Parties.

(k) Each person executing this Settlement Agreement on behalf of any of the Parties hereto represents that such person has the authority to so execute this Settlement Agreement.

(l) This Settlement Agreement may not be amended, modified, altered, or otherwise changed in any manner, except by a writing signed by a duly authorized agent of Defendant and Plaintiffs, and approved by the Court.

(m) Each Party acknowledges, agrees, and specifically warrants that he, she, or it has received independent legal advice with respect to the advisability of entering into this Settlement Agreement and the Releases, the legal effects of this Settlement Agreement and the Releases, and fully understands the effect of this Settlement Agreement and the Releases.

(n) The Parties, and each of them, acknowledge, warrant, represent, and agree that in executing and delivering this Settlement Agreement, through their counsel, they do so freely, knowingly, and voluntarily, that they had an opportunity to and did discuss its terms and their implications with legal counsel, that they are fully aware of the contents and effect of this settlement, and that such execution and delivery is not the result of any fraud, duress, mistake, or undue influence whatsoever.

(o) This Settlement Agreement shall be binding upon, and inure to the benefit of, the heirs, successors, and assigns of the Parties.

(p) Except as otherwise provided herein, each Party shall bear its own costs.

(q) Unless otherwise stated herein, any notice to Settlement Class Counsel or Defendant required or provided for under this Settlement Agreement shall be in writing and sent by electronic mail, fax, hand delivery, or overnight mail postage prepaid to:

If to Settlement Class Counsel:

Daniel C. Girard
Girard Sharp LLP
601 California Street, Suite 1400
San Francisco, CA 94108
dgirard@giardsharp.com

Norman E. Siegel
Stueve Siegel Hanson LLP
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If to counsel for Defendant:

Rodger R. Cole
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Jonathan E. Paikin
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Ave. NW
Washington, DC 20006
Telephone: (202) 663-6000
jonathan.paikin@wilmerhale.com

The notice recipients and addresses designated above may be changed by written notice.

[SIGNATURE PAGES TO FOLLOW]

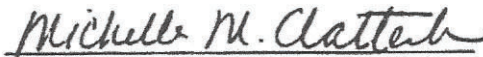
IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed, by their duly authorized attorneys, as of November 12, 2020.

By: 

Daniel C. Girard
GIRARD SHARP LLP
601 California Street, Suite 1400
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Telephone: (415) 981-4800
Facsimile: (415) 981-4846
dgirard@girardsharp.com

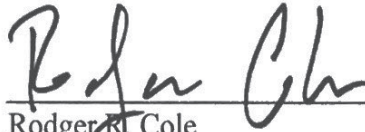
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Co-Lead Interim Class Counsel

By: 

Michelle M. Clatterbuck
Executive Vice President and Chief Financial
Officer
Intuit Inc.

By:



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