

**CLASS ACTION SETTLEMENT AGREEMENT**

This Class Action Settlement Agreement is entered into this 30th day of September, 2021, between the Plaintiffs and Defendant, as defined herein.

**I. RECITALS**

1.1. On November 17, 2020, Friday Apaliski, Jamie Waterman, Angelique Fish, and John Joyal, through their counsel Migliaccio & Rathod LLP, filed a Class Action Complaint in the United States District Court for the District of Delaware against Molekule, Inc., alleging claims for fraudulent concealment, breach of express warranty, breach of the implied warranty of merchantability, violations of the Magnusson-Moss Warranty Act, breach of the implied warranty of fitness for a particular purpose, violations of the California Consumers Legal Remedies Act (“CLRA”), violations of California’s False Advertising Law (“FAL”), violations of the California Unfair Competition Law (“UCL”), violations of the Song-Beverly Consumer Warranty Act, violations of the Massachusetts’ Consumer Protection Law, violations of Michigan Consumer Protection Act, and unjust enrichment. The Plaintiffs sought to pursue these claims on behalf of themselves and all purchasers of the Air Purifiers in the United States.

1.2. Plaintiffs allege that, in its advertising, Defendant made a series of material representations about the nature and efficacy of the Air Purifiers.<sup>1</sup> These include that the Air Purifiers (1) outperform HEPA filters in every category of pollutant; (2) eradicate the full spectrum of indoor air pollutants; (3) provide allergy and asthma symptom relief; (4) combat unhealthy levels of wildfire smoke by destroying airborne pollutants; and (5) that the representations were verified by extensive independent testing. Plaintiffs alleged that these

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<sup>1</sup> All capitalized terms in these Recitals have the meaning set forth in the Definitions section below.

representations were propagated through various media, including the Molekule website, YouTube videos, banner ads, social media, and sponsored media. Plaintiffs allege that this advertising was false and misleading. Defendant denies all of Plaintiffs' Allegations and maintains that its Advertising has been accurate at all times and supported by testing conducted by independent laboratories.

1.3. Plaintiffs' Counsel conducted a thorough examination and investigation of the facts and law relating to the matters in the Litigation, which included extensive formal and informal discovery, commissioning a report by an environmental engineering expert who specializes in indoor air quality, requesting and receiving documents from Defendant, examining Defendant's documents, and questioning Defendant regarding its documents.

1.4. Defendant denies all Allegations in the Litigation. Specifically, Defendant denies all charges of wrongdoing or liability against it arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Litigation. Defendant also denies that Plaintiffs, the Settlement Class, or any member of the Settlement Class have suffered damage or harm by reason of any alleged conduct, statement, act or omission of Defendant. Defendant further denies 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 Plaintiffs' claims in the Litigation. Defendant is entering into this Agreement solely to eliminate the uncertainties, burden, expense, and delay of further protracted litigation.

1.5. Defendant asserts that Molekule's Terms and Conditions contain a class-action waiver that does not permit class-wide arbitration of any claims against the Defendant. Defendant has stipulated to the certification of class claims in the Action for settlement purposes

only. Such stipulation does not in any way waive Defendant's right to assert and/or rely on the class-action waiver and arbitration clause in the Molekule Terms and Conditions in any later proceeding, including but not limited to in the Litigation to the extent that this Agreement is not finally approved by the Court.

1.6. By entering into this Agreement, Defendant in no way waives its right to compel arbitration of any claim brought against Defendant now or in the future by any Settlement Class Member (regardless of whether the Settlement Class Member opts out of this Agreement).

1.7. On March 2, 2021, the Parties participated in an all-day mediation conducted by mediator Antonio Piazza of Mediated Negotiations. That mediation and subsequent negotiations resulted in the settlement memorialized in this Agreement.

1.8. Plaintiffs' Counsel has analyzed and evaluated the merits of the Parties' contentions and this Settlement as it impacts all the Parties and the Settlement Class Members. Among the risks of continued litigation for Plaintiffs 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) Defendant's marketing materials were likely to deceive reasonable consumers, (2) that misrepresentations and omissions in the marketing materials were material to reasonable consumers, (3) the amount of damages or restitution due to the class or to any class member, and (4) that common questions predominate over individual issues such that a class may be certified. Plaintiffs and Plaintiffs' 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 Settlement Class are in the best interest of the Settlement Class Members.

1.9. Defendant agrees 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, Defendant considers it desirable to resolve the Litigation on the terms stated herein, in order to avoid further burden, expense, inconvenience, and interference with its ongoing business operations. Therefore, Defendant and Defendant's Counsel have determined that settlement of this Litigation on the terms set forth herein is in Defendant's 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 Defendant, 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 Plaintiffs, on the one hand, and Defendant, on the other hand, shall be fully and finally compromised, settled and released on the terms and conditions set forth in this Agreement.

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

Capitalized terms in this Agreement shall be defined as follows:

2.1. “Affiliate” means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with such Person. For purposes of the definition, “control” means (a) with respect to any corporation or other entity having voting shares or the equivalent and elected directors, managers, or Persons performing similar functions: (i) the ownership or power, directly or indirectly, to vote more than fifty percent (50%) of shares or the equivalent having the power to vote in the election of such directors, managers or Persons performing similar functions, or (ii) the ability, directly or indirectly, to direct its business and affairs, and (b) with respect to any other Person: the ability, directly or indirectly, to direct its business and affairs.

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

2.3. “Air Purifier” means the Molekule Air, Molekule Air Pro, Molekule Air Mini, Molekule Air Mini+, and the Molekule Air Pro Rx air purifiers.

2.4. “Allegations” means the allegations described in Section 1.2 above, as well as the allegations made in the Class Action Complaint filed in the Litigation, as well as any 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.

2.5. “Allocation Date” means forty-five (45) calendar days after the later of (a) the Claim Filing Deadline or (b) the Effective Date.

2.6. “Attorneys’ Fees and Expenses” means such funds as may be awarded by the Court based on the Settlement described herein to compensate Plaintiffs’ Counsel as

determined by the Court and described more particularly in Section VI of this Settlement. This award will also include a reimbursement of costs and expenses incurred by Plaintiffs' Counsel, arising from their representation in the Litigation, as determined and awarded by the Court.

2.7. "Cash Payment" means a check, payable to the Claimant, which shall be drawn from the Class Cash Fund and delivered as required by this Agreement. Checks must be negotiated within 365 calendar days or they shall become void and not subject to reissue.

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

2.9. "Claim Administrator" means, subject to Court approval, RG/2 Claim Administration. The Claim Administrator's estimate of its costs is \$75,000 and has agreed to a hard cap of \$100,000.

2.10. "Claim Filing Deadline" means two hundred (200) calendar days after the Notice Date.

2.11. "Claim Period" means the two hundred (200) day period beginning on the Notice Date and continuing until the Claim Filing Deadline.

2.12. "Claim Form" means a claim form in substantially the same form as Exhibit A.

2.13. "Claimant" means a Settlement Class Member who files a Claim seeking a Settlement Benefit under this Agreement or who is deemed to have filed a Claim.

2.14. "Class Cash Fund" means the qualified settlement fund this Agreement obligates Molekule to fund in the amount of \$1.3 million, which is in the form of a non-

reversionary common fund and is established in accordance with 26 C.F.R. §§ 1.468B-1(c) and (e)(1). In no event shall Molekule have to pay more than \$1.3 million in cash.

2.15. “Class Coupon Fund” means the equivalent of up to \$1.4 million in coupons as defined in paragraphs 2.18, 3.4, and 3.10 below (including subparts). In no event shall Molekule have to make more than \$1.4 million in coupons available.

2.16. “Class Period” means the period of May 1, 2016 through Preliminary Approval.

2.17. “Class Representatives” means Plaintiffs, who the Parties agree are also Settlement Class Members.

2.18. “Coupon” means a coupon that can be redeemed towards the purchase of a filter to be used in an Air Purifier or a filter subscription at <https://molekule.com/shop>. Each coupon shall be: (i) designated with a unique identifier; (ii) redeemable for a period no later than the second anniversary of the issuance of the coupon to the Class Member (all coupons shall be issued on a single issuance date), (iii) fully transferrable; and (iv) not subject to date restrictions other than that set out in subpart (ii); and (iv) not subject to a service or redemption charge of any kind, with no minimum purchase required to redeem a Coupon.

2.19. “Defendant” means Molekule, Inc.

2.20. “Defendant’s Counsel” means the law firm of Kecker, Van Nest & Peters LLP and the law firm of Shaw Keller LLP.

2.21. “Defendant’s Website” means all digital content and webpages hosted by Defendant at the domain name, <https://www.molekule.com> .

2.22. “Distribution Date” means sixty (60) calendar days after the later of (a) the Claim Filing Deadline or (b) the Effective Date.

2.23. “Effective Date” means the later of: (i) the expiration date of the time for filing a notice of appeal from the Final Approval of this Agreement or (ii) if a notice of appeal is filed, the date on which the Final Approval and judgment is no longer subject to review by any court and has been finally resolved in such a manner that affirms the Final Approval order and judgment in their entirety.

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

2.25. “Excluded Persons” means (i) the Honorable Richard G. Andrews and any member of his immediate family; (ii) any government entity; (iii) Antonio Piazza and any member of his immediate family; (iv) Defendant; (v) any entity in which Defendant has a controlling interest; (vi) any of Defendant’s parents, affiliates, and officers, directors, employees, legal representatives, heirs, successors, or assigns; (vii) third-party sellers Amazon, b8ta, Best Buy, MoMa Design Store NYC, and Sprout; (viii) any persons who timely opt out of the Settlement Class; and (ix) any Person who signed a release regarding their Air Purifier.

2.26. “Exclusion Deadline” means twenty-one (21) calendar days prior to the initially scheduled hearing date for a Motion for Final Approval.

2.27. “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 the Settlement Class 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; (b) determine whether to approve a Service Award and in what amounts;



and (c) rule on Plaintiffs' Counsel's application for Attorneys' Fees and Expenses. The Parties will seek a hearing date that is no later than 120 days after Preliminary Approval.

2.28. "Final Approval" means entry of a judgment, granting final approval of this Agreement as binding upon the Parties, which shall constitute a judgment respecting the Litigation.

2.29. "Air Purifier Proof of Purchase" means (a) a receipt or similar documentation from a third-party commercial source that reasonably establishes the fact of purchase of the Air Purifier from a third-party entity or (b) a photograph of a valid Air Purifier serial number.

2.30. "Litigation" means *Apaliski, et al. v. Molekule, Inc.*, United States District Court for the District of Delaware, Case No. 1:20-cv-01548- RGA.

2.31. "Long Form Notice" means a notice in substantially the same form as Exhibit B1.

2.32. "Motion for Final Approval Deadline" means thirty-five (35) days before Final Approval Hearing date.

2.33. "Net Class Cash Fund" means the amount in the "Class Cash Fund" after attorneys' fees, costs, service awards, and Claim Administrator costs are deducted. The Net Class Cash Fund is estimated to be \$795,000.

2.34. "Notice Date" means the day on which the Claim Administrator initiates the Notice Plan, which shall occur thirty (30) calendar days after entry of the Preliminary Approval Order.

2.35. "Notice Plan" means the procedure for providing notice to the Settlement Class, as set forth in Section 4.2.

2.36. “Objection Deadline” means twenty-one (21) calendar days prior to the initially scheduled Final Approval Hearing date.

2.37. “Parties” means Plaintiffs and Defendant, collectively.

2.38. “Party” means either Plaintiffs or Defendant.

2.39. “Person” means any natural person, corporation, partnership, business organization or association, or other type of legal entity.

2.40. “Plaintiffs” means Friday Apaliski, Angelique Fish, John Joyal, and Jamie Waterman.

2.41. “Plaintiffs’ Counsel,” “Class Counsel” or “Settlement Class Counsel” mean the law firms of Migliaccio & Rathod LLP and deLeeuw Law LLC.

2.42. “Postcard Notice” means a notice substantially in the form of Exhibit B3.

2.43. “Preliminary Approval” means issuance of an order, substantially in the form of Exhibit C, granting preliminary approval of the settlement described in this Agreement.

2.44. “Publication Notice” means a notice, substantially in the form of Exhibit B4, to be published in print format only (*e.g.*, magazines and newspapers).

2.45. “Released Claims” means the claims released as set forth in Section 8 of this Agreement.

2.46. “Released Parties” means Defendant and its present and former subsidiaries, parents, affiliates, divisions, officers, directors, members, managers, shareholders, insurers, suppliers, manufacturers, re-sellers, distributors, brokers, service providers, employees, agents, legal representatives, heirs, predecessors, successors, or assigns.

2.47. “Serial Number” means the serial number of the Air Purifier; the following webpage on Defendant’s Website provides information about how to find an Air

Purifier's Serial Number: <https://help.molekule.com/hc/en-us/articles/360001592148-How-do-I-find-my-serial-number-> .

2.48. "Settlement" means the terms of this Agreement.

2.49. "Settlement Benefit" means a Cash Payment and Coupon, as further described in Section 3 of this Agreement.

2.50. "Settlement Class" or "Settlement Class Members" means all persons, other than Excluded Persons, who, during the Class Period, (a) purchased in the United States, any of the Air Purifiers from a third-party seller, including but not limited to, Amazon, b8ta, Best Buy, MoMa Design Store NYC, and Sprout as of [Preliminary Approval Date], and (b) as of [Preliminary Approval Date], had not agreed to the arbitration provision in Molekule's Terms & Conditions.

2.51. "Settlement Website" means an internet website created and maintained by the Claim Administrator. The URL of the Settlement Website shall be [airpurifiersettlement.com](http://airpurifiersettlement.com).

2.52. "Service Award" means any award sought through application to and approval by the Court that is payable to Plaintiffs to compensate them for their efforts in bringing this Litigation and/or achieving the benefits of this Settlement on behalf of the Settlement Class, as further discussed in Section 6.

2.53. "Timeline of Events" means the timeline of dates set forth in the Settlement and reflected in Exhibit D.

2.54. "Valid Claim" means a claim submitted in compliance with Section 3 of this Agreement.

### III. SETTLEMENT CONSIDERATION

3.1. Molekule agrees to establish a common fund of \$1.3 million (the Class Cash Fund) and a coupon fund, equivalent of up to \$1.4 million in coupons (the Class Coupon Fund), totaling up to \$2.7 million in monetary consideration for the benefit of Settlement Class Members pursuant to the terms of this Settlement.

3.2. The Claim Administrator is authorized to establish the Class Cash Fund under 26 C.F.R. §§ 1.468B-1(c) and (e)(1), to act as the “administrator” of the Class Cash Fund pursuant to 26 C.F.R. § 1.468B2(k)(3), and to undertake all duties as administrator in accordance with the Treasury Regulations promulgated under § 1.468B of the Internal Revenue Code of 1986. All costs incurred by the Claim Administrator operating as administrator of the Class Cash Fund shall be construed as costs of Claim Administration and shall be borne solely by the Class Cash Fund. Interest on the Class Cash Fund shall inure to the benefit of the Class.

3.3. Within seven (7) calendar days after Preliminary Approval, Molekule shall pay \$26,742 into the qualified settlement fund established by the Claim Administrator pursuant to paragraph 3.2 for the Claim Administrator to execute the Notice Plan.

3.4. Within seven (7) days after the Effective Date, Molekule shall pay the remainder of the \$1.3 million into the qualified settlement fund established by the Claim Administrator pursuant to paragraph 3.2.

3.5. Within seven (7) days after the Effective Date, Molekule shall make available the equivalent of \$1.4 million in coupons for the Class Coupon Fund. The allocation and face value of the coupons shall not be determined until the Allocation Date, except as set forth in paragraph 6.1.

A. Each coupon shall be: (i) designated with a unique identifier; (ii) redeemable for a period no later than the second anniversary of the issuance of the coupon to the Class Member (all coupons shall be issued on a single issuance date), (iii) not subject to date restrictions other than that set out in subpart (ii); (iv) fully transferrable; and (v) not subject to a service or redemption charge of any kind, with no minimum purchase required to redeem a Coupon.

3.6. All Settlement Class Members who submit a Claim under Group A or Group B as defined below will be eligible to receive Settlement Benefits as set forth in either the Group A or Group B definitions:

3.7. **Group A.** Settlement Class Members who submit a claim under Group A shall receive a pro rata amount from the Cash Fund and Coupon Fund. The following Settlement Class Members are entitled to submit a claim under Group A:

All Settlement Class Members who provide (a) a valid, signed claim form *and either* (b) a valid receipt or similar documentation showing purchase of an Air Purifier from a third-party seller *or* (c) a photograph of a valid serial number of an Air Purifier.

3.8. **Group B.** Settlement Class Members who submit a claim under Group B shall presumptively receive no more than  $1/3$ , and no less than  $1/6$ , of the pro rata amount from the Cash Fund and Coupon Fund as Settlement Class Members in Group A. All Settlement Class Members who do not submit a claim under Group A are entitled to submit a Claim under Group B. To do so, Settlement Class Members must provide a valid, signed claim form.

3.9. The pro rata calculation shall be subject to the following conditions: (a) purchases of the Air Pro, Air Pro Rx or Air shall be weighted at 2.4 times the value of purchases

of Air Mini+ or Air Mini; (b) the maximum amount that can be paid out *pro rata* for the purchase of an Air Pro, Air Pro Rx or Air is \$1,200 to Group A claimants and \$800 to Group B claimants unless the redistribution described in 3.9(B), *infra*, is required to exhaust the Cash Class Fund; (c) purchases of up to three (3) Air Purifiers are eligible for a pro rata payment for Group B claimants, with no limit for Group A claimants; and (d) the maximum face value of a coupon is \$250 and Class Members are only entitled to receive one (1) coupon.

3.10. To clarify the operation of paragraphs 3.5-3.8 with respect to the Class Cash Fund, after the Effective Date, the Claim Administrator will calculate (a) the total number of valid claims made by Group A claimants and Group B claimants, and (b) the number and type of Air Purifiers for which each Claimant is entitled to receive a pro rata payment. For purposes of deriving the allocation, the Claim Administrator will begin by presuming that each Air Pro, Air Pro Rx, or Air from Group A claimant is entitled to a corresponding payment of \$480 and each Air Mini+ or Air Mini is entitled to a corresponding payment of \$200. After this preliminary Group A allocation, the administrator shall make a preliminary Group B allocation under which the Claim Administrator will begin by presuming that each Group B claimant is entitled to a payment of \$80 for each Air Pro, Air Pro Rx, or Air they purchased, and a payment of \$33.33 for each Air Mini+ or Air Mini that they purchased, subject to the purchase cap of three (3) Air Purifiers set forth in paragraph 3.9. There are three possible outcomes once this preliminary allocation is made requiring three possible next steps:

A. If the amount allocated through the process described in 3.10 exceeds the amount in the Net Class Cash Fund, then the Group A pro rata allocation for each Air Pro, Air Pro Rx, or Air and for each Air Mini+ or Air Mini shall be reduced in five percent increments until either: (i) Group A claimants are entitled to a payment of no less than \$240 for

each Air Pro, Air Pro Rx, or Air they purchased, and a payment of no less than \$100 for each Air Mini+ or Air Mini they purchased; or (ii) the amount in the Net Class Cash Fund is equal to or greater than the amount allocated to claimants. If 3.10(A)(i) occurs, and the amount in the Net Class Cash Fund is less than the amount allocated to claimants, the allocated amounts for all claimants shall be reduced pro rata until the amount in the Net Class Cash Fund is (with rounding) equal to the amount allocated to claimants.

B. If the amount allocated through the process described in 3.10 is less than the amount in the Net Class Cash Fund, then the Group B pro rata allocation for each Air Pro, Air Pro Rx, or Air and for each Air Mini+ or Air Mini that claimants purchased shall be increased in five percent increments until either: (i) Group B claimants are entitled to a payment of no more than \$160 for each Air Pro, Air Pro Rx, or Air they purchased, and a payment of no more than \$66.66 for each Air Mini+ or Air Mini they purchased; or (ii) the amount in the Net Class Cash Fund is equal to or greater than the amount allocated to claimants. If 3.10(B)(i) occurs, and the amount in the Net Class Cash Fund is still more than the amount allocated to claimants, the allocated amounts for all claimants shall be increased pro rata, subject to the presumptive caps in 3.9(b) *supra*. If Group A hits the presumptive cap, then Group B's allocated amount shall be increased pro rata until the Group B presumptive cap is hit. If both presumptive caps are hit, and an amount still remains in the Net Class Cash Fund, the allocated amounts for all claimants shall be increased pro rata until the amount in the Net Class Cash Fund is (with rounding) equal to the amount allocated to claimants.

3.11. In the unlikely event that the amount allocated is exactly equal to the amount in the Net Class Cash Fund, then the allocation will stand as-is.

3.12. For the Class Coupon Fund, the monetary face amount of the coupons allotted will be pro rata based on the claims submitted, as set forth above in paragraphs 3.6-3.8, subject to the \$250 maximum face value of a coupon as set forth in paragraph 3.8. If, after the pro rata allocation, there remains an amount in coupon value remaining in the Class Coupon Fund, that excess amount shall be returned to Defendant. The claim administrator shall maintain a record of each coupon recipient, including the recipient's name and address, and provide a copy of the record to the Parties.

3.13. Settlement Class Members for whom either or both of the Parties have contact information received from a third-party seller – shall be deemed to have submitted a valid claim under Group A without the need to provide a claim form, proof of purchase, or a serial number, unless that Settlement Class Member opts out of the Settlement or elects to fill out a Claim Form (to, for example, correct the presumptive allocation, per below). For these Settlement Class Members, if there is insufficient information to determine the number and/or models of Air Purifiers purchased, inferences can be drawn based on available information, including the total amount spent by the Claimant on Air Purifiers. If the deemed Claim contains insufficient information to infer the number and/or models of Air Purifiers purchased, and the claimant has not filled out a claim form, the claimant will be presumptively deemed to have purchased one (1) AirMini. Settlement Class Members who qualify under this paragraph will also be given the opportunity through direct notice to provide the Claims Administrator with updated contact information prior to distribution.

3.14. 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 Settlement Class Member, Claim Forms may be submitted via first class mail, or electronically at the Settlement



Website or via email to the Claim Administrator. Claim Forms must be postmarked or submitted electronically (online or by email) no later than the Claim Filing Deadline, and Claim Forms submitted after that date will not be Valid Claims. For Claim Forms that are submitted online, the Class Member shall have the opportunity to upload the Air Purifier Proof of Purchase and/or serial number photograph; to review, prior to submitting the claim, a page that redisplay all information entered in the Claim Form and the names of image files uploaded; and to print, immediately after the Claim Form has been submitted, a page showing the information entered, the names of image files uploaded, and the date and time the Claim Form was received. For Claim Forms that are submitted via email, the Class Member shall have the ability to send large image files to an account set up by the Claim Administrator. In addition, for Claim Forms that are submitted electronically, the Class Member shall be sent an email confirmation of the submitted claim that shows the information entered, the names of image files uploaded, and the date and time the Claim Form was submitted.

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

- A. The Settlement Class Member's name, mailing address, and email address;
- B. The number of Air Purifiers purchased (with Group B claimants limited to up to three);
- C. The model of each Air Purifier purchased (Air Pro, Air Pro Rx, Air, Air Mini+, or Air Mini);

- D. For Group B claimants, the approximate month and year of each purchase;
- E. For Group B claimants, the name of the third-party seller from whom each purchase was made;
- F. That any additional information, if any, provided by the Claimant to demonstrate membership in Group A is true and correct; and
- G. That any proof of purchase provided by the Claimant is a true and correct copy or photograph of the original.

3.16. The Email Notice, Long-Form Notice, Postcard Notice, Publication Notice, and Claim Form shall state the anticipated average net amount from the Class Cash Fund per class member, which shall be calculated by dividing the Net Class Cash Fund by the number of estimated class members. The Claim Form shall state that the amount the Settlement Class Member may receive could be appreciably higher or lower than this amount, depending on a number of factors such as the number of Air Purifiers they purchased, the kind of Air Purifiers they purchased, whether they have proof of purchase, and the number of class members who submit a valid claim form.

3.17. The Claim Administrator shall be responsible for processing Claim Forms and administering the Settlement Website, opt-out process, and Settlement Benefit claims process described herein. The Claim Administrator will follow its ordinary course of practice regarding approval of claims, subject to all Parties' right to audit claims determinations and challenge the Claim Administrator's decision(s). If the Parties and the Claim Administrator cannot collectively agree how to resolve disputed claims, then such disputes shall be resolved by

the Court. Within thirty-five (35) calendar days after receiving a Claim, the Claim Administrator shall email the Class Member at the email address (if any) provided by the Class Member on the Claim Form about its decision whether the Claim will be accepted or denied. For those Class Members whose claim is denied, the email from the Claim Administrator will state the reasons for denial. If no email address is provided by the Class Member on the Claim Form, the Administrator shall not have an obligation to provide the class member with such notification. The Class Member shall have fourteen (14) calendar days to cure the deficiency or deficiencies that resulted in the denial of the Claim. The Claim Administrator's determination of whether a claim is a Valid Claim, if not disputed by the Parties, shall be final and not subject to further review. No person shall have any claim against Plaintiffs, Defendant, Plaintiffs' Counsel, Defendant's Counsel, or the Claim Administrator based on any determination about the validity of a claim, distributions, or awards made in accordance with this Agreement and the Exhibits hereto.

3.18. On the first business day of every month after the Notice Date, the Claim Administrator shall provide the Parties with a report about claims made, which shall include information about the number of claims that have been accepted and denied. Fourteen (14) calendar days prior to the date for the Parties' Motion for Final Approval Deadline, the Claim Administrator shall provide information to the Parties about the number of claims filed to-date.

3.19. Within thirty (30) calendar days of the close of the Claims Period, the Claim Administrator shall approve or deny all Claims, and its decision shall be final and binding, except that Plaintiffs' Counsel and Defendant shall have the right to audit claims and to challenge the Claim Administrator's decision by motion to the Court, for good cause, at any time after the Notice Date.

3.20. All costs of the administration of this settlement shall be paid from the Class Cash Fund.

3.21. Cash Payments shall be paid by check sent via first-class mail to the mailing address provided on the Claim Form or at the election of the Settlement Class Member on the Claim Form, by direct deposit into the Settlement Class Member's bank account, or another form of electronic transfer (such as Paypal, Venmo, Google Wallet, or Square Cash). For those Class Members who submit Valid Claims, coupons shall be issued to those Class Members by email to the email address provided on the Claim Form or, at the election of class member, by first-class mail to the mailing address provided on the claim form. All Valid Claims shall be paid by the Claim Administrator by the Distribution Date.

#### **IV. NOTICE AND SETTLEMENT ADMINISTRATION**

4.1. Subject to Court approval, the Parties have agreed that providing Long Form Notice, Email Notice, Postcard Notice, and Publication 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.

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

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

number of Air Purifiers purchased by the Class Member (if available); (vi) the model of Air Purifiers purchased by the Class Member (if available); and (viii) the third-party seller from whom the Class Member purchased each Air Purifier (if available). The Parties will endeavor to conduct a probing but reasonable search of their records for this information and agree to make best efforts to work cooperatively to obtain this information from third-party sellers, either informally or by subpoena.

B. No later than the Notice Date, the Claim Administrator shall send Direct Notice to Class Members as follows. For Settlement Class Members for whom the Claim Administrator has email addresses, 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. For Settlement Class Members for whom the Claim Administrator does not have email addresses but for whom a physical mailing address is available, the Claim Administrator shall send (i) a copy of the Long Form Notice in the form approved by the Court; (ii) a copy of the Claim Form in the form approved by the Court; and (iii) a return envelope with the address of the Claim Administrator.

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 the Postcard Notice or Long Form 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 and/or the Long Form Notice to be sent using an industry-accepted source

such as Accurant, and shall send the Postcard Notices and/or Long Form Notices to the mailing address identified by the skip tracing.

E. Any mailed Postcard Notices and/or Long Form Notices returned to the Claim Administrator as undelivered and bearing a forwarding address shall be re-mailed by the Claim Administrator within seven (7) calendar 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 Accurant, to conduct an address update and send the Postcard Notices and/or Long Form Notices to the mailing addresses identified by the skip-tracing.

F. On or at a reasonable amount of time after the Notice Date, third-party sellers that have been subpoenaed by Plaintiffs, but who have not agreed to provide contact information of purchasers of Air Purifiers known to the third-party seller to Plaintiffs or the Claim Administrator, are authorized to send notice directly to such individuals, informing them of the settlement.

G. 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 Plaintiffs' 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, Plaintiffs'

request for Attorneys' Fees and Expenses and Service Award, and supporting declarations. The Claim Administrator shall provide Plaintiffs' Counsel and Defendant's Counsel with the opportunity to review the Settlement Website at least ten (10) calendar 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) calendar days after all Settlement Benefits are distributed.

H. On the Notice Date, the Claim Administrator shall cause the Publication Notice to be published in the manner ordered by the Court.

I. 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.

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

K. The Parties each represent that they do 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.

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

the Class Representative, Class Counsel, Defendant, or Defendant's Counsel.

M. 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 Defendant's Counsel.

N. 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 Publication Notice to the Class Members approved by the Court to be published;
- (4) Performing physical mailing address and email address updates and verifications prior to the distribution of the Postcard Notice;
- (5) Performing a single skip trace to identify Class Members' addresses and to follow up on any returned Postcard Notices;
- (6) 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;



- (7) Consulting with Defendant's Counsel and/or Class Counsel concerning any relevant issues, including (without limitation) distribution of the Class Notice and processing of Claim Forms;
- (8) Processing and recording timely and proper requests for exclusion from or objections to the Settlement;
- (9) Processing and recording Claim Forms;
- (10) Preparing, drafting, and serving the CAFA Notice;
- (11) Calculating *pro rata* amounts of the Class Cash Fund and Class Coupon Fund;
- (12) Transmitting Coupons to Class Members who qualify;
- (13) Transmitting Cash Payments to Class members who qualify; and
- (14) Such other tasks as the Parties mutually agree or the Court orders the Claim Administrator to perform in connection with this Agreement

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

P. At least fourteen (14) calendar 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.

Q. All costs of the administration of this settlement, including notice and administration costs, shall be paid out of the Class Cash Fund.

R. Upon completion of the implementation and administration of the Settlement, the Claim Administrator shall provide written certification of such completion to Class Counsel and Defendant's Counsel.

**V. CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS**

5.1. Solely for the purpose of effectuating the Settlement set forth in this Agreement and subject to Court approval, the Parties stipulate that a Settlement Class shall be certified in accordance with the definition set forth in this Agreement, that the Class Representatives shall represent the Settlement Class for settlement purposes, and that Plaintiffs' Counsel shall be appointed as counsel for the Settlement Class.

**VI. ATTORNEYS' FEES, COSTS, AND EXPENSES, AND SERVICE AWARDS**

6.1. This Settlement Agreement was arrived at after extensive arm's length negotiations conducted in good faith by counsel for the parties, and is supported by the Plaintiffs. The parties did not discuss or negotiate attorneys' fees until after relief had been fashioned for the Class. Plaintiffs' Counsel may make an application to the Court for an award of Attorneys' Fees and Expenses not to exceed \$410,000 in cash, plus a Service Award to each of the Named Plaintiffs in the amount of \$5,000.00, as compensation for the time and effort undertaken in and risks of pursuing this Litigation. If awarded, in whole or in part, the Attorneys' Fees and Expenses awarded by the Court shall be paid from the Class Cash Fund. Any modification of Plaintiffs' Counsel's application for Attorneys' Fees or Expenses by the Court shall not (i) affect the enforceability of the Settlement Agreement, (ii) provide any of the Parties with the right to terminate the Settlement Agreement, or (iii) impose any obligation on Defendant to increase the consideration paid in connection with the Settlement.

6.2. The Claim Administrator shall pay to Class Counsel from the Class Cash Fund the amount of attorneys' fees and costs awarded by the Court within twenty-one (21) calendar days of the Effective Date, subject to Plaintiffs' Counsel providing its payment routing information and tax ID number. Payment of the Fee Award will be made from the Class Cash Fund by wire transfer to Plaintiffs' Counsel.

6.3. Any Service Award approved by the Court for the Class Representatives shall be paid from the Class Cash Fund in the form of a check to the Class Representatives that is sent care of Class Counsel within the earlier of twenty-one (21) days after the Effective Date, or the date the Claim Administrator begins making distributions to claimants.

6.4. Defendant covenants and agrees on behalf of itself and the Released Parties that, provided Plaintiffs' application for Attorneys' Fees and Expenses is consistent with paragraph 6.1, it and Released Parties shall not (a) oppose or submit any evidence or argument challenging or undermining any application for Attorneys' Fees and Expenses that does not exceed the amounts set forth in paragraph 6.1; (b) encourage or assist any person to oppose or submit any evidence or argument challenging or undermining any application for Attorneys' Fees and Expenses that does not exceed the amounts set forth in paragraph 6.1; or (c) encourage or assist any person to appeal from an order awarding Attorneys' Fees and Expenses that does not exceed the amounts set forth in paragraph 6.1. Defendant also covenants and agrees on behalf of itself and the Released Parties that Plaintiffs' application for Service Awards that do not exceed the amount set forth in paragraph 6.1 is consistent with Section 6.1, that it and Released Parties shall not (a) oppose or submit any evidence or argument challenging or undermining Plaintiffs' application for any Service Award that does not exceed the amount set forth in paragraph 6.1; (b) encourage or assist any person to oppose or submit any evidence or

argument challenging or undermining any application for a Service Award that does not exceed the amount set forth in paragraph 6.1; or (c) encourage or assist any person to appeal from an order making a Service Award that does not exceed the amounts set forth in paragraph 6.1. Plaintiffs' Counsel and Plaintiffs agree that the denial of, reduction or downward modification of, or failure to grant any application for Attorneys' Fees and Expenses or Service Award shall not constitute grounds for modification or termination of this Agreement, including the settlement and releases provided for herein.

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

## **VII. CLASS SETTLEMENT PROCEDURES**

7.1. Settlement Approval. Within thirty (30) days after the signing of this Agreement, Plaintiffs shall move, with the support of Defendant, for a Preliminary Approval order, substantially in the form of Exhibit C, conditionally certifying the Settlement Class; preliminarily approving this Agreement and this Settlement as fair, just, reasonable and adequate; approving Class Notice to the Settlement Class Members as described in Section IV above; and setting the Final Approval Hearing. The Parties shall seek a Final Approval Hearing to occur no later than 120 days after Preliminary Approval.

7.2. Exclusions and Objections. The Long Form Notice and the Print Publication Notice shall advise prospective Settlement Class Members of their rights to forego the benefits of this settlement and pursue an individual claim; to object to this settlement individually or through counsel; and to appear at the Final Approval Hearing.

7.3. If any Settlement Class Member wishes to object to the Settlement and/or to be heard at the Final Approval Hearing, the Settlement Class Member may submit a written

objection, in compliance with the requirements set forth in the Long Form Notice and the Preliminary Approval order.

7.4. If any Settlement Class Member wishes to be excluded from this Settlement and the Settlement Class, the Settlement Class Member may do so by completing and submitting the online form at the Settlement Website or by mailing a valid request to opt out, as described in the Long Form Notice, to the Claim Administrator. Requests for exclusion must be submitted online by the Exclusion Deadline, or if mailed must be *received by* the Claim Administrator (not just postmarked) by the Exclusion Deadline, or they shall not 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. A Settlement Class Member who elects to opt out of this Settlement and the Settlement Class shall not be permitted to object to this Settlement or receive any of the benefits of the Settlement. Settlement Class Members shall be encouraged, but not required, to provide their email addresses in their requests for exclusion.

7.5. At least fourteen (14) days prior to the Final Approval Hearing, the Claim Administrator shall prepare a list of the names of the persons who have excluded themselves from the Settlement Class in a valid and timely manner, and Plaintiffs' Counsel shall file that list with the Court, with service on Defendant's Counsel.

7.6. Effect if Settlement Not Approved or Agreement is Terminated. If this Agreement is not given preliminary or final approval by the Court, or if an appellate court reverses Final Approval of the Agreement, the Parties will seek in good faith to revise the Agreement as needed to obtain Court approval, provided, however, that no party may use subsequent legal developments or other intervening events, other than the decision(s) denying or

reversing approval of the Agreement, as justification for renegotiating the settlement. Failing this, the Parties will be restored to their respective places in the litigation. In such event, the terms and provisions of this Agreement will have no further force or effect with respect to the Parties and will not be used in this or any other proceeding for any purposes, and any Judgment or Order entered by the Court in accordance with the terms of this Agreement will be treated as vacated.

7.7. The proposed Preliminary Approval order and Long Form Notice will provide that any Settlement Class Members wishing to object or exclude themselves who fail to properly or timely file or serve any of the requested information and/or documents will be precluded from doing so.

7.8. If any objection is received by the Claim Administrator, the Claim Administrator shall forward the objection and all supporting documentation to counsel for the Parties. At least twenty (20) days prior to the Final Approval Hearing, Plaintiffs' Counsel shall file all such objections and supporting documentation with the Court. The failure of the Settlement Class Member to comply with the filing requirements of Section 7 shall be grounds for striking and/or overruling the objection, even if the objection is submitted to the Claim Administrator. At least seven (7) days prior to the Final Approval Hearing, Plaintiffs' Counsel and defense counsel shall have the opportunity to submit a supplemental memorandum responding to any objections and requests for exclusion.

7.9. Upon Court order, the Parties will have the right to obtain document discovery from and take depositions of any Objecting Class Member on topics relevant to the Objection.

7.10. If a Settlement 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.

7.11. A Settlement Class Member who objects to the Settlement may also submit a Claim Form on or before the Claim Filing Deadline, which shall be processed in the same way as all other Claim Forms. A Settlement Class Member shall not be entitled to an extension to the Claim Filing Deadline merely because the Settlement Class Member has also submitted an objection.

7.12. If more than two percent (2%) of Settlement Class members opt out of the class-action settlement, Defendant shall have the sole and absolute discretion to terminate the settlement by giving notice of its intent to do so within ten (10) calendar days after the Settlement Administrator reports the final number of opt-outs.

## **VIII. RELEASES**

8.1. Releases Regarding Named Plaintiffs (Class Representatives) and Released Parties. Upon the Effective Date, Named Plaintiffs shall have unconditionally, completely, and irrevocably released and forever discharged the Released Parties from and shall be forever barred from instituting, maintaining, or prosecuting (1) any and all claims, liens, demands, actions, causes of action, rights, duties, obligations, damages or liabilities of any nature whatsoever, whether legal or equitable or otherwise, known or unknown, that actually were, or could have been, asserted in the Litigation, whether based upon any violation of any state or federal statute or common law or regulation or otherwise, or arise directly or indirectly out of, or in any way relate to, the allegations, claims, or contentions that Named Plaintiffs have had in the past, or now have, related in any manner to the Defendant's products, services or business

affairs; and (2) any and all other claims, liens, demands, actions, causes of action, rights, duties, obligations, damages or liabilities of any nature whatsoever, whether legal or equitable or otherwise, known or unknown, that Named Plaintiffs have had in the past or now have, related in any manner to any and all Released Parties' products, services or business affairs, or otherwise.

8.2. Releases Regarding Settlement Class Members and Released Parties.

Upon the Effective Date, Settlement Class Members shall have unconditionally, completely, and irrevocably released and discharged the Released Parties from any and all claims, liens, demands, actions, causes of action, rights, duties, obligations, damages or liabilities of any nature whatsoever, whether legal or equitable or otherwise, known or unknown, whether arising under any international, federal, state or local statute, ordinance, common law, regulation, principle of equity or otherwise, that were, or could have been, asserted in the Litigation and that arise out of or relate to the Allegations, or could have been asserted in the Litigation regarding the labeling, marketing, advertising, sale, or servicing of the Air Purifiers (the "Released Claims"), except that there shall be no release of claims for personal injury allegedly arising out of use of the Air Purifiers. Upon Final Approval, Settlement Class Members shall be forever barred from initiating, maintaining, or prosecuting any Released Claims against Released Parties.

8.3. Waiver of Provisions of California Civil Code § 1542. Plaintiffs shall, by operation of Final Approval and on the Effective Date, be deemed to have waived the provisions, rights and benefits of California Civil Code § 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, be deemed to have waived the provisions, rights and benefits of California Civil Code § 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 8.2.

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.**

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

8.5. 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 and/or arbitrability) on the part of any Party. Defendant expressly denies 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.

**IX. ADDITIONAL PROVISIONS.**

9.1. Non-Disparagement. The Parties, Plaintiffs' Counsel, and Defendant's Counsel agree that they will not make or cause to be made any statements that disparage Plaintiffs, Defendant or its employees, or any of the other Released Parties. Parties, Plaintiffs' Counsel, and Defendant's Counsel also agree that they will not encourage any Person to disparage Plaintiffs, Defendant or its 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 quote or accurately characterize the Allegations, or defenses, in the Litigation or terms of the Agreement, nor does it include any good faith claim or allegation of a legal violation in the future. Nothing herein is intended to, nor shall be construed to, violate counsel's obligations under applicable ethics rules.

9.2. 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.

9.3. 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 Plaintiffs' Counsel and Defendant's Counsel, without notice to Settlement Class Members.

9.4. 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.

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

9.6. Enforcement of this Agreement and Continuing Jurisdiction. The Court possesses exclusive and continuing jurisdiction over this Settlement Agreement and over all Parties and Settlement Class Members to interpret, effectuate, enforce, and implement this Settlement Agreement. The Court shall have exclusive jurisdiction to resolve any disputes involving this Settlement Agreement.

9.7. Entire Agreement. The terms and conditions set forth in this Agreement 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. Any amendment or modification of the Agreement must be in writing signed by Plaintiffs' Counsel and Defendant's Counsel.

9.8. 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.

9.9. Advice of Counsel. The determination of the terms of, and the drafting of, this Agreement have been by mutual agreement after negotiation, with consideration by and participation of all Parties and their counsel. The presumption that uncertainties in a contract are interpreted against the party causing an uncertainty to exist is hereby waived by all Parties.

9.10. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the respective heirs, successors and assigns of the Parties.

9.11. No Tax Advice. Neither Plaintiffs' Counsel nor Defendant's 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.

9.12. No Waiver. The waiver by any Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

9.13. Requirement of Execution. This Agreement shall be valid and binding as to Plaintiff, Plaintiffs' Counsel, the Settlement Class and Defendant upon (1) signature by Plaintiff, (2) signature by an authorized representative of Defendant, and (3) signature as to form by an authorized representative of each of the law firms defined as Plaintiffs' Counsel and Defendant's Counsel.

9.14. 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.

9.15. Extensions of Time. The Parties reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extension of time that might be needed to carry out any of the provisions of this Agreement.

9.16. 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 Plaintiffs or Plaintiffs' Counsel:

Jason Rathod, Esq.  
Migliaccio & Rathod LLP  
412 H St NE  
Washington D.C. 20002  
Telephone: (202) 470-3520  
Fax: (202) 800-2730  
Email: jrathod@classlawdc.com

If to Defendant or Defendant's Counsel:

Erin Meyer  
Keker, Van Nest & Peters LLP  
633 Battery Street  
San Francisco, CA 94118  
Telephone: (415) 391-5400  
Fax : (415) 397-7188  
Email: emeyer@keker.com

9.17. Confidentiality. The Parties, Plaintiffs' Counsel, and Defendant's Counsel agree to keep this the existence and contents of the Term Sheet, Agreement, and all related settlement communications confidential until the filing of the motion for Preliminary Approval. All privileged settlement communications will remain confidential at all times, including following 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 Claim 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) Defendant or any of the Released Parties as necessary for any reasonable commercial purpose. The Parties agree that, on or after the filing of the motion for Preliminary Approval, Plaintiffs' Counsel and/or Plaintiffs may disclose the terms of the Settlement to the public so long as the disclosure is consistent with the other terms of this agreement, including the non-disparagement provision. Nothing herein is intended to, nor shall be construed to, violate counsel's obligations under applicable ethics rules.

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

9.19. 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.

IN WITNESS HEREOF the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on the first date it has been executed by all of the undersigned.

**APPROVED AS TO FORM:**

DATED: September 29, 2021

MIGLIACCIO & RATHOD LLP



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Nicholas A. Migliaccio, Esq.  
Jason S. Rathod, Esq.  
Attorneys for Plaintiff

DATED: September 29, 2021

KEKER, VAN NEST & PETERS LLP



\_\_\_\_\_  
Attorneys for Defendant

**APPROVED AND AGREED:**

DATED: September \_\_\_, 2021

FRIDAY APALISKI

\_\_\_\_\_  
Friday Apaliski

DATED: September \_\_\_, 2021

ANGELIQUE FISH

\_\_\_\_\_  
Angelique Fish

DATED: September \_\_\_, 2021

JOHN JOYAL

\_\_\_\_\_  
John Joyal

DATED: September \_\_\_, 2021

JAMIE WATERMAN

\_\_\_\_\_  
Jamie Waterman

DATED: September 29, 2021

MOLEKULE, INC.

By: *Eric R. Barnett* \_\_\_\_\_

Name: ERIC R. Barnett \_\_\_\_\_

Its: SVP and General Counsel \_\_\_\_\_

DATED: September \_\_, 2021

KEKER, VAN NEST & PETERS LLP

\_\_\_\_\_  
Attorneys for Defendant

**APPROVED AND AGREED:**


DATED: September <sup>30</sup>\_\_, 2021

FRIDAY APALISKI

  
\_\_\_\_\_  
Friday Apaliski


DATED: September <sup>29</sup>\_\_, 2021

ANGELIQUE FISH

  
\_\_\_\_\_  
Angelique Fish

DATED: September <sup>29</sup>\_\_, 2021

JOHN JOYAL

  
\_\_\_\_\_  
John Joyal

DATED: September <sup>30</sup>\_\_, 2021

JAMIE WATERMAN

  
\_\_\_\_\_  
Jamie Waterman

DATED: September \_\_, 2021

MOLEKULE, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_