

SETTLEMENT AGREEMENT

Moreno, et al. v. Buena Vista Catalogue Co.
San Diego County Superior Court
Case No. 37-2019-00039785-CU-BT-CTL

This Settlement Agreement (“Agreement,” the terms of which are sometimes referred to as the “Settlement”) is entered into by and between Ilene Moreno (“Moreno”), Cheryl James-Ward (“James-Ward”), LaRay Peterson (“Peterson”), Henry De leon (“De leon”), Anthony Gonzalez (“Gonzalez”), and Kyle Lanese (“Lanese”) (collectively, “Plaintiffs”), on the one hand, on behalf of themselves and all other individuals who are members of the Class as defined in Section III below, and defendant Buena Vista Catalogue Co., d/b/a Disney Movie Club (“Disney” or “Defendant”), on the other hand. Each of the foregoing is a “Party” (collectively, the “Parties”).

I. RECITALS

A. On July 30, 2019, Moreno and James-Ward filed a complaint in the Superior Court of the State of California, County of San Diego, originally entitled *Moreno, et al. v. Disney Interactive Studios, Inc.*, Case No. 37-2019-00039785-CU-BT-CTL (the “Action”). (ROA# 1.) The Action alleges that Defendant enrolled Moreno, James-Ward, and other Class Members in automatic renewal or continuous service subscriptions without first presenting the consumer with the automatic renewal or continuous service offer terms in a clear and conspicuous manner; charged the consumer’s credit card, debit card, or third-party payment account without first obtaining the consumer’s affirmative consent to an agreement containing clear and conspicuous disclosure of the automatic renewal or continuous service offer terms; failed to provide the consumer with an acknowledgment that included clear and conspicuous disclosure of the automatic renewal or continuous service offer terms, cancellation policy, and information regarding how to cancel; and solicited payment of money for goods that the consumers did not order. The Action seeks both monetary and injunctive relief.

B. On August 15, 2019, plaintiffs Moreno and James-Ward served their first set of Demands for Inspection (“DFIs”), Special Interrogatories, and Form Interrogatories to Defendant. Defendant responded to those discovery requests on October 18, 2019.

C. On October 10, 2019, Defendant filed a Demurrer to Plaintiffs’ Complaint (ROA# 17) and a Motion to Strike Portions of Plaintiffs’ Complaint (ROA# 18) on the grounds that Plaintiffs’ cause of action for violation of the California Automatic Renewal Law (“ARL”) fails because no private right of action exists under the ARL; Plaintiffs’ California Unfair Competition Law (“UCL”) and California Consumers Legal Remedies Act (“CLRA”) claims, based on alleged violations of the ARL, fail because they do not adequately plead that the Disney Movie Club is an “automatic renewal” or “continuous service” within the meaning of the ARL; Plaintiff James-Ward’s claim for an alleged solicitation of payment for unordered goods fails because she does not set forth facts sufficient to state a cause of action; and Plaintiff James-Ward’s class claims should be stricken because she is not a member of the class she seeks to represent. The Demurrer and Motion to Strike were set for hearing on February 14, 2020.

D. In November 2019, the Parties agreed to explore the possibility of an early resolution. To that end, on November 26, 2019, counsel for the Parties attended a mediation in Los Angeles with Hon. Carl J. West (Ret.), a retired judge of the complex litigation panel of the Los Angeles County Superior Court. The mediation did not result in a settlement.

E. Defendant served supplemental discovery responses on January 3, 2020 and February 7, 2020. Defendant produced documents in response to the DFIs on December 19, 2019; February 10, 2020; February 19, 2020; February 21, 2020; February 27, 2020; and March 12, 2020.

F. On January 31, 2020, plaintiffs Moreno and James-Ward filed a First Amended Complaint (“FAC”), which, among other things, added LaRay Peterson as a plaintiff to the Action. (ROA# 25.)

G. On February 7, 2020, Plaintiffs took the deposition of Sumee Chang, Director of the Disney Movie Club.

H. On February 14, 2020, plaintiffs Moreno, James-Ward, and Peterson filed a Motion to Compel Further Responses to Interrogatory Nos. 1 and 2 (ROA# 37-42) and, on February 18, 2020, filed a Motion to Compel Further Response to Demand for Inspection No. 1 and for Production of Documents (ROA# 31-36). The Motions to Compel were scheduled to be heard on June 26, 2020.

I. On February 26, 2020, Defendant served its first set of Requests for Production and Inspection of Documents and Tangible Things, Requests for Admissions, Special Interrogatories, and Form Interrogatories to plaintiffs Moreno, James-Ward, and Peterson. Responses to those discovery requests were served on May 29, 2020.

J. On March 3, 2020, Defendant filed a Demurrer to Plaintiffs’ FAC (ROA# 47) and a Motion to Strike Portions of Plaintiffs’ FAC (ROA# 46) on substantially the same grounds upon which Defendant demurred and moved to strike Plaintiffs’ initial Complaint, and on the basis that Defendant’s good faith compliance with the ARL barred recovery of civil penalties. The hearings on Defendant’s Demurrer and Motion to Strike were scheduled for July 17, 2020.

K. Due to the COVID-19 pandemic, the San Diego Superior Court was closed for most non-emergency services from March 17, 2020 through May 22, 2020. On May 13, 2020, the Court vacated the hearing dates that had been assigned for Defendant’s Demurrer and Motion to Strike and for Plaintiffs’ Motions to Compel. (ROA# 48-51.)

L. On July 7, 2020, the Parties participated in a full-day mediation before the Honorable S. James Otero (Ret.), a retired federal district court judge now associated with JAMS. The Parties were able to reach a settlement on the terms set forth in this Agreement.

M. On July 8, 2020, the Court held a Status Conference at which time the Parties informed the Court of the Settlement, and the Court scheduled the hearing on plaintiffs' motion for preliminary approval for December 4, 2020.

N. This Agreement represents a compromise of disputed claims. Defendant denies any and all allegations of liability, fault, or wrongdoing and denies that any claims alleged in the Action are suitable for class certification other than for purposes of this Settlement. The Parties have entered into the Settlement described herein to fully and finally resolve their disputes.

Therefore, the Parties agree as follows:

II. CONDITIONS PRECEDENT TO EFFECTIVENESS OF SETTLEMENT

A. The Settlement will become final and effective upon the occurrence of all of the following events:

1. The San Diego County Superior Court (the "Court") enters an order preliminarily approving the Settlement and conditionally certifying the Class as defined in Section III. The date the Court enters an order granting preliminary approval of the Settlement will be referred to as the "Preliminary Approval Date."

2. The Court enters an order and judgment granting final approval of the Settlement. The date the Court enters the judgment will be referred to as the "Judgment Entry Date."

3. The Effective Date occurs. The "Effective Date" will be determined as follows:

(a) The Effective Date will be the Judgment Entry Date unless a Class Member, as defined in Section III.A., files a timely objection to the Settlement that is not withdrawn on or before the Judgment Entry Date.

(b) If a Class Member files a timely objection to the Settlement that is not withdrawn on or before the Judgment Entry Date, then the Effective Date will be sixty-one (61) days following the Judgment Entry Date, unless that Class Member files a timely notice of appeal of the judgment.

(c) If a Class Member who has filed a timely objection to the Settlement also files a timely notice of appeal of the judgment, then the Effective Date will be the date the appeal is dismissed or the judgment is affirmed and no longer subject to mandatory or discretionary appellate review.

B. The Parties and their respective counsel will cooperate with each other and do all things reasonably necessary to obtain preliminary approval of the Settlement, obtain final approval of the Settlement, protect and support the Settlement if an appeal is taken or any other form of judicial review is sought, and otherwise seek to ensure that the Effective Date occurs.

C. Class Counsel will have the right to appeal any award of attorneys' fees, litigation expenses, or service payments, but any such appeal, if taken, will not otherwise affect the binding nature of the Settlement, including the release of claims set forth in Section IX below. In the event of any such appeal of attorneys' fees, litigation expenses, or a service payment, the Parties will cooperate to carry out the other terms of the Settlement that are unaffected by that appeal.

D. If the Effective Date does not occur because the Superior Court or a reviewing court enters a final order or decision disapproving of the Settlement with prejudice, or if the Settlement is terminated by agreement of the Parties, or if for other reasons it becomes certain that the Effective Date cannot occur: (1) this Agreement will be void *ab initio* and without any further

force or effect; (2) any conditional certification of the Class pursuant to a preliminary approval order shall be withdrawn; (3) the Second Amended Complaint and any Answer thereto filed pursuant to this Agreement shall be stricken or withdrawn; and (4) the Settlement Administrator will, after deducting any settlement administration expenses incurred as of that date, return any Settlement funds in its possession to Defendant.

III. CLASS CERTIFICATION

A. Solely for the purpose of effectuating the Settlement, and subject to Court approval, the Parties stipulate to class certification of the following Class (the members of which are referred to as the “Class Members”):

All California residents who, between July 30, 2015 and the Preliminary Approval Date, were enrolled by Disney in the Disney Movie Club. Excluded from the Class are all employees of Disney, all employees of Plaintiffs’ counsel, and the judicial officers to whom this case is assigned.

B. Solely for the purpose of effectuating the Settlement, the Parties stipulate to the filing of a Second Amended Complaint which sets forth the foregoing definition of the Class and adds De leon, Gonzalez, and Lanese as additional named plaintiffs and class representatives. As part of the motion for preliminary approval, the Parties will request that the Court grant leave for the filing of the Second Amended Complaint (a copy of which will be lodged with the motion).

C. Within five (5) court days after the filing and electronic service of the Second Amended Complaint, Defendant shall file an Answer without demurring or moving to strike the Second Amended Complaint. However, if the Settlement is not granted final approval by the Court, the Parties stipulate and agree that (a) the Second Amended Complaint shall be stricken, (b) the Answer to the Second Amended Complaint shall be withdrawn, and (c) the Parties will return to the *status quo ante* as if no Settlement had been entered into, including placing on the Court’s calendar hearing dates for Defendant’s Demurrer to the FAC and Motion to Strike Portions of the FAC and Plaintiffs’ Motions to Compel. Moreover, if the Settlement is not granted final approval

by the Court, the Parties shall be deemed to have preserved all of their rights or defenses as of the date of this Agreement, and shall not be deemed to have waived any substantive or procedural rights of any kind.

D. Solely for the purpose of effectuating the Settlement, and subject to Court approval, the Parties stipulate that the law firm of Dostart Hannink & Coveney LLP will be appointed as counsel for the Class (“Class Counsel”).

E. Solely for the purpose of effectuating this Settlement, and subject to Court approval, the Parties stipulate that Moreno, James-Ward, Peterson, De leon, Gonzalez, and Lanese will be appointed as Class Representatives.

F. Subject to Court approval, the Parties agree that CPT Group, Inc. will be the Settlement Administrator. The Settlement Administrator will be responsible for: disseminating the Summary Class Notice; establishing and maintaining the Settlement Website; researching and updating addresses through skip-traces and similar means, if and to the extent necessary; receiving and validating claims; preparing a declaration regarding its due diligence; mailing settlement checks to Class Members; and doing such other things as the Parties or the Court may direct in order to effectuate the Settlement.

G. On statutory notice for the December 4, 2020 scheduled hearing, Plaintiffs shall submit this Agreement to the Court along with a motion for preliminary approval of class action settlement, conditional certification of the Class, and approval of class notice (proposed forms for the emailed Summary Notice, the mailed Summary Notice, the Long Form Notice, and the paper Claim Form are attached hereto as Exhibits A, B, C, and D, respectively). The preliminary approval motion will also ask the Court to schedule a fairness hearing on the question of whether the proposed settlement, including payment of attorneys’ fees, reimbursement of litigation

expenses, and any class representative service payments, should be finally approved as fair, reasonable, and adequate as to the Class.

IV. SETTLEMENT CONSIDERATION

A. Monetary Consideration. The monetary consideration to be paid by Defendant is the principal amount of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) (the “Settlement Amount”). Defendant will pay the entire Settlement Amount to the Settlement Administrator by wire transfer no later than fourteen (14) days following the Preliminary Approval Date and receipt of wire-transfer instructions and any other information necessary to transmit the funds. The Settlement Administrator shall hold said funds in an interest-bearing account (“Settlement Fund”), to be distributed only as set forth in this Agreement. If the Settlement is not granted final Court approval for any reason, the entire remaining balance of the Settlement Fund shall be returned to Defendant. Under no circumstances shall Defendant be obligated to pay any monetary amount pursuant to this Settlement in excess of the Settlement Amount.

B. As provided in Sections V, VI, VII, and VIII below, the Settlement Amount will be used to pay Class Counsel’s attorneys’ fees and litigation expenses (as approved by the Court), any service payment awarded by the Court to one or more of the Class Representatives, the expenses of settlement administration (including class notice), and the settlement payments to Class Members. If any funds are remaining by reason of uncashed settlement checks or otherwise, the remaining funds will be paid to one or more *cy pres* recipient(s) mutually proposed by the Parties and approved by the Court, unless the Court orders otherwise. Provided that the Effective Date occurs, no portion of the Settlement Amount will revert to Defendant.

C. Injunctive Relief and Change of Business Practices. Defendant has modified its offer, billing, and/or payment materials in a manner that Defendant believes continues to ensure

that it is in substantial compliance with California law. Because this Settlement is a compromise of disputed allegations and claims, Defendant's agreement to this Section IV.C. is expressly for the purposes of settlement, is not an admission of wrongdoing, fault, or liability, and is not an admission or acknowledgement that any of Defendant's offer, billing, or payment materials heretofore have not been in compliance with law.

V. ATTORNEYS' FEES AND LITIGATION EXPENSES

Class Counsel will file a motion for an award of attorneys' fees of up to thirty-eight percent (38%) of the Settlement Amount, plus actual litigation expenses not to exceed \$100,000 incurred in connection with the Action. Defendant will take no position regarding these requests, provided the requests made to the Court are consistent with this Section. As soon as practicable following the Effective Date, the Settlement Administrator will pay to Class Counsel from the Settlement Amount the attorneys' fees and litigation expenses awarded by the Court.

VI. SERVICE PAYMENT

Class Counsel will file a motion requesting service payments to Moreno, James-Ward, Peterson, De leon, Gonzalez, and Lanese, not to exceed \$30,000 in the aggregate. Defendant will take no position regarding these requests, provided the requests made to the Court are consistent with this Section. As soon as practicable following the Effective Date, the Settlement Administrator will pay from the Settlement Amount any service payments awarded by the Court.

VII. SETTLEMENT ADMINISTRATION

A. Defendant has provided a verified interrogatory response concerning the number of California consumers who were enrolled in the Disney Movie Club from July 30, 2015 through December 31, 2019. Defendant has also provided to Plaintiffs' counsel additional information concerning the approximate number of California consumers who were enrolled in the Disney Movie Club from January 1, 2020 through July 7, 2020. Defendant agrees to provide Plaintiffs'

counsel with verified information concerning the number of California consumers who enroll in the Disney Movie Club from July 7, 2020 to December 4, 2020 (the reserved date for the hearing on the Motion for Preliminary Approval) on a periodic basis as such data becomes available.

B. Defendant has provided an interrogatory response concerning the Disney Movie Club revenue derived from California consumers from July 30, 2015 through December 31, 2019. Defendant has also provided to Plaintiffs' counsel additional information concerning the approximate Disney Movie Club revenue derived from California consumers from January 1, 2020 through July 7, 2020. Defendant agrees to provide Plaintiffs' counsel with verified information concerning the Disney Movie Club revenue derived from California Consumers from July 7, 2020 to December 4, 2020 (the reserved date for the hearing on the Motion for Preliminary Approval) on a periodic basis as such data becomes available.

C. Within fourteen (14) days after the Preliminary Approval Date, Defendant shall produce to Plaintiffs' counsel and the Settlement Administrator data file(s) reflecting transaction information for all Class Members with respect to transactions that occurred from July 30, 2015 to and including the Preliminary Approval Date (the "Database"). The transaction information shall include the consumer's name, billing address, mailing address, telephone number (if available), and email address (if available). Defendant will provide the Settlement Administrator and Class Counsel with any other documents or data in its possession, custody, or control reasonably necessary to validate claims. The Database and any other documents or data provided pursuant to this paragraph shall be designated as "Highly Confidential" and shall be used only for purposes of class notice and settlement administration.

D. No later than thirty-five (35) days following the Preliminary Approval Date, the Settlement Administrator will email the Court-approved Summary Class Notice to the last-known email address of each Class Member, as reflected in the Database. The date on which the email

notice is disseminated to Class Members is referred to as the “Notice Date.” The emailed Summary Class Notice will include a link to the Settlement Website (discussed below) or other suitable methodology to enable an email recipient to submit a Claim electronically. For individuals with respect to whom the Database does not contain an email address (if any), the Settlement Administrator will send a copy of the Summary Class Notice to the individual’s last-known mailing address, to the extent that information is available in the Database, via first class U.S. Mail, postage pre-paid. Prior to such mailing, the Settlement Administrator will run the Class Members’ last-known addresses through the U.S. Postal Service’s National Change of Address (“NCOA”) database and update the Database as appropriate. If any emailed Summary Class Notice documents are “bounced back” as undeliverable so as to indicate that the email address is not valid, then within fourteen (14) days after the Notice Date, the Settlement Administrator will mail a copy of the Summary Class Notice to the person’s last-known mailing address, to the extent that information is available in the Class List, as updated by the NCOA database. Class Counsel is authorized to direct the Settlement Administrator to undertake additional steps to disseminate the Summary Class Notice.

E. For a period of twenty-one (21) days following the Notice Date, if any mailed Summary Class Notice is returned to the Settlement Administrator as undeliverable, the Settlement Administrator will perform a skip-trace and/or other customary address search in an attempt to locate a valid address, and if a new address is obtained, will re-mail the Summary Class Notice to that address.

F. No later than the Notice Date, the Settlement Administrator will establish a Settlement Website on which it will make available the Second Amended Complaint, the Settlement Agreement, the order granting preliminary approval of the Settlement, the Summary Class Notice, the Long Form Class Notice, the Claim Form (in a format that may be printed), and

any other materials agreed to by the Parties. The Settlement Website will include a mechanism by which individuals whose name and contact information appear in the Database and who receive an emailed Summary Class Notice or a mailed Summary Class Notice may submit a Claim electronically via the Settlement Website.

G. If any individual who does not appear in the Database contacts the Settlement Administrator to request a claim form, the Settlement Administrator will provide that person with a paper Claim Form substantially in the form of Exhibit D.

H. The date that is forty-five (45) days after the Notice Date shall be referred to as the “Claim/Exclusion/Objection Deadline.”

I. In order to receive a share of the Settlement Amount, Class Members must file a timely Claim, either electronically via the Settlement Website or a paper Claim Form, and that Claim must be validated by the Settlement Administrator.

1. Completed Claims that are timely submitted electronically through the Settlement Website by individuals to whom the emailed or mailed Summary Class Notice was sent will be deemed valid.

2. Completed Claims that are submitted in the form of a paper Claim Form will be deemed valid if the claimant’s name, and the claimant’s mailing address and/or email address, match information in the Class List. The paper Claim Form must be completed and signed by the claimant.

J. To be timely, the Claim must be returned to the Settlement Administrator no later than forty-five (45) days following the Notice Date. If the Claim is returned via the Settlement Website, the date of return will be the date of submission through the Settlement Website. If the Claim is returned by U.S. Mail, the date of return will be the date of postmark. If the Claim is returned by personal delivery or email, the date of return will be the date the Claim is received by

the Settlement Administrator. Class Counsel in their discretion may direct the Settlement Administrator to treat as timely a Claim received by the Settlement Administrator after the Claim/Objection/Exclusion Deadline.

K. If the Settlement Administrator disallows a Claim based on a deficiency that can be cured (such as the failure to sign the Claim Form), the Settlement Administrator may either waive the deficiency or notify the claimant by postcard of the reason for the disallowance and invite the claimant to cure the deficiency. The Settlement Administrator will consider any additional information or corrective action by the claimant so long as the additional information or corrective action is submitted within twenty-one (21) days after the mailing of the notice of deficiency. Class Counsel shall be kept apprised of the volume and nature of deficient claims and allowed to communicate with Class Members as they deem appropriate in an effort to cure such deficiencies.

L. In the event multiple or conflicting claims are submitted with respect to the same name or transaction, then subject to any order the Court may make, the Settlement Administrator shall have authority to resolve the issue as between the claimants.

M. Unless otherwise ordered by the Court, the Settlement Administrator's decision regarding the validity of any Claim will be final and not subject to review or appeal.

N. Any Class Member who wishes to be excluded from the Settlement must complete and return a request for exclusion via U.S. Mail, email, or personal delivery, and that request for exclusion must be validated by the Settlement Administrator as provided in this section. The request for exclusion must be in writing, must list the Class Member's name, mailing address, and telephone number, along with the statement "I wish to be excluded from the *Moreno v. Buena Vista Catalogue Co.* Settlement." To be timely, the request for exclusion must be returned to the Settlement Administrator no later than the Claim/Exclusion/Objection Deadline. If the request for exclusion is returned by U.S. Mail, the date of return will be the date of the postmark. If the

request for exclusion is returned by personal delivery or email, the date of return will be the date the request for exclusion is received by the Settlement Administrator. Those Class Members who submit timely requests for exclusion will be referred to as Excluded Class Members. Excluded Class Members will not receive any consideration under the Settlement and will not be bound by any provision of the Settlement. Requests for exclusion shall be sent by regular mail, electronic mail, or hand-delivery to the Settlement Administrator, as follows: CPT Group, 50 Corporate Park, Irvine, California 92606; email: _____.

O. Any Class Member who wishes to object to the Settlement may do so either orally or in writing. To object to the Settlement in writing, a Class Member must file a written objection with the Court and serve copies of the objection on Class Counsel, Defendant's counsel, and the Settlement Administrator, no later than the Claim/Exclusion/Objection Deadline. The written objection must set forth the name of the lawsuit (*Moreno v. Buena Vista Catalogue Co.*, Case No. 37-2019-00039785-CU-BT-CTL), the Class Member's name, address, and telephone number, and the following statement: "I declare under penalty of perjury that, to the best of my knowledge, I was enrolled in the Disney Movie Club between July 30, 2015 and [Preliminary Approval Date], and I wish to object to the Settlement." The written objection must also state the factual and legal basis for the objection. Any written objection must be filed with the Court and served by mail as follows: (1) to the Settlement Administrator, at CPT Group, 50 Corporate Park, Irvine, California 92606; (2) to Defendant's counsel, Amy P. Lally, Sidley Austin LLP, 1999 Avenue of the Stars, 17th Floor, Los Angeles, California 90067; and (3) to Class Counsel, Zach P. Dostart, Dostart Hannink & Coveney LLP, 4180 La Jolla Village Drive, Suite 530, La Jolla, California 92037. The Settlement Administrator will promptly compare the information submitted by the objector against the Database and advise Class Counsel and Defendant's counsel whether it appears that the objector is in fact a Class Member. Class Counsel and Defendant will respond to any written

objections, as appropriate, either in briefs filed in advance of the final approval hearing or at the final approval hearing. Alternatively, any Class Member may present an objection to the Court orally at the final approval hearing.

P. Class Members who submit timely Claims that are validated by the Settlement Administrator are referred to as the “Participating Class Members.” Only Participating Class Members will receive settlement payments under the Settlement, in accordance with Section VIII, below.

Q. No later than fifteen (15) court days following the Claim/Exclusion/Objection Deadline, the Settlement Administrator will make available to Class Counsel and Defendant’s counsel a written report listing the name and contact information of each Participating Class Member, each Excluded Class Member, and any Class Member who has objected to the Settlement.

VIII. SETTLEMENT PAYMENTS

A. Each Participating Class Member will receive a pro-rata portion of the Net Settlement Amount. The “Net Settlement Amount” is the Settlement Amount (plus any accrued interest thereon) reduced by any sums awarded by the Court for attorneys’ fees, litigation expenses, service payments, and all expenses of settlement administration (including expenses previously incurred and the Settlement Administrator’s good faith estimate of future expenses to be incurred). The pro-rata share of each Participating Class Member shall be computed by dividing the Net Settlement Amount by the number of Participating Class Members. There will be no cap on the settlement payment that a Class Member may receive.

B. As soon as practicable after the Effective Date, the Settlement Administrator will mail to each Participating Class Member a check representing that person’s settlement payment. The Settlement Administrator will indicate on the check stub that the Participating Class Member

should consult his or her tax advisor regarding the tax consequences of the settlement payment. In the event any check is returned to the Settlement Administrator as undeliverable, the Settlement Administrator will attempt to contact the Participating Class Member by telephone or perform a skip trace to attempt to locate a current address and re-mail the check. Any check that is not cashed within one hundred and twenty (120) days of its mailing by the Settlement Administrator will be void. Any portion of the Settlement Amount, including any accrued interest, that remains unpaid at the end of one hundred and forty-five (145) days will be paid to a *cy pres* recipient mutually proposed by the Parties and approved by the Court, unless the Court orders otherwise.

IX. RELEASE OF CLAIMS

A. Following the Effective Date and provided that Disney has paid the full Settlement Amount, Moreno, James-Ward, Peterson, De leon, Gonzalez, Lanese, and all Class Members who have not timely requested exclusion from the Settlement, as well as their respective spouses, heirs, assigns, executors, administrators, successors, and agents (collectively, the “Releasing Parties”), shall be deemed to release, resolve, relinquish, and discharge each and all of the Released Parties from each of the Released Claims (as defined below). For purposes of this paragraph, “Released Parties” means Buena Vista Catalogue Co., d/b/a Disney Movie Club, and any of its past, present, and future parents, subsidiaries, affiliated companies, and corporations, and any of its past, present, and future officers, directors, managers, employees, general partners, limited partners, principals, insurers, reinsurers, shareholders, attorneys, advisors, representatives, or assigns. For purposes of this paragraph, “Released Claims” means any and all claims, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses and attorneys’ fees of any nature whatsoever, whether based on any law (including federal law, state law, common law, contract, rule, or regulation) or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen,

actual or contingent, liquidated or unliquidated, punitive or compensatory, monetary or non-monetary, that have been pled in the Action, or that could have been pled in the action, that arise out of or relate to the causes of action, allegations, practices, or conduct at issue in the in the Complaint, First Amended Complaint, or Second Amended Complaint. Each of the Released Parties shall be third-party beneficiaries to this Agreement and entitled to enforce its terms.

B. For the purpose of implementing a full and complete release and discharge between the named plaintiffs and Defendant, Moreno, James-Ward, Peterson, De leon, Gonzalez, and Lanesey expressly acknowledge that their respective releases provided in this Agreement are intended to include in their effect, without limitation, any and all claims, complaints, charges, or suits, including those claims, complaints, charges, or suits which they do not know or suspect to exist in their favor at the time of execution hereof, which if known or suspected, could materially affect their decision to execute this Agreement. This Agreement contemplates the extinguishment of any such claims, complaints, charges, or suits and therefore all rights under any law of any state or territory of the United States or other jurisdiction, or principle of common law. It is further understood and agreed that this release by Moreno, James-Ward, Peterson, De leon, Gonzalez, and Lanesey is entered into with the provisions of California Civil Code section 1542 (or any analogue of or counterpart to section 1542 under any state or federal law) specifically in mind, the provisions of which section are hereby expressly waived. This section reads as follows:

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.

By executing this Agreement, Moreno, James-Ward, Peterson, De leon, Gonzalez, and Lanesey acknowledge that they have been specifically advised by their counsel of the consequences of the above waiver, as well as with respect to this Agreement generally.

X. MISCELLANEOUS

A. The Settlement represents a compromise of disputed claims, which Defendant denies with respect to all allegations of liability, fault, or wrongdoing. Nothing in this Agreement constitutes an admission by any Party as to the validity of any claim or defense asserted in the action as to the merits or the propriety of class certification of any claims, other than for purposes of settlement.

B. This Agreement may be modified only by a writing signed by the Parties.

C. This Agreement, including its exhibits, constitutes the entire agreement between the Parties concerning the subject matter hereof. This Agreement and exhibits will be construed as a whole, and with reference to one another, according to their fair meaning and intent. The Parties agree that the rule of construction that ambiguities in agreements must be construed against the drafting party will not apply in interpreting this Agreement or its exhibits.

D. The invalidity or unenforceability of any of the provisions contained in this Agreement shall not render invalid or unenforceable any of the other provisions of this Agreement. If any provision of this Agreement or the application thereof to any person, organization or circumstance shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement or the application thereof to any person, organization or circumstance shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

E. The Parties represent and warrant that they have not assigned or transferred in any manner, including by way of subrogation or operation of law or otherwise, any claims, suits,

actions, causes of action, demands, liabilities, duties, obligations, rights, damages, benefits, costs, awards, loss of service, expenses and/or compensation released by such party herein.

F. Each Party hereto hereby covenants and agrees not to bring any claim, action, suit, or proceeding against any other Party hereto, directly or indirectly relating in any way to the matters settled and released hereby, and each Party further covenants and agrees that this Agreement is a bar to any such claim, action, suit or proceeding.

G. The Parties hereby agree to do such things and to execute such other and further documents, writings and/or instruments as may be necessary or convenient to the performance of this Agreement and/or to assure that its intent, purposes, and/or objects shall be fully and completely carried out.

H. The Parties have been represented by independent counsel of their own choice, and the settlement and releases referred to herein are an arm's length transaction.

I. Each of the Parties has investigated the facts pertaining to this Agreement as each deems necessary. The Parties understand that the facts with respect to which this Agreement is entered into may hereafter turn out to be other than or different from the facts in that connection now known or believed by them to be true, and each accepts and assumes the risk of the facts turning out to be different and agree that this Agreement shall be and remain in all respects effective and not subject to termination or rescission by virtue of any such difference in facts.

J. The Parties acknowledge and agree that no representation or promise not expressly set forth in this Agreement has been made by any other party or by any of its agents, servants, employees, representatives, attorneys, or insurers. The Parties further acknowledge and agree that they have been represented throughout the dispute and in all the negotiations which preceded the execution of this Agreement by counsel of their own free choice. Each person signing this Agreement represents that he or she has carefully read the Agreement, has had the opportunity to

consult with independent legal counsel with respect to the advisability of making the settlement provided for herein and of executing this Agreement and all other matters contained herein, and understands the Agreement, and is freely and voluntarily signing it and warrants his or her authority to sign the Agreement.

K. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, nor shall such waiver constitute a continuing waiver.

L. The Parties and their respective counsel agree that they will not issue any press release or make any statements or comments to media regarding the settlement of this action. If contacted by media or press, the Parties shall respond to the effect that the action has been settled, and/or “no comment.”

M. Neither Plaintiffs nor Defendant shall make any disparaging remarks or statements towards the other.

N. Each individual signing this Agreement warrants that he or she has the authority to sign the Agreement on behalf of the Party for which he or she signs. Buena Vista Catalogue Co., d/b/a Disney Movie Club warrants that it has obtained all necessary authorizations under its organizational documents and under law to make this Agreement binding on it.

O. The Parties agree that this Agreement, and any and all disputes that arise from or in any way relate to this Agreement, will be governed and interpreted and enforced in accordance with the laws of the State of California, but without regard to its law concerning conflict of laws.

P. This Agreement may be executed in counterparts.

Q. Except as otherwise specifically provided for herein, each Party will bear its own attorneys’ fees, costs and expenses in relation to the Action.

R. The Superior Court of the State of California, County of San Diego, will retain continuing jurisdiction to interpret and enforce this Agreement pursuant to Code of Civil Procedure section 664.6.

IN WITNESS WHEREOF, the Parties accept and agree to this Agreement and hereby execute it voluntarily and with a full understanding of its consequences.

Dated: 10/13/2020 _____

DocuSigned by:


IRENE MORENO

Dated: _____

CHERYL JAMES-WARD

Dated: _____

LARAY PETERSON

Dated: _____

HENRY DE LEON

Dated: _____

ANTHONY GONZALEZ

Dated: _____

KYLE LANESEY

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Dated: _____

ILENE MORENO

Dated: 10/13/2020

DocuSigned by:
Cheryl James-Ward

CHERYL JAMES-WARD

Dated: _____

LARAY PETERSON

Dated: _____

HENRY DE LEON

Dated: _____

ANTHONY GONZALEZ

Dated: _____

KYLE LANESEY

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Dated: _____

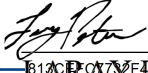
ILENE MORENO

Dated: _____

CHERYL JAMES-WARD

Dated: 10/13/2020

DocuSigned by:



LARRY PETERSON

Dated: _____

HENRY DE LEON

Dated: _____

ANTHONY GONZALEZ

Dated: _____

KYLE LANESEY

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Dated: _____

ILENE MORENO

Dated: _____


CHERYL JAMES-WARD

Dated: _____

LARAY PETERSON

Dated: 10/14/2020

DocuSigned by:



HENRY DE LEON

Dated: _____

ANTHONY GONZALEZ

Dated: _____

KYLE LANESEY

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ILENE MORENO

Dated: _____

CHERYL JAMES-WARD

Dated: _____

LARAY PETERSON

Dated: _____

HENRY DE LEON

Dated: 10/13/2020

DocuSigned by:


ANTHONY GONZALEZ

Dated: _____

KYLE LANESEY

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Dated: _____

ILENE MORENO

Dated: _____

CHERYL JAMES-WARD

Dated: _____

LARAY PETERSON

Dated: _____

HENRY DE LEON

Dated: _____

ANTHONY GONZALEZ

Dated: 10/14/2020

DocuSigned by:



KYLE LANESEY

Dated: 10/15/2020

BUENA VISTA CATALOGUE CO.,
d/b/a Disney Movie Club



Name: Eric Caballero

Title: Vice President, Disney Movie Club

APPROVED AS TO FORM:

Dated: _____, 2020

DOSTART HANNINK & COVENEY LLP

ZACH P. DOSTART
Attorneys for Plaintiffs

Dated: Oct. 16, 2020

SIDLEY AUSTIN LLP



AMY P. LALLY
Attorneys for Defendant

Dated: _____

BUENA VISTA CATALOGUE CO.,
d/b/a Disney Movie Club

Name: _____

Title: _____

APPROVED AS TO FORM:

Dated: October 13, 2020

DOSTART HANNINK & COVENEY LLP



ZACH P. DOSTART
Attorneys for Plaintiffs

Dated: _____, 2020

SIDLEY AUSTIN LLP

AMY P. LALLY
Attorneys for Defendant