

STIPULATION OF AGREEMENT AND SETTLEMENT AND RELEASE

This Stipulation of Agreement and Settlement and Release is entered into by and among the Named Plaintiffs (as defined below), for themselves and on behalf of the Settlement Class, and Defendant Activehours, Inc. d/b/a Earnin (“Earnin” or “Defendant”), subject to preliminary and final Court approval as required by Rule 23 of the Federal Rules of Civil Procedure. As provided herein, Defendant and the Named Plaintiffs hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Agreement and upon entry by the Court of a final order and judgment, all claims of the Settlement Class against the Defendant as alleged in the complaint filed in the action titled *Perks, et al, v. Activehours, Inc. d/b/a Earnin*, Case No. 5:19-cv-05543-BLF (N.D. Cal.) shall be settled and compromised upon the terms and conditions contained herein. The Named Plaintiffs and Defendant are collectively referred to herein as the “Parties.”

I. RECITALS

A. Earnin is a financial technology company that provides its users with various products, including allowing users to cash out the value of their earned but unpaid income, which is subsequently withdrawn on the user’s next regularly scheduled payday.

B. Certain Earnin users claim to have experienced overdraft fees or insufficient funds events that their bank attributed to a withdrawal from Earnin between September 3, 2015 and May 28, 2020. These users claim Earnin’s marketing failed to adequately represent the risk of incurring such third-party fees while using the service.

C. On September 3, 2019, Plaintiffs Mary Perks and Stanley Alexander (the “**Named Plaintiffs**”) filed a putative class action in this Court, captioned *Perks, et al, v. Activehours, Inc. d/b/a Earnin*, Case No. 5:19-cv-05543-BLF (N.D. Cal.) (the “**Perks Action**” or the “**Action**”) and on November 15, 2019, Plaintiff Jared Stark filed the putative class action in this Court, captioned *Stark v. Activehours, Inc. d/b/a Earnin*, Case No. 5:19-cv-07553-BLF (N.D. Cal.) (the “**Stark Action**”). The **Perks Action** and the **Stark Action** were coordinated for settlement conferences in front of Magistrate Judge Laurel Beeler, and with the assistance of Judge Beeler it was agreed that the **Stark Action** would be and now has been dismissed without prejudice on July 24, 2020. It is the intent of the Parties that this Settlement resolve the **Perks Action**.

D. On April 7, 2020, counsel for the Parties attended an initial settlement conference by videoconference in front of Judge Laurel Beeler in San Francisco, California to discuss the facts and the law underlying the Action. Prior to the settlement conference, a substantial exchange of factual information occurred, including information regarding potential class-wide damages and requests for follow-up information. Counsel for Plaintiffs made an initial settlement demand on Defendant. During the conference, and with the assistance of Judge Beeler, counsel for the Parties engaged in discussions regarding the factual circumstances, as well as potential strengths and weaknesses of the allegations in support of, and defenses to, the Actions. The settlement conference did not result in a settlement.

E. During the weeks that followed, and facilitated by Judge Beeler, counsel for the Parties continued discussions via multiple telephone conferences, and additional exchanges of information. Counsel for the Parties continued to exchange proposals and discuss resolution.

F. On May 28, 2020, counsel for the Parties attended an additional settlement videoconference in front of Judge Beeler during which the Parties reached an agreement in principle with regard to the material terms of the proposed settlement, as memorialized in this Settlement Agreement.

G. The Parties did not discuss attorneys' fees, service awards for Class Representatives, costs, and expenses prior to reaching an agreement as to the material terms of the relief for the Settlement Class,

H. The Parties now agree to settle this Action in its entirety, without any admission of liability, with respect to all Released Claims of the Settlement Class. The Parties intend this Agreement to bind the Named Plaintiffs, Defendant, and all Settlement Class Members who do not timely and properly exclude themselves from the Settlement.

NOW, THEREFORE, in light of the foregoing, for good and valuable consideration, the receipt of which is hereby mutually acknowledged, it is hereby stipulated and agreed by the Parties that the Action be settled, compromised, and dismissed on the merits and with prejudice as to Defendant, subject to Court approval as required by Federal Rule of Civil Procedure 23, on the following terms and conditions:

II. DEFINITIONS

In addition to the terms defined at various points within this Agreement, the following defined terms apply throughout this Settlement Agreement:

1. **"Action"** means or refers to *Perks, et al, v. Activehours, Inc. d/b/a Earnin*, Case No. 5:19-cv-05543-BLF (N.D. Cal.).

2. **"Agreement"** or **"Settlement Agreement"** means this Stipulation of Agreement and Settlement and Release, including its attached Exhibits (which are an integral part of this Stipulation of Agreement and Settlement and Release and are incorporated in their entirety herein by reference), duly executed ~~by Class Counsel and Defendant's counsel.~~

3. **"Class Counsel"** means:

Jeffrey Kaniel
Sophia Goren Gold
KALIEL PLLC
1875 Connecticut Ave. NW 10th Floor
Washington, D.C. 20009

Lynn A. Toops
Lisa M. La Fornara
COHEN & MALAD, LLP
One Indiana Square, Suite 1400
Indianapolis, IN 46204

Alison E. Chase
Matthew J. Preusch
Christopher L. Springer
KELLER ROHRBACK LLP
801 Garden Street, Suite 301
Santa Barbara, CA 93101

4. **“Class Representatives”** means every one of the individuals identified as plaintiffs in the consolidated complaint: Mary Perks and Stanley Alexander.

5. **“Court”** means the United States District Court for the Northern District of California.

6. **“Effective Date”** means the date ten (10) business days after which all of the following events have occurred: (a) the Parties have executed this Agreement; (b) the Court has entered the Final Approval Order (as defined in Paragraph 8) without material change to the Parties’ agreed-upon proposed Final Approval Order as described in Section VIII; and either (c) the time for seeking rehearing or appellate or other review of the Final Approval Order has expired, and no appeal or petition for rehearing or review has been timely filed or (d) the Settlement is affirmed on appeal or reviewed without material change, no other appeal or petition for rehearing or review is pending, and the time period during which further petition for hearing, review, appeal, or certiorari could be taken has finally expired. The Effective Date shall not be delayed beyond the date ten business days after the Court has entered the Final Approval Order in accordance with (b) above in the event the Court declines to approve, in whole or in part, solely the payment of attorneys’ fees, costs, and expenses in the amounts that Class Counsel requests (**“Fee Request”**). Further, the Effective Date shall not be delayed beyond the date ten business days after an appeal is filed in the event that the sole issue on appeal is the Fee Request awarded to Class Counsel.

7. **“Final Approval”** means the date that the Court enters an order and judgment granting final approval of the Settlement and determines the amount of fees, costs, and expenses awarded to Class Counsel and the amount of the Service Awards (as defined in Section VIII). In the event that the Court issues separate orders addressing the foregoing matters, then Final Approval means the date of the last of such orders.

8. **“Final Approval Order”** means the order and judgment that the Court enters upon Final Approval. In the event that the Court issues separate orders addressing the matters constituting Final Approval, then Final Approval Order includes all such orders.

9. “**Named Plaintiffs**” is defined as in Section I.C.

10. “**Notice**” means the notice of proposed class action settlement that the Parties will ask the Court to approve in connection with the motion for preliminary approval of the Settlement.

11. “**Notice Deadline**” means 30 days after the Court has entered the Preliminary Approval Order.

12. “**Notice Program**” means the notice methods provided for in this Agreement and consists of (1) e-mailed Notice to all Settlement Class Members at the e-mail address on file in Earnin’s business records and (2) Notice posted on the Settlement Website. The forms of Notice shall be substantially in the forms attached as Exhibits A-B to this Agreement and approved by the Court, and the Notice Program shall be effected in substantially the manner provided in Section VII.

13. “**Objection Deadline**” means 60 days after the Notice Deadline.

14. “**Opt-Out Deadline**” means 60 days after the Notice Deadline.

15. “**Released Claims**” means any and all claims, demands, rights, actions or causes of action, liabilities, damages, losses, obligations, judgments, suits, penalties, remedies, matters and issues of any kind or nature whatsoever, whether known or unknown, contingent or absolute, existing or potential, suspected or unsuspected, disclosed or undisclosed, matured or unmatured, liquidated or unliquidated, legal, statutory or equitable, that have been or could have been asserted, or in the future might be asserted, in the Action or in any court, tribunal or proceeding by or on behalf of the Named Plaintiffs, any and all of the members of the Settlement Class, and their respective present or past heirs, spouses, executors, estates, administrators, predecessors, successors, assigns, parents, subsidiaries, associates, affiliates, employers, employees, agents, consultants, independent contractors, insurers, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, investment bankers, underwriters, lenders, and any other representatives of any of these Persons, whether individual, class, direct, representative, legal, equitable or any other type or in any other capacity whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including the law of any jurisdiction outside the United States, against any or all of the Released Parties, which the Named Plaintiffs or any member of the Settlement Class ever had, now has, or hereinafter may have, by reason of, resulting from, arising out of, relating to, or in connection with, the allegations, facts, events, transactions, acts, occurrences, statements, representations, omissions, or any other matter, thing or cause whatsoever, or any series thereof, embraced, involved, set forth or otherwise related to the alleged claims or events in the Action.

16. “**Released Party**” means Earnin, and any and all of their present or past direct or indirect heirs, executors, estates, affiliates, divisions, predecessors, successors,

assigns, parents, or subsidiaries (“**Released Entity**”), and the associates, employers, employees, agents, consultants, independent contractors, insurers, directors, managers, managing directors, officers, partners, principals, members, attorneys, accountants, administrators, financial and other advisors, investment bankers, underwriters, shareholders, lenders, auditors, investment advisors, sellers, distributors, legal representatives, successors in interest, assigns and persons, firms, trustees, trusts, corporations, officers, directors, general or limited partners of any of the Released Entities, and any and all other individuals or entities in which Defendant has a controlling interest or which are affiliated with them, or any other representatives of any of these persons and entities.

17. “**Releasing Parties**” means the Named Plaintiffs, any Settlement Class Member who does not timely and properly opt out from the Settlement, and any person claiming or receiving a benefit under this Settlement, and each of their respective spouses, children, executors, heirs, assigns, beneficiaries, successors and representatives of any kind.

18. “**Settlement**” means the settlement into which the Parties have entered to resolve the Action. The terms of the Settlement are as set forth in this Agreement, including the exhibits hereto.

19. “**Settlement Administrator**” means the organization, KCC, Class Counsel has selected as Settlement Administrator, subject to approval by the Court if the Court.

20. “**Settlement Class Members**” or “**Settlement Class**” means all persons who fall within the settlement class definition set forth in Section III.

21. “**Settlement Amount**” means the three million dollars (\$3,000,000.00) in total monetary relief to fund the Settlement that will be borne by Defendant, and out of which will be paid the Settlement Relief (*see* Section IV), the costs of the Settlement Administrator (*see* Section IV), any attorney’s fees awarded Class Counsel by the Court (*see* Section XI), and any service awards the Court grants the Named Plaintiffs (*see* Section XI).

22. “**Settlement Website**” means the website that the Settlement Administrator will establish as soon as practicable following entry of the Preliminary Approval Order, but prior to the commencement of the Notice Program, as a means for Settlement Class Members to obtain notice of and information about the Settlement, through and including hyperlinked access to this Agreement, the Notice, the order preliminarily approving this Settlement, the amended complaint filed in the Action and such other documents as Class Counsel and Defendant agree to post or that the Court orders posted on the website. The URL of the Settlement Website shall be agreed upon by Class Counsel and Defendant. The Settlement Website shall not include any advertising and shall remain operational until at least 5 business days after the last payment or credit under this Settlement is made or the Settlement is terminated.

III. SETTLEMENT CLASS

1. For settlement purposes only, the Parties agree that the Court should certify the following class pursuant to Fed. R. Civ. P. 23(b)(3) (the “Settlement Class”) defined as:

All consumers who incurred an overdraft fee or insufficient funds event fee that a bank attributed to an Earnin withdrawal, beginning on September 3, 2015 through May 28, 2020.

For purposes of determining membership in the settlement class, Earnin has identified approximately 273,073 users that had an account open with Earnin, whereby Earnin was able to identify at least one overdraft fee or insufficient funds event fee charged by a bank that the bank attributed to a withdrawal from Earnin from September 3, 2015 to May 28, 2020. These criteria will be used for determining Settlement Class membership and for purposes of notice and the distribution of payment described below.

2. Excluded from the Settlement Class are the Court, the officers and directors of Defendant, persons who have been separately represented by an attorney and entered into a separate settlement agreement, and persons who timely and validly request exclusion from the Settlement Class. Named Plaintiffs will move for certification of the Settlement Class contemporaneously with their motion for preliminary approval of the Settlement. For purposes of this Settlement only, Defendant agrees not to contest certification of the Settlement Class. Should the settlement not be approved, Defendant reserves all rights and defenses on the merits and as to class certification, including any right to move to compel arbitration.

3. For settlement purposes only, the Named Plaintiffs shall also seek, and Defendant shall not oppose, the appointment of Class Counsel as settlement class counsel, Jeffrey Kaliel, Lynn A. Toops, and Alison E. Chase as lead counsel for the settlement class, and appointment of Plaintiffs Mary Perks and Stanley Alexander as settlement class representatives (“**Settlement Class Representatives**”).

IV. SETTLEMENT RELIEF

To compensate Settlement Class Members, the Parties have agreed to the following relief, consisting of both monetary and non-monetary components:

1. Class Payment

- a. As noted above, Defendant shall pay three million dollars (\$3,000,000.00) to compensate the Settlement Class, to pay any Court approved attorney’s fees and service representative awards, and to pay for the cost of the Settlement Administrator. Two million dollars (\$2,000,000.00) of this amount shall be transferred to an escrow account for the benefit of the Settlement Class no later than ten (10) days after the Court enters a Preliminary Approval Order. Earnin shall transfer an additional one

million dollars (\$1,000,000.00) to the escrow account no later than ten (10) days after the Court's entry of the Final Approval Order. Earnin shall have no financial obligations under this Settlement Agreement other than the combined payment of the three million dollars \$3,000,000.00 (the Settlement Amount) into the escrow (the "Settlement Fund"). Should the Court not enter a Final Approval Order, should the Effective Date not be achieved, or should the Settlement Agreement be terminated, all funds in the Settlement Fund shall be returned to Earnin inclusive of any interest. However, the remaining Settlement Fund shall not be returned to Earnin if sole reason that an Effective Date is not achieved or the Settlement Agreement is terminated is that Earnin fails to make all of the payments under this section.

- b. After the payment of attorney's fees, service awards and the Settlement Administrator, the Settlement Class Members will be entitled to receive a payment of their *pro rata* share of the remaining Settlement Fund as described in Section IX. The Settlement Administrator shall oversee this process, though Class Counsel may choose to use the Earnin platform to allow payments to be made to a Settlement Class Member's linked bank account if they are a current Earnin user. Earnin shall not be required to give the Settlement Administrator access to Earnin's platform as part of this process, but shall reasonably facilitate electronic payments if made.
- c. With respect to Settlement Class Members whose accounts have been temporarily suspended due to nonpayment of cash outs, Defendant, through the Class Settlement process, shall allow such Settlement Class Members to use Earnin Express (subject to account onboarding requirements, including federal law), and until an aggregate amount of \$9.5 million is forgiven across such suspended Settlement Class Members, these such Settlement Class Members shall not be required to repay previously unpaid cash outs as a part of the application to Earnin Express, with such forgiveness occurring automatically upon completion of the onboarding process to Earnin Express.

2. Injunctive Relief

Earnin has also agreed to the following changes to its business practices:

- a. Earnin agrees to provide additional disclosures regarding the risk of third-party fees and the company's lack of control over the sequencing of third-party bank transactions in its terms of service for one year, beginning from the date of Final Approval, assuming Earnin remains a going concern.
- b. Earnin agrees to refund all subsequent overdraft and insufficient funds fees that are the result of Earnin debiting a customer's account on a day other than the customer's regularly scheduled payday, upon receipt of adequate

notice and proof by the customer for one year, assuming Earnin remains a going concern.

- c. Earnin agrees to bundle individual payments for restoration that a user authorizes in a pay period as a single debit, up to a maximum of \$35.00, for one year, beginning from the date of Final Approval, assuming Earnin remains a going concern.
- d. Earnin agrees to either partner with a provider of, or itself enable, add-on features that will provide tools for Earnin customers to negotiate overdraft fees with their banks for one year, beginning from the date of Final Approval, assuming Earnin remains a going concern and assuming Earnin continues to offer products that debit third-party bank accounts during that time.
- e. Earnin agrees that it will not consider individual tipping behavior as a factor in determining a customer's max limit for one year, assuming Earnin remains a going concern and assuming Earnin continues to offer services with a tip option during that time.
- f. Earnin agrees that it will offer the option to tip \$0 for each cash out for one year, assuming Earnin remains a going concern and assuming Earnin continues to offer its cash out product.
- g. Earnin agrees that it will comply with all applicable federal and state law, and NACHA operating rules in completing restores from consumer accounts.

The parties recognize and agree that the implementation of all of the injunctive relief, and in particular any injunctive relief that requires coordination with a third party, may take some reasonable amount of time to implement should the Court grant final approval. Earnin will provide a report to Class Counsel once all of the injunctive relief is implemented.

V. PRELIMINARY APPROVAL

1. Class Counsel shall promptly move the Court on or before July 27, 2020 for an order granting preliminary approval of this Settlement (“**Preliminary Approval Order**”), substantially in the form of Exhibit C. The motion for preliminary approval shall request that the Court: (1) preliminarily approve the terms of the Settlement as fair, adequate, and reasonable; (2) provisionally certify the Settlement Class pursuant to Federal Rule of Civil Procedure 23(b)(3) and (e) for settlement purposes only; (3) approve the Notice Program set forth herein and approve the form and content of the Notice; (4) approve the procedures set forth in Section VII for Settlement Class Members to exclude themselves from the Settlement Class or to object to the Settlement; (5) stay the

Action or otherwise adjourn litigation deadlines pending Final Approval of the Settlement; (6) stay and/or enjoin, pending Final Approval of the Settlement, any actions brought by Settlement Class Members concerning a Released Claim; and (7) schedule a Final Approval hearing for a time and date convenient for the Court, at which the Court will conduct an inquiry into the fairness of the Settlement, determine whether it was made in good faith and should be finally approved, and determine whether to approve Class Counsel's application for attorneys' fees, costs, and expenses ("**Final Approval Hearing**").

2. Within 10 days of the filing of the motion for preliminary approval, Defendant, working with the Settlement Administrator, shall serve or cause to be served a notice of the proposed Settlement on appropriate state officials in accordance with the requirements under the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715(b).

VI. SETTLEMENT ADMINISTRATOR

1. The Settlement Administrator shall administer various aspects of the Settlement as described in Section IV and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including, but not limited to, overseeing the distribution of the Settlement Fund to Settlement Class Members; providing E-mail Notice to Settlement Class Members as described in Section VII; establishing and operating the Settlement Website and a toll-free number.

2. The duties of the Settlement Administrator, in addition to other responsibilities that are described in this Agreement, include:

- a. Establishing and maintaining a qualified settlement fund after Preliminary Approval for the Settlement Amount;
- b. Obtaining from Earnin the name and e-mail address of Settlement Class Members for the purpose of sending E-mail Notice to Settlement Class Members;
- c. Establishing and maintaining a post office box for mailed written notifications of exclusion from the Settlement Class;
- d. Establishing and maintaining the Settlement Website;
- e. Establishing and maintaining a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answering the questions of Settlement Class Members who call with or otherwise communicate such inquiries;
- f. Responding to any mailed Settlement Class Member inquiries;

- g. Processing all written notifications of exclusion from the Settlement Class;
- h. Providing weekly reports and, no later than ten days after the Opt-Out Deadline, a final report to Class Counsel and Defendant, that summarize the number of written notifications of exclusions received that week, the total number of written notifications of exclusion received to date, and other pertinent information as requested by Class Counsel and Defendant's counsel;
- i. In advance of the Final Approval Hearing, preparing a declaration to submit to the Court that: (i) attests to implementation of the Notice Program in accordance with the Preliminary Approval Order; and (ii) identifies each Settlement Class Member who timely and properly provided written notification of exclusion from the Settlement Class; and
- j. Performing any function related to Settlement administration at the agreed-upon instruction of both Class Counsel and Defendant, including, but not limited to, verifying that cash payments have been distributed in accordance with Section IV.

3. Plaintiffs shall have the right to select the Settlement Administrator. Defendant shall have the right to consent to Plaintiffs' selection, which shall not be unreasonably withheld. The notice and administration costs associated with the settlement will be deducted from the Settlement Fund.

VII. NOTICE, OPT-OUTS, AND OBJECTIONS

1. Upon Preliminary Approval of the Settlement, at the direction of Class Counsel, the Settlement Administrator will implement the Notice Program provided herein, using forms substantially in the nature of the forms of Notice approved by the Court in the Preliminary Approval Order. The Notice will include, among other information: a description of the material terms of the Settlement; a date by which Settlement Class Members may object to the Settlement; the date upon which the Final Approval Hearing will occur; and the address of the Settlement Website at which Settlement Class Members may access this Agreement and other related documents and information.

2. The Notice Program has two components: (1) E-mail Notice and (2) Notice on the Settlement Website. The Settlement Administrator shall e-mail a copy of the E-mail Notice to all Settlement Class Members for whom Earnin can ascertain an e-mail address from its records with reasonable effort. For any E-mail Notices that are returned undeliverable, the Settlement Administrator shall use reasonable efforts to identify updated e-mail addresses and resend the E-mail Notice to the extent updated e-mail addresses are identified. The Settlement Administrator need make only one attempt to resend any E-mail Notices that are returned as undeliverable.

3. The Notice shall include a procedure for Settlement Class Members to exclude themselves from the Settlement Class by notifying the Settlement Administrator in writing of the intent to exclude himself or herself from the Settlement Class. This procedure will provide for the submission of an opt-out or exclusion form to be provided to Settlement Class Members by the Settlement Administrator. Such written notification or exclusion form must be postmarked no later than the Opt-Out Deadline, as specified in the Notice. A Settlement Class Member may also prepare his or her own exclusion form. Any written notification or exclusion form must include the individual's name and address; a statement that he or she wants to be excluded from the Action; and the individual's signature. Only one individual may be excluded from the Settlement Class per each written notification or exclusion form. No group opt-outs from the Settlement Class shall be permitted. The Settlement Administrator shall provide the Parties with copies of all completed opt-out notifications, and a final list of all individuals who have timely and validly excluded themselves from the Settlement Class, which Class Counsel may move to file under seal with the Court no later than 10 days prior to the Final Approval Hearing. Any Settlement Class Member who does not timely and validly exclude himself or herself shall be bound by the terms of the Settlement.

4. The Notice shall also include a procedure for Settlement Class Members to object to the Settlement and/or to Class Counsel's application for attorneys' fees, costs and expenses. Objections to the Settlement or to the application for fees, costs, and expenses must be filed electronically with the Court or mailed to the Clerk of the Court. Objections need to be submitted to the Court only and not also to Class Counsel and Defendant's counsel. The objections will be available to the Parties on the case docket once the objections are filed by the Clerk of the Court. For an objection to be considered by the Court, the objection must be: (a) electronically filed by the Objection Deadline; or (b) mailed first-class postage prepaid to the Clerk of Court, at the address listed in the Notice, and postmarked by no later than the Objection Deadline, as specified in the Notice. For an objection to be considered by the Court, the objection must also set forth:

- a. the name of the filed action;
- b. the objector's full name, address, Earnin account username and telephone number;
- c. an explanation of the basis upon which the objector claims to be a Settlement Class Member;
- d. all grounds for the objection, accompanied by any legal support for the objection;
- e. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement, the fee application, or the application for Service Awards;

- f. the identity of all counsel representing the objector who will appear at the Final Approval Hearing;
- g. the number of times in which the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior objections that were issued by the trial and/or appellate courts in each listed case;
- h. the number of times the objector's counsel and/or counsel's law firm have objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the counsel or firm has made such objection, and a copy of any orders related to or ruling upon counsel's or the firm's prior such objections that were issued by the trial and/or appellate courts in each listed case;
- i. any and all agreements that relate to the objection or the process of objecting, whether written or verbal, between objector or objector's counsel and any other person or entity;
- j. a list of any persons who will be called to testify at the Final Approval Hearing in support of the objection;
- k. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
- l. the objector's signature on the written objection (an attorney's signature is not sufficient).

5. The E-mail Notice Program shall be completed by the Notice Deadline, including any attempts to resend e-mails for E-mail Notices that are returned undeliverable.

6. The Settlement Administrator shall post the Notice on the Settlement Website in the form agreed to by the Parties and approved by the Court. The Notice shall be posted on the Settlement Website by the Notice Deadline.

7. Within seven (7) days after the Notice Deadline, the Settlement Administrator shall provide Class Counsel and Defendant with one or more affidavits confirming that the Mail Notice Program, and posting of Notice on the Settlement Website, were completed in accordance with the Parties' instructions and the Court's approval. Class Counsel shall file such affidavit(s) with the Court as an exhibit to or in conjunction with Plaintiffs' motion for final approval of the Settlement.

8. All costs and expenses associated with providing notice to Settlement Class Members including, but not limited to, the Settlement Administrator's fees, shall be

deducted from the Settlement Fund. However, Earnin shall, without compensation, provide data and assistance to: facilitate notice and administration of the Settlement, including the provision of Settlement Class Member email addresses, third party overdraft fee or insufficient fund fee data; assist the Settlement Administrator in facilitating the processing and payment of Settlement distributions to current Earnin users; and any other assistance agreed upon in good faith by the Parties. The Settlement Class agrees that Earnin's assistance may be completed through outside counsel.

VIII. FINAL APPROVAL ORDER AND JUDGMENT

1. Plaintiffs' motion for preliminary approval of the Settlement will include a request to the Court for a scheduled date on which the Final Approval Hearing will occur. The Final Approval Hearing shall be scheduled no earlier than 90 days after the CAFA notices are mailed to ensure compliance with 28 U.S.C § 1715. The Settlement Administrator shall bear the obligation of mailing the CAFA notices. By no later than 21 days prior to the Objection Deadline, Plaintiffs shall file a motion for final approval of the Settlement and a motion for attorneys' fees, costs, and expenses and for Service Awards. By no later than 14 days prior to the Final Approval Hearing, the Parties shall file responses, if any, to any objections, and any replies in support of final approval of the Settlement and/or Class Counsel's application for attorneys' fees, costs, and expenses and for Service Awards for each Class Representative. At the Final Approval Hearing, the Court will consider Plaintiffs' motion for final approval of the Settlement, and Class Counsel's application for attorneys' fees, costs, and expenses and for Service Awards for each Class Representative. In the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement or to the applications for attorneys' fees, costs, and expenses, and for Service Awards, provided the objectors filed timely objections that meet all of the requirements listed in Section VII paragraph 4.

2. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order granting final approval of the Settlement, and whether to approve Class Counsel's request for attorneys' fees, costs, and expenses, and the Service Awards. The proposed Final Approval Order that will be filed with the motion for final approval shall be in a form agreed upon by Class Counsel and Defendant. Such proposed Final Approval Order shall, among other things:

- a. Determine that the Settlement is fair, adequate, and reasonable;
- b. Finally certify the Settlement Class for settlement purposes only;
- c. Determine that the Notice provided satisfied Due Process requirements;
- d. Dismiss the Action with prejudice;

- e. Bar and enjoin the Releasing Parties from asserting any of the Released Claims, as set forth in Section IX, including during the pendency of any appeal from the Final Approval Order;
- f. Release Defendant and the Released Parties from the Released Claims, as set forth in Section IX; and
- g. Reserve the Court's continuing and exclusive jurisdiction over Defendant and all Settlement Class Members (including all objectors) to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

IX. DISTRIBUTION OF THE SETTLEMENT BENEFITS

1. Payments to Settlement Class Members. All funds held by the Settlement Administrator shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until distributed pursuant to this Agreement.

All funds held by the Settlement Administrator at any time shall be deemed to be a Qualified Settlement Fund as described in Treasury Regulation §1.468B-1, 26 C.F.R. §1.468B-1.

Within ten (10) days after the Effective Date, the Settlement Administrator shall make payments from the Settlement Fund as follows:

2. Payments to Settlement Class Members. The amount paid to each Settlement Class Member shall be calculated as follows:

(Net Settlement Fund/Overdraft Transactions)

X

Number of Overdraft Transactions per Settlement Class Member as suggested in Earnin's business records.

- a. Payments to individual Settlement Class Members ("Individual Payments") shall be made no later than ten (10) days after the Effective Date, as follows:
 - i. For those Settlement Class Members who are customers of Defendant at the time of the distribution of the Net Settlement Fund, their linked checking accounts shall be credited by Defendant in the amount of the Individual Payment they are entitled to receive.

- ii. For those Settlement Class Members who are not customers of Defendant at the time of the distribution of the Net Settlement Fund, they shall be sent an email by the Settlement Administrator allowing for the electronic transmission of Individual Payments by electronic money transmission services such as Square Cash, Zelle, Venmo, Paypal or ACH.

3. Should the Effective Date be achieved, in no event shall any portion of the Settlement Fund revert to Defendant. Within two hundred (200) days of the Effective Date, any remaining amounts from the Settlement Fund shall be paid by the Settlement Administrator to *cy pres* recipient Center for Responsible Lending, if approved by the Court. Should an Effective Date not be achieved and/or this Settlement Agreement not be granted Final Approval, or is terminated, any funds in this Settlement Fund shall be returned to the Defendant inclusive of any interest and the terms in Section XII paragraph 2 shall apply.

4. The invitation to Settlement Class Members, whose accounts have been temporarily suspended due to nonpayment of cash outs, to use Earnin Express subject to the terms of IV1.C above, shall occur within 20 days of the Effective Date.

X. RELEASES

1. As of the Effective Date, the Releasing Parties, each on behalf of himself or herself and on behalf of his or her respective present or past heirs, spouses, executors, estates, administrators, predecessors, successors, assigns, parents, subsidiaries, associates, affiliates, employers, employees, agents, consultants, independent contractors, insurers, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, investment bankers, underwriters, lenders, and any other representatives of any of these Persons, whether individual, class, direct, representative, legal, equitable or any other type or in any other capacity whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including the law of any jurisdiction outside the United States, shall automatically be deemed to have fully and irrevocably released and forever discharged the Released Parties of and from any and all Released Claims.

2. For the avoidance of doubt, the Released Claims include any claims that a Releasing Party may have related to or arising out of a Releasing Party's use of Earnin's services under the law of any jurisdiction, including, without limitation, those arising under state or federal law of the United States (including, without limitation, any causes of action under consumer protection statutes in effect in the United States or in any states and territories of the United States); causes of action under the common or civil laws of any state or territory of the United States, including but not limited to: unjust enrichment, negligence, bailment, conversion, negligence *per se*, breach of contract, breach of implied contract, breach of fiduciary duty, breach of implied covenant of good faith and fair dealing, misrepresentation (whether fraudulent, negligent, or innocent), fraudulent concealment or nondisclosure; and also including, but not limited to, any and all claims in

any state or federal court of the United States for damages, injunctive relief, restitution, disgorgement, declaratory relief, equitable relief, attorneys' fees and expenses, pre-judgment interest, and any other form of relief. The Released Claims do not include any claims arising from or relating to any conduct by Defendant after the date the Agreement is executed.

3. As of the Effective Date, the Released Parties will be deemed to have completely released and forever discharged the Named Plaintiffs and the Settlement Class Representatives, the other members of the Settlement Class, and Class Counsel from and for any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts, agreements, damages, costs, attorneys' fees, losses, expenses, obligations, or demands, of any kind whatsoever, whether known or unknown, existing or potential, or suspected or unsuspected, whether raised by claim, counterclaim, setoff, or otherwise, including any known or unknown claims, which they have or may claim now or in the future to have, relating to the institution, prosecution, or settlement of the Action.

4. Upon entry of the Final Approval Order, the Settlement Class Members shall be enjoined from prosecuting any claim they have released in the preceding paragraphs in any proceeding against any of the Released Parties or based on any actions taken by any of the Released Parties that are authorized or required by this Agreement or by the Final Approval Order. It is further agreed that the Settlement may be pleaded as a complete defense to any proceeding subject to this section.

5. The Settlement Class Members expressly waive any rights they may have under California Civil Code Section 1542, Section 20-7-11 of the South Dakota Codified Laws, and any other similar law, each of which provides that a general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor, and a waiver of any similar, comparable, or equivalent provisions, statute, regulation, rule, or principle of law or equity of any other state or applicable jurisdiction.

XI. ATTORNEYS' FEES, COSTS, EXPENSES AND SERVICE AWARDS

1. Service Awards. Class Counsel will ask the Court to approve, and Defendant will not oppose, service awards not to exceed \$2,500.00 for each Settlement Class Representative, which are intended to compensate such individuals for their efforts in the litigation and commitment on behalf of the Settlement Class ("**Service Awards**"). Any Service Awards approved shall come out of the Settlement Fund. Neither Class Counsel's application for, nor any individual's entitlement to, a Service Award shall be conditioned in any way upon such individual's support for this Agreement.

2. Attorneys' Fees, Costs, and Expenses. Any attorneys' fees, costs, and expenses awarded by the Court to Class Counsel will come out of the Settlement Fund. The finality or effectiveness of the Settlement will not be dependent on the Court awarding Class Counsel any particular amount on their Fee Request and shall not alter the Effective

Date. Defendant agrees not to oppose Class Counsel's request for fees and reimbursement of costs and expenses from the Settlement Fund of up to 30% of the Settlement Amount.

3. The payment of attorneys' fees, costs, and expenses pursuant to Paragraph 2 shall be made by the Settlement Administrator within ten (10) days of the entry of an order granting Class Counsel's fee petition through a wired deposit into the attorney client trust account to be designated by Class Counsel. After the attorneys' fees, costs, and expenses have been deposited into this account, Class Counsel shall be solely responsible for, and shall have sole discretion in, allocating such attorneys' fees, costs, and expenses and directing distribution to each participating Class Counsel firm an allocated share of such attorneys' fees, costs, and expenses to that firm, and Defendant shall have no responsibility for distribution of attorneys' fees, costs, or expenses among participating firms. Should the Effective Date not be achieved, should the Court not enter a Final Approval Order, or should the Settlement Agreement otherwise be terminated, Class Counsel agrees to return any attorneys' fees paid to them to the Class Action Administrator for return to Earnin.

4. In the event the Court declines to approve, in whole or in part, the payment of attorneys' fees, costs, and expenses in the amount that Class Counsel requests, the remaining provisions of this Agreement shall remain in full force and effect. No order of the Court, or modification, or reversal, or appeal, of any order of the Court, concerning the amount(s) of attorneys' fees, costs, and expenses shall constitute grounds for cancellation or termination of this Agreement.

XII. TERMINATION

1. This Settlement may be terminated by either the Named Plaintiffs or Defendant by serving on counsel for the opposing Party and filing with the Court a written notice of termination within 14 days (or such longer time as may be agreed between Class Counsel and Defendant) after any of the following occurrences:

- a. Class Counsel and Defendant agree to termination before the Effective Date;
- b. The Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement;
- c. An appellate court reverses the Final Approval Order, and the Settlement is not reinstated and finally approved without material change by the Court on remand;
- d. The Court or any reviewing appellate court incorporates material terms or provisions into, or deletes or strikes material terms or provisions from, or materially modifies, amends, or changes, the Preliminary Approval Order, the proposed Final Approval Order, or the Settlement; or

e. The Effective Date does not occur.

2. In the event of a termination as provided in Paragraph 1 of this section, this Agreement shall be considered null and void; all of the Parties' obligations under the Agreement shall cease to be of any force and effect, and the Parties shall return to the status quo ante in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement claims and defenses will be preserved.

XIII. NO ADMISSION OF LIABILITY

1. Defendant disputes the claims alleged in the Action and does not by this Agreement, or otherwise, admit any liability or wrongdoing of any kind. Defendant has agreed to enter into this Agreement solely to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of any further claims that were asserted or could have been asserted in the Action.

2. Class Counsel and Named Plaintiffs believe that the claims asserted against the Defendant, in their respective Action, and as a whole, have merit. Nevertheless, after a thorough examination of the facts and law, the Named Plaintiffs and Class Counsel recognize and acknowledge that the Defendant has raised factual and legal defenses that present a substantial risk that the Named Plaintiffs and the Settlement Class may not prevail. The Named Plaintiffs and Class Counsel also have taken into account the uncertain outcome and risks of further protracted litigation, especially in complex, costly, and time-consuming actions such as these, as well as the difficulties and delays inherent in such litigation, particularly in light of the current economic climate. As a result, the Named Plaintiffs believe that it is desirable that the Released Claims be fully and finally compromised, settled and resolved with prejudice, and barred pursuant to the terms set forth herein.

3. The Named Plaintiffs and Class Counsel believe, and the Parties have agreed, that the Settlement confers substantial benefits upon the Settlement Class. Based on their comprehensive examination and evaluation of the law and facts relating to the matters at issue in the Action, Class Counsel have concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate to the Settlement Class, and that it is in the best interests of the Settlement Class to settle the claims raised in the Action pursuant to the terms and provisions of this Agreement.

4. The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever.

5. Neither the Settlement nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by Named Plaintiffs or Settlement Class Members, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any proceeding in any court, administrative agency, or other tribunal.

XIV. MISCELLANEOUS

1. Singular and Plurals. As used in this Agreement, all references to the plural shall also mean the singular and to the singular shall also mean the plural whenever the context so indicates.

2. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.

3. Cooperation of Parties. The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, defend Court disapproval, and to do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement, including securing certification of the Settlement Class for settlement purposes and the prompt, complete, and final dismissal with prejudice of the Action as to the Defendant.

4. Obligation To Meet And Confer. Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have consulted in good faith.

5. Integration. This Agreement (along with any Exhibits attached hereto) constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

6. No Conflict Intended. Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

7. Governing Law. The Agreement shall be construed in accordance with, and be governed by, the laws of the State of California, without regard to its choice of law or conflict of laws principles.

8. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all signatories do not sign the same

counterparts. Original signatures are not required. Any signature submitted by facsimile or through e-mail of an Adobe PDF shall be deemed an original.

9. Jurisdiction. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation, and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Settlement Administrator. As part of its agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

10. Notices. All notices to Class Counsel provided for herein, shall be sent by overnight mail to:

Jeffrey Kaniel
Sophia Goren Gold
KALIEL PLLC
1875 Connecticut Ave. NW 10th Floor
Washington, D.C. 20009

Lynn A. Toops
Lisa M. La Fornara
COHEN & MALAD, LLP
One Indiana Square, Suite 1400
Indianapolis, IN 46204

Alison E. Chase
Matthew J. Preusch
Christopher L. Springer
KELLER ROHRBACK LLP
801 Garden Street, Suite 301
Santa Barbara, CA 93101

All notices to Defendant provided for herein, shall be sent by overnight mail to:

Thomas P. Brown
PAUL HASTINGS LLP
101 California Street
Forty-Eighth Floor
San Francisco, CA 94111

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each

written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice Program.

11. Authority. Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

12. No Construction Against Drafter. This Agreement shall be deemed to have been drafted by the Parties, and any rule that a document shall be interpreted against the drafter shall not apply to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed on their behalf by their authorized counsel of record, all as of the day set forth below.

Dated: 7/24/2020 By: _____

Activehours, Inc. d/b/a Earnin

DocuSigned by:
Sangeetha Raghunathan
Sangeetha Raghunathan, General
Counsel

**Named Plaintiffs on behalf of the
Settlement Class**

Dated: _____ By: _____

Mary Perks

Dated: _____ By: _____

Stanley Alexander

other with copies of objections, requests for exclusion, or other filings received as a result of the Notice Program.

11. Authority. Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

12. No Construction Against Drafter. This Agreement shall be deemed to have been drafted by the Parties, and any rule that a document shall be interpreted against the drafter shall not apply to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed on their behalf by their authorized counsel of record, all as of the day set forth below.

Activehours, Inc. d/b/a Earnin

Dated: _____

By: _____
Sangeetha Raghunathan, General
Counsel

**Named Plaintiffs on behalf of the
Settlement Class**

Dated: 7/23/20

By: _____
Mary Perks

Dated: _____

By: _____
Stanley Alexander

other with copies of objections, requests for exclusion, or other filings received as a result of the Notice Program.

11. Authority. Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

12. No Construction Against Drafter. This Agreement shall be deemed to have been drafted by the Parties, and any rule that a document shall be interpreted against the drafter shall not apply to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed on their behalf by their authorized counsel of record, all as of the day set forth below.

Activehours, Inc. d/b/a Earnin

Dated: _____

By: _____
Sangeetha Raghunathan, General
Counsel

**Named Plaintiffs on behalf of the
Settlement Class**

Dated: _____

By: _____
Mary Perks

Dated: 7/23/20

By: Stanley Alexander Jr
Stanley Alexander