

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IRIS BOLING, JOHN GORDON, and KARI
PROSKIN on behalf of a class of all others similarly
situated,

PLAINTIFFS,

- v. -

TZUMI INNOVATIONS, LLC,

DEFENDANT.

Civil Action No. 1:22-cv-05919-JSR

CLASS ACTION SETTLEMENT AGREEMENT

1. DEFINITIONS

1.1 “Action” means *Boling et al v. Tzumi Innovations, LLC*, Case No. 1:22-cv-05919-JSR, pending in the United States District Court for the Southern District of New York.

1.2 “Approved Claim” means a Claim Form submitted by a Settlement Class Member that: (a) is submitted timely and in accordance with the directions on the Claim Form and the provisions of the Settlement Agreement; (b) is fully and truthfully completed by a Settlement Class Member with all of the information requested in the Claim Form; (c) is signed by the Settlement Class Member, physically or electronically and under penalty of perjury with respect to claims submitted without proof of purchase; and (d) is approved by the Settlement Administrator pursuant to the provisions of this Agreement.

1.3 “Claim Form” means the document to be submitted by Settlement Class Members seeking a cash payment pursuant to this Settlement Agreement. The Claim Form will be available online at the Settlement Website and the contents of the Claim Form will be substantially in the form attached hereto as Exhibit A, approved by the Court.

1.4 “Claimant” means a Settlement Class Member who submits a claim for cash payment as described in Section 2 of this Settlement Agreement.

1.5 “Claims Deadline” means the date by which all Claim Forms must be postmarked or received to be considered timely. The Claims Deadline will be set forth in the Preliminary Approval Order as well as in the Notice and the Claim Form.

1.6 “Class Counsel” means the law firms of Milberg Coleman Bryson Phillips Grossman, PLLC (“Milberg”) and Bursor & Fisher, P.A.

1.7 “Class Notice” means the Court-approved “Notice of Class Action Settlement.”

1.8 “Class Representatives” means the named Plaintiffs in this Action, Iris Boling, John Gordon, and Kari Proskin.

1.9 “Court” means the United States District Court for the Southern District of New York, the Honorable Jed S. Rakoff presiding, or any judge who may later be reassigned to this Action.

1.10 “Defendant” means Tzumi Innovations, LLC.

1.11 “Defendant’s Counsel” means the law firm of Sills Cummis & Gross P.C.

1.12 “Fee Award” means the amount of attorneys’ fees and reimbursement of expenses and costs awarded by the Court to Class Counsel, which will be paid out of the Settlement Fund.

1.13 “Final Approval Hearing” means the hearing before the Court where the Parties will request the Settlement Approval Order and Final Judgment to be entered by the Court approving the Settlement Agreement and Class Representatives will ask the Court to approve the Fee Award and the Service awards to the Class Representatives.

1.14 “Effective Date” means one business day following the latest of the following events: (i) the date upon which the time expires for filing or noticing any appeal of the Court’s Settlement Approval Order and Final Judgment approving the Settlement Agreement, if no appeal has been filed; (ii) if there is an appeal or appeals, the date of completion, in a manner that finally affirms and leaves in place the Final Judgment without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or *certiorari*, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on *certiorari*.

1.15 “Long Form Notice” means the Court-approved form of notice for publication to Settlement Class Members pursuant to the Media Plan, including the Settlement Website, and substantially in the form attached hereto as Exhibit B.

1.16 “Media Plan” means the Settlement Administrator’s plan to disseminate Class Notice to Settlement Class Members, which will be designed to achieve no less than 80% reach and will be designed to comport with due process requirements, Fed. R. Civ. P 23, and any governing Local Rules or judicial requirements.

1.17 “Notice and Other Administrative Costs” means all costs and expenses actually incurred by the Settlement Administrator and approved by the Court in the publication of Class Notice, establishment of the Settlement Website, providing CAFA notice, the processing, handling, reviewing, and paying of claims made by Claimants, paying taxes and tax expenses related to the Settlement Fund (including all federal, state, or local taxes of any kind and interest or penalties thereon, as well as expenses incurred in connection with determining the amount of and paying any taxes owed and expenses related to any tax attorneys and accountants). Amounts for the Notice and Other Administrative Costs, to be paid within thirty (30) days of when such amounts are invoiced and become due and owing. They shall be paid by Defendant if due before the Effective Date and otherwise paid from the Settlement Fund.

1.18 “Notice Date” means the date to begin the publication of notice pursuant to this Agreement.

1.19 “Objection/Exclusion Deadline” means the date to be set by the Court as the deadline for Settlement Class Members to submit objections and requests for exclusion.

1.20 “Person” will mean, without limitation, any individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assigns. “Person” is not intended to include any governmental agencies or governmental actors, including, without limitation, any state Attorney General office.

1.21 “Preliminary Approval” means the Court’s entry of an order preliminarily approving the terms and conditions of this Settlement Agreement, including the manner of providing, and content of, the notice to Settlement Class Members.

1.22 “Preliminary Approval Date” means the date on which the Court enters an order granting Preliminary Approval.

1.23 “Preliminary Approval Order” means the order preliminarily approving the Settlement Agreement, certifying the Settlement Class for settlement purposes, and directing notice thereof to the Settlement Class, which form of order will be agreed upon by the Parties and submitted to the Court in conjunction with the motion for preliminary approval of the Agreement.

1.24 “Class Product” means any or all of the following products: Wipe Out! Wipes; Wipe Out ! Multi-Surface Wipes; and Wipe Out! Multi-Surface Decontaminant Spray.

1.25 “Released Claims” means the claims released pursuant to this Agreement.

1.26 “Released Parties” means Tzumi Innovations, LLC, as well as any and all of its respective present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parent companies, subsidiaries, divisions, licensors, licensees, associates, affiliates, employers, agents, related business entities, consultants, independent contractors, insurers, and customers, including without limitation, all of its or their respective current, future, or former employees of the foregoing, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns and companies, firms, trusts, and corporations.

1.27 “Releasing Parties” means the Class Representatives, those Settlement Class Members who do not timely opt out of the Settlement Class, and all of their respective present or

past heirs, executors, estates, administrators, predecessors, successors, assigns, parent companies, subsidiaries, divisions, licensors, licensees, associates, affiliates, employers, agents, related business entities, consultants, independent contractors, insurers, and customers, including without limitation, all of its or their respective current, future, or former employees of the foregoing, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns and companies, firms, trusts, and corporations.

1.28 “Service Award” means any award approved by the Court that is payable to the Class Representatives from the Settlement Fund.

1.29 “Settlement Administrator” means a reputable administration company that has been selected jointly by the Parties after receiving competitive bids from at least three qualified administrators, and approved by the Court in the Preliminary Approval Order to perform the duties set forth in this Agreement.

1.30 “Settlement Class Members” or “Settlement Class” means:

All persons in the United States (including in its states, districts, territories, or tribal reservations) who purchased one or more Class Products before the date of the Preliminary Approval Order. Excluded from the Settlement Class are (1) any Judge or Magistrate Judge presiding over this Action and members of their families; (2) Defendant, Defendant’s subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former officers, members, directors, agents, attorneys, and employees; (3) persons who properly execute and file a timely request for exclusion from the class; and (4) the legal representatives, successors, or assigns of any such excluded persons.

1.31 “Settlement Class Period” means any time before the date of the preliminary approval of the settlement by the Court.

1.32 “Settlement Fund” means the non-reversionary total cash commitment of Defendant for purposes of this settlement, as described in Section 2 of this Settlement Agreement with a total value of \$2 million (\$2,000,000.00 USD). The Settlement Fund represents the total extent of Defendant’s monetary obligations under this Agreement. The payment of the Settlement Amount by Defendant fully discharges the Defendant’s and the other Released Parties’ financial obligations (if any) in connection with the Settlement.

1.33 “Settlement Approval Order and Final Judgment” means an order and judgment issued and entered by the Court, approving the Settlement Agreement as binding upon the Parties and the Settlement Class Members, dismissing the Action with prejudice, and setting the amount for an award of attorneys’ fees and costs, and Service Awards. The Settlement Approval Order and Final Judgment will constitute a final judgment within the meaning and for purposes of Rule 54 of the Federal Rules of Civil Procedure.

1.34 “Settlement Website” means a website to be established, operated, and maintained by the Settlement Administrator for purposes of providing notice and otherwise making available to the Settlement Class Members the documents, information, and online claims submission process.

1.35 “Summary Notice” means the Court-approved form of notice for publication to Settlement Class Members, pursuant to the Media Plan, and substantially in the form attached hereto as Exhibit C.

1.36 “Unknown Claims” means claims that could have been raised in the Action and that any or all of the Releasing Parties do not know or suspect to exist, which, if known by him or her, might affect his or her agreement to release the Released Parties or the Released Claims or might affect his or her decision to agree, object, or not to object to the Settlement. Upon the Effective Date, the Releasing Parties will be deemed to have, and will have, expressly waived

and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of § 1542 of the California Civil Code, which provides 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.

Upon the Effective Date, the Releasing Parties also will be deemed to have, and will have, waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable, or equivalent to § 1542 of the California Civil Code. The Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this Release, but that it is their intention to finally and forever settle and release the Released Claims, notwithstanding any Unknown Claims they may have, as that term is defined in this Paragraph.

2. SETTLEMENT RELIEF AND CLAIMS PROCESS

2.1 Payments to Settlement Class Members. Defendant will pay a total of \$2,000,000 in cash into the Settlement Fund for payment of the following: (i) Approved Claims for cash benefits submitted by Settlement Class Members; (ii) the Notice and Other Administrative Costs actually incurred by the Settlement Administrator; (iii) the Fee Award; and (iv) any Service Awards to the Class Representatives. Such funds will be paid to the Settlement Administrator as follows:

2.1.1 The Settlement Fund amount (\$2,000,000 less any amounts paid under Section 1.17 to the Settlement Administrator) shall be paid to the Settlement Administrator within fourteen (14) calendar days from the Effective Date.

2.1.2 The Settlement Administrator shall place all Settlement Funds received into a non-interest-bearing settlement escrow account named the “Wipe Out! Litigation Settlement Fund” to be maintained by the Settlement Administrator in a banking institution acceptable to the Parties.

2.1.3 The Settlement Fund shall be deemed and considered to be in *custodia legis* of the Court and shall be subject to the jurisdiction of the Court until such time as the funds shall be distributed pursuant to the Settlement Agreement and/or further Order of the Court.

2.1.4 The Settlement Fund shall, upon the Effective Date, constitute a “qualified settlement fund” within the meaning of Treasury Regulation Sections 1.468B-1 through 1.468B-3, 26 C.F.R. §§ 1.468B-1 through 1.468B-3 (1992). The Parties and the Settlement Administrator shall treat the Settlement Fund as a qualified settlement fund for all reporting purposes under federal tax laws.

2.2 Claims Process. Each Settlement Class Member will be entitled to submit a claim for cash payment, consistent with this paragraph and as determined by the Court.

2.2.1 Cash Payment. Each Settlement Class Member may file a claim that will, if valid, entitle him or her to cash payment(s) based on Class Products purchased during the Settlement Class Period.

2.2.2 Claims with Proof of Purchase: Settlement Class Members with proof of purchase (which may include the actual product(s) and submission of a UPC Code/Serial Number or a receipt showing proof of purchase) will be entitled to submit a claim for up to \$3 per purchased Class Products, subject to a cap of \$15 per household, and subject to *pro rata* adjustment.

To be valid, the proof of purchase must include the approximate purchase price paid, date of purchase, and location of purchase. Claimants will be required to submit copies of the proof of purchase and sign the claim form.

2.2.3 *Claims without Proof of Purchase:* Settlement Class Members without proof of purchase will be entitled to submit a claim for \$2 per purchased Class Products subject to a cap of \$6 per household, and subject to *pro rata* adjustment. Claimants without proof of purchase will be required to state under penalty of perjury the approximate date, approximate purchase price, and location of each purchase of a Product for which they are making a claim.

2.2.4 *Payment Method.* Class members will have the option to receive settlement funds by check, by credit to a PayPal account, by credit to a Zelle account, or by an electronic gift card.

2.2.5 *Cash Payment from Fund.* Cash Claims will be paid thirty (30) days after the Claims Deadline or the Effective Date, whichever is later, from the Settlement Fund.

2.2.6 *Pro Rata Adjustment.*

2.2.6.1 If the total amount of claims submitted by Class Members, plus attorneys' fees, costs and expenses, plus the cost of notice and administration, and service awards exceed the settlement fund, payments to the Class Members shall be reduced pro rata so that the total amount does not exceed the Settlement Fund amount of \$2 million.

2.2.6.2 If the total amount of claims submitted by Class Members, plus attorneys' fees, costs and expenses, plus the costs of notice and administration, and service awards is lower than the settlement fund, payments to the Class Members shall be increased *pro rata* according to the following schedule: (1) class members who submit a claim with proof of purchase will have a *pro rata* increase capped at \$50; (2) class members who submit a claim without proof of purchase will have a *pro rata* increase capped at \$25; (3) any residual funds remaining after the distribution will be provided on a *cy pres* basis to a mutually agreed charity or charities that meet(s) any governing requirements for *cy pres* distributions. If and when a *cy pres* distribution becomes necessary, the parties will jointly select one or more charities and request approval from the Court to make the distribution.

2.3 Uncleared Checks. Those Settlement Class Members whose cash benefit checks are not cleared within one hundred eighty (180) days after issuance will be ineligible to receive a cash settlement benefit and Defendant will have no further obligation to make any payment pursuant to this Settlement Agreement or otherwise to such Settlement Class Members. Unpaid funds from uncleared checks will in no event revert back to the Defendant. Any unpaid funds remaining after administration of the Settlement Agreement will be donated as *cy pres* to a mutually agreed charity. If and when a *cy pres* distribution becomes necessary for uncleared checks, the parties will jointly select one or more charities and request approval from the Court to make the distribution.

2.4 Review of Claims. The Settlement Administrator will validate claims and have the authority to use appropriate means to weed out duplicate claims, inappropriate claims contrary to the settlement agreement, claims from bots, and fraudulent claims. If the Settlement Administrator rejects a claim, the Class Member who submitted the claim will be given prompt notice by email (to be provided on the claim form), and have one opportunity to cure within 30 days of the notice of the deficiency. Class Counsel will have an opportunity to appeal any rejected claims on a good faith basis.

3. CLASS COUNSEL’S ATTORNEYS’ FEES AND REIMBURSEMENT OF COSTS AND EXPENSES; SERVICE AWARD.

3.1 Class Counsel may receive from the Settlement Fund, subject to Court approval, attorneys’ fees, costs, and expenses not to exceed \$666,666 (approximately one third of the Settlement Fund). Class Counsel will petition the Court for an award of such attorneys’ fees (the Fee Award) and Defendant agrees to not object to or otherwise challenge, directly or indirectly, Class Counsel’s petition for reasonable attorneys’ fees and for reimbursement of costs and expenses if limited to this amount. Class Counsel, in turn, agrees to seek no more than this amount from the Court in attorneys’ fees and for reimbursement of costs and expenses. Payment of the Fee Award will be made from the Settlement Fund and if the Court awards less than the amount sought by Class Counsel, the difference in the amount sought and the amount ultimately awarded pursuant to this Paragraph will remain in the Settlement Fund.

3.2 The Fee Award will be payable from the Settlement Fund as follows: (a) 50% will be payable within fourteen (14) days of the Effective Date; (b) 50% will be payable within ten (10) days after the settlement funds have been fully distributed to the class and any necessary *cypres* distributions have been made under Section 2.2.6.2 above. Payment of the Fee Award will be made from the Settlement Fund by wire transfer to Milberg, as agent for Class Counsel, for distribution to and among counsel for Class Representatives and the Class, in accordance with

wire instructions to be provided by Milberg, and completion of necessary forms, including but not limited to W-9 forms.

3.3 Subject to Court approval, the Class Representatives may be paid a service award from the Settlement Fund, in addition to any settlement payment as a result of an Approved Claim pursuant to this Agreement, and in recognition of their efforts on behalf of the Settlement Class, in the amount of two thousand, five hundred dollars each (\$2,500.00). Defendant will not object to or otherwise challenge, directly or indirectly, Class Counsel's application for the service awards to the Class Representatives if limited to this amount. Class Counsel, in turn, agrees to seek no more than this amount from the Court as the service awards for the Class Representatives. If the Court awards less than this amount, the difference in the amount sought and the amount ultimately awarded pursuant to this Paragraph will remain in the Settlement Fund. Such awards will be paid from the Settlement Fund (in the form of a check to the Class Representatives that is sent care of Class Counsel), subject to receipt of the necessary tax forms, including W-9 forms, fourteen calendar days (14) days after the Effective Date.

4. NOTICE TO THE CLASS AND ADMINISTRATION OF SETTLEMENT.

4.1 Class Notice. The Class Notice will conform to all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clauses), and any other applicable law, and will otherwise be in the manner and form approved by the Court. The Class Notice shall consist of the following:

4.1.1 *Settlement Website.* As soon as reasonably practical before the Notice Date, Notice will be provided on a website at an available settlement URL (such as, for example, www.WipeOutSettlement.com) which will be obtained, administered, and maintained by the Settlement Administrator and will include the ability to file Claim Forms online, with a mechanism

for electronic signatures, under penalty of perjury for claims submitted to Section 2.2.3, and for submissions of supporting documents for claims submitted pursuant to Section 2.2.2. The Notice provided on the Settlement Website will be substantially in the form of Exhibit B.

4.1.2 *Media Plan.* Notice shall also include a Media Plan as defined in Section 1, and may include internet banner notice, press releases, or other means reasonably calculated to achieve no less than 80% reach.

4.2 Responsibilities of Settlement Administrator. The Parties will retain one or more Settlement Administrators (including subcontractors) to be approved by the Court to help implement the terms of the proposed Settlement Agreement. The Settlement Administrator(s) will be responsible for administrative tasks, including, without limitation: (a) notifying the appropriate state officials about the settlement; (b) arranging, as set forth in the Media Plan, for distribution of Class Notice (in the form approved by the Court) and Claim Forms (in a form approved by the Court) to Settlement Class Members; (c) answering inquiries from Settlement Class Members and/or forwarding such written inquiries to Class Counsel or their designee; (d) receiving and maintaining on behalf of the Court and the Parties any Settlement Class Member correspondence regarding requests for exclusion from the settlement; (e) establishing the Settlement Website that posts notices, Claim Forms, and other related documents by the Notice Date; (f) receiving and processing claims and distributing payments to Settlement Class Members; (g) causing notice, pursuant to 28 U.S.C. § 1715, to be served not later than ten (10) days after this Agreement is filed with the Court on the Attorneys General of each U.S. State in which Settlement Class members reside, the Attorney General of the United States, and other required government officials, as required by law; (h) validating claims, providing notices of deficiencies, and other related steps; (i) collecting information concerning Class Members who

opt out or object; and (j) otherwise assisting with implementation and administration of the Settlement Agreement terms.

4.2.1 The Settlement Administrator shall pay any taxes (and any other tax related fees and expenses) required under applicable law without prior approval of the Court. Neither Plaintiffs, Tzumi, nor their counsel shall have any responsibility for the payment of taxes described in this paragraph.

4.2.2 The Settlement Administrator shall serve as the administrator of the Settlement Fund within the meaning of Treasury regulation Section 1.468B-2(k)(3), 26 C.F.R. § 1.468B-2(k)(3) (1992). The Settlement Administrator will comply with all applicable reporting, withholding, and filing requirements for a qualified settlement fund, including as provided for in Treasury Regulation Sections 1.468B-1 through 1.468B-3, 26 C.F.R. §§ 1.468B-1 through 1.468B-3 (1992). Neither Plaintiffs, Tzumi, nor their counsel shall have any responsibility for the payment or withholding of taxes assessed on the Settlement Fund. The Parties to this Settlement Agreement agree to cooperate with the Settlement Administrator, each other, and any tax attorneys or accountants to the extent reasonably necessary to carry out the provisions of this paragraph. The Settlement Administrator shall also have the responsibility for filing any tax forms with the appropriate authorities and issuing any tax forms to Class members that may be required under the tax laws.

4.3 Performance Standards of Settlement Administrator. The contract with the Settlement Administrator will obligate the Settlement Administrator to abide by the following performance standards:

4.3.1 The Settlement Administrator will accurately and neutrally describe, and will train and instruct its employees and agents to accurately and objectively describe, the provisions of this Agreement in communications with Settlement Class Members;

4.3.2 The Settlement Administrator will provide prompt, accurate, and objective responses to inquiries from Class Counsel and Defendant's Counsel and will periodically report on claims, objectors, etc.

4.3.3 The Settlement Administrator will seek clarification, instruction, or authorization for performance of its duties and expenditure or disposition of cash from Class Counsel and Defendant's Counsel.

5. CLASS SETTLEMENT PROCEDURES.

5.1 Exclusions and Objections. The Class Notice will advise all Settlement Class Members of their rights to be excluded from the Settlement or to object to the Settlement.

5.2 Any person who falls within the definition of the Settlement Class but wishes to be excluded from the Settlement may do so by timely mailing a valid opt-out notice, as described in the Class Notice. Any person who is excluded from the Settlement will not be bound by this Settlement Agreement, will not be eligible to make a claim for any benefit under the terms of this Settlement Agreement, and will not be permitted to object to the Settlement or to intervene in the Action. At least seven (7) calendar days before the Final Approval Hearing, the Settlement Administrator will prepare a list of the persons who have excluded themselves in a valid and

timely manner from the Settlement Class (the “Opt-Outs”), and Class Counsel will file that list with the Court, furnishing counsel with copies of such requests for exclusion.

5.3 Any person who is a Settlement Class Member and who wishes to object to the agreement must timely serve a written objection to the Settlement Administrator by the date specified in the Notice. The objection must: (1) clearly state that it is an objection to the Class Settlement in *Boling v. Tzumi Innovations*, Case No. 1:22-cv-05919; (2) include the name and contact information for the objecting Settlement Class Member; (3) include documents sufficient to establish the person’s standing as a Settlement Class Member (either verification under oath of the approximate date and location of a purchase of Class Products within the Settlement Class Period or a receipt reflecting such purchase with information showing the purchase price, Class Products purchased, the dates of purchase, and the store or stores from which the products were purchased); (4) explain the reason for the objection. If an objecting person chooses to appear at the Final Approval Hearing, a notice of intention to appear must be filed with the Court no later than the Objection/Exclusion Deadline.

5.4 Stay of the Action. The Parties will request that the Court, in connection with Preliminary Approval, issue an immediate stay of the Action.

5.5 Effect If Settlement Not Approved. This Settlement Agreement was entered into only for purposes of settlement, subject to and without waiver of the Parties’ respective rights. If the Court fails to enter the order granting Preliminary Approval or fails to grant final approval, or if the Effective Date does not occur, Class Counsel and Defendant’s Counsel will endeavor, consistent with the Settlement Agreement, to cure any defect identified by the Court; provided, however, that Defendant will not be obligated to accept such cure if it increases the cost or burden of the Settlement Agreement to Defendant or any of the other Released Parties. If the Settlement Agreement is terminated for any reason, final approval does not occur for any

reason, or the Effective Date does not occur, then no term or condition of the Settlement Agreement, or any draft thereof, or any discussion, negotiation, documentation, or other part or aspect of the Parties' settlement discussions will have any effect, nor will any such matter be admissible in evidence for any purpose in the Action, or in any other proceeding, the Parties will be restored to their respective positions immediately preceding execution of this Settlement Agreement. If the Settlement Approval Order and Final Judgment or any part of it is vacated, overturned, reversed, or rendered void as a result of an appeal, or the Settlement Agreement is voided, rescinded, or otherwise terminated for any other reason, then within thirty (30) days, Class Counsel will return to Defendant all attorneys' fees, costs, and other payments received by Class Counsel under the Settlement Agreement, as set forth in paragraph 3.2 above. The Parties agree that all drafts, discussions, negotiations, documentation, or other information prepared in relation to the Settlement Agreement and the Parties' settlement discussions will be treated as strictly confidential and may not be disclosed to any person other than the Parties' counsel, proposed administrators as necessary for their selection, and only for purposes of the Action. Defendant's rights with respect to any decision on Class certification, or otherwise, expressly are reserved and preserved.

5.6 Execution. The Settlement Agreement will have no effect unless and until this Settlement Agreement is fully executed by all Parties.

6. RELEASES.

6.1 Release by Settlement Class Members and Named Plaintiffs. Effective as of the Effective Date, each the Releasing Parties, including each and all of the Settlement Class Members who did not opt out, as well as each Named Plaintiff, will release all the Released Parties, including the Defendant and any and all of its current, former, and future parents, predecessors, successors, affiliates, assigns, subsidiaries, divisions, licensors, licensees,

associates, employers, agents, related corporate and business entities, heirs, estates, trustees, administrators, executors, insurers, attorneys, and customers, and all of their respective current, future, and former employees, officers, directors, managing directors, principals, shareholders, partners, members, assigns, agents, attorneys, accountants, financial and other advisors, underwriters, lenders, auditors, investment advisors, legal representatives, companies, firms, trusts, and corporations, from any and all causes of action, suits, claims, liens, demands, judgments, costs, damages, obligations, attorneys' fees (except as provided for in the Class Settlement), and all other legal responsibilities in any form or nature, including but not limited to all claims relating to or arising out of state, local, territorial, or federal statute, ordinance, regulation, or claim at common law or in equity, whether past, present, or future, known or unknown, asserted or unasserted, arising out of or in any way related to the allegations in the action.

6.3 Effectuation of Settlement. None of the above releases includes releases of claims to enforce the terms of the Settlement Agreement or affects the rights granted by the Settlement Agreement.

6.4 No Admission of Liability. This Settlement Agreement reflects, among other things, the compromise and settlement of disputed claims among the parties, and neither this Settlement Agreement nor the releases given herein, nor any consideration therefor, nor any actions taken to carry out this Settlement Agreement, are intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or the validity of any claim, defense, or of any point of fact or law on the part of any party. Defendant denies the material allegations of the complaint filed in this Action. Neither this Settlement Agreement, nor the fact of settlement, nor the settlement proceedings, nor the settlement negotiations, nor any related document, will be used as an admission of any fault or omission by any or all of the Released

Parties, or be offered or received in evidence as an admission, concession, presumption, or inference of any wrongdoing or liability by any or all of the Released Parties in any proceeding, other than such proceedings as may be necessary to consummate, interpret, or enforce this Settlement Agreement.

7. PRELIMINARY APPROVAL ORDER AND SETTLEMENT APPROVAL ORDER AND FINAL JUDGMENT.

7.1 Promptly after the execution of this Settlement Agreement, Class Counsel will submit this Agreement together with its Exhibits to the Court and will move the Court for Preliminary Approval of the settlement set forth in this Agreement; certification of the Settlement Class for settlement purposes only; appointment of Class Counsel and the Class Representatives; and entry of a Preliminary Approval Order, which order will set a Final Approval Hearing date, approve the retention of the Settlement Administrator, and approve the Media Plan. The Preliminary Approval Order will also authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications, and expansions of the Settlement Agreement and its implementing documents (including all exhibits to this Agreement) so long as they are consistent in all material respects with the terms of the Settlement Agreement and do not limit or impair the rights of the Settlement Class or expand the obligations of Defendant. The Preliminary Approval Order will also state that, pending the final determination of the fairness, reasonableness and adequacy of the proposed settlement, Plaintiffs and all class members either directly, representatively, or in any other capacity shall be enjoined from initiating or proceeding in any lawsuit on behalf of that class member or the class against any Released Party in any federal or state court based on the allegations in the First Amended Complaint.

7.2 At the time of the submission of this Agreement to the Court as described above, Class Counsel will request that, after notice is given, the Court hold a Final Approval Hearing and approve the settlement of the Action as set forth herein.

7.3 After notice is given, and at or before the Final Approval Hearing, the Class Representatives will request and seek to obtain from the Court a Settlement Approval Order and Final Judgment, which will (among other things):

7.3.1 approve the Settlement Agreement and the proposed settlement as fair, reasonable, and adequate as to, and in the best interests of, the Settlement Class Members; direct the Parties and their counsel to implement and consummate the Agreement according to its terms and provisions; and declare the Agreement to be binding on, and have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of the Class Representatives and Releasing Parties;

7.3.2 find that the Media Plan implemented pursuant to the Agreement (1) constituted the best practicable notice under the circumstances; (2) constituted notice that was reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action, their right to object to or exclude themselves from the proposed Agreement, and to appear at the Final Approval Hearing; (3) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (4) met all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, and the rules of the Court;

- 7.3.3** find that the Class Representatives and Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Agreement;
- 7.3.4** dismiss the Action (including all individual claims and Settlement Class Claims presented thereby) on the merits and with prejudice, without fees or costs to any party except as provided in the Settlement Agreement;
- 7.3.5** incorporate the Release set forth above, make the Release effective as of the Effective Date, and forever discharge the Released Parties as set forth herein;
- 7.3.6** permanently bar and enjoin all Settlement Class Members from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in any lawsuit or other action in any jurisdiction based on the Released Claims;
- 7.3.7** without affecting the finality of the Settlement Approval Order and Final Judgment for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement and the Settlement Approval Order and Final Judgment, and for any other necessary purpose; and
- 7.3.8** incorporate any other provisions as the Court deems necessary and just.

7.4 Unless otherwise ordered by the Court, the Parties will seek the deadlines listed below in connection with approval of the Settlement. If any deadline below falls on a weekend or federal holiday, then such deadline shall extend to the next court day. Subject to approval of the Court, the Parties agree that deadlines may be extended by order of the Court, for good cause shown, without further notice to the Class.

<u>Event</u>	<u>Deadline</u>
Motion for Preliminary Approval	Filed within 14 days after execution of the Settlement Agreement and in no event later than December 22, 2022, unless the Court's stay order is further extended
CAFA Notice pursuant to 28 U.S.C. § 1715(b)	Within 10 days of filing of motion for preliminary approval
Notice Date	30 days after Preliminary Approval Granted
Application for service awards and Attorneys' Fees and Expenses	14 days after Notice Date
Objection and Opt-Out Deadline	45 days after Notice
Claim Deadline	60 days after Notice
Final Approval Motion and response to any objections	70 days after Notice Date
Deadline to submit notices of appearance at the Final Approval Hearing	70 days after Notice Date
Claims Administrator submits declaration (1) stating the number of claims, requests for exclusion, and objections to date and (2) attesting that Notice was disseminated in a manner consistent with the Settlement Agreement or otherwise required by the Court.	90 days after Notice Date
Final Approval Hearing	100 days after Notice Date, or as soon thereafter as may be heard by the Court
Award Issuance Date	Begins 14 days after Effective Date

8. MISCELLANEOUS PROVISIONS.

8.1 Change of Time Periods. The time periods and/or dates described in this Settlement Agreement with respect to the giving of notices and hearings are subject to approval and change by the Court or by the written agreement of Class Counsel and Defendant's Counsel, without notice to Settlement Class Members. The Parties reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extension of time that might be needed to carry out any of the provisions of this Settlement Agreement.

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

8.3 Governing Law. This Settlement Agreement will be governed by the laws of the State of New York and subject to compliance with the Federal Rules of Civil Procedure, including Fed. R. Civ. P. 23.

8.4 Entire Agreement. The terms and conditions set forth in this Settlement Agreement constitute the complete and exclusive statement of the agreement between the parties relating to the subject matter of this Settlement Agreement, superseding all previous negotiations and understandings, and may not be contradicted by evidence of any prior or contemporaneous agreement. The Parties further intend that this Settlement Agreement constitutes the complete and exclusive statement of its terms as between the parties, and that no extrinsic evidence whatsoever may be introduced in any agency or judicial proceeding, if any, involving this Settlement Agreement. Any modification of the Settlement Agreement must be in writing signed by Class Counsel and Defendant's Counsel.

8.5 Advice of Counsel. The determination of the terms and the drafting of this Settlement Agreement have been by mutual agreement after negotiation, with consideration by and participation of all parties and their counsel.

8.6 Binding Agreement. This Settlement Agreement will be binding upon and inure to the benefit of the respective heirs, successors, and assigns of the Parties, the Settlement Class Members and other Released Parties.

8.7 No Waiver. The waiver by any party of any provision or breach of this Settlement Agreement will not be deemed a waiver of any other provision or breach of this Settlement Agreement.

8.8 Execution in Counterparts. This Settlement Agreement will become effective upon its execution by all of the undersigned. The parties may execute this Settlement Agreement in counterparts, and execution of counterparts will have the same force and effect as if all parties had signed the same instrument. The parties further agree that signatures provided by portable document format (PDF) or other electronic transmission will have the same force and effect as original signatures.

8.9 Enforcement of this Settlement Agreement. The Court will retain jurisdiction, and will have exclusive jurisdiction, to enforce, interpret, and implement this Settlement Agreement and the terms of any order entered pursuant to this Settlement Agreement.

8.10 Notices. All notices to the Parties or counsel required by this Settlement Agreement will be made in writing and communicated by email and mail to the following addresses: Joel D. Smith, Bursor & Fisher, P.A., 888 Seventh Avenue, New York, NY 10019, jsmith@bursor.com; Jeffrey Greenbaum, Sills Cummis & Gross, P.C., One Riverfront Plaza, Newark, NJ, 07102, jgreenbaum@sillscummis.com.

IT IS SO AGREED TO BY THE PARTIES:

Dated: Dec 20, 2022

IRIS BOLING

By:  (Dec 20, 2022 18:11 EST)

Dated: _____

KARI PROSKIN

By: _____

8.7 No Waiver. The waiver by any party of any provision or breach of this Settlement Agreement will not be deemed a waiver of any other provision or breach of this Settlement Agreement.

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IT IS SO AGREED TO BY THE PARTIES:


Dated: _____

IRIS BOLING

By: _____

Dated: Dec 20, 2022

KARI PROSKIN

By:  _____
Kari Proskin (Dec 20, 2022 20:59 EST)

Dated: Dec 20, 2022

JOHN GORDON

By: 
John Gordon (Dec 20, 2022 16:07 PST)

Dated: _____

TZUMI INNOVATIONS

By: _____

IT IS SO STIPULATED BY COUNSEL:


Dec 21, 2022
Dated: _____

**Milberg Coleman Bryson Phillips Grossman,
PLLC**

By: 
Rachel Soffin

Dated: Dec. 21, 2022

Bursor & Fisher, P.A.

By: 
Joel D. Smith

Dated: _____

Sills Cummis & Gross P.C.

By: _____
Jeffrey J. Greenbaum

Dated: _____

JOHN GORDON

By: _____

Dated: 12/21/22

TZUMI INNOVATIONS

By: 

IT IS SO STIPULATED BY COUNSEL:

Dated: _____

**Milberg Coleman Bryson Phillips Grossman,
PLLC**

By: _____

Rachel Soffin

Dated: _____

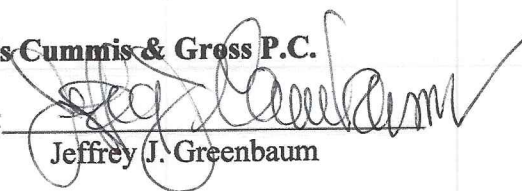
Bursor & Fisher, P.A.

By: _____

Joel D. Smith

Dated: 12/21/22

Sills Cummis & Gross P.C.

By: 

Jeffrey J. Greenbaum