

1 **FARUQI & FARUQI, LLP**
Lisa Omoto (SBN 303830)
2 1901 Avenue of the Stars, Suite 1060
Los Angeles, CA 90067
3 Telephone: (424) 256-2884
Facsimile: (424) 256-2885
4 Email: lomoto@faruqilaw.com

5 *Attorneys for Plaintiff Stacy Dorcas*

6
7 **KENDALL BRILL & KELLY, LLP**
Patrick J. Somers (SBN 318766)
8 10100 Santa Monica Blvd, Ste 1725,
Los Angeles, CA 90067-4013
9 Phone: 310-272-7918
Fax: 310-556-2705
10 Email: psomers@kbfkfirm.com

11 *Attorneys for Defendant Aterian, Inc.*

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SAN BERNARDINO**

14
15 STACY DORCAS, individually, and on behalf
of all others similarly situated,

16 Plaintiff,

17 v.

18 ATERIAN, INC.

19 Defendant.
20

CASE NO. CIVSB2222117

SETTLEMENT AGREEMENT

1 This Settlement Agreement (the “Settlement”) is made and entered into by and between the
2 following parties: Plaintiff Stacy Dorcas (“Plaintiff” and/or “Class Representative”), individually
3 and on behalf of the Settlement Class, and Defendant Aterian, Inc. (“Defendant” or “Aterian”).

4 **I. DEFINITIONS**

5 As used in this Settlement and all related documents, the following terms have the following
6 meanings:

7 A. “Action” means the civil action entitled *Stacy Dorcas v. Aterian, Inc.*, which was
8 filed in the Superior Court for the State of California, County of San Bernardino, on December 9,
9 2022, Case No. CIVSB2222117.

10 B. “Authorized Claimant” means any Settlement Class Member who timely submits a
11 Valid Claim Form that is not determined to be a Fraudulent Claim.

12 C. “Class Counsel Award” means attorneys’ fees for Class Counsel’s litigation and
13 resolution of this Action, and Class Counsel’s expenses and costs incurred in connection with this
14 Action, which the Court authorizes to be paid to Class Counsel.

15 D. “Claimant” means a Settlement Class Member that submits a Claim Form.

16 E. “Claims Deadline” means the date set by the Court for the last date on which a Claim
17 Form may be submitted or postmarked. The Claims Deadline shall be no more than 180 days after
18 the Preliminary Approval Order.

19 F. “Claim Form” means the form Settlement Class Members must submit to participate
20 in the reimbursement provisions of the Settlement. The Claim Form is attached as Exhibit “A.”

21 G. “Class Counsel” means Faruqi & Faruqi, LLP.

22 H. “Class Notice” means, collectively, the notice provided to Settlement Class Members
23 regarding the Settlement as outlined in Section V, which will be submitted to the Court in connection
24 with the Parties’ motion for Preliminary Approval.

25 I. “Class Period” means December 9, 2018 up to and including the date Class Notice
26 is provided to the Settlement Class Members.

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J. “Class Representative Service Award” means the amount that the Court authorizes to be paid to Plaintiff in recognition of Plaintiff’s efforts and risks in assisting with the prosecution of the Action.

K. “Common Fund” or “Settlement Amount” means a non-reversionary common fund of \$800,000 which shall be used to fund payments to Settlement Class Members, Class Notice and administration costs, any Class Counsel Award and costs awarded by the Court, and any Class Representative Service Award to Plaintiff awarded by the Court. Of the \$800,000 Common Fund, \$500,000 shall be made available in the form of cash (“Cash Fund”), and \$300,000 shall be made available in the form of Vouchers (“Voucher Fund”) which Settlement Class Members can use towards the purchase of any Mueller branded product.

L. “Complaint” means the class action complaint filed in the Action.

M. “Court” means the Superior Court for the State of California, County of San Bernardino.

N. “Covered Products” means all Mueller-branded products, identified in Exhibit G, sold during the Class Period.

O. “Effective Date” means:

1. The date twenty-five (25) days after service of notice of entry of the Final Judgment if and only if each of the following five conditions (the “Conditions”) are satisfied: (1) no motion or complaint to intervene is filed in the Action before entry of the Final Judgment; (2) no objections to the Settlement are asserted before entry of the Final Judgment; (3) no motion is filed within that 25-day period that extends the deadline to appeal the Final Judgment; (4) Class Counsel confirms within that 25-day period that it will not appeal any reduction by the Court of the Class Counsel Award; and (5) Plaintiff confirms within that 25-day period that she will not appeal any reduction by the Court in her Class Representative Service Award.

2. If any one of the Conditions is not satisfied, the date 65 days after notice of entry of the Final Judgment, plus any extension of the time to appeal resulting from the filing of a

1 motion that extends the deadline to appeal; assuming no appeal, writ or other request for appellate
2 review is filed within the foregoing time period.

3 3. If any appeal, writ, or other request for appellate review is filed, the date when
4 that appeal, writ, or request for appellate review is finally ruled upon, denied, or dismissed, and no
5 other appeal, writ or appellate review is possible.

6 P. “Email Notice” means notice sent by email from the Claims Administrator to
7 Settlement Class Members whose email addresses are known to the retailers of the Covered
8 Products, as outlined in Section V of this Settlement and attached hereto as Exhibit “B.”

9 Q. “Fraudulent Claims” means any Claim Forms the Settlement Administrator
10 determines in good faith contain indicia of fraud, deceit, or other invalidity, including but not limited
11 to any attempts to bypass the terms and limitations set out in this Settlement Agreement regarding
12 Claim Forms, Authorized Claimants, Settlement Class Members, Individual Cash Settlement
13 Payments and Individual Voucher Settlement Payments.

14 R. “Final Approval Hearing” means the hearing at which the Court shall, among other
15 things: (a) determine whether to grant final approval to this Settlement; (b) consider any timely
16 objections to this Settlement and all responses thereto; and (c) rule on any application for attorneys’
17 fees, costs, and/or service awards.

18 S. “Final Judgment” means the final judgment, substantially in the form of Exhibit “C”
19 attached hereto, in which the Court grants final approval of this Settlement.

20 T. “Individual Cash Settlement Payment” means the amount payable from the Residual
21 Settlement Amount to each Authorized Claimant under the terms of this Settlement.

22 U. “Individual Voucher Settlement Payment” means the amount payable from the
23 Voucher Fund to each Authorized Claimant under the terms of this Settlement.

24 V. “Long Form Notice” means notice of the proposed Settlement to be provided to
25 Settlement Class Members under Section V of this Settlement. The Long Form Notice is attached
26 as Exhibit “D.”

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W. “Objection/Exclusion Deadline” means the date set by the Court for the submission of objections or Requests for Exclusion (defined herein) from the Settlement Class and shall be no more than 180 days after the Preliminary Approval Order.

X. “Parties” means Plaintiff individually, and on behalf of the putative Settlement Class, and Defendant.

Y. “Person” means any individual, proprietorship, corporation, partnership, limited partnership, limited liability company, association, trust, unincorporated association, or any other type of entity or association of any kind including but not limited to any governmental body or authority.

Z. “Preliminary Approval” means the date the Court preliminarily approves the terms and conditions of this Settlement, including but not limited to, conditionally certifying the Settlement Class, approving and authorizing Class Notice to the Settlement Class, appointing the Settlement Administrator, and setting a Final Approval Hearing.

AA. “Preliminary Approval Order” means the order, substantially in the form of Exhibit “E” attached to this Settlement, in which the Court grants Preliminary Approval.

BB. “Publication Notice” means notice of this Settlement to be provided to Settlement Class Members under Section V of the Settlement substantially in the form attached as Exhibit “F.”

CC. “Released Parties” means Defendant and any entity in which Defendant has a controlling interest, its existing and former subsidiaries, parents, affiliates, and officers, directors, employees, legal representatives, predecessors in interest, affiliates, heirs, successors, or assigns.

DD. “Releasing Parties” means Plaintiff and Settlement Class Members, on behalf of themselves and any of their heirs, representatives or assigns.

EE. “Request(s) for Exclusion” means a valid request for exclusion from a Settlement Class Member.

FF. “Released Claims” means any and all past, present and future claims, demands, actions, and causes of action of any kind or nature whatsoever, whether at law or equity, known or unknown, direct, indirect, or consequential, liquidated or unliquidated, foreseen or unforeseen,

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developed or undeveloped, arising under any laws, including but not limited to common law, regulations or laws, statutory law, or otherwise, whether such law is federal, foreign, or under the authority of any state, municipality, administrative or regulatory body, or arises under any other authority, including but not limited to any claims, demands, actions, or causes of action for unjust enrichment, negligence, misrepresentation, fraud, breach of warranty express or implied, violation of California Civil Code 1750 et seq., violation of California Business and Professions Code Sections 17200 et seq. and 17500 et seq. or any related or similar consumer protection statutes, restitution, disgorgement of profits, injunctive or declaratory relief, arising in any manner from allegations, facts, circumstances or occurrences during the Class Period and set forth in the Complaint. However, this definition expressly excludes claims for personal injury and claims to enforce the Settlement.

GG. “Residual Settlement Amount” shall mean the amount of the Cash Fund, less the costs of the Class Counsel Award, Settlement Administration Costs, and the Class Representative Service Award.

HH. “Settlement Administrator” or “Claims Administrator” means A.B. Data, Ltd.

II. “Settlement Administration Costs” means all cost of providing and distributing the Class Notice and all other costs of settlement administration, including not limited to amounts to be paid the Settlement Administrator for performing its tasks.

JJ. “Settlement Class” means all Persons who purchased any of the Covered Products in the United States, its territories, or at any United States military facility or exchange during the Class Period. Excluded from the Settlement Class shall be the assigned Judge to the Action, counsel to the Parties, Mediator Louis M. Meisinger, and their employees, legal representatives, heirs, successors, assigns, or any members of their immediate family; any government entity; Defendant, any entity in which Defendant has a controlling interest, any of Defendant’s subsidiaries, parents, affiliates, and officers, directors, employees, legal representatives, predecessors in interest, heirs, successors, or assigns, or any members of their immediate family; and any Persons who timely opt-out of the Settlement Class.

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KK. “Settlement Class Member” means any member of the Settlement Class.

LL. “Valid Claim Form” means a timely Claim Form submitted by a Settlement Class Member that satisfies all the criteria to qualify for reimbursement established by the Parties’ counsel and the Settlement Administrator.

MM. “Voucher” means a document provided by the Claims Administrator in response to a Valid Claim Form that can be redeemed at Defendant’s online webstore (muellerdirect.com). All Vouchers have a cash value, are freely transferrable to others, may be combined, and have no expiration date.

II. LITIGATION BACKGROUND

A. Plaintiff alleges that during the Class Period, Defendant falsely and deceptively labeled and advertised the Covered Products with an image of the Austrian flag and the name “Austria” (together, the “Austrian Representations”), which led reasonable consumers into believing that the Covered Products were made in Austria when, unbeknownst to consumers, the Covered Products were not made in Austria. Plaintiff further alleges that Plaintiff and Settlement Class Members paid more for the Covered Products as a result of those alleged statements. Plaintiff has asserted claims on behalf of herself and for others similarly situated in the United States based on such allegations.

B. Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, and further contends that, for any purpose other than settlement, the claims alleged in the Action are not appropriate for class treatment. More specifically, Defendant contends, among other things, that its labeling, marketing, packaging, and advertising for the Covered Products is not deceptive as a matter of law, and that such labels, marketing, advertising, and packaging do not in any manner mislead or make misleading suggestions about the geographical location of the Covered Products. Defendant further contends that such materials fully comply with all federal and other regulations; that most consumers view the additional information about the Covered Products available on other portions of the labeling, packaging, or on the internet and which specifically describes the location in which the Covered Products are manufactured; that to the

1 extent any consumers claim reliance on labelling, packaging, or advertising for the Covered
2 Products, such claims raise intensely individual issues not suitable for class treatment.

3 C. The Parties have, in advance of settlement on April 13, 2022, engaged in a full-day,
4 arms-length negotiation with the Hon. Louis M. Meisinger, Ret. of Signature Resolution, a highly
5 experienced mediator, and have further engaged in an informal exchange of documents and other
6 information pertaining to the Settlement Class Member’s claims. The Parties have had a full and
7 fair opportunity to evaluate the strengths and weaknesses of their respective positions.

8 D. Based on the current state of the law, the expense, burden, and time necessary to
9 prosecute the Action through trial and possible appeals, the risks and uncertainty of further
10 prosecution of the Action considering the defenses at issue, the sharply contested legal and factual
11 issues involved, and the relative benefits to be conferred upon Plaintiff and Settlement Class
12 Members pursuant to this Settlement, Class Counsel has concluded that a settlement with Defendant
13 on the terms set forth herein is fair, reasonable, adequate, and in the best interests of the Settlement
14 Class in light of all known facts and circumstances.

15 E. Defendant recognizes the expense and length of continued proceedings necessary to
16 continue the Action through trial and through possible appeals. Defendant also recognizes that the
17 expense and time spent pursuing the Action has detracted and will further detract from resources
18 that may be used to run Defendant’s business. Defendant denies any wrongdoing or liability arising
19 out of any of the facts or conduct alleged in the Action and believes that it has valid defenses to
20 Plaintiff’s claims.

21 F. Based on the foregoing, which the Parties expressly incorporate as material terms of
22 the Settlement, it is the desire of the Parties to fully, finally, and forever settle, compromise, and
23 discharge the Released Claims. Therefore, it is the intention of the Parties that this Settlement shall
24 constitute a full, final and complete settlement and release, which release includes in its effect all of
25 the Released Parties with respect to any and all claims which were alleged, or could have been
26 alleged, by Plaintiff on her own behalf or on behalf of the Settlement Class in the Action.

1 **III. TERMS OF SETTLEMENT**

2 In consideration of the mutual covenants and promises set forth herein, and subject to Court
3 approval, the Parties agree as follows:

4 A. Certification of Class: For settlement purposes only, and without any finding or
5 admission of any wrongdoing or fault by Defendant, and solely pursuant to the terms of this
6 Settlement, the Parties consent to and agree to the establishment and conditional certification of the
7 Settlement Class.

8 B. Certification is Conditional: This certification is conditional on the Court’s
9 preliminary and final approval of this Settlement. In the event the Court does not approve all
10 material terms of the Settlement, then the certification shall be void and the Settlement and all orders
11 entered in connection therewith, including but not limited to any order conditionally certifying the
12 Settlement Class, shall become null and void and shall be of no further force and effect and shall
13 not be used or referred to for any purposes whatsoever in the Action or in any other case or
14 controversy. And, in such an event, this Settlement and all negotiations and proceedings related
15 thereto shall be deemed to be without prejudice to the rights of any and all parties hereto, who shall
16 be restored to their respective positions as of the date of this Settlement, and Defendant shall not be
17 deemed to have waived any opposition or defenses it has to any aspect of the claims asserted herein
18 or to whether those claims are amenable to class-based treatment.

19 C. Releases: Upon the Effective Date, and except as to such rights or claims as may be
20 created by this Settlement, the Releasing Parties shall fully release and discharge each and every
21 one of the Released Parties from the Released Claims.

22 Plaintiff and each of the other Releasing Parties expressly waives and relinquishes, to the
23 fullest extent permitted by law, the provisions, rights and benefits of California Civil Code section
24 1542, or any other similar provision under federal or state law, which provides:

25 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
26 **THAT THE CREDITOR OR RELEASING PARTY DOES NOT**
27 **KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT**
28 **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.

Notwithstanding the provisions of Section 1542 and any similar provisions, rights, and benefits conferred by any law, rule, regulation, or common-law doctrine in any federal, state, or foreign jurisdiction, Plaintiff and the Releasing Parties each understand and agree that the Released Claims and other claims released by Plaintiff as set forth herein are intended to include all claims, whether known or unknown, that Plaintiff or the Releasing Parties have or may have against Defendant and other Released Parties arising from the Complaint.

The Releasing Parties and Plaintiff each represent and warrant that each of them has not assigned, transferred or encumbered, or purported to assign, transfer or encumber, directly or indirectly, voluntarily, by operation of law, or otherwise any portion of any Released Claims or of the other claims released by Plaintiff.

D. Compensation to the Settlement Class: In consideration of a full, complete, and final settlement of the Action, entry of the Final Judgment, and the Releases in this Section III, and subject to the Court’s approval, the Parties agree to the following relief:

1. Monetary Relief: Authorized Claimants can elect to receive a \$7.50 cash payment per Covered Product purchased during the Class Period for up to two (2) Covered Products (subject to a pro-rata increase or decrease as discussed in III.D.3). Alternatively, in lieu of a cash payment, Authorized Claimants can elect to receive a \$15.00 Voucher per Covered Product purchased during the Class Period for up to two (2) Covered Products (subject to a pro-rata increase or decrease as discussed in III.D.4).

Proof of purchase is not required for either the Individual Cash Settlement Payment or the Individual Voucher Settlement Payment. Authorized Claimants shall be solely responsible for any and all taxes arising from payment of the Individual Cash Settlement Payments.

2. Provision of Settlement Benefits: Defendant shall transmit to the Settlement Administrator the total Cash Fund and Voucher Fund for all settlement benefits (the “Settlement Amount”) by no later than seven (7) days after Preliminary Approval. The Settlement Administrator shall pay all Individual Cash Settlement Payments and Individual Voucher Settlement Payments to

1 Authorized Claimants within forty-five (45) calendar days of the Effective Date. The Settlement
2 Administrator will distribute the Individual Cash Settlement Payments digitally to Authorized
3 Claimants, via the email(s) provided on the Claim Form. Authorized Claimants will be provided
4 with a number of digital payment options, such as PayPal, Venmo, or a digital debit card, to
5 immediately receive their Settlement Payment. The distribution communication will inform
6 Authorized Claimants of the deadline to redeem their payment digitally, and will also provide
7 instructions on how to request a paper check be mailed should they prefer that instead. A declaration
8 of payment will be filed by the Settlement Administrator with the Court and provided to the Parties
9 within ten (10) calendar days of mailing and digitally paying the settlement proceeds.

10 3. Pro Rata Adjustment of Individual Cash Settlement Payments: If the total
11 value of all approved Claims either exceeds or falls short of the Residual Settlement Amount
12 available for distribution to Authorized Claimants, then the amounts of the Individual Cash
13 Settlement Payments will be reduced or increased pro rata, respectively, to ensure the Residual
14 Settlement Amount is exhausted. Any such pro rata adjustment will be calculated prior to
15 distribution (*i.e.*, will be made in a single distribution).

16 4. Pro Rata Adjustment of Individual Voucher Settlement Payments: If the total
17 value of all approved Claims either exceeds or falls short of the Voucher Fund available for
18 distribution to Authorized Claimants, then the amounts of the Individual Voucher Settlement
19 Payments will be reduced or increased, pro rata, respectively, to ensure the Voucher Fund is
20 exhausted. Any such pro rata adjustment will be calculated prior to distribution (*i.e.*, will be made
21 in a single distribution).

22 5. Injunctive Relief: For a period of no less than five (5) years after the Effective
23 Date, and subject to all necessary regulatory approvals by appropriate governing agencies,
24 Defendant shall not use the word “Austria” or the Austrian flag on any of the Mueller-branded
25 products, its packaging, labeling, and/or its online marketing, including but not limited to its
26 Mueller-branded products listings on third-party retail sites such as Amazon.com and websites
27 maintained by Aterian (including muellerdirect.com). Defendant shall be permitted four (4) weeks
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1 from entry of the Final Judgment to modify the online marketing described in the proceeding
2 sentence (“Online Marketing Deadline”). For removal of any doubt, however, references by third-
3 party retail sites to “Mueller Austria”, “Mueller Austria Store” or third-party references to prior
4 Mueller-branded products will not be construed as a violation of the injunctive relief. Additionally,
5 Defendant shall be permitted to sell through existing inventory of the Products that contain the word
6 “Austria” and/or the Austrian flag. The Parties acknowledge that Defendant cannot easily control
7 the disposition of Products, and, for this reason, the Online Marketing Deadline is the date
8 Defendant will agree to remove the word Austria and/or the Austrian flag from online marketing
9 internally. Defendant cannot control when all of its existing inventory will be exhausted. These
10 changes are agreed by the Parties to be sufficient to prevent any confusion by a reasonable consumer
11 of the geographical origin of the Products. Any cost incurred by Defendant in achieving the
12 injunctive relief discussed herein shall be borne separate and apart from the Settlement Amount
13 (\$800,000).

14 E. Service Award for Class Representative: Class Counsel agrees that it will apply to
15 the Court for a service award for the Class Representative in an amount not to exceed \$1,500, for
16 her participation as the Class Representative, for taking on the risks of litigation, for her general
17 release, and for settlement of her individual claims as a Settlement Class Member in this Action.
18 The Settlement Administrator shall pay the Class Representative Service Award to Plaintiff within
19 fifteen (15) calendar days of the Effective Date. The Settlement Administrator shall issue an IRS
20 Form 1099-MISC to Plaintiff solely for the amount awarded by the Court for her Class
21 Representative Service Award. Plaintiff shall be solely and legally responsible to pay and all
22 applicable taxes on her Class Representative Service Award, and shall hold harmless Defendant and
23 Class Counsel from any claim or liability for taxes, penalties, or interest arising as a result of the
24 Class Representative Service Award. Defendant has the right to contest the Class Representative
25 Service Award. Plaintiff shall preserve the right to appeal any reduction in the amount of her Class
26 Representative Service Award, but any such reduction shall not affect the validity of this Settlement.

27 F. Attorneys’ Fees and Costs:
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1. Class Counsel agrees that it will apply to the Court, no later than 30 days prior to the Objection/Exclusion Deadline for an award of attorneys’ fees plus costs and expenses not to exceed 25% of the Common Fund (\$800,000). Defendant has the right to contest Class Counsel’s request of fees and costs. Class Counsel shall preserve the right to appeal any reduction in the amount of the Class Counsel Award, but any such reduction shall not affect the validity of this Settlement.

2. If approved by the Court, the Settlement Administrator shall pay Class Counsel the Class Counsel Award within fifteen (15) calendar days of the Court’s entry of the Final Judgment. If the Final Judgment is reversed on appeal, Class Counsel will return the Class Counsel Award to Defendant. Class Counsel shall, as a condition of this Settlement, execute and return to Defendant the Acknowledgment and Guarantee in the form attached as Exhibit “G”.

3. The Class Counsel Award shall be for and in complete satisfaction of all attorneys’ fees and costs incurred to date by Plaintiff and/or Class Counsel on behalf of Plaintiff and the Settlement Class, and of all such future fees and costs including, but not limited to, fees and costs incurred in documenting this Settlement, securing Court approval of this Settlement, monitoring this Settlement, reviewing and participating in the claims administration process, obtaining the Final Judgment, and addressing any appeals. The Settlement Administrator will issue Class Counsel an IRS Form 1099 for the Class Counsel Award. Class Counsel understand and agree that they shall be solely responsible for any and all taxes and/or penalties arising from payment of the Class Counsel Award provided herein.

G. Defendant’s Monetary Obligations Shall Be Limited to The Settlement Amount: Other than the payment of the Settlement Amount, Defendants and the Released Parties shall have no further monetary obligation to Plaintiff, the Settlement Class Members, or Class Counsel under this Settlement. All Settlement Administration Costs, any Class Counsel Award and any and all costs associated with the allocation and distribution of the Residual Settlement Amount and Voucher Fund will be paid solely out of the Settlement Amount, and no Defendant shall have any obligation to pay or bear any amounts, expenses, costs, damages, assessment or fees to or for the benefit of any

1 Plaintiff, Settlement Class Member, or Class Counsel. Except as set forth in Section III.F above,
2 the Parties shall bear all their own costs and attorneys' fees in connection with the Settlement and
3 the Action.

4 **IV. ADMINISTRATION OF SETTLEMENT**

5 A. The Settlement Administrator's duties to administer the Settlement include: (1)
6 preparing and publishing Class Notice; (2) establishing and maintaining a settlement website for
7 notification and Claim Form distribution; (3) establishing a telephone number and responding to
8 inquiries and requests for Claim Forms and assistance from Settlement Class Members; (4) receiving
9 and independently reviewing the Claim Forms submitted by Settlement Class Members for the
10 purpose of verifying any amounts due to Authorized Claimants; (5) receiving and serving upon
11 Class Counsel and Defendant's counsel any written objections or Requests for Exclusion; (6)
12 reporting, in summary or narrative form, to Class Counsel, Defendant's Counsel, and the Court,
13 regarding the completion of its tasks identified within this Settlement; and (7) carrying out other
14 related tasks in accordance with the terms of this Settlement, including printing and sending the
15 Individual Cash Settlement Payments or Individual Voucher Settlement Payments to Authorized
16 Claimants.

17 B. Defendant shall pay, using the Settlement Amount, the Settlement Administrator's
18 reasonable costs and fees associated with administering this Settlement, and all costs associated with
19 publication and distribution of Class Notice to Settlement Class Members.

20 C. All disputes relating to the Settlement Administrator's ability and need to perform
21 its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over
22 the terms and conditions of this Settlement, until all payments and obligations contemplated by the
23 Settlement have been fully carried out.

24 **V. NOTICE TO THE SETTLEMENT CLASS**

25 A. Class Notice: Subject to Court approval, the Parties agree that after entry of the
26 Preliminary Approval Order, Defendant shall provide the Settlement Class with notice of the
27 Settlement by the following methods, which shall be paid for from the Settlement Amount:
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1. Settlement Website: No later than twenty (20) calendar days following entry of the Preliminary Approval Order, the Settlement Administrator shall create and publish a website dedicated to this Settlement, displaying, *inter alia*, the downloadable Claim Forms (Exhibit “A”) and Long Form Notice (Exhibit “D”).

2. Direct Email Notice: Twenty (20) calendar days following entry of the Preliminary Approval Order, the Settlement Administrator shall do the following:

3. With respect to any Covered Products purchased by Settlement Class Members on the muellerdirect.com website (“Direct Purchasers”), the Settlement Administrator shall:

- (i) **Begin sending or causing to be disseminated a copy of the Email Notice (Exhibit “B”) to every Direct Purchaser whose email address can reasonably be identified in the records of Defendant.**
- (ii) For all other Direct Purchasers for whom or which a mailing address, but no email address or other electronic means of contact, can be reasonably identified, the Settlement Administrator shall send or cause to be sent a copy of the Email Notice in the form of a postcard by U.S. mail.
- (iii) The Settlement Administrator will forward Email Notices that are returned by the U.S. Postal Service or electronically with a forwarding address to the Direct Purchaser. For Email Notices returned as undeliverable, the Settlement Administrator shall make reasonable effort to determine a proper email address, other electronic contact information, or mailing address, and resend the Email Notice. All costs related to this process shall be included in the Settlement Administration Costs.

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4. With respect to any Covered Products purchased by Settlement Class Members on Amazon.com (“Amazon”) (“Amazon Purchasers”), the Parties agree that the Parties shall take reasonable steps to ensure Amazon timely complies with the following: :

- (i) Provide the Email Notice (Exhibit “B”) to Amazon Purchasers on its respective customer list. No later than 45 day prior the Objection/Exclusion Deadline, Amazon shall certify it has provided Email Notice by filing with the Court a declaration substantially in a form to be approved by the Court as part of the Preliminary Approval Order. Counsel for the Parties and the Settlement Administrator shall provide oversight and guidance to Amazon as necessary.
- (ii) The Parties shall take reasonable steps to ensure timely compliance by Amazon to allow a reasonable amount of time for Amazon Purchasers to submit a Claim Form before the Claims Deadline.

5. Publication Notice: No later than twenty (20) calendar days after entry of the Preliminary Approval Order, the Settlement Administrator will cause to be published the Publication Notice, in the form attached hereto as Exhibit “F” in the San Bernardino Sun for four successive weeks.

6. Toll-Free Telephone Support: No later than twenty (20) calendar days after entry of the Preliminary Approval Order, the Settlement Administrator shall establish a toll-free support system to provide Settlement Class Members with (a) general information about the Action; (b) frequently asked questions and answers; and (c) the ability to request a Long Form Notice or Claim Form.

B. Declaration of Compliance: Within fourteen (14) calendar days of the Claims Deadline, the Settlement Administrator shall provide the Parties with a declaration attesting to

1 completion of the notice process set forth in this section. The Settlement Administrator shall provide
2 weekly reports detailing claims received and administered.

3 **VI. CLAIMS PROCESS/CLAIMS ADMINISTRATION**

4 A. Claim Form: Settlement Class Members may obtain a Claim Form from the
5 Settlement Administrator by calling the toll-free number or by visiting the website identified in the
6 Long Form Notice and Publication Notice. Each Claim Form will include instructions and the date
7 the form must be returned in order for the claim to be considered eligible under the settlement.

8 B. Submission of Claim Form: All Claim Forms shall be signed under penalty of perjury
9 and filed electronically or sent directly to the Settlement Administrator at the address indicated on
10 the Claim Form. The Settlement Administrator shall review the Claim Forms and make any
11 calculations of payments to be distributed to the Settlement Class Members.

12 C. Validity of Submitted Claims: No Claim Form will be deemed valid if it is not signed
13 by the Settlement Class Member under penalty of perjury, is not postmarked or submitted
14 electronically on or before the Claims Deadline or does not contain the requested information. Any
15 Settlement Class Members who fail to submit Valid Claim Forms and fail to submit a timely and
16 valid Request for Exclusion, shall be bound by all terms of the Settlement and any judgment entered
17 in this Action, including releasing all Released Claims but will be barred from receiving any
18 monetary relief under this Settlement.

19 D. Report of Individual Settlement Payments: Upon completion of its calculation of
20 payments, and within thirty (30) calendar days following the Claims Deadline, the Settlement
21 Administrator shall provide Class Counsel and Defendant's counsel with a report listing the amount
22 of all Individual Cash Settlement Payments and Individual Voucher Settlement Payments to be made
23 to each Authorized Claimant.

24 E. Fraudulent Claims: The Settlement Administrator shall use good faith and
25 appropriate procedures to prevent, detect, and reject the payment of Fraudulent Claims and ensure
26 payment of only legitimate claims. The Settlement Administrator shall notify the claimant via mail
27 or email of the rejection. If any Claimant whose Claim Form has been rejected, in whole or in part,
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1 desires to contest such rejection, the Claimant must, within twenty-one (21) calendar days from
2 receipt of the rejection, mail or email the Settlement Administrator a notice and statement of reasons
3 indicating the grounds for contesting the rejection along with any supporting documentation,
4 requesting further review by the Settlement Administrator of denial of the rejected Claim Form. If
5 any claimant whose Claim Form has been rejected fails to respond to the Settlement Administrator
6 within twenty-one (21) calendar days from receipt of the rejection, the rejection shall be deemed
7 final and valid. The Settlement Administrator, in consultation with Defendant's Counsel and Class
8 Counsel, shall notify the Claimant of its decision within ten (10) business days from receipt of the
9 Claimant's reply contesting the rejection.

10 F. Effect of Failure to Submit A Valid Claim Form: All Settlement Class Members
11 who do not file valid Requests for Exclusion shall be bound by all of the releases and other terms of
12 this Settlement, whether or not they submit a Valid Claim Form or actually receive payment or cash
13 their checks for their Individual Cash Settlement Payment or redeem their Individual Voucher
14 Settlement Payments, and shall not be permitted to seek any further payment or any personal relief
15 of any kind including on account of the Released Claims.

16 G. Uncashed Individual Cash Settlement Payment: Authorized Claimants will have one
17 hundred eighty (180) calendar days from the date of issuance of the check to cash their settlement
18 check. Any check not cashed after 180 calendar days shall be dealt with in accordance and
19 compliance with California Code of Civil Procedure § 384. The Settlement Administrator shall
20 inform the Parties regarding the status of any uncashed checks at the conclusion of the 180-calendar
21 day check cashing period, including the amounts at issue and the identity of any affected Authorized
22 Claimant.

23 **VII. PROCEDURES FOR OBJECTING TO OR REQUESTING EXCLUSION FROM** 24 **SETTLEMENT**

25 A. Objections: Only Settlement Class Members who do not file timely Requests For
26 Exclusion may on their own behalf and not on behalf of any class, object to the Settlement
27 ("Objection Statement"). Those who wish to object to the Settlement may do so in writing submitted
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1 to the Settlement Administrator by the Objection/Exclusion Deadline. In addition, those who wish
2 to object to the Settlement may appear (or appear through counsel) at the Final Approval Hearing.
3 Settlement Class Members do not need to attend the Final Approval Hearing in order to object, but
4 shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate
5 counsel). Objection Statements can be submitted to the Settlement Administrator by: (1) mailing the
6 written Objection Statement. Objection Statements that do not include all required information
7 and/or that are not submitted on a timely basis, will be deemed null, void, and ineffective. The date
8 of the postmark on the mailing envelope shall be the exclusive means used to determine whether a
9 Settlement Class Member's Objection Statement has been timely submitted. In the event that the
10 postmark is illegible, the Objection Statement shall be deemed untimely unless it is received by the
11 Settlement Administrator after five (5) calendar days of the Objection/Exclusion Deadline. Written
12 Objection Statements must contain a caption or title that identifies it as "Objection to Class
13 Settlement in *Dorcas v. Aterian, Inc.*, Case No. CIVSB2222117" and shall also contain:

- 14 i) Information sufficient to identify and contact the objecting Settlement Class
15 Members, including name, address, telephone number, and, if available,
16 email address, and if represented by counsel, the foregoing information for
17 his/her counsel;
- 18 ii) Whether the Settlement Class Member, or his or her counsel, intends to
19 appear at the Final Approval Hearing;
- 20 iii) A clear and concise statement of the Settlement Class Member's objection,
21 including all bases and legal grounds for the objection and copies of paper,
22 briefs, or other documents upon which the objection is based;
- 23 iv) Documents sufficient to establish the person's standing as a Settlement
24 Class Member, *i.e.*, verification under penalty of perjury as to the person's
25 purchase of Covered Products during the Class Period, or a proof of
26 purchase; and
- 27 v) The Settlement Class Member's signature.

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1. Response to Objections: Class Counsel and/or Defendant may, at least fourteen (14) business days (or such other number of days as the Court shall specify) before the Final Approval Hearing, file any responses to any written Objection Statements submitted to the Court by Settlement Class Members in accordance with this Settlement.

B. Procedure for Requesting Exclusion: Settlement Class Members who wish to opt out of this Settlement must submit a written statement by the Objection/Exclusion Deadline (“Requests for Exclusion”). Requests for Exclusion that do not include all required information and/or that are not submitted on a timely basis, will be deemed null, void, and ineffective. The date of the postmark on the mailing envelope shall be the exclusive means used to determine whether a Settlement Class Member’s Request for Exclusion has been timely submitted. In the event that the postmark is illegible, the Request for Exclusion shall be deemed untimely unless it is received by the Settlement Administrator after five (5) calendar days of the Objection/Exclusion Deadline. Any Settlement Class Member who properly opts out of the Settlement Class using this procedure will not be entitled to any relief, will not be bound by the Settlement, and will not have any right to object or appeal. Settlement Class Members who fail to submit a valid and timely request for exclusion on or before the Objection/Exclusion Deadline shall be bound by all terms of the Settlement and any final judgment entered in this Action if the Settlement is approved by the Court, regardless of whether they ineffectively or untimely requested exclusion from the Settlement. Requests for Exclusions must include:

- i. The Settlement Class Member’s name;
- ii. The Settlement Class Member’s address;
- iii. A statement that indicates that the Settlement Class Member wishes to be excluded from *Dorcas v. Aterian, Inc.*, Case No. CIVSB2222117; and
- iv. The Settlement Class Member’s signature;
- v. The request for exclusion must be mailed to the Settlement Administrator at the address below, postmarked no later than the date set by the Court for the submission of objections or Requests for Exclusion from the class

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and shall be no more than 180 days after the Preliminary Approval Order:

- 1. *Dorcas v. Aterian, Inc.* Settlement Administrator [address] [City],
[ST] [ZIP]

C. **Objection Statements and/or Requests for Exclusion:** The Settlement Administrator shall, on a daily basis: (1) keep records of the date it receives Requests for Exclusion and written Objection Statements; and (2) serve copies of same on Class Counsel and Defendant’s counsel no later than seven (7) calendar days after the Objection/Exclusion Deadline. The Settlement Administrator shall inform Class Counsel and Defendant’s counsel of any such documents received that were ineffectively or untimely submitted.

D. **No Solicitation of Settlement Objections or Exclusions:** The Parties agree to use their best efforts to carry out the terms of this Settlement. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class Members to object to the Settlement, or request exclusion from participating as a Settlement Class Member, or encourage any Settlement Class Member to appeal from the Final Judgment.

VIII. DUTIES OF THE PARTIES PRIOR TO FINAL COURT APPROVAL

The Parties shall promptly submit this Settlement to the Court in support of the Motion for Preliminary Approval and determination by the Court as to its fairness, adequacy, and reasonableness. Promptly upon execution of this Settlement, Plaintiff shall apply to the Court for the entry of a Preliminary Approval Order substantially in the following form, as more particularly set forth on Exhibit “E”:

- A. Scheduling a Final Approval Hearing, no earlier than thirty (30) days after Class Counsel files its motion for final approval, on the question of whether the proposed Settlement should be finally approved as fair, reasonable, and adequate as to the Settlement Class Members;
- B. Approving as to form and content the Publication Notice and the Long Form Notice;
- C. Approving as to form and content the proposed Claim Form and instructions;
- D. Directing publication of the Publication Notice, and the method and frequency of Class Notice;

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E. Preliminarily approving the Settlement;

F. Preliminarily and conditionally certifying the Settlement Class for settlement purposes;

G. Preliminarily approving the Settlement Administrator and the administration of the settlement in accordance with the procedures set forth in this Settlement;

H. Staying all proceedings in the Action, and enjoining the prosecution of any other individual or class claims; and

I. Providing that, in the event the Settlement set forth in this Settlement is not approved by the Court, or in the event that this Settlement becomes null and void pursuant to its terms, this Settlement and all orders entered in connection therewith, including but not limited to any order conditionally certifying the Settlement Class, shall become null and void and shall be of no further force and effect and shall not be used or referred to for any purposes whatsoever in the Action or in any other case or controversy; and that in such an event, this Settlement and all negotiations and proceedings related thereto shall be deemed to be without prejudice to the rights of the Parties to, who shall be restored to the respective positions as of the date of this Settlement. In the event the Court does not enter the Preliminary Approval Order described herein, or decides to do so only with material modifications, then this entire Settlement shall become null and void, unless the Parties hereto agree in writing to proceed with this Settlement as modified.

The Parties shall stipulate and seek whatever preliminary court approval may be required to stay all proceedings in the Action, and continue all otherwise applicable deadlines in the Action, including but not limited to any deadline for responding to the complaint in the Action or conducting discovery, pending the proceedings to obtain preliminary and final approval of the Settlement.

IX. DUTIES OF THE PARTIES FOLLOWING PRELIMINARY COURT APPROVAL

Class Counsel will submit a proposed Final Judgment at the Final Approval Hearing in the form set forth as Exhibit “C,” which shall:

A. Confirm the certification of the Settlement Class as defined above;

1 B. Decree that neither the Final Approval nor this Settlement constitutes an admission
2 of liability, fault or wrongdoing;

3 C. Release the Released Parties from the Released Claims of the Releasing Parties;

4 D. Approve the Settlement, finding that it is entered into good faith, is reasonable, fair
5 and adequate, and is in the best interest of the Settlement Class Members;

6 E. Approve the Class Counsel Award and the Class Representative’s Service Award;
7 and

8 F. Make such orders as are necessary and appropriate to effectuate the terms and
9 conditions of this Settlement.

10 **X. FINAL APPROVAL HEARING**

11 The Court shall conduct a Final Approval Hearing so that the Court may review any
12 objections to the Settlement, consider the fairness, reasonableness, and adequacy of the Settlement
13 and consider the motion for Final Approval, for the Class Counsel Award, and for the Class
14 Representative Service Award. The date of the Final Approval Hearing shall be posted in advance
15 of the hearing on the website maintained by the Settlement Administrator. If the date of the Final
16 Approval Hearing is subsequently modified by the Court, no further notice is required to be
17 published to Settlement Class Members, except that the Parties will notify any Settlement Class
18 Member who has filed a written Objection Statement of any change to the date of the Final Approval
19 Hearing. In the event the Court does not enter the Final Judgment as specified on Exhibit C, or
20 decides to do so only with material modifications, then this entire Settlement shall become null and
21 void, unless the Parties hereto agree in writing to proceed with this Settlement as modified.

22 **XI. CONFIRMATORY DISCOVERY**

23 Prior to execution of the Settlement Agreement Defendant shall provide confirmatory
24 discovery to Class Counsel regarding the Covered Products and the Settlement Class. To the extent
25 necessary, Defendant and Plaintiff will provide any additional confirmatory discovery as may be
26 necessary to effectuate the terms of the Settlement.

1 **XII. PARTIES' AUTHORITY**

2 The signatories represent that they are fully authorized to enter into this Settlement and bind
3 the Parties to its terms and conditions.

4 **XIII. MUTUAL FULL COOPERATION**

5 The Parties agree to cooperate fully with each other to accomplish the terms of this
6 Settlement, including but not limited to, execution of such documents and the taking of such other
7 action as may reasonably be necessary to implement the terms of this Settlement. The Parties shall
8 use their best efforts, including all efforts contemplated by this Settlement and any other efforts that
9 may become necessary by order of the Court, or otherwise, to effectuate this Settlement. As soon as
10 practicable after execution of this Settlement, Class Counsel, with the assistance and cooperation of
11 Defendant and its counsel, shall take all necessary steps to secure the Court's final approval of this
12 Settlement. Defendant agrees that it will not attempt to discourage Settlement Class Members from
13 submitting Claim Forms.

14 **XIV. NO ADMISSION**

15 This Settlement is not to be construed or deemed as an admission of liability, culpability,
16 negligence, or wrongdoing on the part of Defendant. Defendant denies all liability for claims
17 asserted in the Action. Each of the Parties has entered into this Settlement with the intention to avoid
18 further disputes and litigation with the attendant inconvenience and expenses. This Settlement is a
19 settlement document and shall, pursuant to Cal. Evid. Code §§ 1151 and 1152 and any comparable
20 laws of any other state or jurisdiction, be inadmissible in evidence in any proceeding in order to
21 establish liability or the propriety of class certification. The preceding sentence shall not apply to an
22 action or proceeding to approve or enforce this Settlement.

23 **XV. ENFORCEMENT ACTIONS**

24 The Court shall retain jurisdiction, and shall have sole and exclusive jurisdiction, to enforce,
25 interpret and implement this Settlement, including any alleged violations of the Settlement, and the
26 terms of any order entered pursuant to this Settlement.
27

XVI. COMPLETE DEFENSE

To the extent permitted by law, this Settlement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceedings that may be instituted, prosecuted, or attempted in breach of or contrary to this Settlement.

XVII. NOTICES

Unless otherwise specifically provided, all notices, demands or other communications in connection with this Settlement shall be in writing and shall be deemed to have been given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

For the Settlement Class	For Defendant
Lisa Omoto (SBN 303830) FARUQI & FARUQI, LLP 1901 Avenue of the Stars, Suite 1060 Los Angeles, CA 90067	Patrick J. Somers (SBN 318766) KENDALL BRILL & KELLY, LLP 10100 Santa Monica Blvd, Ste 1725 Los Angeles, CA 90067-4013

XVIII. CONSTRUCTION

The Parties agree that the terms and conditions of this Settlement are the result of arm's-length negotiations between the Parties and that this Settlement shall not be construed in favor of or against any Party by reason of the extent to which any Party or her or its counsel participated in the drafting of this Settlement.

XIX. MATERIAL TERMS; CAPTIONS

Each term of this Settlement is a material term of the Settlement, not merely a recital, and reflects not only the intent and objectives of the Parties but also the consideration to be exchanged by the Parties hereunder. Paragraph titles or captions are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any of its provisions.

XX. INTEGRATION CLAUSE

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This Settlement and its exhibits (all of which are incorporated herein by reference) contain the entire agreement between the Parties relating to the Settlement, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written, and whether by Class Counsel or Defendant’s counsel, are extinguished.

XXI. NON-EVIDENTIARY USE

Neither this Settlement nor any of its terms shall be offered or received into evidence in the Action, or in any other action or proceeding; provided, however, that nothing contained in this “non-evidentiary use” section shall prevent this Settlement Agreement from being used, offered, or received in any proceeding to enforce, construe, or finalize this Settlement.

XXII. NO COLLATERAL ATTACK

This Settlement shall not be subject to collateral attack by any Settlement Class Member or any recipient of the notices to the Settlement Class after the Final Judgment. Such prohibited collateral attacks shall include claims made before the Final Approval Hearing that a Settlement Class Member’s Individual Cash Settlement Payment or Individual Voucher Settlement Payment was improperly calculated or adjusted.

XXIII. AMENDMENTS

The terms and provisions of this Settlement may be amended only by a written agreement, which is both (1) signed by the Parties who have executed this Settlement; and (2) approved by the Court.

XXIV. GOVERNING LAW

This Settlement shall be governed by, construed under, and interpreted by, and the rights of the Parties determined in accordance with, the laws of the State of California, irrespective of the State of California’s choice of law principles.

XXV. BINDING ON ASSIGNS

This Settlement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, administrators, successors, and assigns.

XXVI. CLASS COUNSEL SIGNATORIES

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It is agreed that because the Settlement Class appears to be so numerous, it is impossible or impractical to have each member of the Settlement Class execute this Settlement. The notice plan set forth herein will advise Settlement Class Members of all material terms of this Settlement, including the binding nature of the releases and such shall have the same force and effect as if this Settlement were executed by each Settlement Class Member.

XXVII. DISPUTE RESOLUTION

If Plaintiff or Class Counsel, on behalf of Plaintiff or any Settlement Class Member, or Defendant’s counsel, on behalf of Defendant, at any time believe that the other Party has breached or acted contrary to the Agreement, that Party shall notify the other Party in writing of the alleged violation. The Parties shall meet and confer in good faith to resolve the dispute. If the Parties are unable to resolve their differences within twenty (20) calendar days, either Party shall first contact the mediator (Hon. Louis Meisinger) or a replacement selected by Signature Resolution or a comparable agency to try to resolve the dispute. If that proves unsuccessful, the Party may file an appropriate motion for enforcement with the Court. The Parties agree that the Court shall have sole and exclusive jurisdiction for motions to enforce this Settlement.

XXVIII. COUNTERPARTS

This Settlement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement, which shall be binding upon and effective as to all Parties and the Settlement Class. This Settlement may be executed by electronic or PDF signatures.

XXIX. ENFORCEMENT

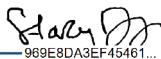
In any proceeding arising under or seeking to enforce or construe this Settlement the prevailing party or parties shall be entitled to recover his, her or its attorneys’ fees and costs.

IN WITNESS WHEREOF, the Parties have duly executed this Settlement as of the dates indicated below:

CLASS REPRESENTATIVE AND SETTLEMENT CLASS COUNSEL:

1 DATED: May¹⁷, 2023

Stacy Dorcas

DocuSigned by:


Individually and on behalf of the
Settlement Class

5 **DEFENDANT:**

6 DATED: May ^{5/19/2023} __, 2023

Aterian, Inc.

Christopher Porcelli

By: Christopher Porcelli
General Counsel

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