

# **EXHIBIT B**

## **AMENDED CLASS ACTION SETTLEMENT AGREEMENT**

This Class Action Settlement Agreement (hereinafter the “Settlement Agreement” or “Agreement”) is made by the Named Plaintiffs, as defined in this Agreement, on behalf of themselves and all others similarly situated (including the Settlement Class as defined below) (collectively “Plaintiffs”), and Defendants POPSUGAR Inc. and POPSUGAR MEDIA Inc. (“POPSUGAR” or “Defendant”), in the action captioned: *O’Brien et al. v. POPSUGAR Inc. et al.*, currently pending in the Superior Court for the State of California for the County of Santa Clara, Case No. 18CV329645, as amended pursuant to this Agreement (herein “*O’Brien*” and also referred to hereinafter as “the Litigation”).

This Settlement Agreement is intended to fully and finally compromise, resolve, discharge and settle all claims brought against POPSUGAR in *O’Brien*, as well as all class claims pleaded in *Batra v. POPSUGAR Inc.*, No. 18-cv-03752-HSG (N.D. Cal.) (herein “*Batra*” or “the *Batra* action”), and all claims based on or related thereto, to the fullest extent reflected herein, subject to the approval of the Court. Plaintiffs and Defendant will, at times, be referred to collectively herein as “the Parties.”

### **I. DEFINITIONS**

The following are certain definitions applicable to this Agreement. Definitions contained elsewhere in this Agreement, including all definitions in the preceding section of this Agreement, shall also be effective.

1. “Authorized Claimant” means any Settlement Class Member who submits a valid and timely Claim that qualifies for payment under the terms of this Settlement Agreement.
2. “Bar Date” means the final date by which a Claim Form must be postmarked or submitted online in order for a Settlement Class Member to be eligible to receive a Settlement Payment. The Bar Date shall be 60 days after the date the Notice is sent to the Settlement Class.

3. “Business Day” means a day other than a Saturday, Sunday or other day on which commercial banks are authorized or required by law to be closed for business.

4. “Claim” means the submission to be made by Settlement Class Members, using the Claim Form.

5. “Claim Form” means the claim form to be developed by the Parties and the Claims Administrator, or an electronic equivalent of such claim form.

6. “Claims Administrator” means KCC LLC, a third-party claims administrator that has been mutually agreed upon by the Parties to effectuate the Settlement, as approved by the Court, or any successors mutually agreed upon by the Parties and approved by the Court.

7. “Claims Administration Expenses” mean those expenses of effectuating and administering the Settlement, *i.e.*, the costs incurred to the Claims Administrator, the costs of giving notice to Settlement Class Members, the costs of administering and disbursing the Net Common Fund, and the fees of the Claims Administrator approved for reimbursement by the Court. The Parties estimate Claims Administration Expenses to be approximately \$\$57,361. These expenses shall be paid from the Gross Common Fund.

8. “Class Counsel” means Gibbs Law Group LLP, Cory Watson, P.C., Glancy Prongay & Murray LLP, and Cohen IP Law Group, PC as class counsel for Plaintiffs.

9. “Class Counsel Fees” mean the amount awarded to the Class Counsel by the Superior Court for the County of Santa Clara for prosecuting and obtaining a settlement of the Litigation. These fees shall be paid from the Gross Common Fund.

10. “Class Period” means the period of time from and including May 1, 2017, to and including June 7, 2018.

11. “Court” means the Superior Court for the County of Santa Clara.

12. “Defendant’s Counsel” means Keker, Van Nest & Peters LLP as counsel for Defendant.

13. “Effective Date” means the later of the following events: (a) when the period for filing any appeal, writ or other appellate proceeding related to the Litigation or this Settlement has lapsed; (b) when any appeal, writ, or other appellate proceeding opposing the Settlement has been dismissed finally and conclusively with no right to pursue further remedies or relief; or (c) when any appeal, writ, or other appellate proceeding has upheld the Court’s final approval order and judgment related to this Settlement with no right to pursue further remedies or relief. It is the intention of the Parties that the Settlement shall not become effective until the Court’s final approval order and entered judgment is completely final, and there is no further recourse by any appellant or objector who seeks to contest the Settlement or the finality of the Litigation.

14. “Escrow Account” means an account maintained at Huntington National Bank, wherein the Settlement Amount shall be deposited.

15. “Escrow Agent” means Huntington National Bank.

16. “Escrow Agreement” means the agreement between the Parties and the Escrow Agent setting forth the terms under which the Escrow Agent shall maintain the Escrow Account.

17. “Exclusion Request” means a written request by a member of the Settlement Class to exclude themselves from the Settlement in accordance with the instructions in the Notice(s).

18. “Final Approval Hearing” means the hearing to be conducted by the California Superior Court for the County of Santa Clara to determine whether to enter the Final Judgment approving and implementing the terms of this Agreement.

19. “Final Judgment” means the Final Judgment and Order Approving Class Settlement.

20. “Gross Common Fund” means the maximum amount of \$2,115,000, that Defendant shall pay, in its entirety, pursuant to this Settlement Agreement. The Gross Common Fund is an “all in” number that shall be used for payment of all Claims, Claims Administration Expenses, Class Counsel Fees, Plaintiffs’ Litigation Expenses, Incentive Awards, and any cost, taxes or other expense arising from payments pursuant to this Agreement, excluding Defendants’ costs, taxes, and other expenses incurred by Defendants, including attorney fees. Defendant warrants and represents and the Parties agree that by funding the Gross Common Fund, Defendant will discharge any profits earned from conduct related to events at issue in the Litigation.

21. “Incentive Award” means the amount awarded to Named Plaintiffs as Class Representatives by the Superior Court for the County of Santa Clara for bringing, prosecuting, and obtaining a settlement of the Litigation. These awards shall be paid from the Gross Common Fund and shall not exceed \$7,500 each.

22. “Motion for Preliminary Approval” means the Motion for Preliminary Approval of the Settlement and its supporting papers.

23. “Named Plaintiffs” mean Plaintiffs Cathy O’Brien and Laura Adney.

24. “Net Common Fund” means the net amount available for payment of Claims to Settlement Class Members after deducting Claims Administration Expenses, Class Counsel Fees, Plaintiffs’ Litigation Expenses, Incentive Awards, and any other cost, tax, or expense related to the Settlement.

25. “Notice(s)” means the Notice(s) of Pendency of Class Action Settlement and Proposed Hearing Date for Court Approval to be provided to Settlement Class Members, subject to Court approval. The Parties have attached an agreed upon proposed form of short-form notice hereto as **Exhibit A**, which is incorporated by reference into this Settlement Agreement.<sup>1</sup> The Parties, however, acknowledge and understand that the number and form(s) of notice(s) ultimately approved and/or ordered by the Court may differ materially from the proposed form(s) of notice attached hereto, and the Court’s approval of the attached form(s) of notice is not a material condition of this Agreement or the Settlement. In the event that multiple Notices are ordered by the Court, all references to a singular “Notice” herein shall be interpreted to apply equally to each individual Notice that is approved by the Court and sent to Settlement Class Members.

26. “Order Granting Preliminary Approval” means the order or statement of decision that the Named Plaintiffs and Defendant will seek from the Court granting preliminary approval of the Settlement, without material variation from the form attached hereto as **Exhibit B**. Entry of the Order Granting Preliminary Approval shall constitute preliminary approval of the Settlement Agreement.

27. “Plaintiffs’ Litigation Expenses” mean the sum of Plaintiffs’ expenses of litigation incurred by Plaintiffs and Class Counsel as set forth on Class Counsel’s billing statement and approved for reimbursement by the Court, which shall not exceed \$28,254.21.

28. “Preliminary Approval Date” means the date that the Court enters the Order Granting Preliminary Approval and thus: a) preliminarily approves the Settlement, and the

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<sup>1</sup> As used in this Agreement, “Notice” refers to Exhibit A to this Agreement. The Parties also submit as Exhibit D a proposed long-form notice, which will be available on the settlement website maintained by the Settlement Administrator.

exhibits thereto, and b) enters an order providing for notice to the Settlement Class, an opportunity to opt out of the Settlement Class, an opportunity to submit timely objections to the Settlement, a procedure for submitting claims, and setting a date for the Final Approval Hearing.

29. “Preliminary Approval Hearing” means the hearing to be conducted by the Court to determine whether to grant the Motion for Preliminary Approval.

30. “Released Claims” means collectively (i) the Settlement Class Members’ Released Claims and (ii) the Named Plaintiffs’ Released Claims, as those terms are defined in Subsections VII.1; VII.2.<sup>2</sup>

31. “Releasees” means collectively: (i) Defendant POPSUGAR Inc. and Defendant POPSUGAR MEDIA Inc. including the past, present and future parents, subsidiaries, affiliates, divisions, franchisees, and any other legal entities that are or were owned or controlled by Defendants, whether foreign or domestic; and (ii) the past, present and future shareholders, employees, directors, officers, members agents, independent contractors, consultants, representatives, fiduciaries, insurers, attorneys, legal representatives, predecessors, successors or assigns of any entity referenced in part (i) of this Subsection.

32. “Settlement” means the settlement of this Litigation and related claims, including without limitation the claims asserted in the *Batra* matter, between and among the Named Plaintiffs, the Settlement Class Members, and Defendant, as set forth in, and effectuated by, this Agreement.

33. “Settlement Class” means all natural persons for whom (i) POPSUGAR displayed a Profile Page during the Class Period or (ii) whose Image(s), after being posted to a

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<sup>2</sup> This document is divided using Sections, Subsections, Paragraphs, then Subparagraphs. These are listed in descending order.

POPSUGAR webpage, generated a Commission during the Class Period. The Settlement Class will be determined by reference to POPSUGAR's records of Profile Pages generated and commissions received, except that an individual may also seek inclusion in the class under Subsection VI.5 of this Agreement. As used herein, the term "Profile Page" means a POPSUGAR webpage with a URL containing an Instagram handle used by the individual. As used herein, the term "Image" means a photograph posted by a Settlement Class Member to Instagram during the Class Period. As used in this Paragraph, the term "Commission" means money received by POPSUGAR as a result of a "click" on an affiliate link related to products featured in an Image or a sale made in connection with such a "click." Excluded from the Settlement Class are Class Counsel and their immediate family members, the judicial officers and associated court staff assigned to the Litigation and their immediate family members, and the individuals who, as of the Preliminary Approval date, are plaintiffs in the following actions: *Memari v. Popsugar Inc.*, 4:18-cv-05589-HSG (N.D. Cal.), and *Friedman v. Popsugar, Inc.*, 4:18-cv-06623-HSG (N.D. Cal.).

34. "Settlement Class Member(s)" means any person(s) included in the Settlement Class, including without limitation any person deemed included in the Settlement Class pursuant to Paragraph VI.5.b of this Agreement, and who has not timely and validly opted out of the Settlement in accordance with the instructions in the Notice(s) or otherwise released their claims against POPSUGAR that are related to the Litigation. Named Plaintiffs are included within the term "Settlement Class Members."

35. "Settlement Payment" or "Settlement Check" means the payment of the Claim mailed by the Claims Administrator to the Settlement Class Member.

## II. RECITALS



1. WHEREAS, on June 7, 2018, Named Plaintiffs filed the Litigation on behalf of themselves and allegedly similarly situated individuals in California Superior Court in and for the County of Santa Clara.

2. WHEREAS, on June 25, 2018, Nita Batra filed the *Batra* action, which arises from the identical factual predicate as that underlying the claims in *O'Brien*.

3. WHEREAS, on July 20, 2018, Defendant removed *O'Brien* to the United States District Court for the Northern District of California, where it was related to the *Batra* action.

4. WHEREAS, the Named Plaintiffs moved to remand *O'Brien* to state court; POPSUGAR opposed that motion; and the federal court granted that motion on February 6, 2019, thus remanding *O'Brien* to California Superior Court in and for the County of Santa Clara, where the case is again in active status.

5. WHEREAS, discovery has opened in the *Batra* matter and the *Batra* court has set a case-management schedule.

6. WHEREAS, on March 14, 2019, Class Counsel, Named Plaintiffs, Defendant's Counsel, and Defendant participated in a full-day mediation facilitated by retired U.S. Magistrate Judge Jay Gandhi of JAMS, during which the parties negotiated and reached a classwide settlement in principle, the basic terms of which were set forth in a signed Memorandum of Understanding.

7. WHEREAS, at the mediation the parties agreed to settle the first-filed *O'Brien* action as a class case, with Defendant and the *Batra* plaintiff arriving at an independent individual resolution of the later-filed *Batra* action.

8. WHEREAS, this Settlement Agreement is made in compromise of disputed claims, including the claims presented in the *Batra* litigation. Based upon all of the information

evaluated, investigated, and reviewed, and after considering all of the circumstances relating to this litigation, including the uncertainties surrounding the risks of further litigation and the defenses that Defendant could assert on the merits and to class certification, the Named Plaintiffs and Class Counsel believe that this proposed Settlement Agreement is fair, reasonable, adequate, in the best interests of the Named Plaintiffs and the Settlement Class, and confers substantial benefits upon the Settlement Class.

9. WHEREAS, the Named Plaintiffs warrant and represent that they are effecting this Settlement and executing this Agreement and the releases contained herein after having received full legal advice as to their respective rights and after having had the opportunity to obtain independent counsel to review this Agreement if desired.

10. WHEREAS, Defendant and Class Counsel understand and agree that this Agreement is intended to fully resolve and provide complete and global peace as to all claims and that were brought or could have been brought against POPSUGAR in the Litigation, and in the *Batra* action, including without limitation all claims against POPSUGAR related to the Images, except the following pending actions: *Memari v. Popsugar Inc.*, 4:18-cv-05589-HSG (N.D. Cal.), and *Friedman v. Popsugar, Inc.*, 4:18-cv-06623-HSG (N.D. Cal.).

11. NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND AGREED, by the Named Plaintiffs, for themselves and on behalf of the Settlement Class, and by Defendant, that subject to the approval of the Court, the Litigation shall be settled and compromised, and the Released Claims shall be finally and fully compromised, settled, and released as to the Releasees, in the manner and upon the terms and conditions set forth hereafter in this Agreement.

### III. SETTLEMENT TERMS

Named Plaintiffs and Defendant agree as follows:

1. **Scope of Settlement**

The Settlement includes monetary and non-monetary components, as set forth in detail below. The Settlement described herein will effect a full and final settlement and resolution of: a) all claims brought against Defendant in the Litigation and in the *Batra* action and b) all Named Plaintiffs' Released Claims and Settlement Class Members' Released Claims as described in Section VII.

2. **Monetary Consideration**

(a) Subject to court approval, and in consideration for the mutual covenants and promises set forth herein, Defendant shall pay the Gross Common Fund amount of \$2,115,000 into an Escrow Account administered by the Escrow Agent for the benefit of the Settlement Class and for distribution in the manner specified in this Agreement. It is understood and agreed that payment of this Gross Common Fund amount of \$2,115,000 shall be the sole financial obligation of Defendant under this Agreement and shall be Defendant's total liability under this Agreement and that under no circumstance shall Defendant be required to pay anything more than this Gross Common Fund amount.

(b) The Gross Common Fund is an "all in" number that shall be used for the benefit of the Settlement Class to: (1) to satisfy the Claims of all Settlement Class Members, as specified herein; (2) to satisfy all Plaintiffs' Litigation Expenses; (3) to satisfy all claims for an award of Plaintiffs' Class Counsel Fees and Incentive Awards to class representatives; (4) to satisfy the Claims Administration Expenses incurred in this action; and (5) to satisfy any other cost, tax, or expense related to the Settlement.

(c) The Gross Common Fund shall be paid in accordance with the terms of this Agreement and in no event shall Defendant be liable for making any payments under this

Settlement, or for providing any relief to the Settlement Class or the Named Plaintiffs before the deadlines set forth in this Agreement.

(d) If this Agreement is approved, in no event shall any of the Gross Common Fund be returned (or revert back) to Defendant.

(e) If this Agreement is not approved, is nullified pursuant to Section IX, is overturned or is modified on appeal or as a result of further proceedings on remand of any appeal with respect to this Agreement, or if the Effective Date otherwise does not occur, the balance of the Gross Common Fund, including all earned and accrued interest, but less any Claims Administration Expenses incurred, shall be returned to Defendant within five (5) Business Days, or as soon as practicable, as set forth in this Agreement.

### 3. **Non-Monetary Consideration**

(a) The non-monetary components of this Settlement from POPSUGAR are:

(i.) POPSUGAR agrees not to display a profile page on its website of any Settlement Class Member without obtaining authorization from such Settlement Class Member.

(ii.) POPSUGAR agrees that it will expand the training it currently provides its employees on its policies governing the use of third-party copyrights and publicity rights by conducting additional privileged and confidential training related to those policies as reviewed by outside legal counsel.

(b) After consultation with Class Counsel, POPSUGAR maintains the right to make further changes to these non-monetary components of this Settlement, as long as such changes do not materially and adversely undermine the primary benefits of the non-monetary terms set forth this Subsection.

(c) The non-monetary terms set forth in Paragraph III.3.a shall be implemented by no later than the Effective Date. Through counsel, POPSUGAR will notify Class Counsel when the non-monetary terms set forth in Paragraph III.3.a have been implemented. This notification is the only verification to which Class Counsel, Named Plaintiffs, or Settlement Class Members shall be entitled to receive concerning POPSUGAR's compliance with Subsection III.3.

(d) Nothing in this Subsection shall restrict any legal right, claim, or defense belonging to Defendant in a manner in which the general public is not restricted.

#### 4. **Denial of Liability**

(a) DEFENDANT DENIES THAT IT OR ANY OF ITS PAST OR CURRENT PARENTS, SUBSIDIARIES, AFFILIATES OR SUCCESSORS OR ANY OTHER RELEASEE HAS ENGAGED IN ANY UNLAWFUL ACTIVITY, WRONGDOING OR HAS FAILED TO COMPLY WITH THE LAW IN ANY RESPECT; DENIES THE ALLEGATIONS IN THE LITIGATION AND IN *BATRA*; DENIES HAVING ANY LIABILITY TO ANYONE UNDER THE CLAIMS ASSERTED IN THE LITIGATION AND IN *BATRA*; DENIES INFRINGING UPON ANYONE'S COPYRIGHT, DENIES VIOLATING THE DIGITAL MILLENNIUM COPYRIGHT ACT; DENIES INFRINGING UPON ANYONE'S PUBLICITY RIGHTS; DENIES THAT IT TORTIOUSLY INTERFERED WITH A CONTRACT; DENIES THAT IT VIOLATED THE LANHAM ACT; DENIES THAT IT WAS UNJUSTLY ENRICHED; DENIES THAT IT VIOLATED SECTION 17200 ET SEQ. OF THE CALIFORNIA BUSINESS AND PROFESSIONS CODE; AND DENIES THAT A LITIGATION CLASS COULD PROPERLY BE CERTIFIED IN THIS LITIGATION OR IN *BATRA*.

(b) The Parties expressly acknowledge that this Agreement is entered into for the sole purpose of compromising highly disputed claims (including without limitation the copyright and

Digital Millennium Copyright Act claims in the *Batra* action) and eliminating the uncertainties, burdens, expense and delay of protracted litigation. The Parties expressly acknowledge that nothing herein is an admission of liability, culpability, negligence, or wrongdoing by Defendant or any of the Releasees.

**5. Restrictions on Use of the Agreement/Information Regarding Settlement**

(a) The Parties agree that this Agreement is a settlement document and shall, pursuant to California Evidence Code section 1152 or any other equivalent or related law, regulation, statute, or provision, be inadmissible as evidence in any proceeding. In addition, the Parties agree that this Agreement, the fact of this Settlement, any other evidence of this Settlement, any of the terms in the Agreement, any documents filed in support of the Settlement, any press release or other statement concerning the Agreement or Settlement and/or any negotiations, proceedings, acts performed, or documents executed pursuant to, or in furtherance of, this Agreement or the Settlement shall not, in any court, arbitration, administrative proceeding or other proceeding or tribunal, constitute, or be offered, received, claimed, construed or used or deemed as, an admission, finding or evidence of: 1) any wrongdoing, fault or omission by Defendant; 2) any violation of any statute or law; 3) any liability on the claims or allegations in the Litigation or any other proceeding; 4) the validity of any claim in the Litigation or any Released Claim; or 5) the propriety of certifying a litigation class or any representative group in the Litigation or any other proceeding, and shall not be used by any person or entity for any purpose whatsoever in any legal proceeding other than a proceeding to enforce the terms of the Agreement in this Litigation, including but not limited to any arbitration or legal proceeding.

(b) However, the Parties also agree that this paragraph and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may be admitted in

evidence and otherwise used in any proceeding to enforce any or all terms of this Agreement. The Parties also agree that the Releasees shall have the right to file the Settlement Agreement, the Final Approval Order, and any other document or evidence relating to the Settlement in any action that may be brought against them in order to support a defense or counterclaim relating to any claims released, precluded, or barred by this Agreement.

**6. Certification of Settlement Class for Settlement Purposes Only**

(a) For purposes of this Settlement only, the Parties stipulate to the certification of the Settlement Class under California law (California Code of Civil Procedure § 382 and Rules of Court, rule 3.769). The Parties agree that this Settlement Agreement is contingent upon the approval and certification by the Court of the Settlement Class for settlement purposes only.

(b) The Parties agree that Defendant does not waive, and instead expressly reserves, its rights to challenge the propriety of class certification for any purpose should the Court not approve the Settlement Agreement and expressly disputes that certification would be proper for the purposes of litigating the claims pleaded in the Litigation or in the *Batra* action.

(c) The Parties agree that the Parties' stipulation to the certification of the Settlement Class for settlement purposes only shall not be used by any person or entity for any purpose whatsoever in any legal proceeding, including but not limited to any arbitration, other than a proceeding to enforce the terms of this Agreement, as set forth in this Agreement. This includes, but is not limited to, an agreement that this stipulation shall not constitute, or be offered, received, claimed, construed or deemed as, a waiver, admission, finding or evidence of the propriety of certifying a litigation class in the Litigation or in any other legal proceeding.

(d) Defendant does not agree or consent to certification of the Settlement Class for any purpose other than to effectuate the Settlement of the Litigation. If this Settlement

Agreement is terminated pursuant to its terms, or the Effective Date for any reason does not occur, all Orders certifying the Settlement Class for purposes of effecting this Settlement Agreement, and all preliminary and/or final findings regarding the Settlement Class certification order, shall be automatically vacated upon notice to the Court and the Litigation shall proceed as though the Settlement Class had never been certified pursuant to this Settlement Agreement and such findings had never been made. Additionally, the Litigation shall revert *nunc pro tunc* to the procedural status quo as of the date and time immediately before execution of the Settlement Agreement, in accordance with this Settlement Agreement.

(e) In connection with the proposed certification of the Settlement Class, the Parties shall cooperate and present to the Court for its consideration, information and/or evidence as may be requested by the Court, under the applicable due-process requirements and standards for class certification.

#### **7. Procedure if Settlement is Ineffective**

If, for any reason, the Settlement does not become Final or the Effective Date does not occur, the Parties stipulate and agree that the Parties shall maintain all rights, remedies, arguments, and defenses to the Litigation as they had at the time immediately before execution of the Settlement Agreement. These rights shall include, but are not limited to, Defendant's right to file a demurrer, a motion to strike, and/or a motion to compel arbitration as well as Named Plaintiffs' rights to oppose such motions, including the right to argue that there are no grounds to compel arbitration and/or that any right to arbitrate has been waived. In this event, the Parties agree to meet and confer in good faith about an appropriate litigation schedule.

#### **8. Settlement Approval Procedure**



(a) This Settlement Agreement will become final and effective upon occurrence of all of the events required to obtain the Effective Date. The Parties and their counsel agree to use their best efforts to obtain a final court order approving this Settlement (“Final Approval Order”).

(b) Promptly upon execution of this Settlement Agreement by the Parties and their respective counsel of record, the Named Plaintiffs shall submit to the Court for approval a Motion for Preliminary Approval of the Settlement, as described in Paragraph III.9.b of this Agreement, for purposes of effectuating this Settlement.

(c) The document described in the preceding Paragraph above shall seek the following order(s) from the Court, among other orders detailed in this Agreement or agreed upon by the Parties: (1) the entry of an order by the Court granting preliminary approval of the Settlement Agreement, including conditional certification of the Settlement Class for settlement purposes only (the Parties’ proposed Order Granting Preliminary Approval is attached hereto as “Exhibit B”); (2) the entry of an order by the Court approving the proposed Notice(s), the proposed and agreed upon form of which is attached hereto as Exhibit A; and (3) the entry of an order by the Court scheduling a hearing date for final approval of the Settlement Agreement.

(d) After the Order Granting Preliminary Approval is Granted, the Parties will seek Final Approval of the Settlement as detailed in this Settlement. As part of this process, Class Counsel shall file, on or before the date of the final approval hearing, the documents detailed in this Settlement, including but not limited to the Claims Administrator’s verification, in writing, that the Notice to the Settlement Class has been disseminated in accordance with the Court’s Order Granting Preliminary Approval.

## **9. Preliminary Approval of Settlement**

The Parties agree to the following procedures for obtaining preliminary approval of the Settlement, certifying a conditional Settlement Class, notifying Settlement Class Members, and obtaining final court approval of the Settlement:

(a) **Class Certification for Settlement Purposes Only**

The Parties stipulate to certification of the Settlement Class for purposes of settlement only, as described in Subsection III.6.

(b) **Motion for Preliminary Approval**

Named Plaintiffs shall file the Motion for Preliminary Approval of the Settlement and proposed Order Granting Preliminary Approval of the Settlement with the supporting papers, a draft of which will be provided to Defendant's Counsel no fewer than five Business Days prior to filing with the Court. The Parties shall jointly agree upon the timing for that filing, the Motion to be filed with the Court, the Claims Administrator, and the timing for any preliminary or final approval hearings requested in the Motion.

The Parties agree that the Court may enter the Order Granting Preliminary Approval, without material variation from Exhibit B except as otherwise permitted by this Agreement, preliminarily approving the Settlement and this Agreement. Among other things, the Order Granting Preliminary Approval shall preliminarily certify the Settlement Class for settlement purposes only; approve the Named Plaintiffs as class representatives; appoint Class Counsel to represent the Settlement Class; appoint the Claims Administrator; approve the Notice(s) of Class Settlement; approve the requirements for objecting to the Settlement and excluding individuals from the Settlement Class, as provided in this Agreement; provide that certification and all actions associated with certification are undertaken on the condition that the certification and other actions shall be automatically vacated if this Agreement is terminated, as provided in this

Agreement; preliminarily enjoin all Named Plaintiffs, Settlement Class Members, and their legally authorized representatives, unless and until they submit a timely request for exclusion pursuant to this Agreement, from filing or otherwise participating in any other suit based on the Named Plaintiffs' Released Claims or Settlement Class Members' Released claims, or from attempting to effect an opt-out of a group, class, or subclass of individuals; and schedule the Final Approval Hearing.

**(c) Notice of Class Settlement**

Notwithstanding the Parties' shared intent to obtain the Court's approval of the Parties' proposed form of notice attached hereto as Exhibit A, the Parties understand and agree that the Court's approval of the Parties' proposed form of notice attached hereto as Exhibit A shall not be deemed a material condition or term of this Agreement, and the Court's modification of the Notice(s) required to effectuate the Settlement shall not be a basis to invalidate this Agreement.

In the event that the Court directs the Parties to prepare and/or use Notice(s) that materially differ from the form(s) of notice attached hereto as Exhibit A, the Parties agree to cooperate in good faith to prepare alternative form(s) of notice consistent with the Court's instructions to effectuate the terms and intentions of this Settlement and Agreement. The defined term "Notice(s)" as used in this Agreement shall include any alternative notice(s) agreed upon by the Parties and/or ordered by the Court.

Following entry of the Order Granting Preliminary Approval of the Settlement, the Notice(s) shall be distributed to the Settlement Class.

The Notice(s) will, subject to Court approval, advise all of the Settlement Class of the nature of the case, the terms of the Settlement, the terms of the release and the binding nature of the release, the final approval hearing date or date(s), an estimate of the Allocation of Claims for

each member of the Settlement Class, the manner of submitting a claim, the Settlement Class' right to opt out or object, and the processes for opting out or objecting. The Notice(s) shall inform members of the Settlement Class that Settlement Payments will be made by direct payment via first class mail or via an electronic method acceptable to the Parties.

(i.) Within five (5) Business Days of notice of the entry of an order granting preliminary approval, Defendant will provide, confidentially, to the Claims Administrator the best information that it can identify in its possession, custody or control following a good faith inquiry with respect to the Settlement Class Members' identities, addresses, telephone numbers and email addresses to the extent known. The Claims Administrator shall keep and maintain all information provided by Defendant as secure and confidential and shall only use such information for purposes of the notice and administration of this Settlement.

(ii.) The Claims Administrator shall undertake commercially reasonable measures to obtain Settlement Class Members' email addresses and to send a copy of the Notice(s) by email. The Claims Administrator shall also send a copy of each Notice to Class Counsel and to the counsel for Defendant. If the Claims Administrator is unable to send a copy of the Notice(s) by email to any Settlement Class Member, the Claims Administrator shall provide the Notice(s) or a link thereto via Instagram's Direct Message function.

(iii.) Within sixty (60) days following preliminary approval, the Claims Administrator shall provide Notice to all identified members of the Settlement Class.

(iv.) Thirty (30) days before the Bar Date or at such other time or times as the Settlement Administrator deems appropriate, the Settlement Administrator shall distribute via email a notice reminding Settlement Class Members who have not submitted a Claim Form of the need to do so in order to receive a Settlement Payment. For any Settlement Class Member

who, pursuant to Subparagraph III.9.c.ii, receives the Notice(s) by Instagram's Direct Message function, the Settlement Administrator shall also provide an appropriate notice by that same method.

(v.) The Parties agree that the procedures set forth in this Section constitute reasonable and the best practicable notice under the circumstances and an appropriate and sufficient effort to locate current addresses for Settlement Class Members such that, unless the court orders otherwise, no additional efforts to do so shall be required. Regardless of whether the affected member of the Settlement Class actually receives the Notice or cashes his or her individual Claim check, the affected member of the Settlement Class shall remain a Settlement Class Member and shall be bound by all the terms of the Settlement and the Court's final approval order and judgment.

(d) **Opt-Out Process**

(i.) Members of the Settlement Class may opt out of the settlement pursuant to Paragraph III.9.d or may object to the Settlement pursuant to Paragraph III.9.e, but may not do both. Any member of the Settlement Class who submits a timely Request for Exclusion pursuant to Paragraph III.9.d may not file an objection to the Settlement.

(ii.) Named Plaintiffs represent that they shall not themselves opt out of the settlement of the Litigation, and Named Plaintiffs and Class Counsel warrant and represent that they shall not encourage, counsel, or represent others to opt out of the settlement of the Litigation.

(iii.) Members of the Settlement Class (with the exception of the Named Plaintiffs) may choose to opt out of the Settlement by following the directions in the Notice(s). Any such request to opt out ("Request for Exclusion") must be made in writing to the Claims

Administrator, signed by the member of the Settlement Class, and postmarked no later than thirty (30) days after the date the applicable Notice is mailed to the Settlement Class (the “Response Deadline”). The Request for Exclusion must contain at least the following: (A) the opting-out Settlement Class Member’s full name, current address, telephone number, Instagram handle(s) used during the Class Period, email address, and signature; and (B) a clear manifestation of the Settlement Class Member’s intent to opt-out of participating in the Settlement Class, like “I wish to opt out of participating in the Settlement Class.” The date of the postmark shall be the exclusive means used to determine whether a request for exclusion has been timely submitted. Requests for Exclusion that do not include all required information, do not comply with the instructions in the Notice, or that are not submitted on a timely basis, will be deemed null, void and ineffective. Requests for Exclusion must be exercised individually by each member of the Settlement Class, not as or on behalf of a group, class, or subclass, except that such individual exclusion requests may be submitted by a legal authorized representative of any member of the Settlement Class.

(iv.) The Claims Administrator, in its sole discretion, shall determine whether a request for exclusion was timely submitted or properly made. The Claims Administrator’s decision shall be final and binding but will be subject to review by the Court at the time of the Final Approval Hearing so long as the member of the Settlement Class submits an objection to the Claims Administrator’s decision at or before the Final Approval Hearing.

(v.) The Claims Administrator shall prepare a list of all persons who timely and properly requested exclusion from the Settlement Class (“Opt-Outs”) and shall, before the Final Approval Hearing, submit an affidavit to the Court and the Parties attesting to the accuracy of this list.

(vi.) The Parties' counsel shall receive a copy of all valid Requests for Exclusion from the Claims Administrator within ten (10) days after the final date to opt out, along with a complete list of all Persons who have timely and properly requested exclusion from the Settlement Class.

(vii.) Persons who are eligible to and do submit valid and timely requests to opt-out of the Settlement Class will not participate in the Settlement or be bound by its terms, will not be bound by the Court's final judgment approving a proposed Settlement, will not be a Settlement Class Member, and will receive no part of the Net Common Fund or the Gross Common Fund.

(viii.) Every member of the Settlement Class who does not validly and timely opt out shall be deemed a Settlement Class Member, shall be bound by this Agreement and shall have all their claims released as provided for herein, even if they never received actual notice of the Litigation or this proposed Settlement.

(e) **Objection Process**

(i.) Members of the Settlement Class who are not Opt-Outs have the right to object to this Settlement Agreement or the proposed Settlement. Members of the Settlement Class who wish to object to the Settlement Agreement or proposed Settlement must, no later than the Response Deadline, send to the Claims Administrator via US Mail either a written statement objecting to the Settlement or may appear at the Final Approval Hearing to object and be heard without filing or serving any papers and without providing any advance notice. With respect to written objections, the postmark date of the notice of objection shall be the exclusive means for determining whether the notice of objection is timely. The Claims Administrator will provide

any written objections to all counsel for the Parties upon receipt of such objections, and to the Court if desired and in the manner directed by the Court.

(ii.) Written objections to the Settlement must contain at least the following: (A) the objecting Settlement Class Member's full name, current address, telephone number, Instagram handle(s) used during the Class Period, email address, and signature; (B) a clear reference to the Litigation; (C) the nature of the objector's dispute with Defendant; (D) a statement of the specific legal and factual reasons why the objector believes the Settlement is unfair or objects to the Settlement; and (E) a statement whether the objector intends to appear at the final approval hearing, either in person or through counsel and, if through counsel, a statement identifying that counsel by name, bar number, address and telephone number. All written objections shall be signed by the objecting Settlement Class Member, even if the objecting Settlement Class Member is represented by counsel. As described in the previous Subparagraph, any Settlement Class Member may also appear at the Final Approval Hearing to object and be heard without filing or serving any papers and without providing any advance notice

(iii.) The right to object to the proposed Settlement or Settlement Agreement must be exercised individually by a Settlement Class Member or his or her attorney and not as a member of a group, class, or subclass, except that such individual exclusion requests may be submitted by a legally authorized representative for a Settlement Class Member.

(iv.) Class Counsel and/or Defendant's Counsel may, at least ten (10) days (or some other number of days as the Court shall specify) before the final approval hearing, file responses to any written objections submitted to the Court.



(v.) Members of the Settlement Class who object to the proposed Settlement or the Settlement Agreement shall remain Settlement Class Members and shall be deemed to have voluntarily waived their right to pursue an independent remedy against Defendant and the Releasees. To the extent any Settlement Class Member objects to the proposed Settlement or Settlement Agreement and such objection is overruled in whole or in part, such individuals will be forever bound by the Court's Final Approval Order.

(vi.) In the event that any Person objects to or opposes this proposed Settlement or the Settlement Agreement or attempts to intervene in or otherwise enter the Litigation, the Parties agree to use their best efforts to cooperate in the defense of the Settlement.

Notwithstanding the foregoing, it shall be Class Counsel's sole responsibility to respond to any objections made with respect to any application for the Class Counsel Fee award or Plaintiffs' Litigation Expenses award. Upon providing Defense Counsel with notice, Class Counsel may, at their sole discretion, depose any objecting Settlement Class Member at any time prior to the Settlement becoming Final, with Defense Counsel having the right to attend and ask questions at the deposition.

(vii.) By signing this Agreement, Named Plaintiffs and Class Counsel each represent and warrant that they have no objection to the Settlement, and will not encourage, counsel, or represent others to object to the settlement of the Litigation.

**(f) Final Approval Hearing**

A Final Approval Hearing to determine final approval of the Settlement shall be conducted subject to the calendar of the Court and agreement of the Parties. No later than five (5) Business Days after the close of the Objection and Opt Out Period, the Claims Administrator shall provide Class Counsel and Counsel for Defendant with a Declaration of Compliance to be

filed with the Court by Class Counsel and the list of Opt-Outs required under paragraph III.9.d. No later than twenty-one days before the Final Approval Hearing, Named Plaintiffs shall file a Motion for Final Approval, Memoranda of Points and Authorities in Support of the Settlement, and Motion for Attorneys' Fees and Costs and Incentive Awards, all in forms to be agreed upon between the Parties and consistent with this Agreement, and the Parties shall file responses, either jointly or separately, to any objections to the Settlement. Class Counsel shall provide a draft copy of the papers described in the proceeding sentence to Defendant's Counsel at least five Business Days before the filing date. Upon final approval of the Settlement by the Court at or after the Final Approval Hearing, the Parties shall present an agreed-upon proposed Final Order and Judgment to the Court for its approval and entry, the entry of which is a material condition for this Settlement Agreement.

**10. Final Order and Judgment**

Upon final approval of the settlement, a Final Order and Judgment shall be entered by the Court, which shall, among other things:

(a) Grant final approval to the Settlement as fair, reasonable, adequate, in good faith and in the best interests of the Settlement Class, as a whole, and order the Parties to carry out the provisions of this Agreement.

(b) Enter the Final Order and Judgment regarding the Litigation, providing that Named Plaintiffs and Settlement Class Members shall take nothing from Defendant except as provided for in this Agreement and without fees or costs except as provided in this Agreement.

(c) Approve the Opt-Out List and determine that the Opt-Out List is a complete list of all members of the Settlement Class who have timely requested exclusion from the Settlement Class and, accordingly, shall neither share in nor be bound by the Final Judgment.

(d) Adjudge that the Named Plaintiffs are each conclusively deemed to have released Defendant and the Releasees of and from Named Plaintiffs' Released Claims and are bound by the provisions of this Agreement.

(e) Adjudge that the members of the Settlement Class who have not been excluded from the Settlement Class as provided in the Opt-Out List approved by the Court are Settlement Class Members and are conclusively deemed to have released Defendant and the Releasees of and from any and all Settlement Class Members' Released Claims and are bound by the provisions of this Agreement.

(f) Declare that this Agreement and the Final Order and Judgment are binding on, and have *res judicata* and preclusive effect, in all pending and future lawsuits or other proceedings, whether brought by the Named Plaintiffs' Releasers or Settlement Class Members' Releasers, that raise claims that were brought in the *O'Brien* or *Batra* actions or that arise from the injury alleged in, or the factual predicate of, the *O'Brien* or *Batra* actions. This declaration binds all Named Plaintiffs' Releasers and Settlement Class Members' Releasers regardless of whether the Settlement Class Member previously initiated or subsequently initiates individual litigation or other proceedings encompassed by the Settlement Class Members' Released Claims, and even if such Settlement Class Member never received actual notice of the Litigation or this proposed Settlement.

(g) Order that the certification of the Settlement Class and final approval of the proposed Settlement, and all actions associated with them, are undertaken on the condition that they shall be vacated if the Settlement Agreement is terminated or disapproved in whole or in part by the Court, or any appellate court or other court of review, or if Defendant invokes the right to withdraw from the Settlement as provided herein, in which event the Agreement and the

fact that it was entered into shall not be offered, received or construed as an admission or as evidence for any purpose, including but not limited to an admission by any Party of liability or non-liability or of the certifiability of a litigation class. Notwithstanding the foregoing terms, the modification by the Court to the form of Notice(s) and/or any award of attorneys' fees to Class Counsel shall not alone be sufficient to vacate the certification of the Settlement Class and final approval of the proposed Settlement.

(h) Without affecting the finality of the Final Order and Judgment, reserve continuing jurisdiction over the Named Plaintiffs, the Settlement Class and Defendant as to all matters concerning the administration, consummation, and enforcement of this Agreement, as provided herein.

(i) Approve any other and further provisions consistent with the terms of this Settlement Agreement to which the Parties expressly consent in writing.

#### IV. Tax

##### 1. Tax Treatment of Gross Common Fund

(a) Defendant shall pay the Gross Common Fund, at the time specified in this Agreement, into an Escrow Account at Huntington National Bank, which shall act as the Escrow Agent for this account.

(b) The Parties and the Escrow Agent agree to treat the Gross Common Fund as a "qualified settlement fund" within the meaning of Treasury Regulation section 1.468B-1 from the earliest possible date, and the Escrow Agent, as administrator of the Escrow Account within the meaning of Treasury Regulation section 1.468B-2(k)(3), shall be responsible for timely preparing and filing tax returns for the Escrow Account or any other necessary documentation, making any advisable or necessary elections to carry out the provisions of this paragraph, and

paying from the Escrow Account any and all taxes, including any interest or penalties thereon owed with respect to the Escrow Account, to the extent necessary.

(c) All taxes arising with respect to the income, if any, earned by the Gross Common Fund (including any taxes that may be imposed upon the Defendant with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes) and any expenses and costs incurred in connection with the payment of taxes pursuant to this paragraph (including, without limitation, expenses of tax attorneys and/or accountants and mailing, administration and distribution costs and expenses related to the filing or failure to file all necessary or advisable tax returns (the “Tax Expenses”) shall be paid out of the Gross Common Fund. Defendant shall not have any liability or responsibility for the taxes or the Tax Expenses beyond any portion of the Gross Common Fund that is allocated to the payment thereof. The Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Gross Common Fund and the distributions and payments therefrom, including, without limitation, the tax returns described in Treasury Reg. section 1.468B-2(k), and to the extent applicable, Treasury Reg. section 1.468B-2(1). Such tax returns shall be consistent with the terms herein and in all events shall reflect that all taxes on the income earned by the Settlement Fund shall be paid out of the Settlement Fund. The Escrow Agent shall also timely pay taxes and Tax Expenses out of the Settlement Fund to the extent necessary and is authorized to withdraw from the Escrow Account amounts necessary to pay taxes and Tax Expenses. The Parties hereto agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of the Settlement

Agreement. Neither the Parties nor their counsel shall have any responsibility or liability for the acts or omissions of the Escrow Agent.

**2. Tax Allocation of Claims**

(a) Under no circumstances will Defendant or Defendant's Counsel have any liability for taxes or tax expenses under the Settlement. Nothing in this Settlement Agreement, or statements made during the negotiation of its terms, shall constitute tax advice.

(b) The Claims shall be reported to the IRS via an IRS Form 1099 if those Claims are \$600 or greater as determined by the Escrow Agent.

(c) Neither Party has made any representation to the other Party as to the taxability or tax implications of any payments pursuant to this Agreement.

(d) No person shall have any claim against Defendant, Defendant's Counsel, or the Claims Administrator based on mailings, distributions, and payments made in accordance with or pursuant to this Agreement.

**V. Calculating Claims**

**1. Method of Determining Allocation of Claims**

(a) The Parties recognize and agree that the claims in the Litigation are difficult to determine with certainty and are subject to differing calculations and formulas and contain differing and potentially overlapping statutory penalties. The Parties hereby agree that the method of allocating the Claims to Settlement Class Members provided herein (hereinafter, "Allocation Formula of Claims") is reasonable and that the payments provided herein are designed to provide a fair settlement to Settlement Class Members, despite uncertainties of the amounts alleged to be owed to Settlement Class Members and the calculation of them.

(b) The Parties also agree that they will request court approval of the Allocation Formula of Claims as stated in this Agreement as part of their efforts to obtain approval of this

Settlement. Any modification to the Allocation Formula of Claims stated in this Section shall not: (i) affect the enforceability of the Agreement; (ii) provide any of the Parties with the right to terminate the Agreement; or (iii) impose any obligation on Defendant to increase the Gross Common Fund amount being paid as consideration in connection with this Agreement.

2. **Allocation Formula of Claims.** To receive a payment from the Settlement, a Settlement Class Member or his/her legally authorized representative must timely submit a Claim by mail or via the online web portal that satisfies the requirements in this paragraph and must not have submitted a request for exclusion. Each Settlement Class Member who satisfies these criteria, including those determined to be a Settlement Class Member pursuant to Subsection VI.5, is an Authorized Claimant. A Claim is timely if it is postmarked by the Bar Date and mailed to the Claims Administrator at the address in the Notice, or if it is submitted online by the Bar Date. The Claim Form must be signed (electronically, if submitted online) under penalty of perjury. Claims shall be calculated *pro rata* by dividing the Net Common Fund by the number of Settlement Class Members who submit a timely and valid Claim Form.

3. **Settlement of Disputed Amounts.** The Parties recognize that the Claims to be paid to Authorized Claimants reflect settlement of a dispute over the Released Claims. No governmental entity is directly or indirectly a recipient of any portion of the payments made pursuant to this Settlement, and no governmental entity has any interest or involvement of any type or kind in the litigation hereby settled. The payments made herein are not made or received with the intention of avoiding or reducing any liability to a governmental entity of any type or kind.

## VI. ADMINISTRATION OF COMMON FUND

1. **Funding of Gross Common Fund:** Subject to the payment maximums specified in Subsection III.2 of this Agreement, Defendant shall pay or cause to be paid the Gross Common

Fund into the Escrow Account no later than fifteen (15) business days after the later of: (a) the date of entry by the Court of an order preliminarily approving this Settlement; or (b) Defendants' Counsel's receipt from Class Counsel of the information necessary to effectuate a transfer of funds to the Escrow Account, including wiring instructions that include the bank name, the bank's address, ABA routing number, account name and number, and a signed W-9 reflecting a valid taxpayer identification number for the qualified settlement fund in which the Settlement Amount is to be deposited.

2. Except as provided herein or pursuant to orders of the Court, the Gross Common Fund shall remain in the Escrow Account prior to the Effective Date. All funds held by the Escrow Agent shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed or returned pursuant to the terms of this Stipulation and/or further order of the Court. The Escrow Agent shall invest any funds in the Escrow Account exclusively in United States Treasury Bills (or a mutual fund invested solely in such instruments) and shall collect and reinvest all interest accrued thereon, except that any residual cash balances up to the amount that is insured by the FDIC may be deposited in any account that is fully insured by the FDIC. In the event that the yield on United States Treasury Bills is negative, in lieu of purchasing such Treasury Bills, all or any portion of the funds held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States. Additionally, if short-term placement of the funds is necessary, all or any portion of the funds held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States.

**3. Distribution of Gross Common Fund**



Any Class Counsel Fees, Plaintiffs' Litigation Expenses, Incentive Awards, Claims Administration Expenses, and any other cost, tax, or expense related to the Settlement shall be deducted from the Gross Common Fund pursuant to this Section.

**(a) Application for Approval of Plaintiffs' Attorney Fees, Plaintiffs' Litigation Expenses, and Incentive Awards**

(i.) The terms of this Agreement relating to the Class Counsel Fees, Plaintiffs' Litigation Expenses, and Incentive Awards, were not negotiated by the Parties before a full agreement was reached as to all other material terms of the proposed Settlement, including but not limited to, the terms relating to relief to the Settlement Class.

(ii.) Class Counsel shall submit an application to the Court for approval of Class Counsel Fees which shall not exceed one-third (\$705,000) of the Gross Common Fund, Plaintiffs' Litigation Expenses, and Incentive Awards. As set forth above, Class Counsel Fees, Plaintiffs' Litigation Expenses, and Incentive Awards shall come exclusively from the Gross Common Fund and shall be subject to approval by the Court. The Parties agree that approval by the Court of the requested Class Counsel Fees, Plaintiffs' Litigation Expenses, and/or Incentive Awards is not a material condition of this Agreement or the Settlement, and the reduction or modification of such Class Counsel Fees and/or Plaintiffs' Litigation Expenses shall not be sufficient bases to rescind this Agreement or the Settlement.

**(b) Payment of Class Counsel Fees, Plaintiffs' Litigation Expenses, and Incentive Awards.** The amount of awarded Class Counsel Fees, Plaintiffs' Litigation Expenses, and Incentive Awards as defined in this Agreement and approved by the Court, shall be paid by the Claims Administrator to the Class Counsel. The Claims Administrator shall make payment of the Plaintiffs' Attorney Fees, Plaintiffs' Litigation Expenses, and Incentive Awards five (5) days

after the Effective Date, as set forth in this Agreement. Class Counsel shall provide the Claims Administrator with a properly completed Form W-9 and the Claims Administrator shall issue Form 1099 to Class Counsel for the payments.

(c) **Payment of Claims Administration Expenses.** The Claims Administrator shall receive the sum of up to \$57,361, or any other such amount approved by the Parties and by the Court, from the Gross Common Fund as set forth in Subsection III.2 of this Agreement. All Claims and Administration Expenses, as well as all applicable taxes and escrow fees, shall be paid out of the Gross Common Fund.

(d) **Approval of Fees and Costs.** Recovery of Class Counsel Fees, Plaintiffs' Litigation Expenses, and Incentive Awards are not conditions to this Agreement, and are to be considered by the Court separately from the fairness, reasonableness, adequacy and good faith of the Settlement. The Parties agree that they will accept the determination of the Court with respect to the amount of Class Counsel Fees, Plaintiffs' Litigation Expenses, Incentive Awards, and Claims Administration Expenses to be awarded from the Gross Common Fund. The Parties agree, however, that in no event will a determination of the Court allow Class Counsel Fees, Plaintiffs' Litigation Expenses, Incentive Awards, and Claims Administration Expenses to be awarded from any source other than the Gross Common Fund and in no event will a determination of the Court allow Defendant to pay for any amounts that are larger than the amounts specified in this Agreement. Any order or proceeding relating to the denial or reduction of an award of Class Counsel Fees, Plaintiffs' Litigation Expenses, and Incentive Awards, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Agreement, or affect or delay the finality of the Final Judgment. To the extent the Court does not approve the full amount of Class Counsel Fees, Plaintiffs' Litigation

Expenses, Incentive Awards, or Claims Administration Expenses, the non-approved amounts will be allocated to the Net Common Fund.

(e) **Remainder of Gross Common Fund.** After any Class Counsel Fees, Plaintiffs' Litigation Expenses, Incentive Awards, Claims Administration Expenses, and any other cost, tax, or expense related to the Settlement are deducted from the Gross Common Fund, the remainder of the Gross Common Fund shall pass to the Net Common Fund.

#### 4. **Distribution of Net Common Fund**

After the Effective Date, and solely for purposes of this Agreement, the Net Common Fund shall be distributed by the Claims Administrator to Authorized Claimants using the method set forth in Section V.

(a) **Distribution of the Net Common Fund.** The Claims Administrator will use reasonable efforts to distribute the Net Common Fund to Authorized Claimants within ninety (90) days after the Effective Date, but in no event before twenty-one (21) days after the Effective Date. The Claims Administrator shall send with each Settlement Payment disbursement an explanation of how the Authorized Claimant's Claim was calculated. Additionally, each Settlement Payment check shall carry a legend that states: "By endorsing this check, I consent to join the Settlement Class in *O'Brien v. POPSUGAR* and agree to release all of my claims that are covered by the Settlement, in addition to the other claims I have released as a Settlement Class Member." Regardless of whether a Settlement Class Member submits a Claim or endorses a Settlement Payment check, the Settlement Class Member's claims will be released by operation of law.

(b) **Residue.** One hundred twenty (120) days after the distribution of the balance of the Net Common Fund for the benefit of the Settlement Class, the Claims Administrator will

send a neutral reminder to any Authorized Claimants who have not already cashed their checks reminding them to do so. The Claims Administrator will cooperate in reissuing checks to any Settlement Class Members who need a new check; however, if a check remains uncashed one hundred eighty (180) days after distribution of the balance of the Net Common Fund for the benefit of the Settlement Class, the check shall be null and void, and shall not be reissued unless mutually agreed upon by Class Counsel and Defendant's Counsel. One hundred eighty-one (181) days after the distribution of the balance of the Net Common Fund for the benefit of the Settlement Class, should any amount remain in the Net Common Fund, the residue shall be awarded on a cy pres basis to the International Women's Media Foundation, which the Parties agree has a substantial nexus to the Settlement Class and represents a next-best, indirect recipient of settlement funds.

**5. Class Membership Dispute Resolution**

(a) If, at any time before the Bar Date, an individual informs Class Counsel or Defendant's Counsel that s/he believes that s/he is a Settlement Class Member, Class Counsel or Defendant's Counsel shall promptly forward the communication to the Settlement Administrator.

(b) If, at any time before the Bar Date, the Settlement Administrator receives a communication from an individual claiming to be a Settlement Class Member (including without limitation any communication received pursuant to Paragraph VI.5.a), the Settlement Administrator shall promptly forward that communication to Class Counsel and Defendant's Counsel, and Class Counsel and Defendant's Counsel shall meet and confer according to this Paragraph. In this event, Class Counsel and Defendant's Counsel shall meet and confer in good faith and determine whether the individual making the claim, or the Parties, can verify that

Defendant published on its webpages Images relating to the individual during the Class Period in a manner that is challenged by the Litigation.

(i) If Class Counsel and Defendant's Counsel agree that such a publication occurred, the Parties shall notify the Court that the individual is a Settlement Class Member (seeking an amended judgment, if necessary) and instruct the Settlement Administrator to issue the individual a Settlement Payment.

(ii) If Class Counsel and Defendant's Counsel agree that no such a publication occurred, they will instruct the Settlement Administrator to notify the individual that s/he is not a Settlement Class Member.

(iii) If Class Counsel and Defendant's Counsel disagree whether such a publication occurred, they shall notify the Court of the dispute and the Court shall conclusively resolve whether the individual is a Settlement Class Member using the criterion set forth in Paragraph VI.5.b, issuing an amended judgment if necessary.

(c) Settlement Class Members who receive a Settlement Payment under Subparagraph VI.5.b(i) or Subparagraph VI.5.b(iii) shall receive a *pro rata* share of the Net Common Fund pursuant to Subsection V.2.

6. **Claims Administration.** The Claims Administrator shall regularly and accurately report to the Parties in written form, the substance of the work performed, including the number of Opt-Outs, and the amounts payable to Settlement Class Members. All disputes relating to the Claims Administrator's ability and need to perform its duties shall be referred to the Court if they cannot be resolved by the Parties.

## VII. Releases

### 1. Release of Claims by Named Plaintiffs

(a) For and in consideration of the mutual promises contained herein, the Named Plaintiffs, individually and on behalf of each of her heirs, estates, trustees, executors, administrators, representatives, agents, successors and assigns, and anyone claiming through her or them, or acting or purporting to act on her or their behalf (collectively the “Named Plaintiff Releasers”), fully and finally release, relinquish and discharge, with prejudice, as of the Effective Date, the Releasees from the “Named Plaintiffs’ Released Claims” (as defined below), and including a California Civil Code section 1542 waiver as to such “Named Plaintiffs’ Released Claims.” The “Named Plaintiffs’ Released Claims” being released pursuant to this Paragraph only include those claims that were brought in the *O’Brien* or *Batra* actions or that arise from the injury alleged in, or the factual predicate of, the *O’Brien* or *Batra* actions. The “Named Plaintiffs’ Released Claims” being released pursuant to this Paragraph are defined as: any and all past, present and future claims, suits, debts, liabilities, rights, demands, obligations, guarantees, costs, expenses, attorneys’ fees and costs, damages, penalties, prejudgment interest, actions, or causes of action of whatever kind, description or nature, whether known or unknown, existing or potential, recognized now or hereafter, expected or unexpected, which the Named Plaintiffs Releasers have ever had, or hereafter may claim to have against the Releasees or any Releasee arising on or before the Effective Date, pursuant to any theory of recovery (including without limitation, any claims based in contract or tort, common law or equity, federal, state or local law, statute, ordinance or regulation, any claims for compensatory, consequential, punitive or exemplary damages, statutory damages, penalties, restitution, interest, attorneys’ fees, costs or disbursements) and for any type of relief that can be released as a matter of law. For the avoidance of doubt, the preceding sentence includes without limitation claims arising under: (i) the Copyright Act (17 U.S.C. § 101 et seq.), (ii) the Digital Millennium Copyright Act (17

U.S.C. § 1201 et seq.), (iii) the Lanham Act (15 U.S.C. § 1051 et seq.), (iv) California constitutional or common law, (v) section 3344 of the California Civil Code, (vi) any jurisdiction's publicity-right-protection laws, and (vii) the California Unfair Competition Law. Named Plaintiffs' Released Claims further include any claims, under the laws of any jurisdiction, related to (i) contract interference or (ii) to misappropriation, including without limitation misappropriation of intellectual property and/or publicity rights. The "Named Plaintiffs' Released Claims" further include, but are not limited to, the Settlement Class Members' Released Claims. The "Named Plaintiffs' Released Claims" also include, but are not limited to, any and all claims for attorneys' fees, costs, or disbursements incurred by Class Counsel or any other counsel representing the Named Plaintiffs or Settlement Class Members, or by the Named Plaintiffs Releasers or Settlement Class Members Releasers, or any of them, in connection with or related in any manner to the Litigation, the Settlement of the Litigation, the administration of such Settlement and/or the Released Claims, except to the extent otherwise specified in this Agreement.

(b) With respect to the above Named Plaintiffs' Released Claims, the Named Plaintiffs expressly waive any rights or benefits available to them or to the Named Plaintiff Releasers under the provisions of section 1542 of the California Civil Code and all similar federal or state laws, rights, rules or legal principles of any other jurisdiction that may be applicable herein. The Named Plaintiffs expressly acknowledge that they are familiar with section 1542 of the California Civil Code and understand fully the statutory language of California Civil Code section 1542, 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.

The Named Plaintiffs expressly acknowledge that they may hereafter discover claims presently unknown or unsuspected or discover facts in addition to or different from those which they now know or believe to be true with respect to matters released herein. Nevertheless, the Named Plaintiffs acknowledge that a portion of the consideration received herein is for a release with respect to unknown damages and complaints, whether resulting from known injuries and known consequences or from unknown injuries or unknown consequences of known or unknown injuries. With this understanding, the Named Plaintiffs state that they nevertheless elect to, and do, assume all risks for claims that have arisen, whether known or unknown, which they ever had, or hereafter may claim to have, on or before the Effective Date and specifically, knowingly, and voluntarily waive and relinquish, to the fullest extent permitted by law, all rights, benefits and provisions that they may otherwise may have under California Civil Code section 1542.

(c) The Named Plaintiffs also expressly acknowledge that they are familiar with principles of law such as California Civil Code section 1542 and specifically, knowingly, and voluntarily waive and relinquish, to the fullest extent permitted by law, all rights, benefits and provisions that they may otherwise may have under all similar federal or state laws, rights, rules, or legal principles of any other jurisdiction that are similar to California Civil Code section 1542 and may be applicable herein.

(d) Each Named Plaintiff further acknowledges, agrees and understands that: a) she has read and understands the terms of this Agreement; b) she has been advised in writing to consult with an attorney before executing this Agreement; c) she has obtained and considered such legal counsel as he or she deems necessary; and d) she has been given the opportunity to consider whether or not to enter into this Agreement.



(e) As of the Effective Date, the Named Plaintiffs agree to hold harmless and covenant not to sue each and all of the Releasees from each and all of the Named Plaintiffs' Released Claims and Settlement Class Members' Released Claims. The Named Plaintiffs further agree that they shall not now or hereafter initiate, maintain, or assert any Named Plaintiffs' Released Claims or Settlement Class Members' Released Claims against the Releasees in any other court action or before any administrative body, tribunal, arbitration panel or other adjudicating body.

## 2. Release of Claims by Settlement Class Members

(a) For and in consideration of the mutual promises contained herein, all Settlement Class Members<sup>3</sup> who have not been excluded from the Settlement Class as provided in this Agreement, individually and on behalf of each Settlement Class Member's heirs, estates, trustees, executors, administrators, representatives, agents, successors and assigns, and anyone claiming through him, her, or them or acting or purporting to act on his, her, or their behalf (collectively the "Settlement Class Members Releasers"), upon entry of final judgment, shall fully and finally release, relinquish, and discharge, with prejudice, the Releasees from all the "Settlement Class Members' Released Claims" (as defined below). The "Settlement Class Members Released Claims" being released pursuant to this Paragraph only include those claims that were brought in the *O'Brien* or *Batra* actions or that arise from the injury alleged in, or the factual predicate of, the *O'Brien* or *Batra* actions. The "Settlement Class Members' Released Claims" being released pursuant to this Paragraph are defined as: any and all past, present and future claims, suits, debts, liabilities, rights, demands, obligations, guarantees, costs, expenses, attorneys' fees and costs, damages, penalties, prejudgment interest, actions, or causes of action of

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<sup>3</sup> Including any individual determined to be a Settlement Class Member pursuant to Subsection VI.5

whatever kind, description or nature, whether known or unknown, existing or potential, recognized now or hereafter, expected or unexpected, which the Settlement Class Members' Releasers have ever had, or hereafter may claim to have against the Releasees or any Releasee arising on or before the Effective Date, pursuant to any theory of recovery (including without limitation, any claims based in contract or tort, common law or equity, federal, state or local law, statute, ordinance or regulation, any claims for compensatory, consequential, punitive or exemplary damages, statutory damages, penalties, restitution, interest, attorneys' fees, costs or disbursements) and for any type of relief that can be released as a matter of law. For the avoidance of doubt, the preceding sentence includes, without limitation, claims arising under: (i) the Copyright Act (17 U.S.C. § 101 et seq.), (ii) the Digital Millennium Copyright Act (17 U.S.C. § 1201 et seq.), (iii) the Lanham Act (15 U.S.C. § 1051 et seq.), (iv) California constitutional or common law, (v) section 3344 of the California Civil Code, (vi) any jurisdiction's publicity-right-protection laws, and (vii) the California Unfair Competition Law. Settlement Class Members' Released Claims further include any claims, under the laws of any jurisdiction, related to (i) contract interference or (ii) to misappropriation, including without limitation misappropriation of intellectual property and/or publicity rights. The Settlement Class Members' Released Claims include, but are not limited to, any and all claims for attorneys' fees, costs or disbursements incurred by Class Counsel or any other counsel representing the Named Plaintiffs or Settlement Class Members, or by the Named Plaintiffs or Settlement Class Members or any of them, in connection with or related in any manner to the Litigation, the Settlement of the Litigation, the administration of such Settlement and/or the Released Claims, except to the extent otherwise specified in this Agreement.

(b) Upon Court approval, the Named Plaintiffs and all Settlement Class Members who have not been excluded from the Settlement Class as provided in the Opt-Out List, shall be bound by this Settlement Agreement and the applicable Releases stated herein, and all of their claims alleged in the Litigation shall be released, even if they never received actual notice of this Litigation or this Settlement.

#### VIII. **Other provisions**

##### 1. **Notices**

Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the fifth day after mailing by United States mail, addressed as follows:

To Named Plaintiffs, Settlement Class Members & Class Counsel:

Michael Schrag, Esq.  
Gibbs Law Group LLP  
505 14th Street, Suite 1110  
Oakland, CA 94612

Ryan Lutz, Esq.  
Cory Watson, P.C.  
2131 Magnolia Avenue South  
Birmingham, AL 35205

Jonathan Rotter, Esq.  
Glancy Prongay & Murray LLP  
1925 Century Park East, Suite 2100  
Los Angeles, CA 90067

Michael Cohen, Esq.  
Cohen IP Law Group, PC  
9025 Wilshire Blvd., Suite 301  
Beverly Hills, California 90211

To Defendant & Defendant's Counsel:

Benedict Y. Hur, Esq.  
KEKER, VAN NEST & PETERS LLP  
633 Battery Street

San Francisco, California 94111

2. **Authorization.** The signatories to this Agreement represent that they are fully authorized to enter into this Settlement Agreement, bind the Parties to its terms and conditions, and take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement.

3. **Publicity.**

(a) Prior to filing the motion for preliminary approval. The Parties, and Class Counsel, agree that no Party and no Class Counsel (directly or through their representatives) will make any public statement, whether oral or written, regarding this Agreement or the settlement described herein, prior to filing the motion for preliminary approval.

(b) After filing the motion for preliminary approval. The Parties agree that, after the motion for preliminary approval is filed, the Named Plaintiffs will make no out-of-court statement that is either online or public regarding this Agreement, the Litigation, the *Batra* action or the settlement described herein, unless approved in advance by Defendant. The preceding sentence does not preclude Class Counsel from identifying and describing the Litigation or the *Batra* action on their respective websites. The Parties agree that the term described in this Subsection VIII is a material term of this Agreement. The Parties further agree that, notwithstanding any other provision of this Agreement, Defendant will have the right to oppose any request for an Incentive Award in the event that a Named Plaintiff breaches the terms set forth in this Paragraph 3.

4. **Return of Documents and Data.** Within thirty (30) days after the filing of the Final Judgment pursuant to this Agreement, Class Counsel shall return to Defendant all

documents and data designated as confidential received from Defendant or, certify in writing the destruction of any such documents and/or data, and further agree that all such documents and data shall not be disclosed to any third parties or be used for any purpose other than to effectuate the terms and conditions of this Agreement.

**5. Jurisdiction and Venue**

(a) After entry of the Final Judgment, the Court shall have continuing and exclusive jurisdiction over the Parties to this Agreement and the Litigation solely for purposes of: (i) enforcing this Settlement Agreement, (ii) addressing settlement administration matters, (iii) resolving any dispute which may arise with regard to the terms and conditions of this Agreement, and (iv) addressing such post-Final Judgment matters as may be appropriate under court rules or applicable law, including but not limited to any appropriate injunctive relief. Except where the context indicates otherwise, references to “the Court” shall also include any other courts that take jurisdiction of the Litigation, or any to whom the Court has referred the matter.

(b) Any other action based on this Agreement or related to any of its terms, shall be venued in California Superior Court for the County of Santa Clara, which shall have jurisdiction over all such disputes.

**6. Successors.** This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective heirs, trustees, executors, administrators, successors and assigns, including any and all Releasees and any corporation, partnership, or other entity into or with which any Party hereto may merge, consolidate or reorganize.

**7. Amended Complaint.** The Named Plaintiffs will file an Amended Complaint with their Motion for Preliminary Approval. A copy of that Amended Complaint is attached hereto as Exhibit C.

## **IX. Nullification of Settlement Agreement**

1. If more than two percent (2%) of the members of the Settlement Class opt out of the Settlement Class by submitting valid and timely Requests for Exclusion as set forth in Paragraph III.9.d of this Agreement, Defendant shall have the right in its sole and exclusive discretion to rescind and void this Settlement Agreement at any time before final approval by the Court, by providing written notice to Class Counsel that Defendant revokes the Settlement pursuant to this Section within ten (10) Business Days from the date on which the Claims Administrator furnishes the parties with the number of valid and timely Requests for Exclusion, as set forth in Paragraph III.9.d. If Defendant exercises this option, or if the Court fails to approve this Agreement, neither Defendant nor any other Releasee shall have any obligation to make any payments under this Agreement and Defendant shall receive a return of any funds already paid. In such cases, Defendant shall pay all Claims Administration Expenses incurred up to that date.

2. If the Court does not approve any material condition of this Settlement Agreement or effects a fundamental change of this Settlement Agreement, with the exception of any modifications to the form of Notice(s) as proposed by the Parties, reductions in the award of Class Counsel Fees, or reductions in the award of Plaintiffs' Litigation Expenses, or reduction in the award of Incentive Awards, then the entire Settlement Agreement will be voidable and unenforceable at the option of either Party hereto. Either Party may void this Settlement Agreement as provided in this Paragraph by giving written notice to all other Parties and the Court at any time prior to final approval of the Settlement Agreement by the Court. In the event this Settlement Agreement becomes void as provided in this Paragraph, the Parties shall proceed in all respects as if this Agreement had not been executed, Defendant shall have no obligation to

make any payment, including payment of the Gross Common Fund, and in that event that Defendant has previously made any payment under this Agreement, such monies shall be returned promptly to Defendant. In such a case, any fees already incurred by the Claims Administrator shall be paid by the Party who exercises the option to void the Settlement Agreement.

**X. Mutual Full Cooperation**

1. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including, but not limited to, allowing reasonable confirmatory discovery in the form of limited, sworn interrogatory responses and execution of such documents and preparation of alternative form(s) of Notice(s) as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties and their respective counsel agree that they shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may be necessary by the order of the Court, or otherwise, to effectuate this Settlement Agreement. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the consent, assistance and cooperation of Defendant's Counsel, take all necessary and agreed upon steps to secure the Court's final approval of this Settlement Agreement.

2. Except where this Settlement Agreement itself explicitly provides otherwise, all terms, conditions, and Exhibits are material and necessary to this Settlement Agreement and have been relied upon by the Parties in entering into this Settlement Agreement. In the event the Parties are unable to reach agreement on the form or content of any non-material document needed to implement the Agreement, or on any supplemental non-material provisions that may become necessary to effectuate the terms of this Agreement, the Parties agree to seek the assistance of the Court in order to determine if agreement can be reached on these matters with

the Court's assistance. The Parties agree, however, that this Paragraph is not intended to allow the Court to order any Party to agree to such documents or provisions and that this paragraph is not intended to allow any Party to seek the Court's assistance with respect to any material documents or provisions that cannot be mutually agreed upon.

3. The Parties agree that neither they nor their counsel, including without limitation Class Counsel, will solicit or otherwise encourage, directly or indirectly, any members of the Settlement Class to request exclusion from the Settlement Class, object to the settlement, or appeal the Final Judgment.

## **XI. Interpretation of this Agreement**

1. **Headings.** The headings contained in this Agreement are for reference only, are not to be construed as a part of the Agreement and shall not affect the meaning or interpretation of this Agreement.

### **2. Entire Agreement**

(a) After this Agreement is fully executed by all Parties and their attorneys of record, this Agreement, including its Exhibits, shall constitute the entire agreement relating to settlement of this Litigation and the causes of action and defenses asserted therein. This Agreement supersedes any and all prior or contemporaneous agreements, understandings, negotiations, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, with respect to all matters. No rights hereunder may be amended, waived or modified except in a writing signed by all Parties.

(b) Each Party to this Agreement warrants that he, she or it is acting upon his, her or its independent judgment and upon the advice of his, her or its counsel, and not in reliance upon any warranty or representation, express or implied, of any nature of any kind by any other party, other than the warranties and representations expressly made in this Agreement.



3. **California Law.** All terms of this Agreement and its Exhibits shall be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.

4. **Counterparts.** This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Any executed counterpart shall be admissible in evidence to prove the existence and contents of this Agreement. The Parties agree, however, that all counterparts to this Agreement shall be executed no later than one (1) week after the Agreement has been executed by counsel for the Parties.

5. **Incorporation of Exhibits.** All exhibits attached hereto are incorporated by reference and are a material part of this Agreement. Any notice, order, judgment or other exhibit that requires approval of the Court must be approved without material alteration from its current form in order for this Agreement to become effective.

6. **Representation by Counsel.** The Parties have each been represented by counsel and have cooperated in the drafting and preparation of this Agreement. This Agreement shall not be construed more strictly against one party than another on the basis that the party was the drafter or participated in the drafting of this Agreement. The Parties agree that, because of the arm's length negotiations resulting in this Agreement, all Parties hereto have contributed substantially and materially to the preparation of the Agreement.

7. **Reasonableness of Settlement**

(a) The Parties believe that this is a voluntary, fair, reasonable and adequate Settlement and that the Parties have arrived at this Settlement in good faith, through arms-length negotiations facilitated by a third-party neutral, based upon adequate information, taking into

account all relevant factors, present and potential, and after consultation with experienced legal counsel.

(b) The Named Plaintiffs and Class Counsel acknowledge that an adequate factual basis exists to support the Settlement and that they hereby waive any right to conduct further discovery to assess or confirm the Settlement.

(c) The Named Plaintiffs and Class Counsel have concluded that the Settlement set forth in this Agreement constitutes a fair, reasonable and adequate resolution of the claims that the Named Plaintiffs have asserted or may assert against Defendant, including the claims on behalf of the Settlement Class. The Named Plaintiffs and Class Counsel have also concluded that the Settlement set forth in this Agreement promotes the best interests of the Settlement Class. Named Plaintiffs and Class Counsel arrive at these conclusions after considering the *Batra* action and the claims presented therein and after participating in arm's length mediation.

8. **Waiver.** The Parties agree that the waiver by one Party of any breach of this Settlement Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

9. **Other Provisions**

(a) In construing this Agreement, the use of the singular includes the plural (and vice-versa) and the use of the feminine includes the masculine (and vice-versa).

(b) Unless otherwise noted, all references to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or California state legal holiday, such date or deadline shall be on the first Business Day thereafter.

(c) The Parties reserve the right, subject to the Court's approval where needed, to make any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement. Such extensions must be mutually agreed upon, in writing, to be enforceable.

## **XII. ADDITIONAL REPRESENTATIONS AND WARRANTIES**

Class Counsel represents and warrants, as of the date of this Agreement, that they have ceased all efforts, and have no intention of affirmatively soliciting or seeking additional clients with similar claims against POPSUGAR. This Section is not intended to be, and shall not be construed as, an impermissible limitation on Plaintiffs' Counsel's legal or ethical rights or obligations to practice law.

**XIII. MODIFICATION**

This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by counsel for the Parties.

IT IS SO AGREED.

**COUNSEL SIGNATURES**

*APPROVED AS TO CONTENT AND FORM*

Dated: 8/15, 2019

GIBBS LAW GROUP LLP

By   
MICHAEL L. SCHRAG  
Attorneys for Plaintiffs

Dated: \_\_\_\_\_, 2019

CORY WATSON, P.C.

By \_\_\_\_\_  
HIRLYE R. "RYAN" LUTZ, III  
Attorneys for Plaintiffs

Dated: \_\_\_\_\_, 2019

GLANCY PRONGRAY & MURRAY LLP

By \_\_\_\_\_  
JONATHAN M. ROTTER  
Attorneys for Plaintiffs

Dated: \_\_\_\_\_, 2019

COHEN IP LAW GROUP

By \_\_\_\_\_  
MICHAEL N. COHEN

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IT IS SO AGREED.

**COUNSEL SIGNATURES**

*APPROVED AS TO CONTENT AND FORM*

Dated: \_\_\_\_\_, 2019

GIBBS LAW GROUP LLP

By \_\_\_\_\_  
MICHAEL L. SCHRAG  
Attorneys for Plaintiffs

Dated: August 15, 2019

CORY WATSON, P.C.

By \_\_\_\_\_  
HIRLYE R. "RYAN" LUTZ, III  
Attorneys for Plaintiffs

Dated: \_\_\_\_\_, 2019

GLANCY PRONGRAY & MURRAY LLP

By \_\_\_\_\_  
JONATHAN M. ROTTER  
Attorneys for Plaintiffs

Dated: \_\_\_\_\_, 2019

COHEN IP LAW GROUP

By \_\_\_\_\_  
MICHAEL N. COHEN

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**COUNSEL SIGNATURES**

*APPROVED AS TO CONTENT AND FORM*

Dated: \_\_\_\_\_, 2019

GIBBS LAW GROUP LLP

By \_\_\_\_\_

MICHAEL L. SCHRAG

Attorneys for Plaintiffs

Dated: \_\_\_\_\_, 2019

CORY WATSON, P.C.

By \_\_\_\_\_

HIRLYE R. "RYAN" LUTZ, III

Attorneys for Plaintiffs

Dated: AUGUST 15, 2019

GLANCY PRONGRAY & MURRAY LLP

By  \_\_\_\_\_

JONATHAN M. ROTTER

Attorneys for Plaintiffs

Dated: \_\_\_\_\_, 2019

COHEN IP LAW GROUP

By \_\_\_\_\_

MICHAEL N. COHEN

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*APPROVED AS TO CONTENT AND FORM*

Dated: \_\_\_\_\_, 2019

GIBBS LAW GROUP LLP

By \_\_\_\_\_  
MICHAEL L. SCHRAG  
Attorneys for Plaintiffs

Dated: \_\_\_\_\_, 2019

CORY WATSON, P.C.

By \_\_\_\_\_  
HIRLYE R. "RYAN" LUTZ, III  
Attorneys for Plaintiffs

Dated: \_\_\_\_\_, 2019

GLANCY PRONGRAY & MURRAY LLP

By \_\_\_\_\_  
JONATHAN M. ROTTER  
Attorneys for Plaintiffs

Dated: 8/15 \_\_\_\_\_, 2019

COHEN IP LAW GROUP

By  \_\_\_\_\_  
MICHAEL N. COHEN

Attorneys for Plaintiffs

*APPROVED AS TO FORM*

DEFENDANT'S COUNSEL

Dated: August 15, 2019

KEKER, VAN NEST & PETERS LLP

By  \_\_\_\_\_

BENEDICT Y. HUR  
Attorneys for Defendant