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6 SUPERIOR COURT FOR THE STATE OF WASHINGTON  
7 FOR KING COUNTY

8 MIKE AALAND, individually and on behalf of  
9 those similarly situated,  
10 Plaintiff,

NO. 19-2-24212-4 SEA

v.

**DECLARATION OF JASON  
RITTEREISER IN SUPPORT OF  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

11 CONTRACTORS.COM LLC, a California Limited  
12 Liability Company, and ONE PLANET OPS INC.,  
13 a Delaware Corporation,  
Defendant.

14 I, Jason A. Rittereiser, declare as follows:

15 1. I am an attorney licensed to practice law in the State of Washington and a partner  
16 in the law firm of HKM Employment Attorneys LLP. I serve as Class Counsel for Named  
17 Plaintiff Mike Aaland, and the putative class in the above-captioned matter. If called to testify as  
18 to the matters set forth herein, I could and would do so competently.

19 2. I graduated from the University of Washington in 2006 and DePaul University  
20 College of Law in 2010. Prior to joining HKM, I worked as a Deputy Prosecuting Attorney for  
21 the King County Prosecuting Attorney’s Office. I have been recognized by Washington Super  
22 Lawyers as a “Rising Star” (2017-2020) and was recognized as the Outstanding Young Lawyer  
23 of the Year by the King County Bar Association (2017).

24 3. I have extensive experience in employment law and wage and hour matters. My  
25 practice involves advising employees and litigating employment claims on behalf of employees.  
26 I have experience litigating, prosecuting, defending, arbitrating, mediating, and trying  
27 employment claims.

1           4.       Since joining HKM I have represented or currently represent both individual  
2 plaintiffs in employment cases and plaintiffs in several employment class actions in addition to  
3 this one. These include: *Steeb v. Overlake Hospital*, King County Superior Court Case No. 15-2-  
4 16399-0; *Stevenson et al. v. Pactera Technologies, Inc.*, King County Superior Court Case No.  
5 16-2-3148-0; *Town et al. v. Cascade Hospitality, LLC*, King County Superior Court Case No.  
6 14-2-28148-0; *Anderson et al. v. Reed Hein*, Federal District Court for the Western District of  
7 Washington Case No. 2:16-cv-00785-RSL; *McKiernan et al. v. Act Fast, et al.*, King County  
8 Superior Court Case No. 16-2-03389-0; *Carson vs AMD Kashi Inc., et al.*; King County Superior  
9 Court Case No. 17-2-29644-9 KNT; *Aaland v. Contractors.com LLC*, King County Superior  
10 Court Case No. 19-2-24212-4 SEA; *Gonzalez v. Providence*, King County Superior Court Case  
11 No. 19-2-27751-3 SEA; *Reese v. NPSG Global LLC*, Federal District Court for the District of  
12 Nevada Case No. 2:19-CV-00209-JCM-NJK (*pro hac vice*); and *Moshtagh v. The Home Depot*, No.  
13 Federal District Court for the Western District of Washington Case No. 2:19-CV-01205-RSM.

14           5.       HKM Employment Attorneys LLP has extensive experience representing  
15 individuals and plaintiffs in class actions, including on claims involving text messaging cases.

16           6.       My firm has been committed to vigorously prosecuting this case for nearly two  
17 years. We will continue to dedicate the staff, time, and resources necessarily to prosecute this  
18 case and represent the interests of the class.

19           7.       Attached hereto as **Exhibit A** is a true and correct copy of the Parties' fully  
20 executed Class Action Settlement Agreement and Release. **Exhibit 1** to the Settlement  
21 Agreement is the Parties' proposed Claim Form; **Exhibits 2** ("Postcard Notice"), **3** ("Email  
22 Notice"), and **4** ("Website Notice") to the Settlement Agreement constitute the Parties' proposed  
23 Settlement Notice. The Email Notice will be substantially the same notice as the Postcard Notice,  
24 but as of today's filing, we have not received the finalized form from the Settlement  
25 Administrator. As such, the Email Notice will be filed on or before the noting date for the  
26 Court's review and approval.

1           8.       After filing the Complaint, we reviewed nearly 4,000 pages of Defendants’  
2 records in discovery and began readying his list of deponents. Before taking depositions, the  
3 Parties paused their litigation efforts to see if resolution was possible.

4           9.       On May 12, 2020, the Parties attended a mediation before John B. Bates, Jr. at  
5 JAMS, but were unable to resolve their dispute.

6           10.      After the failed mediation, the Parties resumed discovery efforts. Following a  
7 protracted period of rigorous litigation and negotiation, the Parties reached a resolution for this  
8 case through good faith arms-length negotiations, which ultimately resulted in a settlement  
9 agreement a year after the mediation.

10          11.      Prior to agreeing to this settlement, we considered the risks inherent to litigation  
11 and the defenses available to Defendants, including the potential defense that they had obtained  
12 consent to send the text messages at issue in this case. Another potential defense was whether the  
13 consent was obtained through a third party. Another anticipated issue was whether any evidence  
14 of that consent was discoverable given that records may not have been retained by Defendants or  
15 the third parties. We also expected that at the certification state, Defendants would have likely  
16 argued that class certification was not appropriate because determination of consent would  
17 require a showing of individualized, rather than classwide, proof. Even though we disagree with  
18 Defendants’ potential arguments and believe class certification would be appropriate, there was  
19 the possibility that a court might accept Defendants’ arguments and deny any motion for class  
20 certification or deny liability. If the class was certified, it is a near certainty that Defendants  
21 would move to decertify. Furthermore, even if Plaintiff was able to prove liability, the amount of  
22 any award issued was not certain, especially liquidated damages. Additionally, even if the class  
23 was certified and was successful at trial, Defendants likely would have sought a remittitur to  
24 limit the amount of statutory damages paid to the class. Moreover, even if Plaintiff were to  
25 prevail on a classwide basis, with treble damages, any recovery could be delayed for years by an  
26 appeal.

1           12.     We were also aware that if the case were to proceed further, the proposed class  
2 would face considerable impediments to discovery. For instance, several of the key witnesses  
3 Defendants disclosed are in the Philippines which would provide challenging in terms of having  
4 jurisdiction to conduct their depositions.

5           13.     I was also aware of the fact that, even if we were able to prove Defendants'  
6 liability at trial, the amount of any award issued was not certain. As such, Plaintiffs had  
7 reasonable concerns about the ability to collect on any judgment. Proving that Defendants  
8 intentionally violated the statute would have been difficult, thus potentially limiting each class  
9 member's damages by two thirds. Additionally, proving that Class Members physically were in  
10 Washington when they received the text message would have been exceedingly difficult.  
11 Furthermore, and especially in light of the ongoing pandemic, there were risks that Defendants  
12 would not be able to pay for a judgment at the conclusion of protracted and hard-fought  
13 litigation.

14           14.     Over the course of this case, our firm has expended \$5,696.27, representing the  
15 out-of-pocket litigation costs paid in total by our firm. These costs include filing fees, payments  
16 for expert consultations and reports, class administration costs, and mediation-related expenses.

17           15.     After deductions for litigation costs, administrative expenses and attorneys' fees,  
18 Plaintiff's counsel estimates that each of the 2,515 Class Members, will receive a minimum cash  
19 payment of \$120 and maximum cash payment of \$1,500, in addition to six Leads (valued at  
20 \$300).

21           16.     Class Representative Michael Aaland actively participated and assisted in  
22 counsel's investigation of the claims, discovery efforts, and in the attempted mediation. The  
23 result we achieved for the class would not have been possible without Mr. Aaland's  
24 participation.

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I declare under penalty of perjury that the foregoing is true and correct.

DATED this 2nd day of July, 2021.

*/s/ Jason A. Rittereiser*  
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Jason Rittereiser, WSBA No. 43628  
**HKM EMPLOYMENT ATTORNEYS LLP**  
  
*Attorney for Plaintiff Michael Aaland*

1 **CERTIFICATE OF SERVICE**

2 I, Klarisse Leonor, certify under penalty of perjury under the laws of the State of  
3 Washington that I have caused service of a true and correct copy of the foregoing document, to  
4 be effected on the following named counsel in the manner identified below:

5 Paul Karlsgodt, WSBA No. 40311  
6 James R. Morrison, WSBA No. 43043  
7 **Baker & Hostetler LLP** [ ] Via Email  
8 999 Third Avenue, Suite 3600 [ ] Via Messenger  
9 Seattle, WA 98104 [ ] Via U.S. Mail, First Class  
10 Phone: 206-332-1380 [X] Via King County E-Service  
11 Fax: 206-624-7317  
12 E-Mail: pkarlsgodt@bakerlaw.com  
13 jmorrison@bakerlaw.com  
14 rmann@bakerlaw.com  
15 jhickman@bakerlaw.com

16 *Attorneys for Defendant Contractors.com LLC*

17 DATED this 2nd day of July, 2021, at Seattle, Washington.

18 /s/ Klarisse Leonor  
19 Klarisse Leonor, Paralegal  
20 **HKM EMPLOYMENT ATTORNEYS LLP**

# EXHIBIT A

## CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

Subject to its terms and conditions and the approval of the Court, this Class Action Settlement and Release of Claims (the “Agreement” or “Settlement Agreement”) is made and entered into by and among Plaintiff Michael Aaland (“Plaintiff” or “Class Representative”), in his individual capacity and on behalf of the Settlement Class Members (defined below), and Defendant One Planet Ops Inc. and Contractors.com LLC (collectively “Defendant”) (referred to collectively herein as the “Parties”), and is intended by the Parties to fully, finally and forever resolve, discharge and settle the Released Claims, as defined below.

### RECITALS

A. On September 16, 2019, Plaintiff filed a proposed class action complaint against Defendant in the Superior Court, Washington, King County, captioned *Michael Aaland v. Contractors.com LLC, and One Planet Ops Inc.*, Cause No. 19-2-24212-4 SEA (the “Action”), alleging that Defendant sent text messages to Plaintiff in violation of the Washington Consumer Protection Act, RCW 19.190.010 et seq. (the “WCPA”) and purporting to represent a class of “[a]ll residents of Washington state with a cellular telephone number to which at least one electronic commercial text message was transmitted by . . . Defendants.”

B. On May 12, 2020, the Parties participated in a good-faith, arms-length, full-day mediation with John B. Bates, Jr. of JAMS. The Parties were not able to resolve their dispute during the mediation but continued negotiations through counsel ultimately resulted in this settlement agreement.

C. The discovery conducted in this matter, as well as discussions between counsel, have been more than adequate to give Plaintiff and Class Counsel a sound understanding of the merits of Plaintiff’s position and to evaluate the worth of the claims of the Settlement Class Members in light of Defendant’s defenses to them and its ability to satisfy any judgment. The discovery conducted in this Action and the information exchanged by the Parties through discovery has allowed the Parties to assess the merits of their respective positions and to compromise the issues on a fair and equitable basis. As a result, Class Counsel and Plaintiff agree and represent to the Court that the Settlement is fair, adequate, and reasonable, and in the best interests of the Settlement Class.

D. Plaintiff and Class Counsel believe that the claims, causes of action, allegations and contentions asserted in the Action have merit. However, Plaintiff and Class Counsel recognize and acknowledge the risk, expense and delay of continued lengthy proceedings necessary to prosecute the Action against Defendant through trial and through appeals. Class Counsel have taken into account the uncertain outcome and the risk of any litigation, the risk of continued litigation in complex actions such as this, as well as the difficulties and delays inherent in such litigation, and the potential difficulty of maintaining the Action as a class action. Class Counsel are mindful of the inherent problems of proof under, and possible defenses to, the claims alleged in the Action, including, but not limited to Defendant’s defenses that it had consent to send the texts. Class



Counsel believe that the Settlement set forth in this Agreement confers substantial benefits upon Plaintiff and the proposed Settlement Class Members and that an independent review of this Agreement by the Court in the approval process will confirm this conclusion. Based on their own independent evaluation of all of these factors, Class Counsel have determined that the Settlement set forth in the Agreement is in the best interests of the Plaintiff and the putative Settlement Class Members.

E. Defendant has denied and continues to deny each and all of the claims and contentions alleged by Plaintiff and all proposed Settlement Class Members in the Action. Defendant has expressly denied and continues to deny all charges of wrongdoing or liability against it arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Action. Defendant further denies that, for any purpose other than settlement, the claims alleged in the Action are appropriate for class or representative treatment of any kind. Nonetheless, Defendant has concluded that further conduct of the Action would be protracted and expensive and that it is desirable for economic reasons that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Agreement in order to limit further expense, inconvenience and distraction, to dispose of burdensome and protracted litigation, and to permit the operation of Defendant's business without further expensive litigation and the distraction and diversion of its personnel with respect to matters at issue in the Action. Defendant has also taken into account the uncertainty and risks inherent in any litigation, especially in complex cases such as the Action. Defendant has, therefore, determined that it is desirable and beneficial to it that the Action be settled in the manner and upon the terms and conditions set forth in this Agreement. The Parties have agreed to the terms set forth herein without in any way acknowledging fault or liability. Therefore, nothing in this Settlement Agreement shall be deemed or used as an admission of liability, fault or wrongdoing by Defendant or as an admission that a class or representative action should be certified or allowed to go forward, and shall not be used for any purpose other than for settlement purposes and to enforce its terms.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Parties, subject to final approval by the Court after a hearing or hearings as provided for in this Settlement Agreement, and in consideration of the benefits flowing from the Settlement Agreement set forth herein, that the Action and the Released Claims shall be finally and fully compromised, settled, and released, and the Action shall be dismissed with prejudice, upon and subject to the terms and conditions of this Agreement.

## **AGREEMENT**

### **1. DEFINITIONS**

As used in this Agreement, the following terms shall have the meanings specified below:

1.1 “Action” means the lawsuit captioned *Michael Aaland v. Contractors.com LLC, and One Planet Ops Inc.*, Cause No. 19-2-24212-4 SEA, pending in the Superior Court, Washington, King County.

1.2 “Agreement” means this document.

1.3 “Claim Form” means the form that will be available on the Settlement Website to download, print, and submit by mail, email, electronic submission, or fax in substantially the form as that attached as Exhibit 1 to this Agreement.

1.4 “Class Counsel” means:

Jason A. Rittereiser

Rachel M. Emens

Henry Brudney

Donald Heyrich

HKM EMPLOYMENT ATTORNEYS LLP

600 Stewart Street, Suite 901

Seattle, WA 98101

Phone: (206) 838-2504

Email: [dheyrich@hkm.com](mailto:dheyrich@hkm.com); [jrittereiser@hkm.com](mailto:jrittereiser@hkm.com); [remens@hkm.com](mailto:remens@hkm.com);  
[hbrudney@hkm.com](mailto:hbrudney@hkm.com)

Peter D. Stutheit

STUTHEIT KALIN LLC

308 SW 1st Avenue, Suite 325

Portland, OR 97204

Phone: (503) 493-7488

Email: [peter@stutheitkalin.com](mailto:peter@stutheitkalin.com)

1.5 “Class Notice” means the notice of proposed settlement in substantially the form attached hereto as Exhibits 2, 3, and 4 that is to be provided to Settlement Class Members after entry of the Preliminary Approval Order, including the “Postcard Notice” (Exhibit 2), “Email Notice” (Exhibit 3), and “Website Notice” (Exhibit 4).

1.6 “Class Representative” or “Plaintiff” means Michael Aaland.

1.7 “Complaint” means the Class Action Complaint for Damages and Injunctive Relief filed in the Action on September 16, 2019.

1.8 “Court” means the Superior Court, Washington, King County.

1.9 “Cy Pres Payment” means a distribution to charity of unclaimed funds as described in Section 11.3 of this agreement.

1.10 “Defendant” means One Planet Ops Inc. and Contractors.com LLC.

1.11 “Defendant’s Counsel” means:

Paul Karlsgodt

BAKER & HOSTETLER LLP

1801 California Street

Suite 4400

Denver, CO 80202-2662

1.12 “Effective Date” means the date that the Settlement becomes Final. “Final” means i) the date the deadline to seek appellate review of the Final Approval Order and Judgment has passed without a timely appeal having been filed, or if no objection to the Settlement is received by the Settlement Administrator, the Parties, or the Court prior to the entry of the Final Approval Order, the date the Final Approval Order is entered; or, (ii) in the event that an appeal of the Final Approval Order and Judgment has been filed, then when the applicable court has rendered a final decision or opinion affirming the Final Approval Order and Judgment without material modification, and the applicable date for seeking further appellate review has passed, or the date that any such Appeal has been either dismissed or withdrawn by the appellant.

1.13 “Email Notice” means the notice that is emailed by the Settlement Administrator to potential Settlement Class Members, in a form substantially similar to Exhibit 3 to this Agreement.

1.14 “Fee Award and Costs” means the amount of attorneys’ fees and reimbursement of costs awarded by the Court to Class Counsel.

1.15 “Final Approval Hearing” means the hearing at which the Court shall consider a motion for entry of the Final Approval Order and Judgment, Plaintiff’s application for Service Award, and Class Counsel’s application for Fee Award and Costs.

1.16 “Final Approval Order and Judgment” means the Court’s order granting final approval of the Settlement.

1.17 “Total Settlement Value” means the combined total of Lead Benefits and Gross Settlement Payment conveyed to the Settlement Class.

1.18 “Gross Settlement Payment” means the all-in non-reversionary payment by Defendant of \$774,500.00 to resolve this case in its entirety and all of the Released Claims, which includes those alleged in the Complaint. The Gross Settlement Payment is the total monetary payment required from Defendant under this Agreement, and is inclusive of all costs except for any internal costs necessary to provide the Lead benefits to Settlement Class Members. The payment shall be used to pay for all monetary benefits to class members, the Fee Award and Costs, the Service Award, and the Settlement Administration Costs. Under no circumstances shall Defendant be required to pay more than the Gross Settlement Amount to consummate the Agreement and effectuate the Settlement.

1.19 “Individual Settlement Payment” means the payment to be made to each Settlement Class Member who submits a timely and valid Claim Form from the Net Settlement Fund pursuant to the terms of this Agreement.

1.20 “Leads” or “Lead Benefits” mean six redeemable leads per Settlement Class Member.

1.21 “Net Settlement Fund” means the amount of the Gross Settlement Amount that remains after the deductions described in Section 11.1(a) and Section 11.1(b) of this Agreement are made.

1.22 “Notice Deadline” means the deadline for the Settlement Administrator to send the Postcard Notice and Email Notice, which shall be thirty (30) days following entry of the Preliminary Approval Order.

1.23 “Objection Deadline,” “Exclusion Deadline,” and “Claim Deadline” mean, respectively, the date by which (1) a written objection to this Agreement must be filed with the Court or (2) a request for exclusion mailed to the Settlement Administrator must be postmarked or (3) a claim must be submitted either electronically, faxed, or postmarked for mailing. The deadlines in each case will be sixty (60) calendar days after the Notice Deadline.

1.24 “Parties” means Settlement Class Members, including the Class Representative, and Defendant, each of whom is a “Party.”

1.25 “Preliminary Approval Date” means the date on which the Court enters the Preliminary Approval Order.

1.26 “Preliminary Approval Order” means the Court’s order granting preliminary approval of the Settlement, ordering the mailing of the Class Notice and scheduling the Final Approval Hearing.

1.27 “Released Claims” means any and all claims, demands, and causes of action by Settlement Class Members that either were raised in the Complaint or that could or should have

been raised in the Complaint, an individual arbitration, or any other legal proceeding, and that arising in any way out of the facts and circumstances giving rise to the claims in the lawsuit, including relate in any way to or arise from Text Messages received from any or on behalf of Defendant to any of the mobile telephone numbers listed on Exhibit 5.

1.28 “Released Parties” means Contractors.com LLC and One Planet Ops Inc., and their respective parent companies, subsidiaries, affiliates, divisions, and related entities, past and present, as well as their direct and indirect owners, shareholders, employees, officers, directors, representatives, attorneys, insurers, reinsurers, partners, and successors and assigns of each.

1.29 “Service Award” means the service payment described in Section 4.3 of this Agreement to be requested from the Court and, if awarded, paid to the Class Representative out of the Gross Settlement Amount as compensation for service to the Class and execution of this Settlement Agreement and Release.

1.30 “Settlement” means the Settlement between the Parties, which is memorialized in this Agreement.

1.31 “Settlement Administrator” means the third-party claims administration firm selected by the Parties and approved by the Court. The Parties have selected JND Legal Administration as the Settlement Administrator.

1.32 “Settlement Administration Costs” means the expenses incurred by and the fees charged by the Settlement Administrator to perform all of its duties under this Settlement Agreement.

1.33 “Settlement Class” means all residents of Washington state with a cellular telephone number to which at least one electronic commercial text message was transmitted by Contractors.com, or someone acting on behalf of Defendant. The Settlement Class is defined to include all persons who could claim to have suffered any injury or could assert any claims as a result of the sending or receipt of Text Messages to the mobile telephone numbers listed on Exhibit 5.

1.34 “Settlement Class Member” means a member of the Settlement Class.

1.35 “Settlement Class Members” means each and every Settlement Class Member.

1.36 “Settlement Notice” means the detailed notice of the Settlement to be posted on the Settlement Website.

1.37 “Settlement Website” means the website to be created by the Settlement Administrator containing full details and information about the Settlement, including this Agreement. The Settlement Website will have links to the Complaint, this Agreement, the Postcard Notice, the Website Notice, motions for preliminary and final approval of this Settlement, any approval order, and Class Counsel’s request for attorneys’ fees and Service

Award. The Settlement Website also will allow Settlement Class Members to obtain claims and leads.

1.38 “Text Message” means an electronic communication involving written text transmitted in any format to a mobile telephone. Text Message includes, but is not limited to electronic messages sent using Short Messaging Service (SMS), multimedia message (MMS), or any other delivery format or technology.

## **2. CONDITIONAL CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL AND CLASS REPRESENTATIVE**

2.1 Subject to the Court’s approval, the Parties hereby stipulate that the Settlement Class may be conditionally certified for settlement purposes only.

2.2 Subject to the Court’s approval, the Parties hereby stipulate to the appointment of Class Counsel as counsel for the Class for settlement purposes only and to effectuate the Settlement contemplated by this Agreement.

2.3 Subject to the Court’s approval, the Parties hereby stipulate to the appointment of Plaintiff as the Class Representative for the Class for settlement purposes only.

## **3. SETTLEMENT CONSIDERATION**

3.1 The Settlement Consideration consists of the Gross Settlement Payment described in Paragraph 3.2, below, and the Lead Benefits, described in Paragraph 3.3, below, defined as the Total Settlement Value to the Class.

3.2 Gross Settlement Payment that Defendant will be obligated to make to effectuate this Settlement is \$774,500.00, inclusive of all funds necessary to effectuate the Settlement other than internal costs incidental to providing the Leads described in Section 3.3, below. The Gross Settlement Payment includes the Settlement Administration Costs, the Fee Award and Costs, the Class Representative Service Award, and all Individual Settlement Payments to Settlement Class Members who submit a timely and valid Claim Form. Under no circumstances shall Defendant be required to pay more than the Gross Settlement Amount to effectuate the Settlement.

3.3 Defendant will also provide codes for six (6) redeemable Leads to Settlement Class Members. Each Lead is valued at \$50.00, which translates into an additional class benefit of \$754,500.00. Defendant will develop an internal procedure or will work in coordination with the Settlement Administrator for allowing each Settlement Class Member to redeem the Leads by selecting Leads of a type relevant to the Settlement Class Member’s business needs. Leads redeemed prior to the Effective Date shall be provided within 30 days of the Effective Date. All other Leads must be redeemed prior to the termination of settlement administration as defined in Section 5.6. After termination of settlement administration, Defendant may at its sole discretion honor Lead redemption requests, but it shall not be required to do so.

#### **4. PRELIMINARY APPROVAL OF SETTLEMENT**

4.1 As soon as practicable following execution of this Agreement, Plaintiff shall file an unopposed motion with the Court for entry of the Preliminary Approval Order, which shall, among other things: (a) conditionally certify the Settlement Class for settlement purposes only and without reaching any determination as to the manageability of the Action at trial; (b) appoint Plaintiff's counsel as Class Counsel; (c) appoint Plaintiff as Class Representative; (d) preliminarily approve the Settlement set forth in this Agreement; (e) appoint a Settlement Administrator to exercise the duties allocated to the Settlement Administrator herein; (f) approve as to form and content the Class Notice; (g) direct the Settlement Administrator to mail the Class Notice to Settlement Class Members as set forth below and instructed by the Court; (h) set deadlines for Settlement Class Members to submit claim forms and exclusion requests and to file and serve objections to the Settlement; and (i) set the date of the Final Approval Hearing approximately 120 days after entry of the Preliminary Approval Order.

4.2 Class Counsel will request and Defendant will not oppose an award of attorneys' fees and costs of up to 30% of the Total Settlement Value (collectively, the "Fee Award and Costs") to be paid from the Gross Settlement Payment. The amount of the Fee Award and Costs is within the sole discretion of the Court and is not a condition of this Settlement. Any order by the Court providing for a Fee Award and Costs that is less than the amount requested by Class Counsel shall not be grounds to rescind this Agreement or otherwise void the Settlement.

4.3 Class Counsel will request and Defendant will not oppose a Class Representative Service Award of up to \$5,000, in addition to any payment Plaintiff is otherwise entitled to as a Settlement Class Member, to recognize Plaintiff's service to the Class and as consideration for a general release of Plaintiff's individual claims against Defendant and all other Released Parties (the "Service Award") and to be paid to Plaintiff from the Gross Settlement Amount. The amount of the Service Award is within the sole discretion of the Court and is not a condition of this Settlement. Any order by the Court providing for a Service Award that is less than the amount Class Counsel applies for shall not be grounds to rescind this Agreement or otherwise void the Settlement.

4.4 Class Counsel will submit their request for a Fee Award and Costs, and Class Representative Service Award, with their motion for Final Approval of the Class Action Settlement.

#### **5. APPOINTMENT AND DUTIES OF SETTLEMENT ADMINISTRATOR**

5.1 Subject to the Court's approval, the Parties hereby stipulate to the appointment of JND Legal Administration as the Settlement Administrator under this Agreement.

5.2 The Settlement Administrator shall perform the following duties in connection with its administration of the Settlement: (i) obtaining addresses for Settlement Class Members using appropriate methods, as described in Section 6.2.1 below; (ii) mailing and emailing the Postcard Notice to Settlement Class Members; (iii) tracking non-delivered Postcard Notices and taking reasonable steps to re-send them to Settlement Class Members' current addresses; (iv) tracking and timely reporting to Class Counsel and Defendant's Counsel any written requests for exclusion submitted by Settlement Class Members; (v) tracking and timely reporting to Class Counsel and Defendant's Counsel any written objections to the Settlement submitted by Settlement Class Members; (vi) tracking and timely reporting Claim Forms submitted electronically and by mail; (vii) administration of the fund established by the Gross Settlement Payment; (viii) disbursement of the Fee Award and Costs, and Service Award; (ix) calculation of the amount of the Individual Settlement Payment that is to be made to each Settlement Class Member that submits a timely and valid Claim Form; (x) disbursement of Individual Settlement Payments to Settlement Class Members who have submitted timely and valid Claim Forms; (xi) tracking the number of Individual Settlement Payment checks or other forms of payment that remain uncashed or unredeemed by the deadline to cash or redeem such payments; (xii) transferring any unclaimed property contemplated by Section 11.3, if any; (xiii) handling of the payment, if any, to a *cy pres* recipient; (xiv) preparing the reports and declarations contemplated by Section 6.6.2; (xv) establishing and maintaining the Settlement Website; (xvi) establishing a toll-free telephone number for Settlement Class Members to call; and (xvii) any other obligations imposed by the Court.

5.3 The Settlement Administrator shall complete its duties in a rational, reasonable, responsive, cost effective, and timely manner. The Settlement Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices, including but not limited to a summary of work performed by the Settlement Administrator. Such records will be provided to Class Counsel and Defendant's Counsel and to the Court along with the motion for entry of the Final Approval Order and Judgment.

5.4 In the exercise of its duties outlined in this Agreement, the Settlement Administrator shall have the right to reasonably request additional information from the Parties or any Settlement Class Member.

5.5 All expenses and fees due the Settlement Administrator in connection with its administration of the Settlement, including, but not limited to, providing the Class Notice, processing requests for exclusion and objections, and disbursing amounts from the Gross Settlement Fund, shall be paid from the Gross Settlement Fund.

5.6 Settlement Administration shall terminate one year from the Effective Date. If circumstances make termination one year from the Effective Date infeasible, then the Parties shall meet and confer about an appropriate extension of this deadline. At the time of termination of the settlement administration, the Settlement Administrator and Class Counsel



shall return or destroy, at the option of the Defendant, all confidential information in their position, with the exception that Class Counsel may maintain one copy pursuant to its obligations and file and retention policies.

## **6. NOTICE OF SETTLEMENT; SUBMISSION OF REQUESTS FOR EXCLUSION AND OBJECTIONS**

6.1 The Settlement Administrator shall cause the Class Notice to be disseminated to Settlement Class Members. The Class Notice shall comport with Rule 23 of the Washington Rules of Civil Procedure.

### 6.2 Providing the Class Notice to the Settlement Class

6.2.1 Within ten (10) days after the Preliminary Approval Date, Defendant shall provide to the Settlement Administrator the names, mailing addresses, and email addresses, if any, associated with the list of unique cellular telephone numbers in Exhibit 5. The Settlement Administrator shall perform reverse look-ups on those telephone numbers appearing on Exhibit 5 for which Defendant did not produce associated addresses.

6.2.2 On or before the Notice Deadline, the Settlement Administrator shall cause the Postcard Notice to be mailed by first-class mail to Settlement Class Members at the addresses produced by Defendant or obtained through reverse look-up, and will cause the E-Mail Notice to be emailed to Settlement Class Members at the email addresses produced by Defendant, and will cause the Settlement Website to become active. If a Postcard Notice is returned with a forwarding address, the Settlement Administrator shall promptly forward the original Postcard Notice to the updated address via first-class regular U.S. Mail indicating on the original Notice the date of such re-mailing. If a Postcard Notice is returned as undeliverable without a forwarding address, the Settlement Administrator will perform a reasonable “skiptrace” search using the National Change of Address database to obtain an updated address, and the Postcard Notice will be re-mailed to the Settlement Class Member at the updated address.

6.2.3 The Postcard Notice shall be in substantially the form as that attached as Exhibit 2 and shall refer Settlement Class Members to the Settlement Website where Settlement Class Members can find detailed information about the Settlement. The Email Notice shall be in substantially the form as that attached as Exhibit 3 and shall refer Settlement Class Members to the Settlement Website where Settlement Class Members can find detailed information about the Settlement.

6.3 Any Settlement Class Member may submit a claim for payment from the Net Settlement Fund by submitting a timely and valid Claim Form to the Settlement Administrator on or before the Claim Deadline. By virtue of signing this Agreement, Plaintiff will not need to return a claim form to receive his Individual Settlement Share. Each individual Settlement Class Member may submit only one claim for payment from the Net Settlement Fund.

#### 6.4 Request for Exclusion from Settlement

6.4.1 Any Settlement Class Member who does not submit a valid request for exclusion, as described more fully in this Section 6.4.2, shall participate in the Settlement and will be bound by all terms of this Agreement, including without limitation those sections of the Agreement addressing Released Claims and Released Parties.

6.4.2 Any Settlement Class Member may elect to be excluded from the Settlement by submitting a timely and valid written request for exclusion to the Settlement Administrator on or before the Exclusion Deadline. To be effective, such written request must include the Settlement Class Member's full name, address, and telephone number, a statement that the Settlement Class Member submitting the request wishes to be excluded from the Settlement, and the signature of the Settlement Class Member submitting the request or an individual authorized to sign on behalf of the Settlement Class Member.

6.4.3 A request to be excluded that does not include all of the foregoing information, or that is sent to an address other than that designated in the Class Notice, or that is not postmarked within the time specified, shall be invalid.

6.4.4 Any Settlement Class Member who submits a timely and valid request for exclusion shall not: (i) be bound by the Final Approval Order and Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) be entitled to file a Claim Form; (iv) gain any rights by virtue of this Agreement; (v) have any standing to object to any aspect of this Agreement; (vi) be bound by the Release set forth in this Agreement; and Defendant will retain all of its defenses to such Settlement Class Member's purported claims.

#### 6.5 Objection to Settlement

6.5.1 Any Settlement Class Member who does not submit a timely and valid request for exclusion may object to this Settlement by filing a written objection and supporting papers, if any, with the Court on or before the Objection Deadline. Such a written objection must (a) clearly identify the case name and number, and (b) be filed with the Clerk of the Court and mailed to Class Counsel and Defense Counsel. The written objection must include: (1) the Settlement Class Member's full name and address; (2) the telephone number or numbers the Settlement Class Member maintains received a text; (3) all of the Settlement Class Member's objections to the Settlement Agreement and the grounds for each such objection, with factual and legal support for each stated ground; (4) a statement indicating whether the Settlement Class Member intends to appear at the Final Approval Hearing and, if so, with or without counsel, and if it is with counsel, identifying the lawyer (including name, address, phone number and email) and identifying any witnesses he, she or it may call to testify at the Final Approval Hearing; and providing copies of any exhibits that he, she, or it intends to introduce into evidence at the Final Approval Hearing.

6.5.2 In the event that the Settlement Administrator receives any written objections to the Settlement, the Settlement Administrator shall send copies of such objections to Class Counsel and Defendant's Counsel by electronic means within 24 hours of receipt.

6.5.3 Any Settlement Class Member who submits a timely and valid request for exclusion or who fails to timely file a written objection in accordance with the terms of this paragraph and as detailed in the Class Notice, shall be deemed to have waived his, her or its objections, shall not be permitted to object to this Settlement at the Final Approval Hearing, and shall be foreclosed from seeking review of any Final Approval Order and Judgment by appeal or other means.

## 6.6 Reports and Declaration By Settlement Administrator

6.6.1 At the end of every week between the Notice Deadline and the Claim Deadline, and within five days after the Claim Deadline (and at any additional time upon the request of Plaintiff or Defendant), the Settlement Administrator shall provide counsel for the Parties with a complete list of all Settlement Class Members who have timely requested exclusion from the Class and with the total number of timely and valid Claim Forms that have been submitted.

6.6.2 Within ten (10) days after the Claim Deadline, the Settlement Administrator will prepare and provide to Class Counsel and Defendant's Counsel a draft declaration attesting to the work it performed notifying Settlement Class Members of the Settlement and the response to the Class Notice. The declaration will discuss the Settlement Administrator's mailing the Postcard Notice, indicating the number of Postcard Notices mailed to Settlement Class Members that were not returned undeliverable and thus the percentage of the Class that the Postcard Notice "reached." The declaration also will state the number of visits and unique visitors to the Settlement Website and the number of calls from Settlement Class Members that the Settlement Administrator received regarding the Settlement. The declaration will attach a list including the names and addresses of the individuals who submitted timely and valid exclusion requests and state the number of valid Claim Forms that were submitted. The declaration will contain a statement from the Settlement Administrator about whether it believes, based on its experience, that the Class Notice satisfies due process.

## 7. DEFENDANT'S RIGHT OF RESCISSION

7.1 If more than 50 Settlement Class Members submit valid requests for exclusion from the Settlement pursuant to the terms of this Agreement, Defendant may, at its election, rescind the Settlement. In that event, all actions taken in furtherance of the Settlement will be thereby null and void. Defendant must exercise this right of rescission within fourteen (14) calendar days after the Settlement Administrator notifies Class Counsel and Defendant's Counsel that the total number of valid requests for exclusion has exceeded 50. In the event Defendant rescinds the Settlement pursuant to this section, Defendant shall be responsible for

paying all administrative costs incurred as of the date that written notice of the right to rescind the Settlement is given.

## **8. FINAL APPROVAL OF SETTLEMENT**

8.1 Class Counsel will file a motion with the Court requesting final approval of the Settlement, approval of Class Counsel's Fee and Cost Award, approval of Class Representative's Service Award, approval of Settlement Administrator's Fees and Costs, and entry of the Final Approval Order and Judgment ("Motion for Final Approval") by the deadline set by the Court, which, unless otherwise ordered by the Court, will be filed at least ten (10) days after the Claim Deadline. The Final Approval Hearing will be set at the convenience of the Court but no earlier than one hundred twenty (120) days after entry of the Preliminary Approval Order.

## **9. RELEASE OF CLAIMS**

9.1 The Parties intend that this Settlement Agreement will fully and finally dispose of the Action, which shall be dismissed with prejudice, and any and all Released Claims against the Released Parties.

9.2 Upon the Effective Date, the Class Representative and all Settlement Class Members (with the exception of those who have submitted a timely and valid request to be excluded from the Settlement under Section 6.4), for themselves and for their heirs, executors and assigns, hereby release, discharge, and agree to hold harmless Defendant and all of the other Released Parties, and each of them, from any and all Released Claims.

## **10. DELIVERY OF GROSS SETTLEMENT PAYMENT TO THE SETTLEMENT ADMINISTRATOR**

10.1 Defendant agrees to fund the Gross Settlement Fund over time as funds are reasonably necessary to cover administrative costs, fees, expenses, and claims.

10.2 Within ten (10) days of preliminary approval of the Settlement, Defendant shall transfer to the Settlement Administrator an initial payment to cover expected notice administration costs, as reasonably estimated by the Settlement Administrator.

10.3 In the event that the Settlement becomes Final, Defendant shall, within ten (10) days of the Effective Date, transfer to the Settlement Administrator the remaining funds. The Settlement Administrator will hold this amount in escrow until such time as it is authorized to use or pay those funds pursuant to the Settlement Agreement, the Preliminary Approval Order, or the Final Approval Order and Judgment, or as otherwise directed by the Parties. To the extent any interest accrues from funds being placed in escrow, such interest shall revert to Defendant upon the closing of the escrow account.

## **11. DISTRIBUTION OF GROSS SETTLEMENT PAYMENT**

11.1 Within (15) days of the Settlement Administrator's receipt of the funds described in Section 10.3, the Settlement Administrator shall disburse the following from the amounts held in escrow:

- (a) any Settlement Administration Expenses that have not already been paid, to itself;
- (b) the Fee Award and Costs, and the Service Award, by such means as Class Counsel may direct; and
- (c) the Individual Settlement Payments, by mailing checks to the address of each Settlement Class Member that submitted a timely and valid Claim Form.

11.2 The amount of the Individual Settlement Payments shall be at least \$120 per Settlement Class Member. The precise amount of the Individual Settlement Payments shall be determined by dividing the Net Settlement Fund (i.e., the Gross Settlement Payment less the Settlement Administration Expenses, the Fee Award and Costs, and the Service Award) by the number of Settlement Class Members who submitted timely and valid Claim Forms. If the amount of Individual Settlement Payments calculated by this formula would exceed \$1500, then Individual Settlement Payments shall be \$1500, and any remaining amount of the Net Settlement Fund shall be distributed as a Cy Pres pursuant to Section 11.4 of this agreement.

11.3 Settlement Class Members who submitted timely and valid Claim Forms shall have 180 days to cash their settlement checks or redeem any alternative form of payment. In the event that any checks mailed to Settlement Class Members who submitted timely and valid Claim Forms remain uncashed after the expiration of 180 days, or an envelope mailed to such Settlement Class Members is returned and no forwarding address can be located for these Settlement Class Members after reasonable efforts have been made, then any such unclaimed funds shall revert to the Net Settlement Fund. The amounts of any payments that are not redeemed more than 180 days after the date on the check or alternative form of payment will be submitted to the Washington State Unclaimed Property Fund.

11.4 If it is necessary to distribute unclaimed funds to charity as a Cy Pres Distribution, the total amount of any unclaimed funds will be paid, subject to Court approval, to the following charity: Downtown Seattle Association. If the Court does not approve a given charity, it may direct the funds to be paid to a substitute charity. If no suitable charity can be found, any unclaimed funds will escheat to the State of Washington.

## **12. EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION**

12.1 If (a) Defendant rescinds the Settlement pursuant to Section 7 of this Agreement, (b) the Court should for any reason decline to approve this Settlement in the form agreed to by the Parties, or (c) the Court should for any reason fail to enter a judgment

dismissing the Action with prejudice, then the Settlement and conditional class certification will automatically become null and void without any act or deed by any Party and the terms and fact of this Agreement (and of any act performed or document executed pursuant to or in furtherance of the Agreement), the fact that the Parties stipulated to a Settlement Class for settlement purposes only, and the fact that the Court granted certification of the Settlement Class for settlement purposes only, will be inadmissible evidence in any subsequent proceeding of any kind, including in the Action or elsewhere. Put another way, neither the Settlement, class certification, nor any of the related negotiations or proceedings, shall be of any force or effect, and all Parties to the Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court. Notwithstanding the foregoing, the Parties may attempt in good faith to cure any perceived defects in the Settlement to facilitate approval.

### **13. RETENTION OF JURISDICTION**

13.1 The Parties stipulate that the Court may retain jurisdiction over any further disputes relating to this Agreement, the implementation of the Agreement, or further issues regarding the claims in the Action, until the Settlement Administrator and the Parties notify the Court that all issues have been resolved and the Settlement has been fully effectuated.

### **14. MISCELLANEOUS**

14.1 The Parties will fully cooperate and use reasonable efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary or be ordered by the Court, or otherwise, to accomplish the terms of this Agreement, including, but not limited to, executing such documents and taking such other action as may reasonably be necessary to obtain preliminary and final approval of this Agreement without material modifications and to implement its terms.

14.2 Unless the Parties agree otherwise in writing, and with the exception of a notation of the existence of the settlement on Class Counsel's respective websites and/or firm resumes that may be submitted to courts in future cases, Class Counsel and/or Plaintiff agree not to issue press releases or initiate any public statements regarding the Action, the Settlement and/or the Settlement Agreement, with the exception of the statements made in the Settlement Notices that are approved by the Court. The Parties may make public statements to the Court as necessary to obtain preliminary or final approval of the Settlement and Class Counsel will not be prohibited from communicating with any person in the Class regarding any aspect of the action or the Settlement.

14.3 Defendants agree that, as part of the settlement process, it will not dispute representations in any motions before the Court, that the instant litigation was one factor in Defendants' decision to cease its text message marketing practices in Washington, which is the subject of this litigation.

14.4 This Agreement shall be subject to, governed by, construed, enforced and administered in accordance with the laws of the State of Washington, both in its procedural and substantive aspects.

14.5 The Parties have had a full opportunity to negotiate the terms and conditions of this Agreement, and in fact only agreed on the terms pursuant to arms-length, voluntary, and rigorous negotiations between the Parties. Accordingly, the Parties expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement. The Parties agree that the language in this Agreement shall not be construed in favor or against any Party. The Parties further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

14.6 The Parties agree that if, at any time before the Effective Date, any portion of the release of claims, the notice and/or the distribution provisions of this Agreement are determined to be illegal, invalid or unenforceable, then the Parties agree to meet and confer in order to attempt to resolve outstanding issue(s).

14.7 If the Court denies final approval of the Settlement, or if the Court's final approval is reversed or fundamentally changed on appellate review, then this Settlement shall become null and void. If the Settlement is voided through any of the mechanisms described herein, the Parties will have no further obligations under the Settlement, including any obligation by Defendant to pay the Gross Settlement Amount, or any amounts that otherwise would have been owed under this Settlement.

14.8 Nothing in this Agreement shall be construed or deemed to be an admission by Defendant or of any of the other Released Parties of any liability, culpability, negligence, or wrongdoing toward the Class Representative, the Settlement Class Members, or any other person, and Defendant specifically disclaims any liability, culpability, negligence, or wrongdoing toward the Class Representative, the Settlement Class Members, or any other person. Each of the Parties has entered into this Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and contingencies. Nothing herein shall constitute any admission by Defendant of wrongdoing or liability, or of the truth of any factual allegations in the Action. Nothing herein shall constitute an admission by Defendant that the Action was properly brought as a class action other than for settlement purposes.

14.9 Except as otherwise specifically provided for herein, each Party shall bear its own attorney fees, costs and expenses, taxable or otherwise, incurred by them in, or arising out of, the Action and or the negotiation and execution of this Agreement, and shall not seek reimbursement thereof from any other party to this Agreement.

14.10 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 business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

To Plaintiff and the Class:

**HKM EMPLOYMENT ATTORNEYS LLP**

Jason A. Rittereiser

600 Stewart Street, Suite 901

Seattle, WA 98101

Telephone: (206) 838-2504

Email: [jrittereiser@hkm.com](mailto:jrittereiser@hkm.com)

To Defendant:

**BAKER & HOSTETLER LLP**

Paul G. Karlsgodt

1801 California Street

Suite 4400

Denver, CO 80202-2662

Telephone: (303) 764-4013

Email: [PKarlsgodt@bakerlaw.com](mailto:PKarlsgodt@bakerlaw.com)

14.11 This Agreement and its Exhibits constitute the entire agreement between the Parties and their respective counsel relating to the Settlement and the transactions contemplated thereby. No rights hereunder may be waived except in writing.

14.12 The Parties represent, covenant and warrant that they have not directly or indirectly, assigned transferred, encumbered or purported to assign, transfer or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.

14.13 With respect to the subject matter hereof, the Parties acknowledge that no written or oral representations, statements or promises made by the other Party, or by their respective agents or attorneys, have been relied upon in entering into this Agreement.



14.14 This Agreement may be modified or amended only if such modification or amendment is agreed to in writing and signed by the duly authorized representatives of the Parties hereto, and approved by the Court which writing shall expressly state the intent of the Parties to modify this Agreement.

14.15 This Agreement shall be binding upon and shall inure to the benefit of the respective heirs, assigns, executors, administrators, successors, subsidiaries, divisions and partnerships, past and present, and trustees, directors, officers, shareholders, partners, and employees, past and present, of Plaintiff, Settlement Class Members, Defendant and all of the other Released Parties.

14.16 This Agreement may be executed in counterparts and/or electronic and/or facsimile signatures, and when each Party has signed and delivered at least one such counterpart, electronic and/or facsimile signature, each said signature shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Parties.

14.17 Each of the undersigned represents that he, she, or it has the advice of counsel, has authority to sign on behalf of his, her or its principal, and understands that this Agreement is final and binding, and subject only to the settlement process set forth above.

THE UNDERSIGNED ACKNOWLEDGE THAT EACH HAS READ THE FOREGOING AGREEMENT IN ITS ENTIRETY AND ACCEPTS AND AGREES TO THE PROVISIONS CONTAINED THEREIN, AND HEREBY EXECUTES IT VOLUNTARILY WITH FULL KNOWLEDGE OF ITS CONSEQUENCES.

Dated: July 2, 2021



\_\_\_\_\_  
Michael Aaland

ONE PLANET OPS INC.

Dated: July \_\_, 2021

By: \_\_\_\_\_

14.14 This Agreement may be modified or amended only if such modification or amendment is agreed to in writing and signed by the duly authorized representatives of the Parties hereto, and approved by the Court which writing shall expressly state the intent of the Parties to modify this Agreement.

14.15 This Agreement shall be binding upon and shall inure to the benefit of the respective heirs, assigns, executors, administrators, successors, subsidiaries, divisions and partnerships, past and present, and trustees, directors, officers, shareholders, partners, and employees, past and present, of Plaintiff, Settlement Class Members, Defendant and all of the other Released Parties.

14.16 This Agreement may be executed in counterparts and/or electronic and/or facsimile signatures, and when each Party has signed and delivered at least one such counterpart, electronic and/or facsimile signature, each said signature shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Parties.

14.17 Each of the undersigned represents that he, she, or it has the advice of counsel, has authority to sign on behalf of his, her or its principal, and understands that this Agreement is final and binding, and subject only to the settlement process set forth above.

THE UNDERSIGNED ACKNOWLEDGE THAT EACH HAS READ THE FOREGOING AGREEMENT IN ITS ENTIRETY AND ACCEPTS AND AGREES TO THE PROVISIONS CONTAINED THEREIN, AND HEREBY EXECUTES IT VOLUNTARILY WITH FULL KNOWLEDGE OF ITS CONSEQUENCES.

Dated: July \_\_, 2021

\_\_\_\_\_

Michael Aaland

ONE PLANET OPS INC.

Dated: July \_\_, 2021

By:  \_\_\_\_\_

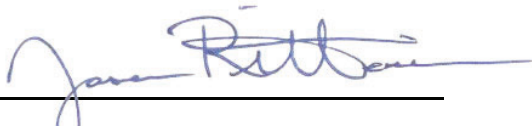
Tatevik Davtyan

VP Legal and Compliance

Approved as to form:

Dated: July 2, 2021

HKM EMPLOYMENT ATTORNEYS LLP

By:   
\_\_\_\_\_  
Jason A. Rittreiser  
Attorneys for the Class

Dated: July \_\_, 2021

BAKER & HOSTETLER LLP

By: \_\_\_\_\_  
Paul G. Karlsgodt, Esq.  
Attorneys for Defendant

Approved as to form:

Dated: July \_\_, 2021

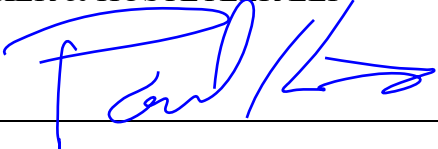
HKM EMPLOYMENT ATTORNEYS LLP

By: \_\_\_\_\_

Jason A. Rittreiser  
Attorneys for the Class

Dated: July 2, 2021

BAKER & HOSTETLER LLP

By:  \_\_\_\_\_

Paul G. Karlsgodt, Esq.  
Attorneys for Defendant

# EXHIBIT 1

**CLAIM FORM**

This claim form should be filled out and submitted online or submitted by mail if you received a text message from Contractors.com or One Planet Ops ("Defendant"). If (1) you fill out this claim form, (2) the settlement is approved, and (3) you are found to be eligible for a payment, you will receive a check for a minimum of \$120 and a maximum of \$1,500. Even if you do not submit this claim form, you are eligible for six free leads from Defendant, with each valued at \$50.

The settlement notice describes your legal rights and options. Please visit the official settlement administration website, [www.\\_\\_\\_\\_\\_.com](http://www._____.com), or call 1-\_\_\_\_\_ for more information.

If you wish to submit a claim for a settlement payment, you need to provide the information requested below. Please type or print clearly in blue or black ink. This claim form must be submitted online OR mailed and postmarked by \_\_\_\_\_, 2021.

**1. CLASS MEMBER INFORMATION.**

Name (REQUIRED): \_\_\_\_\_

Number and Street (REQUIRED) \_\_\_\_\_

City (REQUIRED) \_\_\_\_\_ State (REQUIRED) \_\_\_\_\_ Zip Code (REQUIRED) \_\_\_\_\_

Telephone Number (REQUIRED): (\_\_\_\_) \_\_\_\_\_ Email Address (optional) \_\_\_\_\_

**2. PAYMENT ELIGIBILITY INFORMATION.**

Please review the notice and sections 1.27 and 3.1 through 3.3 of the Settlement Agreement (available at [www.\\_\\_\\_\\_\\_.com](http://www._____.com)) for more information on who is eligible for a payment and the nature of the settlement benefits.

**PLEASE PROVIDE THE INFORMATION LISTED BELOW:**

Check the following box to confirm that you received a text message from Defendant:

**3. SIGN AND DATE YOUR CLAIM FORM.**

I declare under penalty of perjury under the laws of the United States and the laws of my State of residence that the information supplied in this claim form by the undersigned is true and correct to the best of my recollection, and that this form was executed on the date set forth below.

I understand that I may be asked to provide supplemental information by the Settlement Administrator before my claim will be considered complete and valid.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_/\_\_\_\_/\_\_\_\_  
Month/Day/Year

**4. MAIL YOUR CLAIM FORM.**

This claim form must be submitted online or postmarked by \_\_\_\_\_, 2021 and mailed to:  
\_\_\_\_\_, c/o \_\_\_\_\_

**5. REDEEM YOUR FREE LEADS.**

Your six free leads may be redeemed using the Lead ID provided on the postcard notice you received. To redeem your leads, call \_\_\_\_\_ or visit [www.\\_\\_\\_\\_\\_.com](http://www._____.com). You will be asked to provide information, including your specialty or preferred project types for opening an account to allow Contractors.com to tailor leads to your business. If you misplaced the Lead ID from your postcard, you can contact the settlement administrator at [www.XXXXXXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXXXXXX.com) or by calling 1-XXX-XXX-XXXX to request your Lead ID. Leads redeemed prior to the date the Court finally approves the settlement will be made available after the Court grants final approval.

# EXHIBIT 2

**You may be eligible for a payment  
from a class action settlement if you received a text message  
from Contractors.com or One Planet Ops**

*Si desea recibir esta notificación en español, llámenos o visite nuestra página web.*

A settlement has been reached in a class action lawsuit against One Planet Ops Inc. and Contractors.com LLC (collectively “Defendant”) relating to text messages sent by Defendant (the “Text Messages”). The plaintiff claims that Defendant sent the Text Messages in violation of the Washington State Consumer Protection Act. Defendant denies all of the claims and says it did not do anything wrong.

**WHO IS INCLUDED?** Defendant’s records show you are an individual who may have received a text message from Defendant and, therefore, you may be included in this Settlement as a “Settlement Class Member.”

**SETTLEMENT BENEFITS.** The Settlement provides two types of benefits to Settlement Class Members: 1) payment of between \$120 and \$1,500, depending on the number of claims received; and 2) six free leads, valued at \$50 each, from Defendant, which provides leads for contractors.

**THE ONLY WAY TO RECEIVE A PAYMENT IS TO FILE A CLAIM.** To get a Claim Form, visit the website or call 1-XXX-XXX-XXXX. The claim deadline is **Month Day, 2021**. The website and toll free number also have information on how to redeem your free leads.

**OTHER OPTIONS.** If you do nothing, you will remain in the class, you will not be eligible for a payment (but remain eligible to redeem your six free leads), and you will be bound by the decisions of the Court and give up your rights to sue Defendant for the claims resolved by this Settlement. If you do not want to be legally bound by the Settlement, you must exclude yourself by **Month Day, 2021**. If you stay in the Settlement, you may object to it by **Month Day, 2021**. A more detailed notice is available to explain how to exclude yourself or object. Please visit the website or call 1-XXX-XXX-XXXX for a copy of the more detailed notice. On **Month Day, 2021**, the Court will hold an Approval Hearing to determine whether to approve the Settlement, Class Counsel’s request for attorneys’ fees, costs, and expenses of up to 30 percent of the Total Settlement Value of \$1,529,000 and a service award of \$5,000 for the Representative Plaintiff. You or your own lawyer, if you have one, may ask to appear and speak at the hearing at your own cost, but you do not have to. This is only a summary. For more information, call or visit the website below.

[www.XXXXXXXXXX.com](http://www.XXXXXXXXXX.com)

1-XXX-XXX-XXXX

YOUR INDIVIDUAL LEAD ID IS: xxxxxxxxxxxx. RETAIN THIS NUMBER TO REDEEM YOUR LEADS.



# EXHIBIT 3

UNDERLYING EXHIBIT TO BE FILED  
ON OR BEFORE NOTING DATE

# EXHIBIT 4

## **You may be eligible for a payment from a class action settlement if you received a text message from Contractors.com or One Planet Ops**

*Para una notificación en Español, visitar [www.XXXXXXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXXXXXX.com).*

*A state court authorized this Notice. This is not junk mail, an advertisement, or a solicitation from a lawyer.*

- A settlement has been proposed in a class action lawsuit against Defendants One Planet Ops Inc. and Contractors.com LLC (collectively “Defendant”) relating to text messages sent by Defendant (the “Text Messages”).
- If you received a notification from Defendant, you may be included in this Settlement as a “Settlement Class Member.”
- The Settlement provides payments to people who submit valid claims, as well as a code redeemable for six (6) Leads from Defendant to Settlement Class Members.
- Your legal rights are affected regardless of whether you do or do not act. Read this notice carefully.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>SUBMIT A CLAIM FORM</b>	This is the only way you can get payment.
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT</b>	You will not get any payment or free leads from the Settlement, but you also will not release your claims against Defendant. This is the only option that allows you to be part of any other lawsuit against Defendant or related parties for the legal claims resolved by this Settlement.
<b>OBJECT TO THE SETTLEMENT</b>	Write to the Court with reasons why you do not agree with the Settlement.
<b>GO TO THE FINAL APPROVAL HEARING</b>	You may ask the Court for permission for you or your attorney to speak about your objection at the Final Approval Hearing.
<b>DO NOTHING</b>	You will not get any payment from this Settlement and you will give up certain legal rights. Submitting a claim form is the only way to obtain payment from this Settlement. Leads may still be redeemed using the code provided on the postcard notice you received.

- These rights and options—and the deadlines to exercise them—are explained in this Notice. For complete details, view the Class Action Settlement Agreement and Release (“Settlement Agreement”), available at [www.XXXXXXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXXXXXX.com), or call 1-\_\_\_\_-\_\_\_\_-\_\_\_\_\_.

- The Court in charge of this case still has to decide whether to grant final approval the Settlement. Payments will only be made after the Court grants final approval of the Settlement and after any appeals are resolved.

**WHAT THIS NOTICE CONTAINS**

**BASIC INFORMATION..... PAGE 3**

1. Why is this Notice being provided?
2. What is this lawsuit about?
3. What is a class action?
4. Why is there a Settlement?

**WHO IS INCLUDED IN THE SETTLEMENT?..... PAGE 3**

5. How do I know if I am part of the Settlement?
6. Are there exceptions to being included in the Settlement?

**THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY..... PAGE 4**

7. What does the Settlement provide?

**HOW TO GET BENEFITS..... PAGE 4**

8. How do I get benefits from the Settlement?
9. How will claims be decided?
10. When will I get my payment?

**REMAINING IN THE SETTLEMENT..... PAGE 5**

11. Do I need to do anything to remain in the Settlement?
12. What am I giving up as part of the Settlement?

**EXCLUDING YOURSELF FROM THE SETTLEMENT..... PAGE 5**

13. If I exclude myself, can I still get payment from the Settlement?
14. If I do not exclude myself, can I sue Defendant for the same thing later?
15. How do I get out of the Settlement?

**THE LAWYERS REPRESENTING YOU..... PAGE 6**

16. Do I have a lawyer in this case?
17. How will Class Counsel be paid?

**OBJECTING TO THE SETTLEMENT..... PAGE 6**

18. How do I tell the Court that I do not like the Settlement?
19. What is the difference between objecting to and excluding myself from the Settlement?

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## BASIC INFORMATION

### **1. Why is this Notice being provided?**

The Court directed that this Notice be provided because you have a right to know about a proposed settlement that has been reached in this class action lawsuit and about all of your options before the Court decides whether to grant final approval of the Settlement. If the Court approves the Settlement, and after objections or appeals, if any, are resolved, the Settlement Administrator appointed by the Court will distribute the payments that the Settlement allows. This Notice explains the lawsuit, the Settlement, your legal rights, what payments are available, who is eligible for them, and how to get them.

The Court in charge of this case is the Superior Court of the State of Washington, County of King. The case is known as *Michael Aaland v. Contractors.com LLC, and One Planet Ops Inc.*, Cause No. 19-2-24212-4 SEA (the “Action”). The person who filed the Action is called the Plaintiff and the entities they sued, Defendant, are called the Defendants.

### **2. What is this lawsuit about?**

The Action claims that Defendant sent the Text Messages in violation of the Washington State Consumer Protection Act. The Action seeks, among other things, payment for persons who received such Text Messages.

Defendant has denied and continues to deny all of the claims made in the Action, as well as all charges of wrongdoing or liability against it.

### **3. What is a class action?**

In a class action, one or more people called Class Representatives (in this case, Michael Aaland) sue on behalf of people who have similar claims. Together, all these people are called a Class or Class members. One Court and one judge resolves the issues for all Class members, except for those who exclude themselves from the Settlement Class.

### **4. Why is there a Settlement?**

The Court did not decide in favor of the Plaintiff or Defendant. Instead, the Plaintiff negotiated a settlement with Defendant that allows both Plaintiff and Defendant to avoid the risks and costs of lengthy and uncertain litigation and the uncertainty of a trial and appeals. It also allows Settlement Class members to obtain payment without further delay. The Class Representative and his attorneys think the Settlement is in the best interest of all Settlement Class members. This Settlement does not mean that Defendant did anything wrong.

## WHO IS INCLUDED IN THE SETTLEMENT?

### **5. How do I know if I am part of the Settlement?**

You are part of this Settlement as a Settlement Class member if you received a Text Message from Defendant. If you have received this notice, then you have been identified as a person who may have received such a Text Message.

**6. Are there exceptions to being included in the Settlement?**

Yes. Specifically excluded from the Settlement Class are: (i) Defendant and its officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; and (iii) the Judge assigned to evaluate the fairness of this settlement.

**THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY**

**7. What does the Settlement provide?**

The Settlement will provide payments to people who submit valid claims. If the Settlement is approved, Defendant will be obligated to make a payment of \$774,500.00, inclusive of all funds necessary to effectuate the Settlement other than internal costs incidental to providing the leads described below. The Gross Settlement Payment includes the Settlement Administration Costs, the Fee Award and Costs, the Class Representative Service Award, and all Individual Settlement Payments to Settlement Class Members who submit a timely and valid Claim Form. Persons who submit a timely and valid claim will be entitled to payment of at least \$120 and up to \$1,500, depending on the number of claims received. The total amount of any unclaimed funds will be paid, subject to Court approval, to the following charity: Downtown Seattle Association.

In addition, Defendant provides leads for contractors. Defendant will also provide codes for six (6) redeemable leads. Each lead is valued at \$50.00. In the postcard or email notice, each Settlement Class member will receive a unique code to redeem the free leads. To redeem leads using the unique code, go to WEBSITE ADDRESS or call TOLL-FREE NUMBER. You will be asked to provide information that will allow Defendant to tailor the Leads to your business needs. Leads redeemed prior to the time that the Court finally approves the settlement will be provided after the settlement is finally approved and becomes effective. Leads may be redeemed until settlement administration terminates, which is one year after the Effective Date of the settlement, as defined in the Settlement Agreement.

**HOW TO GET BENEFITS**

**8. How do I get benefits from the Settlement?**

To ask for a payment, you must complete and Submit a Claim Form. Claim Forms are available at [www.XXXXXXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXXXXXX.com), or you may request one by mail by calling 1-XXX-XXX-XXXX. Read the instructions carefully, fill out the Claim Form, and submit it online or mail it postmarked no later than **Month Day, 2021** to:

Defendant Settlement Administrator  
PO Box XXXXX  
City, State zip code

To redeem your free leads, contact Contractors.com either by calling 1-XXX-XXX-XXXX or visting [www.\\_\\_\\_\\_\\_.com](http://www._____.com). You will be asked to provide the Lead ID that was provided on the postcard notice you received. If you misplaced the Lead ID from your postcard, you can contact the settlement administrator at [www.XXXXXXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXXXXXX.com) or by calling 1-XXX-XXX-XXXX to request your Lead ID. Leads must be redeemed before the settlement administration terminates, which is one year after an order approving the settlement becomes final.

**9. How will claims be decided?**

The Settlement Administrator will initially decide whether the information provided on a Claim Form is complete and valid. The Settlement Administrator may require additional information from any claimant. If the required information is not timely provided, the claim will be considered invalid and will not be paid.

**10. When will I get my payment?**

The Court will hold a Final Approval Hearing at \_\_:00 a.m. on Month \_\_, 2021 to decide whether to approve the Settlement. If the Court approves the Settlement, there may be appeals. It is always uncertain whether any appeals can be resolved favorably, and resolving them can take time, perhaps more than a year. It also takes time for all the Claim Forms to be processed, depending on the number of claims submitted and whether any appeals are filed. Please be patient.

**REMAINING IN THE SETTLEMENT**

**11. Do I need to do anything to remain in the Settlement?**

You do not have to do anything to remain in the Settlement, but if you want a payment you must submit a Claim Form online or postmarked by **Month Day, 2021**. You are still able to redeem your six free leads as described in Question 8 above.

**12. What am I giving up as part of the Settlement?**

If the Settlement becomes final, you will give up your right to sue Defendant for the claims being resolved by this Settlement. The specific claims you are giving up against Defendant are described in Section 1.27 of the Settlement Agreement. You will be “releasing” Defendant and all related people or entities as described in Section 1.28 of the Settlement Agreement. The Settlement Agreement is available at [www.XXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXX.com).

The Settlement Agreement describes the Released Claims with specific descriptions, so read it carefully. If you have any questions about what this means you can talk to the law firms listed in Question 16 for free or you can, of course, talk to your own lawyer at your own expense.

**EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you do not want a payment from this Settlement, but you want to keep the right to sue Defendant about issues in the Litigation, then you must take steps to get out of the Settlement Class. This is called excluding yourself from – or is sometimes referred to as “opting out” of – the Settlement Class.

**13. If I exclude myself, can I still get payment from the Settlement?**

No. If you exclude yourself from the Settlement, you will not be entitled to any benefits of the Settlement, but you will not be bound by any judgment in this case.

**14. If I do not exclude myself, can I sue Defendant for the same thing later?**

No. Unless you exclude yourself from the Settlement, you give up any right to sue Defendant for the claims that this Settlement resolves. You must exclude yourself from the Settlement Class to start your own lawsuit or to be part of any different lawsuit relating to the claims in this case. If you exclude yourself, do not submit a Claim Form to ask for a payment.

### **15. How do I get out of the Settlement?**

To exclude yourself from the Settlement, you must send a letter by mail stating that you want to be excluded from the Settlement in *Michael Aaland v. Contractors.com LLC, and One Planet Ops Inc.*, Cause No. 19-2-24212-4 SEA. Your letter must also include your name, address, and signature. You must mail your exclusion request postmarked no later than **Month \_\_, 2021** to:

Defendant Settlement Exclusions  
P.O. Box \_\_\_\_\_  
[City] [ST] \_\_\_\_\_ - \_\_\_\_\_

### **THE LAWYERS REPRESENTING YOU**

### **16. Do I have a lawyer in this case?**

Yes. The Court appointed Jason A. Rittereiser, Rachel M. Emens, Henry Brudney, and Donald Heyrich of HKM Employment Attorneys LLP 600 Stewart Street, Suite 901, Seattle, WA 98101 and Peter D. Stutheit of Stutheit Kalin LLC, 308 SW 1st Avenue, Suite 325, Portland, OR 97204 to represent you and other Settlement Class members. These lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

### **17. How will Class Counsel be paid?**

If the Settlement is approved and becomes final, Class Counsel will ask the Court to award attorneys' fees, costs, and expenses not to exceed 30 percent of the Total Settlement Value of \$1,529,000. Class Counsel will also request approval of a service award of \$5,000 for the Class Representative.

### **OBJECTING TO THE SETTLEMENT**

You can tell the Court that you do not agree with the Settlement or some part of it.

### **18. How do I tell the Court that I do not like the Settlement?**

If you are a Settlement Class member, you can object to the Settlement if you do not like it or a portion of it. You can give reasons why you think the Court should not approve the Settlement. The Court will consider your views before making a decision. To object, you must file with the Court and mail copies to Class Counsel and Defendant's Counsel a written notice stating that you object to the Settlement in *Michael Aaland v. Contractors.com LLC, and One Planet Ops Inc.*, Cause No. 19-2-24212-4 SEA.

Your objection must include:

- 1) your full name, address, telephone number, and e-mail address;
- 2) information or proof showing you are a Settlement Class member;
- 3) the reasons why you object to the Settlement, including any documents supporting your objection;
- 4) the name and address of your attorney, if you have retained one;
- 5) the name and address of any attorneys representing you that may appear at the Final Approval Hearing;
- 6) a statement confirming whether you and/or your counsel intend to personally appear and/or testify at the Final Approval Hearing;



- 7) a list, by case name, court, and docket number, of all other cases in which you (directly or through a lawyer) have filed an objection to any proposed class action settlement within the last three years;
- 8) a list, by case name, court, and docket number, of all other cases in which your lawyer (on behalf of any person or entity) has filed an objection to any proposed class action settlement within the last three years;
- 9) your signature or the signature of your attorney or other duly authorized representative (along with documentation illustrating representation).

Your objection must be filed with the Clerk of the Superior Court of the State of Washington, County of King, 516 Third Avenue, Room E-609, Seattle, WA 98104 no later than **Month \_\_, 2021**. You must also mail copies of your objection to Class Counsel and Defendant's Counsel postmarked no later than **Month \_\_, 2021**, at all of the addresses below.

CLASS COUNSEL	DEFENDANT'S COUNSEL
Jason A. Rittreiser, Rachel M. Emens, Henry Brudney, and Donald Heyrich <b>HKM EMPLOYMENT ATTORNEYS            LLP</b> 600 Stewart Street, Suite 901 Seattle, WA 98101  Peter D. Stutheit <b>STUTHEIT KALIN LLC</b> 308 SW 1st Avenue, Suite 325 Portland, OR 97204	Paul G. Karlsgodt <b>BAKER &amp; HOSTETLER LLP</b> 1801 California Street, Suite 4400 Denver, Colorado 80202-2662

**19. What is the difference between objecting to and excluding myself from the Settlement?**

Objecting is telling the Court that you do not like something about the Settlement. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself from the Settlement, you have no basis to object or submit a Claim Form because the Settlement no longer affects you.

**THE COURT'S FINAL APPROVAL HEARING**

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you do not have to. You cannot speak at the hearing if you exclude yourself from the Settlement.

**20. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Approval Hearing at \_\_: 0 .m. on Month \_\_, 2021, in the Superior Court of the State of Washington, County of King, 516 Third Avenue, Seattle, WA 98104. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will take into consideration any properly-filed written objections and may also listen to people who have asked to speak at the hearing (*see* Question 18). The Court will also decide whether to approve fees and costs to Class Counsel, and the service awards to the Class Representatives.

**21. Do I have to come to the Final Approval Hearing?**

No. Class Counsel will answer any questions the Court may have. However, you are welcome to attend at your own expense. If you file an objection, you do not have to come to Court to talk about it. You may also hire your own lawyer to attend, at your own expense, but you are not required to do so.

**22. May I speak at the Final Approval Hearing?**

Yes, you may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must follow the instructions provided in Question 18 above. You cannot speak at the hearing if you exclude yourself from the Settlement.

**IF YOU DO NOTHING**

**23. What happens if I do nothing?**

If you do nothing, you will not receive any compensation from this Settlement but you are still able to redeem your six free leads as described in Question 8 above. If the Court approves the Settlement, you will be bound by the Settlement Agreement and the Release. This means you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendant or related parties about the issues involved in the Action, resolved by this Settlement, and released by the Settlement Agreement.

**GETTING MORE INFORMATION**

**24. Are more details about the Settlement available?**

Yes. This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement, which is available at [www.XXXXXXXXXXX.com](http://www.XXXXXXXXXXX.com), or by writing to the Defendant Settlement Administrator, P.O. Box \_\_\_\_\_, [City] [ST] \_\_\_\_\_ - \_\_\_\_.

**25. How do I get more information?**

Go to [www.XXXXXXXXXXX.com](http://www.XXXXXXXXXXX.com), call 1-\_\_\_\_-\_\_\_\_-\_\_\_\_, or write to the Defendant Settlement Administrator, P.O. Box \_\_\_\_\_, [City] [ST] \_\_\_\_\_ - \_\_\_\_.

***Please do not call the Court or the Clerk of the Court for additional information.  
They cannot answer any questions regarding the Settlement or the Action.***

# EXHIBIT 5

UNDERLYING EXHIBIT TO BE FILED  
ON OR BEFORE NOTING DATE