

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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|-----------------------------------|---|--|
| MEGAN PERKINS, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| THE NEW YORK TIMES COMPANY, |) | |
| d/b/a <i>THE NEW YORK TIMES</i> , |) | |
| |) | |
| Defendant. |) | |
| |) | |

Civil Action No. 1:22-cv-05202-PKC

CLASS ACTION SETTLEMENT AGREEMENT

This Agreement (“Agreement” or “Settlement Agreement”) is entered into by and among (i) Plaintiff Megan Perkins (“Plaintiff”); (ii) the Settlement Class (as defined herein); and (iii) Defendant The New York Times Company (“Defendant” or “NYT”). The Settlement Class and Plaintiff are collectively referred to as the “Plaintiffs” unless otherwise noted. The Plaintiffs and the Defendant are collectively referred to herein as the “Parties.” This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined herein), upon and subject to the terms and conditions of this Agreement, and subject to the final approval of the Court.

RECITALS

A. This putative class action was filed on June 21, 2022, in the United States District Court for the Southern District of New York. The material allegations of the action are that Defendant enrolled Plaintiff and other Class Members in automatic renewal newspaper subscriptions without providing or formatting certain disclosures as required under a North Carolina statute, N.C.G.S. § 75-41 (the “ARS”). Based on Defendant’s alleged conduct, the Complaint sought monetary relief and brought claims for: (1) violation of N.C.G.S. § 75-41

(Count One); (2) unfair and deceptive trade practices under North Carolina law (Count Two); and (3) unjust enrichment (Count 3). (Dkt. 1.)

B. In response to the complaint, on September 9, 2022, Defendant filed a motion to dismiss under Rule 12(b)(6), arguing that Plaintiff failed to state a claim upon which relief could be granted. (Dkt. 22–24.) Among other things, Defendant argued that it complied with the ARS; that Plaintiff failed to allege facts supporting a claim for unfair and deceptive trade practices and because ARS subsection 75-41(e) sets forth the exclusive remedy for a violation of the ARS ; and that Plaintiff failed to state an unjust enrichment claim because the parties’ relationship was governed by an express contract. Plaintiff filed her opposition brief on September 30, 2022 (Dkt. 32), and Defendant filed a reply brief on October 14, 2022 (Dkt. 27).

C. On May 23, 2023, the Court issued an Opinion and Order granting in part and denying in part Defendant’s motion to dismiss. (Dkt. 33). The Court denied the motion as to Plaintiff’s claims asserted in Count One under ARS subsections 75-41(a)(2) and (a)(4). The Court deemed Plaintiff’s claim asserted in Count One under ARS subsection 75-41(a)(3) to be voluntarily dismissed and granted the motion as to the remainder of Count One and the entirety of Counts Two and Three.

D. Defendant answered the complaint on June 6, 2023. (Dkt. 35). The Parties engaged in a Rule 26(f) planning conference and a Rule 16 scheduling conference, and the Court issued a Civil Case Management Plan and Scheduling Order. (Dkt. 40–42, 45).

E. The Parties proceeded to fact discovery, which closed on April 18, 2024. Through discovery, the Parties were able to assess the size and scope of the putative class, along with the strengths and weakness of the claims and defenses.

F. After the close of fact discovery, the Parties engaged in mediation before Mark E. Isserles, an experienced neutral affiliated with JAMS.

G. The mediation took place on April 25, 2024, was conducted by Zoom, and lasted approximately five hours. The Parties engaged in good faith negotiations, which at all times were at arms' length. Although the Parties were unable to reach an agreement at the mediation itself, they continued to discuss settlement through Mr. Isserles and, with his help, were able to reach an agreement on all material terms of a class action settlement. The Parties thereafter executed a term sheet.

H. On May 13, 2024, the Parties filed a joint letter informing the Court that the Parties had reached agreement on all material terms of a class action settlement and requesting that the Court enter an order staying all upcoming deadlines. On May 14, 2024, the Court entered an order granting in part and denying in part the Parties' request, staying all deadlines on the condition that a motion for preliminary approval of a class settlement be filed by July 12, 2024.

I. At all times, Defendant has denied and continues to deny any wrongdoing whatsoever and has denied and continues to deny that it committed any wrongful act or violation of law or duty alleged in the Action, and has opposed and continues to oppose certification of a litigation class. Defendant believes that the claims asserted in the Action do not have merit and that Defendant would have prevailed at summary judgment or at trial. Nonetheless, taking into account the uncertainty and risks inherent in any litigation, and the desire for finality and closure of this Action, Defendant has concluded it is desirable and beneficial that the Action be fully and finally settled and terminated in the manner and upon the terms and conditions set forth in this Agreement. This Agreement is a compromise, and the Agreement, any related documents, and any negotiations resulting in it shall not be construed as or deemed to be evidence of or an admission or concession of liability or wrongdoing on the part of Defendant, or any of the Released Parties (defined below), with respect to any claim of any fault or liability or

wrongdoing or damage whatsoever or with respect to the certifiability of a litigation class.

J. Plaintiff believes that the claims asserted in the Action against Defendant have merit and that she would have prevailed at summary judgment and/or trial. Nonetheless, Plaintiff and Class Counsel recognize that Defendant has raised factual and legal defenses that present a risk that Plaintiff may not prevail. Plaintiff and Class Counsel also recognize the expense and delay associated with continued prosecution of the Action against Defendant through class certification, summary judgment, trial, and any subsequent appeals. Plaintiff and Class Counsel also have taken into account the uncertain outcome and risks of litigation, especially in complex class actions, as well as the difficulties inherent in such litigation. Therefore, Plaintiff believes it is desirable that the Released Claims be fully and finally compromised, settled, and resolved with prejudice. Based on its evaluation, Class Counsel has concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate to the Settlement Class, and that it is in the best interests of the Settlement Class to settle the claims raised in the Action pursuant to the terms and provisions of this Agreement.

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

AGREEMENT

1. DEFINITIONS.

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

1.1 “Action” means *Perkins v. The New York Times Company*, Case No. 1:22-cv-05202-PKC, pending in the United States District Court for the Southern District of New York.

1.2 “Alternate Judgment” means a form of final judgment that may be entered by the Court herein but in a form other than the form of Judgment provided for in this Agreement and where none of the Parties elects to terminate this Settlement by reason of such variance.

1.3 “Approved Claim” means a Claim Form submitted by a Settlement Class Member for cash payment from the Settlement Fund that is: (a) submitted timely and in accordance with the directions on the Claim Form and the provisions of the Settlement Agreement, as determined by the Settlement Administrator; (b) fully and truthfully completed by a Settlement Class Member with all of the information requested in the Claim Form; (c) signed by the Settlement Class Member, physically or electronically under penalty of perjury; and (d) approved by the Settlement Administrator pursuant to the provisions of this Agreement.

1.4 “Claim Form” means the document substantially in the form attached hereto as **Exhibit A**, as approved by the Court. The Claim Form shall be submitted by Settlement Class Members seeking a cash payment pursuant to this Settlement Agreement. The Claim Form will be available online at the Settlement Website (defined at paragraph 1.38 below).

1.5 “Claims Deadline” means the date by which all Claim Forms must be postmarked or received, including by electronic submission via the Settlement Website, to be considered timely and will be set as a date no later than forty-five (45) days following the dissemination of Notice to the Settlement Class by the Settlement Administrator, pursuant to the

terms herein. The Claims Deadline will be clearly set forth in the Preliminary Approval Order, and will be stated on the Notice and the Claim Form.

1.6 “Class Counsel” means J. Hunter Bryson and Nick Suciu III of the law firm of Milberg Coleman Bryson Phillips Grossman, PLLC, and Philip L. Fraietta and Alec Leslie of the law firm of Bursor & Fisher, P.A.

1.7 “Class Period” means the period of time from June 21, 2018, to and through June 2, 2023.

1.8 “Class Representative” means the named Plaintiff in this Action, Megan Perkins.

1.9 “Court” means the United States District Court for the Southern District of New York, the Honorable P. Kevin Castel presiding, or any judge who will succeed him as the Judge in this Action.

1.10 “Defendant” or “NYT” means The New York Times Company.

1.11 “Defendant’s Counsel” means Stephen V. Carey and Jasmine Little of the law firm of Parker Poe Adams and Bernstein LLP and Demetri B. Blaisdell, Karen A. Chesley, and David E. McCraw of The New York Times Company.

1.12 “Effective Date” means the date ten (10) days after which all of the events and conditions specified in paragraph 9.1 have been met and have occurred.

1.13 “Escrow Account” means the “Escrow Account” means the separate, interest-bearing escrow account to be established by the Settlement Administrator under terms acceptable to all Parties at a depository institution insured by the Federal Deposit Insurance Corporation. The Settlement Fund shall be deposited by Defendant into the Escrow Account in accordance with the terms of this Agreement and the money in the Escrow Account shall be invested in the following types of accounts and/or instruments and no other: (i) demand deposit accounts and/or

(ii) time deposit accounts and certificates of deposit, in either case with maturities of forty-five (45) days or less. The costs of establishing and maintaining the Escrow Account shall be paid from the Settlement Fund.

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

1.15 “Final Approval Date” means one (1) business day following the latest of the following events: (i) the date upon which the time expires for filing or noticing any appeal of the Court’s Final Judgment approving the Settlement Agreement, if no appeal has been filed; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee Award, the date of completion, in a manner that finally affirms and leaves in place the Final Judgment without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or *certiorari*, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on *certiorari*.

1.16 “Final Approval Hearing” means the hearing before the Court where the Parties will request the Final Judgment to be entered by the Court approving the Settlement Agreement, the Fee Award, and the Incentive Award to the Class Representative.

1.17 “Final Judgment” means the Final Judgment and Order to be entered by the Court approving the Agreement after the Final Approval Hearing, which is substantially in the form of **Exhibit B** attached hereto.

1.18 “Incentive Award” means any award approved by the Court that is payable to the Plaintiff from the Settlement Fund.

1.19 “Net Settlement Fund” means the amount of the Settlement Fund remaining after payment of Settlement Administration Expenses, incentive award to the Class Representative, and the Fee Award.

1.20 “Notice” means the notice of this proposed Class Action Settlement Agreement and Final Approval Hearing, which is to be sent to the Settlement Class substantially in the manner set forth in this Agreement, consistent with the requirements of Due Process, Rule 23, and substantially in the form of **Exhibits C-E** hereto.

1.21 “Notice Plan” means the Settlement Administrator’s plan to disseminate Notice to Settlement Class Members as further detailed in paragraph 4.1.

1.22 “Notice Date” means the publication of notice pursuant paragraph 4.1(b) of this Agreement, which shall be no later than twenty-eight (28) days after the Preliminary Approval Order.

1.23 “NYT Subscriptions” means all of Defendant’s print and digital subscription offerings in the state of North Carolina.

1.24 “Objection/Exclusion Deadline” means the date by which a written objection to this Settlement Agreement or a request for exclusion submitted by a Person within the Settlement Class must be made, which shall be designated as a date no later than forty-five (45) days after the Notice Date and no sooner than fourteen (14) days after papers supporting the Fee Award are filed with the Court and posted to the settlement website listed in paragraph 4.1(e), or such other date as ordered by the Court.

1.25 “Person” shall mean, without limitation, any individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouse, parent, child, guardian,

associate, co-owners, heirs, predecessors, successors, representatives, or assigns. “Person” is not intended to include any governmental agencies or governmental actors, including, without limitation, any state Attorney General office.

1.26 “Plaintiff” means Megan Perkins.

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

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

1.29 “Preliminary Approval Order” means the order preliminarily approving the Settlement Agreement, conditionally certifying the Settlement Class for settlement purposes, and directing notice thereof to the Settlement Class, which will be agreed upon by the Parties and submitted to the Court in conjunction with Plaintiffs’ motion for preliminary approval of the Agreement. The Parties’ proposed form of Preliminary Approval Order is attached hereto as **Exhibit F**.

1.30 “Released Claims” means any and all causes of action or claims for relief, whether in law or equity, including but not limited to injunctive relief, actual damages, nominal damages, statutory damages, punitive damages, exemplary or multiplied damages, restitution, disgorgement, expenses, attorneys’ fees and costs, and/or any other form of consideration whatsoever (including “Unknown Claims” as defined below), whether in law or in equity, accrued or un-accrued, direct, individual or representative, of every nature and description whatsoever, that were brought or could have been brought in the Action relating to any and all Releasing Parties, any NYT Subscription associated with any of them, or that in any way relate to or arise out of Defendant’s automatic renewal and/or continuous service programs in North

Carolina from June 21, 2018 to date of entry of judgment in this action, including but not limited to any of the facts, transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions or failures to act related thereto.

1.31 “Released Parties” means The New York Times Company, as well as any and all of its respective present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parent companies, subsidiaries, licensors, licensees, associates, affiliates, employers, agents, consultants, independent contractors, insurers, and customers, including without limitation employees of the foregoing, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns and companies, firms, trusts, and corporations.

1.32 “Releasing Parties” means Plaintiff, those Settlement Class Members who do not timely opt out of the Settlement Class, and all of their respective present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parent companies, subsidiaries, associates, affiliates, employers, employees, agents, consultants, independent contractors, insurers, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns and companies, firms, trusts, and corporations.

1.33 “Settlement Administration Expenses” means the expenses actually incurred by the Settlement Administrator in providing Notice (including CAFA notice), processing claims, responding to inquiries from members of the Settlement Class, mailing checks for Approved Claims, and related services, paying taxes and tax expenses related to the Settlement Fund (including all federal, state or local taxes of any kind and interest or penalties thereon, as well as

expenses incurred in connection with determining the amount of and paying any taxes owed and expenses related to any tax attorneys and accountants).

1.34 “Settlement Administrator” means Analytics Consulting, LLC, or such other reputable administration company that has been selected jointly by the Parties and approved by the Court to perform the duties set forth in this Agreement, including but not limited to serving as Escrow Agent for the Settlement Fund, overseeing the distribution of Notice, as well as the processing and payment of Approved Claims to the Settlement Class as set forth in this Agreement, handing all approved payments out of the Settlement Fund, and handling the determination, payment and filing of forms related to all federal, state and/or local taxes of any kind (including any interest or penalties thereon) that may be owed on any income earned by the Settlement Fund. Class Counsel’s assent to this Agreement shall constitute consent on behalf of each and every member of the Settlement Class as defined herein to disclose all information required by the Settlement Administrator to perform the duties and functions ascribed to it herein.

1.35 “Settlement Class” means all Persons who are or were NYT digital, print, and ancillary subscription consumers who used a North Carolina billing and delivery zip code and were directly billed and automatically renewed by NYT from June 21, 2018, to and through June 2, 2023. Excluded from the Settlement Class are: (1) any Judge or Magistrate presiding over this Action and members of their families; (2) Defendant, Defendant’s subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest and their current or former officers, directors, agents, attorneys, and employees; (3) Persons who properly execute and file a timely request for exclusion from the class; and (4) the legal representatives, successors or assigns of any excluded Persons.

1.36 “Settlement Class Member” means a Person who falls within the definition of the Settlement Class.

1.37 “Settlement Fund” means the non-reversionary total cash fund that shall be established by Defendant for purposes of this settlement in the total amount of \$275,000 USD to be deposited into the Escrow Account, according to the schedule set forth herein, plus all interest earned thereon. The Settlement Fund represents the total extent of Defendant’s monetary obligations under this Agreement. The Settlement Fund shall be used for payment of the following: (i) Approved Claims submitted by Settlement Class Members; (ii) the Settlement Administration Expenses; (iii) any Fee Award to Class Counsel; and (iv) any Incentive Award to the Class Representative, not to exceed \$10,000, as may be ordered by the Court. The Settlement Fund shall be kept in the Escrow Account with permissions granted to the Settlement Administrator to access said funds until such time as the listed payments are made. The Settlement Fund includes all interest that shall accrue on the sums deposited in the Escrow Account. The Settlement Administrator shall be responsible for all tax filings with respect to any earnings on the Settlement Fund and the payment of all taxes that may be due on such earnings. The payment of the Settlement Amount by Defendant fully discharges the Defendant and the other Released Parties’ financial obligations (if any) in connection with the Settlement, meaning that no Released Party shall have any other obligation to make any payment into the Escrow Account or to any Class Member, or any other Person, under this Agreement. In no event shall the total monetary obligation with respect to this Agreement on behalf of Defendant exceed two hundred seventy five thousand dollars (\$275,000).

1.38 “Settlement Website” means a website to be established, operated, and maintained by the Settlement Administrator for purposes of providing notice and otherwise

making available to the Settlement Class Members the documents, information, and online claims submission process referenced in paragraphs 2.1(b) through 2.1(d), below.

1.39 “Unknown Claims” means claims that could have been raised in the Action and that any or all of the Releasing Parties do not know or suspect to exist, which, if known by him or her, might affect his or her agreement to release the Released Parties or the Released Claims or might affect his or her decision to agree, object, or not to object to the Settlement. The Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention to finally and forever settle and release the Released Claims, notwithstanding any Unknown Claims they may have, as that term is defined in this paragraph.

2. SETTLEMENT RELIEF.

2.1 Payment to Settlement Class Members.

(a) Defendant shall cause to be paid into the Escrow Account the amount of the Settlement Fund (\$275,000 USD), specified in paragraph 1.37 of this Agreement, within twenty-eight (28) business days after Preliminary Approval.

(b) Settlement Class Members shall have until the Claims Deadline to submit a Claim Form for approval by the Settlement Administrator as an Approved Claim. Each Settlement Class Member who submits an Approved Claim will receive a *pro rata* payment from the Net Settlement Fund in the form of a check, issued and mailed by the Settlement Administrator within 60 days of the Effective Date.

(c) The Settlement Administrator will be responsible for reviewing all claims to determine their validity. The Settlement Administrator will reject any claim that does not comply in any material respect with the instructions on the Claim Form or the terms of paragraphs 1.3 and 1.4, above, or is submitted after the Claims Deadline. Defendant has the

right to audit the claims process for evidence of fraud or error; provided, however, that the Settlement Administrator shall be the final arbiter of a claim's validity.

(d) Each claimant who submits an invalid Claim Form to the Settlement Administrator must be given a notice of the Claim Form's deficiency and an opportunity to cure the deficiency within 21 days of the date of the notice.

(e) All cash payments issued to Settlement Class Members via check will state on the face of the check that it will expire and become null and void unless cashed within one hundred and eighty (180) days after the date of issuance. If a check issued to a Settlement Class Member is not cashed within one hundred and eighty (180) days after the date of issuance, such funds shall be donated as *cy pres* to organizations that have a connection to the issues raised in this lawsuit, as recommended by Class Counsel and Defendant and approved by the Court.

3. RELEASE.

3.1 The obligations incurred pursuant to this Settlement Agreement shall be a full and final disposition of the Action and any and all Released Claims, as against all Released Parties.

3.2 Upon the Effective Date, the Releasing Parties, and each of them, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties, and each of them.

3.3 Plaintiff, the Settlement Class and the Releasing Parties each individually covenant not to bring any Released Claim and expressly agree that this Release will be, and may be raised as, a complete defense to and will preclude any action or proceeding encompassed by the release(s) contained herein in respect to any NYT Subscription associated with a Class Member.

4. NOTICE TO THE CLASS.

4.1 The Notice Plan shall consist of the following:

(a) *Settlement Class List.* Defendant shall produce an electronic list from its records that includes the names, and last known e-mail and U.S. Mail addresses that, according to its records, belong to Persons with NYT Subscriptions within the Settlement Class. This electronic document shall be called the “Class List,” and shall be provided to the Settlement Administrator with a copy to Class Counsel. In no event shall the Class List be provided to the Settlement Administrator later than fourteen (14) days prior to the date Notice shall be disseminated. This Class List is confidential and shall not be used for any other purposes beyond providing notice to the Settlement Class and assisting with the determination of valid claims. Class Counsel’s assent to this Agreement shall constitute consent on behalf of each and every member of the Settlement Class as defined herein to disclose this information as stated in this paragraph.

(b) *Direct Notice to Settlement Class Members.* No later than the twenty-eight (28) days from entry of the Preliminary Approval Order, the Settlement Administrator shall send notice to the Class Members via email in the form attached as **Exhibit C**, along with an electronic link to the Claim Form, to all Settlement Class Members for whom a valid email address is in the Class List. If an email notice to a Settlement Class Member is returned as non-deliverable, the Settlement Administrator shall send the notice in the form attached as **Exhibit D** to the Settlement Class Member’s billing or mailing address via First Class U.S. Mail, together with a postcard Claim Form with return postage prepaid. For Settlement Class Members without an email address, the Settlement Administrator shall send the Notice via First Class U.S. Mail, together with a postcard Claim Form with return postage prepaid.

(c) If any Notice is returned as non-deliverable, and a forwarding address is provided, the Settlement Administrator shall re-mail the Notice to the forwarding address within five (5) business days. If any Notice is returned as non-deliverable, and no forwarding address

is provided, the Settlement Administrator shall attempt to ascertain a valid address for the affected Settlement Class Member by seeking change of address information through the U.S. Postal Service's National Change of Address Link, and shall re-mail the Notice within five (5) business days to the address(es) that are found. The Settlement Administrator shall have no obligation to send Notices beyond those obligations specified herein.

(d) *Settlement Website.* Within ten (10) days from entry of the Preliminary Approval Order, Notice shall be provided on a website at an available URL that will be agreed upon by the parties (such as, for example, www.NCrenewalsettlementNYT.com) which shall be obtained, administered and maintained by the Settlement Administrator and shall include the ability to file Claim Forms online, provided that such Claim Forms, if signed electronically, will be binding for purposes of applicable law and contain a statement to that effect. The Notice provided on the Settlement Website shall be substantially in the form of **Exhibit E** hereto.

(e) *CAFA Notice.* Pursuant to 28 U.S.C. § 1715, not later than ten (10) days after the Agreement is filed with the Court, the Settlement Administrator shall cause to be served upon the Attorney General of the United States, and any other required government official, notice of the proposed settlement as required by law, subject to paragraph 5.1 below.

4.2 The Notice shall advise the Settlement Class of their rights, including the rights to be excluded from or object to the Settlement Agreement or any of its terms. The Notice shall specify that any objection to the Settlement Agreement, and any papers submitted in support of said objection, shall be considered by the Court at the Final Approval Hearing only if, on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice, the Person making the objection files notice of an intention to do so and at the same time (a) files copies of such papers he or she proposes to be submitted at the Final Approval Hearing with the Clerk of the Court, or alternatively, if the objection is from a Class Member represented by

counsel, files any objection through the Court's CM/ECF system, and (b) sends copies of such papers by mail, hand, or overnight delivery service to Class Counsel and Defendant's Counsel.

4.3 Any Settlement Class Member who intends to object to this Agreement must present the objection in writing to the Settlement Administrator, postmarked on or before the Objection/Exclusion deadline approved by the Court and specified in the Notice, which must be personally signed by the objector, and must include: (1) the objector's name and address; (2) an explanation of the basis upon which the objector claims to be a Settlement Class Member; (3) all grounds for the objection, including all citations to legal authority and evidence supporting the objection; (4) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection (the "Objecting Attorneys"); and (5) a statement indicating whether the objector intends to appear at the Final Approval Hearing (either personally or through counsel who files an appearance with the Court in accordance with the Local Rules).

4.4 Within the last 7 years, if a Settlement Class Member or any of the Objecting Attorneys has objected to any class action settlement where the objector or the Objecting Attorneys asked for or received any payment in exchange for dismissal of the objection, or any related appeal, with or without any modification to the settlement, then the objection must include a statement identifying each such case by full case caption and amount of payment received.

4.5 A Settlement Class Member may request to be excluded from the Settlement Class by sending a written request postmarked on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice. To exercise the right to be excluded, a Person in the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing his/her name and address, a signature, the name and number of the case,

and a statement that he or she wishes to be excluded from the Settlement Class for purposes of this Settlement. A request to be excluded that does not include all of this information, or that is sent to an address other than that designated in the Notice, or that is not postmarked within the time specified, shall be invalid, and the Person(s) serving such a request shall be a member(s) of the Settlement Class and shall be bound as a Settlement Class Member by this Agreement, if approved. Any member of the Settlement Class who validly elects to be excluded from this Agreement shall not: (i) be bound by any orders or the Final Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Agreement; or (iv) be entitled to object to any aspect of this Agreement. The request for exclusion must be personally signed by each Person requesting exclusion. So-called “mass” or “class” opt-outs shall not be allowed. To be valid, a request for exclusion must be postmarked or received by the date specified in the Notice. Upon receiving any request(s) for exclusion, the Settlement Administrator shall stamp on the original the date it was received and shall promptly notify Class Counsel and Defendant’s Counsel of such request(s) no later than two (2) calendar days after receiving any request. The Settlement Administrator shall indicate whether such request is timely received, and provide copies of the request(s) for exclusion, the mailing envelope, and any accompanying documentation, by email.

4.6 The Final Approval Hearing shall be no earlier than ninety (90) days after the date Preliminary Approval is granted.

5. SETTLEMENT ADMINISTRATION.

5.1 The Settlement Administrator shall, under the supervision of the Court, administer the relief provided by this Settlement Agreement by processing Claim Forms in a rational, responsive, cost effective, and timely manner, consistent with the terms of this Agreement. The Settlement Administrator shall maintain reasonably detailed records of its activities under this

Agreement. The Settlement Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices and such records will be made available to Class Counsel and Defendant's Counsel upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. The Settlement Administrator shall provide Class Counsel and Defendant's Counsel with regular reports at weekly intervals containing information concerning Notice, administration, and implementation of the Settlement Agreement. Should the Court request, the Parties shall submit a timely report to the Court summarizing the work performed by the Settlement Administrator, including a report of all amounts from the Settlement Fund paid to Settlement Class Members on account of Approved Claims. Without limiting the foregoing, the Settlement Administrator shall:

(a) Forward to Defendant's Counsel, with copies to Class Counsel, all original documents and other materials received in connection with the administration of the Settlement, and all copies thereof, within thirty (30) days after the date on which all Claim Forms have been finally approved or disallowed in accordance with the terms of this Agreement;

(b) Provide Class Counsel and Defendant's Counsel with drafts of all administration related documents, including but not limited to CAFA Notices, follow-up class notices or communications with Settlement Class Members, telephone scripts, website postings or language or other communications with the Settlement Class, at least five (5) days before the Settlement Administrator is required to or intends to publish or use such communications, unless Class Counsel and Defendant's Counsel agree to waive this requirement in writing on a case by case basis;

(c) Receive requests to be excluded from the Settlement Class and other requests and promptly provide to Class Counsel and Defendant's Counsel copies thereof. If the

Settlement Administrator receives any exclusion forms or other requests after the deadline for the submission of such forms and requests, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendant's Counsel;

(d) Provide weekly reports to Class Counsel and Defendant's Counsel, including without limitation, reports regarding the number of Claim Forms received, the number approved by the Settlement Administrator, and the categorization and description of Claim Forms rejected, in whole or in part, by the Settlement Administrator; and

(e) Make available for inspection by Class Counsel or Defendant's Counsel the Claim Forms received by the Settlement Administrator at any time upon reasonable notice.

5.2 The Settlement Administrator shall be obliged to employ reasonable procedures to screen claims for abuse or fraud and deny Claim Forms where there is evidence of abuse or fraud. The Settlement Administrator shall determine whether a Claim Form submitted by a Settlement Class Member is an Approved Claim by determining if the Person is on the Class List and shall reject Claim Forms that fail to (a) comply with the instructions on the Claim Form or the terms of this Agreement, or (b) provide full and complete information as requested on the Claim Form. If a Person submits a timely Claim Form by the Claims Deadline where the Person appears on the Class List but the Claim Form is not otherwise complete, then the Settlement Administrator shall give such Person one (1) reasonable opportunity to provide any requested missing information, which information must be received by the Settlement Administrator no later than thirty (30) calendar days after the Claims Deadline. If the Settlement Administrator receives such information more than thirty (30) days after the Claims Deadline, then any such claim shall be denied. The Settlement Administrator may contact any Person who has submitted a Claim Form to obtain additional information necessary to verify the Claim Form.

5.3. 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.

5.4. Defendant, the Released Parties, and Defendant's Counsel shall have no responsibility for, interest in, or liability whatsoever with respect to: (i) any act, omission, or determination by Class Counsel, or the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the settlement or otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the allocation of Net Settlement Funds to Settlement Class Members or the implementation, administration, calculation or interpretation thereof; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in value of, the Settlement Fund; or (vi) the payment, reporting, or withholding of any taxes, tax expenses, or costs incurred in connection with the taxation of the Settlement Fund or the filing of any federal, state, or local returns.

5.5. To allow a calculation of the *pro rata* payments to Settlement Class Members, no later than twenty-one (21) days before any distribution of Settlement Funds must occur, the Settlement Administrator shall submit to Class Counsel and Defendant's Counsel a final and total invoice for all of the Settlement Administrator's services.

5.7. All taxes and tax expenses shall be paid out of the Settlement Fund, and shall be timely paid by the Settlement Administrator pursuant to this Agreement and without further order of the Court. Any tax returns or reporting forms prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with this Agreement 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 as provided herein. The Released Parties shall have no responsibility or

liability for the acts or omissions of the Settlement Administrator or its agents with respect to the reporting or payment of taxes or tax expenses.

6. TERMINATION OF SETTLEMENT.

6.1 Subject to paragraphs 9.1-9.2 below, Defendant or the Class Representative on behalf of the Settlement Class, shall have the right to terminate this Agreement by providing written notice of the election to do so (“Termination Notice”) to all other Parties hereto within twenty-one (21) days of any of the following events: (i) the Court’s refusal to grant Preliminary Approval of this Agreement in any material respect; (ii) the Court’s refusal to grant Final Approval of this Agreement in any material respect; (iii) the Court’s refusal to enter the Final Judgment in this Action in any material respect; (iv) the date upon which the Final Judgment is vacated, modified or reversed in any material respect by the Court, the Court of Appeals or the Supreme Court; or (v) the date upon which an Alternate Judgment, as defined in paragraph 9.1(d) of this Agreement is vacated, modified or reversed in any material respect by the Court, the Court of Appeals or the Supreme Court. The parties will meet and confer if any of the following events occur as outlined in this section to see if any material item can be resolved before providing Termination Notice to either party.

6.2 If, prior to the filing of the Final Approval Motion, Persons who otherwise would be members of the Settlement Class have timely requested exclusion from the Settlement Class in accordance with the provisions of the Notice, and such Persons in the aggregate constitute more than half of a percent (.5%) of the Settlement Class, Defendant shall have, in its sole and absolute discretion, the option to terminate this settlement by giving notice as set forth in paragraph 6.1.

7. PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER.

7.1 Promptly after the execution of this Settlement Agreement, Class Counsel shall submit this Agreement together with its Exhibits to the Court and shall move the Court for Preliminary Approval of the settlement set forth in this Agreement; certification of the Settlement Class for settlement purposes only; appointment of Class Counsel and the Class Representative; and entry of a Preliminary Approval Order substantially in the form of **Exhibit F** hereto, which order shall set a Final Approval Hearing date and approve the Notice and Claim Form for dissemination substantially in the form of **Exhibits C, D and E** hereto. The Preliminary Approval Order shall also authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement and its implementing documents (including all Exhibits to this Agreement) so long as they are consistent in all material respects with the terms of the Settlement Agreement and do not limit or impair the rights of the Settlement Class or materially expand the obligations of Defendant.

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

7.3 After Notice is given, the Parties shall request and seek to obtain from the Court a Final Judgment substantially in the form of **Exhibit B** hereto, which will (among other things):

(a) find that the Court has personal jurisdiction over all Settlement Class Members and that the Court has subject matter jurisdiction to approve the Agreement, including all Exhibits thereto;

(b) approve the Settlement Agreement and the proposed settlement as fair, reasonable, and adequate as to, and in the best interests of, the Settlement Class Members; direct

the Parties and their counsel to implement and consummate the Agreement according to its terms and provisions; and declare the Agreement to be binding on, and have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiffs and Releasing Parties;

(c) find that the Notice implemented pursuant to the Agreement

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

(d) find that the prerequisites for a class action under Fed. R. Civ. P. 23(a) and

Fed. R. Civ. P. 23(b) have been satisfied for settlement purposes for the Settlement Class in that: (1) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable; (2) there are questions of law and fact common to the Settlement Class Members; (3) the claims of the Class Representative are typical of the claims of the Settlement Class they seek to represent; (4) the Class Representative has and will continue to fairly and adequately represent the interests of the Settlement Class for purposes of entering into the Settlement Agreement; (5) the questions of law and fact common to Settlement Class Members predominate over any questions affecting any individual Settlement Class Member; (6) the Settlement Class is ascertainable; and (7) a class action is superior to the other available methods for the fair and efficient adjudication of the controversy.

(e) dismiss the Action (including all individual claims and Settlement Class Claims presented thereby) on the merits and with prejudice, without fees or costs to any party except as provided in the Settlement Agreement;

(f) incorporate the Release set forth above, make the Release effective as of the date of the Effective Date, and forever discharge the Released Parties as set forth herein;

(g) permanently bar and enjoin all Settlement Class Members from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in any lawsuit or other action in any jurisdiction based on the Released Claims;

(h) without affecting the finality of the Final Judgment for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement and the Final Judgment, and for any other necessary purpose;

(i) close the case; and

(j) incorporate any other provisions, as the Court deems necessary and just, provided that such other provisions do not materially abridge, enlarge or modify any rights or responsibilities of the Released Parties or Settlement Class Members under this Agreement.

8. CLASS COUNSEL'S ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES; INCENTIVE AWARD.

8.1 Class Counsel may receive from the Settlement Fund, subject to Court approval, attorneys' fees, costs, and expenses not to exceed one third of the Settlement Fund. Plaintiff will petition the Court for an award of such attorneys' fees, costs, and expenses. Class Counsel, shall not seek more than this amount from the Court in attorneys' fees, costs, and expenses. Payment of the Fee Award shall be made from the Settlement Fund, and should the Court award less than the amount sought by Class Counsel, the difference in the amount sought and the amount

ultimately awarded pursuant to this paragraph shall remain in the Settlement Fund for *pro rata* distribution to Settlement Class Members in distributions for Approved Claims.

8.2 The Fee Award shall be payable by the Settlement Administrator within ten (10) business days after entry of the Court's Final Judgment, subject to Class Counsel executing the Undertaking Regarding Attorneys' Fees and Costs (the "Undertaking") attached hereto as **Exhibit G**, and providing all payment routing information and tax I.D. numbers for Class Counsel. Payment of the Fee Award shall be made from the Settlement Fund by wire transfer to Milberg Coleman Bryson Phillips Grossman, PLLC, in accordance with wire instructions to be provided by Milberg Coleman Bryson Phillips Grossman, PLLC, and completion of necessary forms, including but not limited to W-9 forms. Notwithstanding the foregoing, if for any reason the Final Judgment is reversed or rendered void as a result of an appeal(s) then Class Counsel shall return such funds to the Defendant plus interest. Additionally, should any parties to the Undertaking dissolve, merge, declare bankruptcy, become insolvent, or cease to exist prior to the final payment to Class Members, those parties shall execute a new undertaking guaranteeing repayment of funds within 14 days of such an occurrence.

8.3 Subject to Court approval, the Settlement Administrator may pay an Incentive Award to the Class Representative from the Settlement Fund, in addition to any settlement payment as a result of a valid claim pursuant to this Agreement, in the amount of up to ten thousand dollars (\$10,000.00). Should the Court award less than this amount, the difference in the amount sought and the amount ultimately awarded pursuant to this paragraph shall remain in the Settlement Fund for *pro rata* distribution to Settlement Class Members for Approved Claims. Such Incentive Award shall be paid from the Settlement Fund (in the form of a check to the Class Representative that is sent care of Class Counsel), within five (5) business days after entry

of the Final Judgment if there have been no objections to the Settlement Agreement, and, if there have been such objections, within five (5) business days after the Effective Date.

9. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION.

9.1 The Effective Date of this Settlement Agreement shall not occur unless and until ten (10) days after each of the following events occurs and shall be the date upon which the last (in time) of the following events occurs:

- (a) The Parties and their counsel have executed this Agreement;
- (b) The Court has entered the Preliminary Approval Order;
- (c) The Court has entered an order finally approving the Agreement,

following Notice to the Settlement Class and a Final Approval Hearing, as provided in the Federal Rules of Civil Procedure, and has entered the Final Judgment, or a judgment consistent with this Agreement in all material respects; and

(d) The Final Judgment has become Final, as defined above, or, if the Court enters an Alternate Judgment, such Alternate Judgment becomes Final.

9.2 If some or all of the conditions specified in paragraph 9.1 are not met, or if this Agreement is not approved by the Court, or the settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, then this Settlement Agreement shall be canceled and terminated subject to paragraph 6.1 unless Class Counsel and Defendant's Counsel mutually agree in writing to proceed with this Agreement. If any Party is in material breach of the terms hereof, any other Party, provided that it is in substantial compliance with the terms of this Agreement, may terminate this Agreement on notice to all of the Settling Parties. Notwithstanding anything herein, the Parties agree that the Court's failure to approve, in whole or in part, Class Counsel's request for payment of attorneys' fees, costs and/or

expenses and/or the request for Incentive Award payments set forth in paragraph 8.3 above shall not prevent the Agreement from becoming effective, nor shall it be grounds for termination.

9.3 If this Agreement is terminated or fails to become effective for the reasons set forth in paragraphs 6.1 or 6.2 and/or 9.1-9.2 above, the Parties shall be restored to their respective positions in the Action as of the moment just prior to the signing of this Agreement. In such event, any Final Judgment or other order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*, and the Parties shall be returned to the *status quo ante* with respect to the Action as if this Agreement had never been entered into. Within five (5) business days after written notification of termination as provided in this Agreement is sent to the other Parties, the Settlement Fund (including accrued interest thereon), less any Settlement Administration costs actually incurred, paid or payable and less any taxes and tax expenses paid, due or owing, shall be refunded by the Settlement Administrator to Defendant, based upon written instructions provided by Defendant's Counsel. If the Final Settlement Order and Judgment or any part of it is vacated, overturned, reversed, or rendered void as a result of an appeal, or the Settlement Agreement is voided, rescinded, or otherwise terminated for any other reason, Class Counsel shall, within thirty (30) days repay to Defendant, based upon written instructions provided by Defendant's Counsel, the full amount of the attorneys' fees and costs paid to Class Counsel from the Settlement Fund, plus interest. If the attorney fees and costs awarded by the Court or any part of them are vacated, modified, reversed, or rendered void as a result of an appeal, Class Counsel shall within thirty (30) days repay to Defendant, based upon written instructions provided by Defendant's Counsel, the attorneys' fees and costs paid to Class Counsel and/or Class Representative from the Settlement Fund, in the amount vacated or modified, plus interest.

10. MISCELLANEOUS PROVISIONS.

10.1 The Parties (a) acknowledge that it is their intent to consummate this Settlement Agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement, to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Agreement, to secure final approval, and to defend the Final Judgment through any and all appeals. Class Counsel and Defendant's Counsel agree to cooperate with one another in seeking Court approval of the Settlement Agreement, entry of the Preliminary Approval Order, and the Final Judgment, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Agreement.

10.2 The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Plaintiffs, the Settlement Class and each or any of them, on the one hand, against the Released Parties, and each or any of the Released Parties, on the other hand.

10.3 The Parties have relied upon the advice and representation of counsel, selected by them, concerning their respective legal liability for the claims hereby released. The Parties have read and understand fully the above and foregoing agreement and have been fully advised as to the legal effect thereof by counsel of their own selection and intend to be legally bound by the same.

10.4 Whether or not the Effective Date occurs or the Settlement Agreement is terminated, neither this Agreement nor the settlement contained herein or any term, provision or definition therein, nor any act or communication performed or document executed in the course of negotiating, implementing or seeking approval pursuant to or in furtherance of this Agreement or the settlement:

(a) is, may be deemed, or shall be used, offered or received in any civil, criminal or administrative proceeding in any court, administrative agency, arbitral proceeding or other tribunal against the Released Parties, or each or any of them, as an admission, concession or evidence of, the validity of any Released Claims, the truth of any fact alleged by the Plaintiff, the deficiency of any defense that has been or could have been asserted in the Action, the violation of any law or statute, the definition or scope of any term or provision, the reasonableness of the settlement amount or the Fee Award, or of any alleged wrongdoing, liability, negligence, or fault of the Released Parties, or any of them. Defendant, while continuing to deny all allegations of wrongdoing and disclaiming all liability with respect to all claims, considers it desirable to resolve the action on the terms stated herein to avoid further expense, inconvenience, and burden, and therefore has determined that this settlement is in Defendant's best interests. Any public statements made by Plaintiffs or Class Counsel will be consistent with this paragraph and Class Counsel will not issue any press release concerning this Agreement or the settlement contained herein;

(b) is, may be deemed, or shall be used, offered or received against any Released Party, as an admission, concession or evidence of any fault, misrepresentation or omission with respect to any statement or written document approved or made by the Released Parties, or any of them;

(c) is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them, as an admission or concession with respect to any liability, negligence, fault or wrongdoing or statutory meaning as against any Released Parties, or supporting the certification of a litigation class, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. However, the settlement, this Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to

this Agreement and/or Settlement may be used in any proceedings as may be necessary to effectuate the provisions of this Agreement. Further, if this Settlement Agreement is approved by the Court, any Party or any of the Released Parties may file this Agreement and/or the Final Judgment in any action that may be brought against such Party or Parties in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim;

(d) is, may be deemed, or shall be construed against Plaintiffs, the Settlement Class, the Releasing Parties, or each or any of them, or against the Released Parties, or each or any of them, as an admission or concession that the consideration to be given hereunder represents an amount equal to, less than or greater than that amount that could have or would have been recovered after trial; and

(e) is, may be deemed, or shall be construed as or received in evidence as an admission or concession against Plaintiffs, the Settlement Class, the Releasing Parties, or each and any of them, or against the Released Parties, or each or any of them, that any of Plaintiffs' claims are with or without merit or that damages recoverable in the Action would have exceeded or would have been less than any particular amount.

10.5 The Parties acknowledge that (a) any certification of the Settlement Class as set forth in this Agreement, including certification of the Settlement Class for settlement purposes in the context of Preliminary Approval, shall not be deemed a concession that certification of a litigation class is appropriate, or that the Settlement Class definition would be appropriate for a litigation class, nor would Defendant be precluded from challenging class certification in further proceedings in the Action or in any other action if the Settlement Agreement is not finalized or finally approved; (b) if the Settlement Agreement is not finally approved by the Court for any

reason whatsoever, then any certification of the Settlement Class will be void, the Parties and the Action shall be restored to the status quo ante, and no doctrine of waiver, estoppel or preclusion will be asserted in any litigated certification proceedings in the Action or in any other action; and (c) no agreements made by or entered into by Defendant in connection with the Settlement may be used by Plaintiffs, any person in the Settlement Class, or any other person to establish any of the elements of class certification in any litigated certification proceedings, whether in the Action or any other judicial proceeding.

10.6. No person or entity shall have any claim against the Class Representative, Class Counsel, the Settlement Administrator or any other agent designated by Class Counsel, or the Released Parties and/or their counsel, arising from distributions made substantially in accordance with this Agreement. The Parties and their respective counsel, and all other Released Parties, shall have no liability whatsoever for the investment or distribution of the Settlement Fund or the determination, administration, calculation, or payment of any claim or nonperformance of the Settlement Administrator, the payment or withholding of taxes (including interest and penalties) owed by the Settlement Fund, or any losses incurred in connection therewith.

10.7. All proceedings with respect to the administration, processing and determination of Claims and the determination of all controversies relating thereto, including but not limited to disputed questions of law and fact with respect to the validity of Claims, and the enforcement of the Release and Covenant not to Sue set forth herein, shall be subject to the jurisdiction of the Court, which shall have exclusive jurisdiction to protect and effectuate the Final Order and Judgment.

10.8 The headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

10.9 The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Agreement.

10.10 All of the Exhibits to this Agreement are material and integral parts thereof and are fully incorporated herein by this reference.

10.11 This Agreement and its Exhibits set forth the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements and undertakings with respect to the matters set forth herein. No representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents. This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

10.12 Except as otherwise provided herein, each Party shall bear its own costs.

10.13 Plaintiffs represent and warrant that they have not assigned any claim or right or interest therein as against the Released Parties to any other Person or Party and that they are fully entitled to release the same.

10.14 Each counsel or other Person executing this Settlement Agreement, any of its Exhibits, or any related settlement documents on behalf of any Party hereto, hereby warrants and represents that such Person has the full authority to do so and has the authority to take appropriate action required or permitted to be taken pursuant to the Agreement to effectuate its terms.

10.15 This Agreement may be executed in one or more counterparts. Signature by digital means, facsimile, or in PDF format will constitute sufficient execution of this Agreement.

All executed counterparts and each of them shall be deemed to be one and the same instrument.

A complete set of original executed counterparts shall be filed with the Court if the Court so requests.

10.16 This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto and the Released Parties.

10.17 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Agreement.

10.18 This Settlement Agreement shall be governed by and construed in accordance with the substantive laws of the State of New York without giving effect to its conflict of laws provisions.

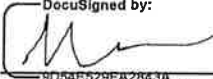
10.19 This Agreement is deemed to have been prepared by counsel for all Parties, as a result of arm's-length negotiations among the Parties. Because all Parties have contributed substantially and materially to the preparation of this Agreement, it shall not be construed more strictly against one Party than another.

10.20 Where this Agreement requires notice to the Parties, such notice shall be sent to the undersigned counsel: J. Hunter Bryson, Milberg Coleman Bryson Phillips Grossman, PLLC, 900 W. Morgan St., Raleigh, NC 27603, hbryson@milberg.com; Alec M. Leslie, Bursor & Fisher, P.A., 1330 Avenue of the Americas, 32nd Floor, New York, NY 10019, aleslie@bursor.com; Stephen V. Carey, Parker Poe Adams & Bernstein LLP, 301 Fayetteville St., Suite 1400, P.O. Box 389, Raleigh, NC 27601, stevecarey@parkerpoe.com; Demetri B. Blaisdell, Counsel, The New York Times Company, Legal Department, 620 8th Avenue, New York, NY 10018, demetri.blaisdell@nytimes.com.

IT IS SO AGREED TO BY THE PARTIES:

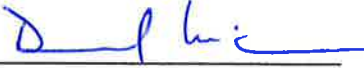
Dated: 7/24/2024

MEGAN PERKINS

DocuSigned by:
By: 
Megan Perkins, individually and as representative
of the Class

Dated: 7/24/2024

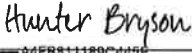
THE NEW YORK TIMES COMPANY

By: 
DAVID MCCRAW

IT IS SO STIPULATED BY COUNSEL:

Dated: 7/22/2024

**MILBERG COLEMAN BRYSON PHILLIPS
GROSSMAN, PLLC**

DocuSigned by:
By: 
J. Hunter Bryson

Dated: 7/25/2024

PARKER POE ADAMS & BERNSTEIN LLP

By: 
Stephen V. Carey

EXHIBIT

A

NEW YORK TIMES AUTOMATIC RENEWAL SETTLEMENT CLAIM FORM

THIS CLAIM FORM MUST BE SUBMITTED ONLINE OR POSTMARKED BY [DATE] AND MUST BE FULLY COMPLETED, BE SIGNED, AND MEET ALL CONDITIONS OF THE SETTLEMENT AGREEMENT.

Instructions: Fill out each section of this form and sign where indicated.

First Name: _____ Last Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Email Address: _____ (optional)

If you received notice of the Settlement by e-mail or mail, please provide the Claim ID from the notice:

Address Associated with Your Subscription(s) To The New York Times (if different than above)

Street Address: _____

City: _____ State: _____ Zip Code: _____

Email Address (associated with NYT Subscription): _____

Contact Phone #: (_____) _____-_____(You may be contacted if further information is required.)

Class Member Verification: By submitting this Claim Form and checking the boxes below, I declare that I believe I am a member of the Settlement Class and that the following statements are true (each box must be checked to receive a payment):

- I enrolled in a New York Times digital, print, and ancillary subscription, using a North Carolina billing or delivery zip code, and, from June 21, 2018, to and through June 2, 2023, I was charged and paid a subscription fee after my subscription was automatically renewed.
- I have not filed or submitted an Opt-Out or requested to be excluded from this Settlement.
- Under penalty of perjury, all information in this Claim Form is true and correct to the best of my knowledge and belief.

Signature: _____ Date: ____/____/____

Print Name: _____

Before you complete and submit this Claim Form by mail or online, you should read and be familiar with the information contained in this notice and available at: www.DOMAIN.com.

The Settlement Administrator will review your Claim Form; you may be required to submit additional documentation to validate your claim. If accepted, you will be mailed a check for a *pro rata* share of the Settlement Fund. This process takes time, please be patient.

Questions? Visit www.DOMAIN.com or call toll free at 1-XXX-XXX-XXXX

EXHIBIT

B

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

MEGAN PERKINS on behalf of herself and
all others similarly situated,

Plaintiff,

v.

THE NEW YORK TIMES COMPANY,
d/b/a THE NEW YORK TIMES,

Defendant.

Civil Action No. 1:20-cv-05202-PKC

**[PROPOSED] FINAL JUDGMENT AND
ORDER OF DISMISSAL WITH PREJUDICE**

WHEREAS, a class action is pending before the Court entitled *Perkins v. The New York Times Company d/b/a The New York Times*, No. 1:20-cv-05202-PKC; and

WHEREAS, Plaintiff Megan Perkins (“Plaintiff”) and Defendant The New York Times Company (“Defendant”) (together, the “Parties”) have entered into a Class Action Settlement Agreement, which, together with the exhibits attached thereto, sets forth the terms and conditions for a proposed settlement and dismissal of the Action with prejudice as to Defendant upon the terms and conditions set forth therein (the “Settlement Agreement”); and

WHEREAS, on _____, 2024, the Court granted Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, conditionally certifying a Class pursuant to Fed. R. Civ. P. 23(b)(3) of: “[a]ll New York Times digital, print, and ancillary subscription consumers who used a North Carolina billing and delivery zip code and were directly billed and automatically renewed by NYT from June 21, 2018, to and through June 2, 2023”; and

WHEREAS, the Court has considered the Parties’ Class Action Settlement Agreement, as well as Plaintiff’s Motion for Final Approval of the Settlement Agreement, Plaintiff’s Motion for Attorneys’ Fees, Costs, Expenses, And Incentive Award, together with all exhibits thereto,

the arguments and authorities presented by the Parties and their counsel at the Final Approval Hearing held on _____, 2024, and the record in the Action, and good cause appearing;

IT IS HEREBY ORDERED, DECREED, AND ADJUDGED AS FOLLOWS:

1. Terms and phrases in this Final Judgment shall have the same meaning as ascribed to them in the Parties' Class Action Settlement Agreement.
2. This Court has jurisdiction over the subject matter of the Action and over all Parties to the Action, including all Settlement Class members.
3. The notice provided to the Settlement Class pursuant to the Settlement Agreement and order granting Preliminary Approval – including (i) direct notice to the Settlement Class via email and U.S. mail, based on the comprehensive Settlement Class List provided by Defendant, and (ii) the creation of the Settlement Website – fully complied with the requirements of Fed. R. Civ. P. 23 and due process, was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, their right to object to or to exclude themselves from the Settlement Agreement, and their right to appear at the Final Approval Hearing.
4. The Court finds that Defendant properly and timely notified the appropriate government officials of the Settlement Agreement, pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715. The Court has reviewed the substance of Defendant’s notice, and finds that it complied with all applicable requirements of CAFA. Further, more than ninety (90) days have elapsed since Defendant provided notice pursuant to CAFA and the Final Approval Hearing.
5. This Court now gives final approval to the Settlement Agreement, and finds that the Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class. The settlement consideration provided under the Settlement Agreement constitutes fair value given in exchange for the release of the Released Claims against the Released Parties. The

Court finds that the consideration to be paid to members of the Settlement Class is reasonable, and in the best interests of the Settlement Class Members, considering the total value of their claims compared to (i) the disputed factual and legal circumstances of the Action, (ii) affirmative defenses asserted in the Action, and (iii) the potential risks and likelihood of success of pursuing litigation on the merits. The complex legal and factual posture of this case, the amount of discovery completed, and the fact that the Settlement is the result of arm's-length negotiations between the Parties support this finding. The Court finds that these facts, in addition to the Court's observations throughout the litigation, demonstrate that there was no collusion present in the reaching of the Settlement Agreement, implicit or otherwise.

6. The Court has specifically considered the factors relevant to class action settlement approval. *See* Fed. R. Civ. P. 23(e); *see also City of Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974).

7. The Court finds that the Class Representative and Class Counsel adequately represented the Settlement Class for the purposes of litigating this matter and entering into and implementing the Settlement Agreement.

8. Accordingly, the Settlement is hereby finally approved in all respects.

9. The Parties are hereby directed to implement the Settlement Agreement according to its terms and provisions. The Settlement Agreement is hereby incorporated into this Final Judgment in full and shall have the full force of an Order of this Court.

10. This Court hereby dismisses the Action, as identified in the Settlement Agreement, on the merits and with prejudice.

11. Upon the Effective Date of this Final Judgment, Plaintiff and each and every Settlement Class Member who did not timely opt out of the Settlement Class and all of their respective present or past heirs, executors, estates, administrators, predecessors, successors,

assigns, parent companies, subsidiaries, associates, affiliates, employers, employees, agents, consultants, independent contractors, insurers, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns and companies, firms, trusts, and corporations shall be deemed to have released Defendant, as well as any and all of its respective present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parent companies, subsidiaries, licensors, licensees, associates, affiliates, employers, agents, consultants, independent contractors, insurers, and customers, including without limitation employees of the foregoing, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns and companies, firms, trusts, and corporations from any and all any and all causes of action or claims for relief, whether in law or equity, including but not limited to injunctive relief, actual damages, nominal damages, statutory damages, punitive damages, exemplary or multiplied damages, restitution, disgorgement, expenses, attorneys' fees and costs, and/or any other form of consideration whatsoever (including "Unknown Claims" as defined below), whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever, that were brought or could have been brought in the Action relating to any and all Releasing Parties, any NYT Subscription associated with any of them, or that in any way relate to or arise out of Defendant's automatic renewal and/or continuous service programs in North Carolina from June 21, 2018 to date of entry of judgment in this action, including but not limited to any of the facts, transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions or failures to act related thereto.

12. Upon the Effective Date of this Final Judgment, the above release of claims and the Settlement Agreement will be binding on, and will have *res judicata* and preclusive effect on, all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiff and all other Settlement Class Members and Releasing Parties. All Settlement Class Members are hereby permanently barred and enjoined from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in any lawsuit or other action in any jurisdiction based on or arising out of any of the Released Claims.

13. The Court has also considered Plaintiff's Motion For Attorneys' Fees, Costs, Expenses, And Incentive Awards, as well as the supporting memorandum of law and declarations, and adjudges that the payment of attorneys' fees and costs in the amount of \$ _____ is reasonable in light of the multi-factor test used to evaluate fee awards in the Second Circuit. *See Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 50 (2d Cir. 2000). This award includes Class Counsel's unreimbursed litigation costs and expenses. Such payment shall be made pursuant to and in the manner provided by the terms of the Settlement Agreement.

14. The Court has also considered Plaintiff's Motion, memorandum of law, and supporting declarations for an incentive award to the Class Representative, Megan Perkins. The Court adjudges that the payment of incentive awards in the amount of \$ _____ to Ms. Perkins and to compensate her for her efforts and commitment on behalf of the Settlement Class is fair, reasonable, and justified under the circumstances of this case. Such payment shall be made pursuant to and in the manner provided by the terms of the Settlement Agreement.

15. All payments made to Settlement Class Members pursuant to the Settlement Agreement that are not cashed within one hundred eighty (180) days of issuance shall be donated as *cy pres* to _____. Except as otherwise set forth in this Order, the Parties shall bear their own costs and attorneys' fees.

16. The Parties, without further approval from the Court, are hereby permitted to agree and adopt such amendments, modifications, and expansions of the Settlement Agreement and its implementing documents (including all exhibits to the Settlement Agreement) so long as they are consistent in all material respects with this Final Judgment and do not limit the rights of Settlement Class Members.

17. Without affecting the finality of this Final Judgment for purposes of appeal, until the Effective Date the Court shall retain jurisdiction over all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement.

18. This Court hereby directs entry of this Final Judgment pursuant to Federal Rule of Civil Procedure 58 based upon the Court's finding that there is no just reason for delay of enforcement or appeal of this Final Judgment.

IT IS SO ORDERED, this _____ day of _____, 2024.

The Honorable P. Kevin Castel
United States District Judge

EXHIBIT

C

To: [Class Member email address]
From: NYT Automatic Renewal Settlement Administrator
Subject: Notice of Class Action Settlement Regarding The New York Times Company.

Perkins v. The New York Times Company Case No. 1:22-cv-05202-PKC (S.D.N.Y.)

A United States District Court authorized this Notice

If you are or were a NYT digital, print, and ancillary subscription consumer who used a North Carolina billing and delivery zip code and were directly billed and automatically renewed by NYT from June 21, 2018, to and through June 2, 2023, you may be entitled to cash benefits from a class action settlement.

[FILE CLAIM]

Your Unique ID: <<RefNum>>
Your Unique PIN: <<PIN>>

IMPORTANT MESSAGE FROM THE COURT: A Settlement has been reached in a class action lawsuit concerning The New York Times Company (“Defendant” or “NYT”) and its practices regarding the automatic renewal of NYT digital, print, and ancillary subscription subscriptions.

Who is Included? All individuals who are or were NYT digital, print, and ancillary subscription consumers who used a North Carolina billing and delivery zip code and were directly billed and automatically renewed by NYT from June 21, 2018, to and through June 2, 2023. The Class specifically excludes: (i) any Judge or Magistrate presiding over this Action and members of their families; (ii) Defendant, Defendant’s subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest and their current or former officers, directors, agents, attorneys, and employees; (iii) Persons who properly execute and file a timely request for exclusion from the class; and (iv) the legal representatives, successors or assigns of any excluded Persons.

What does the Settlement Provide? Defendant has agreed to establish a \$275,000 Settlement Fund to settle claims related to this litigation. From this Settlement Fund, Class Members who submit Valid Claim Forms are eligible to receive a cash payment that will be a pro rata payment from the Settlement Fund after the payment of (i) any Fee Award to Class Counsel; (ii) any Incentive Award to the Class Representative, not to exceed \$10,000; and, (iii) Settlement Administration Expenses, as may be ordered by the Court.

For complete details, please see the Settlement Agreement, whose terms control, available at **www.DOMAIN.com**. The Settlement Administrator will post additional information about the payment amount on **www. DOMAIN.com**, if necessary.

How To Get Benefits: You must submit a Claim Form, available at **www. DOMAIN.com**. You will need the Unique ID number found at the top of this email to submit a Claim Form. The Claim

Form must be postmarked or submitted electronically at www.DOMAIN.com on or before <<ClaimDeadline Date and Time>>. Claims will be subject to a verification process and will be denied if they do not meet the verification requirements.

Your Other Options. If you file a Claim Form, object to the Settlement, or do nothing, you will stay in the Class and be bound to its terms including its Release. You will be legally bound by all orders of the Court and you will not be able to start, continue or be part of any other lawsuit against Defendant or related parties arising out of the Data Incident. If you do not want to be legally bound by the Settlement or receive any benefits from it, you must exclude yourself by <<ExclusionDeadline>>. If you do not exclude yourself, you may object to the Settlement by <<ExclusionDeadline>>. Please see the Settlement Agreement for full details.

The Final Approval Hearing. The Court has scheduled a hearing for <<FinalApprovalDate>>, to decide whether to approve the Settlement; attorneys' fees, costs, and expenses; service awards; and any objections. If you object to the settlement, you or your attorney may request permission from the Court to speak about your objection at the hearing.

More Information. More information about your rights and options can be found in the Long-Form Notice and Settlement Agreement available at www.DOMAIN.com or by calling toll-free <<SettlementTollFreeNumber>>.

EXHIBIT

D

**NYT Automatic Renewal
Settlement**

c/o Analytics Consulting, LLC

P.O. Box XXXX

City, State Zip

FIRST-CLASS MAIL
U.S. POSTAGE PAID
CITY, STATE ZIP
PERMIT NO. XXXX

**NOTICE OF CLASS ACTION
SETTLEMENT**

You may be entitled to submit a claim
for monetary compensation under a
class action settlement.

www.DOMAIN.com

<<Barcode>>

Class Member ID: <<Refnum>>

<<FirstName>> <<LastName>>

<<Address>>

<<Address2>>

<<City>>, <<ST>> <<Zip>>-<<zip4>>

WHO IS A CLASS MEMBER?

In the lawsuit *Perkins v. The New York Times Company, Case No. 1:22-cv-05202-PKC (S.D.N.Y.)*, you are a class member if you are or were a NYT digital, print, and ancillary subscription consumer who used a North Carolina billing and/or delivery zip code and were directly billed and automatically renewed by NYT from June 21, 2018, to and through June 2, 2023.

WHAT ARE THE SETTLEMENT BENEFITS AND TERMS?

Under the Settlement, NYT has agreed to pay \$275,000.00 into a Settlement Fund to pay all Approved Claims submitted by the Settlement Class, together with Settlement Administration Expenses, attorneys' Fee Award, and an incentive award for Class Representative.

WHAT ARE YOUR RIGHTS AND OPTIONS?

Submit a Claim Form. To qualify for a cash payment, you must timely mail a Claim Form that is attached to this notice or complete and submit a Claim Form online at www.DOMAIN.com. Your Claim Form must be postmarked or submitted online no later than [REDACTED], 2024. Analytics Consulting, LLC is the Settlement Administrator.

Opt Out. You may exclude yourself from the Settlement and retain your ability to sue Defendant on your own by mailing a written request for exclusion to the Settlement Administrator that is postmarked no later than [REDACTED], 2024. If you don't exclude yourself, you will be bound by the Settlement and give up your right to sue regarding the released claims.

Objecting. If you do not exclude yourself, you have the right to object to the Settlement. Written objections must be signed, postmarked no later than [REDACTED], 2024, and provide the reasons for the objection. If you intend to file an objection, please review the full requirements for filing an objection located at www.DOMAIN.com.

Do Nothing. If you do nothing, you will not receive a Settlement payment and will lose the right to sue regarding the released claims.

Attend the Final Approval Hearing. The Court will hold a Final Approval Hearing at [REDACTED] m. on [REDACTED], 2024 to determine if the Settlement is fair, reasonable, and adequate. All persons who timely object to the Settlement may appear at the Final Approval Hearing.

Who are the attorneys for the Plaintiff and the proposed Class? J. Hunter Bryson of the law firm of Milberg Coleman Bryson Phillips Grossman, PLLC as "Class Counsel" to represent the Class.

Do I have any obligation to pay attorneys' fees or expenses? No. Attorneys' fees and expenses will be paid exclusively from the Settlement Fund as awarded and approved by the Court. Class Counsel will request Attorneys' fees and costs in an amount not to exceed one third of the Settlement Fund. The motion for attorneys' fees and expenses will be posted on the Settlement Website once it is filed.

How much are the Class Representative Service Awards? The Class Representative will seek a Service Award in the amount of up to \$10,000 for her efforts in this case.

Who is the Judge overseeing this Settlement? Judge P. Kevin Castel of the United States District Court for the Southern District of New York.

Where may I locate a copy of the settlement agreement, learn more about the case, or learn more about submitting a Claim? www.DOMAIN.com.

This Notice is a summary of the proposed Settlement.

Postage
Required

Perkins v. The New York
Times Company
c/o Settlement Administrator
P.O. Box XXXX
City, State Zip

<<Barcode>> Class Member ID:

<<Refnum>>

CLAIM FORM

Claims must be postmarked or submitted online no later than **_____**, 2024.

NAME: _____

ADDRESS: _____

By signing my name below, I swear and affirm that the information included on this Claim Form is true and accurate, and that I am completing this claim form to the best of my personal knowledge.

_____ (signature)



United States District Court
Perkins v. The New York Times Company
Case No. 1:22-cv-05202-PKC (S.D.N.Y.)



Class Action Notice

Authorized by the U.S. District Court

Did you subscribe to the New York Times, have a billing address in North Carolina, and were automatically renewed from June 21, 2018 to June 2, 2023?

There is a \$275,000 settlement of a lawsuit.

You may be entitled to money.

To be eligible for a payment, you must take action by [date].

You can visit [website] to learn more.

Key things to know:

- This is an important legal document.
- If you take no action, any ruling from the court will apply to you, and you will not be able to sue The New York Times Company about the same issues.

- Questions or to learn more: www.DOMAN.com, scan the QR code, or call 1-XXX-XXX-XXXX.

Court-Approved Legal Notice



This is an important notice
about a class action lawsuit.

<<MAIL ID>>

<<NAME 1>>

<<NAME 2>>

<<ADDRESS LINE 1>>

<<ADDRESS LINE 2>>

<<ADDRESS LINE 3>>

<<ADDRESS LINE 4>>

<<ADDRESS LINE 5>>

<<CITY, STATE ZIP>>

<<COUNTRY>>

EXHIBIT

E

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Perkins v. The New York Times Company
Case No. 1:22-cv-05202-PKC

If You Are Receiving this Notice a Class Action Settlement May Affect Your Rights.

*The United States District Court for the Southern District of New York
authorized this Notice. You are not being sued.
This is not a solicitation from a lawyer.*

- A Settlement has been reached in a class action lawsuit concerning The New York Times Company (“Defendant” or “NYT”) and its practices regarding the automatic renewal of NYT digital, print, and ancillary subscription subscriptions.
- The lawsuit is called *Perkins v. The New York Times Company*, Case No. 1:22-cv-05202-PKC (S.D.N.Y.). The Defendant in the lawsuit is The New York Times Company. The lawsuit asserts claims that Defendant enrolled Plaintiff and other Class Members in automatic renewal newspaper subscriptions without providing or formatting certain disclosures as required under a North Carolina statute, N.C.G.S. § 75-41 (the “ARS”). NYT denies it is or can be held liable for the claims made in the lawsuit. The Settlement does not establish who is correct, but rather is a compromise to end the lawsuit.
- Members of the Class are those who are or were NYT digital, print, and ancillary subscription consumers who used a North Carolina billing and delivery zip code and were directly billed and automatically renewed by NYT from June 21, 2018, to and through June 2, 2023. The Class specifically excludes: (i) any Judge or Magistrate presiding over this Action and members of their families; (ii) Defendant, Defendant’s subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest and their current or former officers, directors, agents, attorneys, and employees; (iii) Persons who properly execute and file a timely request for exclusion from the class; and (iv) the legal representatives, successors or assigns of any excluded Persons.
- Class Members are eligible to receive a cash payment that will be a *pro rata* payment from the Settlement Fund after the payment of (i) any Fee Award to Class Counsel; (ii) any Incentive Award to the Class Representative, not to exceed \$10,000; and, (iii) Settlement Administration Expenses, as may be ordered by the Court. The Settlement Administrator will post additional information about the payment amount on www.DOMAIN.com. For complete details, please see the Settlement Agreement, whose terms control, available at www.DOMAIN.com.
- Your legal rights are affected regardless of whether you act or do not act. Please read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

| | |
|---|---|
| SUBMIT A CLAIM FORM | This is the only way you may receive a payment from the Settlement Fund. The deadline to submit a Claim Form is <<Date>>. |
| EXCLUDE YOURSELF FROM THE SETTLEMENT | You will receive no payment, but you will retain any rights you currently have with respect to Defendant and the issues in this case. You may download an exclusion form at www.DOMAIN.com . The deadline to exclude from the Settlement is <<Date>>. |
| OBJECT TO THE SETTLEMENT | Write to the Court explaining why you do not agree with the Settlement. The deadline to object is <<Date>>. |
| ATTEND THE FINAL APPROVAL HEARING | You may ask the Court for permission for you or your attorney to speak about your objection at the Final Approval Hearing. The Final Approval Hearing will be held on <<Date>> at <<Time>>. |
| DO NOTHING | You get no payment and you give up rights. |

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice. For complete details, please see the Settlement Agreement, whose terms control, available at www.DOMAIN.com.
- The Court in charge of this case still has to decide whether to approve the Settlement. No Settlement benefits or payments will be provided unless the Court approves the Settlement and it becomes Final.

BASIC INFORMATION

1. What is this Notice and why should I read it?

The Court authorized this Notice to inform you about a proposed Settlement with Defendant. You have legal rights and options that you may act on before the Court decides whether to approve the proposed Settlement. You may be eligible to receive a cash payment as part of the Settlement. This Notice explains the lawsuit, the Settlement, and your legal rights.

Judge P. Kevin Castel of the United States District Court for the Southern District of New York is overseeing this class action. The case is called *Perkins v. The New York Times Company*, Case No. 1:22-cv-05202-PKC (S.D.N.Y.). (the “Action”).

Megan Perkins is the Plaintiff. The company she sued, The New York Times Company, is the Defendant.

2. What is a class action lawsuit?

A class action is a lawsuit in which one or more plaintiffs—in this case, Megan Perkins, sues on behalf of a group of people who have similar claims. Together, this group is called a “Class” and

consists of “Class Members.” In a class action, the court resolves the issues for all class members, except those who exclude themselves from the class. After the Parties reached an agreement to settle this case, the Court granted preliminary approval of the Settlement and recognized it as a case that should be treated as a class action for settlement purposes.

THE CLAIMS IN THE LAWSUIT AND THE SETTLEMENT

3. What is this lawsuit about?

The Plaintiff claims that Defendant enrolled Plaintiff and other Class Members in automatic renewal newspaper subscriptions without providing or formatting certain disclosures as required under a North Carolina statute, N.C.G.S. § 75-41 (the “ARS”).

Defendant denies that it is or can be held liable for the claims made in the lawsuit. More information about the allegations in the lawsuit and Defendant’s responses can be found in the “Court Documents” section of the Settlement Website at www.DOMAIN.com.

4. Why is there a Settlement?

The Court has not decided whether the Plaintiff or Defendant should win this case. Instead, both sides agreed to this Settlement. That way, they can avoid the uncertainty, risks, and expense of ongoing litigation, and Class Members will get compensation now rather than years later—if ever. The Class Representative and Class Counsel, attorneys for the Class Members, agree the Settlement is in the best interests of the Class Members. The Settlement is not an admission of wrongdoing by Defendant.

WHO’S INCLUDED IN THE SETTLEMENT?

5. How do I know if I am in the Settlement Class?

You are part of the Settlement as a Class Member if you are or were NYT digital, print, and ancillary subscription consumers who used a North Carolina billing and delivery zip code and were directly billed and automatically renewed by NYT from June 21, 2018, to and through June 2, 2023. The Class specifically excludes: (i) any Judge or Magistrate presiding over this Action and members of their families; (ii) Defendant, Defendant’s subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest and their current or former officers, directors, agents, attorneys, and employees; (iii) Persons who properly execute and file a timely request for exclusion from the class; and (iv) the legal representatives, successors or assigns of any excluded Persons.

Eligible Class Members will have been e-mailed or mailed notice of their eligibility by the Settlement Administrator, and Class membership will be verified against that mailed list. If you are still not sure whether you are included, you can contact the Settlement Administrator by calling toll-free at <<[Settlement Toll-Free Number](tel:)>> or by visiting the Settlement Website at www.DOMAIN.com.

THE SETTLEMENT BENEFITS

6. What does the Settlement provide?

Under this Settlement, the maximum total amount Defendant may be required to pay is \$275,00.00. This Settlement provides eligible Class Members who submit a Claim Form with a cash payment that will be a *pro rata* payment from a \$275,000 Settlement Fund after the payment of (i) any Fee Award to Class Counsel; (ii) any Incentive Award to the Class Representative, not to exceed \$10,000; and, (iii) Settlement Administration Expenses, as may be ordered by the Court. The Settlement Administrator will post additional information about the payment amount on www.DOMAIN.com. For complete details, please see the Settlement Agreement, whose terms control, available at www.DOMAIN.com.

HOW TO GET BENEFITS

7. How do I make a Claim?

By submitting a valid claim form by on or before the claim deadline of [\[Month/Date/Year\]](#). If you are a Class Member, you can make a claim by filling out and submitting the claim form available at www.DOMAIN.com.

You can also contact the Settlement Administrator to request a paper claim form by telephone ([1-800-XXX-XXXX](tel:1-800-XXX-XXXX)), email (info@www.DOMAIN.com), or U.S. mail (Analytics Consulting, LLC, [NYT Automatic Renewal Settlement, \(address, city\) , MN \(Zip\)](#)).

Claims will be subject to a verification process. You will need the Unique ID provided on the front of your postcard Notice (or the top of your email notice) to fill out a Claim Form. If you do not know your Unique ID, please contact the Settlement Administrator.

8. When will I get my payment?

The hearing to consider the fairness of the Settlement is scheduled for [<<ClaimDeadline>>](#), [<<DeadlineTime>>](#). If the Court approves the Settlement, eligible Settlement Class Members whose Claims were approved by the Settlement Administrator will be sent payment after all appeals and other reviews, if any, are completed. Please be patient. Eligible claims will be paid to Class Members via written check unless a Class Member chooses to receive payment electronically. All checks will expire and become void 180 days after they are issued.

THE LAWYERS REPRESENTING YOU

9. Do I have a lawyer in this case?

Yes, the Court has appointed J. Hunter Bryson of the law firm of Milberg Coleman Bryson Phillips Grossman, PLLC as “Class Counsel.”

Should I get my own lawyer?

You don’t need to hire your own lawyer because Class Counsel is working on your behalf. These lawyer and his firms is experienced in handling similar cases. You will not be charged for these

lawyers. You can ask your own lawyer to appear in Court for you, at your own cost, if you want someone other than Class Counsel to represent you.

10. How will the lawyers be paid?

Class Counsel will ask the Court for attorneys' fees, costs, and expenses that will be paid from the Settlement Fund. Class Counsel will not seek more than one-third (\$91,666.67) in attorneys' fees costs, and expenses. Class Counsel will also request an Incentive Award of up to \$10,000 for the Class Representative. The Court will determine the proper amount of any attorneys' fees, costs, and expenses to award Class Counsel and the proper amount of any Incentive Award to the Class Representative. The Court may award less than the amounts requested.

YOUR RIGHTS AND OPTIONS

11. What claims do I give up by participating in this Settlement?

If you do not exclude yourself from the Settlement, you will not be able to sue the Defendant about the issues in this case, and you will be bound by all decisions made by the Court in this case, the Settlement, and its included Release. This is true regardless of whether you submit a Claim Form. You can read the Settlement Agreement at www.DOMAIN.com. However, you may exclude yourself from the Settlement (see Question 14). If you exclude yourself from the Settlement, you will not be bound by any of the Released Claims.

“Released Claims” means any and all causes of action or claims for relief, whether in law or equity, including but not limited to injunctive relief, actual damages, nominal damages, statutory damages, punitive damages, exemplary or multiplied damages, restitution, disgorgement, expenses, attorneys' fees and costs, and/or any other form of consideration whatsoever (including “Unknown Claims” as defined below), whether in law or in equity, accrued or un-accrued, direct, individual or representative, of every nature and description whatsoever, that were brought or could have been brought in the Action relating to any and all Releasing Parties, any NYT Subscription associated with any of them, or that in any way relate to or arise out of Defendant's automatic renewal and/or continuous service programs in North Carolina from June 21, 2018 to date of entry of judgment in this action, including but not limited to any of the facts, transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions or failures to act related thereto.

The Settlement Agreement in Subsection [1.30](#), [1.31](#), and [1.32](#) describe the Release, Released Claims, Released Parties, and Releasing Parties in necessary legal terminology, so please read these sections carefully. The Settlement Agreement is available at www.DOMAIN.com or in the public court records on file in this lawsuit.

The Released Claims do not include any claims arising from or relating to any conduct by Defendant after the date the Agreement is executed. The Released Claims shall also not include the right of Plaintiff, any Class Member, or any Releasing Party to enforce the terms of the Settlement Agreement.

12. What happens if I do nothing at all?

If you do nothing, you will receive no payment under the Settlement. You will be in the Class, and if the Court approves the Settlement, you will also be bound by all orders and judgments of the Court, the Settlement, and its included Release. You will be deemed to have participated in the Settlement and will be subject to the provisions of Section 11 above. Unless you exclude yourself, you won't be able to file a lawsuit or be part of any other lawsuit against Defendant for the claims or legal issues resolved in this Settlement.

13. What happens if I ask to be excluded?

If you opt-out of the Settlement, you will not have any rights as a member of the Class under the Settlement terms; you will not receive any payment as part of the Settlement; you will not be bound by any further orders or judgments in this case; and you will keep the right, if any, to sue on the claims alleged in this lawsuit at your own expense.

14. How do I ask to be excluded?

You can ask to be excluded from the Settlement. To do so, you must mail a letter or exclusion form stating: (1) the name of the proceeding, *Perkins v. The New York Times Company*, Case No. 1:22-cv-05202-PKC (S.D.N.Y.); (2) your full name; (3) your current address; (4) your personal signature; and (5) a clear statement of your intent to opt-out of or exclude yourself from the settlement. You must mail your exclusion request, postmarked no later than <<ExclusionDeadline>>, to the following address:

NYT Automatic Renewal Settlement
c/o Analytics Consulting, LLC
(address, city) , MN (Zip)

You cannot exclude yourself by phone or email. Each individual who wants to be excluded from the Settlement must submit his or her own exclusion request. No group opt-outs shall be permitted.

15. If I don't exclude myself, can I sue Defendant for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Defendant for the claims being resolved by this Settlement even if you do nothing.

16. If I exclude myself, can I get anything from this Settlement?

No. If you exclude yourself, do not submit a Claim Form to ask for a payment.

17. How do I object to the Settlement?

If you did not exclude yourself from the Class and think that the Court should not approve the settlement, you can tell the Court that you do not agree with the Settlement or some part of it by objecting to the Settlement. The Court will consider your views in its decision on whether to approve the Settlement. The Court can only approve or deny the Settlement and cannot change its terms. To object, you must mail your objection to the Clerk of the Court and the Settlement

Administrator, at the mailing addresses listed below, postmarked by **no later** than the Objection Deadline, <<Objection Date>>:

| Location To Send Objection | Settlement Administrator |
|---------------------------------|---|
| Clerk of the Court [address] | NYT Automatic Renewal Settlement c/o Analytics Consulting, LLC (address, city) , MN (Zip) |

You or your counsel shall also file any Objection with the Court through the Court’s ECF system or by submitting your objection to the Clerk of Court, which is located at <<Address>>.

Your objection must be written and must include all of the following:(i) your full name and address; (ii) the case name and docket number, *Perkins v. The New York Times Company*, Case No. 1:22-cv-05202-PKC (S.D.N.Y.); (iii) information identifying yourself as a Class Member, including proof that you are a member of the Class (e.g., copy of your settlement notice or a statement explaining why you believe you are a Class Member); (iv) a written statement of all grounds for the objection, accompanied by any legal support for the objection that you believe is applicable; (v) the identity of any and all counsel representing you in connection with your objection; (vi) a statement whether you and/or your counsel will appear at the Final Fairness Hearing; and (vii) your signature or the signature of your duly authorized attorney or other duly authorized representative (if any) representing you in connection with the objection.

If a Settlement Class Member or any of the Objecting Attorneys has objected to any class action settlement where the objector or the Objecting Attorneys asked for or received any payment in exchange for dismissal of the objection, or any related appeal, without any modification to the settlement, then the objection must include a statement identifying each such case by full case caption and amount of payment received.

For all objections mailed to the Settlement Administrator, Class Counsel will file them with the Court with the Motion for Final Approval of the Settlement, unless the Objection(s) were previously filed on the docket.

18. What’s the difference between objecting and excluding myself from the Settlement?

Objecting simply means telling the Court that you don’t like something about the Settlement. You can object only if you stay in the Class. Excluding yourself from the Class is telling the Court that you don’t want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT’S FAIRNESS HEARING

19. When and where will the Court hold a hearing on the fairness of the Settlement?

The Court will hold the Final Approval Hearing on <<[FinalApprovalHearingDateandTime](#)>> at the <<[CourtAddress](#)>>. The purpose of the hearing is for the Court to determine whether the Settlement is fair, reasonable, adequate, and in the best interests of the Class. At the hearing, the Court will hear any objections and arguments concerning the fairness of the proposed Settlement, including those related to the amount requested by Class Counsel for attorneys' fees, costs, and expenses and the Incentive Award Payment to the Class Representative.

Note: The date and time of the Final Approval Hearing are subject to change by Court Order. Any changes will be posted at the Settlement Website, [www.DOMAIN.com](#), or through the Court's publicly available docket. You should check the Settlement Website to confirm the date and time have not been changed.

20. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have, but you are welcome to attend the hearing at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as your written objection was filed or mailed on time and meets the other criteria described in the Settlement Agreement, the Court will consider it. You may also pay a lawyer to attend on your behalf at your own expense, but you don't have to.

21. May I speak at the Hearing?

Yes. If you do not exclude yourself from the Class, you may ask the Court for permission to speak at the Final Approval Hearing concerning any part of the proposed Settlement.

GETTING MORE INFORMATION

22. Where can I get additional information?

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement, which is available at [www.DOMAIN.com](#).

YOU MAY CONTACT THE SETTLEMENT ADMINISTRATOR ONLINE AT [www.DOMAIN.com](#), BY CALLING TOLL-FREE AT, <<[SETTLEMENTTOLLFREENUMBER](#)>> OR WRITING TO:

NYT Automatic Renewal Settlement
[c/o Analytics Consulting, LLC](#)

PLEASE DO NOT CALL THE COURT, THE CLERK OF THE COURT, THE JUDGE, OR THE DEFENDANT WITH QUESTIONS ABOUT THE SETTLEMENT OR CLAIMS PROCESS.

EXHIBIT

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

MEGAN PERKINS on behalf of herself and
all others similarly situated,

Plaintiff,

v.

THE NEW YORK TIMES COMPANY, d/b/a
THE NEW YORK TIMES,

Defendant.

Civil Action No. 1:20-cv-05202-PKC

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT AGREEMENT, CERTIFYING
SETTLEMENT CLASS, APPOINTING CLASS REPRESENTATIVE,
APPOINTING CLASS COUNSEL, AND APPROVING NOTICE PLAN**

WHEREAS, a class action is pending before the Court entitled *Perkins v. The New York Times Company, d/b/a The New York Times*, No. 1:20-cv-05202-PKC (the “Action”); and

WHEREAS, Plaintiff Megan Perkins and Defendant The New York Times Company have entered into a Class Action Settlement Agreement, which, together with the exhibits attached thereto, sets forth the terms and conditions for a proposed settlement and dismissal of the Action with prejudice as to Defendant upon the terms and conditions set forth therein (the “Settlement Agreement”), and the Court having read and considered the Settlement Agreement and exhibits attached thereto;

This matter coming before the Court upon the agreement of the parties, good cause being shown, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED, DECREED, AND ADJUDGED AS FOLLOWS:

1. Terms and phrases in this Order shall have the same meaning as ascribed to them in the Settlement Agreement.

2. The Parties have moved the Court for an order approving the settlement of the Action in accordance with the Settlement Agreement, which, together with the documents incorporated therein, sets forth the terms and conditions for a proposed settlement and dismissal of the Action with prejudice, and the Court having read and considered the Settlement Agreement and having heard the parties and being fully advised in the premises, hereby preliminarily approves the Settlement Agreement in its entirety subject to the Final Approval Hearing referred to in paragraph 5 of this Order.

3. This Court finds that it has jurisdiction over the subject matter of the Action and over all Parties to the Action.

4. The Court finds that, subject to the Final Approval Hearing, the Settlement Agreement is fair, reasonable, and adequate, within the range of possible approval, and in the best interests of the Settlement Class set forth below. The Court further finds that the Settlement Agreement substantially fulfills the purposes and objectives of the class action, and provides substantial relief to the Settlement Class without the risks, burdens, costs, or delay associated with continued litigation, trial, and/or appeal. The Court also finds that the Settlement Agreement (a) is the result of arm's-length negotiations between experienced class action attorneys; (b) is sufficient to warrant notice of the settlement and the Final Approval Hearing to be disseminated to the Settlement Class; (c) meets all applicable requirements of law, including Federal Rule of Civil Procedure 23 and the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715; and (d) is not a finding or admission of liability by the Defendant or any other person, nor a finding of the validity of any claims asserted in the Action or of any wrongdoing or any violation of law.

Final Approval Hearing

5. The Final Approval Hearing shall be held before this Court on _____, at _____. [*suggested date of 90 days after entry of this Order*] at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York to determine (a) whether the proposed settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate and should be given final approval by the Court; (b) whether a judgment and order of dismissal with prejudice should be entered; (c) whether to approve the payment of attorneys' fees, costs, and expenses to Class Counsel; and (d) whether to approve the payment of incentive awards to the Class Representative. The Court may adjourn the Final Approval Hearing without further notice to members of the Settlement Class.

6. Class Counsel shall file papers in support of their Fee Award and Class Representatives' Incentive Awards (collectively, the "Fee Petition") with the Court on or before _____ [*suggested date of 52 days after entry of this Order, (i.e., 14 days before the Objection/Exclusion Deadline).*] Defendant may, but is not required to, file a response to Class Counsel's Fee Petition with the Court on or before _____ [*suggested date of 21 days before Final Approval hearing.*] Class Counsel may file a reply in support of their Fee Petition with the Court on or before _____ [*suggested date of 14 days before Final Approval hearing.*]

7. Papers in support of final approval of the Settlement Agreement and any supplementation to the Fee Petition shall be filed with the Court on or before _____ [*suggested date of 14 days before Final Approval hearing.*]

Certification of the Settlement Class

8. For purposes of settlement only: (a) Philip L. Fraietta and Alec M. Leslie of Bursor & Fisher, P.A. and J. Hunter Bryson of Milberg Coleman Bryson Phillips Grossman, LLC are appointed Class Counsel for the Settlement Class; and (b) Megan Perkins is named Class Representative. The Court finds that these attorneys are competent and capable of exercising the responsibilities of Class Counsel, and that Plaintiff will adequately protect the interests of the Settlement Class defined below.

9. For purposes of settlement only, the Court conditionally certifies the following Settlement Class as defined in the Settlement Agreement:

[All] New York Times digital, print, and ancillary subscription consumers who used a North Carolina billing and delivery zip code and were directly billed and automatically renewed by NYT from June 21, 2018, to and through June 2, 2023.

10. The Court finds, subject to the Final Approval Hearing referred to in Paragraph 5, that the Settlement Agreement is fundamentally fair, adequate, and reasonable, and, solely within the context of and for the purposes of settlement only, that the Settlement Class satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, specifically, that: the Settlement Class is so numerous that joinder of all members is impracticable; there are questions of fact and law common to the Settlement Class; the claims of the Class Representative are typical of the claims of the members of the Settlement Class; the Class Representative and Class Counsel will fairly and adequately protect the interests of the members of the Settlement Class; common questions of law or fact predominate over questions affecting individual members; and a class action is a superior method for fairly and efficiently adjudicating the Action.

11. If the Settlement Agreement does not receive the Court's final approval, or if final approval is reversed on appeal, or if the Settlement Agreement is terminated or otherwise fails to

become effective, the Court's grant of class certification shall be vacated, and the Class Representative will once again bear the burden of establishing the propriety of class certification. In such case, neither the certification of the Settlement Class for settlement purposes, nor any other act relating to the negotiation or execution of the Settlement Agreement shall be considered as a factor in connection with any class certification issue(s).

Notice and Administration

12. The Court approves, as to form, content, and distribution, the Notice Plan set forth in the Settlement Agreement, including all forms of Notice to the Settlement Class as set forth in the Settlement Agreement and Exhibits C, D, and E thereto (the "Notice Forms"). The Notice Plan shall be commenced by _____ [*suggested date of 10 days after entry of this Order, in accordance with § 4.1(d) of the Settlement Agreement*] as outlined in Section 4.1 of the Settlement Agreement. The Court finds that such Notice is the best notice practicable under the circumstances, and that the Notice complies fully with the requirements of the Federal Rules of Civil Procedure. The Court also finds that the Notice constitutes valid, due and sufficient notice to all persons entitled thereto, and meets the requirements of Due Process. The Court further finds that the Notice is reasonably calculated to, under all circumstances, reasonably apprise members of the Settlement Class of the pendency of this action, the terms of the Settlement Agreement, and the right to object to the settlement and to exclude themselves from the Settlement Class. In addition, the Court finds that no notice other than that specifically identified in the Settlement Agreement is necessary in this Action. The Parties, by agreement, may revise the Notice Forms in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting.

13. The Court approves the request for the appointment of Analytics LLC as

Settlement Administrator of the Settlement Agreement.

14. Pursuant to Section 4 of the Settlement Agreement, the Settlement Administrator is directed to publish the Notice Forms on the Settlement Website and to send direct notice via email and U.S. Mail, in accordance with the Notice Plan called for by the Settlement Agreement. The Settlement Administrator shall also maintain the Settlement Website to provide full information about the Settlement.

Requests for Exclusion from Class

15. Any person falling within the definition of the Settlement Class may, upon valid and timely request, exclude themselves or “opt out” from the Class. Any such person may do so if, on or before the Objection/Exclusion Deadline, which the Court orders to be set as 45 days after the Notice Date, they comply with the exclusion procedures set forth in the Settlement Agreement and Notice. Any members of the Class so excluded shall neither be bound by the terms of the Settlement Agreement nor entitled to any of its benefits.

16. Any members of the Settlement Class who elect to exclude themselves or “opt out” of the Settlement Agreement must file a written request with the Settlement Administrator, received or postmarked no later than the Objection/Exclusion Deadline. The request for exclusion must comply with the exclusion procedures set forth in the Settlement Agreement and Notice and include the Settlement Class member’s name and address, a signature, the name and number of the case, and a statement that he or she wishes to be excluded from the Settlement Class for the purposes of this Settlement. Each request for exclusion must be submitted individually. So called “mass” or “class” opt-outs shall not be allowed.

17. Individuals who opt out of the Class relinquish all rights to benefits under the Settlement Agreement and will not release their claims. However, members of the Settlement

Class who fail to submit a valid and timely request for exclusion shall be bound by all terms of the Settlement Agreement and the Final Judgment, regardless of whether they have requested exclusion from the Settlement Agreement.

Appearances and Objections

18. At least twenty-one (21) calendar days before the Final Approval Hearing, any person who falls within the definition of the Settlement Class and who does not request exclusion from the Class may enter an appearance in the Action, at their own expense, individually or through counsel of their own choice. Any Settlement Class Member who does not enter an appearance will be represented by Class Counsel.

19. Any members of the Settlement Class who have not timely filed a request for exclusion may object to the fairness, reasonableness, or adequacy of the Settlement Agreement or to a Final Judgment being entered dismissing the Action with prejudice in accordance with the terms of the Settlement Agreement, or to the attorneys' fees and expense reimbursement sought by Class Counsel in the amounts specified in the Notice, or to the award to the Class Representatives as set forth in the Notice and Settlement Agreement. At least fourteen (14) days prior to the Objection/Exclusion Deadline, papers supporting the Fee Award shall be filed with the Court and posted to the settlement website. Members of the Class may object on their own, or may do so through separate counsel at their own expense.

20. To object, members of the Class must sign and file a written objection no later than on or before the Objection/Exclusion Deadline, which the Court orders to be set as 45 days after the Notice Date. To be valid, the objection must comply with the objection procedures set forth in the Settlement Agreement and Notice. Specifically, the objection must contain a caption or title that identifies it as "Objection to Class Settlement in *Perkins v. The New York Times*,"

contact and address information for the objecting Settlement Class Member, documents sufficient to establish the person's standing as a Settlement Class Member (such as, for example, billing statements for the New York Times reflecting a North Carolina address during the relevant time period), the facts supporting the objection, and the legal grounds on which the objection is based, the name and contact information of any and all attorneys representing, advising, or in any way assisting him or her in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection (the "Objecting Attorneys"), and a statement indicating whether he or she intends to appear at the Final Approval Hearing (either personally or through counsel who files an appearance with the Court in accordance with Southern District of New York Local Rules). If a Settlement Class Member or any of the Objecting Attorneys has objected to any class action settlement where the objector or the Objecting Attorneys asked for or received any payment in exchange for dismissal of the objection, or any related appeal, without any modification to the settlement, then the objection must include a statement identifying each such case by full case caption. Class Counsel and Defendant's Counsel may petition the Court for discovery of any objector to determine whether the objector has standing as a Settlement Class Member.

21. Members of the Class who fail to file and serve timely written objections in compliance with the requirements of this paragraph and the Settlement Agreement shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement Agreement or to any of the subjects listed in Paragraph 5, above, *i.e.* (a) whether the proposed settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate and should be given final approval by the Court; (b) whether a judgment and order of dismissal with

prejudice should be entered; (c) whether to approve the payment of attorneys' fees and expenses to Class Counsel; and (d) whether to approve the payment of an incentive award to the Class Representatives.

22. To be valid, objections by persons represented by counsel must be filed electronically on the docket. Pro se objectors may mail their objects to the Court, Honorable P. Kevin Castel, 500 Pearl Street, New York, New York 10007, with a copy also sent to Class Counsel, Philip L. Fraietta and Alec M. Leslie of Bursor & Fisher, P.A., 1330 Avenue of the Americas, New York, NY 10019; and Defendant's Counsel Stephen V. Carey of Parker Poe, 301 Fayetteville Street, Suite 1400, Raleigh, NC 27601.

Further Matters

23. All further proceedings in the Action are ordered stayed until Final Judgment or termination of the Settlement Agreement, whichever occurs earlier, except for those matters necessary to obtain and/or effectuate final approval of the Settlement Agreement.

24. Members of the Settlement Class shall be bound by all determinations and judgments concerning the Settlement Agreement and Final Approval of same, whether favorable or unfavorable.

25. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement Agreement. The Court may approve the Settlement Agreement, with such modifications as may be agreed to by the Parties, if appropriate, without further notice to the Class.

26. Any Settlement Class Member who does not timely and validly request exclusion from the Class pursuant to Paragraphs 16-18 hereto: (a) shall be bound by the provisions of the Settlement Agreement and all proceedings, determinations, orders and judgments in the Action

relating thereto, including, without limitation, the Final Judgment, and the Releases provided for therein, whether favorable or unfavorable to the Class; and (b) shall forever be barred and enjoined from directly or indirectly filing, commencing, instituting, prosecuting, maintaining, or intervening in any action, suit, cause of action, arbitration, claim, demand, or other proceeding in any jurisdiction, whether in the United States or elsewhere, on their own behalf or in a representative capacity, that is based upon or arises out of any or all of the Released Claims against any of the Defendant and the other Released Parties, as more fully described in the Settlement Agreement.

27. Pursuant to this Order:

- a. The Notice Plan shall be commenced by _____ [*suggested date of 10 days after entry of this Order, in accordance with § 4.1(d) of the Settlement Agreement*] as outlined in Section 4.1 of the Settlement Agreement;
- b. Class Counsel shall file papers in support of their Fee Award and Class Representative's Incentive Award (collectively, the "Fee Petition") with the Court on or before _____ [*suggested date of 52 days after entry of this Order, (i.e., 14 days before the Objection/Exclusion Deadline).*] Defendant may, but is not required to, file a response to Class Counsel's Fee Petition with the Court on or before _____ [*suggested date of 21 days before Final Approval hearing.*] Class Counsel may file a reply in support of their Fee Petition with the Court on or before _____ [*suggested date of 14 days before Final Approval hearing.*];
- c. Objections shall be filed in accordance with Paragraph 20 of this Order on or before _____ [*suggested date of 60 days after the Notice Date.*];

- d. Requests for Exclusion shall be submitted in accordance with Paragraph 16 of this Order on or before _____ [*suggested date of 60 days after the Notice Date.*];
- e. Papers in support of final approval of the Settlement Agreement and any supplementation to the Fee Petition shall be filed with the Court on or before _____ [*suggested date of 14 days before Final Approval hearing.*];
- f. The Final Approval Hearing shall be held before this Court on _____, at _____. [*suggested date of 90 days after entry of this Order*] at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York.

IT IS SO ORDERED, this _____ day of _____, 2024.

The Honorable P. Kevin Castel
United States District Judge

EXHIBIT

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

MEGAN PERKINS on behalf of herself and
all others similarly situated,

Plaintiff,

v.

THE NEW YORK TIMES COMPANY, d/b/a
THE NEW YORK TIMES,

Defendant.

Civil Action No. 1:20-cv-05202-PKC

STIPULATION REGARDING UNDERTAKING RE: ATTORNEYS' FEES AND COSTS

Plaintiff Megan Perkins and Defendant The New York Times Company, d/b/a The New York Times (“Defendant”) (collectively, “the Parties”), by and through and including their undersigned counsel, stipulate and agree as follows:

WHEREAS, Class Counsel and their law firms Bursor & Fisher P.A. and Milberg Coleman Bryson Phillips Grossman, LLC desire to give an undertaking (the “Undertaking”) for repayment of their award of attorney fees and costs, approved by the Court, and

WHEREAS, the Parties agree that this Undertaking is in the interests of all Parties and in service of judicial economy and efficiency.

NOW, THEREFORE, each of the undersigned Class Counsel, on behalf of themselves as individuals and as agents for their law firms, hereby submit themselves and their respective law firms to the jurisdiction of the Court for the purpose of enforcing the provisions of this Undertaking.

Capitalized terms used herein without definition have the meanings given to them in the Settlement Agreement.

By receiving any payments pursuant to the Settlement Agreement, Bursor & Fisher, P.A. and Milberg Coleman Bryson Phillips Grossman, LLC and their shareholders, members, and/or partners submit to the jurisdiction of the United States District Court for the Southern District of New York for the enforcement of and any and all disputes relating to or arising out of the reimbursement obligation set forth herein and the Settlement Agreement.

In the event that the Final Settlement Order and Judgment or any part of it is vacated, overturned, reversed, or rendered void as a result of an appeal, or the Settlement Agreement is voided, rescinded, or otherwise terminated for any other reason, Class Counsel shall, within thirty (30) days repay to Defendant, based upon written instructions provided by Defendant's Counsel, the full amount of the attorneys' fees and costs paid to Class Counsel from the Settlement Fund, including any accrued interest.

In the event the attorney' fees and costs awarded by the Court or any part of them are vacated, modified, reversed, or rendered void as a result of an appeal, Class Counsel shall within thirty (30) days repay to Defendant, based upon written instructions provided by Defendant's Counsel, the attorneys' fees and costs paid to Class Counsel and/or Representative Plaintiff from the Settlement Fund in the amount vacated or modified, including any accrued interest.

This Undertaking and all obligations set forth herein shall expire upon finality of all direct appeals of the Final Settlement Order and Judgment.

In the event Class Counsel fails to repay to Defendant any of attorneys' fees and costs that are owed to it pursuant to this Undertaking, the Court shall, upon application of Defendant, and notice to Class Counsel, summarily issue orders, including but not limited to judgments and attachment orders against each of Class Counsel, and may make appropriate findings for sanctions for contempt of court.

The undersigned stipulate, warrant, and represent that they have both actual and apparent authority to enter into this stipulation, agreement, and undertaking on behalf of Bursor & Fisher, P.A. and Milberg Coleman Bryson Phillips Grossman, LLC.

This Undertaking may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Signatures by facsimile shall be as effective as original signatures.

The undersigned declare under penalty of perjury under the laws of the United States that they have read and understand the foregoing and that it is true and correct.

IT IS SO STIPULATED THROUGH COUNSEL OF RECORD:

DATED: July ____, 2024

BURSOR & FISHER, P.A.

By: _____

DATED: July ____, 2024

MILBERG COLEMAN BRYSON PHILLIPS
GROSSMAN, LLC

By: _____

Class Counsel

DATED: July ____, 2024

PARKER POE ADAMS & BERSTEIN LLP

By: _____

Counsel for Defendant