

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (this “Agreement”) is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between PLAINTIFF, (hereinafter referred to as “PLAINTIFF”) and DEFENDANT (hereinafter referred to as “DEFENDANT”).

WHEREAS, PLAINTIFF filed a lawsuit against DEFENDANT in the \_\_\_\_\_ County Superior Court, Case No. CASE NUMBER, (herein the “Lawsuit”), alleging DEFENDANT owes a debt to PLAINTIFF as the issuer of a credit account ending in XXXX (referred to herein as the “Account”).

WHEREAS, DEFENDANT denies any liability to PLAINTIFF and disputes that she is liable for this alleged debt, and PLAINTIFF denies any liability to DEFENDANT.

WHEREAS, the parties wish to amicably, fully and forever resolve any and all claims that now or may exist between them.

Now, THEREFORE, for and in consideration of the promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Consideration.** In exchange for the mutual promises and agreements herein, neither party will pay the other party any sums as a part of this Agreement.
2. **Dismissal with Prejudice.** Within 30 days of DEFENDANT signing this Agreement, PLAINTIFF will file a dismissal of the entire Lawsuit with prejudice and each party shall bear their own costs and attorney’s fees.
3. **Representations.** PLAINTIFF represents and warrants that it is the sole and lawful owner of all right, title and interest in an to the Account and that it has not and will not sell, assign or otherwise transfer all or any part thereof.
4. **Mutual Release.** In consideration of the promises, warranties, and covenants contained in this Agreement, it is further agreed that PLAINTIFF and DEFENDANT hereby agree to fully release and forever discharge and covenant not to sue the other and their respective heirs, executors, administrators, principals, partners, officers, directors, shareholders, subsidiaries, associated companies, employees, agents, attorneys, assignors, and successors and assigns thereof (“Released Parties”) and agree not to hold the Released Parties liable from any and all claims, demands, or causes of action which either party has against them arising out of the Account including, but not limited to, any claims arising out of, based upon, or relating in any way to any alleged act, omission, or dispute asserted in the claim or that could have been asserted in the claim and/or any other claim made under federal or statutory or common law. This shall include any claims arising out of, or related to the Lawsuit and the Account, including alleged violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§1692 and California Civil Code §§1788 *et*

*seq.* This release includes, but is not limited to, claims for damages of any and all types, including compensatory damages, emotional distress, punitive damages, costs, interest, attorneys' fees, and any other damages, whether known or unknown, anticipated or unanticipated, foreseen or unforeseen.

It is the express intent of the undersigned to waive any and all claims that they have against the persons and entities herein released, including any claims which are presently unknown, unsuspected, unanticipated, or undisclosed. THE UNDERSIGNED EXPRESSLY WAIVE THE PROVISIONS OF SECTION 1542 OF THE CIVIL CODE OF CALIFORNIA, WHICH PROVIDES:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

5. **Collections and Credit Reporting.** Within thirty (30) days after the Agreement is fully executed, PLAINTIFF shall notify the credit reporting agencies to which they typically report and request that such reporting agencies delete PLAINTIFF's trade line for DEFENDANT's Account. DEFENDANT understands that it may take forty-five (45) days for those reporting agencies to update her credit records. If at any time following sixty (60) days after the execution of this Agreement, DEFENDANT determines that any of the credit reporting agencies has not complied with PLAINTIFF's request as set out in this paragraph, then DEFENDANT agrees to provide notice to PLAINTIFF along with copies of any credit reports for which DEFENDANT contends the trade line was not deleted. In that event, PLAINTIFF will have thirty (30) business days following receipt of such written notice to re-contact the credit reporting agencies and again request that its trade line for DEFENDANT's Account be deleted. DEFENDANT acknowledges PLAINTIFF's responsibilities, as set forth in this paragraph, shall constitute the full and complete requirements imposed on PLAINTIFF under this Agreement with respect to credit agencies reporting on the Account.
  
6. **No Admission of Liability.** Nothing in this Agreement, nor any act (including, but not limited to, the execution of this Agreement) of PLAINTIFF or DEFENDANT, nor any transaction occurring between PLAINTIFF and DEFENDANT prior to the date hereof or shall be treated, construed or deemed as an admission by any party hereto or to any person, so as to any allegation or claim, or otherwise, for any purpose whatsoever, all such liability, fault, responsibility and guilt of any kind being expressly denied. It is understood and agreed by the parties that this Agreement reflects settlement of disputed legal claims that may be legally unenforceable, and does not represent a discharge of indebtedness for the purposes of 26 U.S.C. §61(a)(11). PLAINTIFF agrees that it need not and will not issue a 1099-C for this matter.

7. **Amendment.** This Agreement may not be amended unless such amendment is in writing and signed by the parties hereto.
8. **No Waiver.** Any breach or violation of any provision of this Agreement may only be waived in writing by the party entitled to the benefit thereof; provided however, that such waiver shall not operate or be construed to be a waiver of any subsequent breach or violation hereof.
9. **Construction.** This Agreement represents the wording selected by the Parties to define their Agreement and no rule of strict construction shall apply against either party.
10. **Benefit.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and assigns.
11. **Entire Agreement.** This Agreement supersedes all prior discussions and agreements among the parties hereto with respect to the subject matter hereof and with respect to the transactions set forth in this Agreement and constitutes the sole and entire Agreement of the parties with respect hereto. Any representation, inducement, promise or agreement, whether oral or written, among the parties hereto with respect to the transactions described herein that is not embodied herein and shall be of no force and effect.
12. **Severability.** If any provision of this Agreement shall be found by a court to be void, voidable, invalid or unenforceable, the remaining portions shall remain in full force and effect.
13. **Counterparts.** This Agreement may be executed by counterparts and by facsimile or email transmission of said counterparts, and each counterpart, whether transmitted by facsimile or otherwise, shall have the same force and effect as an original, and shall constitute an effective, binding agreement on the part of the undersigned. All facsimile or scanned signatures sent by e-mail shall have the same force and effect, and may be used in lieu of, original signatures herein.
14. **Breach of this Agreement.** If a party to this Agreement files a lawsuit to enforce any term or condition herein, the party that prevails in such a lawsuit shall be entitled to an award of all attorneys' fees, professional fees, expert witness fees and disbursements it incurred in prosecuting or defending such action.
15. **Governing Law.** The parties agree that this Agreement shall be governed by the laws of the State of California.

**16. Venue.** The parties agree that should any dispute arise between them regarding this Agreement or the subjects addressed herein, any legal action between them shall be brought and litigated only in the \_\_\_\_\_ County Superior Court.

IN WITNESS WHEREOF, the parties cause this Agreement to be executed as of the date of the first written above

Dated: \_\_\_\_\_

\_\_\_\_\_  
PLAINTIFF.

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
DEFENDANT