

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Settlement” or “Agreement”) is made and entered into by and between Plaintiffs Michael Katz-Lacabe and Jennifer Golbeck (collectively, “Plaintiffs” or “Class Representatives”), individually and as representatives of the Settlement Class as defined below, and Defendant Oracle America, Inc. (“Oracle”). Plaintiffs and Oracle collectively are referred to herein as the “Parties,” or, respectively, as a “Party.”

### **DEFINITIONS**

As used herein, the following terms have the meanings set forth below:

- A. “Action” means the litigation entitled *Katz-Lacabe, et al. v. Oracle America, Inc.*, No. 3:22-cv-04792-RS, filed in the United States District Court for the Northern District of California (the “Court”).
- B. “Attorneys’ Fee and Expense Payment” means the amount of attorneys’ fees and reimbursement of costs and expenses awarded to Class Counsel by the Court from the Settlement Fund.
- C. “Claim Form(s)” means the form(s) for Settlement Class Members to make a claim, substantially in the form of Exhibit A. The Claim Form will require Settlement Class Members to provide the following information with a personal attestation under the penalty of perjury that the information they have provided is true to the best of their knowledge: (i) full legal name and any aliases or nicknames; (ii) current mailing address, email address, and phone number associated with the individual submitting the form; (iii) the Settlement Class Member resided in the United States during the relevant time period; (iv) the Settlement Class Member has not submitted more than one claim; (v) any acquisition, capture, or collection of their personal information by Oracle was without their consent; and (v) information specified by the Settlement Administrator sufficient to make a distribution by the electronic means described in the Notice Plan (unless the Settlement Class Member opts for an alternative form of payment).
- D. “Claimant” means any individual who submits a Claim Form.
- E. “Class Counsel” means Michael W. Sobol and David T. Rudolph of the law firm of Lief Cabraser Heimann & Bernstein, LLP.
- F. “Eligible Organization(s)” means an organization approved by the Court to receive cy pres funds from non-distributable residual funds in the Settlement Fund escrow account.
- G. “Oracle’s Counsel” means the law firm Morrison & Foerster LLP.
- H. “Net Settlement Fund” means the Settlement Fund, less any Attorneys’ Fee and Expense Payment, Service Awards, Settlement Administrator expenses, and taxes (as described in Section 3.2.8 of this Agreement).

- I. “Notice” means the method of communication of this Settlement to the Settlement Class via the Notice Plan, as contemplated in Section 7 of this Agreement, and approved by the Court. The Notice shall be substantially in the forms attached as Exhibits B (“Email Notice”), and C (“Detailed Notice”).
- J. “Notice Date” means the first date on which notice is emailed to members of the Settlement Class, provided, however, that any re-emailing of such notice shall not affect or extend the Notice Date. The “Notice Date” shall be twenty-one (21) days after the Court issues the Preliminary Approval Order.
- K. “Notice Plan” means the plan for disseminating notice of the Settlement to the Settlement Class, described in Section 7.2 of this Agreement.
- L. “Preliminary Approval Order” means the Court’s order preliminarily approving the Settlement, Notice, and Notice Plan, substantially in the form of Exhibit D.
- M. “Released Parties” means Oracle, its respective current and former owners, parents, wholly or majority-owned subsidiaries, divisions, affiliated and related entities of any nature whatsoever, whether direct or indirect, as well as each of Oracle’s respective predecessors, successors and assigns, licensees, representatives, assigns, trustees, transferees, and all other persons, entities, and corporations acting on their behalf, including any of its current and former directors, officers, employees, principals, agents, advisors, consultants, contractors, insurers, reinsurers, and subrogees, shareholders and attorneys and including, without limitation, any person related to any such entity or person who is, was, or could have been named as a defendant in the Action.
- N. “Releasing Parties” means Plaintiffs and the Settlement Class Members, including any and all of their respective heirs, executors, administrators, representatives, agents, partners, successors, or assigns.
- O. “Service Awards” means the amounts awarded to the Class Representatives by the Court from the Settlement Fund solely for their services, time, and effort on behalf of the Settlement Class Members. Service Awards shall not be a measure of damages.
- P. “Settlement Administrator” means an independent settlement administrator to be agreed upon by the Parties and approved by the Court.
- Q. “Settlement Amount” means the amount of one hundred and fifteen million dollars (\$115,000,000.00) to be deposited by Oracle in the Settlement Fund.
- R. “Settlement Class” means all natural persons residing in the United States whose personal information, or data derived from their personal information, was acquired, captured, or otherwise collected by Oracle Advertising technologies or made available for use or sale by or through ID Graph, Data Marketplace, or any other Oracle Advertising product or service from August 19, 2018 to the date of final judgment in the Action. Excluded from the Settlement Class are (i) Oracle; (ii) Oracle’s parents, subsidiaries, affiliates, officers, directors, investors, and employees; (iii) any entity in which Oracle has a controlling interest; (iv) any individual who would otherwise be included in the Settlement Class, but has agreed,

in another proceeding, to release claims covered by this Settlement prior to the Claim Form deadline identified in Section 3.6; and (v) any judge presiding over this Action, their staff, and the members of the judge's immediate family. Oracle stipulates to this Settlement Class for settlement purposes only.

- S. "Settlement Class Members" means all members of the Settlement Class other than those persons who validly request exclusion from the Settlement Class as set forth in Section 6 this Agreement.
- T. "Settlement Fund" means the non-reversionary settlement fund described in Section 3.2 of this Agreement to be distributed in accordance with the terms of this Agreement.
- U. "Settlement Website" means a publicly-accessible website created and maintained by the Settlement Administrator for the purpose of providing the Settlement Class with notice of and information about the Settlement, as well as providing Claim Forms for Settlement Class Members to view and submit.
- V. "Valid Claim" means a claim made upon an accurate, valid, and timely-submitted Claim Form that includes a completed penalty of perjury attestation regarding the accuracy of the information provided in the Claim Form.
- W. "Valid Claimant" means any Settlement Class Member who submits a Valid Claim.

### RECITALS

This Agreement is made for the following purposes and with reference to the following facts:

WHEREAS, on August 19, 2022, Plaintiffs filed a Class Action Complaint against Oracle America, Inc. in the U.S. District Court for the Northern District of California, (*Katz-Lacabe, et al. v. Oracle America, Inc.*, No. 3:22-cv-04792-RS (N.D. Cal.)), individually and on behalf of a proposed worldwide class, alleging common law privacy, statutory, and consumer protection claims arising out of the purported capture, compilation, and sale of individuals' online and offline data.

WHEREAS, following the Court's April 6, 2023 Order partially granting and partially denying Oracle's motion to dismiss, (ECF No. 49), Plaintiffs filed an Amended Class Action Complaint on May 22, 2023, individually and on behalf of a proposed nationwide class, which alleged, in the alternative, California and Florida subclasses for putative class members' common law privacy claims.

WHEREAS, following the Court's October 3, 2023 Order again partially granting and partially denying Oracle's motion to dismiss, (ECF No. 77), Plaintiffs filed a Second Amended Class Action Complaint on November 17, 2023, which alleged a nationwide class for Plaintiffs' Electronic Communications Privacy Act ("ECPA") claim, and California and Florida classes for Plaintiffs' remaining claims.

WHEREAS, on April 3, 2024, the Court granted Oracle's Motion to Dismiss Portions of Plaintiffs' Second Amended Complaint and dismissed Plaintiffs' ECPA claim with prejudice, (ECF No. 114).

WHEREAS, on April 22, 2024, Plaintiffs moved to certify a question underpinning the dismissal of their ECPA claim for interlocutory appeal (ECF No. 120).

WHEREAS, the Parties desire to resolve all claims asserted or that could have been asserted in the Action relating to the allegations made against Oracle.

WHEREAS, the Parties and their respective counsel participated in extensive mediated negotiations from late April to May 2024, including a full-day, in-person mediation on April 24 in San Francisco, California, facilitated by Eric D. Green and Fouad Kurdi, which ultimately resulted in the Parties reaching an agreement in principle on May 8, 2024 to settle the Action on the terms and conditions embodied in this Settlement Agreement.

WHEREAS, Plaintiffs have conducted extensive discovery relating to the Action, have thoroughly analyzed the factual and legal issues in the Action, have engaged in motion practice, have considered the risks associated with the continued prosecution of this complex and time-consuming litigation and the likelihood of ultimate success on the merits, and have concluded that the Settlement is fair, adequate, reasonable, and in the best interests of the Settlement Class and that this Settlement Agreement should be approved by the Court under Rule 23(e) of the Federal Rules of Civil Procedure.

WHEREAS, Oracle denies all of the allegations made in the Action and denies that it did anything unlawful or improper and its agreement to this Settlement is not an admission of guilt or wrongdoing of any kind, and is entering into this Settlement Agreement solely to avoid the further burden and expense of continued litigation of the Lawsuit.

WHEREAS, the Parties desire to settle the Action in its entirety as to Plaintiffs, the Settlement Class Members, and Oracle with respect to all Released Claims, and intend this Agreement to bind Plaintiffs (both as the Class Representatives and individually), Oracle, and Settlement Class Members.

NOW THEREFORE, in light of the foregoing, for good and valuable consideration, the Parties, and each of them, hereby warrant, represent, acknowledge, covenant, and agree, subject to approval by the Court, as follows:

## **1. SETTLEMENT CLASS**

**1.1 Certification of the Settlement Class.** For purposes of settlement and the proceedings contemplated by this Agreement only, the Parties stipulate and agree that a Settlement Class shall be provisionally certified pursuant to Federal Rule of Civil Procedure 23 as defined herein, that Plaintiffs Michael Katz-Lacabe and Jennifer Golbeck shall be appointed Class Representatives and shall represent the Settlement Class for settlement purposes, and that Michael W. Sobol and David T. Rudolph of the law firm of Lief Cabraser Heimann & Bernstein, LLP shall be appointed Class Counsel for the Settlement Class.

1.2 **Decertification of the Settlement Class if Settlement Not Approved.** Oracle does not consent to certification of the Settlement Class for any purpose other than to effectuate the Settlement. If the Court does not enter an order granting final approval of the Settlement, or if for any other reason the Effective Date does not occur, this Agreement and any certification of any Settlement Class will be vacated, and the Parties will be returned to their positions with respect to the Action as if the Parties had not entered into the Agreement. Specifically: (a) the Parties shall jointly request that any Court order preliminarily or finally approving the certification of any Settlement Class contemplated by this Agreement be vacated, and agree that such order shall not be used or cited thereafter by any person or entity; and (b) the fact of the settlement reflected in this Agreement, that Oracle did not oppose the certification of a Settlement Class under this Agreement, or that the Court preliminarily or finally approved the certification of a Settlement Class, shall not be used or cited thereafter by any person in any manner whatsoever, including without limitation any contested proceeding relating to the certification of any class. In the event the terms and conditions of this Agreement are substantially modified by the Court, Oracle reserves the right to declare this Agreement null and void, in its sole discretion, within fourteen (14) days after such modification. For purposes of this Paragraph, “substantially modified” means material changes including but not limited to (a) the definition of the Settlement Class, Settlement Class Members, Released Parties, or Released Claims; and/or (b) the terms of the Non-Monetary Relief; and/or (c) the size of the Settlement Fund; and/or (d) the Notice Plan, including methods of distributing notice, to the Settlement Class. Notwithstanding the above, in the event the Settlement is not approved, the Parties will meet and confer in good faith, to the extent possible, to address the Court’s concerns.

**2. CONFIDENTIALITY AND COMMUNICATIONS REGARDING THE SETTLEMENT**

2.1 The Parties, Class Counsel, and Oracle’s Counsel agree that the negotiations leading to the execution of the Agreement and all submissions, documents, communications, and arguments related to the mediation shall not be disclosed by the Parties, Class Counsel, and Oracle’s Counsel other than as necessary to finalize the Settlement and Notice Plan and obtain necessary approvals to effectuate the Settlement and Notice Plan.

2.2 The Parties, Class Counsel, and Oracle’s Counsel agree that after the Agreement is submitted to the Court, each Party may respond in neutral terms to inquiries, including from the press, to communicate that the Action has been resolved by the Parties. Any response shall not contain inflammatory language about the Parties or their perceived conduct in the Action, and shall be limited to accurately describing the terms of the Settlement as reflected in the Agreement.

**3. SETTLEMENT RELIEF**

3.1 **Class Benefit.** Each Settlement Class Member who timely submits a Valid Claim shall receive a pro rata portion of the Net Settlement Fund.

- 3.1.1 Settlement Class Members may each submit one claim to receive a payment from the Settlement Fund. Settlement Class Members will be required to prove eligibility by means reasonably resistant to fraud, including through identifying information, such as full legal name, mailing addresses, telephone numbers, and email address required in the Claim Form; and information specified by the Settlement Administrator sufficient to make a distribution by the electronic means described in the Notice Plan, unless the member of the Settlement Class requests a paper check.
- 3.1.2 **Dissemination of Class Benefit.** The Settlement Administrator shall distribute the class benefit to Valid Claimants within forty (40) days after the Effective Date.

### 3.2 Settlement Fund.

- 3.2.1 The Settlement Administrator shall establish and maintain the Settlement Fund in the amount of \$115,000,000. The Settlement Fund shall be a non-reversionary common fund, no part of which shall revert to Oracle. The Settlement Administrator will hold the Settlement Fund in escrow until such time as the Settlement Administrator is authorized to disseminate the funds pursuant to this Agreement, the Final Approval Order, or other order of the Court.
- 3.2.2 The Settlement Fund is intended to be treated as a Qualified Settlement Fund (“QSF”) for U.S. federal income tax purposes, with Oracle treated as the “transferors” to the QSF within the meaning of Section 1.468B-1(d)(1) of the Treasury Regulations with respect to the Settlement Fund. The Settlement Administrator shall be the “administrator” of the QSF within the meaning of Section 1.468B-2(k)(3) of the Treasury Regulations, responsible for causing the filing of all tax returns required to be filed by or with respect to the QSF, paying from the QSF any taxes owed by or with respect to the QSF, and complying with any applicable information reporting or tax withholding requirements imposed by Section 1.468B-2(l)(2) of the Treasury Regulations or any other applicable law on or with respect to the QSF. Oracle shall provide to the Settlement Administrator any documentation reasonably requested by the Settlement Administrator that is required to obtain QSF status for the Settlement Fund pursuant to Treas. Reg. §1.468B-1. All taxes on income or interest generated by the Settlement Fund, if any, shall be paid out of the Settlement Fund.
- 3.2.3 The Settlement Administrator shall open an escrow account for the Settlement Fund at an escrow bank following the Parties’ mutual agreement as to the appropriate bank and account. The Settlement Fund escrow bank shall invest the Settlement Fund exclusively in an interest-bearing account.
- 3.2.4 Other than the Settlement Fund, Oracle will have no financial obligations to Class Representatives, Settlement Class Members, Class Counsel, any other attorney representing any Settlement Class Member, or the Settlement Administrator with respect to the Released Claims. The Settlement Fund



represents the total extent of Oracle's monetary obligations under this Agreement. In no event shall Oracle's total monetary obligations with respect to this Agreement exceed the amount stated above.

- 3.2.5 Subject to Section 3.2.15, the Settlement Administrator will draw from the Settlement Fund to cover all obligations with respect to costs related to this Agreement, including the expenses of the Settlement Administrator, the Notice Plan, payments to Settlement Class Members, any Service Awards, any Attorneys' Fee and Expense Payment, and any other administrative fees and expenses in connection with this Agreement; provided, however, that the Parties must approve any payments to the Settlement Administrator prior to the Settlement Administrator incurring such expenses and prior to any withdrawals from the Settlement Fund. The Parties intend that, after the foregoing payments and disbursements are made, there will be no funds remaining.
- 3.2.6 If this Agreement is terminated, the Settlement Administrator will return all funds to Oracle within ten (10) days of the termination date; provided, however, that the Settlement Administrator need not return any funds already spent on notice and on reasonable Settlement Administrator expenses before the termination date. Notwithstanding any provision herein, in the event this Agreement is not approved by any court, or is terminated for any reason, or the Settlement set forth in this Agreement is declared null and void, or in the event that the Effective Date does not occur, Settlement Class Members, Class Representatives, and Class Counsel shall not in any way be responsible or liable for any administration expenses, taxes with respect to the Settlement Fund, or any expenses, including costs of notice and administration associated with this Settlement or this Agreement, except that each Party shall bear its own attorneys' fees and costs and Oracle's future payment obligations shall cease.
- 3.2.7 The Released Parties, Oracle's Counsel, the Releasing Parties and Settlement Class Members shall have no liability, obligation, or responsibility with respect to the investment, disbursement, or other administration or oversight of the Settlement Fund and shall have no liability, obligation, or responsibility with respect to any liability, obligation, or responsibility of the Settlement Administrator.
- 3.2.8 All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by or in connection with the Settlement Fund escrow account, including any taxes or tax detriments that may be imposed upon Class Counsel or Oracle with respect to income earned by the Settlement Fund escrow account for any period during which the Settlement Fund escrow account does not qualify as a QSF for purposes of federal or state income taxes or otherwise, shall be paid out of the Settlement Fund escrow account. Plaintiffs, Class Counsel, and Oracle shall have no liability or responsibility for any taxes arising with respect to the Settlement Fund escrow account.

- 3.2.9 For avoidance of doubt, neither Oracle nor any of the Released Parties shall have any liability, obligation, or responsibility whatsoever for tax obligations arising from payments to any Settlement Class Member based on the activities and income of the QSF. In addition, neither Oracle nor any of the Released Parties shall have any liability, obligation, or responsibility whatsoever for tax obligations arising from payments to Class Counsel. The QSF will be solely responsible for its tax obligations. Each Settlement Class Member will be solely responsible for their tax obligations. Each Class Counsel or other attorney or firm receiving a distribution from the Settlement Fund will be solely responsible for their tax obligations. The Parties acknowledge that amounts paid by Oracle under this Agreement are solely because of Oracle's desire to move forward from this matter.
- 3.2.10 Oracle is not providing legal advice to any party or other person regarding the taxability of any amount paid hereunder and nothing contained herein shall be interpreted as constituting legal advice regarding the taxability of any amount paid hereunder, nor shall it be relied upon as such. For the avoidance of doubt, Oracle makes no representation or warranty to any person regarding, and shall have no liability with respect to, the qualification of the Settlement Fund as a QSF. Any tax issues raised by this Agreement may be unique as to each Party and Settlement Class Member, and each Party and Settlement Class Member is advised to obtain tax advice from their own tax advisor with respect to any payments resulting from this Agreement. Each Party and Settlement Class Member will be responsible for paying their own respective share of all applicable state, local, and federal taxes on all amounts received or paid pursuant to this Agreement.
- 3.2.11 Oracle shall have no liability whatsoever with respect to (i) any act, omission, or determination by Class Counsel or the Settlement 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; (iv) the determination, administration, or calculation of claims to be paid to Settlement Class Members from the Settlement Fund; or (v) the payment or withholding of taxes or related expenses, or any expenses or losses incurred in connection therewith. The Releasing Parties and Class Counsel release Oracle from any and all liability and claims arising from or with respect to the administration, investment, or distribution of the Settlement Fund, or the qualification of the Settlement Fund as a QSF. If applicable, the Settlement Administrator shall be responsible for obtaining all necessary information for any required IRS Forms 1099 or other tax forms and issuing such tax forms as necessary.
- 3.2.12 Within ten (10) days after entry of the Preliminary Approval Order, Oracle shall pay into the Settlement Fund the portion of the Settlement Amount sufficient to cover the reasonable costs of CAFA Notice, Notice, and settlement administration associated with Notice and claims processing, as estimated by the Settlement Administrator.



- 3.2.13 Oracle must pay into the Settlement Fund the portion of the Settlement Amount sufficient to cover attorneys' fee and expenses, and class representative service awards within ten (10) days after the later of (i) the entry by the Court of the Final Approval Order; (ii) the entry by the Court of an order granting Class Counsel's request for attorneys' fees and expenses; and (iii) Class Counsel's delivery to Oracle and the Settlement Administrator of an executed undertaking providing for Class Counsel's and its shareholders', members', and/or partners' joint and several liability with respect to the attorneys' fees and expenses repayment obligations set forth in Section 8 hereof.
- 3.2.14 Within ten (10) days after the Effective Date, Oracle shall deposit the balance of the Settlement Amount into the Settlement Fund.
- 3.2.15 The Settlement Fund shall be applied as follows, in accordance with the terms and conditions set forth in this Agreement:
- 3.2.15.1 To pay the costs of Notice and settlement administration;
- 3.2.15.2 To pay any Attorneys' Fee and Expense Payment and any Service Awards that may be approved by the Court; and
- 3.2.15.3 To distribute the Net Settlement Fund to Valid Claimants in accordance with this Agreement. Specifically, each Valid Claimant shall receive payment of their *pro rata* share, as determined by dividing the Net Settlement Fund by the number of Valid Claims.
- 3.2.15.4 If all Valid Claims, Notice and settlement administration costs, any Attorneys' Fee and Expense Payment, and any Service Awards total an amount less than the Settlement Fund, or to the extent that any distribution funds remain in the Settlement Fund one hundred and eighty (180) days after the Effective Date, such funds ("Residual Funds") shall be redistributed on a *pro rata* basis to Settlement Class Members who previously received payment, to the extent feasible and practical in light of the costs of administering such subsequent payments, unless the amounts involved are too small to make individual distributions economically viable or other specific reasons exist that would make such further distributions impossible or unfair.
- 3.2.15.5 If the Settlement Administrator determines that any residue of the Settlement Fund cannot be distributed on a *pro rata* basis to Settlement Class Members who submitted a claim, the remaining funds shall be distributed to one or more 26 U.S.C. § 501(c)(3) non-profit Eligible Organization(s).
- 3.2.15.6 All costs associated with the disposition of residual funds – whether through additional distributions to Settlement Class Members and/or to the non-profit Eligible Organization(s) shall be borne solely by the Settlement Fund.

- 3.3 **Cy Pres Recipients.** No later than seven (7) days before the Court holds a hearing on preliminary approval of this Agreement, the Parties shall identify one or more Eligible Organization(s) to recommend to the Court for approval and shall comply with the requirements set forth in the Northern District of California guidance on cy pres awards.
- 3.4 **Cy Pres Reporting.** Each Eligible Organization(s) shall agree that, if approved by the Court, it shall provide a report to the Parties within one hundred eighty (180) days following first receipt of cy pres funds and on a periodic basis not to exceed one hundred eighty (180) days thereafter, describing how it has used any cy pres funds and how it intends to use any remaining funds. Class Counsel shall be responsible for ensuring that such reports are posted on the Settlement Website.
- 3.5 **Non-Monetary Relief.** No later than the Effective Date, Oracle will certify that, for as long as it continues to offer the products and services described in the Second Amended Complaint (ECF No. 87), it will: (i) not capture (a) user-generated information within referrer URLs (*i.e.*, the URL of the previously-visited page) associated with a website user or (b) except for Oracle's own websites, any text entered by a user in an online web form,; and (ii) implement an audit program to reasonably review customer compliance with contractual consumer privacy obligations.
- 3.6 **Claim Form.** To be entitled to receive any monetary benefit from the Settlement, Settlement Class Members must accurately and timely submit the Claim Form and any required documentation within forty-nine (49) days following the Notice Date.
- 3.7 **Determination and Processing of Claims.** The Settlement Administrator will review all Claim Forms to determine their validity and each Claimant's eligibility, and shall employ reasonable procedures to screen claims for abuse or fraud. The Settlement Administrator will reject any claim that does not materially comply with the instructions on the Claim Form, is not submitted by a Settlement Class Member, or is deemed to be duplicative or fraudulent.

#### 4. **OBTAINING COURT APPROVAL OF THE AGREEMENT**

- 4.1 **Preliminary Approval.** Class Counsel will file the motion for preliminary approval within ten (10) days of the execution of this Agreement and will provide that draft to Oracle's Counsel at least five (5) business days prior to the filing of the motion, unless otherwise agreed to by the Parties. The motion shall be written in a neutral manner that plainly states Plaintiffs' allegations and claims, while making clear that Oracle denies every allegation of wrongdoing and admit no liability. Oracle may provide comments concerning the motion, and Class Counsel will meet and confer with Oracle's Counsel in good faith regarding Oracle's comments.
- 4.2 **CAFA Notice.** Not later than ten (10) days after the Agreement is filed with the Court, Oracle will direct the Settlement Administrator to provide timely notice of the motion as required by the Class Action Fairness Act ("CAFA Notice"), 28 U.S.C. § 1711 *et seq.*

4.3 **Final Approval and Judgment.** In accordance with the schedule set in the Preliminary Approval Order, Class Counsel will draft the motion for final approval of the Settlement and will provide that draft to Oracle's Counsel at least five (5) business days prior to the filing of the motion, unless otherwise agreed to by the Parties. The motion shall be written in a neutral manner that plainly states Plaintiffs' allegations and claims while making clear that Oracle denies every allegation of wrongdoing and admits no liability. Oracle may provide comments concerning the motion, and Class Counsel will meet and confer with Oracle's Counsel in good faith regarding Oracle's comments.

## 5. OBJECTIONS

- 5.1 Settlement Class Members may file objections to the Settlement, Class Counsel's request for Attorneys' Fee and Expense Payment and/or Class Representatives' request for Service Awards. Only Settlement Class Members shall be eligible to make an objection to this Agreement.
- 5.2 Any Settlement Class Member who intends to object to the Settlement must submit to the Court a written statement that includes: (i) a caption or title that identifies it as an objection to the Settlement in this Action; (ii) the Settlement Class Member's full name, mailing address, email address, and telephone number; (iii) the objector's basis for believing they are a Settlement Class Member; (iv) a statement whether the objector intends to appear at the Final Approval Hearing and, if so, whether personally or through counsel; (v) a clear and concise statement of the grounds for the objection and (vi) a statement identifying their counsel, if they are represented by counsel. To be timely, the objection must be filed with the Court or postmarked within forty-nine (49) days after the Notice Date ("Objection Deadline"). An objection may be submitted to the Court by filing electronically, filing in person at any location of the United States District Court for the Northern District of California, or by mail to the to the Class Action Clerk of the United States District Court for the Northern District of California.
- 5.3 Any Settlement Class Member who fails to timely file with or submit to the Court an objection in accordance with the terms of Sections 5.1 and 5.2 of this Agreement and as detailed in the Notice shall waive and forfeit any and all rights the Settlement Class Member may have to object, appear, present witness testimony, and/or submit evidence; shall be barred from appearing, speaking, or introducing any testimony or evidence at the Final Approval Hearing; shall be precluded from seeking review of this Agreement by appeal or other means; and shall be bound by all the terms of this Agreement and by all proceedings, orders, and judgments in the Action.
- 5.4 Settlement Class Members may raise an objection either on their own or through an attorney hired at their own expense. If a Settlement Class Member hires an attorney other than Class Counsel to represent him or her, the attorney must (i) file a notice of appearance with the Court no later than the Exclusion and Objection Deadline, and (ii) deliver a copy of the notice of appearance on Class Counsel and Oracle's counsel, no later than the Exclusion and Objection Deadline. Settlement Class Members, or their attorneys, intending to make an appearance at any hearing relating to this Agreement, including the Final Approval Hearing, must deliver to Class Counsel and Oracle's

counsel, and file with the Court, no later than twenty-one (21) days before the date of the hearing at which they plan to appear, or as the Court otherwise may direct, a notice of their intention to appear at that hearing.

- 5.5 Class Counsel shall file their request for the Attorneys' Fee and Expense Payment and Class Representatives shall file their request for Service Awards at least fifty (50) days prior to the Exclusion and Objection Deadline. Once filed, the request shall be posted on the Settlement Website.
- 5.6 Plaintiffs and Oracle shall have the right, but not the obligation, to respond to any objection no later than fourteen (14) days after the Exclusion and Objection Deadline. The Party responding shall file a copy of the response with the Court and shall serve a copy on the objector (or counsel for the objector).

## 6. EXCLUSIONS

- 6.1 **Requests for exclusion.** The Notice will advise all members of the Settlement Class of their right to exclude themselves from the Settlement. The Settlement will not bind any individuals who timely exclude themselves from the Settlement. Settlement Class Members may not seek to both exclude themselves from the Class and submit an objection to this Agreement. Any Settlement Class Member who both objects to this Agreement and submits a timely and valid request for exclusion will be deemed to have opted out and the objection shall be deemed null and void.
- 6.2 **Requesting process.** A member of the Settlement Class may request exclusion from the Settlement up until the Exclusion Deadline. To request exclusion, the individual must complete, personally sign, and mail to the Settlement Administrator a request for exclusion, using a form to be agreed on by the Parties (the "Request for Exclusion"). The Request for Exclusion will be available to download via the Settlement Website and must be personally signed by the member of the Settlement Class seeking exclusion under penalty of perjury. So-called "mass" or "class" opt-outs shall not be allowed. To be valid, a Request for Exclusion must be postmarked on or before the Exclusion Deadline, defined below. Any Person who submits a valid and timely Request for Exclusion shall not be entitled to relief under, and shall not be affected by, this Agreement or any relief provided by this Agreement. For a Request for Exclusion to be valid, it must set forth: (i) the name of the Action; (ii) the person's full name, mailing address, email address, and telephone number; (iii) a specific statement of the person's intention to be excluded from the Settlement; (iv) the identity of the person's counsel, if represented; and (v) be personally signed by the individual Settlement Class Member. The Parties shall have the right to challenge the timeliness and validity of any Request for Exclusion.
- 6.3 **Deadline.** To be excluded from the Settlement, the Request for Exclusion must be postmarked by the Exclusion Deadline established in the Preliminary Approval Order, which shall be forty-nine (49) days after the Notice Date (the "Exclusion Deadline").
- 6.4 **Effect of exclusion.** Any person who is a member of the Settlement Class and who validly and timely submits a Request for Exclusion from the Settlement shall not be

(i) a Settlement Class Member; (ii) bound by the Settlement; (iii) eligible to apply for or receive any benefit under the terms of the Settlement; or (iv) entitled to submit an objection to the Settlement.

6.5 **Exclusion list.** No later than fifteen (15) days after the Exclusion Deadline, the Settlement Administrator will provide Class Counsel and Oracle's Counsel with the list of persons who have timely and validly excluded themselves from the Settlement.

6.6 **Effect of exclusions.** If fifteen thousand or more of the members of the Settlement Class validly and timely exclude themselves from the Settlement, then Oracle shall have the option to rescind this Agreement, in which case all of Oracle's obligations under this Agreement shall cease to be of any force and effect, and this Agreement shall be rescinded, cancelled, and annulled. If Oracle exercises this option, they shall provide Plaintiffs and the Court with written notice of their election within fifteen (15) days of receiving the exclusion list from the Settlement Administrator, at which point the Parties shall return to their respective positions that existed prior to the execution of this Agreement. No term of this Agreement or any draft thereof, or the negotiation, documentation, or other part of any aspect of the Parties' settlement discussions, or any filings or orders respecting the Settlement or any aspect of the Settlement, shall have any effect or be admissible as evidence for any purpose in the Action, or in any other proceeding.

## 7. NOTICE AND SETTLEMENT ADMINISTRATION

7.1 Oracle will provide to the Settlement Administrator any names, addresses, and email addresses for all members of the Settlement Class for whom it has reasonably available records within fourteen (14) days of the date of entry of the Preliminary Approval Order. The Settlement Administrator will administer the Notice in accordance with the Preliminary Approval Order. The Settlement Administrator will keep identities and contact information of members of the Settlement Class confidential, using them only for purposes of administering this Settlement.

7.2 **Notice Plan.** The Parties agree upon and will seek Court approval of the following forms and methods of Notice to the Settlement Class. The Notice shall conform to all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clauses), and any other applicable law:

7.2.1 **Settlement Website.** The Settlement Administrator will establish and maintain a Settlement Website with the domain name [www.KatzPrivacySettlement.com](http://www.KatzPrivacySettlement.com). The Settlement Website will include, without limitation, the Detailed Notice, the Agreement, the Complaint, the Preliminary Approval Motion and Order as entered, Plaintiffs' Motion for Attorneys' Fees and Expenses and Service Awards, Plaintiffs' Motion for Final Approval of Class Action Settlement, answers to a set of frequently asked questions, and information on how to object or request exclusion, as well as contact information for Class Counsel and the Settlement Administrator. The Settlement Website will include readily accessible means for Settlement Class Members to submit a Claim Form or download a request for exclusion, as well as an address to which Claim Forms or requests for



exclusion may be mailed. The Settlement Website will be live on the Notice Date.

7.2.2 **Toll-Free Number.** The Settlement Administrator will establish a toll-free telephone number where members of the Settlement Class can request a copy of the Detailed Notice, the Claim Form, and other case documents.

7.2.3 **Email Notice.** The Settlement Administrator will email to each member of the Settlement Class for whom Oracle has an available email address a copy of the Email Notice. The email notice shall contain a hyperlink to the Settlement Website.

7.2.4 **Media Notice.** The Settlement Administrator will effect media notice as agreed to by the Parties and approved by the Court.

7.2.5 **Detailed Notice.** The Detailed Notice shall contain a plain and concise description of the nature of the action and the proposed Settlement, including information on the definition of the Settlement Class, how the proposed Settlement would provide relief to Settlement Class Members, what claims are released under the proposed Settlement, and other relevant information. The Detailed Notice shall also inform members of the Settlement Class of their right to seek exclusion from the Settlement and to object to the Settlement, together with the Exclusion and Objection Deadlines and procedures for exercising those rights.

7.3 The Settlement Administrator has agreed to perform all Notice and administration duties required by the Settlement. The Parties agree that the Settlement Administrator may make non-material modifications to the Notice and Claim Forms described herein without further order of the Court, so long as they are approved by the Parties and consistent in all material respects with the Settlement and Preliminary Approval Order.

7.4 With approval from Class Counsel and Oracle's Counsel, the Settlement Administrator will withdraw from the Settlement Fund funds sufficient to cover all reasonable costs and expenses related to the Notice and administration functions to be performed by the Settlement Administrator, including the claims administration process.

## **8. ATTORNEYS' FEE AND EXPENSE PAYMENT AND SERVICE AWARDS**

8.1 Class Counsel may apply to the Court for an order approving the payment of reasonable attorneys' fees and expenses. Oracle reserves the right to object or comment on Class Counsel's request for attorneys' fees and expenses in the District Court but agrees not to appeal any order of the District Court awarding attorneys' fees and expenses.

8.2 Class Counsel may apply for up to \$10,000 in Service Awards to each Class Representative. Oracle agrees not to oppose these requests up to \$10,000.

8.3 The Court's award of any Attorneys' Fee and Expense Payment shall be separate from the determination of whether to approve the Settlement. Any order or proceeding relating to the Attorneys' Fee and Expense Payment or any Service



Award, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate this Settlement or affect or delay the finality of the Final Approval Order and Judgment approving the Settlement. In the event the Court approves the Settlement, but declines to award Class Counsel attorneys' fees or expenses in the amount requested by Class Counsel, or a Service Award in an amount different from that requested by Class Representatives, the Settlement will nevertheless be binding on the Parties to the extent permissible under applicable law. The Attorneys' Fee and Expense Payment shall be paid by the Settlement Administrator to an account or accounts designated by Class Counsel within five (5) days of receipt of the funds designated for payment of such award pursuant to Section 3.2.13.

- 8.4 Within five (5) business days after the entry of an order by any court of competent jurisdiction which vacates, reverses or alters the Final Approval Order or the order granting Class Counsel's request for attorneys' fees and expenses, Class Counsel shall repay to Oracle the full amount Class Counsel received for such award.
- 8.5 Any order or proceeding relating to the application for a Service Award, the pendency of the application, or any appeal from any such order, will not operate to terminate or cancel this Agreement or affect or delay the finality of the Final Approval Order and Judgment approving the Settlement. The Class Representatives' approval of this Settlement is not contingent on the filing of an application for a Service Award, or the Court approving any application for a Service Award.

## **9. DENIAL OF LIABILITY; PROHIBITION OF USE**

- 9.1 Oracle vigorously denies all of the allegations in the Action. Oracle enters into this Agreement without in any way acknowledging any fault, liability, or wrongdoing of any kind. Oracle further denies the truth of any of the claims asserted in the Action, including any allegations that Plaintiffs or any member of the Settlement Class has been harmed by any conduct by Oracle, whether as alleged in the Action or otherwise. Oracle further asserts that no injury has been alleged by the Action, and Oracle's practices are lawful and proper. Oracle nonetheless has concluded that it is in its best interest that the Action be settled on the terms and conditions set forth herein in light of the expense that would be necessary to defend this litigation and the benefits of disposing of protracted and complex litigation.
- 9.2 To the extent permitted by law, neither this Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be offered as evidence or received in evidence in any pending or future civil, criminal, or administrative action or proceeding to establish any liability or admission by Oracle, or to establish the truth of any of the claims or allegations alleged in the Action.
- 9.3 Neither the Agreement nor anything that the Parties said or did during the negotiation of the Agreement shall be construed or used in any manner as an admission of liability or evidence of any Party's fault, liability, or wrongdoing of any kind; nor shall it be construed as an admission of any lack of merit of the causes of action asserted in the Action.

- 9.4 To the extent permitted by law, the Agreement may be pleaded or invoked as a full and complete defense to and may be used as the basis for an injunction against any action, suit, or other proceeding which may be instituted, prosecuted, or attempted for the Released Claims.

## **10. RELEASES AND WARRANTIES**

- 10.1 The Parties represent that they have obtained the requisite authority to enter into this Settlement Agreement in a manner that binds all Parties to its terms.

- 10.2 As of the Effective Date, Releasing Parties hereby fully and irrevocably release and forever discharge Released Parties from any and all claims, demands, rights, damages, arbitrations, liabilities, obligations, suits, debts, liens, and causes of action (including, without limitation, claims for attorneys' fees and expenses and costs) pursuant to any theory of recovery (including, but not limited to, those based in contract or tort, common law or equity, federal, state, or local law, statute, ordinance, or regulation) of every nature and description whatsoever, ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, including unknown claims as of the execution date of the Settlement that have been or could have been asserted in the Action, including any such claims the Releasing Parties may have against the Released Parties arising out of, in whole or in part, the conduct of any other third party (the "Released Claims").

- 10.3 In consideration for this Agreement and the consideration set forth herein, Plaintiffs and the Settlement Class Members acknowledge that the release herein includes any and all claims, demands, rights, damages, arbitrations, liabilities, obligations, suits, debts, liens, and causes of action (including, without limitation, claims for attorneys' fees and expenses and costs) pursuant to any theory of recovery (including, but not limited to, those based in contract or tort, common law or equity, federal, state, or local law, statute, ordinance, or regulation) of every nature and description whatsoever, ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, including unknown claims as of the execution date of the Settlement that have been or could have been asserted in the Action, including any such claims the Releasing Parties may have against the Released Parties arising out of, in whole or in part, the conduct of any other third party. Plaintiffs and the Settlement Class Members hereby agree that all rights under California Civil Code § 1542, and any similar law of any state or territory of the United States, are expressly and affirmatively waived. California Civil Code § 1542 states as follows:

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

- 10.4 When the Final Approval Order and judgment are entered, the Action will be dismissed with prejudice.

- 10.5 Each Party to this Agreement represents and warrants that they have not heretofore assigned or transferred, or purported to assign or transfer, any of the Released Claims to any other person and that they are fully entitled to compromise and settle the same.
- 10.6 No person will have any claim of any kind against the Parties or their counsel or the Settlement Administrator with respect to the Settlement and the matters set forth herein or based on determinations or distributions made substantially in accordance with this Agreement, the Final Approval Order and Judgment, or other order(s) of the Court.

**11. EFFECTIVE DATE OF THE AGREEMENT; TERMINATION**

- 11.1 The “Effective Date” of this Agreement shall be the first day after which all of the following events and conditions of this Agreement have been met or have occurred:

- 11.1.1 All of the Parties and their counsel have executed this Agreement;

- 11.1.2 The Court has entered the Final Approval Order finally approving the Settlement and has entered Judgment; and

- 11.1.3 The Judgment has become final in that the time for appeal of the Judgment has expired or, if any such appeal and/or petition for review is taken and the Settlement Agreement is affirmed, the time period during which further petition for review, appeal, or writ of certiorari can be taken has expired. If the Judgment is set aside, materially modified, or overturned by any court, and is not fully reinstated on further appeal, the Judgment shall not become final.

- 11.2 If the Judgment does not become final and/or this Agreement is terminated pursuant to the express provisions of this Agreement or for cause or fails to become effective for any reason, the Parties shall be restored to their respective positions in the Action as of the date of the signing of this Agreement. In such event, any Final Approval Order and 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. In the event of a termination, the Settlement Administrator shall return the monies remaining in the Settlement Fund to Oracle within fourteen (14) days of receiving notice of the termination.

**12. MISCELLANEOUS**

- 12.1 **Extensions of time.** All time periods and dates described in this Agreement are subject to the Court’s approval. Unless otherwise ordered by the Court, the Parties through their counsel may jointly agree to reasonable extensions of time to carry out any of the provisions of this Agreement. The time periods and dates provided for herein or in the Preliminary Approval Order may be altered by the Court or through written consent of the Parties’ counsel, without notice to the Settlement Class; provided, however, that any such changes in the schedule of Settlement proceedings will be posted on the Settlement Website.

- 12.2 **Integration.** This Agreement, including all exhibits, constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.
- 12.3 **Governing law.** This Agreement shall be construed in accordance with, and be governed by, the laws of the state of California, without regard to the principles thereof regarding choice of law.
- 12.4 **Gender and plurals.** As used in this Agreement, the masculine, feminine, or neutral gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.
- 12.5 **Representative capacity.** Each person executing this Agreement in a representative capacity represents and warrants that they are empowered to do so.
- 12.6 **Headings and counterparts.** The headings or captions in this Agreement will not be deemed to have any effect and are provided for convenience only. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts.
- 12.7 **Cooperation of Parties.** The Parties and their counsel agree to prepare and execute all documents, to seek Court approvals, to defend Court approvals, and to do all things reasonably necessary to complete the Settlement.
- 12.8 **Voluntary execution.** This Agreement is executed voluntarily by each of the Parties without any duress or undue influence on the part, or on behalf, of any of them. The Parties represent and warrant to each other that they have read and fully understand the provisions of this Agreement and have relied on the advice and representation of legal counsel of their own choosing. Each of the Parties has cooperated in the drafting and preparation of this Agreement and has been advised by counsel regarding the terms, effects, and consequences of this Agreement. Accordingly, in any construction or interpretation to be made of this Agreement, the Agreement shall not be construed as having been drafted solely by any one or more of the Parties or their counsel. The Agreement has been, and must be construed to have been, drafted by all Parties and their counsel, so that any rule that construes ambiguities against the drafter will have no force or effect.
- 12.9 **Notices.** Any notice provided in connection with the Agreement or other document to be given by any Party to any other Party shall be in writing and (i) delivered personally or by registered or certified mail, postage prepaid, to the appropriate address(es) set forth immediately below, or to other contact points as the Parties may identify by notice given in accordance with this Section; and also (ii) transmitted by email to the appropriate email address(es) set forth immediately below.



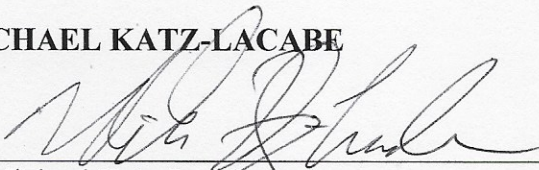
<b>Notice to Class Counsel:</b>  Michael W. Sobol LIEFF CABRASER HEIMANN & BERNSTEIN, LLP 275 Battery Street, 29th Floor San Francisco, CA 94111 msobol@lchb.com	<b>Notice to Oracle:</b>  Tiffany Cheung MORRISON & FOERSTER, LLP 425 Market Street San Francisco, CA 94105 TCheung@mofo.com
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The notice recipients and addresses designated above may be changed by written notice pursuant to this Section.

- 12.10 **Modification or amendment.** Except as otherwise provided herein, this Agreement may be amended or modified only by a written instrument signed by the Parties' counsel.
- 12.11 **Continuing jurisdiction.** Any and all disputes arising from or related to the Settlement must be brought by the Parties, Class Counsel, Oracle's Counsel, and/or each member of the Settlement Class, exclusively in the Court. The Parties, Class Counsel, Oracle's Counsel, and each member of the Settlement Class hereby irrevocably submit to the exclusive and continuing jurisdiction of the Court for any suit, action, proceeding, or dispute arising out of or relating to the Settlement or this Agreement.

Date: July 8, 2024

**MICHAEL KATZ-LACABE**

By:   
Michael Katz-Lacabe

Date: July \_\_, 2024

**JENNIFER GOLBECK**

By: \_\_\_\_\_  
Jennifer Golbeck

<b>Notice to Class Counsel:</b>  Michael W. Sobol LIEFF CABRASER HEIMANN & BERNSTEIN, LLP 275 Battery Street, 29th Floor San Francisco, CA 94111 msobol@lchb.com	<b>Notice to Oracle:</b>  Tiffany Cheung MORRISON & FOERSTER, LLP 425 Market Street San Francisco, CA 94105 TCheung@mof.com
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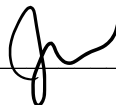
Date: July \_\_, 2024

**MICHAEL KATZ-LACABE**

By: \_\_\_\_\_  
Michael Katz-Lacabe

Date: July \_\_, 2024

**JENNIFER GOLBECK**

By: \_\_\_\_\_  
Jennifer Golbeck 



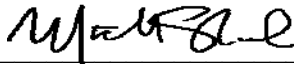
Date: July \_\_, 2024

**ORACLE AMERICA, INC.**

By: \_\_\_\_\_  
Peggy E. Bruggman  
Senior Vice President, Associate General  
Counsel, Litigation

APPROVED AS TO FORM:

Date: July 8, 2024

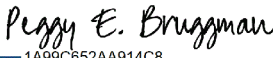
By:  \_\_\_\_\_  
Michael W. Sobol  
Lief Cabraser Heimann & Bernstein, LLP  
*Counsel for Plaintiffs and the Settlement Class*

Date: July \_\_, 2024

By: \_\_\_\_\_  
Tiffany Cheung  
Morrison & Foerster LLP  
*Counsel for Defendant Oracle America, Inc.*

Date: July 8, 2024

**ORACLE AMERICA, INC.**

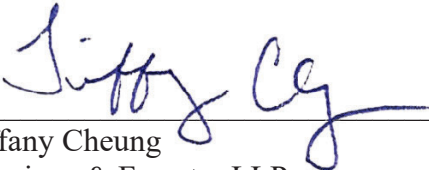
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Peggy E. Bruggman  
Senior Vice President, Associate General  
Counsel, Litigation

APPROVED AS TO FORM:

Date: July \_\_, 2024

By: \_\_\_\_\_  
Michael W. Sobol  
Lief Cabraser Heimann & Bernstein, LLP  
***Counsel for Plaintiffs and the Settlement Class***

Date: July 8, 2024

By:   
Tiffany Cheung  
Morrison & Foerster LLP  
***Counsel for Defendant Oracle America, Inc.***