

SETTLEMENT AGREEMENT

This Class-Action Settlement Agreement (the “**Agreement**”) was entered into on or about April 29, 2024, between and among, on the one hand, Plaintiffs Michael Sizemore, Rudy Vazquez, Mikey Vongdara, and Gordon Lewis (collectively, “**Plaintiffs**”), on behalf of themselves and all others similarly situated (the “**Class**”) and, on the other hand, Jimmy Butler (“**Mr. Butler**”) (each party hereto referred to as a “**Party**” and, collectively, as the “**Parties**”).

**WHEREAS**, Plaintiffs commenced this putative class-action lawsuit on or about March 31, 2023, when they filed the original Class Action Complaint and Demand for Jury Trial against Mr. Butler, Changpeng Zhao, Binance Holdings Limited d/b/a Binance.com, Binance Holdings (IE) Limited, Binance (Services) Holdings Limited, BAM Management U.S. Holdings, Inc., and BAM Trading Services Inc. d/b/a Binance.US, Paxos Trust Company, LLC and Ben Armstrong in the U.S. District Court for the Southern District of Florida, captioned as *Sizemore v. Zhao, et al.*, Case No. 1:23-cv-21261-RKA (the “**Action**”);

**WHEREAS**, Plaintiffs filed their First Amended Class Action Complaint (the “**Operative Complaint**”) on or about June 27, 2023;

**WHEREAS**, the crux of the allegations against Mr. Butler in the Operative Complaint is that he personally participated or aided in making the sale of unregistered securities and that he is jointly and severally liable with the other Defendants for all sums invested by the Class;

**WHEREAS**, Mr. Butler filed his Motion to Compel Arbitration or, in the Alternative, to Dismiss Plaintiffs’ Amended Complaint on or about July 24, 2023;

**WHEREAS**, the Court stayed the *Sizemore* Action on or about August 7, 2023;

**WHEREAS**, Mr. Butler filed his Reply on his Motion to Compel Arbitration or, in the Alternative, to Dismiss Plaintiffs’ Amended Complaint on or about December 20, 2023;

**WHEREAS**, Mr. Butler adamantly denies any and all wrongdoing whatsoever, maintains that he did absolutely nothing unlawful or otherwise improper, and that he ultimately would be absolved of all liability if this matter were litigated to a conclusion on the merits;

**WHEREAS**, the Parties wish to settle to avoid the expense, inconvenience, and uncertainty of continued litigation and, therefore, have entered into this Agreement and agree to be bound by the terms and conditions as set forth herein;

**NOW, THEREFORE**, for and in consideration of the mutual covenants set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the Parties stipulate and agree as follows:

1. **RECITALS**: All of the foregoing recitals are true and correct.

2. **SUBMISSION AND APPLICATION TO THE COURT:** Plaintiffs shall file with the Court a motion seeking the entry of an order granting preliminary approval of this Agreement (“**Preliminary Approval**”), which shall include provisions that:

- a. Preliminarily approve the Agreement as within the range of what is reasonable;
- b. Certify the Class solely for the purposes of effectuating the Agreement;
- c. Approve the form of a Notice of Proposed Settlement of Class Action and Final Approval Hearing (the “**Notice**”);
- d. Provide that the distribution of Notice substantially in the manner set forth in the motion seeking Preliminary Approval constitutes the best notice practicable under the circumstances, meets the requirements of applicable law and due process, is due and sufficient notice of all matters relating to the Agreement, and fully satisfies the requirements of Federal Rule of Civil Procedure 23 (“**Rule 23**”); and
- e. Direct that a final approval hearing (“**Final Approval Hearing**”) be held to determine whether the Court should:
  - i. enter an Order and Final Judgment granting final approval of the Agreement pursuant to Rule 23 as fair, reasonable, adequate, and in the best interests of the Class;
  - ii. enter an order awarding counsel for Plaintiffs and the Class (“**Class Counsel**,” as further herein defined) their reasonable attorneys’ fees and costs; and
  - iii. hear all such other matters as the Court may deem necessary and appropriate.

3. **NOTICE:** Class Counsel shall be responsible for overseeing the process of providing Notice and administering the Agreement. Class Counsel, however, may retain a company that specializes in class-action administration to perform those functions. The Parties further agree that the Settlement Proceeds (defined below) may be utilized to pay all reasonable costs and expenses incurred in providing Notice and administering the Agreement. Class Counsel shall prepare a notice which will contain a description of the Agreement and afford affected parties the opportunity to obtain copies of all the settlement-related papers. The Notice shall be the legal notice to be provided to the Settlement Class Members, and shall otherwise comply with Rule 23 and any other applicable statutes, laws, and rules, including, but not limited to, the Due Process Clause of the United States Constitution. The Notice will be distributed in accordance with subsection 3(b) below.

- a. The Notice is attached hereto as Exhibit A. If the Court does not accept the Notice attached hereto as Exhibit A, the final Notice shall be substantially similar to the Notice attached as Exhibit A. The Notice shall advise the Potential Settlement Class Members of the following:
  - i. General Terms. Subject to Mr. Butler's approval, the Class Notice shall contain a plain, neutral, objective, and concise summary description of the nature of the Action and the terms of the proposed Settlement, including all relief that will be provided by Mr. Butler to the Settlement Class in the Settlement, as set forth in this Agreement. This description shall also disclose, among other things, that (a) any relief to Settlement Class Members offered by the Settlement is contingent upon the Court's approval of the Settlement, which will not become effective until the Effective Date (defined below); (b) Class Counsel and Plaintiffs have reserved the right to petition the Court for an award of Attorneys' Fees and Expenses from the Settlement Funds. The Settlement is not contingent upon any particular amount of Attorneys' Fees and Expenses being awarded by the Court.
  - ii. The Settlement Class. The Class Notice shall define the Settlement Class and shall disclose that the Settlement Class has been provisionally certified for purposes of settlement only.
  - iii. Opt-Out Rights. The Class Notice shall inform the Settlement Class Members of their right to seek exclusion from the Settlement Class and the Settlement and provide the deadlines and procedures for exercising this right.
  - iv. Objection to Settlement. The Class Notice shall inform Settlement Class Members of their right to object to the proposed Settlement and to appear at the Fairness Hearing and provide the deadlines and procedures for exercising these rights.
  - v. Fairness Hearing. The Class Notice shall disclose the date and time of the Fairness Hearing and explain that the Fairness Hearing may be rescheduled without further notice to the Settlement Class.
  - vi. Release. The Class Notice shall summarize or recite the proposed terms of the Release contemplated by this Agreement.
  - vii. Further information. The Class Notice shall disclose where Settlement Class Members may direct written or oral inquiries regarding the Settlement, and also where they may obtain additional information about the Action, including instructions on how

Settlement Class Members can access the case docket using PACER or in person at any of the court's locations.

- b. Delivery of Notice. The Settlement Administrator shall deliver the Notices to Settlement Class Members no later than thirty days after entry of the Preliminary Approval Order via publication to the dedicated website created and maintained for this Action, and via email to any Class Members whose email addresses are reasonably available to Class Counsel.
- c. Settlement Website. The Plaintiffs shall cause the Settlement Administrator to establish the Settlement Website, the address for which shall be included and disclosed in the Class Notice, and which will inform potential Settlement Class Members of the terms of this Agreement, their rights, dates, and deadlines and related information. The Settlement Website shall include, in .pdf format, a copy of the Operative Complaint, this Agreement and its exhibits, any Preliminary Approval Order entered by the Court, and a copy of the Class Notice, along with such other information as the Court may designate or the Parties may agree to post there. The Settlement Website will be operational and live by the date of the first mailing of the Class Notice. A Spanish-language translation of the Class Notice shall be placed on the Settlement Website by the Settlement Administrator at the time the Settlement Website becomes operational and live. The Spanish-language translation shall be created by a federally certified translator. However, in the case of conflict, the English-language version of the Class Notice shall control.
- d. IVR Calling Line. The Plaintiffs shall cause the Settlement Administrator to establish an automated interactive voice recognition telephone system for the purposes of providing information concerning the nature of the Action, the material terms of the Settlement, and the deadlines and procedures for potential Settlement Class Members to exercise their opt-out and objection rights. The Class Notice and Settlement Website shall include and disclose the telephone number of this automated interactive voice recognition telephone system.
- e. Internet Notice. The Plaintiffs shall cause the Settlement Administrator to make advertisements on the internet for the purpose of alerting Settlement Class Members to the settlement website, in a form recommended by the Settlement Administrator and mutually acceptable to the Parties, with an aggregate cost not to exceed 1% of the Common Fund.
- f. Notice to Appropriate Federal and State Officials. Pursuant to the notice provisions of the Class Action Fairness Act, 28 U.S.C. § 1715, within ten (10) days after this Agreement is deemed filed with the Court, the Plaintiffs

will provide notice of this Action and this Agreement to the appropriate federal and state entities.

**4. ORDER AND FINAL JUDGMENT:** If the Court grants Preliminary Approval of the Agreement, Plaintiffs shall request that the Court enter an Order and Final Judgment ("**Final Approval**"). Subject to the Court's approval pursuant to Rule 23(e), the Parties contemplate that the Order and Final Judgment shall:

- a. approve the Agreement pursuant to Rule 23(e), adjudge the terms thereof to be fair, reasonable, adequate, and in the best interests of the Class, direct consummation of the Agreement in accordance with its terms and conditions;
- b. determine that the requirements of Rule 23 and due process have been satisfied in connection with both the certification of the Class for purposes of settlement and the provision of Notice;
- c. approve the dismissal with prejudice of all claims pleaded against Mr. Butler in the Operative Complaint;
- d. award Class Counsel their reasonable attorneys' fees and costs;
- e. provide for the entry of a Bar Order; and
- f. reserve jurisdiction to supervise the consummation and administration of the Agreement.

**5. EFFECTIVE DATE:** The date on which the Agreement shall be deemed effective (the "Effective Date") shall be the first business day after the following have occurred:

- a. the entry of the Order and Final Judgment approving the Agreement; and
- b. either:
  - i. the expiration of any applicable appeal period for the appeal of the Order and Final Judgment without an appeal having been filed; or (if an appeal is taken);
  - ii. the entry of an order affirming the Order and Final Judgment and the expiration of any applicable period for the reconsideration, rehearing, or appeal of such order without any motion for reconsideration or rehearing or further appeal having been filed; or (if a motion for reconsideration or rehearing or further appeal is filed); or

- iii. the entry of a subsequent order affirming the Order and Final Judgment.

6. **CONTINGENT PROTOCOL IF THE AGREEMENT IS NOT APPROVED:** In the event the Court does not approve the Agreement – either at the Preliminary Approval or Final Approval stage – then the Agreement shall be deemed void, *nunc pro tunc*, the Settlement Class shall be deemed decertified and the Parties will resume the litigation posture they were in as of the date of this Agreement. The Parties, however, intend for this Agreement to resolve, fully and completely, all claims (and potential claims) that Plaintiffs and the Class have brought (or could have brought) against Mr. Butler. Accordingly, the Parties shall endeavor to pursue Preliminary Approval and Final Approval of the Agreement, cooperate in the pursuit thereof, and take all reasonable efforts to obtain the Court’s grant of both Preliminary Approval and Final Approval.

7. **THE PARTIES SHALL ANNOUNCE THE SETTLEMENT TO THE COURT:** The Parties shall prepare and submit a joint notice to the Court advising the Court that they have agreed to a settlement and the form of this Agreement, and that they will submit a motion seeking Preliminary Approval at the appropriate time (which is addressed below), and the Parties shall cooperate in the drafting thereof. In addition:

- a. The terms of this Agreement are to be kept strictly confidential unless and until Plaintiffs file a motion seeking Preliminary Approval, except that Mr. Butler may disclose this Agreement to his attorneys, agents, and as reasonably necessary to enforce any claims he may have for indemnification with respect to the Settlement Consideration.
- b. Prior to the filing of a motion seeking Preliminary Approval (if any is filed), the Parties are not to make any public comment regarding the Agreement. If contacted by the press or otherwise prior to the filing of a motion seeking Preliminary Approval, the Parties are to respond simply: “*No comment.*”
- c. After the filing of a motion seeking Preliminary Approval, Plaintiffs shall disclose the terms of the Agreement to the Court in the pursuit of Preliminary Approval and Final Approval and:
  - i. Class Counsel may make all statements in court proceedings as reasonably necessary to advocate in favor of Final Approval; but Class counsel shall not otherwise make any public statement about Mr. Butler or this Agreement that would disparage Mr. Butler, or injure his image and brand; and
  - ii. Mr. Butler may issue a public statement, if he chooses to do so, explaining why he chose to settle the case and to protect his image and his brand. Any such public statement, however, shall not disparage Plaintiffs, the Class, or Class Counsel.

8. **SETTLEMENT CONSIDERATION:** Mr. Butler shall pay the sum of Three Hundred Thousand Dollars and Zero Cents (\$300,000.00) to settle this matter, which sum shall be paid within 30 days after the Effective Date, and shall constitute the entire consideration paid by Mr. Butler under this Agreement.

9. **SUBMISSION OF DISPUTE TO MEDIATION:** In the event that there are any *bona fide* disputes regarding the interpretation or execution of this Agreement, the Parties agree to submit the dispute to Mediation before Hon. Michael A. Hanzman (Ret.) upon the request of any Party.

10. **THE CLASS DEFINITION:** For purposes of this Agreement, "Settlement Class" means, collectively, subject to the right to submit a timely request to be excluded pursuant Rule 23(c)(2)(B)(v), all individuals who are included in the subclasses defined in the Complaint, as follows:

All persons and entities who, within the applicable limitations period, A) purchased, held, and/or sold the cryptocurrency tokens BNB and/or BUSD on any platform, B) purchased, held, and/or sold SOL, ADA, MATIC, FIL, ATOM, SAND, MANA, ALGO, AXS, or COTI on Binance.US or Binance.com, or C) participated in the programs BNB Vault, Simple Earn, and/or any staking program through Binance.US or Binance.com.

Excluded from the Settlement Class are Defendants and their officers, directors, affiliates, legal representatives, and employees, the Binance entities and their officers, directors, affiliates, legal representatives, and employees, any governmental entities, any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff.

"Class Counsel" means, collectively, all counsel of record for the Class Members in the Action, including, Co-Lead Class Counsel.

"Settlement Class Member" means a Person who falls within the definition of the Class as set forth in this section.

"Class Notice" means a notice to be approved by the District Court.

"Class Representatives" means Michael Sizemore, Rudy Vazquez, Mikey Vongdara, and Gordon Lewis.

"Co-Lead Class Counsel" means Adam Moskowitz of The Moskowitz Law Firm, PLLC and David Boies of Boies Schiller Flexner LLP.

11. **ADMINISTRATION AND DISTRIBUTION OF THE SETTLEMENT FUND:** Regarding the administration and distribution of the Settlement Consideration (if any):

- a. Class Counsel, or their authorized agents, shall administer and calculate the amounts payable to all Settlement Class Members and, after the Effective

Date, shall oversee distribution of the Settlement Consideration to all Settlement Class Members;

- b. Neither Mr. Butler, nor his counsel, shall have any responsibility relating to, or liability arising from, distribution of the Settlement Consideration; and
- c. The Settlement Consideration (subject to Court approval) may be utilized to pay all reasonable costs and expenses incurred in providing Notice and administering the Agreement.

**12. PROCEDURES FOR OBJECTING TO THE SETTLEMENT:** The order granting Preliminary Approval shall provide that only Settlement Class Members may object to the settlement. All objections must be filed no later than thirty (30) days prior to the Final Fairness Hearing (the "Objection/Exclusion Deadline") with the Clerk of the United States District Court for the Southern District of Florida, 400 North Miami Avenue, 8th Floor, Miami, FL 33128, and served at that same time upon the following:

Co-Lead Class Counsel  
Adam M. Moskowitz  
Joseph M. Kaye  
THE MOSKOWITZ LAW FIRM, PLLC  
3250 Mary Street, Suite 202  
Miami, FL 33133  
[adam@moskowitz-law.com](mailto:adam@moskowitz-law.com)  
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-and-

David Boies  
Brooke Alexander  
BOIES SCHILLER FLEXNER LLP  
333 Main Street  
Armonk, NY 10504  
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[dboies@bsflp.com](mailto:dboies@bsflp.com)  
[balexander@bsflp.com](mailto:balexander@bsflp.com)

-and-

Defendant's Counsel

Courtney Rockett  
Douglas P. Baumstein  
Kara M. Cormier



Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.  
919 Third Avenue,  
New York, NY 10022  
[crockett@mintz.com](mailto:crockett@mintz.com)  
[dbaumstein@mintz.com](mailto:dbaumstein@mintz.com)  
[kmcormier@mintz.com](mailto:kmcormier@mintz.com)

-and-

Alexander M. Peraza  
David A. Rothstein  
Dimond Kaplan & Rothstein, P.A  
Offices at Grand Bay Plaza  
2665 South Bayshore Drive, PH 2B  
Coconut Grove, Florida 33133  
[aperaza@dkrpa.com](mailto:aperaza@dkrpa.com)  
[drothstein@dkrpa.com](mailto:drothstein@dkrpa.com)

- a. A Settlement Class Member's objection must:
  - i. be in writing;
  - ii. include the objector's full name, current address, and current telephone number;
  - iii. include documentation or attestation sufficient to establish membership in the Settlement Class;
  - iv. be signed by the person filing the objection, or his attorney;
  - v. state, in detail, the factual and legal grounds for the objection;
  - vi. state any objections filed by the objector in the last seven years (case name, name of court, and result of objection);
  - vii. attach any document the Court should review in considering the objection and ruling on the Motion;
  - viii. provide dates for availability to Class Counsel for the Settlement Class Member's deposition; and
  - ix. include a request to appear at the Final Approval Hearing, if the objector intends to appear at the Final Approval Hearing.
- b. Any objection that does not meet all of these requirements will be deemed invalid and will be overruled.
- c. Subject to approval of the Court, any objecting Settlement Class Member may appear, in person or by counsel, at the Final Approval Hearing held by the Court, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, or object to any petitions for attorneys' fees, Class Representative General Release Payment, and reimbursement of reasonable litigation costs and expenses. The objecting

Class Member must file with the Clerk of the Court and serve upon Class Counsel and Defendant's Counsel (at the addresses listed above), a notice of intention to appear at the Final Approval Hearing ("Notice of Intention to Appear") on or before the Objection/Exclusion Deadline.

- d. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting Class Member (or his/her/its counsel) will present to the Court in connection with the Final Approval Hearing. Any Class Member who does not provide a Notice of Intention to Appear in complete accordance with the deadlines and other specifications set forth in the Class Notice, will not be allowed to speak or otherwise present any views at the Final Approval Hearing.
- e. The date of the postmark on the mailing envelope or a legal proof of service accompanied and a file-stamped copy of the submission shall be the exclusive means used to determine whether an objection and/or notice of intention to appear has been timely filed and served. If the postmark is illegible, the objection and/or notice to appear shall be deemed untimely unless it is received by the counsel for the Parties within two (2) days of the Objection/Exclusion Deadline.
- f. Response to Objections: Class Counsel shall, at least ten (10) business days (or such other number of days as the Court shall specify) before the Final Approval Hearing, file any responses to any written objections submitted to the Court by Settlement Class Members in accordance with this Agreement.
- g. No Solicitation of Settlement Objections: The Parties agree to use their best efforts to carry out the terms of this Settlement. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class Member to object to the settlement or encourage any Settlement Class Member to appeal from the final judgment.

**13. PROCEDURES FOR REQUESTING EXCLUSION FROM SETTLEMENT:** The order granting Preliminary Approval shall provide that any person or entity falling within the definition of the Settlement Class that does not wish to participate in the Agreement (*i.e.*, receive a *pro rata* share of the Settlement Consideration and to be bound by the dismissals and release set forth herein) must request exclusion from the Settlement Class – *i.e.*, "Opt Out" – pursuant to Rule 23(c)(2)(B)(v).

- i. Any Settlement Class Member who wishes to be excluded from the Settlement Class must mail a written "request for exclusion" to the Settlement Administrator at the address provided in the Class Notice, sufficiently in advance to be received by the Settlement Administrator no later than the Objection/Exclusion Deadline. A written request for exclusion

must: (a) contain a caption or title that identifies it as “Request for Exclusion in Binance Action”; (b) include the Settlement Class Member’s name, mailing and email addresses, and contact telephone number; (c) specify that he or she wants to be “excluded from the Settlement Class” for which he or she seeks exclusion from the Settlement; and (d) be personally signed by the Settlement Class Member. The requirements for submitting a timely and valid request for exclusion shall be set forth in the Class Notice.

- ii. Each Settlement Class Member who wishes to be excluded from the Settlement Class must submit his or her own personally signed written request for exclusion. A single written request for exclusion submitted on behalf of more than one Potential Settlement Class Member will be deemed invalid; provided, however, that an exclusion received from one Settlement Class Member will be deemed and construed as a request for exclusion by all co-account holders.
- iii. Unless excluded by separate Order entered by the Court for good cause shown prior to the final approval of this Settlement, any Settlement Class Member who fails to strictly comply with the procedures set forth in this Section for the submission of written requests for exclusion will be deemed to have consented to the jurisdiction of the Court, will be deemed to be part of the Settlement Class, and will be bound by all subsequent proceedings, orders, and judgments in the Action, including, but not limited to, the Release, even if he or she has litigation pending or subsequently initiates litigation against the Defendant relating to the released claims.
- iv. The Settlement Administrator shall file with the Court, no later than ten (10) business days before the Fairness Hearing, a list reflecting all requests for exclusion it has received (the “Opt Out List”). The Opt Out List shall also identify which of those requests for exclusion were received late, and which requests for exclusion failed to comply with the requirements of this Section 13.
- v. Settlement Class Members who exclude themselves from the Settlement Class as set forth in this Section expressly waive any right to the continued pursuit of any objection to the Settlement as set forth in this Section, or to otherwise pursue any objection, challenge, appeal, dispute, or collateral attack to this Agreement or the Settlement, including: to the Settlement’s fairness, reasonableness, and adequacy; to the appointment of Class Counsel and Plaintiffs as the representatives of the Settlement Class; to any Attorneys’ Fee and Expense awards; and to the approval of the Class Notice, and the procedures for disseminating the Class Notice to the Settlement Class.

14. **TERMINATION OF THE AGREEMENT:** Mr. Butler shall have the right to terminate this Agreement and thereby render it void, *nunc pro tunc*, in the event that Class Members whose claimed losses (as set forth in the "Opt Out" notice) exceed, in the aggregate, the sum of One Hundred Thousand dollars (\$100,000) timely request to Opt Out of the Agreement, by providing written notice of termination in the manner provided in Paragraph 31 of this Agreement within five (5) business days after the Settlement Administrator files the Opt Out List with the Court.

15. **ATTORNEYS' FEES AND COSTS:**

- a. Class Counsel may petition the Court for an award of Attorneys' Fees and Expenses in an aggregate amount not to exceed thirty three percent (33%) of the Settlement Funds. Class Counsel may also seek payments for General Releases signed by the Class Representatives in favor of The Settling Defendants in the amount of \$500. Class Counsel shall file its motion for an Attorneys' Fees and Expenses award no later than fourteen (14) days before the Objection/Exclusion Deadline. As soon as is practicable after filing, Class Counsel shall cause the Settlement Administrator to post on the Settlement Website all papers filed and served in support of Class Counsel's motion for an award of Attorneys' Fees and Expenses. Mr. Butler reserves the right to oppose any petition by Class Counsel for Attorneys' Fees and Expenses that Mr. Butler deems to be unreasonable in nature or amount or otherwise objectionable.
- b. All attorneys' fees for, and any reimbursement of litigation expenses incurred by, Class Counsel shall be paid out of the Settlement Funds. Other than making available the Settlement Funds pursuant to the requirements of Section 8, Mr. Butler shall have no responsibility for, and no liability whatsoever with respect to, any payment of attorneys' fees or expenses to Class Counsel and/or to the Plaintiffs, or the Class Representative General Release payments, which Class Counsel and Plaintiffs shall seek to have paid only from the Settlement Funds.
- c. Class Counsel is solely responsible for distributing any Attorneys' Fees and Expenses to and among all attorneys that may claim entitlement to attorneys' fees or costs in the Action. It is a condition of this Settlement that Mr. Butler shall not be liable to anyone for any attorneys' fees or costs, or any claim by any other counsel or Settlement Class Member or Plaintiff for additional attorneys' fees, costs or expenses, relating in any way to the Action, the Settlement, its administration and implementation, any appeals of orders or judgments relating to the Settlement, any objections or challenges to the Settlement, and/or any proceedings on behalf of Settlement Class Members who do not exclude themselves from the Settlement Class based on any of

the claims or allegations forming the basis of the Action or any other claims that are defined as Released Claims in this Settlement.

- d. Within fourteen (14) days after the later of (a) the Final Settlement Date or (b) receipt of wire instructions from Class Counsel, whichever is later, the Settlement Administrator shall pay Class Counsel from the Settlement Funds any Attorneys' Fees and Expenses and General Release Payments that may be awarded by the Court. Class Counsel shall be solely responsible for supplying the Settlement Administrator with all information required by the Settlement Administrator in order to pay such awards from the Settlement Funds, and to comply with the Settlement Administrator's state and local reporting obligations. Class Counsel will also be solely responsible for distributing such General Release Payments to the Plaintiffs, in accordance with the terms and provisions of any Order entered by the Court approving such awards.
- e. In the event the Final Order and Judgment is not entered, or this Agreement and the Settlement do not reach the Final Settlement Date, Mr. Butler will not be liable for, and shall be under no obligation to pay, any of the Attorneys' Fees and Expenses and General Release Payments set forth herein and described in this Agreement.
- f. The effectiveness of this Agreement and Settlement will not be conditioned upon or delayed by the Court's failure to approve in whole or in part any petition by Plaintiffs and Class Counsel for Attorneys' Fees and Expenses and General Release Payments. The denial, downward modification, or failure to grant any petition by Plaintiffs and Class Counsel for Attorneys' Fees and Expenses and General Release Payments shall not constitute grounds for modification or termination of this Agreement or the Settlement proposed herein.

16. **RELEASE IN FAVOR OF MR. BUTLER:** Save and except only those obligations expressly owed by Mr. Butler under this Agreement, and subject to the approval of the Court pursuant to Rule 23(e), Plaintiffs and the Class hereby absolutely, irrevocably, fully, now and forever release, remise, acquit, satisfy, and discharge Mr. Butler, and each of his predecessors, successors, assigns, heirs, employees, contractors, agents, representatives, attorneys, trustees, insurers, and related entities (including, but not limited to ZS Endorsement, LLC), and each of their respective owners, members, directors, officers, managers, executives, employees, contractors, agents, representatives, insurers, attorneys, administrators, trustees, and assigns, whether in their individual, representative, or other capacity (collectively, the "Butler Releasees"), from any and all claims, actions, causes of action (whether claims, counter-claims, cross-claims, third-party claims, or otherwise), contributions, indemnities, apportionments, duties, omissions, commitments, obligations, losses, suits, debts, dues, sums, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, obligations,

compensation, trespasses, damages, judgments, executions, rights, expenses, fees, costs, and demands of whatsoever kind or nature, in law or equity, whether arising under state, federal, common, or administrative law or otherwise, whether direct, derivative, representative, or in any other capacity, whether *known or unknown, accrued or unaccrued*, contingent or absolute, asserted or unasserted, suspected or unsuspected, disclosed or undisclosed, hidden or concealed, matured or unmatured (collectively, "Claims"), which Plaintiffs and the Class ever had, now have or hereafter may have against any of the Butler Releasees for, upon, by reason of, or arising out of any act, error, omission, thing, agreement or event which concern or in any way relate to or arise out of the subject matter addressed in the Operative Complaint or that could have been brought in the Operative Complaint.<sup>1</sup>

**Section 1542 Waiver.** Plaintiffs and the Class understand and agree that this Agreement constitutes a full and final release and settlement of all claims, demands, actions, causes of action, liabilities, obligations, losses, and expenses, known or unknown, suspected, or unsuspected, foreseen, or unforeseen, relating to the subject matter of this Agreement, and expressly waive any and all rights and benefits conferred upon them by the provisions of:

- a. Section 1542 of the California Civil Code, 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.**

and

- b. any law of any state of the United States, federal law, or principle of common law which is similar, comparable, or equivalent to Section 1542 of the California Civil Code.

**17. NO ADMISSION OF WRONGDOING:** This Agreement, whether consummated or not, and any proceedings taken pursuant to it:

- a. shall not be offered or received against Mr. Butler as evidence of, or construed as, or deemed to be evidence of, any presumption, concession, or admission by Mr. Butler with respect to the truth of any fact alleged by Plaintiffs or the validity of any claim that had been or could have been asserted against Mr. Butler in the action or in any litigation, or of any liability, negligence, fault or wrongdoing of Mr. Butler;

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<sup>1</sup> Plaintiffs and the Class have not, and shall not, assign any claims that have been brought, or could be brought, against any of the Butler Releasees to any person or entity, including any person or entity with standing to bring suit in any associated case.

- b. shall not be offered or received against Mr. Butler as evidence of a presumption, concession, or admission of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by Mr. Butler, or against Plaintiffs or any other members of the Class;
- c. shall not be offered or received against Mr. Butler as evidence of a presumption, concession, or admission with respect to any liability, negligence, fault, or wrongdoing, or in any way referred to for any other reason in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Agreement; provided, however, that if the Agreement is approved by the Court, Mr. Butler may refer to it to effectuate the liability protection granted to him hereunder; and
- d. shall not be considered against Mr. Butler as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial.

**18. NO ORAL MODIFICATIONS/NO WAIVER:** No amendment, waiver, or modification of any of the terms and conditions set forth in this Agreement shall be effective unless in writing, signed by all Parties. The failure of any Party to insist, in any one or more instances, on the performance of any terms or conditions of this Agreement shall not be construed as a waiver or relinquishment of any rights granted hereunder or of the future performance of any such term or condition, and the obligations of the non-performing Party with respect thereto shall continue in full force and effect. If any Party to this Agreement is nevertheless found to have waived any of its rights under this Agreement, such waiver or waivers shall not constitute a continuing waiver as to any rights under this Agreement and shall not affect that Party's rights to later fully enforce any provision of this Agreement. No waiver shall be binding unless in writing and signed by the Party waiving the breach.

**19. BAR ORDER:** Plaintiffs and the Class shall request that any Order and Final Judgment entered in this action include a bar order provision in conformance with the law of the Eleventh Circuit Court of Appeals that bars, enjoins, and restrains, in any and all jurisdictions, including any federal or state court, and any other tribunal, arbitration proceeding, administrative agency, or other forum in the United States or elsewhere, to the maximum extent permitted by law, the commencement, prosecution, or assertion of any and all claims, cross-claims, counterclaims, and third-party claims or actions based on or related to, in whole or in part, directly or indirectly, the settled claims whether arising under state, federal, or foreign law, claims for contribution, indemnification, or equitable indemnification against any Butler Releasee, or any successor or assign, related, directly or indirectly, to the facts of this action. But this Agreement shall remain binding even if the Court does not agree to the entry of a Bar Order as requested herein.

**20. COVENANT NOT TO SUE:** Even if the Court elects not to enter the Bar Order requested herein, Plaintiffs and the Class covenant and agree not to directly or indirectly institute, file or cause to be filed, maintain, assist with, or advise to be commenced threaten, prosecute or otherwise pursue, assist or support in any way any demand, claim, proceeding, suit or action based on, arising out of and/or relating to, in whole or in part, directly or indirectly, the settled claims

whether arising under state, federal or foreign law, claims for contribution, indemnification, or equitable indemnification against any Butler Releasee, or any successor or assign, related, directly or indirectly, to the facts of this action.

21. **DISCOVERY INFORMATION SHALL BE KEPT CONFIDENTIAL:** The Parties hereby acknowledge that they have obtained access to certain confidential information as a result of discovery obtained in this matter, and the Parties hereby represent and warrant that they have not disclosed and will not disclose any such confidential information.

22. **NON-DISPARAGEMENT:** No Party shall make any comments or remarks relating to the subject matter of this action that might have a negative effect on the reputation of any other Party to this Agreement, and the Parties stipulate and agree that this non-disparagement provision is a material inducement for the Parties to enter into this Agreement.

23. **COOPERATION:** The Parties agree to cooperate in good faith with regard to the execution of any additional documents, and the performance of additional tasks, reasonably necessary or desirable to effectuate and implement the terms and conditions of this Agreement.

24. **GOVERNING LAW; VENUE; SUBMISSION TO JURISDICTION:** The Parties hereby stipulate and agree as follows:

- a. **GOVERNING LAW:** This Agreement shall be construed and enforced pursuant to the laws of the State of Florida, both substantive and procedural.
- b. **VENUE:** The Parties hereby consent to venue for any action arising under or in any way related to this Agreement in any court of competent jurisdiction venued in Miami-Dade County, Florida, and all Parties hereby expressly waive any objection or defense that such venue is an inconvenient or otherwise improper forum for any dispute arising under or in any way related to this Agreement.
- c. **PERSONAL JURISDICTION:** All Parties hereby waive any and all objections to personal jurisdiction as they may relate to the enforcement of the terms of this Agreement in Miami-Dade County, Florida.

25. **ADMISSIBILITY:** This document is to be deemed a “settlement agreement” and, therefore, is not admissible in a court of law or equity other than to enforce its terms and conditions.

26. **INTERPRETATION:** Each of the Parties to this Agreement has been represented by legal counsel or has had the opportunity to consult with legal counsel throughout the negotiations and drafting of this Agreement and has had the opportunity to adequately confer with counsel with respect thereto. In the event a dispute arises among the Parties regarding the interpretation of any term of this Agreement, the Parties shall be considered collectively to be the drafting party and any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall be inapplicable. As a result, this Agreement shall not be more strictly construed against any one Party or in favor of any other Party.



27. **SCOPE AND BINDING EFFECT:** This Agreement contains the entire agreement between the Parties and constitutes the complete, final, and exclusive embodiment of their agreement relating to the subject matter hereof, and supersedes all prior proposals, communications, agreements, and understandings concerning the subject matter of this Agreement. It shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties.

28. **ATTORNEYS' FEES AND COSTS:** Should any proceedings be required to enforce the terms and conditions of this Agreement, the "prevailing party" shall be entitled to recover its reasonable attorneys' fees and costs incurred, as well as the reasonable value of all attorneys' fees and costs expended but not incurred, in connection with such dispute from the "non-prevailing party." This provision applies to fees and costs incurred both at trial and appellate levels, including petitions (if any), as well as fees and costs incurred in arbitration proceedings or any other forum (if any). The prevailing party shall be entitled to recover not only those fees and costs incurred in conjunction with all efforts to achieve prevailing-party status and to determine entitlement to fees and costs, but also those fees and costs incurred in conjunction with all efforts to establish the proper amount of such fees and costs. Finally, this provision applies to fees and costs incurred in post-judgment collection proceedings (if any).

29. **COUNTERPARTS / ORIGINALS:** This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute the same instrument. A fax or portable document format (PDF) of this Agreement and all signatures thereon, will be deemed a duplicate original of the Agreement and may be used by any Party to this Agreement in the same manner as an original copy of this Agreement.

30. **SEVERABILITY:** If any provision of this Agreement is, for any reason, held illegal, invalid, or unenforceable, such illegality, invalidity, or enforceability will not affect any other clause, provision, or paragraph of this Agreement, and this Agreement will be construed and enforced as if the illegal, invalid, or unenforceable clause, paragraph, or other provision had not been contained within it; provided, however, that Mr. Butler's obligation to pay the settlement consideration pursuant to Section 8 is expressly conditioned upon the issuance of a valid and binding general release without material deviation from that set forth in Section 18.

31. **NOTICES:** Any notice or demand required or permitted by any provision of this Agreement (other than the requirements of Sections 12 and 13 regarding objections and requests for exclusion) shall be deemed sufficient if it is delivered via e-mail as follows:

If to Plaintiffs: Adam M. Moskowitz, Esq.  
The Moskowitz Law Firm  
[ADAM@MOSKOWITZ-LAW.COM](mailto:ADAM@MOSKOWITZ-LAW.COM)

If to Mr. Butler: David A. Rothstein, Esq.  
Dimond Kaplan & Rothstein, P.A.  
[DROTHSTEIN@DKRPA.COM](mailto:DROTHSTEIN@DKRPA.COM)

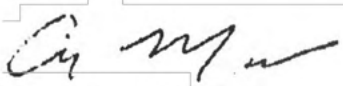
Unless the sender receives email notification that the sent message is undeliverable, notice shall be deemed to have been delivered as of the date and time when the email is sent. In the event of an undeliverable email notice, counsel for the Parties agree to cooperate to facilitate delivery of any required notice.

32. **COMPUTATION OF DEADLINES:** For purposes of determining deadlines under this Agreement, any interval measured in "business days" shall exclude (a) weekend days; and (b) federal or Florida state holidays. All other intervals shall be measured in calendar days. In the event that an interval specified for performance of any action or obligation required under this Agreement results in a deadline that falls on a date that is not a business day, that deadline will be deemed to fall on the next business day.


33. **WAIVER OF JURY TRIAL:** THE PARTIES HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION, DEFENSE, COUNTERCLAIM, OR OTHER PROCEEDING ARISING UNDER OR IN ANY WAY RELATED TO THIS AGREEMENT, AND THE PARTIES RECOGNIZE THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

IN WITNESS WHEREOF, the Parties to this Agreement have caused this document to be executed and delivered at Miami-Dade County, Florida.

CLASS REPRESENTATIVES

By:   
ADAM MOSKOWITZ  
Co-Lead Counsel for the Class  
Representatives and the Proposed Class

Dated: May 2nd, 2024.

DEFENDANT  
By:   
JIMMY BUTLER

Dated: 6-29, 2024.