

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

RUBY MITCHELL and EDWARD J.
KELLY, *individually, and on behalf of a class of
similarly situated persons,*

Plaintiff,

vs.

INTERO REAL ESTATE SERVICES,

Defendant.

Case No. 5:18-cv-05623-BLF

**SETTLEMENT AGREEMENT
AND RELEASE**

This Settlement Agreement and Release is entered into between and among Plaintiffs Ruby Mitchell and Edward J. Kelly, on behalf of themselves and all Settlement Class Members as defined herein, on the one hand, and Intero Real Estate Services (“Intero”), on the other (collectively “Parties” or “Settling Parties”).

1. RECITALS

WHEREAS, the above-captioned lawsuit is comprised of the Parties and claims alleged or that could have been alleged regarding Intero’s alleged violations of the Telephone Consumer Protection Act (“TCPA”) and other federal and state laws (the “Litigation”).

WHEREAS, Plaintiffs have each asserted statutory and injunctive claims, on their own behalf and on behalf of classes of persons similarly situated, seeking monetary damages and other relief on behalf classes of persons who allegedly received unwanted telephone solicitations and telemarketing calls from Intero or its alleged agents.

WHEREAS, Intero denies all allegations of wrongful conduct and damages, denies liability to Plaintiffs or the classes, asserts that its conduct and practices are lawful and proper, and asserts numerous procedural and substantive defenses to Plaintiffs' claims, and Intero further denies that the Litigation satisfies the requirements to be tried as a class action under the applicable Federal Rules of Civil Procedure.

WHEREAS, the Parties have engaged in extensive arm's length negotiations concerning the claims alleged, the defenses presented, and the potential risk and uncertain outcomes of continued litigation for all Parties, first as part of a settlement conference with the Honorable Maria-Elaina James (Ret.), and later as part of multiple settlement conferences before the Honorable Joseph C. Spero, Chief Magistrate Judge of the U.S. District Court, Northern District of California, both of whom possess extensive experience in dispute resolution.

WHEREAS, Plaintiffs have conducted a thorough investigation of the facts and claims alleged herein through extensive litigation and discovery and as part of the settlement conference process and have taken into account the sharply contested issues involved in this litigation, the risks and costs to the Settlement Class of continued litigation and attendant appeals, the uncertain outcomes of continued litigation and attendant appeals, the substantial relief to be provided to the Settlement Class pursuant to this Settlement Agreement, and Intero's ability to satisfy an adverse judgment as verified by Plaintiffs' review of Intero's financial records. Plaintiffs believe a settlement on the terms set forth in this Settlement Agreement is fair, equitable, and in the best interests of the Settlement Class, particularly considering Intero's adverse financial condition, and have thus agreed to settle this Litigation on the terms set forth herein as reached with the assistance of the Honorable Joseph C. Spero.

WHEREAS, Intero, though expressly disclaiming any liability or wrongful conduct, but nonetheless recognizing the uncertainty of continued litigation and appeals, desires to resolve this Litigation to avoid further expense, to eliminate risk, and to resolve all claims brought by Plaintiffs on their own behalf and on behalf of the Settlement Class on the terms set forth in this Settlement Agreement, as reached with the assistance of Honorable Joseph C. Spero, and have thus agreed to settle this Litigation.

WHEREAS, Plaintiffs and Intero have agreed to settle and fully and finally resolve their disagreements on a claims-made basis for an amount equal to \$350.00 for each class member who submits as valid claim consistent with the terms set forth herein, which shall include a full and complete release of Intero and Released Parties.

2. DEFINITIONS

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

2.1. “Action” or “Litigation” means the action currently styled as *Ruby Mitchell and Edward J. Kelly, et al. v. Intero Real Estate Services*, Case No. 18-cv-05623-BLF, U.S. District Court for the Northern District of California, San Jose Division.

2.2. “Administrative Expenses” shall mean the costs of administering this Settlement Agreement from the date of execution through the completion of distribution of funds to the Settlement Class, including all amounts paid the Settlement Administrator, all costs of notice, and all costs of allocation and distribution of funds.

2.3. “Approved Claim” means a Claim submitted by a Settlement Class Member for a Cash Award that is timely and submitted in accordance with the terms of this Settlement Agreement.

2.4. “Attorneys’ Fees and Costs” means such funds as may be awarded to Class Counsel by the Court to compensate them for their reasonable attorneys’ fees, costs and other

litigation expenses incurred by Plaintiffs or Class Counsel in connection with the Litigation, including the costs incurred in paying for the original class notice.

2.5. “CAFA Notice” means the notice Intero must provide pursuant to 28 U.S.C. Section 1715(b).

2.6. “Cash Award” means payment in the amount of \$350.00 to a Settlement Class Member who submits an Approved Claim.

2.7. “Claim” means a written request for Settlement Relief submitted by a Settlement Class Member to the Settlement Administrator, pursuant to the Claim Form in a form substantially similar to the document attached as **Exhibit 1** to this Settlement Agreement or in the form as ultimately approved by the Court.

2.8. “Claim Form” means a set of documents in a form substantially similar to **Exhibit 1** attached to this Settlement Agreement, or in the form as ultimately approved by the Court.

2.9. “Claimant” means any Settlement Class Member who submits an Approved Claim confirming that they were a user of the Residential Telephone Number on the dates (as reflected in the Mojo Dialing Solutions, LLC, calling records) the calls were initiated to that number.

2.10. “Class Counsel” means the law firms of Tycko & Zavareei LLP, Reese LLP and Bailey & Glasser, LLP.

2.11. “Class Notice” means the program of notice described in Section 6 of this Settlement Agreement to be provided to potential Settlement Class Members, including the Mail Notice, Email Notice, and Website Notice on the Settlement Website, which will notify potential Settlement Class Members about, among other things, their rights to opt out or object to the

Settlement, the preliminary approval of the Settlement, the manner by which to submit a Claim, and the scheduling of the Final Approval Hearing.

2.12. “Class Period” means September 13, 2014 through the date notice is provided to the settlement class.

2.13. “Class Representatives” means Plaintiffs Ruby Mitchell and Edward J. Kelly.

2.14. “Court” shall mean the United States District Court for the Northern District of California and the U.S. District Judge to which this Action assigned.

2.15. “Days” means calendar days, except that, when computing any period of time prescribed or allowed by this Settlement Agreement, the day of the act, event, or default from which the designated period of time begins to run shall not be included. Further, when computing any period of time prescribed or allowed by this Settlement Agreement, the last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

2.16. “Deadlines.” As used herein, the Parties agree to the following deadlines, subject to Court approval:

2.16.1. “Notice Deadline” means the last day for the Settlement Administrator to send Mail Notice and Email Notice to potential Settlement Class Members. Mail and Email Notice shall be sent no later than thirty (30) Days after the Court’s Preliminary Approval Order, such date being subject to approval or modification by the Court.

2.16.2. “Fee and Incentive Motion Deadline” means the last day for Plaintiffs to file a motion for an award of Attorneys’ Fees and Costs, and a Service Award to Plaintiffs. The

Fee and Incentive Motion shall be filed twenty-five (25) days after the Notice Deadline, such date being subject to approval or modification by the Court.

2.16.3. “Objection Deadline” means the date identified in the Preliminary Approval Order and Class Notice by which a Settlement Class Member must serve written objections, if any, to the Settlement in accordance with Section 12 of this Settlement Agreement in order to qualify them to be able to object to the Settlement. The Objection Deadline shall be sixty (60) days after the Notice Deadline, such date being subject to approval or modification by the Court.

2.16.4. “Opt Out Deadline” means the date identified in the Preliminary Approval Order and Class Notice by which a Request for Exclusion must be filed in writing with the Settlement Administrator in accordance with Section 11 of this Settlement Agreement in order for a potential Settlement Class Member to be excluded from the Settlement Class. The Opt-Out Deadline shall be sixty (60) Days after the Notice Deadline, such date being subject to approval or modification by the Court.

2.16.5. “Claim Deadline” means the last date by which a Claim submitted to the Settlement Administrator by a Settlement Class Member must be postmarked or submitted electronically, which will be sixty (60) Days after the Notice Deadline, such date being subject to approval or modification by the Court. All Claims postmarked or submitted electronically at the Settlement Website on or before the Claim Deadline shall be timely, and all Claims postmarked or submitted electronically at the Settlement Website after the Claim Deadline shall be untimely and barred from entitlement to any Settlement Relief.

2.16.6. “Final Approval Motion Deadline” means the date by which Class Counsel shall file the motion seeking final approval of the Settlement. The Final Approval

Motion Deadline shall be thirty (30) Days after the Objection and Opt-Out deadline, such date being subject to approval or modification by the Court.

2.17. “Defense Counsel” means the law firm of Simmonds & Narita LLP and the law firm of Burr Forman LLP.

2.18. “Final” with respect to the Final Approval Order, the Judgment, and any award of Attorneys’ Fees and Costs means that the time for appeal or writ review has expired or, if an appeal or petition for review is taken and dismissed or the Settlement (or award of Attorneys’ Fees and Costs) is affirmed, the time period during which further petition for hearing, appeal, or writ of certiorari can be taken has expired. If the Final Approval Order and/or Judgment is set aside, modified, or overturned by the Court or on appeal, and is not fully reinstated on further appeal, the Final Approval Order and/or Judgment shall not become Final.

2.19. “Final Approval” the later date on which (1) the Court enters final judgment, (2) the Court enters final approval of attorneys’ fees and expenses, and/or (3) all appellate rights with respect to this Settlement Agreement have expired or have been exhausted, culminating in affirmation of this settlement as proposed by the Parties.

2.20. “Final Approval Order” means the Order Granting Final Approval of Class Action Settlement and Dismissing Class Plaintiffs’ Claims, to be entered by the Court pursuant to the Settlement, the effect of which is the dismissal with prejudice of the Litigation and release of claims brought therein by Plaintiffs and the Settlement Class.

2.21. “Final Approval Hearing” means the hearing held by the Court to determine whether the terms of this Settlement Agreement are fair, reasonable, and adequate for the Settlement Class as a whole, and whether the Final Approval Order and the Judgment should be entered. The Parties shall seek to have the Final Approval Hearing on a date not earlier than one-

hundred and twenty-five (125) Days after the Notice Deadline, such date being subject to approval or modification by the Court.

2.22. “Final Settlement Date” means the earliest date on which both the Final Approval Order and the Judgment are Final (as defined in Section 2.18). If no appeal has been taken from the Final Approval Order or the Judgment, the Final Settlement Date means the day after the last date on which either the Final Approval Order or the Judgment could be appealed. If any appeal has been taken from the Final Approval Order or from the Judgment, the Final Settlement Date means the date on which all appeals of either the Final Approval Order or the Judgment, including petitions for rehearing, petitions for rehearing en banc, and petitions for certiorari or any other form of review, have been finally disposed of in a manner that affirms the Final Approval Order and the Judgment.

2.23. “Intero” means defendant Interio Real Estate Services, Inc.

2.24. “Internal DNC Class” means: All persons in the United States who: (a) were on an internal list of persons who asked Interio not to call them (‘Internal DNC List’), (b) received more than one call made on behalf of Interio by, or on behalf of, on Interio’s California sales associates; (c) promoting Interio’s goods or services; (d) in a 12-month period; (e) on their non-business telephone line; (f) at any time since September 14, 2014.

2.25. “Judgment” means the judgment to be entered by the Court pursuant to Final Approval Order.

2.26. “National DNC Class” means the class previously certified by the Court and defined as follows: All persons in the United States who: (a) received more than one call made on behalf of Interio by, or on behalf of, one of Interio’s California sales associates; (b) promoting Interio’s goods or services; (c) that was placed through the dialing platform provided by Mojo

Dialing Solutions, LLC, the calling records for which appear in one of 35 account files, identified in Appendix A [to the Court's Class Certification Order, Docket No. 126]; (d) in a 12-month period; (e) on their non-business telephone lines; (f) whose telephone number(s) were on the NDNCR for at least 31 days; (g) at any time since September 13, 2014.

2.27. "NDNCR" means the National Do-Not-Call Registry maintained by the Federal Trade Commission.

2.28. "Notice" means as follows:

2.28.1. "Postcard Notice" means the notice that is mailed by the Settlement Administrator to potential Settlement Class Members, in a form substantially similar to **Exhibit 2** attached to this Settlement Agreement and/or as ultimately approved by the Court. The Postcard Notice will be a double postcard that includes a tear-off Claim Form with prepaid postage.

2.28.2. "Email Notice" means the notice that is emailed by the Settlement Administrator to potential Settlement Class Members, in a form substantially similar to **Exhibit 3** attached to this Settlement Agreement and/or as ultimately approved by the Court.

2.28.3. "Website Notice" means the long form notice that is available to Settlement Class Members on the Settlement Website, in a form substantially similar to **Exhibit 4** attached to this Settlement Agreement and/or as ultimately approved by the Court.

2.29. "Notice and Administrative Costs" means all reasonable and authorized costs and expenses of disseminating and publishing the Class Notice in accordance with the Preliminary Approval Order, and all reasonable and authorized costs and expenses incurred by the Settlement Administrator in administering the Settlement, including but not limited to costs and expenses

associated with assisting Settlement Class Members, processing claims, escrowing funds, and issuing and mailing Settlement Relief.

2.30. “Plaintiffs” mean Ruby Mitchell and Edward J. Kelly.

2.31. “Preliminary Approval Motion” means Plaintiffs’ motion for the Court to approve the Settlement preliminarily and to enter the Preliminary Approval Order, including all exhibits and documents attached thereto.

2.32. “Preliminary Approval Order” means the order entered by the Court that provides for, among other things, preliminary approval of the Settlement as fair, reasonable, and adequate; preliminary certification of the Settlement Class for settlement purposes only; dissemination of the Class Notice to potential Settlement Class Members; and a finding that the proposed Class Notice is reasonably calculated to apprise potential Settlement Class Members of the material terms of the proposed Settlement, and potential Settlement Class Members’ options and rights with respect thereto.

2.33. “Release” or “Releases” means the releases of all Released Claims by the Releasing Persons against the Released Persons, as provided for in Section 10 of this Settlement Agreement.

2.34. “Released Claims” means the claims released as provided for in Section 10 of this Settlement Agreement.

2.35. “Released Persons” means: Intero and each of its respective divisions, parents, subsidiaries, affiliates, predecessors, investors, and parent companies, any direct or indirect subsidiary of Intero and its insurers and each of their respective divisions, parents, subsidiaries, predecessors, investors, parent companies, and all of the past or present officers, directors,

employees, agents, brokers, distributors, representatives, owners, and attorneys of all such entities.

2.36. “Releasing Persons” means Plaintiffs, all Settlement Class Members, and anyone claiming through them such as heirs, administrators, successors, and assigns.

2.37. “Residential Telephone Number” means a telephone number used primarily for residential purposes.

2.38. “Request for Exclusion” means a written request from a potential Settlement Class Member that seeks to exclude the potential Settlement Class Member from the Settlement Class and that complies with all requirements in Section 11 of this Settlement Agreement.

2.39. “Service Award” means Court-approved compensation for Plaintiffs for their time and effort undertaken in the Litigation.

2.40. “Settlement” means the settlement set forth in this Settlement Agreement.

2.41. “Settlement Administrator” or “Claims Administrator” or “Class Administrator” means KCC Class Action Services LLC.

2.42. “Settlement Agreement” means this Settlement Agreement and Release, including all exhibits thereto.

2.43. “Settlement Class” or “Class” means the class of persons that will be certified by the Court for settlement purposes only, as more fully described in Section 3.1 herein.

2.44. “Settlement Class Member” means any person who falls within the definition of the Settlement Class and who does not submit a valid Request for Exclusion.

2.45. “Settlement Relief” means payment by Intero to Settlement Class Members who submit Approved Claims.

2.46. “Settlement Website” means the Internet site created by the Settlement Administrator pursuant to Section **Error! Reference source not found.** of this Settlement Agreement, which shall have the Uniform Resource Locator (“URL”) of www.InteroClassActionSettlement.com.

2.47. “Settling Parties” means, collectively, Intero, Plaintiff Ruby Mitchell, Plaintiff Edward J. Kelly and all Releasing Persons.

2.48. “TransUnion Reverse Lookup Data” means the reverse lookup data that was returned by TransUnion LLC to Epiq Class Action & Claims Solutions, Inc. (“Epiq”) and used by Epiq to provide notice to the National DNC Class on December 31, 2020, as discussed in the Declaration of Cameron R. Azari, Esq. on Implementation of Notice Plan for Rule 23(b)(3) at Docket No. 172.

3. CLASS DEFINITION AND CONDITIONS AND OBLIGATIONS RELATING TO THE EFFECTIVENESS OF THE SETTLEMENT

3.1. The Settling Parties agree to modify the National DNC Class as certified by the Court and to seek approval of the following “Settlement Class”:

All persons in the United States who: (a) received two or more calls on their residential telephone number (b) that had a duration of more than zero seconds; (c) initiated by, or on behalf of, a real estate salesperson at a time when Intero or Intero Referral Services was the salesperson’s responsible broker (as reflected in the records maintained by the California Department of Real Estate (“DRE”)); (d) promoting the purchase of Intero’s goods or services; (e) placed through the dialing platform provided by Mojo Dialing Solutions, LLC, the call records for which appear in one of 35 account files, identified in Appendix A to the Court’s order granting class certification in the Litigation; (f) within a 12-month period; (g) whose telephone number(s) were on the NDNCR for at least 31 days prior to the calls; and (h) at any time since September 13, 2014.

Intero represents and warrants that there are 37,962 telephone numbers contained in the Settlement Class. That number is subject to confirmation through confirmatory discovery.

Plaintiffs and Intero recognize that this number is less than the number of telephone numbers contained in the National DNC Class certified by the Court, and that the reduction is attributable to the elimination of approximately 30,000 telephone numbers which Intero represents are numbers eliminated from the class when the Parties agreed to remove zero-second duration calls and calls which were not initiated by, or on behalf of, a real estate salesperson at a time when Intero or Intero Referral Services was the salesperson's responsible broker. Plaintiffs and Intero agree to file a Stipulation and Proposed Order providing for this modification of the National DNC Class and providing for Notice in the form attached hereto as **Exhibit 5** to be sent to those persons associated with the eliminated telephone numbers.

3.2. This Settlement Agreement is expressly contingent upon the satisfaction, in full, of the material conditions set forth below. In the event that the Settlement is not finally approved, Intero shall be refunded any money that has not yet been expended, and the Litigation will resume as if there had been no conditional certification of the Settlement Class and no settlement.

3.3. Condition No. 1: District Court Approval. The Settlement must be approved by the Court in accordance with the following steps:

3.3.1. Application for Preliminary Approval of Proposed Settlement, Class Certification, and Class Notice. After good-faith consultation with Defense Counsel, Class Counsel will present a Preliminary Approval Motion to the Court. The Preliminary Approval Motion shall include Class Notice, in forms substantially similar to **Exhibits 2 through 5** attached hereto. The Settling Parties shall, in good faith, take reasonable steps to secure expeditious entry by the Court of the Preliminary Approval Order.

3.3.2. Settlement Class Conditional Certification. Solely for the purposes of settlement, providing Class Notice and implementing this Settlement Agreement, Plaintiffs shall seek (and Intero will not oppose) orders of preliminary and final approval of the Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure. If the Settlement is not finalized or finally approved by the Court for any reason whatsoever, the certification of the Settlement Class is voidable by any Party, the Litigation will return to its status as it existed prior to this Settlement Agreement, and no doctrine of waiver, estoppel or preclusion will be asserted in any litigated class certification proceedings or otherwise asserted in any other aspect of the Litigation or in any other proceeding.

3.3.3. CAFA Notice. Intero shall be responsible for timely compliance with the notice requirements of the Class Action Fairness Act, 28 U.S.C. § 1715(b). The mailings required by CAFA will be performed by the Class Administrator. No later than 10 days before the hearing on the Preliminary Approval Motion, the Class Administrator shall file with the Court one or more declarations stating that the Class Administrator has complied with the mailings required by the CAFA notice obligations.

3.3.4. Entry of Preliminary Approval Order. The Parties will request that the Court enter a Preliminary Approval Order, which shall, among other things:

(a) Certify for purposes of settlement a nationwide Settlement Class, approving Plaintiffs as class representatives and appointing Class Counsel, pursuant to Rule 23 of the Federal Rules of Civil Procedure;

(b) Preliminarily approve the Settlement as fair, reasonable and adequate;

(c) Order the issuance of Class Notice to the Settlement Class, and determine that such Class Notice complies with all legal requirements, including, but not limited to, the Due Process Clause of the United States Constitution;

(d) Schedule a date and time for a Final Approval Hearing to determine whether the Preliminary Approval Order should be finally approved by the Court;

(e) Require Settlement Class Members who wish to exclude themselves to submit an appropriate and timely written request for exclusion by the Opt-Out Deadline, as directed in this Settlement Agreement and Class Notice, and advise that a failure to do so shall bind those Settlement Class Members who remain in the Settlement Class;

(f) Require Settlement Class Members who wish to object to this Settlement Agreement to submit an appropriate and timely written statement by the Objection Deadline, as directed in this Settlement Agreement and Class Notice, and advise that a failure to do so shall prevent those Settlement Class Members from doing so;

(g) Authorize the Settling Parties to take all necessary and appropriate steps to establish the means necessary to implement this Settlement Agreement; and

(h) Issue related orders to effectuate the preliminary approval of this Settlement Agreement.

3.3.5. Issuance of Class Notice. Pursuant to the Preliminary Approval Order to be entered by the Court, the Settlement Administrator shall cause the Class Notice to be issued in accordance with Section 6 below.

3.3.6. Final Approval Hearing. In connection with the Preliminary Approval Motion, the Parties shall request that the Court schedule and conduct a hearing at least 125 days after the Notice Deadline, at which time it will consider whether the Settlement is fair,

reasonable, and adequate pursuant to Rule 23 of the Federal Rules of Civil Procedure.

Specifically, Plaintiffs, after good faith consultation with Defense Counsel, shall request that, on or after the Final Approval Hearing, the Court: (i) enter the Final Approval Order and the Judgment; (ii) determine the Attorneys' Fees and Costs that should be awarded to Class Counsel as contemplated in this Settlement Agreement; and (iii) determine the Service Award, if any, that should be awarded as contemplated by this Settlement Agreement. The Settling Parties agree to support entry of the Final Approval Order and the Judgment, although Intero shall retain the right to object to Class Counsel's petition for award of Attorneys' Fees and Costs. The Settling Parties will reasonably cooperate with one another in seeking entry of the Final Approval Order and of the Judgment.

3.4. Condition No. 2: Finality of Judgment. The Court shall enter the Final Approval Order and the Judgment. The Final Approval Order and the Judgment must become Final in accordance with Section 2.18 above, and shall, among other things:

(a) Find that (1) the Court has personal jurisdiction over all Settlement Class Members; (2) the Court has subject matter jurisdiction over the claims asserted in the Litigation; and (3) venue is proper;

(b) Finally approve this Settlement Agreement, pursuant to Rule 23 of the Federal Rules of Civil Procedure, as fair, reasonable, and adequate;

(c) Finally certify the Settlement Class for settlement purposes only;

(d) Find that the form and means of disseminating the Class Notice complied with all laws, including, but not limited to, the Due Process Clause of the United States Constitution;

(e) Enter the Final Approval Order and the Judgment with respect to the claims of all Settlement Class Members and dismiss the claims of all Settlement Class Members with prejudice;

(f) Make the Releases in Section 10 of this Settlement Agreement effective as of the date of Final Approval;

(g) Permanently bar Plaintiffs and all Settlement Class Members who have not opted out of the Settlement from filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise) any action in any jurisdiction for the Released Claims;

(h) Find that, by operation of the entry of the Judgment, Plaintiffs and all Settlement Class Members who have not opted out of the Settlement shall be deemed to have forever released, relinquished, and discharged the Released Persons from any and all Released Claims;

(i) Authorize the Settling Parties to implement the terms of this Settlement Agreement;

(j) Retain jurisdiction relating to the administration, consummation, enforcement, and interpretation of this Settlement Agreement, the Final Approval Order, and the Judgment, and for any other necessary purpose; and

(k) Issue related orders to effectuate the Final Approval of this Settlement Agreement and its implementation.

4. SETTLEMENT CONSIDERATION, BENEFITS, AND OTHER RELIEF

In consideration for the Releases set forth in Section 10:

4.1. Intero's representations regarding the number of Settlement Class Members assume that the telephone numbers of all Settlement Class Members were used for residential

purposes, and that the telephone numbers were registered on the National Do Not Call Registry. Intero disputes that there is sufficient record evidence to support these assumptions or that they accurately reflect what is necessary to establish a claim under applicable law, and Intero makes them only for purpose of effectuating this Settlement. Without conceding that the phone number of any Settlement Class Member was a Residential Telephone Number, or that it was received by the person who registered the number, Intero has identified 37,962 telephone numbers that received a total of 171,584 calls or call attempts. These numbers are subject to confirmatory discovery.

4.1.1. Upon Final Approval of the Settlement, and after receiving specific payment instructions and all required tax information from the Class Administrator and all information needed to determine the identities of Claimants, Intero will deposit \$350 per Approved Claim into an interest-bearing escrow account maintained by the Class Administrator. The Class Administrator will hold these amounts until such time as the Parties authorize the distribution of the funds to Claimants, which will be on or before the Distribution Date. The Distribution Date is the earliest date on which the Class Administrator may distribute funds to Claimants.

4.1.2. All Cash Awards issued to Claimants via check will state on the face of the check that the check will expire and become null and void unless cashed within one hundred and eighty (180) Days after the date of issuance. Cash Awards can be made via other means as well, such as electronic deposit, Paypal, Venmo or other electronic payment options, subject to the capabilities of the Class Administrator.

4.1.3. If any such payment is returned by the U.S. Postal Service as undeliverable, or is not negotiated before it expires, neither Intero, the Settlement Administrator,

nor Class Counsel shall have any further obligations to any of the Settlement Class Members as to these payments, except that:

4.1.3.1. For any check returned by the U.S. Postal Service with a forwarding address before the check's expiration date, the Settlement Administrator will mail the check to the forwarding address;

4.1.3.2. If any of the Settlement Class Members contacts the Settlement Administrator or Class Counsel to request a replacement check, the Settlement Administrator will comply with that request by cancelling the initial check and issuing a replacement check, but the replacement check shall expire on the same date as the original check and the replacement check will state this on its face; and

4.1.3.3. It is the Parties' intent to distribute all Cash Awards for Approved Claims to Settlement Class Members. If, after distributing the Cash Awards for Approved Claims as set forth in this Section 4, any cash remains from uncashed checks, the Parties will jointly select a *cy pres* recipient, and Plaintiffs will move the Court for the Court's approval to have such cash from uncashed checks paid to the *cy pres* recipient. Under no circumstances shall any cash that was intended to be distributed as a Cash Award on an Approved Claim revert or otherwise be returned to Intero.

4.2 In addition to the payment of Cash Awards to Claimants, Intero agrees to take the following actions in connection enhancing its existing policies, procedures, and training relating to compliance with the requirements of the TCPA:

4.2.1 Intero will: (i) establish and implement written procedures to comply with the national do-not-call rules and (ii) institute procedures and a written policy for maintaining a

company list of persons who request not to be called, which will cover do-not-call requests made to Intero or to any representative or agent of Intero.

4.2.1.1 Intero's written policies and procedures for complying with the do-not-call rules will include a requirement that any Intero representative or agent making a call for telemarketing purposes on behalf of Intero must provide the called party with

- the name of the individual caller,
- the name of Intero or the Intero representative or agent on whose behalf the call is being made, and
- a telephone number or address at which Intero or the Intero representative or agent may be contacted. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

4.2.1.2 Intero will maintain written policies, available upon demand, for maintaining a do-not-call list.

4.2.2 Intero will conduct annual training for all Intero representatives and agents regarding (i) Intero's procedures for compliance with the national do-not-call rules and (ii) the existence of, and how to use, the company do-not-call list.

4.2.3 Intero will maintain and record a list of telephone numbers that Intero and its representatives and agents may not contact because they are on the national do-not-call registry. Intero will use a process to prevent telephone solicitations to any telephone number on the national do-not-call registry and will employ a version of the national do-not-call registry obtained from the administrator of the registry no more than 31 days prior to the date any call is

made. Intero will maintain records documenting the process it has undertaken to comply with this paragraph 4.2.3.

4.2.4 Intero will maintain a record of all consumer requests not to receive calls from Intero and its representatives.

4.2.4.1 If Intero or any Intero representative or agent receives a request not to receive calls from Intero or any Intero representative or agent, Intero will record the request and place the requester's name, if provided, and telephone number on the company do-not-call list at the time the request is made.

4.2.4.2 Intero will honor all do-not-call requests it receives within no more than 30 days from the date of the request.

4.2.4.3 Intero will maintain and honor all do-not-call requests it receives for no less than 5 years from the time the request was made.

4.3 Paragraphs 4.2 through 4.2.4.3 of the Settlement Agreement shall be effective for a period of two (2) years from the date of Final Approval of the Settlement.

5. RETENTION OF SETTLEMENT ADMINISTRATOR AND COSTS

5.1. The parties agree that the Settlement Administrator will be responsible for all matters relating to the administration of this Settlement, as set forth herein. Those responsibilities include, but are not limited to, giving notice to the class, mailing the CAFA notices, obtaining updated addresses for Settlement Class Members, obtaining email addresses for Settlement Class Members, sending a reminder notice to Settlement Class Members for whom email addresses are available (and by mail for those for whom email addresses are not available), setting up and maintaining the Settlement Website and toll-free telephone number with interactive voice response ("IVR") technology, fielding inquiries about the Settlement, processing claims, acting as a liaison between Settlement Class Members and the Parties regarding claims information,

approving Claims, rejecting any Claim Form where there is evidence of fraud (as determined by the Claims Administrator under policies and procedures developed by the Claims Administrator and approved by the Parties), directing the mailing or electronic distribution of Cash Awards to Settlement Class Members, and any other tasks reasonably required to effectuate the foregoing. The Claims Administrator will provide weekly updates on the claims status to counsel for all Parties.

5.2. All Notice and Administrative Costs will be paid by Intero.

5.3. The Settlement Administrator shall administer the Settlement in a cost-effective and timely manner. Without limiting any of its other obligations as stated herein, the Settlement Administrator shall be responsible for Mail Notice, Email Notice, Website Notice, the Settlement Website, administration of Settlement Relief, and providing all other related support, reporting, and administration as further stated in this Settlement Agreement.

5.4. Both parties will coordinate with the Settlement Administrator to provide Notice to the Settlement Class, as provided in this Settlement Agreement.

5.5. W9 Forms. The Settlement Administrator shall complete and provide to Intero any W9 forms necessary for Intero to implement this Settlement.

6. NOTICE TO THE SETTLEMENT CLASS

6.1 Email Notice. The Settlement Administrator will send Email Notice of the Settlement to the email addresses provided in the TransUnion Reverse Lookup Data no later than forty-five (45) days after the Court's Preliminary Approval Order, in a form substantially similar to **Exhibit 3** to this Settlement Agreement or as ultimately approved by the Court. The Email Notice shall detail how Settlement Class Members may make a Claim for Settlement Relief, may opt out of the Settlement (as described in Section 11), or object to the Settlement (as described in Section 12). The Email Notice shall also include the Settlement Class Member's Unique

Identification Number, the Toll-Free Settlement Hotline (as described in Section 6.4) and a link to the Settlement Website (described in Section 6.3) at which copies of the Settlement Agreement, Website Notice, Claim Form, and other relevant case filings may be downloaded, and where Claims may be submitted.

6.2. Mail Notice. The Settlement Class Administrators shall mail Postcard Notice to any physical mailing addresses provided in the TransUnion Reverse Lookup Data belonging to names without an associated email address, in a form substantially similar to **Exhibit 2** to this Settlement Agreement or as ultimately approved by the Court. The Postcard Notice will be mailed no later than forty-five (45) days after the Court's Preliminary Approval Order. The Settlement Administrator shall check the mailing list in the TransUnion Reverse Lookup Data against the National Change of Address database ("NCOA") before mailing. The Settlement Administrator may also run skip traces or reverse-lookups to obtain better addresses for Settlement Class Members before mailing.

6.2.1 The Postcard Notice shall detail how Settlement Class Members may make a Claim for Settlement Relief, may opt out of the Settlement (as described in Section 11), or object to the Settlement (as described in Section 12). The Postcard Notice shall also include the Settlement Class Member's Unique Identification Number, the Toll-Free Settlement Hotline (as described in Section 6.4) and a link to the Settlement Website (described in Section 6.3) at which copies of the Settlement Agreement, Website Notice, Claim Form, and other relevant case filings may be downloaded, and where Claims may be submitted.

6.2.2 For any Email Notices that are returned as undeliverable, the Settlement Administrator will make two more attempts to deliver the Email Notice. If Email Notice cannot

be completed, the Settlement Administrator shall mail Postcard Notice as described in Section 6.2.

6.3. Settlement Website. No later than the deadline to send Email and Postcard Notice, the Settlement Administrator shall establish a Settlement Website, which shall contain the Website Notice, in a form substantially similar to **Exhibit 4**, copies of the Settlement Agreement, Claim Form, and other relevant case filings which may be downloaded. The Settlement Website shall require Settlement Class Members input their Unique Identification Number. The Settlement Website shall contain instructions and allow Settlement Class Members to submit a Claim, which will include inputting their telephone number to determine if, in fact, they are a member of the Settlement Class. The Settlement Website shall have a URL which identifies the Settlement Website as www.InteroClassActionSettlement.com.

6.3.1. The Settlement Website shall remain open and accessible for not less than thirty (30) Days after the last day to cash any check mailed to Settlement Class Members.

6.3.2. All costs associated with the Settlement Website will be paid by Intero.

6.4. Toll-Free Settlement Hotline. The Settlement Administrator will establish and maintain an automated toll-free telephone line with IVR technology for persons in the Settlement Class to call for information regarding the Settlement, which will include instructions for how Settlement Class Members can submit a Claim over the phone, consistent with the terms of this Settlement Agreement. The parties will mutually approve of scripts used by the Settlement Administrator in connection with the IVR process.

7. CLAIM FILING, REVIEW, AND APPROVAL PROCESS

7.1. Claim Filing Process. Settlement Class Members shall be permitted to make a Claim for Settlement Relief in one of three ways:

- (a) By completing an online Claim Form available on the Settlement Website and submitting that Claim Form online or by mail; or
- (b) By calling the Toll-Free Settlement Hotline and submitting a Claim by telephone; or
- (c) By mailing the tear-off double sided prepaid postcard claim form.

7.2. Any Settlement Class Member who does not submit a completed Claim Form on or before the Claim Deadline shall be deemed to have waived any claim to Settlement Relief and any such Claim Form will be rejected.

7.3. Claim Review Process. As soon as practicable, the Settlement Administrator shall confirm that each Claim Form submitted is in the form required, that each Claim Form was submitted in a timely fashion, and that the person submitting the Claim is a member of the Settlement Class. The Settlement Administrator shall employ reasonable audit procedures and may request additional information from Claimants as appropriate for verification purposes. In the event that more than one person submits a valid Claim with respect to the same telephone number, the Settlement Administrator shall send a follow-up Notice to each such persons requesting the time period during which they were a user of the telephone number. For any persons who provide the time period during which they were a user of the telephone number to the Settlement Administrator, the Settlement Administrator will compare that information with the dates of the calls to the number in the Mojo Dialing Solutions, LLC, calling records attached as Appendix A to the Court's Order Granting Class Certification (Docket No. 126). The Settlement Administrator will pay a Cash Award to each person who provides a date range that includes the dates of the calls reflected in the Mojo Dialing Solutions, LLC, calling records for the telephone number.

7.4. Notification. Within ten (10) Days after the Claims Deadline, the Settlement Administrator shall provide Class Counsel and Intero with a list of all Settlement Class Members

who filed a Claim, whether the Claim was rejected or accepted, and if rejected, the reason it was rejected. The Parties will use their best efforts to amicably resolve any dispute about the processing of any Claim.

7.5. The Settlement Administrator shall have sixty (60) Days after the Final Settlement Date within which to process the Claims and remit the appropriate Settlement Relief amounts by check or other electronic means as set forth in paragraph 4.1.2 to Claimants.

8. COVENANTS

The Settling Parties covenant and agree as follows:

8.1. Covenant Not to Sue. Plaintiffs and Settlement Class Members covenant and agree not to file, commence, prosecute, intervene in, or participate in (as class members or otherwise) any action in any jurisdiction based on any of the Released Claims against any of the Released Persons. The foregoing covenant and this Settlement Agreement shall be a complete defense to any of the Released Claims against any of the Released Persons. However, this Settlement Agreement is not intended to and does not prohibit a Settlement Class Member from responding to inquiries from federal, state or local agencies and/or law enforcement, even if the inquiries relate to the Released Claims. Similarly, this Settlement Agreement is not intended to and does not prohibit a Settlement Class Member from bringing his or her concerns to federal, state or local agencies and/or law enforcement, even if those inquiries relate to the Released Claims.

8.2. Cooperation. The Settling Parties agree to cooperate reasonably and in good faith with the goal of obtaining entry of the Final Approval Order and the Judgment as quickly as is reasonably practicable and expeditiously reaching agreement on the matters requiring mutual agreement as set forth in this Settlement Agreement, including, but not limited to, the expeditious agreement to the terms of all Class Notice documents and settlement administration

protocols, and the preparation and execution of all other reasonable documents necessary to achieve Final Approval of the Settlement by the Court.

9. REPRESENTATIONS AND WARRANTIES

9.1. Plaintiffs' Representations and Warranties.

9.1.1. Plaintiffs represent and warrant that they are the sole and exclusive owner of all their own Released Claims and have not assigned or otherwise transferred any interest in any of their Released Claims against any of the Released Persons, and further covenant that they will not assign or otherwise transfer any interest in any of their Released Claims.

9.1.2. Plaintiffs represent and warrant that they have no surviving claim or cause of action against any of the Released Persons with respect to any of the Released Claims.

9.2. Intero's Representations and Warranties.

9.2.1. Intero represents and warrants that there are 37,962 telephone numbers contained in the Settlement Class.

9.2.2. Intero represents and warrants that it has provided Plaintiffs with true and accurate financial records, including its balance sheet, income statement, and tax returns.

9.3. The Settling Parties' Representations and Warranties. The Settling Parties, and each of them on his, her, or its own behalf only, represent and warrant that they are voluntarily entering into this Settlement Agreement as a result of arm's-length negotiations among their counsel, that in executing this Settlement Agreement, they are relying solely upon their own judgment, belief, and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters that relate in any way to the subject matter hereof; and that, except as provided herein, they have not been influenced to any extent whatsoever in executing this Settlement Agreement by representations, statements, or omissions pertaining to

any of the foregoing matters by any Party or by any person representing any Party to this Settlement Agreement. Each of the Settling Parties assumes the risk of mistake as to facts or law.

10. Releases.

10.1. Released Claims of Settlement Class. Upon Final Approval, each member of the Settlement Class shall, by operation of the Judgment, be deemed to have fully, conclusively, irrevocably, forever, and finally released, relinquished, and discharged the Released Persons in all capacities, including individual and trustee capacities, from any and all claims, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses and attorneys' fees of any nature whatsoever, whether based on any federal law, state law, common law, territorial law, foreign law, contract, rule, regulation, any regulatory promulgation (including, but not limited to, any opinion or declaratory ruling), common law or equity, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, punitive or compensatory, as of the date of Final Approval, that relate to or arise out of the calls that were placed through the dialing platform provided by Mojo Dialing Solutions, LLC, the calling records for which appear in one of 35 account files, identified in Appendix A to the Court's Order Granting Class Certification (Docket No. 126). This release includes any and all claims for violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 and the regulations promulgated thereunder, and any and all claims for violation of any laws of any state that regulate, govern, prohibit or restrict the making, placing, dialing or initiating of calls to phone numbers on the NDNCR (or any state law equivalent) or to persons who asked not to be called or to be placed on an internal do-not-call list.

10.2. Without in any way limiting their scope, the Released Claims cover by example and without limitation, any and all claims for attorneys' fees or costs incurred by Class Counsel,

Plaintiffs, or any Settlement Class Members in connection with or related in any manner to this Settlement, the administration of this Settlement, and/or the Released Claims, except to the extent otherwise specified in this Settlement Agreement.

10.3. In connection with the Releases in Section 10.1, and without expanding their scope in any way, Plaintiffs and each Settlement Class Member shall be deemed, as of the date of Final Approval, to have waived any and all provisions, rights, benefits conferred by Section 1542 of the California Civil Code, and any statute, rule and legal doctrine similar, comparable, or equivalent to California Civil Code Section 1542, which provides that:

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, which if known by him or her, would have materially affected his or her settlement with the debtor or released party.

10.4. This Settlement Agreement and the Releases herein do not affect the rights of Settlement Class Members who timely and properly submit a Request for Exclusion from the Settlement in accordance with the requirements in Section 11 of this Settlement Agreement.

10.5. The administration and consummation of the Settlement as embodied in this Settlement Agreement shall be under the authority of the Court. The Court shall retain jurisdiction to protect, preserve, and implement this Settlement Agreement, including, but not limited to, enforcement of the Releases contained in this Settlement Agreement. The Court shall retain jurisdiction in order to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of this Settlement Agreement.

10.6. Upon entry of the Final Approval Order and the Judgment: (i) this Settlement Agreement shall be the exclusive remedy for any and all Settlement Class Members, except those who have properly requested exclusion (opted out) in accordance with the terms and provisions hereof; (ii) the Released Persons shall not be subject to liability or expense for any of

the Released Claims to any Settlement Class Member(s) except as set forth in this Settlement Agreement; and (iii) Settlement Class Members who have not opted out shall be permanently barred from filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise) any action in any jurisdiction based on any of the Released Claims.

10.7. Nothing in this Settlement Agreement shall preclude any action to enforce the terms of this Settlement Agreement, including participation in any of the processes detailed therein. The Releases set forth herein are not intended to include the release of any rights or duties of the Settling Parties arising out of this Settlement Agreement, including the express warranties and covenants contained herein.

11. OPT-OUT RIGHTS.

11.1. A potential Settlement Class Member who wishes to opt out of the Settlement Class must complete and send to the Settlement Administrator a Request for Exclusion that is postmarked no later than the Opt Out Deadline. The Request for Exclusion must: (a) identify the name and address of the potential Settlement Class Member requesting exclusion; (b) provide the phone number at which that potential Settlement Class Member was called by Intero, or someone acting on its behalf, during the Class Period; (c) be personally signed by the potential Settlement Class Member requesting exclusion; and (d) contain a statement that reasonably indicates a desire to be excluded from the Settlement.

11.2. Any potential member of the Settlement Class who properly opts out of the Settlement Class by complying with all the requirements set forth in the preceding paragraph shall: (a) not be bound by any orders or judgments relating to the Settlement; (b) not be entitled to relief under, or be affected by, this Settlement Agreement; (c) not gain any rights by virtue of this Settlement Agreement; and (d) not be entitled to object to any aspect of the Settlement.

11.3. The Settlement Administrator shall provide Class Counsel and Defense Counsel with a list of all timely Requests for Exclusion within seven (7) Days after the Opt Out Deadline.

11.4. Except for those potential members of the Settlement Class who timely and properly file a Request for Exclusion in accordance with Section 11, all other potential members of the Settlement Class will be deemed to be Settlement Class Members for all purposes under this Settlement Agreement, and upon Final Approval, will be bound by its terms, regardless of whether they receive any monetary relief or any other relief.

12. OBJECTIONS.

12.1. Overview. Any potential Settlement Class Member who does not opt out of the Settlement will be a Settlement Class Member and may object to the Settlement. To object, the Settlement Class Member must comply with the procedures and deadlines in this Settlement Agreement.

12.2. Process. Any Settlement Class Member who wishes to object to the Settlement must do so in writing on or before the Objection Deadline, as specified in the Class Notice and Preliminary Approval Order. The written objection must be filed with the Clerk of Court no later than the Objection Deadline.

12.2.1. The requirements to assert a valid written objection shall be set forth in the Class Notice and on the Settlement Website, and, to be valid, the written objection must include: (a) the name, address, and telephone number of the Settlement Class Member objecting and, if different, the telephone number at which the Settlement Class Member was called by Intero during the Settlement Class Period; (b) if represented by counsel, the name, address, and telephone number of the Settlement Class Member's counsel; (c) the basis for the objection; and (d) a statement of whether the Settlement Class Member objecting intends to appear at the Final Approval Hearing, either with or without counsel.

12.2.2. Any Settlement Class Member who fails to object to the Settlement in the manner described in the Class Notice and consistent with all of the requirements of this Section shall be deemed to have waived any such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from seeking any review of the Settlement or the terms of this Settlement Agreement by appeal or other means.

12.3. Appearance. Subject to approval of the Court, any Settlement Class Member who files and serves a written objection in accordance with Section 12.2 and the Class Notice 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, but only if the objecting Settlement Class Member: (a) files with the Clerk of the Court a notice of intention to appear at the Final Approval Hearing by the Objection Deadline (“Notice Of Intention To Appear”); and (b) serves the Notice of Intention to Appear on all counsel designated in the Class Notice by the Objection Deadline.

12.3.1. The Notice of Intention to Appear must include the Settlement Class Member’s full name, address, and telephone number, as well as copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member will present to the Court in connection with the Final Approval Hearing.

12.3.2. Any Settlement Class Member who does not file a Notice of Intention to Appear in accordance with the deadlines and other specifications set forth in this Settlement Agreement and Class Notice shall not be entitled to appear at the Final Approval Hearing or raise any objections.

13. SETTLEMENT APPROVAL.

13.1. Plaintiffs shall apply to the Court for entry of the proposed Preliminary Approval Order and setting of a Final Approval Hearing.

13.2. Not later than seven (7) Days before the Final Approval Motion Deadline, the Settlement Administrator will provide the Parties with a declaration that the Class Notice has been disseminated in accordance with the Preliminary Approval Order. The declaration shall identify the number of Requests for Exclusion to the Settlement, along with the number of claims received to date.

14. CERTIFICATION OF SETTLEMENT CLASS FOR SETTLEMENT PURPOSES.

14.1. The Parties entered this Settlement Agreement solely for the purposes of fully and finally resolving the Litigation along the lines and terms set forth herein. Nothing in this Settlement Agreement shall be construed as an admission by Intero or the Released Parties of any wrongdoing as asserted in the Litigation, or that this Litigation or any similar case is amenable to class certification for purposes of trial, or that any of the Released Claims are meritorious in any respect.

14.2. The Parties agree, for the sole purpose of effecting a settlement, and upon the express terms and conditions set out in this Settlement Agreement, Plaintiffs shall seek, and Intero will not oppose, certification of the Settlement Class defined above. Plaintiffs, on behalf of themselves and the Settlement Class, acknowledge and agree that if this Settlement Agreement is not fully and finally approved by the Court without material change, the settlement is voidable at the election of either Party and, if voided, that Intero has not waived and has expressly reserved the right to challenge the certification of the Settlement Class and the substantive merits of Plaintiffs' claims in the Litigation, and to object to and appeal any order entered in any of the cases that comprise the consolidated Litigation. Nothing in this Settlement

Agreement may be used in any judicial or administrative proceeding regarding the propriety of class certification outside of settlement. The Court's certification of the Settlement Class is not and shall not be deemed to be the adjudication of any fact or issue for purpose other than the accomplishment of the Settlement.

14.3. If this Settlement is not approved by the Court for any reason, or is modified by the Court (including change to the release provided herein), or is otherwise terminated, then (1) this Settlement Agreement shall have no legal or persuasive effects and shall immediately become null and void, and the Parties expressly agree to do whatever is necessary legally and procedurally to return all cases that comprise this Litigation to their pre-settlement status, including filing all necessary joint motions; (2) this settlement and all aspects of it, including but not limited to, all negotiations, terms and documents created as a result of negotiations or the proposed settlement may not be used for any purpose in this or any other legal action unless the subject of that legal action is the settlement of the Litigation; (3) the Litigation shall revert to the same procedural and legal status existing prior to the Parties entering into this Settlement Agreement; (4) the Settlement Class shall be automatically decertified, and the Parties shall take whatever action is appropriate so that the Parties can be restored to their pre-settlement positions, and (5) all monies paid to the Settlement Administrator that had not been used at that time shall be returned to Intero within fourteen (14) days.

15. ATTORNEYS' FEES, COSTS, AND PLAINTIFFS' SERVICE AWARDS.

15.1. Class Counsel will petition the Court for an award of Attorneys' Fees and Costs for all attorney services and expenses related to this Litigation, including but not limited to, services rendered and to be rendered in connection with the Settlement Agreement and its implementation. The amount of Attorneys' Fees and Costs to be awarded to Class Counsel and payable by Intero within fourteen (14) days of Final Approval, unless otherwise agreed, shall be

determined by the Court. Class Counsel agree they will not seek or accept Attorneys' Fees and Costs exceeding \$2,775,000.00. Intero reserves the right to object to the petition for Attorneys' Fees and Costs, or any part thereof. The Parties further agree that any portion of the Attorneys' Fees and Costs up to the amounts set forth above that are requested but not approved by the Court will inure to the benefit of the Settlement Class to be distributed pro rata to Claimants, and that such amounts will not be returned to Intero. Under no circumstances, may Plaintiffs, the Classes, or Class Counsel seek or accept Attorneys' Fees and Costs that exceeds \$2,775,000.00. The Attorneys' Fees and Costs shall be awarded in addition to the amounts paid to the Settlement Class. In other words, the amounts paid to the Settlement Class will not be reduced by the amount of Attorneys' Fees and Costs awarded.

15.2. The amount of Attorneys' Fees and Costs described herein is a material aspect of this Agreement. In the event Plaintiffs, the Settlement Class, or Class Counsel seek or are awarded any amount of Attorneys' Fees and Costs that, in total, exceeds \$2,775,000.00, Intero shall have the right terminate this Agreement. If Intero elects to exercise its right of termination, Intero shall have no obligation to make any further payments required by this Agreement any money held in escrow by the Settlement Administrator shall be returned to Intero with five (5) days.

15.3. Class Counsel hereby disclose that they have a joint prosecution agreement ("JPA") with a fee split agreement. That agreement is that after Class Counsel are reimbursed for their costs, attorney fees will be split as follows: Tycko & Zavareei LLP: 47.5% of the fees, Reese LLP: 47.5% of the fees; and, Bailey & Glasser, LLP: 5% of the fees.

15.4. Plaintiffs may make an application to the Court for a Service Award not to exceed \$5,000 for each class representative. Intero takes no position regarding the appropriateness of

such an award. If the Court approves a Service Award, the payment for the Service Award, in the amount approved the Court, shall be made by check payable to “Tycko & Zavareei LLP Attorney Trust Account” and shall be delivered to 1828 L Street NW, Suite 1000, Washington, DC 20036 within twenty-one (21) days after Final Approval. The Parties further agree that any portion of the Service Awards up to the amounts set forth above that are requested but not approved by the Court will inure to the benefit of the Settlement Class to be distributed pro rata to Claimants, and that such amounts will not be returned to Intero. In the event payment is required under this Section, Plaintiffs will provide Intero a copy of their current W-9s within fourteen (14) days after Final Approval. .

15.5. The procedure for and the grant or denial or allowance or disallowance by the Court of the Attorneys’ Fees and Costs and Service Awards are to be considered by the Court separately from the Court’s consideration of the fairness, reasonableness, and adequacy of the Settlement, and any order or proceedings relating to the applications for Attorneys’ Fees and Costs and Service Awards, or any appeal from any order relating thereto or reversal or modification thereof, will not operate to terminate or cancel this Settlement Agreement, or affect or delay the finality of the Final Approval Order or Judgment approving this Settlement Agreement and the Settlement, except as provided for in Section 15.2.

15.6. As long as Plaintiffs’ application for a Service Award is made in compliance with this section, the Court’s grant or denial of the application (and any subsequent appeal of that ruling) will not operate to terminate or cancel this Agreement, or affect or delay the finality of the Final Approval Order or Judgment approving this Agreement and Settlement.

16. TERMINATION AND EFFECT THEREOF.

16.1. This Settlement Agreement shall be terminable by any Party if any of the conditions of Section 3 are not fully satisfied unless the relevant conditions are waived in writing signed by authorized representatives of Plaintiffs and Intero.

16.2. This Settlement Agreement shall also terminate at the discretion of Plaintiffs or Intero if, in the good faith exercise of discretion: (1) the Court, or any appellate court(s), rejects, modifies, or denies approval of any portion of this Settlement Agreement or the proposed Settlement that is material, including without limitation, the terms or relief, the findings or conclusions of the Court, the provisions relating to Class Notice, the definition of the Settlement Class, and/or the terms of the Releases; (2) the Court, or any appellate court(s), does not enter or completely affirm, or alters, or restricts, or expands, any portion of the Final Approval Order or Judgment, or any of the Court's findings of fact or conclusions of law, that is material; or (3) if all of the conditions required to be met before the Final Settlement Date do not occur.

16.3. At its sole discretion, without penalty or sanction, Intero may terminate this settlement and the Parties will return to their respective positions in the Litigation if more than 5% of the Settlement Class Members properly and timely opt out of the Settlement in accordance with Section 11 of this Agreement.

16.4. If the Settlement Agreement is terminated as provided herein, the Settlement shall be null and void from its inception, and the Settling Parties will be restored to their respective positions in the Litigation as of the day prior to the date of the Preliminary Approval Order. In such event, the Parties shall move the Court to vacate any and all orders entered by the Court pursuant to the provisions of this Settlement Agreement, including any order certifying the Settlement Class for settlement purposes. Further, in such event, the terms and provisions of this Settlement Agreement will have no further force and effect with respect to the Settling Parties

and will not be used in the Litigation, or in any other proceeding for any purpose, shall not be deemed or construed to be an admission or confession by the Parties of any fact, matter, or proposition of law, and any judgment or order entered by the Court in accordance with the terms of this Agreement will be treated as vacated, nunc pro tunc.

17. MISCELLANEOUS PROVISIONS

17.1. The Settling Parties acknowledge that it is their intent to consummate this Agreement, and they agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of this Agreement.

17.2. The Settling Parties intend the Settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The Settlement compromises claims that are contested and will not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling Parties agree that the consideration provided to the Settlement Class and the other terms of the Settlement were negotiated in good faith and at arm's length by the Settling Parties and reflect a Settlement that was reached voluntarily after consultation with competent legal counsel. The amounts paid are to compromise the Claimants' claims for damages and the amounts paid represent the Claimants' compensation for such alleged damages.

17.3. Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement is or may be deemed to be or may be used as an admission or evidence of the validity of any Released Claims, or of any wrongdoing or liability of Intero.

17.4. All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information will survive this Agreement.

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

17.6. This Agreement may be amended or modified only by a written instrument signed by or on behalf of Plaintiffs and Intero or their respective successors-in-interest. Any material changes must be approved by the Court.

17.7. This Agreement and the Exhibits attached hereto constitute the entire agreement among the Settling Parties, and no representations, warranties, or inducements have been made to any Party concerning this Agreement or its Exhibits other than the representations, warranties, and covenants covered and memorialized herein. Except as otherwise provided herein, no Settling Party shall be responsible for paying fees, expenses, or other costs incurred by any other Settling Party.

17.8. This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties.

17.9. No party shall file any materials with the Court in support of the settlement that are inconsistent with the terms of this Settlement Agreement.

17.10. The Court will retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all Settling Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement.

17.11. None of the Settling Parties, or their respective counsel, will be deemed the drafter of this Agreement or its Exhibits for purposes of construing the provisions thereof. The language in all parts of this Agreement and its Exhibits will be interpreted according to its fair meaning, and will not be interpreted for or against any Settling Party as the drafter thereof.

17.12. The Settlement shall be governed by the laws of the State of California, except to the extent that the law of the United States governs any matters set forth herein, in which case such federal law shall govern.

17.13. The following principles of interpretation apply to the Agreement: (a) the plural of any defined term includes the singular, and the singular of any defined term includes the plural, as the case may be; (b) references to a person are also to the person's successors-in-interest; and (c) whenever the words "include," "includes," or "including" are used in the Agreement, they shall not be limiting, but rather shall be deemed to be followed by the words "without limitation."

17.14. The Settlement Agreement shall not be subject to collateral attack by any Settlement Class Member or any recipient of the notices of the Settlement Class after the Final Approval Order and Judgment are entered.

17.15. The Parties may execute this Settlement Agreement in counterparts, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument. Electronic copies of the executed Settlement Agreement shall be considered an original and may be relied upon as such.

17.16. All members of the Settlement Class shall be responsible for paying any and all federal, state, and local taxes, if any, due on the payments made to them under this Settlement Agreement. No opinion concerning the tax consequences of the proposed settlement to members of the Settlement Class or anyone else is given or will be given by the Parties or the Parties' counsel.

17.17. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties to this Settlement Agreement, Class Counsel, and the members of the Settlement Class,

and their respective heirs, predecessors, successors, and assigns. Nothing herein shall prevent Intero from assigning its rights and obligations.

17.18. All notices (other than the Class Notice) required by the Agreement shall be made in writing and communicated by email and mail to the following addresses:

17.19. All notices to Class Counsel shall be sent to Class Counsel, c/o:

Sabita J. Soneji
TYCKO & ZAVAREEI LLP
1970 Broadway, Suite 1000
Oakland, CA 94612

Michael R. Reese
REESE LLP
100 West 93rd Street, 16th Floor
New York, New York 10025

Counsel for Plaintiff Ruby Mitchell, Edward J. Kelly, and the Class

17.20. All notices to Defense Counsel shall be sent to Defense Counsel, c/o:

Tomio B. Narita
SIMMONDS & NARITA LLP
44 Montgomery Street, Suite 3010
San Francisco, California 94104-4816

Counsel for Intero

17.21. The notice recipients and addresses designated above may be changed by written agreement of Plaintiffs and Intero.

17.22. Upon request, the Parties agree to promptly provide each other with copies of objections, Requests for Exclusion, or other similar documents received from Settlement Class Members in response to the Class Notice.

IN WITNESS WHEREOF, the Settling Parties have executed and caused this Settlement on the dates set forth below.

On Behalf of Defendant Intero Real Estate Services:

Dated: _____ By: _____
Name: _____
Title: _____

On Behalf of Plaintiffs and the Settlement Class:

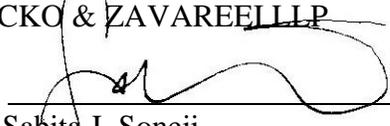
Dated: 10/26/2021 By: 
Ruby Mitchell

On Behalf of Plaintiffs and the Settlement Class:

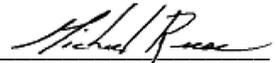
Dated: 10/26/2021 By: 
Edward J. Kelly

Approved as to form and content:

For Plaintiffs Ruby Mitchell and Edward J. Kelly and the Class:
TYCKO & ZAVAREE LLP

By: 
Sabita J. Soneji
Email: ssoneji@tzlegal.com
1970 Broadway, Suite 1000
Oakland, California 94612

REESE LLP

By: 
Michael R. Reese
100 West 93rd Street, 16th Floor
New York, New York 10025

For Intero Real Estate Services:
SIMMONDS & NARITA LLP

By: _____
Tomio B. Narita
Email: tnarita@snllp.com
R. Travis Campbell
Email: tcampbell@snllp.com
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On Behalf of Defendant Intero Real Estate Services:

Dated: 10/27/21

By: 

Name: Brian Crane

Title: CEO

On Behalf of Plaintiffs and the Settlement Class:

Dated: _____

By: _____

Ruby Mitchell

On Behalf of Plaintiffs and the Settlement Class:

Dated: _____

By: _____

Edward J. Kelly

Approved as to form and content:

For Plaintiffs Ruby Mitchell and Edward J. Kelly and the Class:
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By: _____

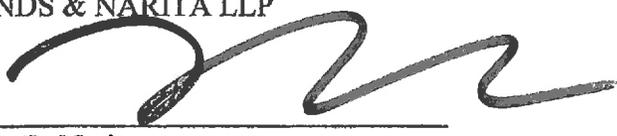
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