

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Settlement Agreement”) is entered into this 4th day of April, 2022 by and between Plaintiff DAVID VACCARO (“Plaintiff”), individually and on behalf of the Settlement Class as further defined herein, and Defendant DELTA DRUGS, II, INC. (“Defendant” or “Delta”), subject to Court approval as required by California Rules of Court Rule 3770. As provided herein, Class Counsel and the Parties hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Settlement Agreement and upon entry by the Court of a Final Approval Order and Final Judgment, all claims of Plaintiff and the Settlement Class against Defendants asserted in *DAVID VACCARO, individually and on behalf of all others similarly situated, v DELTA DRUGS II, INC.* Case No. Case No. 20STCV28871 (the “Action”), pending before the Superior Court of California County of Los Angeles, shall be settled and compromised upon the terms and conditions set forth herein.

RECITALS

A. There is pending in the Superior Court of California County of Los Angeles, a civil action entitled *DAVID VACCARO, individually and on behalf of all others similarly situated, v DELTA DRUGS II, INC.* Case No. Case No. 20STCV28871 (the “Action”),

B. Plaintiff commenced the Action on August 19, 2020 against Defendant by filing a putative class action complaint asserting causes of action under California Penal Code §§ 630 et seq. (“IPA”). Plaintiff alleges that Delta violated the IPA by knowingly, negligently and/or intentionally employing and/or causing to be employed certain recording equipment in order to record telephone conversations with Plaintiff without the knowledge or consent of Plaintiff and other call recipients. Defendant denies these allegations.

C. For several months, the Parties have actively litigated the Action. Among other things, the Parties have propounded and responded to extensive written discovery and exchanged documents.

D. On March 23, 2021, the Parties attended an all-day mediation with well-respected mediator Hon Andrew Guilford (Ret.). Taking into account the burdens, uncertainty, and risks inherent in this litigation, the Parties have concluded that further prosecution and defense of the Action could be protracted, unduly burdensome, and expensive, and that it is desirable, fair, and beneficial that the Action now be fully and finally compromised, settled and terminated in the manner and upon the terms and conditions set forth in this Settlement Agreement.

E. Defendant denies that it committed any wrongful act or violated any law or duty. Defendant also denies that Plaintiff, or the class he seeks to represent, is entitled to any form of damages or relief based on the conduct alleged in the Action. In addition, Defendant maintains that it has meritorious defenses to all claims alleged in the Action and it is prepared to defend the Action. This Settlement Agreement, and all related documents, shall not be construed as any admission or concession by Defendant, or any of the Released Parties (defined in Section 16 below), of any fault, liability, wrongdoing or damage whatsoever. Defendant also disputes that a

class would be manageable or that issues common to the class predominate over individual issues, and denies that a litigation class should have been certified on the claims asserted in the Action. However, solely for purposes of avoiding the expense and inconvenience of further litigation, Defendant agrees to settle the case on the terms set forth below. Defendant's agreement to settle shall not be deemed a concession that certification of a litigation class was appropriate, nor would Defendant be precluded from opposing class certification in further proceedings in the Action if the Settlement does not receive Final Approval. If the Settlement does not receive Final Approval by the Court for any reason whatsoever, the Settlement will be void, and no doctrine of waiver, estoppel, or preclusion will be asserted in any proceedings involving Defendant. No agreements made by or entered into by Defendant in connection with the Settlement may be used by Plaintiff, any person in the Settlement Class, or any other persons to establish any of the elements of class certification in any other proceedings.

F. Plaintiff and his counsel believe that the claims asserted in the Action have merit. However, taking into account the risks of continued litigation, as well as the delays and uncertainties inherent in such litigation and any subsequent appeal, Plaintiff and his counsel believe that it is desirable that the Action be fully and finally compromised, settled and terminated now with prejudice, and forever barred pursuant to the terms and conditions set forth in this Settlement Agreement. Plaintiff and his counsel have concluded that the terms and conditions of this Settlement Agreement are fair, reasonable, and adequate to the proposed class, and that it is in the best interests of the proposed class to settle the Action.

WHEREFORE, in consideration of the promises, covenants, representations and warranties contained herein, and for good and valuable consideration given hereunder, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties hereby agree, subject to approval by the Court, as follows:

1. Definitions

In addition to the terms defined at various points within this Settlement Agreement, the following Defined Terms apply throughout this Agreement and the attached exhibits:

1.1 "Action" means *DAVID VACCARO, individually and on behalf of all others similarly situated*, DELTA DRUGS II, INC. Case No. Case No. 20STCV28871, pending before the Superior Court Of Los Angeles County.

1.2 "Claim Form" means the form made available for use by Class Members on the back of the Mail Notice and on the Settlement Website for the purpose of making a claim for recovery under the Settlement.

1.3 "Claims Administrator" means Postlethwaite & Netterville (P&N).

1.4 "Class Counsel" means Todd M. Friedman and Adrian Bacon of The Law Offices of Todd M. Friedman, P.C.

1.5 "Class Period" means the period from January 1, 2020 to May 25, 2022.

1.6 "Class Representative" means Plaintiff David Vaccaro, an individual.

1.7 “Court” means the Superior Court of Los Angeles County.

1.8 “Defendant” means DELTA DRUGS II, INC.

1.9 “Escrow Account” means the account to be established consistent with the terms and conditions described below.

1.10 “Final Approval” means entry of the Final Approval Order and Final Judgment and a determination of the amount of fees, costs, and expenses awarded to Class Counsel and the amount of the Service Award to Plaintiff.

1.11 “Final Approval Order” means the order that the Court enters upon finally approving the Settlement. The Parties shall tender the form of Final Approval Order attached hereto as **Exhibit E** for the Court’s consideration.

1.12 “Final Hearing Date” means the date set by the Court for the hearing on final approval of the Settlement.

1.13 “Final Judgment” means the entry by the Court of a judgment finally approving the settlement of the Action pursuant to the terms of this Settlement Agreement. That judgment shall have become final either by expiration of time for appeal or, if a Class Member files an appeal, the date on which such reconsideration, appeal, or review has been finally concluded and is no longer subject to review, whether by appeal, petitions for rehearing, petitions for rehearing *en banc*, or petitions for writ of certiorari, or otherwise.

1.14 “Mail Notice” means the form of notice to be mailed by the Claims Administrator to all Class Members with a known address. Mail Notice shall take a form substantially the same as that attached hereto as side one of **Exhibit A**.

1.15 “Notice Deadline” means June 22, 2022.

1.16 “Opt-Out Period” means September 22, 2022. The Opt-Out deadline will be specified in the Class Mail Notice.

1.17 “Opt-Out and Objection Deadline” means September 22, 2022.

1.18 “Parties” means Plaintiff and Defendant.

1.19 “Plaintiff” mean Plaintiff David Vaccaro.

1.20 “Preliminary Approval” means the date that the Court enters an order granting preliminary approval of the Settlement.

1.21 “Preliminary Approval Order” means the order that the Court enters upon preliminarily approving the Settlement. The Parties shall tender the form of Preliminary Approval Order attached hereto as **Exhibit D** for the Court’s consideration.

1.22 “Publication Notice” means the notice of the Settlement to be accomplished through print and internet media as described at Section 9.3 of this Agreement.

1.23 “Q & A Notice” means the notice concerning the Settlement to be posted on the Settlement Website as described in Section 9.2 of this Agreement.

1.24 “Released Claims” means all claims to be released as specified in Section 16 of this Agreement. The “Releases” means all of the releases contained in Section 16 of this Agreement.

1.25 “Released Parties” shall have the meaning set forth in Section 16.1 of this Agreement.

1.26 “Releasing Persons” shall have the meaning set forth in Section 16.1 of this Agreement.

1.27 “Settlement” means the settlement into which the Parties have entered to resolve the Action. The terms of the Settlement are as set forth in this Agreement and the attached exhibits.

1.28 “Settlement Class” means the proposed class as defined at Section 2.1 of this Agreement.

1.29 “Settlement Class Member” means any person or entity included in the Settlement Class who does not timely and properly opt out of the Settlement.

1.30 “Settlement Fund” means the fund established under Section 4 of this Agreement.

1.31 “Settlement Website” means the website to be created and operated by the Claims Administrator to facilitate Class Members’ access to settlement-related information and necessary settlement-related forms.

1.32 “Service Award” means any Court-ordered payment to Plaintiff in addition to any payment due Plaintiffs as Settlement Class Members.

1.33 “Valid Claim Form” means a timely-submitted Claim Form that satisfies the criteria set forth at Section 10.2 of this Agreement.

1.34 “Valid Exclusion Request” means a timely-submitted opt-out or exclusion request that satisfies the criteria set forth at Section 11 of this Agreement.

2. Settlement Class

2.1 Proposed Class Definition. The Court previously certified a class in this matter. The parties have agreed to treat the certified class as the Settlement Class, which is defined as follows:

All California residents who, from January 1, 2020 to May 25, 2022, received an outbound call from Defendant and/or Defendant’s dialing vendors without notice and whose call was recorded.

For avoidance of doubt, class membership consists exclusively of the individuals included on the list to be provided to the Settlement Administrator as set forth in Section 9.1.1.

2.2 Estimated Class Size. The Parties have entered into this Settlement Agreement on the basis of their estimate that the Class consists of approximately 10,000 members (“Class Members”).

3. Motions for Preliminary Approval and Final Approval

3.1 The Parties desire and intend to seek Court approval of the Settlement and a final judgment on the claims of Plaintiff and the Class Members as set forth in this Settlement Agreement. The Parties agree to undertake all steps necessary to effectuate the purpose of the Settlement, to secure the Court’s approval of the settlement, and to oppose any interventions and objections to the Settlement, including objections by any regulatory authority. Class Counsel (as defined in Section 1.3 above) reserves the right to appeal any award of attorney’s fees and costs that is less than the amount set forth in Section 4 below. The proposed Preliminary Approval Order is attached as **Exhibit D** hereto. The proposed Final Approval Order is attached as **Exhibit E** hereto.

3.2 Upon full execution of this Settlement Agreement, Plaintiff will file a Motion for Preliminary Approval of Class Action Settlement (“Motion for Preliminary Approval”) in accordance with the terms of this Settlement Agreement. Plaintiff will request that the court enter a Preliminary Approval Order in substantially similar form to order attached hereto as **Exhibit D**. Defendant will not oppose the Motion for Preliminary Approval. The Motion for Preliminary Approval will seek an order that: (a) preliminarily approves the settlement of the Action as fair, reasonable, and adequate; (b) approves the forms provided for in this Settlement Agreement for giving notice of the Settlement to the Class, as provided in Section 9 of this Agreement (the “Notice Forms”); (c) approves the methods provided for in this Agreement for giving notice of the Settlement as provided in Section 9 of this Agreement; (d) approves the Claim Form attached as side two of **Exhibit A** hereto and the claims process described in Section 10; (e) sets deadlines for providing notice to the Class and for Class Members to submit requests for exclusion/opt-out, entry of an appearance, or objections to the proposed settlement; (f) schedule a date and time for a Final Approval Hearing to determine whether the Settlement should be finally approved by the Court, the amount of attorneys’ fees and costs that should be awarded to Class Counsel, and the amount of any Service Award to Plaintiff; and (g) authorize the Parties to take all necessary and appropriate steps to establish the means necessary to implement the Settlement Agreement.

3.3 In connection with the Motion for Preliminary Approval Application, Plaintiff shall request that the Court schedule and conduct a Final Approval Hearing after dissemination of class notice, at which it will consider whether the Settlement is fair, reasonable, and adequate pursuant to California Rule of Court 3.770. Specifically, after good faith consultation with Defendant, Plaintiffs shall request that, on or after the Final Approval Hearing, the Court: (i) enter the Final Judgment substantially in the form attached hereto as **Exhibit F**; (ii) determine the amount of any attorney’s fees and costs that should be awarded to Class Counsel as contemplated in the Settlement Agreement; and (iii) determine the amount of any Service Award that should be awarded to Plaintiff as contemplated by the Settlement Agreement. Any application for attorney’s fees and costs or a service award shall be made at least fourteen (14) days prior to the Opt-Out and

Objection Deadline. Plaintiff's final approval motion shall be filed in accord with the notice period prescribed the Local Rules of the Central District of California or as otherwise directed by the Court. The Parties will reasonably cooperate with one another in seeking entry of the Final Judgment.

3.4 At the Final Approval Hearing, the parties shall request that the Court enter a Final Judgment in substantially similar form as **Exhibit F** that shall, among other things:

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

b. Finally approve the Settlement Agreement, pursuant to California Rule of Court 3.770, as fair, reasonable, and adequate;

c. Find that the form and means of disseminating the Class Notice complied with all laws, including, but not limited to, to California Rule of Court 3.770, and the Due Process Clause of the United States Constitution;

d. Enter Final Judgment with respect to the claims of all Settlement Class Members;

e. Make the Releases in Section 16 of the Settlement Agreement effective as of the date by which all settlement funds are paid out in full by Defendant and have been finally distributed and after a Final Judgment has been entered in this matter;

f. Find that, by operation of the entry of the Final Judgment, Plaintiff and all Settlement Class Members who have not opted out of the Agreement shall be deemed to have forever released, relinquished, and discharged the Released Persons from any and all Released Claims only after full payment of the Settlement Fund by Defendant;

g. Authorize the Settling Parties to implement the terms of the Settlement Agreement;

h. Without affecting the finality of the Final Judgment for purposes of appeal, retain jurisdiction relating to the administration, consummation, enforcement, and interpretation of the Settlement Agreement, the Final Judgment, and for any other necessary purpose; and

i. Issue related orders to effectuate the Final Approval of the Agreement and its implementation.

3.4 If the Court declines to approve the Settlement, or if the Court changes the Settlement Class definition or the terms of the Settlement in any way not acceptable to one or more of the Parties, or if certification of the Settlement Class or approval of the Settlement is reversed, or if certification of the Settlement Class or approval of the Settlement is changed upon appeal or review in any way not acceptable to one of more of the Parties, that Party or those Parties shall, after reasonable consultation with the other, have the right to terminate the Settlement. In that

event, there will have been no admission of liability or that a class should be certified and no waiver of any claim or defense of any kind whatsoever.

4. The Settlement Fund

4.1 In exchange for the mutual promises and covenants in this Agreement, including, without limitation, the Releases as set forth in Section 16 and the entry of judgment upon Final Approval, within thirty (30) days following Final Judgment, Defendant shall deposit the sum of Three-Hundred Thousand Dollars (\$300,000) into an Escrow Account held by the Claims Administrator to create the Settlement Fund.

4.2 The Settlement Fund shall be used to provide the exclusive recovery and relief for the Class, any reasonable attorneys' fees and costs approved and awarded by the Court, any Service approved and awarded by the Court, and the costs of claims administration, including class notice. Defendant shall not, under any circumstances, be obligated to pay any other additional amounts to the Settlement Fund or any other amounts in connection with this Settlement Agreement. No interest shall accrue on the Settlement Fund.

4.3 The Settlement Fund at all times shall be deemed a "qualified settlement fund" within the meaning of United States Treasury Reg. § 1.468B-1. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Settlement Fund or otherwise, including any taxes or tax detriments that may be imposed on Defendant or its counsel or Plaintiff and Class Counsel with respect to income earned by the Settlement Fund during any period during which the Settlement Fund does not qualify as a "qualified settlement fund" for the purpose of federal or state income taxes or otherwise (collectively "Taxes"), shall be paid out of the Settlement Fund. Defendant and its counsel and/or Plaintiffs and Class Counsel shall have no liability or responsibility for any of the Taxes.

4.4 The amount of the Settlement Fund shall not be reduced as a result of any member(s) of the Settlement Class electing to opt out or be excluded from the Settlement or for any other reason.

5. Recovery for the Class

Class Members who submit a Valid Claim Form, as set forth in Section 10.2 below, will receive a pro rata share of the Settlement Fund in the form of a check (after any attorneys' fees and costs awarded by the Court, any Service Award to Plaintiff awarded by the Court, and any costs of claims administration are deducted from the Settlement Fund). There shall be permitted only one claim per cellular telephone number for each Class Member regardless of the number of calls received. It is anticipated that after deduction of attorney's fees, costs, administration expenses, and service awards, that there will be \$130,000 in residual class member settlement benefits to be distributed to claimant Class Members.

6. Attorney's Fees and Costs for Class Counsel

Class Counsel shall move the Court for an award of attorneys' fees and costs incurred in connection with the Action to be paid to Class Counsel from the Settlement Fund. The motion for attorney's fees and costs shall be made at least fourteen (14) days prior to the Opt-Out and Objection Deadline. Class Counsel agree their request for attorneys' fees will not exceed more than 33% of the Settlement Fund and the request for litigation costs will not exceed \$10,000. Defendant shall not object to such a motion so long as the attorneys' fees requested are not more than 33% of the Settlement Fund and the request for litigation costs will not exceed \$10,000. Any attorneys' fees and costs approved by the Court shall be paid to Class Counsel from the Settlement Fund. Class Counsel and Class Representative expressly disclaim any right to recover attorneys' fees and costs in excess of the amount awarded by the Court from any person or entity. Class Counsel and Class Representative also agree that the amounts of such attorneys' fees and costs awarded shall compensate them for all legal work in the Action up to including the Final Judgment, as well as for all legal work and costs that may be incurred in the Action after the Final Judgment. This Settlement Agreement is not conditioned on the Court's approval of any attorneys' fees and costs sought by Class Counsel. If the amounts awarded by the Court are less than what was sought by the Class Representative and Class Counsel, the remaining provisions of this Settlement shall be binding and effective. No interest will accrue on any attorneys' fees or costs awarded by the Court to Class Counsel.

7. Service Award for Plaintiff

Class Counsel shall move the Court for a Service Award for Plaintiff for his service as class representative in this Action, in an amount not to exceed \$10,000, to be paid from the Settlement Fund. The motion for a Service Award shall be made at least fourteen (14) days prior to the deadline for class members to object. Court approval of any Service Award will not be a condition of the Settlement. Defendant shall not object to a Service Award that does not exceed \$10,000.

8. Third-Party Claims Administrator

8.1 The costs and expenses related to claims administration shall be paid exclusively from the Settlement Fund. Because the costs and expenses of claims administration will affect each Class Member's pro rata share of the Settlement Fund, the costs and expenses of claims administration shall be overseen by Class Counsel. Defendant's counsel may also oversee the claims administration process as they deem necessary. The Parties will use good faith efforts to minimize the costs of claims administration.

8.2 Claims administration shall be conducted by a third party administrator, P&N. (the "Claims Administrator"), which is located at 8550 United Plaza, Suite 1001 Baton Rouge, LA 70809. The Claims Administrator's telephone number is (225) 922-4600.

8.3 Subject to the oversight of Class Counsel and Defendants' counsel, the Claims Administrator shall be responsible for, among other things, the following: (a) providing notice to Settlement Class Members as set forth in Section 9 below; (b) providing settlement

checks to Settlement Class Members entitled to receive a settlement check pursuant to Section 10.1 below; (c) creating and maintaining the Settlement Website as set forth in Section 9.2 below; (d) maintaining a toll-free telephone number as set forth in Section 9.3 below; (e) acting as a liaison between Settlement Class Members and the Parties regarding the settlement; (f) make available for inspection by Class Counsel or Defendant's Counsel the Claim Forms, any documentation submitted in support thereof, and any correspondence received by the Claims Administrator at any time upon reasonable notice; and (g) provide Class Counsel and Defendant's Counsel with an affidavit or declaration by a competent affiant or declarant, attesting that the Mail Notice has been disseminated in accordance with the Preliminary Approval Order and identifying the number of Requests for Exclusion to the Settlement. The Claims Administrator shall be permitted to communicate without restriction with Class Counsel and Defendant's counsel.

8.4 All costs and expenses related to claims administration shall be paid from the Settlement Fund as invoiced by the Claims Administrator in order to do what is necessary for claims administration. The costs and expenses related to claims administration are anticipated to be approximately \$50,000. Actual expenses may be higher or lower than this amount depending on a number of factors, including the participation rate, postage expense, and other administrative duties that may fluctuate.

9. Notice of Settlement

9.1 Mail Notice.

9.1.1 In the event of Preliminary Approval, Defendants shall create a list of Settlement Class Members, including the telephone number and last known address for each Class Member to the extent available from its existing business records. As soon as practicable, but in no event after June 8, 2022, ~~June 8, 2022~~ Defendant shall deliver the list of Settlement Class Members to the Claims Administrator. As a condition of receiving the list of settlement class members, the Claims Administrator must execute an agreement to maintain the confidentiality of the data. The Claims Administrator will treat the information regarding the Settlement Class Members in a confidential manner pursuant to this agreement.

9.1.2 The Claims Administrator will provide individual notice, via First Class U.S. Mail, to all Settlement Class Members with known addresses ("Mail Notice"). Prior to mailing the Mail Notice, the Claims Administrator will update the address information provided by Defendant through the National Change of Address ("NCOA") database maintained by the U.S. Postal Service. Any Mail Notice returned to the Claims Administrator with a new forwarding address will be re-mailed to the Settlement Class Member at the new forwarding address.

9.1.3 The Claims Administrator will perform a reverse telephone number lookup for the Settlement Class Members, if any, for whom Defendant does not have address information. The address information obtained through a reverse phone number lookup will be used to facilitate Mail Notice to the Settlement Class Members.

9.1.4 The Claims Administrator will mail the Settlement Class Members the Mail Notice as soon as reasonably practicable but not after June 22, 2022. The Claims

Administrator will file a declaration with the Court, as part of the final approval papers, stating that these procedures were followed.

9.1.5 The Mail Notice to the Settlement Class will consist of a double-sided postcard that contains a summary description of the Settlement Agreement, identifies the Claims Administrator, and directs recipients to the Settlement Website from which additional information about the settlement, including the Claim Form, can be obtained. The back of the Mail Notice will contain the Claim Form. The Mail Notice and Claim Form will be substantially in the form of **Exhibit A** attached hereto.

9.2 Settlement Website Notice.

9.2.1 The Claims Administrator shall create an Internet website for this Action, where settlement information and claim submission will be made available (“Settlement Website”). The Settlement Website will: (a) inform Settlement Class Members of the basis of the claims raised in the Action and the payment under this settlement; (b) advise Settlement Class Members about how to submit opt out/exclusion notices from the settlement and the deadlines for Settlement Class Members to submit requests for exclusion/opt-out or objections to the proposed settlement (“Opt-Out and Objection Deadline”); (c) instruct that Settlement Class Members should direct questions about the Action or proposed settlement to Class Counsel; and (d) inform Settlement Class Members to their right to appear in the Action through their own attorney. This notice will be in a question and answer format and will contain a full copy of the release (the “Q & A Notice”) and will be substantially in the form of **Exhibit B** attached hereto.

9.2.2 In addition, the Settlement Website will provide access to copies of the Mail Notice, Q & A Notice, Claim Form, the Settlement Agreement, the Preliminary Approval Order, Plaintiff’s fee brief, and any other materials the Parties agree to include. The Settlement Website shall also provide for online submission of Claim Forms. These documents shall be available on the Settlement Website no later than the Notice Deadline and remain so at least until Final Approval. The Claims Administrator shall secure a URL for the Settlement Website selected by Class Counsel and approved by Defendants. The content and format of the website will be agreed upon by the parties. The cost of securing and maintaining the Settlement Website shall be paid out of the Settlement Fund. The Settlement Website shall be maintained for at least one hundred and eighty (180) days, and shall be fully operational on the day the Mail Notice is sent to Class Members.

9.3 Settlement Call Center.

The Claims Administrator shall designate a toll-free number for receiving calls related to the settlement (“Settlement Call Center”). Anyone may call the Settlement Call Center from anywhere in the United States to ask questions of the Claims Administrator about the settlement. The Parties shall jointly resolve any dispute that may arise regarding the operation of the Settlement Call Center. The Mail Notice and Q & A Notice shall include the toll-free number for the Settlement Call Center. The Settlement Call Center shall be maintained from the date Mail Notice is provided through at least the next one hundred (100) days. Once this time period has expired, for a period of at least thirty (30) days, either a live person or a recording will advise any

caller to the Settlement Call Center that the details regarding the settlement may be reviewed on the Settlement Website.

10. Claims Process

10.1 Potential Claimants

Each Settlement Class Member who does not timely and validly request for exclusion from the settlement as required in this Settlement Agreement shall be bound by this Settlement Agreement and Final Judgment to be entered following the hearing for final approval of the settlement. Any Settlement Class Member who does not submit a completed Claim Form by September 22, 2022, shall be deemed to have waived any claim to relief from the Settlement Fund.

10.2 Valid Claim Forms

10.2.1. In order to receive a settlement payment pursuant to Section 4, a Settlement Class Member must submit a valid and timely claim form, substantially in the form attached hereto as side two of **Exhibit A** (“Claim Form”). A Claim Form is valid and timely if it: (a) includes the Settlement Class Member’s full name and address; (b) includes the cellular telephone number called by Super during the Class Period; (c) is postmarked or submitted online by September 22, 2022 “Claim Period,” as specified in the Claim Form and on the Mail Notice and Q&A Notice; (d) is correct and truthful; and (e) is not successfully challenged under Section 10.2.2 (“Valid Claim Form”).

10.2.2 Defendant reserves the right, but not the obligation, to challenge a claim by submitting written objection to the Claims Administrator, with notice to Class Counsel and the Settlement Class Member making the claim. The Claims Administrator will provide Defendant’s Counsel with copies of the Claim Forms to review on a weekly basis. The Claims Administrator shall have full authority to determine the validity of all claims based on the criteria set forth in the definition of “Valid Claim Form” at Section 10.2.1 of this Settlement Agreement.

11. Right to Opt Out of Settlement

11.1 Settlement Class Members have the right to opt out and exclude themselves from the settlement by mailing a valid exclusion request (“Valid Exclusion Request”) to the Claims Administrator. The Valid Exclusion Request must be postmarked on or before September 22, 2022. The Claims Administrator will provide copies of such exclusion requests to Class Counsel and counsel for Defendant promptly upon receipt.

11.2 The Valid Exclusion Request shall also: (1) be in writing; (2) include the name and number of this case, as well as the Settlement Class Member’s name, address, and cellular telephone number at which the Settlement Class Member was called by Delta; and (3) be signed by the Settlement Class Member.

11.3 An Exclusion Request may be withdrawn by providing written notice of the withdrawal no more than fourteen (14) days prior to the Final Approval Hearing.

11.4 Except for those Settlement Class Members who have properly and timely mailed a Valid Exclusion Request, all Settlement Class Members will be bound by this Settlement Agreement and the Final Judgment to be entered following the hearing for final approval of the Settlement Agreement.

11.5 If 10 (10) percent or more of Settlement Class Members opt out of the Settlement Agreement by timely submitting a Valid Exclusion Request, then Defendant, in its sole discretion, shall have the right to terminate the settlement. In the event that the settlement is terminated pursuant to this Section, the Parties will be returned to the status quo ante as if no settlement had been negotiated or entered into as set forth in Section 17 below.

12. Right to Object to Settlement

12.1 Any Settlement Class Member who intends to object to this Settlement Agreement must mail his or her objection(s) (the "Objection") in writing to the Administrator at the address provided in the Class Notice

The Administrator shall provide a copy of the Objection to Class Counsel and Defendants' counsel at the following addresses:

Class Counsel

Todd M. Friedman, Esq.
The Law Offices of Todd M. Friedman, P.C.
21031 Venture Blvd. #340
Woodland Hills, CA 91364

and

Defendant's Counsel

William C. Fleming, Jr. Esq.
Moss Law Group
255 South Marengo Avenue
Pasadena, CA 91101

To be considered timely, an Objection must be postmarked on or September 22, 2022.

12.2 Any Objection must (1) be in writing; (2) include the name and number of this case, as well as the Settlement Class Member's name, address, and cellular telephone number at which the Settlement Class Member was called by Delta; (3) be signed by the Settlement Class Member, (4) provide all arguments, citations and evidence supporting the Objection, and whether the objecting Settlement Class Member intends to appear at the hearing with or without counsel.

12.3 The Claims Administrator will provide to Settlement Class Counsel and Defendant's Counsel all copies of any objections mailed or otherwise transmitted to the Claims Administrator.

13. Right to Enter an Appearance

On or before the date specified on the Settlement Website, which is one hundred and thirty (120) days after the date the Court grants the Motion for Preliminary Approval, a Class Member may enter an appearance through an attorney if he or she so desires. The Class Member is solely responsible for any fees, costs or expenses of his or her attorney.

14. Final Judgment

14.1 Defendant shall not be obligated to pay any sum pursuant to this Settlement Agreement except upon Final Judgment. However, in the event that Final Approval of this Settlement is not granted, Defendant will reimburse the Claims Administrator for reasonable costs incurred in administering the settlement, including but not limited to time spent to prepare documents and testimony in support of the Motion for Preliminary Approval or final approval motion.

14.2 By entering Final Judgment, the Court shall:

14.2.1 Approve the Settlement Agreement and the proposed settlement as fair, reasonable and adequate as to, and in the best interests of, the Settlement Class Members; direct the Parties and their counsel to implement and consummate the Settlement Agreement, to the extent the Parties have not done so already, according to its terms and provisions; and declare the Settlement Agreement to be binding on, and have res judicata and preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiff and all other Settlement Class Members, as well as their agents, administrators, servants, employees, representatives, assigns, heirs, executors, trustees, joint venturers, partners, successors, predecessors and-attorneys, and each of them.

14.2.3 Find that the Notice Forms and the manner of disseminating notice pursuant to the Settlement Agreement: (a) constitute the best practicable notice, (b) constitute notice that is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, their right to accept, object to or exclude themselves from the proposed settlement and to appear at the fairness hearing, (c) constitute reasonable, due, adequate and sufficient notice to all persons entitled to receive notice, and (d) meet all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution and any Rules of the Court;

14.2.4 Find that Class Counsel and Plaintiff adequately represented the Class for purposes of entering into and implementing the settlement;

14.2.5 Enter said Final Judgment on the merits and terms set forth herein as to all claims of Plaintiff and the Settlement Class Members asserted against Defendant, as well as the Action, without costs to any party, except as provided in this Agreement.

15. Payments Upon Final Judgment

15.1 Within forty-five (45) days of Final Judgment, the Claims Administrator shall pay to Class Counsel, from the Settlement Fund, any reasonable attorney's fees and costs awarded by the Court. However, in the event Final Judgment occurs prior to creation of the Escrow Account, such payment shall be made within thirty (30) days of creation of the Escrow Account. Class Counsel may request that attorneys' fees and costs be paid into a qualified settlement fund, pursuant to United States Treasury Reg. § 1.468B.

15.2 Within forty-five (45) days of Final Judgment, the Service Award shall be paid to Plaintiffs from the Settlement Fund. However, in the event Final Judgment occurs prior to creation of the Escrow Account, such payment shall be made within thirty (30) days of creation of the Escrow Account.

15.3 Within forty-five (45) days of Final Judgment, the Claims Administrator shall calculate the pro rata share that each Settlement Class Member who submitted a Valid Claim Form is entitled to receive and mail a settlement check to each Settlement Class Member who submitted a Valid Claim Form. The settlement checks to Settlement Class Members shall state on their face that the check will expire and become void if not cashed within one hundred and eighty (180) days of the date of the check. After checks are mailed to Class Members, the Administrator shall distribute attorney's fees and costs awarded to Class Counsel and costs of claims administration shall be paid out of the Settlement Fund,

15.4 The settlement checks shall be sent via U.S. Mail to the addresses provided by Settlement Class Members who submitted Valid Claim Forms. In the event a settlement check is returned to the Claims Administrator as undeliverable, the Claims Administrator shall attempt to identify a new address pursuant to the process described at Section 9.1.2 above or other reasonable means and shall re-send the settlement check if a valid address can be identified.

15.5 If, after the expiration date of the checks distributed pursuant to Section 15.3 above, there remains money in the Settlement Fund sufficient to pay at least ten dollars (\$10.00) to each Settlement Class Member who was not a person who failed to cash his or her initial check, such remaining monies will be distributed on a pro rata basis to those Settlement Class Members (the "Second Distribution") via the method set forth in Section 15.4. The Second Distribution shall be made within ninety (90) days after the expiration date of the checks distributed pursuant to Section 15.3 above. Checks issued pursuant to the Second Distribution will be valid for one hundred and eighty (180) days from the date on the check.

15.6 After the expiration of the validity of checks sent pursuant to Sections 15.3 through 15.5, any remaining funds from uncashed settlement checks, including settlement checks

to Settlement Class Members who submitted Valid Claim Forms but whose current Valid Address could not ultimately be determined, shall be divided and given 50% to Public Justice, and 50% to the Electronic Privacy Information Center (EPIC) as *cy pres* recipients. Neither Defendant, nor Class Counsel have any interest in either of the proposed Cy Pres recipients.

16. Releases Upon Final Judgment after Payment of Settlement Funds

16.1 Release by Settlement Class Members. All Settlement Class Members, (other than those persons who have timely and properly filed a Valid Exclusion Request), on behalf of themselves and their agents, administrators, servants, employees, representatives, assigns, heirs, executors, trustees, joint venturers, partners, successors, predecessors and attorneys, and each of them (collectively the “Releasing Persons”), hereby jointly and severally release and discharge Defendant and all of its respective former, present and future direct and indirect parents, affiliates, subsidiaries, successors and predecessors and all of their respective former, present and future officers, directors, shareholders, indemnitees, employees, servants, agents, attorneys, representatives, independent contractors, successors, trusts, trustees, partners, associates, principals, divisions, insurers, members, agents, representatives, brokers, consultants, heirs, assigns and vendors (collectively the “Released Parties”) from any and all actions, causes of action, obligations, costs, expenses, damages, losses, claims, liabilities, and demands, of whatever character, known or unknown, to the date hereof, arising out of, relating to, or in connection with specifically receiving an outbound call from Defendant or one of its vendors, without having notice that the call was being recorded, during the Class Period, including, but not limited to, claims for violation of Sections 632 and Section 632.7 of the IPA and any other federal, state or local statute, regulation, or common law relating to the recording of telephone calls. For avoidance of doubt, “Released Parties” also includes any representatives or facilities that made calls on behalf of the Released Parties during the Class Period. This release will only take effect after Defendant has paid all sums contemplated by this Settlement Agreement.

16.2 The Class Representative and Defendant acknowledge that it/he/she may hereafter discover facts different from, or in addition to, those which it/he/she now claims or believes to be true with respect to the claims released herein, and agrees that this Settlement Agreement shall remain effective in all respects notwithstanding the discovery of such different, additional, or unknown facts. The Class Representative and Defendant hereby expressly waive any rights they may have, specific to the claims brought in the Complaint (Dkt. No. 1), under California Civil Code Section 1542, which section reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

This waiver applies only to the named Class Representative and does not apply to absent Class Members. The Parties further expressly waive any rights they may have under any similar statute of any other state.

The California Civil Code Section 1542 release herein shall be expressly limited to claims relating to conduct alleged in the Complaint, i.e. those legal claims arising from calls placed by Defendant and the recording of calls by Defendant. This release applies to any claim made the named Class Representative only, may have arising out of the alleged conduct described in Complaint, whether that claim arises under the IPA or any other legal theory or cause of action relating to the recording of telephone calls. For example, if the Class Representative believes that a call as described in the Complaint violated some other law than the IPA or breached a contract, such a claim would be barred by this release.

17. Effect of Court's Denial of Preliminary or Final Approval of Settlement

There is no settlement if the Court does not preliminarily approve the settlement or finally approve the settlement in substantially the same form as set forth herein, or if the settlement or the judgment approving the settlement is appealed and not approved on appeal in substantially the same form as set forth herein. In such event, (a) this Settlement Agreement is terminated and is of no force and effect and no party shall be bound by any of its terms; (b) to the extent applicable, any preliminary order approving the settlement, approving the Notice Program, and providing notice to the Settlement Class shall be vacated; (c) the Settlement Agreement and all of its provisions and all negotiations, statements, and proceedings relating to the Settlement Agreement shall be without prejudice to the rights of any of the Parties; (d) each of the Parties shall be restored to their respective positions as of the date this Settlement Agreement was fully executed; and (e) neither the settlement nor any of its provisions or the fact that this Settlement Agreement has been made shall be admissible in this Action or in any other action for any purpose whatsoever.

18. Representations and Warranties

Each of the Parties to this Settlement Agreement acknowledges, represents, warrants and/or agrees as follows:

18.1 Assignment of Claims.

Plaintiffs represent and warrant that he is the sole and exclusive owner of all Released Claims and that he has not assigned or otherwise transferred any interest in any of the Released Claims against any of the Released Persons, and further covenants that he will not assign or otherwise transfer any interest in any of Plaintiff's Released Claims. Plaintiffs further represents and warrants that he has no surviving claim or cause of action against any of the Released Persons with respect to any of the Released Claims.

18.2 Legal Advice.

He/She/It has had the opportunity to consult with independent legal counsel with respect to the advisability of making the settlement provided for herein and of executing this Settlement Agreement and all other matters contained herein, including the waiver of rights under California Civil Code Section 1542 or any other similar statute of any other state.

18.3 Investigation.

He/She/It has been represented in the negotiations for, and in preparation of, this Settlement Agreement by counsel of his/its choice; he/she/it has read this Settlement Agreement and has had it fully explained to him/her/it by such counsel to the extent necessary; and that he/she/it is fully aware of the contents of this Settlement Agreement and of the legal effect of each and every provision thereof. He/She/It has made such investigation of the facts pertaining to this Settlement Agreement and of all of the matters pertaining thereto as it deems necessary.

18.4 Authority and Capacity to Execute Settlement Agreement.

The person executing this Settlement Agreement on his/her/its behalf has full authority and capacity to execute this Settlement Agreement and to give the releases and other promises contained herein.

19. No Admission of Liability

This Settlement Agreement affects the settlement of claims that are denied and contested, and nothing contained herein shall be construed as an admission by Defendant of any liability of any kind. Defendant denies any liability in connection with any such claims and intend merely to avoid further litigation of the Action.

20. Return of Confidential Documents

Within thirty-five (35) days of Final Judgment, the original and all copies of all confidential or highly confidential documents and/or information subject to the Protective Order entered in this Action shall be returned to the designating party or destroyed with a certification that no copies have been retained or that all copies have been destroyed by the receiving party.

21. Choice of Law and Jurisdiction

This Settlement Agreement is being executed in the State of California, and it shall be deemed to be made under, and shall be interpreted in accordance with, the internal laws of the State of California and applicable federal law.

22. Construction of Agreement

Each Party has participated in the drafting and preparation of this Settlement Agreement. Hence, in construing this Settlement Agreement, none of the Parties hereto shall have any term or provision, or any uncertainty or ambiguity as to any term or provision herein, construed against such Party solely by reason of such Party having drafted the same, as a result of the manner of the preparation of this Settlement Agreement, or otherwise. Each term and provision of this Settlement Agreement shall be construed and interpreted so as to render it enforceable.

23. Headings or Pronouns

Headings or captions contained in this Settlement Agreement are solely for the convenience of the Parties, are not a part of this Settlement Agreement, and shall not be used for the interpretation of, or determination of the validity of, this Settlement Agreement or any provision hereof. Whenever the context may so require, the masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular shall be deemed to refer to and include the plural, and vice versa.

24. Entire Agreement

This Settlement Agreement contains the entire agreement and understanding between the Parties concerning the subject matter hereof, and any and all prior oral or written agreements or understandings between the Parties related hereto are superseded. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Settlement Agreement, have been made by any party hereto.

25. Waiver, Modification and Amendment

No provision of this Settlement Agreement may be waived unless in writing signed by all Parties hereto. Waiver of any one provision shall not be deemed to be a waiver of any other provision hereof. This Settlement Agreement may not be altered, amended or otherwise changed or modified, except in writing signed by all Parties.

26. Successors and Assigns

This Settlement Agreement is binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors, assigns, heirs, agents, employees, attorneys, representatives, officers, parents, affiliates, and subsidiaries.

27. Execution in Counterparts

This Settlement Agreement may be executed in counterparts and all of said counterparts shall collectively constitute one agreement binding on all Parties.

28. Termination Of Discovery And Motion Practice

By signing this Settlement Agreement, the Parties agree not to serve any discovery or proceed with any motion after the date of this Settlement Agreement, except for motions related to the approval of the Settlement, unless the Parties are ordered to do so by the Court or the Final Approval Order is not entered and this Settlement becomes void.

29. Further Cooperation

The Parties hereto agree to execute all such further and additional documents and instruments, as shall be necessary or expedient to carry out the provisions of this Settlement

Agreement, and shall promptly and in good faith undertake all reasonable acts to effectuate the provisions of this Settlement Agreement.

30. Notices

All letters, notices, requests, demands and other communication required or permitted to be given to the parties pursuant to this Settlement Agreement, excluding communications directed to Class members, shall be in writing and addressed as follows:

For Named Plaintiff and the Class:


Todd M. Friedman, Esq.
The Law Offices of Todd M. Friedman, P.C.
21031 Ventura Blvd. Suite 340
Woodland Hills, CA 91364

For Defendants:

William C. Fleming, Jr. Esq.
Moss Law Group
255 South Marengo Avenue
Pasadena, CA 91101

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed as of the dates set forth below.

DATED: _____

DocuSigned by:

75A8A50DE1DF49D...

David Vaccaro, as an Individual and as Class Representative

DATED: _____

DELTA DRUGS, II. INC.

By
Name:
Title:

Agreement, and shall promptly and in good faith undertake all reasonable acts to effectuate the provisions of this Settlement Agreement.

30. Notices

All letters, notices, requests, demands and other communication required or permitted to be given to the parties pursuant to this Settlement Agreement, excluding communications directed to Class members, shall be in writing and addressed as follows:

For Named Plaintiff and the Class:


Todd M. Friedman, Esq.
The Law Offices of Todd M. Friedman, P.C.
21031 Ventura Blvd. Suite 340
Woodland Hills, CA 91364

For Defendants:

William C. Fleming, Jr. Esq.
Moss Law Group
255 South Marengo Avenue
Pasadena, CA 91101

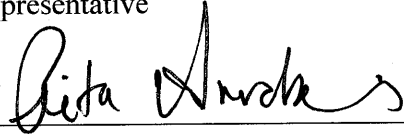
IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed as of the dates set forth below.

DATED: _____

DocuSigned by:

75A8A50DE1DF49D...

David Vaccaro, as an Individual and as Class Representative

DATED: 4 / 4 / 22



DELTA DRUGS, II. INC.

By Rita Arakian

Name:

Title: President

APPROVED AS TO FORM AND CONTENT

DATED: April 4, 2022

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By Todd M. Friedman

Todd M. Friedman, Attorney for Plaintiffs
DAVID VACCARO

DATED: April 4, 2022

MOSS LAW GROUP

By W.C. Fleming, Jr. / D.A. Huffine

William C. Fleming, Jr.
Dustin A. Huffine
Attorneys For Defendant
DELTA DRUGS, II. INC.