

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

**MICHELLE MORELLI, individually** \*  
**and on behalf of all others similarly** \*  
**situated,** \*

**Plaintiff,** \*

**v.** \*

**Case No.: 8:22-cv-00292-GJH**

**JIM KOONS MANAGEMENT** \*  
**COMPANY, dba JIM KOONS** \*  
**AUTOMOTIVE COMPANIES,** \*

**Defendant.** \*

\* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \*

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (the “Settlement Agreement”) is entered into by and between (1) Plaintiffs Michelle Morelli, Bianca Wenck, and Iris Perez (“Plaintiffs”), on behalf of themselves and all others similarly situated, and (2) Jim Koons Management Company, dba Jim Koons Automotive Companies (“Koons” or “Defendant”) (all parties collectively referred to as the “Parties”).

**RECITALS**

**WHEREAS**, on February 3, 2022, Plaintiff Michelle Morelli filed a putative class action styled *Morelli v. Jim Koons Management Company*, Case No. 8:22-cv-00292 (D. Md.) alleging that Koons failed to adequately safeguard its customers’ and employees’ electronically stored private information. Subsequently, on April 11, 2022, Plaintiff Iris Perez filed a second putative class action styled *Perez v. Jim Koons Management Company*, Case No. 8:22-cv-00875-GJH (D. Md.). The two cases shall hereafter be collectively referred to as the “Lawsuits.” Plaintiffs and the putative class sought monetary and equitable relief;

**WHEREAS**, Plaintiffs asserted claims against Koons for (i) negligence, (ii) breach of implied contract, (iii) unjust enrichment; (iv) negligence *per se*, and; (v) violation of Maryland’s Consumer Protection Act, Md. Code Ann., Com. Law § 13-301, et seq. (“MDTPA”);

**WHEREAS**, the Parties agreed to engage in voluntary settlement negotiations;

**WHEREAS**, after multiple months of arms’-length negotiation between competent and experienced counsel for the Parties, August 15, 2022 the Parties agreed to the terms of a settlement, desiring to resolve the Lawsuits rather than continue litigating;

**WHEREAS**, Plaintiffs and their counsel believe that, in consideration of all the circumstances, and after prolonged and serious arm's-length settlement negotiations with Koons, the proposed settlement embodied in the Settlement Agreement is fair, reasonable, and adequate, and is in the best interests of all members of the Settlement Class (as defined in paragraph 1 below);

**WHEREAS**, Koons indicated its intent to contest every claim in the Lawsuits and maintains that it has consistently acted in accordance with governing laws, but and after prolonged and serious arm's-length settlement negotiations with Plaintiffs' counsel and considering the expenses that would be necessary to defend the Lawsuits and the benefits of a final resolution of the Lawsuits, concluded that it is in its best interests to settle the Lawsuits on the terms and conditions in the Settlement Agreement;

**WHEREAS**, the Parties and their respective counsel have engaged in arm's-length settlement negotiations and mutually desire to settle the Lawsuits fully, finally, and forever on behalf of the Settlement Class and for the Released Claims (defined in paragraph 8 below) in accordance with the terms and conditions of the Settlement Agreement, which the Parties believe constitutes a fair and reasonable compromise of the claims and defenses asserted in the Lawsuits and upon final approval of the Court;

**WHEREAS**, based on their evaluation of the facts and the law, Plaintiffs and their counsel (hereinafter "Class Counsel") have agreed to settle the Lawsuits after considering such factors as (1) the benefits to the Settlement Class; (2) the risk, uncertainty, cost, and delay of litigation; and (3) the desirability of obtaining relief for Plaintiffs and the Settlement Class now rather than later (or not at all);

**WHEREAS**, Plaintiffs and Class Counsel have determined that the Settlement Agreement provides substantial benefits to the Settlement Class and represents a fair, reasonable, and adequate settlement of the claims that are or could have been alleged in the Lawsuits;

**WHEREAS**, Koons and its counsel have made similar determinations, and, while denying wrongdoing, Koons enters into the Settlement Agreement to avoid the expense, inconvenience, and inherent risk of litigation, as well as the concomitant disruption of its business operations.

### **CERTIFICATION OF SETTLEMENT CLASS**

- The Settlement Class**: The Settlement Class is defined as follows:

All persons to whom Jim Koons Management Company sent a "Notice of Security" letter dated on or about January 14, 2022 regarding the Data Security Incident.

Specifically excluded from the Settlement Class are: (i) Koons's officers, directors, and employees; (ii) any entity in which Koons has a controlling interest; and (iii) the affiliates, legal representatives, attorneys, successors, heirs, and assigns of Koons. Also excluded from the Settlement Class are members of the judiciary to whom this case is assigned, their families and members of their staff. The Settlement Class is estimated to include 114,153 individuals.

**2. Certification of Settlement Class:** Promptly after execution of the Settlement Agreement, Class Counsel will ask the Court to issue an order certifying the Settlement Class for settlement purposes only. Koons agrees not to object to this request without waiver of its right to contest certification or the merits of the Lawsuit if the settlement does not receive final approval or the Effective Date (defined in paragraph 14 below) does not occur.

### **RELIEF TO THE SETTLEMENT CLASS**

**3. Relief to the Settlement Class:** If the proposed settlement receives final approval, Koons will provide benefits to members of the Settlement Class (“Settlement Class Members”) as follows:

- a. **Compensation or Out-of-Pocket Losses and Lost Time:** Defendant will agree to make available the following compensation available to Settlement Class Members who submit valid and timely claim forms. Claims will be subject to review for completeness and plausibility by a Claims Administrator, and Settlement Class Members will have the opportunity to seek review by a third-party Claims Referee, at Defendant’s expense, if they dispute the Claims Administrator’s initial determination.
- b. **Compensation for Ordinary Losses:** Defendant will provide compensation to Settlement Class Members for unreimbursed losses caused by the Data Security Incident, up to a total of \$500 per person, upon submission of a claim and supporting documentation, such as the following losses:
  - i. *Out of pocket expenses incurred* as a result of the Data Security Incident, including bank fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, or gasoline for local travel;
  - ii. *Fees for credit reports, credit monitoring, or other identity theft insurance product* purchased between January 14, 2022 and the date of the close of the Claims Period;
  - iii. *Up to 3 hours of lost time*, at \$20/hour, if at least one full hour was spent dealing with the Data Security Incident.<sup>1</sup>
- c. **Compensation for Extraordinary Losses:** Defendant will provide up to \$4,500 in compensation to each Settlement Class Member who documents monetary loss arising from actual identity theft if:
  - i. The loss is an actual, documented, and unreimbursed monetary loss;
  - ii. The loss was more likely than not caused by the Data Security Incident;

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<sup>1</sup> Claims for lost time are included within the \$500 cap on ordinary losses.

- iii. The loss occurred between January 14, 2022 and the close of the Claims Period;
  - iv. The loss is not already covered by one or more of the normal reimbursement categories; and the Settlement Class Member made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all available credit monitoring insurance and identity theft insurance.
- d. Credit Monitoring. Defendant will pay for credit monitoring services as follows:

An automatic 2-year extension of the term for those Settlement Class Members who claimed the credit monitoring offered previously (without the need to make a claim), and a new 2 year 1B claim-in offering to the rest of the Settlement Class who timely submits a claim and requests credit monitoring. The automatic extension would be subject to the proviso that this has to be technically feasible.

This service will have substantially the same scope as the credit monitoring previously offered by Koons in its initial notification letters, described as follows:

**SINGLE BUREAU CREDIT MONITORING (adults\*)** - Monitoring of credit bureau for changes to the member's credit file such as new credit inquires, new accounts opened, delinquent payments, improvements in the member's credit report, bankruptcies, court judgments and tax liens, new addresses, new employers, and other activities that affect the member's credit record.

**CYBERSCANTM** - Dark Web monitoring of underground websites, chat rooms, and malware, 24/7, to identify trading or selling of personal information like SSNs, bank accounts, email addresses, medical ID numbers, driver's license numbers, passport numbers, credit and debit cards, phone numbers, and other unique identifiers.

**IDENTITY THEFT INSURANCE** - Identity theft insurance will reimburse members for expenses associated with restoring their identity should they become a victim of identity theft. If a member's identity is compromised, the policy provides coverage for up to \$1,000,000, with no deductible, from an A.M. Best "A-rated" carrier. Coverage is subject to the terms, limits, and/or exclusions of the policy.

**FULLY-MANAGED IDENTITY RECOVERY** - ID Experts' fully-managed recovery service provides restoration for identity theft issues such as (but not limited to): account creation, criminal identity theft, medical identity theft, account takeover, rental application, tax fraud, benefits fraud, and utility creation. This service includes a complete triage process for affected individuals who report suspicious activity, a personally assigned IDCare Specialist to fully manage restoration of each case, and expert guidance for those with questions about identity theft and protective measures.

\*Minors to receive all other service components.

If IDX has modified this service in the normal course of their business, the current version that is most near in scope will be offered or, alternatively, the most nearly available service from another vendor.

For Settlement Class Members who selected and enrolled in the 12 months of ID Experts identity monitoring previously offered by Koons, the credit monitoring offered under this settlement shall be in addition to that period.

e. California Statutory Benefit.

Defendant will pay a \$100 cash benefit to any of the 791 persons who were sent the “Notice of Security” letter dated on or about January 14, 2022 to a California address and who submit a timely claim.

**4. Claims Payments.**

a. Payments. Within 30 days of the Effective Date, the Claims Administrator shall report to Koons and Class Counsel regarding all approved claims, including the name of the Settlement Class Member whose claim is approved and the dollar amount of the approved claim for that Settlement Class Member. Koons shall have five business days to advise the Claims Administrator and Class Counsel if Koons disputes any approved claim. Within 15 business days thereafter, Koons shall pay into a Settlement Fund administered by the Claims Administrator an amount sufficient to pay all approved claims that are not disputed. As to any approved claim that is disputed, within 5 business days after being advised in writing that Koons disputes the claim, the Claims Administrator shall provide to the Claims Referee all information related to the disputed claims and within 5 business days thereafter Koons shall provide to the Claims Referee any information upon which Koons disputes that claim. The Claims Referee shall as soon thereafter as is reasonably practicable uphold or reverse a disputed claim and advise the Claims Administrator, Koons and Class Counsel of the Claims Referee’s decision. For any disputed claim upheld by the Claims Referee, within 5 business days thereafter Koons shall pay into the Settlement Fund the amount necessary for the Claims Administrator to pay that claim. Koons shall have no obligation to pay any claim that Koons disputes and the Claims Referee determines should not be paid. Payments will be mailed to Settlement Class Members by the Claims Administrator as soon as reasonably practicable after Koons funds payment of the approved claim in accord with this Settlement Agreement. A copy of the claim form agreed to by the parties is attached as Exhibit D.

b. Returned Checks. If a check is returned as undeliverable, the Claims Administrator will re-mail the check if a forwarding address is provided. If a new address is not provided, or if the check is re-mailed and returned, the check will be cancelled and Koons will have no further obligation to attempt to make a payment to that Settlement Class Member.

c. Uncashed/Cancelled Checks. Checks shall be valid for at least 90 days from the date of issue. A Settlement Class Member whose check is uncashed after the 90-day period may request a new check for up to six months from the date of the original check. Upon request, the Claims Administrator will provide Class Counsel and Koons with a report on uncashed or

cancelled checks. If a check remains uncashed for more than 270 days after the original date of issuance by the Claims Administrator, those funds will be returned to Koons.

**5. Attorneys' Fees, Costs, and Incentive Award:**

(a) Attorneys' Fees and Costs. Koons agrees not to object to Plaintiffs' request for attorneys' fees to Class Counsel<sup>2</sup> in an amount not to exceed a total of \$265,000, inclusive of costs ("Class Counsel Payment"). Class Counsel and Plaintiffs agree not to seek or accept a Class Counsel Payment greater than \$265,000. Class Counsel will petition for approval of the Class Counsel Payment at least 14 days before the deadline for Class Members to Exclude themselves or Object, or any other deadline set by the Court. Koons will pay the amount approved by the Court that does not exceed \$265,000.

The Court-approved Class Counsel Payment will not affect any benefits provided to Settlement Class Members or Plaintiffs. Koons will pay the Court-approved Class Counsel Payment within 7 business days of the Effective Date by wire transfer to the attorney trust account of Class Counsel David K. Lietz of Milberg Coleman Bryson Phillips Grossman, PLLC, so long as the necessary documentation, including completed and executed tax reporting forms, is provided by co-Class Counsel. Koons's obligations with respect to the Court-approved Class Counsel Payment shall be fully satisfied upon receipt of the funds by Class Counsel. Class Counsel will be responsible for any loss that may occur after receipt of the funds and for allocating the Court-approved Class Counsel Payment among Class Counsel or others. Koons will have no responsibility or liability in connection with the allocation of the Court-approved Class Counsel Payment, or for any tax obligations or payments associated with the payment. Class Counsel will bear all liability, and Koons will bear no liability (beyond the Court-approved Class Counsel Payment itself) in connection with any claim for payment made by any attorney or service provider who claims to have rendered services to, for, or on behalf of Plaintiffs, any Settlement Class Member, or Class Counsel in connection with the Lawsuit and this settlement.

Except for the Court-approved Class Counsel Payment, Class Counsel will be responsible for all fees, costs, and expenses incurred by Plaintiffs or Class Counsel in connection with the Lawsuit. No interest will accrue with respect to the Court-approved Class Counsel Payment.

(b) Service Award. Koons agrees not to object to Plaintiffs' request for a service award in an amount not to exceed \$2,500 for Plaintiffs Michelle Morelli, Bianca Wenck<sup>3</sup>, and Iris Perez for their time and effort on behalf of the Settlement Class. Class Counsel and each Plaintiff agree not to seek or accept an incentive award greater than \$2,500 each. Class Counsel will petition for approval of the service award at least 14 days before the opt-out or objection deadline, or any other deadline set by the Court. Koons will pay the amount approved by the Court that does not exceed \$2,500 per named Plaintiff. The Court-approved service award will not affect any benefit provided to Settlement Class Members, including

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<sup>2</sup> Class Counsel in this matter is David K. Lietz of Milberg Coleman Bryson Phillips Grossman, PLLC and Terence R. Coates of Markovits Stock DeMarco.

<sup>3</sup> Bianca Wenck is a class member who was poised to file a third lawsuit arising out of this Data Security Incident, but who decided to settle her claims rather than file suit. Should it become necessary to do so, Plaintiff Morelli will amend her action to add Plaintiff Wenck as an additional plaintiff.

Plaintiffs. Koons will pay the Court-approved incentive award within 7 business days of the Effective Date by check payable to “Milberg Coleman Bryson Phillips Grossman, PLLC” or by wire transfer to the attorney trust account of Class Counsel David K. Lietz, Milberg Coleman Bryson Phillips Grossman, PLLC, so long as the necessary documentation, including completed and executed tax reporting forms, is provided by Class Counsel. Koons’s obligation for payment of any Court-approved incentive award will be fully satisfied upon receipt of the check or wire transfer by Milberg Coleman Bryson Phillips Grossman, PLLC. Plaintiffs will bear all liability, and Koons will bear no liability, for payment of taxes due, if any, on the Court-approved service award. No interest will accrue with respect to the Court-approved service award if paid in accordance with the Settlement Agreement.

**6. New Practices:** Koons has implemented improvements, and planned for future implementations, to improve its cybersecurity since the cybersecurity incident (including [DEFENDANT TO FILL IN]) and will commit to additional information security enhancements in each of years 2022 and 2032. The enhancements may include, [DEFENDANT TO FILL IN]. The value of implemented cybersecurity improvements is approximately \$xxxx/annually.

**6. Settlement Administration:**

(a) The Parties will choose a third-party Claims Administrator (“Claims Administrator”) to provide notice of the settlement to the Settlement Class and otherwise administer the settlement in accord with this Agreement, subject to the approval of the Court. The Claims Administrator will administer the settlement, including (i) providing postcard notification of the proposed settlement to the same population as Koons’s pre-Lawsuit Data Security Incident notification, or email notice when valid email addresses are available; (ii) create and host a website, publicly accessible for at least six months after the Effective Date, dedicated to providing information related to this Lawsuit, including access to relevant publicly available court documents relating to this Lawsuit, the settlement and the Settlement Agreement, including the postcard/short, e-mail and long-form notices of the settlement (attached hereto as Exhibits B and C), and provide Class Members with the ability to submit claims and supporting documentation for compensatory relief; (iii) maintaining a toll-free telephone number and P.O. Box by which Class Members can seek additional information regarding the Settlement Agreement; (iv) assist Koons with posting notification of the proposed settlement on Koons’s website, which notification will be retained on the website for a period of at least 90 days after the Effective Date; (v) processing claims and supporting documentation submissions, and the provision of approved payments to Settlement Class Members; (vi) processing requests for exclusion from Class Members; and (vii) any other provision of the Settlement Agreement that relates to the settlement and claims administration. Upon reasonable notice, the Claims Administrator and Koons will make available for inspection by Class Counsel information reasonably necessary for Class Counsel to confirm that the Claims Administrator and Koons have complied with the settlement administration aspects of the Settlement Agreement.

(b) **Review and Assistance.** Class Counsel will be permitted to audit and review actual (or summary reports on) claims made, claims approved or denied, checks issued, calculation of benefits under the settlement, returned checks and uncashed checks to assist with (1) the

effectuation of the settlement, and (2) the Parties' mutual desire to reasonably ensure that the benefits are administered in a manner to attempt to reach each Settlement Class Member.

(c) **Cost of Settlement Administration.** Koons will be responsible for the cost of settlement administration, including the payment of the Claims Administrator and the Claims Referee, if needed. The cost of settlement administration will not affect any benefit provided to Settlement Class Members, including Plaintiffs. Except for the Court-approved Class Counsel Payment and Court-approved incentive award, Koons will not be responsible for, and will not pay, any additional costs or fees incurred by Plaintiffs or Class Counsel with respect to the negotiation, implementation, or administration of the settlement, or any costs incurred by any Settlement Class Member in connection with participating in, opting out of, or objecting to the settlement.

(d) **Dispute Resolution.** In the event of a dispute over the validity of a claim, or a dispute over the denial of a check reissuance request, Settlement Class Members shall be entitled to submit their claim to a Claims Referee. Settlement Class Members must first notify the Claims Administrator that they intend to pursue the dispute resolution process, and Koons will have the option, at its sole discretion, to negotiate with the Settlement Class Member to attempt to resolve the dispute, provided that Koons provides prior written notice to Class Counsel of its intent to do so. If Koons elects not to undertake a negotiation process or the process does not resolve the dispute within 30 days from the date the Settlement Class Member notifies the Claims Administrator of the dispute, the Settlement Class Member may then submit the claim to the Claims Referee. Koons will provide notice to Class Counsel of any claims submitted to the Claims Referee. The Claims Referee's findings will be final and binding on both parties. Koons will pay the Claims Referee's fees for the dispute resolution process. Settlement Class Members and Koons will each bear their own attorneys' fees and any other costs of the dispute resolution process, if any. Class Counsel will have the option, but not the obligation, to participate in the dispute resolution process.

(e) In the event of a dispute over the validity of a claim, or a dispute over the denial of a check reissuance request, so that the services of a Claims Referee are required, Class Counsel and Koons will promptly meet and confer to reach agreement on selection of a Claims Referee. If the Parties are unable to reach agreement within three business days, either side may ask the Court before whom this matter is filed to appoint a Claims Referee.

**7. No Other Financial Obligations on Koons:** Koons will not be obligated to pay any fees, expenses, or costs in connection with the Lawsuit or the Settlement Agreement other than the amounts and categories specifically provided for in the Settlement Agreement.

### **RELEASE**

**8. Release:** Upon the Effective Date, Plaintiffs named in this Settlement Agreement and Release and every Settlement Class Member (except those who timely opt-out), for themselves, their attorneys, spouses, beneficiaries, executors, representatives, heirs, successors, and assigns, in consideration of the relief set forth in the Settlement Agreement, fully and finally release Koons, its parents, subsidiaries, and affiliates, and all of their present and former officers, directors, employees, agents, attorneys, representatives, insurers, and legal representatives from any and all claims or causes of action, whether known or unknown, that concern, refer or relate to (a) the Data Security Incident announced by Koons on or about June 5, 2021; and (b) all other



claims arising out of the Data Security Incident announced by Koons on or about June 5, 2021 that were asserted, or that could have been asserted, in the Lawsuit. The claims released in this paragraph are referred to as the “Released Claims,” and the parties released are referred to as the “Released Parties.”

Plaintiffs and the Settlement Class Members waive any principles of law similar to and including Section 1542 of the California Civil Code, which provides:

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

Plaintiffs and Settlement Class Members agree that Section 1542 and all similar federal or state laws, rules, or legal principles of any other jurisdiction are knowingly and voluntarily waived in connection with the claims released in the Settlement Agreement, and agree that this is an essential term of the Settlement Agreement. Plaintiffs and the Settlement Class Members acknowledge that they may later discover claims presently unknown or suspected, or facts in addition to or different from those which they now believe to be true with respect to the matters released in the Settlement Agreement. Nevertheless, Plaintiffs and Settlement Class Members fully, finally, and forever settle and release the Released Claims against the Released Parties.

#### **9. No Release of Unrelated Claims**

Notwithstanding the foregoing, the Parties expressly agree and acknowledge that the Release negotiated herein shall not apply to any litigation or claim not related to or arising out of the Data Security Incident, including without limitation an express agreement not to release any medical negligence, medical malpractice, or other similar claims brought by Plaintiffs and Settlement Class Members, or any such litigation or claims pending against Defendant.

### **SETTLEMENT APPROVAL PROCESS**

**10. Preliminary Approval Order:** Plaintiffs will petition the Court for a preliminary order approving the Settlement Agreement (the “Preliminary Approval Order”) promptly after the Settlement Agreement has been fully executed. A copy of the proposed Preliminary Approval Order is attached as Exhibit D.

**11. Class Notice:** By no later than 30 days following entry of the Preliminary Approval Order (the “Notice Deadline”), the Claims Administrator will send the Notice of Proposed Settlement (attached as Exhibit B) to Class Members by U.S. mail or email, which notice will advise that Class Members have 90 days from the date the Notice of Proposed Settlement is sent to submit a claim for compensation. The Claims Administrator will send Class Members to whom Koons previously mailed notice of the Data Security Incident the above notice via U.S. mail or, if a valid email address is available, by email. Before mailing the notice, the Claims Administrator will update the Class Members address through a reliable service of the Claims Administrator’s

choosing that is consistent with its customary business practices. If a notice is returned to the Claims Administrator as undelivered and a forwarding address is provided, the Claims Administrator will re-mail one additional time to the new address.

**12. Right of Exclusion:** Class Members who submit a timely written request for exclusion from the Settlement Class will be excluded from the Settlement Class. Only Class Members who do not submit a timely written request for exclusion from the Settlement will remain Settlement Class Members entitled to receive benefits pursuant to this Settlement Agreement. A request for exclusion must be in writing and must state the name, address, and phone number of the person seeking exclusion. Each request must also contain a signed statement to the following effect: "I request to be excluded from the Settlement Class in the Koons lawsuit." The request must be mailed to the Claims Administrator at the address provided in the Class Notice no later than 60 days after notice commences to the Class (the "Notice Deadline"), or any other date set by the Court. A request for exclusion that does not include all of the foregoing information, or that is sent to an address other than the one designated in the Class Notice, or that is not mailed by the deadline will be invalid, and the person submitting the request will remain a Settlement Class Member. A Settlement Class Member who cashes a check from Koons or submits a valid claim form is not eligible for exclusion, and any request for exclusion will be invalid. Class Counsel will file a list of Class Members requesting exclusion with the Court. If more than three percent of the Settlement Class Members request exclusion, Koons will have the right, at its sole discretion, to terminate the Settlement Agreement and render the settlement void and of no effect.

**13. Right to Object:** Any Settlement Class Member who objects to the settlement may appear in person or through counsel, at his or her own expense, at the final approval hearing to present any relevant evidence or argument. No Settlement Class Member will be heard and no papers submitted by any Settlement Class Member will be considered unless, no later than 60 days after the Notice Deadline, or any other date set by the Court, the Settlement Class Member files with the Court and mails to Class Counsel and Koons's counsel written objections that include: (1) the title of the case; (2) the Settlement Class Member's name, address, and telephone number; (3) all legal and factual bases for any objection; and (4) copies of any documents that the Settlement Class Member wants the Court to consider. Should the Settlement Class Member wish to appear at the Final Approval Hearing, the Settlement Class Member must so state, and must identify any documents or witnesses the Settlement Class Member intends to call on his or her behalf. Any Settlement Class Member who fails to object in this manner will be deemed to have waived any objections.

**14. Final Judgment Order:** At the final approval hearing, the parties will ask the Court to enter final judgment (the "Final Judgment and Order"). A copy of the proposed Final Judgment and Order is attached as Exhibit E.

**15. Finality of Judgment:** The Final Judgment and Order will be deemed final, and the Effective Date will occur: (a) 35 days after the Final Judgment Order is entered if no notice of appeal or motion tolling the time for appeal is filed; or (b) if any such document is filed, 14 days after all appellate proceedings (including proceedings in the Court in the event of a remand) have been finally terminated and the Settlement Agreement has been finally approved in all material respects.

## MISCELLANEOUS PROVISIONS

16. **Integration and Drafting:** The Settlement Agreement was drafted and negotiated by counsel for the Parties at arm's length. It sets forth the entire agreement among the Parties.

17. **Amendment, Court Approval, Extensions:** The Settlement Agreement may not be amended without the written consent of all Parties and approval of the Court; provided, however, that the Parties may agree to reasonable extensions of time to carry out any provision of the Settlement Agreement, and provided further that any extension of more than 30 days must be approved by the Court.

18. **Construction:** The Settlement Agreement has been drafted by all Parties and shall not be construed for or against any of the Parties.

19. **Integration of Exhibits:** The exhibits to the Settlement Agreement are incorporated by reference and are an integral part of the Settlement Agreement.

20. **Counterparts:** The Settlement Agreement may be executed in counterparts, each of which will be considered an original. Executed signature pages are valid and enforceable whether they are originals or copies, and whether transmitted by facsimile, email, or any other means.

21. **No Evidence, No Admission:** In no event shall the Settlement Agreement, any of its provisions, or any negotiations, statements, or proceedings relating to it be offered or received as evidence in the Lawsuit or in any other proceeding, except in a proceeding to enforce the Settlement Agreement (including its release). Without limiting the foregoing, neither the Settlement Agreement nor any related negotiations will be offered or received as evidence, or as an admission or concession, by any person of any matter, including but not limited to any alleged wrongdoing on the part of Koons or the appropriateness of certification of any class.

22. **Tax Consequences:** Koons gives no opinion as to the tax consequences of the settlement to Class Members or anyone else. Each Settlement Class Member's or other person's tax obligations, if any, and the determination of those obligations, are the sole responsibility of the Settlement Class Member or other person. Koons will act as it determines is required by the Internal Revenue Code in reporting any settlement benefit provided pursuant to the Settlement Agreement.

23. **Cooperation in Effecting Settlement:** The Parties, their successors and assigns, and their attorneys will implement the Settlement Agreement in good faith, use good faith in resolving any disputes that may arise in the implementation of the Settlement Agreement, cooperate with one another in seeking Court approval of the Settlement Agreement, and use their best efforts to effect the prompt consummation of the Settlement Agreement.

24. **Publicity:** The Parties will cooperate with each other regarding public statements about the settlement and may issue a joint statement/press release if they mutually agree to do so. Notwithstanding the foregoing, the Parties may include on their websites or provide to Settlement Class Members, the notice, any signed orders from the Court regarding the settlement, and may

respond to inquiries from Settlement Class Members regarding the substance of the settlement, provided however that such responses shall in no way be disparaging to a Party. Koons may, at its sole discretion, make a public statement about its operating procedures, or changes to these procedures, relating to cybersecurity.

**25. Authority to Execute Agreement:** Each person executing the Settlement Agreement represents that he or she is authorized to execute it.

\_\_\_\_\_  
**Michelle Morelli**

\_\_\_\_\_  
**Bianca Wenck**

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Date:

\_\_\_\_\_  
**Iris Perez**

\_\_\_\_\_  
**JIM KOONS MANAGEMENT COMPANY.**

\_\_\_\_\_  
Signature

BY: \_\_\_\_\_  
Name and Title

Date: \_\_\_\_\_

Approved as to Form by Counsel:

**MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN PLLC**  
**Attorneys for Plaintiffs and the Settlement Class**

\_\_\_\_\_  
David K. Lietz

Date: \_\_\_\_\_

**LEWIS BRISBOIS BISGAARD & SMITH, LLP**  
Attorneys for Defendant

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Jon Kardassakis  
Andrew Gendron

Date: \_\_\_\_\_