

**AMENDED STIPULATION OF CLASS
ACTION SETTLEMENT AND RELEASE**

This Stipulation of Class Action Settlement and Release (“Stipulation of Settlement” or “Settlement”) is made and entered into by and between Plaintiff D’erica Washington (“Plaintiff”), individually and on behalf of all others similarly situated, and Defendant ESA Management, LLC (“Defendant”), subject to the terms and conditions hereof and the approval of the Court.

1. Definitions

1.1 “Action” or “Lawsuit” refers to the civil action initiated by Tracy Reid on March 27, 2018 in Alameda County Superior Court, Case No. RG18898705, currently styled as *D’erica Washington v. ESA Management, LLC*, Case No. RG18898705.

1.2 “Class” or “Class Members” means all persons who applied for employment with Defendant in the United States during the Class Period for whom Defendant procured a background check report for employment purposes. Defendant estimates that there are approximately 66,072 class members.

1.3 “Class Counsel” means Plaintiff’s counsel, Shaun Setareh and William M. Pao of the Setareh Law Group.

1.4 “Class Period” is the period beginning on March 27, 2013 through February 20, 2020.

1.5 “Class Data List” means information regarding the Class Members that Defendant will, in good faith, compile from its records and provide to the Settlement Administrator. It shall

be formatted in a Microsoft Excel spreadsheet and will be encrypted and shall include the following information for each Class Member: (1) full name; (2) last known home address; and (3) Social Security number.

1.6 “Court” means the United States District Court for the Northern District of California or the Superior Court of the State of California for the County of Alameda.

1.7 “Defendant’s Counsel” means the law firm Littler Mendelson P.C.

1.8 “Effective Date” of the Settlement means the date by which this Settlement is finally approved as provided herein and the Superior Court's entry of Judgment becomes final and is no longer appealable. For purposes of this Stipulation of Settlement, “becomes final” shall mean upon the later of: (i) the day after the last date by which a notice of appeal to the California Court of Appeal or United States Court of Appeals of the final judgment or final approval order may be timely filed, and none is filed (*i.e.*, 60 calendar days after service of notice of entry of judgment by the Superior Court or any party); (ii) if an appeal is filed, and the appeal is finally disposed of by ruling, dismissal, denial, or otherwise, the day after the last date for filing a request for further review of the Appellate Court's decision passes, and no further review is requested; or (iii) if an appeal is filed and there is a final disposition by ruling, dismissal, denial, or otherwise by the Appellate Court, and further review of the Appellate Court's decision is requested, the day after the review is finally dismissed or denied with prejudice and/or no further review of the judgment or order can be requested.

1.9 “Final Approval” means the final settlement approval order and judgment that will be entered by the Court.

1.10 "Final Approval Hearing" means a hearing set by the Court, to take place for purposes of determining the fairness, adequacy, and reasonableness of the Stipulation of Settlement terms and associated Settlement pursuant to class action procedures and requirements, determining the amount of the award of attorneys' fees and costs to Class Counsel, determining the amount of the Service Payment to the Class Representative, and entering Judgment.

1.11 "Gross Settlement Amount" means the maximum amount of Two Million Nine Hundred Fifty Thousand Dollars (\$2,950,000.00) that Defendant would pay as a result of this Stipulation of Settlement. The Gross Settlement Amount includes: (1) the amounts payable to Participating Class Members; (2) the Service Payment to the Class Representative; (3) attorneys' fees and costs; and (4) the Settlement Administration Costs. All amounts paid to anyone pursuant to this Stipulation of Settlement shall be paid out of a Qualified Settlement Fund.

1.12 "Judgment" means the judgment and order of final approval to be executed and filed by the Court pursuant to this Stipulation of Settlement following the Final Approval Hearing.

1.13 "Mediator" means Francis J. Ortman, Esq.

1.14 "Named Plaintiff," "Plaintiff," or "Class Representative" means D'erica Washington.

1.15 "Net Settlement Amount" means the Gross Settlement Amount, less the attorneys' fees and costs, the Settlement Administration Costs of the Settlement Administrator, and the Service Payment to the Class Representative. This amount will be distributed to the Class Members who do not timely request exclusion from the Settlement.

1.16 “Notice” or “Notice of Settlement” means the Court-approved form of Notice of Class Action Settlement, substantially in the same form as Exhibit A, attached hereto.

1.17 “Objection/Exclusion Deadline” means the date forty-five (45) calendar days following the date on which the Settlement Administrator first mails the Notice to the Class Members.

1.18 “Opt-Out Request” means a letter or written request submitted by First-Class Mail by a Class Member to the Settlement Administrator and postmarked by the Objection/Exclusion Deadline that includes the Class Member’s name and signature, the last four digits of their Social Security Number and the following statement or something similar to “I request to be excluded from the class action proceedings in the matter of *D’erica Washington v. ESA Management, LLC*, Case No. RG18898705 pending in the California Superior Court, County of Alameda.”

1.19 “Participating Class Member” means a Class Member who does not submit a valid and timely Opt-Out Request to be excluded from the Settlement.

1.20 “Parties” means Plaintiff, and the Class, and Defendant, collectively.

1.21 “Preliminary Approval Date” means the date on which the Court enters an order granting preliminary approval of the Settlement.

1.22 “Released Claims” means upon Final Approval by the Court of this Stipulation of Settlement, Plaintiff, and each member of the Settlement Class shall fully and finally compromise, release, resolve, relinquish, and discharge each and all Released Parties from any and all claims, causes of action, demands, and obligations, and all other forms of legal or equitable relief that were or could have been raised, whether such claims are known or unknown, arising from the factual

allegations made in the Action relating in any way to background checks, reference checks, investigations, and/or consumer reports of any kind, including, without limitation, claims based on alleged violations of the Fair Credit Reporting Act (15 U.S.C. §§ 1681 *et seq.*), the California Investigative Consumer Reporting Agencies Act (California Civil Code §§ 1786 *et seq.*), the California Consumer Credit Reporting Agencies Act (California Civil Code §§ 1785 *et seq.*), California Business and Professions Code section 17200 *et seq.* or any other source of obligation, based on federal, state or local law, that is now recognized by law or that may be created or recognized in the future by statute, regulation, judicial decision, or in any other manner, arising out of the facts that were alleged, or could have been alleged in regard to the subject of those allegations in the Action, through February 20, 2020. The parties agree that the judgment and release of claims provided herein shall have *res judicata* effect.

1.23 “Released Parties” means Defendant ESA Management, LLC, and all of its past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and its respective successors and predecessors in interest, subsidiaries, affiliates, members, parents, and attorneys.

1.24 “Service Payment” means the sum approved by the Court to be paid to Plaintiff D’erica Washington in recognition of her efforts in obtaining the benefits of the Settlement in exchange for executing a General Release provided herein. The Service Payment shall not exceed Ten Thousand Dollars (\$10,000.00).

1.25 “Settlement” means the terms and conditions set forth in this Stipulation of Class Action Settlement and Release.

1.26 “Settlement Administrator” means such entity that the Parties mutually agree shall serve as Settlement Administrator, subject to Court approval.

1.27 “Settlement Administration Costs” means the fees and expenses reasonably incurred by the Settlement Administrator as a result of the procedures and processes required by this Settlement.

1.28 “Settlement Class” shall mean all Class Members who do not timely send a signed valid Opt-Out Request that is received by the Settlement Administrator.

1.29 “Settlement Payment” means the amount due to each Participating Class Member under the terms of this Settlement.

2. **Recitals**

2.1 On March 27, 2018, Tracy Reid filed his original putative nationwide class action Complaint in the Superior Court of California, County of Alameda captioned *Tracy Reid, on behalf of himself, all others similar situated v. ESA Management, LLC, and Does 1 through 50, inclusive*, designated as Case No. RG18898705. Reid’s Complaint asserted various federal and state violations pertaining to pre-employment background checks and California wage and hours laws.

2.2 On April 30, 2018, Defendant removed the case to the United States District Court for the Northern District of California.

2.3 On June 27, 2018, Reid filed a First Amended Complaint adding a twelfth cause of action for civil penalties under California Labor Code section 2698 *et seq.* On September 24,

2018, Defendant stipulated to allow the First Amended Complaint, filed on June 27, 2018, to be the operative Complaint.

2.4 The First Amended Complaint, alleged 12 causes of actions as follows: (1) violation of 15 U.S.C. §§ 1681b(b)(2)(A) (Fair Credit Reporting Act); (2) violation of 15 U.S.C. §§ 1681d(a)(1) and 1681g(c) (Fair Credit Reporting Act); (3) violation of California Civil Code § 1786 *et seq.* (Investigative Consumer Reporting Agencies Act); (4) violation of California Civil Code § 1785 *et seq.* (Consumer Credit Reporting Agencies Act); (5) failure to provide meal periods (California Labor Code §§ 204, 223, 226.7, 512, and 1198); (6) failure to provide rest periods (California Labor Code §§ 204, 223, 226.7, and 1198); (7) failure to pay hourly wages (California Labor Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1, and 1198); (8) failure to indemnify (California Labor Code § 2802 [Reid only]); (9) failure to provide accurate written wage statements; (California Labor Code § 226(a)); (10) failure to timely pay all final wages (California Labor Code §§ 201, 202, 203); (11) unfair competition (Business and Professions Code §§ 17200 *et seq.*); and (12) civil penalties (California Labor Code section 2698 *et seq.*). The First Amended Complaint sought unpaid wages, actual damages, liquidated damages, civil penalties, statutory damages, punitive damages, restitution, interest, injunctive and equitable relief, and attorneys' fees and costs.

2.5 On October 16, 2018, Defendant filed a motion to sever the first, second, third and fourth causes of action of the First Amended Complaint for alleged violations of the Fair Credit Reporting Act, the California Investigative Consumer Reporting Agencies Act, and the California Consumer Credit Reporting Agencies Act, and transfer these causes of action to the United States District Court for the Western District of North Carolina, Charlotte Division.

2.6 On November 2, 2019, pursuant to stipulation, the Court stayed the Action, including further briefing and hearing on Defendant's motion to sever and transfer venue, pending mediation.

2.7 On March 14, 2019, the Parties attended mediation and participated in good faith, arms-length settlement discussions with mediator Francis J. Ortman, Esq. The Parties continued their settlement discussions following mediation and subsequently reached an agreement to resolve the pre-employment background check claims arising under the Fair Credit Reporting Act, the California Investigative Consumer Reporting Agencies Act, the California Consumer Credit Reporting Agencies Act, California Business and Professions Code section 17200, and like federal, state, and local laws. This Settlement was reached after exchanges of information both before and during the mediation, and is the result of extensive arm's-length negotiations.

2.8 On May 21, 2020, following a joint stipulation of the Parties, a Second Amended Complaint was filed adding D'erica Washington as an additional named plaintiff. The Second Amended Complaint alleges 12 causes of actions as follows: (1) violation of 15 U.S.C. §§ 1681b(b)(2)(A) (Fair Credit Reporting Act); (2) violation of 15 U.S.C. §§ 1681d(a)(1) and 1681g(c) (Fair Credit Reporting Act); (3) violation of California Civil Code § 1786 *et seq.* (Investigative Consumer Reporting Agencies Act); (4) violation of California Civil Code § 1785 *et seq.* (Consumer Credit Reporting Agencies Act); (5) failure to provide meal periods (California Labor Code §§ 204, 223, 226.7, 512, and 1198); (6) failure to provide rest periods (California Labor Code §§ 204, 223, 226.7, and 1198); (7) failure to pay hourly wages (California Labor Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1, and 1198); (8) failure to indemnify (California Labor Code § 2802 [Reid only]); (9) failure to provide accurate written wage statements; (California Labor Code § 226(a)); (10) failure to timely pay all final wages (California Labor Code §§ 201,

202, 203); (11) unfair competition (Business and Professions Code §§ 17200 *et seq.*); and (12) civil penalties (California Labor Code section 2698 *et seq.*). The Second Amended Complaint seeks statutory damages, punitive damages, restitution, injunctive and equitable relief, and attorneys' fees and costs. The Parties agreed that Defendant would not answer the Second Amended Complaint as it was filed solely to implement the Settlement in accordance with the Parties' agreement. If the Court requires an Answer to the Second Amended Complaint, the Parties agree and stipulate that all denials and defenses previously asserted by Defendant in its Answer to the First Amended Complaint are preserved and shall be continued to be recognized as stated denials and defenses to the Second Amended Complaint, until and unless that Answer is Amended.

2.9 On August 21, 2020, the Parties attended a case management conference before United States District Court Judge, Jeffrey S. White, where they discussed with the Court motions or stipulations to be filed with the court to sever and remand the Action to fully implement the Parties' agreement to resolve the Action and seek approval of the settlement in state court. On August 31, 2020, the Court *sua sponte* severed Reid's claims from Washington's claims and ordered that the claims shall proceed as separate and independent actions. On September 3, 2020, the Court entered an order remanding Plaintiff Washington's claims to state court.

2.10 As alleged in the Action, Plaintiff contends that Defendant acquired consumer, investigative consumer, and/or consumer credit reports to conduct background checks on Plaintiff and other prospective current and former employees for employment purposes without providing proper disclosures and obtaining proper authorization in violation of the Fair Credit Report Act and failed to provide prospective current and former employees with a Summary of Rights under the Fair Credit Reporting Act, along with similar state law claims under the California

Investigative Consumer Reporting Agencies Act, and the California Consumer Credit Reporting Agencies Act.

2.11 Plaintiff believes that the Action has merit and that class certification is appropriate.

2.12 Defendant denies any liability and wrongdoing of any kind associated with the claims alleged in the Action, and further denies that the Action is appropriate for class treatment for any purpose other than this Settlement. Defendant in no way admits any violation of law or any liability whatsoever to Plaintiff and/or the Class Members, individually or collectively, all such liability being expressly denied. Defendant contends that it has complied at all times with the Fair Credit Reporting Act, the California Investigative Consumer Reporting Agencies Act, and the California Consumer Credit Reporting Agencies Act, and the California Business and Professions Code. Defendant further contends that the amount of damages is small, even if Plaintiff and the Class can establish any wrongdoing.

2.13 The Parties have conducted an investigation of the facts and law applicable to Plaintiff's claims in the Action and defenses thereto, the damages claimed by Plaintiff, and exchanged data, documents, and information regarding the claims prior to the mediation and negotiating the Settlement. The Parties agree that the foregoing exchange of information and evaluation are sufficient to assess the merits of the respective Parties' position.

2.14 Based on the forgoing data and on its own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement for the consideration and on the terms set forth in this Stipulation of Settlement is fair, reasonable, and adequate and is in the best interest of the Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, the various defenses asserted by

Defendant, and the numerous potential appellate issues. Further, Plaintiff has carefully evaluated the terms of the Settlement, and, based upon that review, has determined that it is fair and reasonable.

2.15 Defendant and its counsel have similarly concluded that it is desirable that the Action be settled in a manner and upon such terms and conditions set forth herein in order to avoid further expense, inconvenience and distraction of further legal proceedings, as well as the risk pertaining to the outcome of the Action. Therefore, Defendant has determined that it is desirable and beneficial to settle these claims in this manner, and agrees the Settlement is fair, reasonable and adequate.

3. **Terms of Agreement**

3.1 Cooperation and Remand to State Court. The Parties agree to fully cooperate with each other to accomplish the terms of this Stipulation of Settlement, including but not limited to, execution of such documents and to take such other actions as may reasonably be necessary to implement the terms of this Stipulation of Settlement.

3.2 Conditional Certification of the Class. The Parties stipulate and agree to the conditional certification of the Class for purposes of this Settlement only. Should, for whatever reason, the Court not grant Final Approval, the Parties' stipulation to class certification as part of the Settlement shall become null and void and shall have no bearing on, and shall not be admissible in connection with, the issue of whether or not certification would be appropriate in a non-settlement context. Defendant expressly reserves its right and declares that it intends to oppose class certification vigorously should this Settlement not be granted Final Approval.

3.3 Gross Settlement Amount. Defendant shall pay Two Million Nine Hundred Fifty Thousand Dollars (\$2,950,000.00) as the Gross Settlement Amount as a result of this Stipulation of Settlement. The Gross Settlement Amount includes: the Settlement Administration Costs, reasonable attorneys' fees (not to exceed one-third (1/3) of the Gross Settlement Amount) plus costs as determined by the Court for Class Counsel, the Service Payment to the Class Representative (not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00)), with the remainder to pay the Settlement Payments to Participating Class Members pursuant to Section 3.10 below.

3.3.1 If the total number of Class Members exceeds 72,679, then Defendant will supplement the settlement fund as follows: For each Class Member over the 72,679 total, Defendant will supplement the settlement fund by \$45. For example, if the total number of Members is 72,689, then Defendant will supplement the settlement fund by \$ 450 (\$ 45 x 10 Class Members).

3.4 Service Payment to Class Representative. The Service Payment to the Class Representative will, subject to Court approval, be paid by Defendant in an amount not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00) from the Gross Settlement Amount for service and assistance to the Class. Defendant will not oppose the Class Representative's request for Service Payment not to exceed this amount.

3.5 Because the Service Payment represents payment to the Class Representative for service to the Class Members, payroll taxes will not be withheld from the Service Payment. The Settlement Administrator will report the Service Payment on a Form 1099, and any other required tax forms, and will provide them to the Class Representative and to the pertinent taxing authorities

as required by law. The Class Representative assumes full responsibility for paying all taxes, federal and state, if any, due as a result of the Service Payment and will indemnify and hold Defendant harmless from any liability incurred as a result of any failure by the Class Representative to pay any taxes held by any taxing authority to be owed by her.

3.6 Attorneys' Fees and Costs. Class Counsel shall apply to the Court for an award of reasonable attorneys' fees not to exceed one-third (1/3) of the Gross Settlement Amount plus reasonable costs from the Gross Settlement Amount, which Defendant will not oppose. Any amount of the requested attorneys' fees and costs not awarded by the Court will become part of the Net Settlement Amount.

3.7 Settlement Administration Costs. The Settlement Administrator shall be paid for the costs of administering of the Settlement from the Gross Settlement Amount and are estimated to be One Hundred Thirty Thousand Dollars (\$130,000), but in any event shall not exceed One Hundred Fifty Thousand Dollars (\$150,000.00). The Settlement Administrator shall be paid the Settlement Administration Costs no later than thirty (30) calendar days after Defendant provides funds to the Settlement Administrator for disbursement under this Agreement.

3.8 The actions of the Settlement Administrator shall be governed by the terms of this Stipulation of Settlement and any orders of the Court. The Parties agree that communications to and from the third-party claims administrator will include both Class Counsel and Defendant's Counsel.

3.9 In the event that either Defendant's Counsel or Class Counsel take the position that the Settlement Administrator is not acting in accordance with the terms of the Stipulation of Settlement, such party shall meet and confer first with opposing counsel and/or, if necessary with

the Settlement Administrator to attempt to resolve the issue. Should those efforts fail, counsel shall jointly request the Court's assistance in resolving the issue.

3.10 Calculation of Settlement Payments. In recognition that Defendant potentially has a statute of limitations defense against Class Members whose background check Defendant procured or caused to be procured before March 27, 2016, which is two years before the Action was filed, the Net Settlement Amount shall be distributed to Class Members as follows:

(a) Sixty-Eight percent (68%) of the Net Settlement Amount shall be divided evenly among Class Members on a pro rata basis whose background check Defendant procured or caused to be procured on or after March 27, 2016 through February 20, 2020;

(b) Thirty-two percent (32%) of the Net Settlement Amount shall be divided evenly among Class Members on a pro rata basis whose background check Defendant procured or caused to be procured from March 27, 2013 through March 26, 2016.

3.11 Only Participating Class Members shall be entitled to a Settlement Payment. Based on the various federal and state claims alleged in the Action pertaining to pre-employment background checks, the Parties understand and agree the payments to each member of the Settlement Class are not wages, not subject to withholdings, and will be reported on a 1099 form to be issued by the Settlement Administrator. Each member of the Settlement Class will be solely responsible for paying all taxes owed on this payment.

3.12 The Parties recognize that the Settlement Payment to be paid to Class Members reflect the settlement of a dispute over the disclosure of and acquisition of consumer reports to be used for employment purposes.

3.13 Releases

3.13.1 Release by All Members of the Settlement Class. Upon the Effective Date, Plaintiff and each member of the Settlement Class fully release and forever discharge the Released Parties from the Released Claims.

3.13.2 General Release by Plaintiff. Upon the Effective Date, Plaintiff for herself and Plaintiff's representatives, heirs, executors, administrators, successors and assigns, fully, finally, and forever releases and discharges the Released Parties from all claims, demands, actions, causes of action, suits, damages, losses, and expenses, of any and every nature whatsoever, known or unknown, as a result of actions or omissions occurring through the Effective Date. Specifically included in this waiver and release are, among others, claims for unlawful discrimination, harassment, or failure to accommodate; related to terms and conditions of employment; and for wrongful termination of employment under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the National Labor Relations Act, the California Fair Employment and Housing Act, any amendments to the foregoing, or any other federal, state or local statute, rule, ordinance, or regulation, as well as any claims in equity or under common law for tort, contract or wrongful discharge. Nothing in this Stipulation of Settlement is intended to be a waiver by Plaintiff of claims Plaintiff may have against the Released Parties (a) for unemployment or workers' compensation benefits, (b) for vested rights under ERISA-covered employee benefit plans as applicable on the date Plaintiff signs this Stipulation of Settlement, (c)

alleged in the Action for (i) failure to provide meal periods; failure to provide rest periods, (ii) failure to pay hourly wages, (iii) failure to indemnify, (iv) failure to provide accurate written wage statements, (v) failure to timely pay all final wages, (vi) for violation of Business and Professions Code §§ 17200 *et seq.* predicated on Plaintiff's fifth, sixth and seventh causes of action asserted in the Action, (vii), civil penalties under California Labor Code section 2698 *et seq.*, and (viii) claims that cannot be released by private agreement. In addition, nothing in this Agreement, including the release of claims, shall be construed to prevent the disclosure of factual information related to any acts of sexual assault, sexual harassment, workplace harassment or discrimination based on sex, failure to prevent an act of workplace harassment or discrimination based on sex, or act of retaliation against a person for reporting harassment or discrimination based on sex related to the Action or waives Plaintiff's right to testify in an administrative, legislative, or judicial proceeding concerning alleged criminal conduct or alleged sexual harassment on the part of Defendant, or on the part of the agents or employees of the Defendant, when Plaintiff has been required or requested to attend such a proceeding pursuant to a court order, subpoena, or written request from an administrative agency or the legislature, prevents Plaintiff from communicating with, filing a charge or complaint with, or from participating in an investigation or proceeding conducted by the Equal Employment Opportunity Commission, National Labor Relations Board, the Securities and Exchange Commission, or any other any federal, state or local agency charged with the enforcement of any laws, including providing documents or any other information, or limits Plaintiff from exercising rights under Section 7 of the NLRA to engage in protected, concerted activity with other employees, although by signing this Agreement Plaintiff is waiving rights to individual relief (including back pay, front pay, reinstatement or other legal or equitable relief) in any charge, complaint, or lawsuit or other proceeding brought by Plaintiff or on Plaintiff's

behalf by any third party, except for any right Plaintiff may have to receive a payment or an award from a government agency (and not Defendant) for information provided to the government agency or where otherwise prohibited.

3.14 Safe Harbor. Plaintiff agrees that Defendant's forms of disclosure and authorization attached hereto as Exhibit B is compliant with applicable employment laws, specifically including the Fair Credit Reporting Act, the California Investigative Consumer Reporting Agencies Act, and similar laws. Plaintiff agrees to entry of a Consent Order by the Court in a form substantially similar to the Joint Stipulation and Proposed Consent Order attached hereto as Exhibit C upon Final Approval of the Settlement.

3.15 No Tax Advice. Class Counsel and Defendant's Counsel do not intend this Stipulation of Settlement to constitute legal or tax advice regarding any federal, state or local tax issue. To the extent this Settlement or any of its attachments are interpreted to contain or constitute advice regarding any federal, state, or local tax issue, such advice is not intended or written to be used, and cannot be sued, by any person for the purpose of avoiding any tax liability or penalties. The tax issues for each Class Member are unique to him/her, and each Class Member is advised to obtain tax advice from his or her own tax advisor with respect to any payments resulting from this Settlement.

4. **Notice to Class**

4.1 Application for Preliminary Approval. At the earliest practicable time after execution of this Stipulation of Settlement and remand of Plaintiff's first, second, third, and fourth causes of action in the Second Amended Complaint for alleged violations of the Fair Credit Reporting Act, the California Investigative Consumer Reporting Agencies Act, and the California

Consumer Credit Reporting Agencies Act to California state court, Class Counsel shall submit to the Court a motion for preliminary approval, and supporting papers, which shall include this Stipulation of Settlement. Plaintiff shall be responsible for drafting and filing the motion for preliminary approval. Plaintiff will provide Defendant with a copy of the draft motion for preliminary approval at least five (5) business days before the filing of the motion(s). The Court's preliminary approval of this Stipulation of Settlement shall be embodied in a Preliminary Approval Order (in a form substantially similar to Exhibit D) certifying the Class for settlement purposes only, preliminarily approving the Settlement and providing for Notice of Class Action Settlement to be mailed to the Class in the general form attached hereto as Exhibit A, and which will also set the date for the Final Approval Hearing.

4.2 Notice

4.2.1 Within thirty (30) calendar days after the Court issues the Preliminary Approval Order, Defendant shall provide to the Settlement Administrator the Class Data List. The Class Data List shall be based on Defendant's business records and provided in an electronic format reasonably acceptable to the Settlement Administrator. The Settlement Administrator will maintain the Class Data List, and all data contained with the Class Data List as private and confidential, and shall not disclose the Class Data List to Class Counsel or Plaintiff or any third party, or use the Class Data List or any information contained therein for any purpose other than to administer this Settlement as provided herein. Upon receipt of the Class Data List, the Settlement Administrator shall run on Accurint (or substantially similar) skip-trace and check with the U.S. Postal Service National Change of Address Database and update any addresses with any new information found regarding the location of Class Members.

4.2.2 Class Members shall not be required to file claim forms.

4.2.3 The Settlement Administrator will mail via First-Class Mail the Notice of Settlement directly to the last known address of each Class Member within fifteen (15) calendar days of receiving the Class Data List from Defendant. The Settlement Administrator will also establish a settlement website which will include the Stipulation of Settlement and a summary of the settlement terms within fifteen (15) calendar days of receiving the Class Data List from Defendant. A long-form notice of settlement will also be made available on the settlement website, a copy of which is attached as Exhibit E.

4.2.4 Unless the Settlement Administrator receives the Notice of Settlement returned as undeliverable from the U.S. Postal Service, the Notice Packet shall be deemed received by the Class Member to whom it was sent.

4.2.5 If after the first mailing of the Notice and prior to the Final Approval Hearing, any Notice is returned to the Settlement Administrator by the U.S. Postal Service with a forwarding address for the recipient, the Settlement Administrator shall re-mail such notice to that forwarding address within three (3) calendar days.

4.2.6 In the event that after the first mailing of the Notice and prior to the Final Approval Hearing, any Notice is returned to the Settlement Administrator by the U.S. Postal Service without a forwarding address, the Settlement Administrator will make reasonable efforts to locate forwarding addresses, including performing a standard skip-trace using the Class Member's social security number, and address in an effort to ascertain the current address and/or telephone number of the Class Member. If a current address is ascertained, the Settlement Administrator shall re-mail the Notice within three (3) days.

4.2.7 Class Members, except for Plaintiff, will have forty-five (45) days from the initial date of mailing the Notice of Settlement within which to opt-out of the Settlement. Class Members who wish to exercise this option must timely submit an Opt-Out Request to the Settlement Administrator postmarked by the Objection/Exclusion Deadline. The Objection/Exclusion Deadline is forty-five (45) calendar days from the date on which the Settlement Administrator first mails the Notice. Any Class Member who properly requests exclusion using this procedure will not receive any payment from the Settlement and will not be bound by the Stipulation of Settlement or have any right to object, appeal or comment thereon. Class Members who do not submit a valid and timely executed Opt-Out Request shall be part of the Settlement Class and bound by all the terms of the Stipulation of Settlement and any judgment entered in the Action once the Settlement is approved by the Court. The Notice of Settlement shall advise Class Members of their ability to opt-out of the Settlement and of the consequence thereof. Neither the Parties nor any of their counsel will solicit any Class Member to submit an Opt-Out Request.

4.2.8 An Opt-Out Request must be signed and dated to be valid.

4.2.9 Upon receipt of any Opt-Out Request that is postmarked no later than the Objection/Exclusion Deadline, the Settlement Administrator shall review the request to verify the information contained therein and to confirm that the request complies with the requirements of the Stipulation of Settlement. The Settlement Administrator shall not review or consider any Opt-Out Request postmarked after the Objection/Exclusion Deadline. Under no circumstances shall the Settlement Administrator have the authority to extend the deadline for Class Members to submit an Opt-Out Request.

4.2.10 The Parties agree that Plaintiff may not file an objection to the Settlement. Class Members, except for Plaintiff, will have forty-five (45) days from the date of mailing the Notice of Settlement within which to submit an objection to the Settlement. Only Class Members who have not filed an Opt-Out Request may object to the Settlement. To object, a Class Member may submit by First-Class Mail a written objection to the Settlement Administrator postmarked by the Objection/Exclusion Deadline that includes the Class Member's name and signature, the last four digits of their Social Security Number, the reasons for the objection, whether the Class Member intends to appear at the Final Approval Hearing, and the name of the case: *D'erica Washington v. ESA Management, LLC*, Case No. RG18898705 pending in the California Superior Court, County of Alameda." Class Members may also object to the Settlement by attending the final fairness hearing, even if the Class Member has not filed a written objection. ~~Class Members who fail to make objections in the manner described above shall be deemed to have waived any objection to the Settlement, whether by appeal or otherwise.~~ The Settlement Administrator shall forward copies of any objections to Class Counsel and Defendant's Counsel within three (3) days of receipt. Class Counsel shall submit copies of any objections received to the Court in conjunction with the filing of the motion for Final Approval of the Settlement. The Parties and their counsel agree that they will not solicit, encourage, counsel, or advise any individual to object to the Settlement.

4.2.11 Beginning two weeks after the date the Notices of Settlement are mailed, the Settlement Administrator shall provide to Class Counsel and Defendant's Counsel a weekly status report which will be cumulative, reflecting the names and the number of Class Members who have filed Opt-Out Requests, as well as information about how many Notices have been mailed to forwarding addresses, returned as undeliverable, and/or re-mailed.

4.2.12 If five percent (5%) or more of the total number of Class Members submit timely and valid Opt-Out Requests, then Defendant shall have the option to cancel the Settlement in its sole discretion, and all actions taken in its furtherance will be null and void. To exercise this option, Defendant must send written notification to Class Counsel within fourteen (14) days of receiving a report from the Settlement Administrator informing Defendant that the total number of timely and valid Opt-Out Requests is five percent (5%) or more. If Defendant chooses to exercise this option to cancel the Settlement, the effect will be precisely the same as if Final Judgment did not occur, as discussed herein, and Defendant will retain the entirety of the Gross Settlement Amount, except for the Settlement Administration Costs incurred by the Settlement Administrator through that date.

4.2.13 At least ten (10) days prior to the deadline for filing the motion for final approval of the Settlement, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel a declaration of due diligence and proof of mailing with regard to the mailing of the Notice and the number of completed Opt-Out Requests.

4.3 Final Approval

4.3.1 Following preliminary approval, notice to the Class, and an opportunity for objection, Plaintiff will move the Court for entry of the Final Approval Order and Judgment in a form substantially similar to Exhibit F. The Final Approval Order and Judgment shall, among other things, (a) find that the Court has personal jurisdiction over all members of the Settlement Class and that the Court has subject matter jurisdiction to approve this Stipulation of Settlement, (b) certify the Class for Settlement purposes only, (b) find the Settlement fair, reasonable, adequate, and in the best interests of the Class Members, (c) approve Class Counsel's application for an

award of attorneys' fees and costs, (d) approve the Class Representative's application for Service Payment, (e) approve the payment of reasonable Settlement Administration Costs, and (f) permanently release and bar any further Released Claims by Class Members who do not opt-out of the Settlement. The Parties expressly agree that the Court will retain jurisdiction to enforce the terms of the Settlement and the Final Approval Order. The Parties and their counsel shall make all reasonable efforts to secure entry of the Judgment. The proposed Final Approval Order and Judgment shall be lodged with the Court no later than seven (7) days before the Final Approval Hearing. Plaintiff shall be responsible for drafting and filing the motion for Final Approval and for entry of the Judgment. Plaintiff will provide Defendant with a copy of the motion(s) at least five (5) business days before the filing of the motion(s).

4.3.2 Class Representative and Class Counsel agree that they shall draft and file the necessary papers for approval of the Service Payment and attorneys' fees and costs. Defendant will not oppose the amount of the Service Payment and attorneys' fees and costs sought, as long as they are consistent with the Stipulation of Settlement. If the Court (or any appellate court) awards less than the amount requested for attorneys' fees and/or costs, or less than the amount requested for the Service Payment for the Class Representative only the awarded amount shall be paid and shall constitute satisfaction of the obligations of Defendant under this Stipulation of Settlement. If Class Counsel files a timely appeal regarding the amount of Class Counsel fees and/or costs or Service Payment approved by the Court, the Settlement Administrator shall hold the difference between the amount requested and the amount awarded in escrow, in an interest-bearing account until such appeal has been fully resolved. Any unawarded amounts shall be added to the Net Settlement Amount for distribution to the Participating Class Members, pursuant to Section 4.4.

4.3.3 If Final Approval does not occur, or if this Stipulation of Settlement is terminated or canceled pursuant to its terms, the Parties to this Stipulation of Settlement shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Stipulation of Settlement. Notwithstanding any other provision of this Stipulation of Settlement, no order of the Court, or modification or reversal on appeal of any order of the Court, reducing the amount of any attorneys' fees or costs to be paid by Defendant to Class Counsel, or reducing the amount of the Service Payment paid to the Class Representative, shall constitute grounds for cancellation or termination of the Stipulation of Settlement, or grounds for limiting any other provision of the Judgment.

4.4 Funding and Distribution of Settlement Proceeds

4.4.1 Within fifteen (15) business days after the Effective Date, Defendant shall provide the Gross Settlement Amount to the Settlement Claims Administrator to fund the Settlement as set forth in this Stipulation of Settlement.

4.4.2 Within thirty (30) calendar days after the Effective Date, the Settlement Administrator shall issue Settlement Payments to Class Members in the form of a check, which shall become null and void if not cashed within one hundred eighty (180) days of issuance. The Settlement Administrator will mail all settlement checks to the last known address of each Participating Class Member. No settlement checks will be mailed to those Class Members whose Notice was returned as undeliverable with no valid address ascertained as provided in paragraph 4.2.6. Any Class Member who is not mailed an initial Settlement Payment pursuant to this paragraph shall nevertheless be bound by the Judgment and release of Claims. For all such Class Members, the value of their Settlement Payment shall be included in the Net Settlement Amount

to be allocated to Participating Class Members. The settlement check shall contain release language printed on the back of the check. In the event that a Settlement Payment is returned by the U.S. Postal Service with a forwarding address, the Settlement Administrator shall re-mail the check within three (3) days. In the event that a Settlement Payment is returned by the U.S. Postal Service as undeliverable, the Settlement Administrator shall perform a standard skip-trace and shall re-mail the check within three (3) days if a current address can be ascertained.

4.4.3 Any checks issued to the Class Members shall remain valid and negotiable for one hundred eighty (180) days from date of their issuance. If a Class Member does not cash his or her settlement check within 180 days, the uncashed funds will revert back to the Qualified Settlement Fund and will be paid as a *cy pres* award to the National Center for Youth Law, a 501c(3) non-profit organization. ~~shall be transmitted to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code section 1500 *et seq.*, so that the Class Members will have the opportunity to claim their payments after the expiration of the settlement checks.~~ During the 180-day check-cashing period, the Settlement Administrator shall provide bi-weekly reports to Class Counsel and Defendant's Counsel regarding the number of checks cashed and the total value of Settlement Payment remaining uncashed.

4.4.4 Within thirty (30) calendar days of the Effective Date, the Settlement Administrator shall pay the Court-approved Attorneys' Fees and Costs to Class Counsel's trust account, which shall distribute the Attorneys' Fees and Costs as appropriate to Class Counsel and in accordance with Section 3.6. Class Counsel shall provide to the Settlement Administrator, with a copy to Defendant, the pertinent taxpayer identification number and Form W-9 within fourteen (14) days after the Effective Date.

4.4.5 Within thirty (30) calendar days of the Effective Date, the Settlement Administrator shall send a check by mail for the Court-approved Service Payment to the Class Representative, care of Class Counsel.

4.4.6 Within two hundred and ten (210) days of issuance of the settlement checks, the Class Administrator shall provide to Class Counsel and Defendant's Counsel a report as to the amount of funds remaining in the Settlement Fund.

5. **Miscellaneous Provisions**

5.1 Voluntary Nature. The Parties acknowledge they have entered into this Stipulation of Settlement voluntarily, based on their own judgment and without coercions, duress, or undue influence of any Party, and not in reliance on any promises, representations, or statements made by the other parties other than those contained in this Stipulation of Settlement. Plaintiff has read and fully understood the terms of this Stipulation of Settlement and is advised to consult with an attorney prior to executing this Stipulation of Settlement. Plaintiff agrees that the Defendant has provided all information needed to make an informed decision to enter into this Stipulation of Settlement, and Plaintiff has been given the opportunity to ask any questions which Plaintiff may have regarding this Stipulation of Settlement. Plaintiff has been represented by an attorney and has consulted with that attorney prior to signing this Stipulation of Settlement.

5.2 Informed Consent. Prior to execution of the Stipulation of Settlement, each Party has read this entire Stipulation of Settlement and has been given an opportunity to consult with independent counsel of their choosing and to have such independent counsel advise as to the meaning of the Stipulation of Settlement and its legal effect.

5.3 Mutual Full Cooperation. The Parties and their counsel agree to cooperate fully with each other to accomplish and implement the terms of this Stipulation of Settlement. Such cooperation shall include, but not be limited to, execution of such other documents and the taking of such other action as may reasonably be necessary to fulfill the terms of this Stipulation of Settlement. The Parties to this Stipulation of Settlement shall exercise reasonable efforts, including all efforts contemplated by this Stipulation of Settlement and any other efforts that may become necessary by Court order, or otherwise, to effectuate this Stipulation of Settlement and the terms set forth herein.

5.4 No Admission. Nothing contained herein, nor the consummation of this Stipulation of Settlement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or and of the other Released Parties. Each of the Parties hereto has entered into this Stipulation of Settlement with the intention of avoiding further disputes and litigation with the attendant risk, inconvenience and expenses. This Stipulation of Settlement is a settlement document and shall pursuant to the California Evidence Code section 1152 and/or Federal Rule of Evidence 408 and/or any other similar law, be inadmissible as evidence in any proceeding, except an action or proceeding to approve the settlement and/or interpret or enforce this Stipulation of Settlement.

5.5 Construction. The Parties hereto agree that the terms and conditions of this Stipulation of Settlement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that this Stipulation of Settlement shall not be construed in favor of or against any party by reason of the extent to which any party or its counsel participated in the drafting of this Stipulation of Settlement.

5.6 No Comments to Media. The Parties and their counsel agree that no comments of any kind regarding the Stipulation of Settlement, the Settlement-related documents, or the Settlement negotiations, may be made at any time to the press/media, unless the Parties agree otherwise in writing. Notwithstanding the foregoing, Defendant shall have the right to disclose the Settlement and its terms for accounting or public filing purposes, or to otherwise comply with any public reporting duties and that Class Counsel may post Court documents only on Class Counsel's website. The Parties' counsel shall also retain the right to discuss the Settlement with the Parties.

5.7 Plaintiff, by signing this Stipulation of Settlement, is bound by the terms herein and further agrees not to request to be excluded from the Settlement and not to object to any terms of this Stipulation of Settlement. Any such request for exclusion or objection shall therefore be void and of no force or effect. Defendant and Plaintiff waive their rights to file an appeal, writ, or any challenge whatsoever to the terms of this Stipulation of Settlement, except Plaintiff and Class Counsel have the right to appeal any order denying, in whole or in part, their application for the award of attorneys' fees and costs and/or the Service Payment.

5.8 Amendment or Modification. This Stipulation of Settlement may not be changed, altered, or modified, except in writing signed by counsel for the Parties and approved by the Court. This Stipulation of Settlement may not be discharged except by performance in accordance with its terms or by a writing used by the Parties hereto.

5.9 Binding on Successors. This Stipulation of Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

5.10 Parties' Authority. The signatories hereto represent that they are fully authorized to enter into this Stipulation of Settlement and bind the Parties hereto to the terms and conditions hereof.

5.11 No Prior Assignments. The Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights released and discharged by this Stipulation of Settlement.

5.12 Counterparts. The Parties may execute this Stipulation of Settlement in counterparts, and execution of counterparts and photocopies thereof shall have the same force and effect as if all Parties had signed the same instrument.

5.13 Jurisdiction of the Court. The Court shall retain jurisdiction solely with respect to the implementation and enforcement of the terms of the Stipulation of Settlement and all orders and judgements entered in connection therewith, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the Stipulation of Settlement and all orders and judgments entered in connection therewith.

5.14 Governing Law. This Stipulation of Settlement shall be interpreted, construed, enforced and administered in accordance with the laws of the state of California.

5.15 Entire Agreement. This Stipulation of Settlement including Exhibits attached, contains the entire agreement between the Parties relating to the Settlement. All prior or contemporaneous agreements, understandings, representations, and statements, whether oral or

written and whether by a party or such party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

IN WITNESS THEREOF, this Stipulation of Settlement is executed by the Parties and their duly authorized attorneys, as of the day and year herein set forth.

DATED: _____ By: _____
D'ERICA WASHINGTON

DATED: _____ ESA MANAGEMENT, LLC
By: _____
Title: _____

APPROVED AS TO FORM AND CONTENT:

DATED: _____ **SETAREH LAW GROUP**
By: _____
Shaun Setareh
William Pao
Attorneys for Plaintiff D'ERICA
WASHINGTON Proposed Counsel for the
Class

DATED: _____ **LITTLER MENDELSON, P.C.**
By: _____
Lindbergh Porter
Kurt R. Bockes
Attorneys for Defendant
ESA MANAGEMENT, LLC