

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release, and all its exhibits (collectively referred to herein as the “Settlement Agreement”) is entered into by and between plaintiffs Alan Brinker, Austin Rugg, and Ana Sanders (collectively, “Plaintiffs”), for themselves and the Settlement Class Members (as defined below), and defendants Normandin’s d/b/a/ Normandin Chrysler Jeep Dodge Ram (“Normandin”) and OneCommand, Inc. (“One Command”) (collectively, “Defendants”). Plaintiffs and Defendants are referred to collectively in this Settlement Agreement as the “Parties.”

I. RECITALS

This Settlement Agreement is made with reference to and in contemplation of the following facts and circumstances:

A. On July 1, 2014, Plaintiff Alan Brinker filed a Class Action Complaint seeking monetary damages and injunctive relief against Normandin on behalf of a class of consumers who received prerecorded calls on their cell phones in alleged violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (the “TCPA”).

B. On March 10, 2015, Mr. Brinker filed a First Amended Complaint adding OneCommand as a defendant. On August 23, 2016, a Second Amended Complaint was filed, adding Plaintiffs Austin Rugg and Ana Sanders, and asserting additional claims and another class.

C. Defendants Answered the Complaint, the First Amended Complaint and the Second Amended Complaint, and have denied liability for Plaintiffs’ claims.

D. By way of this Settlement Agreement, the parties are stipulating to the filing and service of a Third Amended Complaint.

E. Defendants vigorously deny all claims asserted in the Third Amended Complaint, and deny all allegations of wrongdoing and liability.

F. The Parties desire to settle the Action on the terms set forth herein solely for the purpose of avoiding the burden, expense, risk and uncertainty of continuing these proceedings.

G. The Parties and their counsel have engaged in extensive and arm's-length negotiations concerning settlement of the claims asserted in the Action, including participating in private mediation with experienced mediator Judge Edward A. Infante (Ret.) of JAMS.

H. As a result of the abovementioned efforts of the Parties and their counsel, the Parties now enter into this Settlement Agreement. The Parties agree that the execution of this Settlement Agreement constitutes the settlement and compromise of disputed claims set forth in the Third Amended Complaint, attached as Exhibit A, which the Parties stipulate shall be filed in conjunction with a motion for preliminary approval of the Settlement Agreement. This Settlement Agreement is inadmissible as evidence against any Party except to enforce the terms of the Settlement Agreement and is not an admission of wrongdoing or liability on the part of any Party to this Settlement Agreement.

I. It is the Parties' desire and intention to effect a full, complete and final settlement and resolution of disputes and claims as set forth in the Third Amended Complaint.

NOW, THEREFORE, in light of the foregoing, for good and valuable consideration, the amount of which is hereby mutually acknowledged, the Parties agree to the Settlement Agreement, subject to approval by the Court, as follows:

II. DEFINITIONS

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

1. "Action" means the litigation captioned *Brinker, et al. v. Normandin's, et al.*, No. 14-cv-03007-EJD in the United States District Court for the Northern District of

California.

2. “CAFA Notice” refers to the notice requirements imposed by 28 U.S.C. § 1715(b).

3. “Certificate” means a certificate entitling the Settlement Class Member or person tendering such certificate to select goods, products, and/or services redeemable at Normandin, located at 900 Capitol Expressway Auto Mall, San Jose, California, 95136. Each Settlement Class Member who has not made a claim for Cash shall be entitled to make a claim for a Certificate with a value of \$90.00, which shall be used exclusively for the one-time purchase of goods or services at Normandin, as described in Section III(G)(1), below. All Certificates issued pursuant to this Settlement Agreement shall state that they do not expire.

4. “Cash” means \$40.00, the amount of cash for which each Settlement Class Member who has not made a claim for a Certificate shall be entitled to make a claim, as described in Section III(G)(2), below.

5. “Claims Administrator” means Kurtzman Carson Consultants (KCC), subject to Court approval.

6. “Claim Form” means the claim form to be submitted by Settlement Class Members in order to receive the Settlement Award. “Claim Form” refers to both the electronic form available on the Settlement Website and the .pdf form in substantially the form attached as Exhibit B that may be downloaded from the Settlement Website, printed, completed, and submitted via U.S. Mail.

7. “Class Counsel” means Terrell Marshall Law Group, PLLC, as approved by the Court.

8. “Class Notice” means all types of notice that will be provided to the

Settlement Class, pursuant to Section III.F of this Settlement Agreement, including Mail Notice, Website Notice and Publication Notice, as well as any additional notice that might be ordered by the Court.

9. “Class Representatives” means Alan Brinker, Austin Rugg, and Ana Sanders, subject to Court approval.

10. “Court” means the United States District Court for the Northern District of California.

11. “DMS software” means the customer tracking system used by Normandin.

12. “Effective Date” means the fifth business day after the last of the following dates:

a. All Parties and Class Counsel have executed this Settlement Agreement;

b. The Court has entered, without material change, the Final Approval Order; and

c. The final disposition of any related appeals, and in the case of no appeal or review being filed, expiration of the applicable appellate period.

13. “Fee Award” means the amount of attorneys’ fees and reimbursement of expenses awarded by the Court to Class Counsel.

14. “Final Approval Hearing” means the hearing at which the Court considers the Parties’ request to enter the Final Approval Order granting final approval of the Settlement, *infra*, Class Counsel’s request for an award of fees, costs and expenses, and Plaintiffs’ request for a service award.

15. “Final Approval Order” or “Final Approval” means the order and judgment

that the Court enters upon finally approving the Settlement in connection with the Final Approval Hearing, the proposed form of which is attached hereto as Exhibit E. Among other things, the Final Approval Order shall dismiss all claims in the Third Amended Complaint with prejudice.

16. “Mail Notice” means the postcard substantially in the form attached hereto as Exhibit B.

17. “Notice” or “Notice Program” means the methods provided for in this Settlement Agreement for giving notice of the Settlement and includes Mail Notice, Website Notice, and possible Publication Notice. A complete description of the contemplated Notice Program is provided in Section III.F of this Settlement Agreement.

18. “Notice and Claims Administration Expenses” means the cost to implement the Notice Program and process claims to redeem certificates.

19. “Notice Deadline” means the date by which the Notice Program set forth in Section III.F is complete, which shall be a date no later than thirty (30) days after Preliminary Approval.

20. “Objection/Exclusion Deadline” means the date by which a written objection to the Settlement or a request for exclusion submitted by a Settlement Class Member must be postmarked and/or filed with the Court, which shall be designated as a date no later than sixty (60) days after the Notice Deadline or such other date as ordered by the Court.

21. “Preliminary Approval” means the date that the Court enters, without material change, an order preliminarily approving the Settlement in the form jointly agreed upon by the Parties.

22. “Preliminary Approval Order” means the order to be submitted to the Court in connection with the preliminary approval hearing on the Settlement, the proposed form of which

is attached hereto as Exhibit D.

23. “Released Claims” means all claims to be released as set forth in Section III.O of this Settlement Agreement. The “Releases” means the releases contained in Section III.O of this Settlement Agreement.

24. “Released Parties” means those persons and entities released as set forth in Section III.O of this Settlement Agreement.

25. “Releasing Parties” means Plaintiffs and each and every Settlement Class Member, on behalf of themselves and their respective heirs, executors, administrators, representatives, agents, attorneys, partners, successors and predecessors-in-interest, as set forth in Section III.O of this Settlement Agreement.

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

27. “Settlement Benefits” means the Certificate or Cash a Settlement Class Member may receive pursuant to this Settlement Agreement.

28. “Settlement Class” means all persons who owned one or more of the 8,313 cellular telephone numbers to which calls were placed by OneCommand on Normandin’s behalf on or after October 16, 2013, through the alleged use of any automatic telephone dialing system or with an artificial or prerecorded voice, which calls allegedly were not made for emergency purposes or with the recipient’s prior express consent. Excluded from the Settlement Class are the Judge to whom the Action is assigned and any member of the Judge’s staff and immediate family.

29. “Settlement Class Member” means any person in the Settlement Class who does not opt out of the Settlement.

30. “Settlement Website” means the website that will be established and maintained by the Claims Administrator as set forth in this Settlement Agreement.

31. “Normandin’s Counsel” means Robards & Stearns.

32. “OneCommand’s Counsel” means Keating Muething & Klekamp PLL and Gordon & Rees LLP.

33. “Website Notice” means the detailed notice of the Settlement that will be available on the Settlement Website pursuant to Section III.F.2, subject to approval by the Court, substantially in the form attached hereto as Exhibit C.

B. Capitalized terms used in this Settlement Agreement but not defined above shall have the meaning otherwise ascribed to them in this Settlement Agreement, including the attached exhibits.

III. TERMS OF SETTLEMENT

A. Conditional Certification of the Settlement Class. Solely for the purposes of settlement, providing Class Notice and implementing this Settlement Agreement, the Parties agree to conditional certification of the Settlement Class. Preliminary certification of the Settlement Class shall not be deemed a concession that certification of a litigation class is appropriate, nor are Defendants precluded from challenging class certification in further proceedings in the Action or in any other action if the Settlement is not finalized or finally approved. If the Settlement is not finally approved by the Court for any reason whatsoever, the conditional certification of the Settlement Class will be void, and no doctrine of waiver, estoppel or preclusion may be asserted in any litigated certification proceedings in the Action or in any other action. No agreements made by or entered into by Defendants in connection with the Settlement may be used by Plaintiffs, any person in the proposed Settlement Class or any other person to establish any of the elements of

class certification in any litigated certification proceedings, whether in the Action or any other judicial proceeding.

B. Third Amended Complaint. In conjunction with the filing of Plaintiffs' motion for preliminary approval, the Parties shall stipulate to the filing of the Third Amended Complaint, attached as Exhibit A, which sets forth the class and claims subject to this Settlement Agreement, and to the dismissal without prejudice of claims in the Second Amended Complaint related to calls made to cell phones prior to October 16, 2013, and calls made to individuals on the National Do-Not-Call Registry. The parties further stipulate that no responsive pleading to the Third Amended Complaint shall be required. In the event the Court enters an Order denying preliminary or final approval of the Settlement, the parties shall stipulate to the withdrawal of the Third Amended Complaint, in which case the operative pleading will revert back to the Second Amended Complaint, to which the Defendants have filed Answers.

C. Preliminary Approval: On or before October 5, 2017, Plaintiffs will file a motion for preliminary settlement approval. Plaintiffs will ask the Court to enter the Preliminary Approval Order, which shall specifically include provisions that: (a) preliminarily approve the Settlement reflected herein as fair, adequate and reasonable to the Settlement Class, and within the reasonable range of possible final approval; (b) conditionally certify the Settlement Class for settlement purposes only; (c) appoint Plaintiffs as Class Representatives for settlement purposes only, and appoint Class Counsel as counsel for the Settlement Class for settlement purposes only; (d) approve the forms of Class Notice and find that the Notice Program constitutes the best notice practicable under the circumstances, provides due and sufficient notice to the Settlement Class, and fully satisfies the requirements of due process and Federal Rule of Civil Procedure 23; (e) direct that notice be provided to the Settlement Class, in accordance with this Settlement

Agreement, within thirty (30) days following entry of the Preliminary Approval Order; (f) establish a procedure for Settlement Class Members to object to the Settlement or exclude themselves from the Settlement Class, and set a date sixty (60) days after the Notice Deadline, after which no one shall be allowed to object to the Settlement or exclude himself or herself from the Settlement Class or seek to intervene; (g) pending final determination of whether the Settlement should be approved, bar all Settlement Class Members, directly, on a representative basis or in any other capacity, from commencing or prosecuting against any of the Released Parties any action, arbitration, or proceeding in any court, arbitration forum or tribunal asserting any of the Released Claims; (h) pending final determination of whether the Settlement should be approved, stay all proceedings in the Action except those related to effectuation of the Settlement; and (i) schedule a hearing on Final Approval of the Settlement, which shall be scheduled no earlier than thirty (30) days after the Objection/Exclusion Deadline.

D. Settlement Class List. Defendants and/or the Claims Administrator will compile and produce the “Settlement Class List” for use by the Claims Administrator, which shall be comprised of the names and addresses associated with the 8,313 unique cell phone numbers of Settlement Class Members.

E. Claims Administrator. The Claims Administrator shall administer the Settlement. If for any reason the Claims Administrator fails or refuses to do so, Plaintiffs and Defendants will mutually select a substitute party to administer the Settlement. If Plaintiffs and Defendants are unable to so agree, then they shall request that the Court appoint a party to serve as Claims Administrator.

F. Settlement Class Notice. The Claims Administrator shall provide Class Notice in the forms approved by the Court, as detailed below, by the Notice Deadline.

1. Mail Notice. The Claims Administrator will provide individual notice via direct mail to the most recent mailing address as reflected in Defendants' computerized records. Reverse-lookups shall be performed for all records without addresses, and a skip trace shall be performed for all returned direct mail; all costs of reverse-lookups and skip tracing will be considered Notice and Claims Administration Expenses and paid by Defendants. The Mail Notice shall direct recipients to the Settlement Website on which the Website Notice will be posted.

2. Website Notice. The Claims Administrator will establish and maintain the Settlement Website within seven days after Preliminary Approval. The Claims Administrator will post the Mail Notice, the Third Amended Class Action Complaint, a copy of this Settlement Agreement, the Preliminary Approval Order, the Website Notice, Class Counsel's Motion for Attorneys' Fees, and any other materials the Parties agree to include. The Settlement Website shall also provide a method for Settlement Class Members to submit online claims for a Certificate or Cash. All documents other than the Motion for Attorneys' Fees shall be available on the Settlement Website no later than the Notice Deadline and remain at least until Final Approval. The Motion for Attorneys' Fees shall be available on the Settlement Website within twenty-four (24) hours of its filing. The Claims Administrator shall secure a URL for the Settlement Website selected by Class Counsel and approved by Defendants. All costs associated with the Website will be considered Notice and Claims Administration Expenses and paid by Defendants.

3. CAFA Notice. Defendants shall be responsible for timely compliance with all CAFA notice requirements.

4. Publication Notice. If the Claims Administrator deems it necessary to ensure that the Settlement Class receives adequate notice, the Claims Administrator may supplement the Mail Notice with a targeted internet banner ad campaign commencing no later than

the posting of the Mail Notice. Such campaign will be directed to the Settlement Class in a form and content recommended by the Claims Administrator and mutually acceptable to Class Counsel and Defendants. All costs associated with Publication Notice will be considered Notice and Claims Administration Expenses and paid by Defendants.

G. Settlement Consideration. Settlement Class Members may submit one claim for either a Certificate or Cash, but not both, as follows:

1. Certificate. Settlement Class Members may submit a timely claim for a Certificate according and subject to the following conditions:

a. In order to receive the Certificate, the Settlement Class Member must submit a claim by mail or online within 60 days of the postmark date of the Mail Notice.

b. The Claims Administrator will mail the Certificates no later than ten days after the Effective Date.

c. The Certificates may be redeemed for goods, products and/or services during a single visit at Normandin;

d. A person redeeming a Certificate whose total cost incurred for goods, products and/or services received is greater than \$90 must pay the difference between \$90 and the total cost incurred at the time the goods, products and/or services are received;

e. The Certificate shall include both a toll-free telephone number and a website address providing the location of Normandin;

f. The Certificate shall state that it may be redeemed for goods, products and/or services in a single transaction at Normandin;

g. The Certificate shall state that it does not expire;

h. The Certificate may be redeemed as of the Effective Date; and

i. The Certificate may be combined with any other certificate(s).

2. Cash. In order to receive Cash, the Settlement Class Member must submit a timely claim for Cash by mail or online within 60 days of the postmark date of the Mail Notice. Any claim postmarked or submitted more than 60 days after such postmark date shall be deemed untimely and an invalid claim.

3. The claims process shall require only that the Settlement Class Member provide his or her name, a Claim Identification Number assigned to each Mail Notice, if available, a cellular telephone number, and a selection of a Certificate or Cash. If the claimant's name and/or cellular telephone number matches the Settlement Class List, that claim will be approved, subject to the limitation that only one claim will be paid to each Settlement Class Member and the qualification that each claim must be timely submitted in order to be approved.

3. The Claims Administrator shall send via U.S. mail a check to Settlement Class Members whose claims for Cash have been approved no later than ten days after the Effective Date.

H. Agreed Injunctive Relief. As a material term of this Settlement Agreement, Defendants agree to provide the following injunctive relief to Plaintiffs and Settlement Class Members:

1. Defendant OneCommand

a. OneCommand will continue its existing practice of using the Interactive Marketing Solutions database and the Neustar database to analyze phone numbers provided to OneCommand by its customers so as to identify those numbers that are cellular telephone numbers and those numbers that are land lines. OneCommand will maintain this information consistent with its document retention policies.

b. Except as otherwise authorized by law, OneCommand will not use an ATDS or use an artificial or prerecorded voice to call any number that it has identified as a cellular telephone number for the purpose of delivering a telemarketing message unless OneCommand's customer(s) provides written certification that they have obtained prior express written consent from the parties to be called to receive such calls, in a form that complies with the provisions of 47 C.F.R. § 64.1200(f)(8). OneCommand shall ensure that its internal policies are current and require compliance with such provisions.

c. OneCommand will continue to train and instruct its new and current employees whose duties or responsibilities include participation in making telephone calls on behalf of customers regarding the requirements of the TCPA, the regulations implementing the TCPA and the company's policy of compliance with such requirements and regulations. Such training will take place within one month of hiring, and OneCommand shall provide annual training regarding the requirements of the TCPA and the regulations implementing the TCPA to all employees whose duties or responsibilities include participation in making telephone calls on behalf of customers.

2. Defendant Normandin

a. Normandin has discontinued the use of third party vendors to deliver telemarketing messages to customers or potential customers. Normandin does not have an in-house capability, policy or procedure for delivering telemarketing message to its customers or potential customers, including the use of an ATDS to call telephone numbers for purposes of delivering an artificial prerecorded voice message.

b. As part of maintaining its records through the DMS software, Normandin shall refrain from robocalling or leaving prerecorded messages on cell phones unless

consumers have signed a clear and conspicuous disclosure informing the person signing that: (A) By executing the disclosure, the customer authorizes Normandin and its agents to deliver or cause to be delivered to the customer telemarketing calls using an automatic telephone dialing system or an artificial or prerecorded voice; and (B) The person is not required to sign the disclosure (directly or indirectly), or agree to enter into any agreement to allow telemarketing calls using an automatic telephone dialing system or an artificial or prerecorded voice as a condition of purchasing any property, goods, or services pursuant to 47 C.F.R. § 64.1200(f)(8), unless and until the law changes.

c. As part of maintaining its records through the DMS software, Normandin shall identify those numbers that are cellular telephone numbers and those numbers that are land lines. Normandin will maintain this information consistent with its document retention policies.

d. Normandin will continue to train and instruct its new and current employees concerning the requirements of the TCPA, the regulations implementing the TCPA and the need to comply with such requirements and regulations.

3. Should any prohibition of this Section III(H) conflict with or be inconsistent with any existing or subsequently adopted statute, regulation or law, such statute, regulation or law shall control. In that event, this Settlement Agreement, and the Final Approval Order and Judgment confirming this Settlement Agreement, shall be deemed amended to conform to such statute or regulation.

I. Service Award. Plaintiffs will ask the Court to approve a service award to Plaintiff Alan Brinker of \$10,000, and to approve service awards to Plaintiffs Austin Rugg and Ana Sanders that do not exceed \$1,000 each. Defendants do not oppose these requests and will pay all service

awards, subject to court approval. Assuming the Court's approval, any service award shall be paid at the time the attorneys' fees and costs payments to Class Counsel are due as set forth in Section III(J), below. Court approval of the service award, or its amount, will not be a condition of the Settlement. In addition, no interest will accrue on such amount at any time. Defendants will pay any fee and cost award separately from the benefits to the Class.

J. Attorneys' Fees and Costs. Plaintiffs shall move the Court for an award of \$150,000 for attorneys' fees and costs within thirty days after the Notice Deadline. Defendants do not oppose these requests, subject to court approval. Class Counsel may receive payment of the fees and costs awarded by the Court within ten business days after the Effective Date. Court approval of attorneys' fees and costs, or their amount, will not be a condition of the Settlement. In addition, no interest will accrue on such amounts at any time. Defendants will pay any fee and cost award separately from the benefits to the Class.

K. Opt-Out Right.

1. Opt-Out Requirements. Individuals who are part of the Settlement Class may opt out of the Settlement by sending a written request to the Claims Administrator at the address designated in the Class Notice by the Objection/Exclusion Deadline. Exclusion requests must be signed by the Settlement Class member and include the following statement: "I request to be excluded from the settlement in the *Brinker v. Normandin* action." Members of the Settlement Class who do not timely and validly request exclusion shall be bound to orders pertaining to the Settlement, even if they have previously or subsequently initiated individual litigation or other proceedings against the Released Parties relating to the Released Claims

2. Retention of Exclusions. The Claims Administrator will retain a copy of all requests for exclusion and will, upon written request, provide copies of any such requests to

counsel for the Parties. Such request may be made by electronic mail to the Claims Administrator. Class Counsel will keep any such opt-out information confidential and use it only for purposes of determining whether a person who falls within the Settlement Class has properly opted out.

L. Objections to the Settlement.

1. Right to Object. Any Settlement Class Member may appear at the Final Approval Hearing to object to the proposed settlement and/or to the application of Class Counsel for an award of attorneys' fees and costs and/or the service award, but only if the Settlement Class Member has first submitted a written objection in accordance with the requirements set forth in Section III.L.2, by the Objection/Exclusion Deadline. Any Settlement Class Member who does not provide a written objection in the manner described in Section III.L.2 shall be deemed to have waived any objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement, the plan of allocation, or the award of any attorney fees and/or service awards. Further, any Settlement Class Member who intends to appear at the Final Approval Hearing, must file with the Court and serve on all Parties a Notice of Intention to Appear.

2. Objection Requirements. The written objection must (a) contain information sufficient to allow the Parties to confirm that the objector is a member of the Settlement Class; (b) include a statement of such Settlement Class Member's specific objections; and (c) state the grounds for such objections, as well as identify any documents which such objector desires the Court to consider. Only those specific objections, grounds and documents that comply with the requirements in this paragraph may be presented to the Court.

Anyone who properly objects, as described herein, may appear at the Final Approval Hearing, including through an attorney hired at the objector's expense. Such objectors or their

attorneys intending to appear at the Final Approval Hearing must file a Notice of Intention to Appear with this Court no later than ten (10) days prior to the Final Approval Hearing. Any member of the Settlement Class who fails to comply with this provision shall waive and forfeit any and all rights to appear and/or object separately, and shall be bound by the terms of this Settlement and the orders and judgments of this Court. Class Counsel shall file responses to any valid objections no later than fourteen (14) days prior to the Final Approval Hearing. Defendants' counsel also may file responses, but no later than fourteen (14) days prior to the Final Approval Hearing.

M. Final Approval. Following provision of the Notice Program and expiration of the objection and exclusion period, Plaintiffs shall request that the Court enter the Final Approval Order, which shall specifically include provisions that: (a) finally approve the Settlement as fair, reasonable and adequate to the Settlement Class; (b) find that the Class Notice as given was the best notice practicable under the circumstances, is due and sufficient notice to the Settlement Class, and fully satisfies the requirements of due process and Federal Rule of Civil Procedure 23; (c) finally certify the Settlement Class; (d) confirm that Plaintiffs and the Settlement Class Members have released all Released Claims and are permanently barred and enjoined from asserting, commencing, prosecuting, or continuing any of the Released Claims against the Released Parties; and (e) dismiss the Action with prejudice, without costs to any party, except as provided in this Settlement Agreement, and subject to the Court's retaining continuing jurisdiction over the Parties for the purpose of enforcement of the terms of this Settlement Agreement.

N. Dismissal. Upon entry of the Final Approval Order, the claims in the Third Amended Complaint shall be dismissed with prejudice as to all Parties.

O. Releases. Plaintiffs and the Settlement Class Members provide the following releases:

Plaintiffs and each and all Settlement Class Members, on behalf of themselves and their respective heirs, executors, administrators, personal representatives, representatives, agents, assigns, attorneys, partners, successors and predecessors-in-interest (together, the “Releasing Parties”), will be deemed to have fully released and forever discharged Normandin and OneCommand and their respective predecessors, successors, parents, subsidiaries, divisions, assigns, insurers, sureties and affiliates, and each of their respective past or present officers, directors, employees, attorneys, shareholders, managers, members, principals, agents, accountants, auditors, advisors, consultants, insurers, sureties, vendors, contractors and any other person or entity acting on their behalf (together, the “Released Parties”) from any and all claims, actions, causes of action or liabilities described or alleged in the Third Amended Complaint as of the date of the Final Approval Order (the “Released Claims”).

To the fullest extent permitted by law, the Plaintiffs and Settlement Class Members hereby waive and relinquish any and all rights or benefits they have or may have against Defendants and/or Released Parties under California Civil Code Section 1542, or any comparable provision of state or federal law, with regard to the Plaintiffs’ Released Claims. California Civil Code Section 1542 provides:

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.

Such releases shall become effective on the Effective Date. Plaintiffs and the Settlement Class Members understand and acknowledge the significance of these releases under any applicable federal or state statute, case law, rule or regulation relating to limitations on releases. In connection with such waivers and relinquishment, Plaintiffs and the Settlement Class Members acknowledge

that they are aware that they may hereafter discover facts in addition to, or different from, those facts that they now know or believe to be true with respect to the subject matter of the Settlement, but that it is their intention to release fully, finally and forever all Released Claims with respect to the Released Parties and in furtherance of such intention, such releases provided for herein will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

P. Stay/Bar of Proceedings. All proceedings in the Action will be stayed following entry of the Preliminary Approval Order, except as may be necessary to implement the Settlement or comply with the terms of the Settlement. Pending determination of whether the Settlement should be granted final approval, the Parties in the Action agree not to pursue any claims or defenses otherwise available to them, and no person in the Settlement Class and no person acting or purporting to act directly or derivatively on behalf of a Settlement Class Member, or acting on a representative basis or in any other capacity, will commence or prosecute against any of the Released Parties any action or proceeding asserting any of the Released Claims. The proposed order submitted on a motion for preliminary approval will contain an injunction enjoining the commencement or prosecution of the Released Claims. The Settlement will be conditioned upon the entry of such an injunction in both the Preliminary Approval Order and the Final Approval Order.

Q. No Admissions. Defendants expressly disclaim and deny any wrongdoing or liability whatsoever. This Settlement, and any and all negotiations, statements, documents, and/or proceedings leading up to or made in connection with this Settlement, shall not be construed or deemed to be evidence of an admission or concession by Defendants of any liability or wrongdoing by Defendants or any of their respective affiliates, agents, representatives, vendors, or any other

person or entity acting on their behalf, and shall not be construed or deemed to be evidence of an admission or concession that any person suffered compensable harm or is entitled to any relief and shall be protected under Evidence Code §1152. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of Defendants; (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of Defendants in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal; or (iii) is or may be deemed a waiver of Defendants' right to challenge class certification if this Settlement for any reason does not become Final and effective.

R. Notices. Unless otherwise indicated herein, all notices to counsel provided for herein shall be sent by electronic mail with a hard copy sent by overnight mail to:

As to Plaintiffs and the Settlement Class:

Beth E. Terrell
Email: bterrell@tmdwlaw.com
Terrell Marshall Law Group PLLC
936 North 34th Street, Suite 300
Seattle, Washington 98103-8869

As to Normandin's:

Andrew Stearns
Email: astearns@robardsstearns.com
Robards & Stearns
718 University Ave., Ste. 216
Los Gatos, CA 95032

As to OneCommand

Steven C. Coffaro
Email: Steve.Coffaro@KMKLAW.com
Keating Muething & Klekamp PLL
One East 4th Street
Suite 1400
Cincinnati, OH 45202

IV. GENERAL PROVISIONS

A. Settlement Conditioned Upon Approval. The Settlement is conditioned upon entry of the Preliminary Approval Order and Final Approval Order. In the event of failure to obtain any of the required provisions of such orders, including, but not limited to, the denial of any motion seeking preliminary or final approval, the Parties will use reasonable efforts to negotiate in good faith in an attempt to obtain such approval, including but not limited to further mediation. If such reasonable efforts are not successful, the Parties will return, without prejudice, to the *status quo ante* as if no Settlement had been negotiated or entered into and the Settlement and its existence shall be inadmissible to establish any fact relevant to any alleged liability of the Released Parties for the matters alleged in the Action or for any other purpose.

B. Evidentiary Preclusion. Neither the Settlement, the Settlement Agreement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or any other claim of any wrongdoing or liability of the Released Parties; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of the Released Parties in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. In addition, neither the fact of, nor any documents relating to any party's withdrawal from the Settlement, any failure of the Court to approve the Settlement and/or any objections or interventions may be used as evidence for any purpose whatsoever. The Released Parties may file the Settlement Agreement and/or the judgment in any action or proceeding that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

C. Time Periods. The time periods and dates described in this Settlement Agreement with respect to the giving of Class Notice and hearings will be subject to Court approval and modification by the Court with the consent of the Parties.

D. No Construction against Drafter. This Settlement Agreement will be deemed to have been drafted by the Parties, and any rule that a document shall be interpreted against the drafter will not apply.

E. Entire Agreement. This Settlement Agreement contains the entire agreement between the Parties and supersedes all prior understandings, agreements, or writings regarding the subject matter of this Settlement Agreement. This Settlement Agreement may be amended or modified only by a written instrument signed by all Parties or their successors in interest and approved by the Court.

F. Governing Law. The Settlement Agreement is governed by the laws of the State of California, without reference to internal choice of law principles.

G. Authority. Plaintiffs and Defendants represent and warrant that the persons signing this Settlement Agreement on their behalf have full power and authority to bind every person, partnership, corporation, or entity included within the definitions of Plaintiffs and Defendants to all terms of this Settlement Agreement. Any person executing this Settlement Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Settlement Agreement to all of the terms and provisions of this Settlement Agreement.

H. Receipt of Advice of Counsel. Each Party acknowledges, agrees and specifically warrants that he, she or it has fully read this Settlement Agreement and the Releases contained in Section III.O, received independent legal advice with respect to the advisability of entering this

Settlement Agreement and the Releases, and the legal effects of this Settlement Agreement and the Releases, and fully understands the effect of this Settlement Agreement and the Releases.

I. Agreement Binding on Successors in Interest. This Settlement Agreement is binding on and shall inure to the benefit of the respective predecessors, successors, parents, subsidiaries, divisions, assigns, insurers, sureties and affiliates, and each of their respective past or present officers, directors, employees, attorneys, shareholders, managers, members, principals, agents, accountants, auditors, advisors, consultants, insurers, sureties, vendors, contractors and any other person or entity acting on their behalf.

J. Execution in Counterparts. The Parties may execute this Settlement Agreement in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile or pdf signatures shall be deemed as valid and binding as an original signature on this Settlement Agreement.

K. Miscellaneous Provisions.

1. Each and every exhibit to this Settlement Agreement is incorporated herein by this reference as though fully set forth herein.

2. The provisions of the Settlement Agreement may be waived or modified only in a writing executed by all Parties or by Order of the Court. The waiver by one party of any breach of this Settlement Agreement by any other party shall not be deemed a waiver by that party or by any other party of any other prior or subsequent breach of this Settlement Agreement.

3. Each party to this Settlement Agreement warrants that he, she, or it is acting upon his, her or its independent judgment and upon the advice of his, her, or its own counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other party, other than the warranties and representations expressly made in this Settlement Agreement.

4. This Settlement Agreement has been carefully read by each of the Parties, or the responsible officers thereof, and its contents are known and understood by each of the Parties. This Settlement Agreement is signed freely by each party executing it.

5. No party to this Settlement Agreement has heretofore assigned, transferred, or granted, or purported to assign, transfer, or grant, any of the claims, demands, or cause or causes of action disposed of by this Settlement Agreement.

6. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement Agreement, and all Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in this Settlement Agreement.

The Parties hereto have caused this Settlement Agreement to be executed as of September _____, 2017:

ONECOMMAND

By: Adrian C. Meri

NORMANDIN'S

By: _____
Mark Normandin, President

3. Each party to this Settlement Agreement warrants that he, she, or it is acting upon his, her or its independent judgment and upon the advice of his, her, or its own counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other party, other than the warranties and representations expressly made in this Settlement Agreement.

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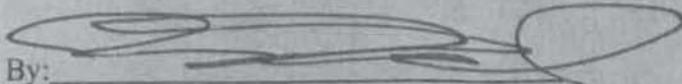
6. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement Agreement, and all Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in this Settlement Agreement.

The Parties hereto have caused this Settlement Agreement to be executed as of September _____, 2017:

ONECOMMAND

By: _____

NORMANDIN'S

By:  _____
Mark Normandin, President

ALAN BRINKER

By: *Alan Brinker*
Alan Brinker, Plaintiff

AUSTIN RUGG

By: _____
Austin Rugg, Plaintiff

ANA SANDERS

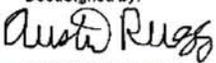
By: _____
Ana Sanders, Plaintiff

*Remanding
Settlement Agreement & Release*

ALAN BRINKER

By: _____
Alan Brinker, Plaintiff

AUSTIN RUGG

DocuSigned by:
 _____
DAB4BDEADD544BE... Plaintiff

ANA SANDERS

By: _____
Ana Sanders, Plaintiff

ALAN BRINKER

By: _____
Alan Brinker, Plaintiff

AUSTIN RUGG

By: _____
Austin Rugg, Plaintiff

ANA SANDERS

By:  _____
Ana Sanders, Plaintiff