

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN**

REBECCA FRISKE, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

BONNIER CORPORATION, a Delaware  
corporation,

Defendant.

Case No. 16-cv-12799-DML-EAS

District Judge David M. Lawson  
Magistrate Judge Elizabeth A.  
Stafford

**DECLARATION OF GARY F. LYNCH IN SUPPORT OF PLAINTIFF'S  
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

I, Gary F. Lynch, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am an adult over the age of 18, a resident of the Commonwealth of Pennsylvania, and a partner at Carlson Lynch, LLP.

2. I have personal knowledge of all matters asserted herein, and if called to testify, could do so competently.

**History of the Litigation and Settlement**

3. This action was filed on July 29, 2016, *see* Dkt. No. 1, and an amended complaint was filed on November 07, 2016, *see* Dkt. No. 7.

4. Bonnier filed a motion to dismiss, *see* Dkt. No. 11, which the parties fully briefed, *see* Dkt. Nos. 12, 17 and 20.

5. Plaintiff served discovery on Bonnier when the motion was pending.

6. After discovery was served, the parties began engaging in settlement discussions.

7. After numerous settlement discussions, the parties agreed to mediate their dispute and the Court entered a formal order on April 29, 2017, referring the case to mediation. *See* Dkt. No. 21.

8. The first mediation was conducted by Jed D. Melnick at JAMS in New York City, and the parties exchanged mediation briefs and informal information in order to prepare for and conduct the mediation. After a full day of mediation, follow-up work with the mediator, and various arms-length negotiations spanning several months, the parties ultimately reached an agreement in principal (the “Prior Settlement”). Plaintiff moved for certification of a settlement class, which the Court granted on December 13, 2017. *See* Dkt. No. 30. However, the Court ultimately denied preliminary approval of the Prior Settlement on July 26, 2018. *See* Dkt. No. 39.

9. The Court held a status conference on October 22, 2018, and issued an amended scheduling order. *See* Dkt. No. 42. Pursuant to that order, the parties continued to conduct discovery and Plaintiff moved to certify a litigation class on November 26, 2018. Dkt. No. 48. Bonnier took Plaintiff’s deposition on November 19, 2018, and served document requests on her. After Plaintiff moved for class certification, the parties agreed to hold a second mediation. Plaintiff also took a

second deposition of Defendant's corporate representative under Rule 30(b)(6) on December 19, 2018.

10. The second mediation was conducted by former Chief Judge Gerald E. Rosen at an in-person session in Detroit on January 3, 2019. Prior to that session, the parties exchanged mediation briefs. Through these briefs and discussions with the parties, Judge Rosen was fully informed of the terms of the Prior Settlement as well as the Court's order denying preliminary approval to that agreement. After a full day of mediation, the parties agreed in principle to resolve this case on a classwide basis pursuant to the terms of Judge's Rosen's Mediator's Proposal.

11. Before executing the final Settlement Agreement, the Parties engaged in additional discussions facilitated by Judge Rosen, and Plaintiff's Counsel conducted additional discovery, including serving three third-party subpoenas, to verify information regarding the class size. Both parties then accepted the final Mediator's Proposal. The parties have since memorialized the terms of the mediator's proposal in an executed final agreement, a true and correct copy of which is attached to this Declaration as **Exhibit A**.

12. All told, prior to executing the Settlement Agreement, Plaintiff's Counsel has taken two Rule 30(b)(6) depositions, defended Plaintiff's deposition, served document requests and reviewed documents produced by Defendant, served three third-party subpoenas and reviewed documents produced by the third parties,

and engaged in numerous informal exchanges of information with Defendants and the third parties.

13. I believe the discovery and information exchanges conducted prior to the parties' execution of the proposed settlement agreement provided me and my co-counsel with sufficient information to reasonably assess the size of the proposed class and the strengths and weaknesses of the claims. For example, at the second Rule 30(b)(6) deposition (taken before the second mediation session while the case was in active litigation), I questioned Bonnier's representative at length about its "list rental" practices, and the exact process by which the information of Plaintiff and other Bonnier subscribers came to be shared with other entities. The deposition revealed the nature of the relationships between Bonnier and outside companies with which it contracted to facilitate its list rental business. Obtaining this information allowed us to make an informed assessment of the settlement value of the case during the mediation and subsequent discussions facilitated by Judge Rosen. After a settlement in principle was negotiated using Judge Rosen's Mediator's Proposal, I used the information revealed at the deposition to subpoena the three third parties that were most involved in Bonnier's list rental practices. The information obtained in response to these subpoenas allowed Class Counsel to confirm our understanding of how Bonnier calculated the class size, and to verify Bonnier's deposition testimony about the extent of its list rental practices.

14. According to Defendant's most recent analysis of its records, and the records it provided to Class Counsel and the Administrator, there are approximately 164,509 individuals who fit within the proposed class definition.

15. While I have confidence in the merits of Plaintiff's claim, discovery revealed some information that arguably might have allowed Defendant to raise colorable defenses. For example, we learned that Defendant has relied on third-party entities to fulfill certain subscription services, such as taking orders, managing subscriber files, accepting payments, and dealing with customer complaints. Further, Defendant produced numerous examples of "opt-out" notices it includes in its magazines, including contact information Defendant's subscribers can use to opt-out of any disclosure of their personal information.

16. Before reaching the terms of the final settlement agreement with Defendant, my co-counsel and I closely examined the terms of settlements in approximately eleven similar, recent class actions. I believe the current settlement proposal compares favorably with those settlements and represents a strong recovery for the class here.

### **The Notice and Claim Process**

17. My understanding based on the report of the settlement administrator, Angeion, is that Angeion mailed 164,506 Notices on July 10, 2019. From that mailing, Angeion received 7,975 returned Notices, and was able to forward or re-

mail 4,347 of those Notices. Based on this information, it appears that 160,878 Notices were successfully delivered, which equals 97.795% of the total class size of 164,506.

18. Based on the current number of submitted claims, the final *pro rata* value of each claim will be approximately \$76–79. This can be assessed by first dividing the projected net settlement distribution fund of \$1,424,000 by the current number of submitted claims, 17,957, (10.92% of the Class) which yields \$79.30. In addition, a small number of Class Members have contacted either Class Counsel or the settlement Administrator with what appear to be technically deficient efforts to submit a claim. Class Counsel and the Administrator are following up with these individuals by mail or other forms of contact to advise them how to perfect their claims. Additionally, based on information from the Administrator and prior experience, I anticipate that a small number of untimely claim forms will be submitted between now and the Fairness Hearing, which may ultimately be accepted with the Court's permission. For these reasons, I anticipate that the final number of accepted claims will increase before the Fairness Hearing, which will slightly reduce the final *pro rata* value of each claim, but I do not expect that more than 500 additional such claims. For purposes of illustration, if the final number of accepted claims is 18,500, the final *pro rata* value of each claim will be approximately \$76.97.

19. If the final number of accepted claims is 17,957, then 146,546 Class Members will receive the non-cash relief provided by the Settlement, which is a voucher or purchase code that can be used for a free, one-year subscription to a Bonnier magazine of the Class Member's choice. (164,506 original class members, minus three opt-outs, minus 17,957 claimants equals 146,546 non-claiming class members).

20. Based on review of communications from Class Members received by Class Counsel, the report of the administrator, and the docket of this case, I am aware of only three Class Members who have requested exclusion from the Settlement. I am aware of only one objection, which was filed on the docket.

#### **Class Counsel's Communications with the Objector's Counsel**

21. On June 26, 2019, the day after the Court entered the preliminary approval order, William LaTarte's counsel Joseph Marchese emailed me requesting a phone conference to discuss this case. I responded the same day, requesting that Mr. Marchese put any communications he wanted to have with me about the case in writing via email. Mr. Marchese responded: "That's absurd. In any event, a phone call is more efficient, and I'm not going to engage in an inefficient e-mail writing campaign because of your insecurities." I reiterated in two subsequent emails to Mr. Marchese that I was willing to hear whatever concerns he had regarding the settlement, but that I wanted to conduct all discussions in writing.

22. On July 2, 2019, Mr. Marchese emailed me a “proposed settlement agreement,” which contemplated a payment of \$28,750 to Bursor & Fisher P.A., and \$1,250 to William LaTarte, in exchange for LaTarte’s agreement not to object to the proposed Settlement. The “proposed settlement agreement” did not provide for any alterations to the proposed class Settlement with Bonnier. Mr. Marchese added in his email that if I did not call him back by phone or negotiate settlement with Mr. LaTarte, then Mr. LaTarte intended to object to the Settlement.

23. On July 3, 2019, I responded to Mr. Marchese via email, asking him to clarify whether he wanted to discuss substantive objections to the Settlement, or simply discuss whether Mr. Marchese and his client should be entitled to any fees from the Settlement for their perceived contributions. Mr. Marchese responded later that day by simply stating that if I did not respond to him by phone, his client intended to object. Mr. Marchese emailed me again on July 12, 2019, and again requested that I call him by phone.

24. I responded to Mr. Marchese on July 16, 2019, reiterating my request that he communicate his concerns about the Settlement in writing. He replied later that day, simply asking whether I agreed to his “proposed settlement agreement,” or had a counter offer. He requested that I either sign the agreement or make a counter offer. He stated that my other option was to respond to his client’s objection “in due course.” I did not directly respond to that email.



25. On August 22, 2019, Mr. Marchese emailed me a draft of his client's proposed objection. This was the first time Mr. Marchese divulged to me the substantive issues he intended to base his client's objection on. In the same email, Mr. Marchese indicated that he still hoped that I would accept the terms of his proposed settlement agreement in order to avoid his filing of the objection. I replied to his email, indicating that I would review the draft objection and respond.

26. On August 23, 2019, Mr. Marchese requested that I share with him a copy of the claims report from the settlement Administrator. On August 26, 2019, I responded to Mr. Marchese via email. I told him that we did not believe that his objection had merit and that we did not believe any changes to the class Settlement were necessary in response. I proposed to Mr. Marchese that if he believed his client's attempted intervention provided some value or benefit to the class, then he could file a motion with the Court seeking an award of fees from the Settlement, and that we would not oppose his request so long as it did not exceed \$30,000. In the same email, I also responded to his request for information about the claims process by informing him that there had been 17,329 claims submitted as of August 22, 2019.

27. I also had a brief phone conversation with Mr. Marchese on August 26, 2019, after I sent the aforementioned email. During the call, I essentially reiterated what I wrote in the email. Later that afternoon, Mr. Marchese emailed me requesting another phone call by 3:30 pm. He stated that if he did not hear from me, he would

file his client's objection. Around 3:30 pm, my Co-Class Counsel Daniel Myers emailed Mr. Marchese, informing him that we did not believe the proposed settlement agreement was appropriate. Mr. Myers reiterated our position that Mr. Marchese could file a petition for attorney fees with the Court, and that we would not oppose it. Mr. Marchese filed the objection shortly thereafter.

28. Throughout these communications, Mr. Marchese never requested information from me or my co-counsel regarding the amount of time or expenses we incurred in the case, or about the types or amount of discovery we had taken. Mr. Marchese never suggested that the terms of the Settlement with Bonnier needed to be modified, and did not notify me that he believed the objection deadline was improperly sequenced until August 22, 2019, four days before the objection deadline.

### **Class Counsel's Qualifications**

29. Carlson Lynch and LODM have been involved in numerous consumer protection lawsuits throughout the country, have the resources and skill to litigate these cases, and have litigated this case thoughtfully and engaged in months-long negotiations to achieve the result currently before the Court. *See* Firm Resumes filed at Dkt. Nos. 25-1, 25-2.

30. Carlson Lynch and LODM have, both individually and collectively, devoted substantial time and resources to the prosecution and settlement of this

action, and will continue to do so until final judgment. Details regarding the time attorneys spent working on this matter are being submitted contemporaneously with the fee petition.

I declare under penalty of perjury that the above and foregoing is true and accurate.

Executed this September 3, 2019, Pittsburgh, Pennsylvania.

/s/ Gary F. Lynch  
Gary F. Lynch  
CARLSON LYNCH, LLP  
1133 Penn Avenue, 5th Floor  
Pittsburgh, PA 15222  
(412) 322-9243

**CERTIFICATE OF SERVICE**

I hereby certify that on September 3, 2019, I electronically filed the foregoing document with the Clerk of Court using the Court's ECF filing system, which will send notification to counsel of record for all parties.

*/s/ Gary F. Lynch* \_\_\_\_\_  
Gary F. Lynch

## Exhibit A - Proposed Settlement Agreement

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN**

REBECCA FRISKE, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

BONNIER CORPORATION, a Delaware  
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Defendant.

Case No. 16-cv-12799-DML-EAS

District Judge David M. Lawson  
Magistrate Judge Elizabeth A.  
Stafford

**CLASS ACTION SETTLEMENT AGREEMENT**

This Settlement Agreement is entered into by (i) Plaintiff, Rebecca Friske, on behalf of herself and the Settlement Class (defined below) and (ii) Defendant, Bonnier Corporation. The Parties (defined below) intend this Agreement to fully and forever resolve and settle the Released Claims (defined below) in accord with the terms contained herein and subject to final court-ordered approval.

**AGREEMENT**

**1. DEFINITIONS**

1.1. “**Action**” means *Friske v. Bonnier Corporation*, 16-cv-12799-DML-EAS (E.D. Mich.).

1.2. “**Agreement**” shall refer to the full terms of and all documents incorporated by reference in this Class Action Settlement Agreement.

1.3. **“Alternative Judgment”** means an order and final judgment in a form other than the Final Judgment.

1.4. **“Approved Claim Form”** means a Claim Form that (i) is submitted by the Claims Deadline, (ii) is in accordance with the directions on the Claim Form and the provisions of the Agreement, (iii) is fully and truthfully completed by a Settlement Class Member with all of the information requested on the Claim Form, (iv) is electronically acknowledged by the Settlement Class Member, and (v) is approved by the Settlement Administrator pursuant to the terms of the Agreement.

1.5. **“Bonnier”** means Bonnier Corporation.

1.6. **“Bonnier Publication”** means any magazine published by Bonnier.

1.7. **“Claims Deadline”** means the date by which all Claim Forms must electronically submitted to be considered timely, and shall be set no later than thirty (30) days after the Notice Date.

1.8. **“Claim Form”** means a document substantially in the form attached hereto as Exhibit 3 and as approved by the Court. The Claim Form shall be made available electronically and shall be eligible for submission in electronic form as described below.

1.9. **“Class Counsel”** means Gary Lynch of Carlson Lynch, LLP and Daniel Myers of the Law Offices of Daniel O. Myers.

1.10. **“Class Representative”** means Rebecca Friske.

1.11. “**Court**” means the United States District Court for the Eastern District of Michigan and, as the context requires, either the Honorable David M. Lawson, the Honorable Elizabeth A. Stafford or both.

1.12. “**Class List**” means an electronic list that includes the names and last known U.S. Mail addresses, to the extent reasonably available to Bonnier, of the persons within the Settlement Class.

1.13. “**Defendant**” means Bonnier Corporation.

1.14. “**Defendant’s Counsel**” means Daniel Stabile and Frank Zacherl of Shutts & Bowen LLP.

1.15. “**Effective Date**” means the date ten (10) days after which all of the events and conditions specific in Paragraph 8.1 have been met and have occurred.

1.16. “**Fee Award**” means the amount of attorneys’ fees and reimbursement of expenses and costs awarded by the Court to Class Counsel, which will be paid out of the Settlement Fund.

1.17. “**Final**” means one (1) business day following the latest in time of the following events: (i) the date upon which the time expires for filing or noticing any appeal of the Court’s Final Judgment; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee Award, the date of completion, in a manner that finally affirms and leaves in place the Final Judgment without any material modification, of all proceedings arising out of the appeal or appeals



(including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or *certiorari*, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on *certiorari*.

1.18. **“Final Approval Hearing”** means the hearing before the Court where the Parties will request the Final Judgment to be entered by the Court approving the Agreement, and Class Counsel will request approval of the Fee Award and Incentive Award.

1.19. **“Final Judgment”** means the final judgment and order to be entered by the Court approving the Agreement after the Final Approval Hearing.

1.20. **“Free Subscription”** means a free, one-year subscription to a Bonnier Publication of a Settlement Class Member’s choice that is published by Bonnier on the date of the Settlement Class Member’s selection and that is anticipated by Bonnier to be published by Bonnier for at least 12 months.

1.21. **“Incentive Award”** means the amount awarded to Rebecca Friske by the Court and paid out of the Settlement Fund, in addition to any Cash Distribution Amount or Free Subscription, in recognition of her efforts on behalf of the Settlement Class.

1.22. **“Notice”** means notice of this Agreement and the Final Approval Hearing related to this Agreement. Notice shall be sent to the Settlement Class Members as described herein and in the form of Exhibits 1 and 2 attached hereto.

1.23. **“Notice Date”** means the date by which the Notice set forth in Paragraph 4 is complete, which shall be no later than thirty (30) days after Preliminary Approval.

1.24. **“Opt-Out/Objections Deadline”** means the date by which an opt out request or objection to the Agreement must be made, which shall be no later than thirty (30) days after the Notice Date or such other date as ordered by the Court.

1.25. **“Named Plaintiff”** means Rebecca Friske.

1.26. **“Parties”** means (i) Plaintiff, Rebecca Friske, on behalf of herself and the Settlement Class and (ii) Defendant, Bonnier Corporation.

1.27. **“Plaintiffs”** means Rebecca Friske and the Settlement Class Members.

1.28. **“Preliminary Approval”** means the Court’s preliminary approval of the Agreement, and preliminary approval of the form and dissemination of Notice.

1.29. **“Preliminary Approval Order”** means the order preliminarily approving the Agreement, and preliminarily approving the form and dissemination of Notice.

1.30. **“Released Claims”** means all claims under the VRPA (or similar causes of action) that have been or could have been brought from the beginning of time through the date of Preliminary Approval of the Agreement.

1.31. **“Released Parties”** means Bonnier and all of its respective present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parent companies, subsidiaries, licensors, licensees, associates, affiliates, employers, employees, agents, consultants, independent contractors, insurers, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns and companies, firms, trusts, and corporations.

1.32. **“Releasing Parties”** means Plaintiff, Settlement Class Members who do not timely opt out of the Settlement Class, and all of their respective present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parent companies, subsidiaries, associates, affiliates, employers, employees, agents, consultants, independent contractors, insurers, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns and companies, firms, trusts, and corporations.

1.33. **“Settlement Administration Expenses”** means the fees and expenses charged by the Settlement Administrator to provide Notice, receive, process and review claims, respond to inquiries, and provide related services in connection with this Agreement. The Settlement Administration Expenses shall be paid from the Settlement Fund.

1.34. **“Settlement Administrator”** means Angeion Group, or such other reputable administration company that has been suggested by the Parties and appointed by the Court.

1.35. **“Settlement Class”** means all Michigan residents who subscribed to or received one or more subscriptions to a magazine published by Bonnier between July 28, 2010 and the date of Preliminary Approval of the Agreement, and who did not purchase such subscriptions through a Third-Party Subscription Agent. Excluded from the Settlement Class are (i) any Judge or Magistrate presiding over the Action and members of their families, and (ii) Bonnier, its subsidiaries, parent companies, successors, predecessors, and any entity in which Bonnier or its parent companies have controlling interests, along with their current or former officers, directors, agents, attorneys, and employees.

1.36. **“Settlement Class Members”** means a person who falls within the definition of the Settlement Class.

1.37. **“Settlement Fund”** means Two Million, One Hundred and Fifty Thousand Dollars (\$2,150,000.00), the total amount that Bonnier has agreed to make available to settle this case. Within 30 days of the Effective Date, Defendant shall deliver the Settlement Fund amount to the Settlement Administrator. In no event shall Defendant’s total monetary obligation with respect to the Agreement exceed Two Million, One Hundred and Fifty Thousand Dollars (\$2,150,000.00).

1.38. **“Settlement Website”** means the website created and maintained by the Settlement Administrator in connection with this Agreement for the purpose of notifying Settlement Class Members of this Agreement and accepting claims related to this Agreement.

1.39. **“Third-Party Subscription Agent”** means an entity that sells Bonnier-published magazines to subscribers and then remits nothing or some amount of the proceeds from the sale to Bonnier.

## 2. **SETTLEMENT RELIEF**

### 2.1. **Cash and Subscription Relief**

2.1.1. Settlement Class Members shall have until the Claims Deadline to electronically submit a Claim Form. Each Settlement Class Member that submits an Approved Claim Form shall be entitled to its pro rata share of the Settlement Fund, after deducting from the Settlement Fund: (i) Settlement Administration Expenses, (ii) the Fee Award, and (iii) the Incentive Award. Within sixty (60) days

after the Effective Date, or such other date as the Court may set, the Settlement Administrator shall pay from the Settlement Fund all amounts due to Settlement Class Members claimed by way of Approved Claim Forms.

2.1.2. Within sixty (60) days after the Effective Date, or such other date as the Court may set, Bonnier shall send every Settlement Class Member who does not submit an Approved Claim Form a voucher or purchase code for a Free Subscription.

## 2.2. **Prospective Relief**

2.2.1. Bonnier agrees to retain its disclosure language contained in all Bonnier Publications and to undertake commercially reasonable measures to honor the request of any individual who submits a request to opt out of the subscriber list(s) occasionally made available to third parties.

2.2.2. Bonnier will undertake commercially reasonable measures to include disclosure language in informational materials, electronic or otherwise, used to establish a new magazine subscription so that the disclosure is available to consumers before subscribing to any Bonnier Publication.

**3. RELEASE**

3.1. The obligations incurred pursuant to this Agreement shall be a full and final disposition of the Action and any and all Released Claims, as against all Released Parties.

3.2. Upon the Effective Date, the Releasing Parties shall be deemed to have fully, finally and forever released, relinquished and discharged all Released Claims against the Released Parties.

**4. NOTICE TO THE CLASS, OPTING OUT AND OBJECTIONS**

4.1. The Notice shall be distributed to the Settlement Class Members as follows:

4.1.1. Within fourteen (14) business days of the execution of the Agreement, Bonnier shall produce from its records the Class List. Bonnier shall produce the Class List to the Settlement Administrator and a copy to Class Counsel. It is Bonnier's obligation to produce the Class List to the Settlement Administrator.

4.1.2. Within (30) business days of Preliminary Approval, the Settlement Administrator shall send Notice via direct mail in the form attached as Exhibit 2 to all Settlement Class Members.

4.1.3. No later than fourteen (14) business days after Preliminary Approval, Notice shall be provided on the Settlement Website. The Notice provided on the Settlement Website shall be in the form attached as Exhibit 1. The Settlement

Website shall allow Settlement Class Members to submit a Claim Form and shall provide Settlement Class Members access to settlement-related documents.

4.1.4. Pursuant to 28 U.S.C. § 1715, no later than ten (10) days after the Agreement is filed with the Court, Defendant's Counsel shall cause to be served upon the Attorney General of Michigan, the Attorney General of the United States, and other required government officials, notice of the proposed settlement as required by law.

4.2. Notice shall advise the Settlement Class Members of their right to opt out of or object to the Agreement and the process by which Settlement Class Members can opt out of or object to the Agreement.

4.3. The process by which Settlement Class Members can opt-out and the effect of opting-out:

4.3.1. Any Settlement Class Member who intends to opt out of the Agreement may do so by sending an individual written request postmarked on or before the Opt-Out/Objection Deadline approved by the Court and specified by the Notice. "Mass" and "class" opt-outs shall not be allowed.

4.3.2. The written request must be sent to the Settlement Administrator at the address designated in the Notice.

4.3.3. The written request must provide the name and address of the person opting-out of the Agreement, the name of the Bonnier Publication to which



he or she subscribes, his or her signature, the name and number of the Action, and a statement that he or she wishes to be excluded from the Settlement Class for purposes of the Agreement.

4.3.4. If a written opt out request does not include the information required herein, or if the request is not sent in the time provided for herein, the person serving such a request shall be a member of the Settlement Class and shall be bound by this Agreement.

4.3.5. Any Settlement Class Member who validly opts out of the Agreement shall not (1) be bound by the Agreement, (2) be bound by any orders of the Court, (3) gain any rights or obligations under the Agreement, or (4) be entitled to object to the Agreement.

4.4. Any Settlement Class Member that does not opt out of the Agreement in accordance with the terms described herein, will be bound by all of the terms of the Agreement, including the Release provided by the Agreement, and such persons will be barred from bringing any action against any of the Released Parties concerning the Released Claims.

4.5. The process by which Settlement Class Members can object to the Agreement and the effect of objecting:

4.5.1. Any Settlement Class Member who intends to object to the Agreement must do so in writing.

4.5.2. The objection shall be considered by the Court at the Final Approval Hearing so long as the person making the objection files notice of intent to do so no later than the Opt-Out/Objection Deadline and the objector files his or her notice of objection and all supporting papers with the Clerk of the Court and sends such notice and supporting papers, by mail, hand or overnight delivery to Class Counsel and Defendant's Counsel.

4.5.3. The notice of objection and supporting papers must be signed by the objector and must include: (1) the objector's name and address; (2) an explanation of the basis upon which the objector claims to be a Settlement Class Member, including the Bonnier publication(s) to which he or she subscribes; (3) all grounds for objection, including citation to all legal authority and factual evidence supporting objection; (4) name and contact information of any and all attorneys representing, advising, or assisting the objector in any way with respect to the objector's objection to the Agreement; and (5) whether the objector intends to appear at the Final Approval Hearing, either personally or through representation. The writing also must include a statement identifying each case, by full case caption, where an objector or the attorney representing the objector, has objected to any class settlement and asked for or received any payment in exchange for dismissal of the objection, or any related appeal, without modification to the class settlement.

## 5. SETTLEMENT ADMINISTRATION

5.1. The Settlement Administrator shall provide Notice to the Settlement Class Members as described in Section 4, and create and administer the Settlement Website.

5.2. The Settlement Administrator shall receive and review Claim Forms submitted electronically. The Settlement Administrator shall also receive and review opt out requests and all other forms and requests, and promptly provide to Class Counsel and Defendant's Counsel copies of such forms and requests.

5.3. The Settlement Administrator shall provide weekly reports to Class Counsel and Defendant's Counsel regarding the number of Claim Forms received and the number of Approved Claim Forms.

5.4. The Settlement Administrator shall keep reasonably detailed records of its activities associated with the Agreement and shall maintain all such records as required by applicable law and in accordance with reasonable business practices. Such records shall be available to Class Counsel and Defendant's Counsel upon request, and shall be provided to the Court if so required.

5.5. The Settlement Administrator shall provide Class Counsel and Defendant's Counsel information concerning Notice and administration of the Settlement Agreement.

5.6. The Settlement Administrator shall determine whether any Claim Form submitted is an Approved Claim Form and shall reject any Claim Form that fails to (i) comply with the instructions on the Claim Form or terms of the Agreement, or (ii) provide full and complete information as requested on the Claim Form. The Settlement Administrator may contact any Person who has submitted a Claim Form to obtain additional information necessary to verify the Claim Form.

5.7. Class Counsel and Defendant's Counsel shall have the right to challenge any acceptance or denial of a Claim Form. The Settlement Administrator shall follow any agreed decisions of Class Counsel and Defendant's Counsel as to the validity of any disputed Claim Form. In the event that Class Counsel and Defendant's Counsel cannot agree regarding a disputed Claim Form, the Parties may submit the issue to mediation before Gerald Rosen of JAMS.

**6. CERTIFICATION OF THE SETTLEMENT CLASS AND PRELIMINARY AND FINAL APPROVAL**

6.1. On March 18, 2019, the Parties shall file their (i) motion and accompanying memorandum to conditionally certify the Settlement Class (and appoint Plaintiff's Counsel as Class Counsel) for purposes of this Agreement and preliminary and final approval and (ii) motion for preliminary approval of the settlement. In their motion for preliminary approval, the Parties will seek preliminary approval of the Agreement and the settlement set forth herein, appointment of the Class Representative, and entry of a Preliminary Approval Order,

which shall set a Final Approval Hearing date and approve the Notice and Claim Form for dissemination in the form of Exhibits 1 through 3. The Preliminary Approval Order also shall authorize the Parties to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement and its supporting documents so long as those amendments, modifications and expansions are materially consistent with the terms of the Final Judgment and do not limit or impair the rights of the Settlement Class Members.

6.2. After Notice is disseminated, the Parties shall request from the Court entry of Final Judgment, which will, among other things:

6.2.1. find the Court has personal jurisdiction over all Settlement Class Members and the Court has subject matter jurisdiction to approve the Agreement and all incorporated documents;

6.2.2. approve the Agreement and the settlement terms proposed therein as fair, reasonable, adequate and in the best interests of the Settlement Class Members;

6.2.3. direct the Parties to implement the Agreement according to its terms;

6.2.4. declare the Agreement binding on Plaintiffs and the Releasing Parties;

6.2.5. find Notice implemented under the Agreement is the best practicable notice under the circumstances and meets all applicable requirements of the Federal Rules of Civil Procedure, the rules of the Court, and the Constitution of the United States;

6.2.6. find Class Representative and Class Counsel adequately represented the Settlement Class;

6.2.7. dismiss the Action on the merits and with prejudice;

6.2.8. incorporate the Release contained herein, make the Release effective as of the Effective Date, and forever discharge the Released Parties as set forth herein;

6.2.9. retain jurisdiction as to all matters relating to administration, consummation, enforcement and interpretation of the Agreement and Final Judgment; and

6.2.10. incorporate any other provisions the Court deems necessary and just.

## **7. ATTORNEY'S FEES AND INCENTIVE AWARD**

7.1. Class Counsel shall request (and Bonnier agrees not to oppose) that the Court approve a Fee Award not to exceed Six Hundred and Twenty-Five Thousand Dollars (\$625,000.00), which shall include all attorneys' fees and reimbursement of costs and expenses associated with the Action.

7.2. Class Counsel shall be paid the Fee Award by the Settlement Administrator from the Settlement Fund no later than five (5) business days after the Effective Date. The Fee Award shall be paid via wire transfer to an account designated by Class Counsel.

7.3. Bonnier agrees not to oppose a request by Class Counsel that the Court award the Class Representative from the Settlement Fund an Incentive Award of Two Thousand, Five Hundred Dollars (\$2,500.00).

7.4. The Incentive Award shall be paid by the Settlement Administrator from the Settlement Fund no later than five (5) business days after the Effective Date.

**8. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION**

8.1. The Effective Date of the Agreement is the date on which the last of the following events occur in time:

8.1.1. The Parties, Class Counsel and Defendant's Counsel execute the Agreement;

8.1.2. The Court's grant's Plaintiff's Motion to Certify the Settlement Class;

8.1.3. The Court enters the Preliminary Approval Order;

8.1.4. The Court enters Final Judgment, following the Notice to the Settlement Class Members and the Final Approval Hearing; and

8.1.5. The Final Judgment has become Final, or in the event the Court enters an Alternative Judgment to which the Parties consent, the Alternative Judgment becomes Final.

8.2. If some or all of the conditions specified above are not met, then this Agreement shall be canceled and terminated unless Class Counsel and Defendant's Counsel mutually agree in writing to proceed with the Agreement.

8.3. Any Party may terminate the Agreement on notice to all Parties in the event that another Party is in material breach of the terms of the Agreement.

## **9. MISCELLANEOUS PROVISIONS**

9.1. The headings used herein are used only for convenience and are not meant to have legal effect.

9.2. The waiver by one Party of any breach of the Agreement by another Party shall not be deemed as waiver of any prior or subsequent breaches of the Agreement.

9.3. All of the Exhibits to the Agreement are material and integral parts of the Agreement and are fully incorporated by reference.

9.4. The Agreement, along with the Exhibits, are the entire agreement and understanding of the Parties regarding the subject matter of the Agreement, and supersede all prior negotiations, agreements, arrangements or undertakings regarding the subject matter of the Agreement. No representations, warranties or



inducements have been made to any Party concerning the Agreement other than the representations, warranties and covenants contained and memorialized herein. The Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors.

9.5. Except as otherwise provided herein, each Party shall bear its own costs.

9.6. Each counsel or other persons executing the Agreement on behalf of any Party, hereby warrants and represents that such counsel or other persons have full authority to do so and have the authority to take appropriate action required or permitted to be taken pursuant to the Agreement and effectuate its terms.

9.7. The Agreement may be executed in one or more counterparts. Signature by digital means, facsimile or in PDF format will constitute sufficient execution of the Agreement. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court if the Court so requests.

9.8. The Court shall retain jurisdiction with respect to the implementation and enforcement of the Agreement and its terms, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Agreement and its terms.

9.9. The Parties have relied upon the advice and representation of their counsel concerning their respective legal liability for the claims hereby released. The Parties have read and understand fully the above

9.10. The Agreement is deemed to have been prepared by counsel for all Parties, as a result of arm's-length negotiations amount the respective Parties. Because all Parties have contributed substantially and materially to the preparation of the Agreement, it shall not be construed more strictly against one Party than another.

9.11. The contractual terms of this Agreement shall be interpreted in accordance with the substantive law of the State of Florida, without regard to its conflict of laws and/or choice of law provisions.

9.12. Plaintiff and her counsel agree that they will not issue any press release concerning this case that is disparaging to Bonnier. Notwithstanding this paragraph, Plaintiff's counsel is permitted to note on its public-facing website and in future court submissions that this action has been settled and this action is an example of a class action that has been certified and/or settled.

9.13. Where the Agreement requires notice to the Parties such notice shall be sent to Carlson Lynch, LLP, 1133 Penn Avenue, 5th Floor, Pittsburgh, PA 15222, and Shutts & Bowen LLP, 200 South Biscayne Boulevard, Suite 4100, Miami, FL 33131.

The undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

**REBECCA FRISKE**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

**BONNIER CORPORATION**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

**COUNSEL FOR REBECCA FRISKE**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

**COUNSEL FOR BONNIER**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

The undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

**REBECCA FRISKE**

By: Rebecca Friske

Printed Name: Rebecca Friske

Date: March 18, 2019

**BONNIER CORPORATION**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

**COUNSEL FOR REBECCA FRISKE**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

**COUNSEL FOR BONNIER**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

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The undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

**REBECCA FRISKE**

**BONNIER CORPORATION**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

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

**COUNSEL FOR REBECCA FRISKE**

**COUNSEL FOR BONNIER**

By:                     *GF*                    

By: \_\_\_\_\_

Printed Name:                     *Geary F. Lynch*                    

Printed Name: \_\_\_\_\_

Its:                     *Counsel*                    

Its: \_\_\_\_\_

Date:                     *3/18/19*                    

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

The undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

**REBECCA FRISKE**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

**BONNIER CORPORATION**

By:  \_\_\_\_\_

Printed Name: Jeremy M Thompson

Its: General Counsel

Date: 3-18-19

**COUNSEL FOR REBECCA FRISKE**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

**COUNSEL FOR BONNIER**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

15222, and Shutts & Bowen LLP, 200 South Biscayne Boulevard, Suite 4100, Miami, FL 33131.

The undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

**REBECCA FRISKE**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

**BONNIER CORPORATION**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

**COUNSEL FOR REBECCA FRISKE**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

**COUNSEL FOR BONNIER**

By: 

Printed Name: Daniel T. Stabile

Its: Outside Counsel

Date: Mar. 18, 2019