

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS**

KIMBERLY KJESSLER, KLAIRE
RUECKERT, LAURA BRALEY, TIMOTHY
HAYDEN and SUMMER LANG,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

ZAAPPAAZ, INC., AZIM MAKANOJIYA,
NETBRANDS MEDIA CORP.,
MASHNOON AHMED, GENNEX MEDIA,
LLC, BRANDECO, L.L.C., AKIL KURJI,
CUSTOM WRISTBANDS INC., and
CHRISTOPHER ANGELES,

Defendants.

Civil Action No. 4:18-cv-0430
(Consolidated)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into on January 23, 2020 (“Execution Date”) by and between PMGOA, Inc. and Defendants Gennex Media, LLC, Brandeco, L.L.C., and Akil Kurji (collectively, “Gennex Defendants”), on the one hand, and Class Representatives Kimberly Kjessler, Klaire Rueckert, Laura Braley, Timothy Hayden, and Summer Lang, for themselves individually and on behalf of all Class Members (collectively “Plaintiffs” or the “Class,” and together with Gennex Defendants, “Parties”) as defined below, on the other. (All Defendants in this litigation, including the Gennex Defendants and the other, non-settling Defendants, are referenced collectively as “Defendants” in this Agreement.) This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims, upon and subject to the terms and conditions herein, subject to Court approval.

I. AGREED-UPON RECITALS

WHEREAS, beginning August 30, 2017, numerous proposed class actions were filed against Defendants, and were later consolidated in the docket of the first-filed case, *Kjessler v. Zaappaaz, Inc., et al.*, Civil Action No. 4:18-cv-0430 (S.D. Tex.) (the “Action”);

WHEREAS, Plaintiffs allege that Defendants violated Section 1 of the Sherman Act, 15 U.S.C. § 1, through, among other things, a nationwide agreement with each other to fix, stabilize, and maintain the prices of Promotional Products (as defined below) sold to Plaintiffs and all other members of a class of persons who directly purchased those products from Defendants;

WHEREAS, the claimed conspiracy challenged by Plaintiffs arose from a criminal antitrust investigation conducted by the United States Department of Justice into price-fixing of Promotional Products that has resulted in the indictments and guilty pleas of all Defendants, including the Gennex Defendants;

WHEREAS, Defendant Gennex Media, L.L.C. and PMGOA, Inc. were ordered to pay a fine of \$752,717 over a fifty-two month period but was not ordered to pay restitution to victims, *see United States of America v. Gennex Media LLC*, Criminal No. 18-cr-00654 (S.D. Tex.);

WHEREAS, Defendant Akil Kurji was sentenced to eight months in prison and ordered to pay a fine of \$20,000 but was not ordered to pay restitution to victims, *see United States of America v. Akil Kurji*, Criminal No. 18-cr-00655 (S.D. Tex.);

WHEREAS, the Court denied Defendants’ motions to dismiss Plaintiffs’ consolidated amended complaint but granted Defendants’ motions to dismiss Plaintiffs’ claims as to customized lanyards for lack of standing;

WHEREAS, all Defendants, including the Gennex Defendants, have denied and continue to deny any liability to Plaintiffs and the Class arising out of any Conduct (as defined below) alleged or that could have been alleged in the Action;

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WHEREAS, Class Counsel (defined below) has conducted and overseen extensive discovery and investigation of the facts, including those underlying the economics of the market, and after carefully considering the relevant circumstances of the Action and the applicable law has concluded that: (i) it is in the best interests of Plaintiffs and the Class to enter into this Agreement in order to avoid the uncertainties of continued litigation, and to assure that the benefits reflected herein, including the value of the Settlement Amount to be paid by the Gennex Defendants under this Agreement, are obtained for the Class; and (ii) the settlement set forth in this Agreement is fair, reasonable, and adequate within the meaning of Federal Rule of Civil Procedure 23 and in the best interests of the Class;

WHEREAS, the Gennex Defendants, while denying any liability for the claims asserted in the Action, and believing that they have good defenses to those claims, but recognizing that continued litigation of the Action is likely to be expensive and time-consuming, have agreed to enter into this Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and thereby put fully to rest with finality this controversy by obtaining complete dismissal of the Action and a release by the Class and each member thereof of all Released Claims;

WHEREAS, this Agreement is the product of arms'-length negotiations between Class Counsel and the Gennex Defendants, and this Agreement embodies all of the terms and conditions of the settlement agreed upon between the Gennex Defendants and Plaintiffs, both for themselves individually and on behalf of the Class and each member thereof, subject to the preliminary and final approval of the Court;

NOW, THEREFORE, it is agreed, by and among the Plaintiffs, by and through Class Counsel, and the Gennex Defendants, by and through the Gennex Defendants' Counsel, that,

subject to the preliminary and final approval of the Court, the Action be settled, compromised, and dismissed on the merits with prejudice as to the Gennex Defendants and the other Released Parties, without costs, on the following terms and conditions.

II. DEFINITIONS

As used in this Agreement, the following capitalized terms have the meanings specified below:

1. “Action” means the consolidated action known as *Kjessler v. Zaappaaz, Inc., et al.*, Civil Action No. 4:18-cv-0430 (S.D. Tex.), and includes all the actions filed in or transferred to the United States District Court for the Southern District of Texas and consolidated thereunder, and all actions that may be so transferred or consolidated in the future.

2. “Agreement” means this Settlement Agreement, together with any exhibits attached hereto, which are incorporated by reference.

3. “Claim” means any and all manner of claims, causes of action, cross-claims, counterclaims, suits, demands, actions, rights, charges, liabilities, losses, obligations, and controversies of any kind, nature, or description whatsoever, whether known or unknown, asserted or unasserted, arising from the facts and circumstances alleged in the Complaint.

4. “Class” shall have the meaning given to it in Section III.1.

5. “Class Member” or “Class Members” means each member of the Class who has not timely and validly excluded himself, herself, or itself from the Class in accordance with procedures established by the Court in accordance with the provisions of this Agreement.

6. “Class Counsel” means Court-appointed Interim Lead Counsel for Plaintiffs and the Proposed Class, Warren T. Burns of Burns Charest LLP, as well as the following firms who have prosecuted Plaintiffs’ claims under the direction and supervision of Interim Lead Counsel:

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Gustafson Gluek PLLC, Levin Sedran & Berman LLP, Stoll Stoll Berne Lokting & Shlachter P.C. and Wolf Haldenstein Adler Freeman & Herz LLP.

7. “Class Representatives” means Plaintiffs Kimberly Kjessler, Klaire Rueckert, Laura Braley, Timothy Hayden and Summer Lang.

8. “Conduct” means any alleged conduct, acts, transactions, policies, practices, events, communications, occurrences, statements, omissions or failures to act.

9. “Court” means the United States District Court for the Southern District of Texas.

10. “Defendants” means Zaappaaz, Inc., Azim Makanojiya, Netbrands Media Corp., Mashnoon Ahmed, Gennex Media, LLC, Brandeco, L.L.C., Akil Kurji, Custom Wristbands, Inc., and Christopher Angeles.

11. “Effective Date” or “Effective Date of Settlement” means the first business day following the date the Final Judgment and Order of Dismissal has become final and unappealable, either because: (i) the prescribed time for commencing any appeal has expired and no appeal has been filed; or (ii) an appeal has been filed and either (1) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (2) the order has been affirmed in its entirety and the prescribed time, if any, for commencing any further appeal has expired. For purposes of this Section, an appeal includes appeals as of right, discretionary appeals, interlocutory appeals, proceedings involving writs of certiorari or mandamus, and any other proceedings of like kind whether by affirmance on or exhaustion of any possible appeal or review, writ of certiorari, lapse of time, or otherwise. The finality of the Final Judgment and Order of Dismissal shall not be affected by any appeal or other proceeding regarding solely an application for attorneys’ fees and expenses.

12. “Escrow Agent” means Wolf Haldenstein Adler Freeman & Herz LLP.

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13. “Execution Date” or “Settlement Date” means January 23, 2020.
14. “Fairness Hearing” means the hearing to be held by the Court to determine whether the settlement set forth in this Agreement shall receive final approval pursuant to Fed. R. Civ. P. 23.
15. “Fee and Expense Application” has the meaning given to it in Section VII.1.
16. “Final Judgment and Order of Dismissal” means the order of the Court that (i) contains all the provisions set forth in Section VI.3, and (ii) finally approves the Settlement set forth in this Agreement and dismisses with prejudice the claims of Plaintiffs and all Class Members against the Gennex Defendants.
17. “Final Order Date” means the date the Court enters the Final Judgment and Order of Dismissal as to the Gennex Defendants.
18. “Notice” means the notice required by Fed. R. Civ. P. 23(e) to be provided to the Class in a manner acceptable to the Parties and approved by the Court.
19. “Parties” means the Gennex Defendants and Plaintiffs.
20. “Person” means any individual or entity.
21. “Plaintiffs” means, individually and collectively, Class Representatives and each Class Member.
22. “Preliminary Approval Order” means an order of the Court that (i) contains all the provisions set forth in Section VI.1, and (ii) preliminarily approves the settlement set forth in this Agreement and directs Notice thereof to the Settlement Class.
23. “Promotional Products” means customized silicone wristbands and customized pin buttons that Defendants sold to customers.

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24. “Released Claims” means those claims released pursuant to this Settlement Agreement.

25. “Releasing Parties” means, individually and collectively, Plaintiffs, on behalf of themselves and anyone purporting to act on behalf of, or for the benefit of, or derivatively for any of them, regardless of whether such Person submits any claim for payment or receives any such payment pursuant to any claims process that may be established and approved by the Court. For avoidance of doubt, the term “Releasing Parties” includes (among others) every Class Member regardless of whether he, she, or it submits any claim for payment or receives any such payment pursuant to any claims process that may be established and approved by the Court.

26. “Gennex Defendants” or “Released Parties” means each of the Gennex Defendants (Genex Media, L.L.C., Brandeco, L.L.C., and Akil Kurji) as well as PMGOA, Inc., and all of their respective past, present, and future, direct and indirect corporate parents (including holding companies), subsidiaries, related entities and affiliates, associates (all as defined in SEC Rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), predecessors, successors, and all of their respective officers, directors, managing directors, employees, agents, contractors, attorneys, legal or other representatives, accountants, auditors, experts, trustees, trusts, heirs, beneficiaries, estates, executors, administrators, insurers, and assigns.

27. “Gennex Defendants’ Counsel” means Sheiness, Glover & Grossman, LLP.

28. “Settlement” means the settlement and related terms between the Parties as set forth in this Agreement.

29. “Settlement Amount” means the sum of \$140,000 to be paid by the Gennex Defendants as follows:

- (i) Not later than December 1, 2019, the sum of \$20,000, which may be used in whole or in part for notice and administration. Should the Settlement not

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be finally approved by the Court, any amounts not actually used or incurred for notice and administration shall be returned to the Gennex Defendants.

- (ii) Not later than February 28, 2020, the sum of \$20,000, which may be used in whole or in part for notice and administration. Should the Settlement not be finally approved by the Court, any amounts not actually used or incurred for notice and administration shall be returned to the Gennex Defendants.
- (iii) Upon the later of final approval of the Settlement by the Court or July 31, 2021, the sum of \$50,000.
- (iv) Not later than July 31, 2022, \$50,000.
- (v) Any sums outstanding shall accrue interest at 5% per annum compounded annually commencing December 1, 2019 to December 31, 2019, and thereafter beginning January 1, 2020 until payment of amounts remaining due, with no penalty for prepayment of principal.
- (vi) Defendant Akil Kurji will execute a personal guarantee for the amount of settlement unpaid as of the Execution Date.

30. “Settlement Class Notice” means, collectively, the Notice and Summary Notice.

31. “Settlement Fund” means the escrow account established pursuant to Section IV of this Agreement, including all monies held therein in accordance with the terms of this Agreement.

32. “Summary Notice” means the summary notice of proposed settlement and hearing for publication acceptable to the Parties and approved by the Court.

33. “Taxes” has the meaning given to it in Section IX.

34. “Unknown Claims” means any and all Released Claims against the Released Parties which a Releasing Party does not know or suspect to exist in his, her, or its favor as of the Effective Date, which if known by the Releasing Party might have affected his, her, or its decision(s) with respect to the Settlement. With respect to any and all Released Claims against any and all Released Parties, the Parties stipulate and agree that, by operation of the Final Judgment and Order of Dismissal, upon the Effective Date, Releasing Parties shall have expressly waived, and each Class Member shall be deemed to have waived, and by operation of the Final Judgment and Order of

Dismissal as to the Gennex Defendants shall have expressly waived, the provisions, rights and benefits of Cal. Civ. Code § 1542 or any present, future, federal, state or foreign law, rule, regulation or common-law doctrine, principle or law that is similar, comparable, equivalent or identical to, or that has the effect in whole or part of, Section 1542 of the California Civil Code (“Section 1542”), which 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.

III. SETTLEMENT CLASS CERTIFICATION

1. Plaintiffs and the Gennex Defendants hereby stipulate for purposes of settlement only that the requirements of Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure are satisfied, and, subject to Court approval, the following Class shall be certified for settlement purposes as to the Gennex Defendants:

All persons or entities in the United States, including its territories and the District of Columbia, who purchased customized silicone wristbands or customized pin buttons within the United States, including its territories and the District of Columbia, directly from one or more Defendants, or any of their predecessors, subsidiaries, or affiliates thereof, and all federal or state government entities or agencies, between June 1, 2014 and the Execution Date.

2. The Parties’ agreement as to certification of the Class is only for purposes of effectuating this Settlement as to the Gennex Defendants, and for no other purpose. The Gennex Defendants retain all, and do not waive any, of their objections, arguments, and defenses with respect to any other request for class certification, and reserve all rights to contest class certification if the Settlement set forth in this Agreement does not receive the Court’s final approval, if the Court’s approval is reversed or vacated on appeal, if either provides a Termination Notice pursuant to Section X, or if the Settlement set forth in this Agreement otherwise fails to proceed for any

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other reason. The Parties acknowledge that there has not been and there is no stipulation to a class or certification of a class for any purpose other than effectuating the Settlement, and that, if the Settlement set forth in this Agreement does not receive the Court's final approval, if the Court's approval is reversed or vacated on appeal, if this Agreement is terminated as provided herein, or if the Settlement set forth in this Agreement otherwise fails to close for any other reason, then this Agreement as to certification of the Class becomes null and void *ab initio*, and neither this Agreement nor any other Settlement-related statement may be cited in support of an argument for or against certifying a class related to this Action.

IV. THE SETTLEMENT FUND

1. The Gennex Defendants shall pay or cause to be paid the portions of the Settlement Amount by wire transfer to the Escrow Agent pursuant to the schedule established in Section II.29 above. Before final approval of the settlement by the Court, if the Gennex Defendants fail to make a required payment pursuant to the schedule set forth in Section II.29 above and do not cure within 15 days of the failure to make such payment, the Settlement shall be null and void, and all parties shall return to their respective positions in this actions as if this Agreement had never been executed. After final approval of the settlement by the Court, if the Gennex Defendants fail to make a required payment pursuant to the schedule set forth in Section II.29 and fail to cure such failure within 15 days, the total amount of the settlement shall immediately become due and payable and Plaintiffs will be allowed to take any and all legal actions to collect such debt. Before any wire transfer takes place, Lead Class Counsel shall provide the Gennex Defendants with information necessary to complete the wire transfer. These wire-transferred funds, together with any interest earned thereon in the escrow account from the date of such wire transfer, shall constitute the Settlement Fund. The Settlement Fund shall be established as an escrow account and administered by the Escrow Agent, subject to approval by the Court. Should the Settlement

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become final, the Gennex Defendants, and each of them, shall under no circumstances have any reversionary interest in the Settlement Fund or any portion thereof.

2. Other than payment of the Settlement Amount in accordance with the provisions of Section IV.1 above, the Gennex Defendants shall not have any liability, responsibility, or obligation to pay or reimburse any other amounts to any Person, including but not limited to Plaintiffs, Class Counsel, any Class Member, or any Releasing Parties in connection with, relating to, or arising out of the Action, the Released Claims, or this Settlement. The Gennex Defendants shall have no liability, obligation, or responsibility with respect to the investment, allocation, use, disbursement, administration, or oversight of the Settlement Fund.

3. The Settlement Fund shall be administered pursuant to this Agreement and subject to the Court's continuing supervision and control, as shall any provision of this Agreement. No monies shall be disbursed from the Settlement Fund prior to the Effective Date and without the specific authorization of the Court, with the sole exception of notice and administration costs described in Section VIII and Taxes described in Section IX. Provided, however, that expenses authorized by the Court from the Settlement Fund shall be payable to Class Counsel upon award, notwithstanding the existence of any timely filed objections to the Settlement, to any payment of fees, expenses, or incentive awards or potential for any appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to Class Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund, if the Effective Date does not occur, or the Settlement Agreement is subject to successful collateral attack, or the fee or cost amount is reduced or reversed.

4. The Settlement Fund shall be invested by the Escrow Agent in short term (up to one-year maturity) United States agency or Treasury securities or other instruments backed by the

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full faith and credit of the United States government or an agency thereof, or fully insured by the United States government or an agency thereof, and the proceeds of these instruments shall be reinvested in similar instruments at their then-current market rates as they mature. In the event that the yield on securities identified herein is negative, in lieu of purchasing such securities, all or any portion of the Settlement Fund held may be deposited in a non-interest-bearing account, which to the extent available, is fully insured by the Federal Deposit Insurance Corporation. All risks related to the investment of the Settlement Fund in accordance with the investment guidelines set forth in this Section shall be borne by the Settlement Fund. Neither the Gennex Defendants nor their counsel shall bear any liability relating to the management of the Settlement Fund or for the loss of any funds invested in the Settlement Fund.

5. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds are either returned to the Gennex Defendants pursuant to Section X.3 of this Agreement or distributed subsequent to the Effective Date pursuant to a plan of distribution approved by the Court or pursuant to other orders of the Court.

V. DISMISSALS, RELEASES, AND COVENANTS NOT TO SUE

1. Subject to Court approvals, Class Representatives, on behalf of themselves and all Class Members, and the Gennex Defendants agree that this Agreement shall be in full and final disposition of: (i) the Action; and (ii) any and all Released Claims as against any and all Released Parties.

2. Upon final approval of the Settlement reflected in this Agreement, and as part of the entry of the Final Judgment and Order of Dismissal as to the Gennex Defendants, the Action shall be dismissed with prejudice as to the Gennex Defendants.

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3. *Released Claims.* The Releasing Parties hereby expressly and irrevocably waive, and fully, finally, and forever settle, discharge, and release the Released Parties from, any and all manner of claims, demands, actions, suits, and causes of action, whether individual, class, representative, or otherwise in nature, for damages, restitution, disgorgement, interest, costs, expenses, attorneys' fees, fines, civil or other penalties, or other payment of money, or for injunctive, declaratory, or other equitable relief, whenever incurred, whether directly, indirectly, derivatively, or otherwise, whether known or unknown, suspected or unsuspected, asserted or unasserted, in law or in equity, that any Releasing Party ever had, now has, or hereafter can, shall, or may have and that have accrued as of the Settlement Preliminary Approval Date related in any way to the Claims, including Unknown Claims. In connection therewith, upon the Effective Date of Settlement, each of the Releasing Parties (i) shall forever be enjoined from prosecuting in any forum any Released Claim against any of the Released Parties from the beginning of time through the Settlement Preliminary Approval Date; and (ii) agrees and covenants not to sue any of the Released Parties with respect to any Released Claims or to assist any third party in commencing or maintaining any suit against any Released Party related in any way to any Released Claims. For avoidance of doubt, this release shall extend to, but only to, the fullest extent permitted by federal law, but excluding any claim for any product defect, breach of warranty, breach of contract, trade claims, claims under the Uniform Commercial Code or similar claims, and claims for personal or bodily injury.

4. The Releasing Parties may hereafter discover facts other than or different from those which they now know or believe to be true with respect to the subject matter of the Released Claims. Nevertheless, the Releasing Parties expressly, fully, finally, and forever settle and release, and, upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment and

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Order of Dismissal as to the Gennex Defendants shall have, fully, finally, and forever settled and released, any and all Released Claims, without regard to the subsequent discovery or existence of such different or additional facts, as well as any and all rights and benefits existing under (i) Cal. Civ. Code Section 1542 or any equivalent, similar or comparable present or future law or principle of law of any jurisdiction and (ii) any law or principle of law of any jurisdiction that would limit or restrict the effect or scope of the provisions of the release set forth above, without regard to the subsequent discovery or existence of such other or different facts. The Releasing Parties acknowledge that the inclusion of Unknown Claims in the definition of Released Claims was separately bargained for and was a material element of the Agreement.

5. The Parties intend by this Settlement Agreement to settle with and release only the Released Parties that the Releasing Parties have released pursuant to Section V.1-4, and the Parties do not intend this Settlement Agreement, or any part hereof, or any other aspect of the proposed Settlement or release, to release or otherwise affect in any way any claims concerning product liability, breach of warranty, breach of contract or tort of any kind (other than a breach of contract or tort based on any factual predicate in this Action), a claim arising out of violation of the Uniform Commercial Code, or personal or bodily injury.

6. The Parties each acknowledge that they each consider it to be a material term of this Agreement that the parties will be bound by the provisions of Paragraph V.

VI. PRELIMINARY APPROVAL ORDER, NOTICE, AND FAIRNESS HEARING

1. At a date to be selected by Class Counsel, Class Counsel shall submit to the Court a motion and supporting papers requesting entry of the Preliminary Approval Order, with the Gennex Defendants' Counsel to be provided at least five business days' advance notice of the proposed filings and drafts thereof. The requested Preliminary Approval Order shall include provisions to the following effect:

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- (i) Approving the Settlement set forth in this Agreement as sufficiently fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23 for purposes of issuing Notice to the Class;
- (ii) Approving the form, contents, and method of dissemination, of: (1) the Summary Notice, which shall be (a) e-mailed; and (b) published in appropriate periodicals generally read by Class members as determined by Class Counsel in consultation with the Claims Administrator; and (2) the Notice, which shall be mailed to Class Members that request a copy and posted on a dedicated website. The Preliminary Approval Order shall also direct Class Counsel to establish and maintain, or cause to be established and maintained, a dedicated website from which each member of the Settlement Class can view and download relevant documents, including the Preliminary Approval Order, Notice, Summary Notice, and Plaintiffs' First Consolidated Amended Class Action Complaint;
- (iii) Approving the procedures set forth in the Notice for Persons who would otherwise be Class Members to object to the Settlement or request exclusion from the Class;
- (iv) Approving the appointment of Wolf Haldenstein Adler Freeman & Herz LLP as Escrow Agent;
- (v) Setting a briefing schedule for (a) Plaintiffs' brief in support of final settlement approval and proposed allocation plan, and (b) Class Counsel's application for attorneys' fees, costs, and incentive awards for the Class Representatives; and
- (vi) Scheduling a final approval hearing with respect to the proposed Settlement for a time and date convenient for the Court, but no earlier than 60 days after the Court's entry of the Preliminary Approval Order, at which hearing the Court will conduct an inquiry into the fairness, reasonableness, and adequacy of this Agreement and address any objections to it, and determine whether this Agreement should be finally approved.

2. Class Counsel may, as practicable, combine the above-referenced motion and supporting papers requesting entry of the Preliminary Approval Order with the motions and supporting papers regarding settlement agreements reached with any other Defendants. The text of any combined notices shall be agreed upon by Class Counsel and Gennex Defendants and any other settling Defendants before submission of the notice to the Court for approval.

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3. Any Person who has not requested timely exclusion from the Class and who objects to the Settlement set forth in this Agreement may appear in person or through counsel, at that Person's own expense, at the Fairness Hearing to present any evidence or argument that the Court deems proper and relevant, subject to further order by the Court. However, no such Person shall be heard, and no papers, briefs, pleadings, or other documents submitted by any such Person shall be received and considered by the Court, unless such Person properly submits a written objection that includes: (i) a notice of intention to appear; (ii) proof of membership in the Settlement Class; and (iii) the specific grounds for the objection and any reasons why such Person desires to appear and be heard, as well as all documents or writings that such Person desires the Court to consider. Such a written objection must be both filed with the Court and mailed to Lead Class Counsel and the Gennex Defendants' Counsel not less than 14 days prior to the Fairness Hearing, or any other date set by the Court, in accordance with the procedures and deadlines set forth in the Notice. Any Person who fails to timely object in the manner prescribed herein shall be deemed to have waived his or her objections and will forever be barred from making any such objections in the Action, unless otherwise excused for good cause shown, as determined by the Court. Lead Class Counsel and/or the Gennex Defendants shall file any papers in response to any such objection or otherwise in further support of the Settlement within seven days of the Fairness Hearing, or any other date set by the Court.

4. If the Preliminary Approval Order is entered by the Court, Class Counsel shall seek entry of a Final Judgment and Order of Dismissal, with the Gennex Defendants' Counsel to be provided at least five business days' advance notice of the proposed filings and drafts thereof, that among other things:

- (i) Approves finally the Settlement set forth in this Agreement and its terms, which shall be incorporated by reference, as being a fair, reasonable, and

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adequate settlement as to Class Members within the meaning of Fed. R. Civ. P. 23 and directing its consummation according to its terms;

- (ii) Approves Lead Class Counsel's proposed allocation plan for distribution of proceeds of the Settlement to Class members;
- (iii) Finds that the Notice constitutes due, adequate, and sufficient notice of the Settlement set forth in this Agreement, meeting the requirements of due process and the Federal Rules of Civil Procedure;
- (iv) Directs that the Action shall be dismissed with prejudice without costs;
- (v) Directs that the releases of any and all Released Claims with respect to the Released Parties shall be deemed effective as of the Effective Date;
- (vi) Orders that Releasing Parties are permanently enjoined and barred from instituting, commencing, or prosecuting any action or other proceeding asserting any Released Claims against any Released Party;
- (vii) Orders that rulings, orders, and judgments in this Action shall not have any res judicata, collateral estoppel, or offensive collateral estoppel effect with respect to any non-released claim;
- (viii) Retains with the Court exclusive jurisdiction over the Settlement and this Agreement, including the administration and consummation of the Settlement; and
- (ix) Directs that the judgment of dismissal as to the Gennex Defendants shall be final and entered forthwith.

VII. APPLICATION FOR ATTORNEYS' FEES, EXPENSES, AND CLASS REPRESENTATIVE INCENTIVE AWARDS

1. Lead Class Counsel will submit an application or applications (the "Fee and Expense Application") to the Court for an award of attorneys' fees and expenses and incentive awards, if any, to Plaintiffs pertaining to this Settlement or to this Action. Neither the Gennex Defendants nor the Released Parties shall have any responsibility for, or liability whatsoever with respect to, any payment of attorneys' fees or expenses or incentive awards; rather, any such attorneys' fees, expenses, or incentive awards must be paid solely from the Settlement Fund. Any attorneys' fees, costs and expenses awarded by the Court shall be disbursed only to Lead Class

Counsel for allocation, at their discretion, among the various Class Counsel who have participated in this litigation.

2. Any Fee and Expense Application shall be considered by the Court separate and apart from its consideration of the fairness, reasonableness, and adequacy of the Settlement, and any order or proceeding relating to the Fee and Expense Application, or any appeal of any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Agreement or the Settlement, or affect the finality or binding nature of any of the releases granted hereunder.

VIII. NOTICE AND ADMINISTRATIVE COSTS AND ADMINISTRATION OF THE SETTLEMENT

1. Prior to the Effective Date and without further order of the Court, the Escrow Agent shall be entitled, upon approval of Lead Class Counsel, to make disbursements of up to \$40,000 from the Settlement Fund for purposes of paying costs (other than attorneys' fees) incurred in preparing and providing the Settlement Class Notice and paying other administrative expenses, including expenses of and incurred by the Claims Administrator. After the Effective Date, Plaintiffs' Counsel or the Escrow Agent may pay all further reasonable notice and administration expenses, regardless of amount, without further order of the Court. Funds expended pursuant to Section VIII for Settlement Class Notice and claims administration are not recoverable (i.e., do not revert to the Gennex Defendants) if this Settlement is terminated or does not become final.

2. It is anticipated and understood that Lead Class Counsel and Plaintiffs will eventually seek to establish a claims process pertaining to this Settlement or this Action, subject to approval by the Court, pursuant to which Class Members may seek to be included in distributions of funds recovered on their behalf in the Action. Any such claims process shall include required submission of a proof of claim form by each Class Member, which proof of claim

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form shall include, *inter alia*, an acknowledgement of, and agreement to, the releases of all Released Claims against all Released Parties. Any Class Member who does not execute a proof of claim form containing such an acknowledgement and agreement shall not be permitted to receive any distribution from the Settlement Fund or otherwise in connection with the Action and will in any event be barred from bringing any action against the Released Parties concerning the Released Claims.

3. Neither the Gennex Defendants nor the Released Parties shall have any role in, or responsibility or liability to any person for, the solicitation, review, or evaluation of proofs of claim by Plaintiffs, Class Counsel, or their designated representatives or agents.

4. Neither the Gennex Defendants nor the Released Parties shall have any responsibility for, or liability whatsoever with respect to, any Notice and Administrative Costs, rather, any such costs will be paid solely from the Settlement Fund.

5. All Class Members whose claims are not approved and who may be barred from any participation in distributions from the Settlement Fund shall nonetheless be bound by all of the terms of this Agreement and the Settlement, including the terms of the Final Judgment and Order of Dismissal as to the Gennex Defendants to be entered in the Action and the releases provided for herein, and will be barred from bringing any action against the Released Parties concerning the Released Claims.

6. All proceedings with respect to the administration, processing, and determination of claims and proof of claims by Plaintiffs (including Class Members) and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the Court.

IX. TAXES

1. The Parties agree that the Settlement Fund is intended to be treated at all times as a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and agree not to take any position for Tax purposes inconsistent therewith. The Settlement Fund, less any amounts incurred for Taxes (as defined below), and less any funds expended for Settlement Class Notice and claims administration pursuant to Section VIII, plus any accrued interest thereon, shall be returned to the Gennex Defendants, as provided in Section X.2, if the Settlement does not become effective for any reason, including by reason of a termination of this Agreement pursuant to Section X or otherwise.

2. The Escrow Agent and the Gennex Defendants will cooperate and, if in the view of the Gennex Defendants such an election is necessary or advisable, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of Section IX including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1(j)(2)) back to the earliest permissible date. Such elections shall be made in compliance with the procedures and requirements contained in in the Treasury Regulations under Section 468B of the Code. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing(s) to occur.

3. For the purpose of Section 1.468B of the Internal Revenue Code and the Treasury regulations thereunder, the Escrow Agent shall be designated as the “administrator” of the Settlement Fund. The Escrow Agent or the claims administration firm retained by Class Counsel and approved by the Court shall timely and properly file all income, informational, and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)). Such returns shall be consistent with

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this Section IX and, in all events, shall reflect that all Taxes (as defined below) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein.

4. All: (i) taxes or other similar imposts or charges (including any estimated taxes, interest, penalties, or additions to tax) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon the Released Parties with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “Qualified Settlement Fund” within the meaning of Treasury Regulation § 1.468B-1(a) (or any relevant equivalent for state tax purposes); (ii) other taxes imposed on or in connection with the Settlement Fund (collectively, “Taxes”); and (iii) expenses and costs incurred in connection with the operation and implementation of Section IX (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described herein (“Tax Expenses”)), shall promptly be paid out of the Settlement Fund by the Escrow Agent without prior order from the Court. Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund, and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to any claimants authorized by the Court any funds necessary to pay such amounts including the establishment of adequate reserves for any Taxes (as well as any amounts that may be required to be withheld under Treasury Regulation § 1.468B-2(l)(2)). The Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Section.

5. Neither the Parties nor their counsel shall have any responsibility for or liability whatsoever with respect to: (i) any act, omission, or determination of the Escrow Agent or any other person, or any of their respective designees or agents, in connection with the administration

of the Settlement Fund or otherwise; (ii) any plan of distribution approved by the Court; (iii) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (iv) any losses suffered by, or fluctuations in the value of, the Settlement Fund; or (v) the payment or withholding of any Taxes or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.

X. TERMINATION OF SETTLEMENT

1. Lead Class Counsel, acting on behalf of Plaintiffs, and the Gennex Defendants shall each have the respective independent and discretionary right to terminate this Settlement by providing written notice to the other of an election to do so (“Termination Notice”) within 30 days following any of the following events: (i) the Court enters an order declining to enter the Preliminary Approval Order in any material respect; (ii) the Court enters an order refusing to approve this Agreement or any material part of it; (iii) the Court enters an order declining to enter the Final Judgment and Order of Dismissal as to the Gennex Defendants in any material respect; (iv) the Final Judgment and Order of Dismissal as to the Gennex Defendants is modified in any material respect or reversed by a court of appeal or any higher court.

2. Except as otherwise provided herein, in the event the Settlement is terminated in accordance with the provisions of Paragraph X.1., then, other than with respect to scheduling matters, the Parties to this Agreement shall be deemed to have reverted to their respective status in the Action as of the Execution Date, and the Parties shall proceed in all respects as if this Agreement and any related orders had not been entered. Within five business days following any notice of termination being delivered to the Escrow Agent, the Settlement Fund shall be returned in its entirety to the Gennex Defendants (including any accrued interest thereon), less any Taxes due and expenditures made of notice and administrative costs pursuant to Sections VIII and IX, if any. At the Gennex Defendants’ request, the Escrow Agent or Court-appointed claims

administrator shall apply for any tax overpaid by Escrow Agent with respect to the Settlement Fund and pay the proceeds of any such refund to the Gennex Defendants.

XI. NO ADMISSION OF LIABILITY

1. Nothing in the existence of, or terms of, this Agreement constitutes an admission by the Gennex Defendants as to the merits of any allegation made in the Action or the validity of any substantive defenses or procedural issues that could be or have been asserted by the Gennex Defendants. For avoidance of doubt, the Gennex Defendants expressly deny all liability. The Agreement, and all negotiations, documents, and discussions associated with it, shall be without prejudice to the rights, positions, or privileges of any Released Party (except as expressly provided for in this Agreement), and shall not be construed as, or deemed to be, an admission or evidence on the part of any Released Party of any violation of any statute, regulation, law, rule, or principle of common law or equity, or of any liability or wrongdoing, or of the truth or merit of any allegations or claims in this Action, and shall not be discoverable, used, offered, or accepted, directly or indirectly, as evidence of such in this Action or any other action, litigation, arbitration, or other proceeding, and shall have no precedential value; provided, however, that nothing contained herein shall preclude use of this Agreement in any proceeding to enforce this Agreement or the Final Judgment and Order of Dismissal as to the Gennex Defendants.

2. Plaintiffs (including each Class Member), Class Counsel, and the Gennex Defendants agree that neither this Agreement nor any statement made in negotiation thereof shall be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by the Gennex Defendants or of the truth of any of the claims or allegations alleged in or relating to the Action.

XII. GOOD FAITH EFFORTS TO EFFECTUATE THIS SETTLEMENT AGREEMENT

1. The Parties agree to cooperate with one another in good faith to effectuate and implement the terms and conditions of this Agreement and to exercise their reasonable best efforts to accomplish the terms of this Agreement. This includes the Gennex Defendants' timely serving notice on those entities required to receive notice pursuant to 28 U.S.C. § 1715.

XIII. COOPERATION

1. In consideration for the dismissal of this Action and the release of the Released claims as against the Gennex Defendants, the Gennex Defendants have agreed to provide Plaintiffs with the Cooperation identified in this section. No additional cooperation to Plaintiffs is required of the Gennex Defendants under this Agreement.

2. The Gennex Defendants will bear all costs and expenses they incur in connection with performing the cooperation obligations set forth in this Section.

3. The Gennex Defendants' cooperation obligations shall begin no later than one (1) business day after final approval of this Agreement, but the Gennex Defendants have the option of providing information requested by Plaintiffs and Class Counsel pursuant to this Section as soon as they desire. The Gennex Defendants' cooperation obligations shall cease as of the date that final judgment has been rendered against all Defendants in this Action.

4. The Gennex Defendants shall make every reasonable effort to:

(i) produce to Class Counsel the following documents;

a. All communications with competitors pursuant to the price-fixing scheme alleged in the Consolidated Amended Complaint;

b. All internal communications relating to the price-fixing scheme alleged in the Consolidated Amended Complaint;

c. All documents and data related to the price-fixing scheme alleged in the Consolidated Amended Complaint provided to the U.S. Department of

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Justice relating to its criminal antitrust investigation of the Gennex Defendants; and

d. Transaction-level electronically stored sales information and data during the period May 1, 2012 through June 30, 2018 for all sales of Promotional Products as defined in Section II.21.

- (ii) provide to Class Counsel an attorney proffer, upon reasonable notice and at a mutually agreeable time and place, providing all known facts relevant to Plaintiffs' claims as alleged in the Action;
- (iii) make available for interviews with Class Counsel or experts, upon reasonable notice and at a mutually agreeable time and place, up to two (2) current and former directors, officers and employees of Gennex Media, L.L.C., including any predecessor, successor, or related entities, who are believed to have knowledge regarding Plaintiffs' claims as alleged in the Action. The parties agree to negotiate in good faith to the extent that Plaintiffs request an additional follow-up interview;
- (iv) prepare declarations or affidavits or provide testimony, upon reasonable notice and at a mutually agreeable time and place, by current and former directors, officers and employees of Gennex Media, L.L.C., including any predecessor, successor, or related entities, at deposition or trial. Deposition and trial testimony under this section shall be limited to three (3) percipient witnesses and to one (1) one corporate representative pursuant to Fed. R. Civ. P. 30(b)(6), though Gennex may opt to designate multiple representative on different topics to provide its corporate testimony; and
- (v) take necessary steps to provide authentication of non-privileged documents that Class Counsel intend to use at trial, upon reasonable notice.

5. The Gennex Defendants shall have the right to designate any information, testimony or documents produced pursuant to this Section as "Confidential" or "Highly Confidential – Outside Counsel's Eyes Only" pursuant to the terms of the Protective Order in this Action. Any such designations shall survive the termination or rescission of this Agreement and shall continue to enjoy the fullest protections afforded by the Protective Order.

6. Notwithstanding any other provision in this Settlement Agreement, Gennex Defendants may assert, where applicable, the work-product doctrine, the attorney-client privilege, the common interest privilege, the joint defense privilege, obligations under applicable data

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privacy laws or regulations, and/or any other applicable privilege or protection with respect to any materials. None of the cooperation provisions are intended to, nor do they, waive any such privileges or protections. In accordance with Fed. R. Civ. P. 26(b)(5) and Fed. R. Evid. 502, Gennex Defendants and Plaintiffs therefore agree that if Gennex Defendants through inadvertence produce or provide materials that it believes is subject to a claim of attorney-client privilege or attorney work product, obligations under applicable data privacy laws or regulations, and/or any other applicable privilege or protection are accidentally or inadvertently produced, Gennex Defendants shall give reasonably prompt written notice to Plaintiffs that the document or thing is subject to a claim of attorney-client privilege or attorney work product and request that the document or thing be returned to the producing party. If any materials protected by the work-product doctrine, the attorney-client privilege, the common interest privilege, the joint defense privilege, obligations under applicable data privacy laws or regulations, and/or any other applicable privilege or protection are accidentally or inadvertently produced, Plaintiffs shall, upon notice from the Gennex Defendants, promptly cease reviewing the Materials and return or destroy them within five (5) business days. Plaintiffs shall also delete or destroy the portions of any other documents or work product which refer to or summarize such materials. The production of any such materials shall in no way be construed to have waived any privilege or protection attached to such materials.

7. All information and materials the Gennex Defendants provide to Class Counsel shall be used only in connection with this Action and shall not be used directly or indirectly for any other purpose. No information provided to Class Counsel pursuant to this Agreement may be disclosed to or shared with any other person or party (other than co-counsel or experts retained in the course of the Action), including absent Class Members and their counsel and plaintiffs who

opt-out of this Agreement and their counsel, except as part of non-privileged documents or testimony filed with the Court or produced at a hearing or trial of the Action. Class Counsel agrees that even if filed with the Court or produced at a hearing or trial, documents or testimony designated as confidential in accordance with the Protective Order shall retain the protection of that order until the Court directs otherwise.

XIV. MISCELLANEOUS

1. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

2. The Parties agree that the amount paid and the other terms of the Settlement were negotiated at arm's-length in good faith by the Parties, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

3. The administration and consummation of the Settlement as embodied in this Agreement shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering all orders relating to matters addressed in this Agreement and enforcing the terms of this Agreement.

4. For the purpose of construing or interpreting this Agreement, the Parties agree that it is to be deemed to have been drafted equally by all Parties hereto and shall not be construed strictly for or against any Party.

5. This Agreement shall constitute the entire, complete, and integrated agreement between the Parties pertaining to the settlement of the Action and supersedes any and all prior negotiations and agreements, and is not subject to any condition not explicitly provided for in this Agreement itself. All terms of this Agreement are contractual and not mere recitals. In entering into and executing this Agreement, each of the Parties respectively warrants that it is acting upon its respective independent judgment and upon the advice of its respective counsel, and not in

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reliance upon any warranty or representation, express or implied, of any nature or kind by any other Person, other than the warranties and representations expressly made in this Agreement. Subject to approval of the Court, the terms of this Agreement are and shall be binding upon each of the Parties hereto, their heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns, and upon all other Persons claiming any interest in the subject matter hereto through any of the Parties hereto including any Class Members.

6. The terms of this Agreement are not severable; they are interdependent and have been agreed to only as a whole by the Parties.

7. This Agreement may be modified or amended only by a writing executed by the Parties, including their counsel.

8. All terms of this Agreement shall be governed by and interpreted according to the substantive laws of Texas without regard to its choice-of-law principles.

9. The waiver by any Party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach of this Agreement, whether prior, subsequent, or contemporaneous. If one Party to this Agreement considers another Party to be in breach of its obligations under this Agreement, that Party must provide the breaching Party with written notice of the alleged breach and provide a reasonable opportunity to cure the breach before taking any action to enforce any rights under this Agreement.

10. Each of the Released Parties is intended to be and is a third-party beneficiary of this Agreement and is authorized to enforce the provisions of this Agreement, including without limitation the release of Released Claims against the Released Parties and covenant not to sue the Released Parties, and such other provisions of this Agreement as are applicable to each Released Party.

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11. The Gennex Defendants and Plaintiffs (including Class Members), and Class Counsel hereby irrevocably submit to the exclusive jurisdiction and venue of the United States District Court for the Southern District of Texas, for any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of this Agreement, including, without limitation, any suit, action, proceeding, or dispute relating to the release provisions herein. Each party waives the right to move to dismiss or transfer any action brought in the United States District Court for the Southern District of Texas to enforce this Agreement on grounds of jurisdiction, venue, or *forum non conveniens*.

12. It is anticipated that Lead Class Counsel and Plaintiffs will eventually submit to the Court a plan of distribution with respect to the distribution of some or all of the Settlement Fund at some time following the Effective Date. A plan of distribution is not a term of this Agreement, and it is not a condition of this Agreement that any particular plan of distribution be approved. Any plan of distribution is a matter separate and apart from the settlement between the Parties and any decision by the Court concerning a plan of distribution shall not affect the validity or finality of the proposed settlement. The Gennex Defendants shall have no responsibility, obligations, or liabilities whatsoever with respect to any plan of distribution or implementation thereof, or with respect to any other administration or distribution of the Settlement Fund.

13. This Agreement may be executed in counterparts by or on behalf of the Parties, and a facsimile or .pdf signature shall be deemed an original signature for purposes of executing this Agreement.

14. Plaintiffs and the Gennex Defendants acknowledge that they have been represented by counsel and have made their own investigations of the matters covered by this Agreement to the extent they have deemed it necessary to do so. Therefore, Plaintiffs and the Gennex Defendants

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and their respective counsel agree that they will not seek to set aside any part of this Agreement on the grounds of mistake or coercion. Moreover, Plaintiffs and the Gennex Defendants and their respective counsel understand, agree, and expressly assume the risk that any fact may turn out hereinafter to be other than, different from or contrary to the facts now known to them or believed by them to be true, and further agree that this Agreement shall be effective in all respects notwithstanding and shall not be subject to termination, modification, or rescission by reason of any such difference in facts.

15. Any notice or materials to be provided to Plaintiffs or Lead Class Counsel pursuant to or relating to this Agreement shall be sent to Warren T. Burns of Burns Charest LLP; any notice or materials to be provided to the Gennex Defendants pursuant to or relating to this Agreement shall be sent to Todd Newman of Sheiness, Glover & Grossman, LLP.

16. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement, subject to Court approval, and the undersigned Lead Class Counsel represent that they are authorized to execute this Agreement on behalf of Plaintiffs and, subject to Court Approval, on behalf of the Class and all Class Members.

Date: January 23, 2020



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