IN THE CIRCUIT COURT OF LONOKE COUNTY, ARKANSAS

MICHAEL FLORENCE, ***individually and on behalf of a class of similarly situated persons,***	
Plaintiffs,	**Case No. 43CV-18-843**
v.	
HORSEPOWER ENTERTAINMENT, LLC, ***and*** **THE MADISON COMPANIES, LLC,**	
Defendants.	

SETTLEMENT AGREEMENT

Between the Class Representative and the Class,
and Defendants Horsepower Entertainment, LLC, and The Madison Companies, LLC

The undersigned Parties hereby stipulate and agree, subject to the approval of the Court pursuant to Rule 23 of the Arkansas Rules of Civil Procedure, that this Action, as defined herein below, shall be fully settled, compromised, and dismissed with prejudice pursuant to the terms and conditions set forth in this Settlement Agreement.

RECITALS

WHEREAS Michael Florence ("Florence") is the named Plaintiff and the Class Representative in the Action and seeks to recover damages on behalf of himself and similarly situated persons;

WHEREAS Horsepower Entertainment, LLC and The Madison Companies, LLC (collectively, "Horsepower" or the "Defendants") are Defendants in the Action and alleged to have been a partner in the creation, promotion, marketing, organization, and presentation of the Thunder on the Mountain Music Festival ("Thunder");

WHEREAS the Class Representative and Class Members (hereafter, the "Plaintiffs") are those that purchased parking passes, camping passes, shower passes, vendor booths, day passes, children passes, VIP passes, RV passes, hotel passes or packages, and/or passes of any kind to Thunder 2015 scheduled for the weekend of June 26-28, 2015 ("Purchases"), and which are more specifically defined below in the Class Definition;

WHEREAS the Plaintiffs allege, in general terms, that Horsepower and Brett Mosiman and his companies, which included Backwood Enterprises, LLC and Pipeline Productions, Inc. (collectively, "Backwood") joint ventured Thunder, and sold to Plaintiffs their parking passes, camping passes, shower passes, vendor booths, day passes, children passes, VIP passes, RV passes, hotel passes or packages, and/or passes of any kind to Thunder, but then cancelled Thunder and failed to fully refund Plaintiffs their money;

WHEREAS Backwood sued Horsepower in federal court in Kansas City, Kansas on May 21, 2015 in a case entitled *Pipeline Productions, Inc., et al. v. The Madison Companies, LLC, et al.*, Case No. 5:15-cv-04890 (the "Kansas Action");

WHEREAS, on or about June 22, 2015, Grant Williams, individually and putatively on behalf of a class of similarly situated persons, filed an action in the Circuit Court of Pulaski County, Arkansas, against Backwood, along with Horsepower, which action was assigned Case No. 60-CV-15-2799 (the "Williams Action").

WHEREAS, Horsepower was dismissed with prejudice from the Williams Action by Plaintiff Williams only, and by joint stipulation and agreed order entered February 23rd and February 28, 2018, respectively.

WHEREAS the persons who comprise the Class in this Action are the same persons who comprised the class in the Williams Action; to wit, those that purchased parking passes, camping passes, shower passes, vendor booths, day passes, children passes, VIP passes, RV passes, hotel passes or packages, and/or passes of any kind to the Thunder, which all meet the requirements of the Class Definition provided below.

WHEREAS the Williams Action was subsequently settled on a class-wide basis insofar as asserted against Backwood only (the "Williams Settlement"), with the Williams Settlement being approved by the Pulaski Circuit Court on or about December 28, 2018, and the Williams Action dismissed with prejudice by entry of a Final Judgment and Order of Dismissal with Prejudice on December 28, 2018.

WHEREAS, the Williams Settlement specifies that the Williams settlement class – i.e., the Class – will receive a specified percentage of any recovery obtained by Backwood in the Kansas Action, or any global settlement resolving the claims in the Kansas Action, but in no event less than $450,000.00, and grants a lien on the proceeds of the Kansas Action.

WHEREAS, the lien was filed in the Kansas Action on behalf of the Williams settlement class on August 15, 2019.

WHEREAS the Kansas Action went to trial in February 2020, and the jury returned a verdict against Horsepower, resulting in entry of the Kansas Judgment which, if not overturned by post-trial motion or on appeal, will result in a payment of $450,000.00 to the Williams settlement class – i.e., the Class under the terms of the Williams Settlement;

WHEREAS Horsepower has filed in the Kansas Action motions for judgment as a matter of law, for a new trial, and/or to amend the Kansas Judgment in which they assert that judgment should be entered in Horsepower's favor as a matter of law or, failing that, that the Kansas Judgment should be vacated and a new trial granted on various grounds.

WHEREAS Horsepower also has stated an intention to appeal the Kansas Judgment should their post-trial motions be denied.

WHEREAS the Plaintiffs believe this Action has merit but understand that Horsepower have vigorously asserted and intend to vigorously assert various procedural and substantive defenses that make recovery uncertain, that will delay any potential recovery, and that will be expensive to litigate, including:

- Horsepower assert that the Plaintiffs' unjust enrichment claim is barred by the three-year statute of limitations because the action was filed more than four years after the alleged misconduct. Plaintiffs have relied on a tolling theory based on the pendency of the prior putative class actions but never certified as such. Horsepower argue that there can be no tolling under the United States Supreme Court decision in *China Agritech, Inc. v. Resh*, 138 S. Ct. 1800 (2018). While this Court denied Horsepower's motion to dismiss on this theory, Horsepower intend to continue asserting the statute of limitations defense in the Action, including on appeal, if necessary;
- Horsepower argue that this Action cannot be maintained on a class basis since the General Assembly amended the Arkansas Deceptive Trade Practices Act ("ADTPA") to preclude class actions except those alleging violation of the usury rate specified by the Arkansas Constitution. Ark. Code Ann. § 4-88-113(f)(1)(B).

The amendment was effective July 30, 2017. *Driver Solutions, LLC v. Downey*, 2019 Ark. 296, 586 S.W. 3d 142, 148 (2019). This Action does not involve a claim for violation of the usury rate specified by the Arkansas Constitution. Plaintiffs assert that the amendment barring ADTPA class actions is unconstitutional, but the Arkansas courts have not yet addressed this question;

- Horsepower assert that recovery is barred because the tickets issued to Plaintiffs contained language stating that there were "No refunds" and that the buyer "bears all risk including cancellation of the event[.]" Plaintiffs acknowledges the existence of this language but dispute that such language bars recovery;
- Horsepower assert that neither of their names appeared on any public-facing advertisements or marketing material for Thunder and this precludes any claim that they acted deceptively in allegedly promoting or marketing Thunder. Plaintiffs are unaware of any public-facing advertisement or marketing material with the name of Horsepower but dispute that this precludes liability;
- Horsepower argue that they received no portion of the proceeds of the sales of tickets to Thunder and that all proceeds were instead received by Backwood. Plaintiffs have no contrary information. Horsepower, therefore, assert they cannot be held liable for unjust enrichment because they were not enriched by the sale of tickets to Plaintiffs;

WHEREAS, Plaintiffs understand that Horsepower are no longer operating entities and have no assets and that the sole source for any recovery in this Action is an insurance policy issued to Horsepower. but that the judgment entered in the Kansas Action exceeds the remaining policy limits and, if paid, will leave no proceeds with which to pay any judgment or subsequent settlement

in this Action, and that the policy limits continue to erode on an ongoing basis due to the ongoing costs of defending the litigation against Horsepower;

WHEREAS Horsepower and Backwood have reached a global settlement of all litigation between them, including the Kansas Action (the "Global Settlement");

WHEREAS the terms of the Global Settlement are confidential but that Global Settlement will exhaust the remaining insurance policy limits while providing the funds needed to pay the Williams Settlement (i.e., the Class) the $450,000.00 called for by the Williams Settlement;

WHEREAS a condition of the Global Settlement is the dismissal of this Action, with prejudice, on a class-wide basis, and entry of a final judgment granting to Horsepower in this Action a full and complete class-wide release of and discharge from all claims made or that could have been made in this Action;

WHEREAS, the court in the Kansas Action, upon being apprised of the Global Settlement, and prior to deciding Horsepower's post-trial motions and thereby triggering the onset of the time to appeal the Kansas judgment, issued an order administratively closing the Kansas Action but permitting the parties thereto to move to reopen the case for the purpose of obtaining a final determination;

WHEREAS Plaintiffs and their counsel believe that litigating this Action will not increase the recovery to the named Plaintiff or Class Members but instead only increase the expense of securing any recovery, further delay any recovery, and could result in the Class losing the benefit of the prior Williams Settlement if the Global Settlement is not concluded and the Kansas Judgment is reversed by post-trial motion or on appeal;

WHEREAS the Parties have had a full and fair opportunity to evaluate the strengths and weaknesses of the claims and defenses;

WHEREAS the Plaintiffs have concluded that, in light of the risks of litigation of the matters in dispute, and in the desire to ensure relief to the Class, this Settlement is fair, reasonable, adequate, and in the best interests of the Class;

WHEREAS Horsepower deny they were at fault, but nevertheless have concluded that, in light of the risks, costs and disruption of litigation, this Settlement is appropriate on the terms and conditions set forth herein;

NOW, THEREFORE, the Parties stipulate and agree that, in consideration of the agreements, promises, and covenants set forth in this Settlement Agreement; for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged; and subject to the approval of the Court, this Action shall be fully and finally settled and dismissed with prejudice as between the Plaintiffs and Defendants, and pursuant to the following terms and conditions:

ARTICLE I – DEFINITIONS

As used in this Settlement Agreement and the documents attached hereto as exhibits, the terms set forth below shall have the meanings set forth below. The singular includes the plural and vice versa.

1.1 "Action" means this civil action entitled *Michael Florence, et al. v. Horsepower Entertainment, LLC, et al.*, pending in the Circuit Court of Lonoke County, Arkansas and having the Case No. 43CV-18-843.

1.2 "Class" or "Class Definition" means:

All persons who purchased day passes, children passes, VIP passes, camping passes, RV passes, hotel passes or packages, reserved seating, shower passes, passes of any other kind, or vendor booths to Thunder on the Mountain to be held on Mulberry Mountain, near Ozark, Arkansas between June 26th and 28th, 2015.

Excluded from the Class are the following:

a) Any Class member that received a refund or charged back the amounts of their Thunder purchase on their credit or debit card;

b) Any of the named Defendants, their directors, officers, employees, and/or agents;

c) The judge presiding over this action and her immediate family members;

d) Any person that timely and properly excludes himself/herself/itself from this Settlement.

1.3 "Class Counsel" means Scott Poynter of the Poynter Law Group.

1.4 "Class Notice" means the notice provided to the Class by Class Counsel as fully described in Article III and includes the following methods of notification:

(a) "Mail Notice" means notice of this Settlement by mail as set forth in Article III;

(b) "Press Release Notice" means a national press release issued by the Plaintiffs introducing the Settlement and directing readers to the Settlement's Website;

(c) "Email Notice" means the notice of this Settlement by email as set forth in Article III; and

(d) "Web Notice" or "Settlement's Website" means the posting of content of the Mail Notice and Email Notice on a website specifically created for information purposes related to the Action and this Settlement.

1.5 "Class Member" means a person who is a member of the Class, including all members of the Class alleged in the Williams Action.

1.6 "Class Representative" or "Plaintiff" means Michael Florence.

1.7 "Court" means the Circuit Court of Lonoke County, Arkansas.

1.8 "Defendants" are Horsepower Entertainment, LLC and The Madison Companies, LLC.

1.9 "Effective Date" means the first date by which all of the following events shall have occurred: (a) the parties to the Kansas Action have executed a Settlement Agreement; (b) the Court has entered the Preliminary Approval Order; (c) the Court has entered the Final Approval Order; and (d) the Final Approval Order has become Final.

1.10 "Fees and Costs Application" means that written motion or application by which Class Counsel requesting that the Court award attorney's fees and costs.

1.11 "Final" means that the Final Approval Order has been entered on the docket in the Action and (a) the time to appeal from such order has expired and no appeal has been timely filed, (b) if such an appeal has been filed, it has finally been resolved and has resulted in an affirmation of the Final Approval Order, or (c) the Court, following the resolution of the appeal, enters a further order or orders approving settlement on the terms set forth herein, and either no further appeal is taken from such order(s) or any such appeal results in affirmation of such order(s).

1.12 "Final Approval Hearing" means the hearing at which the Court shall, among other things: (a) determine whether to grant final approval to this Settlement Agreement; (b) consider any timely objections to this Settlement Agreement and all responses thereto; (c) rule on the Fees and Costs Application; and (d) rule on the Incentive Award Application.

1.13 "Final Approval Order" means the order, substantially in the form of **Exhibit B** hereto, in which the Court, among other things, grants final approval of this Settlement Agreement and authorizes entry of final judgment and dismissal of the Defendants with prejudice.

1.14 "Global Settlement" means a settlement involving the Parties hereto, Horsepower, and Backwood that fully and finally resolves the Action on a class-wide basis and all litigation pending between Horsepower, or any of them, and Backwood, or any of them, including (a) the Kansas Action; (b) *Brett J. Mosiman v. The Madison Companies, LLC, et al*., District of Delaware Case No. 1:17-CV-01517-CFC; and (c) *Pipeline Productions, Inc., et al. v. The Madison Companies, LLC, et al*., San Diego Superior Court Case No. 37-2019-00067643-CU-FR-CTL.

1.15 "Incentive Award Application" means that written motion or application by which Class Counsel requests that the Court approve an incentive award to the Class Representative.

1.16 "Kansas Action" means that action entitled *Pipeline Productions, Inc., et al. v. The Madison Companies, et al*., United States District Court for the District of Kansas Case No. 5:15-cv-4890.

1.17 "Kansas Judgment" means the Judgment entered in the Kansas Action on March 27, 2020.

1.18 "Parties" means the Plaintiffs, Horsepower Entertainment, LLC, and The Madison Companies, LLC.

1.19 "Person" means an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government, or any political subdivision or agency thereof, and

any business or legal entity, and their spouses, heirs, predecessors, successors, representatives, or assignees.

1.20 "Preliminary Approval Order" means the order, substantially in the form of **Exhibit A** hereto, in which the Court grants preliminary approval of this Settlement Agreement.

1.21 "Released Claims" means all claims, demands, rights, liabilities, actions or causes of action, in law or in equity, damages, losses, obligations, judgments, duties, suits, fees, expenses, costs, matters and issues of any kind or nature whatsoever, whether known or unknown, matured or unmatured, accrued or unaccrued, fixed or contingent, suspected or unsuspected, disclosed or undisclosed, direct, individual or representative, that have been, could have been or in the future can or might be asserted in the Action or in any court, tribunal, proceeding, or arbitration (including but not limited to any claims arising under contract, federal, state, local, statutory or common law or any other law, rule or regulation, including the law of any jurisdiction outside the United States), or in equity, by or on behalf of any Releasing Party, against any of the Released Parties, whether or not any such Released Parties were named, served with process or appeared in the Action, which have arisen, could have arisen, arise now or hereafter arise out of, or relate in any manner to, the allegations, facts, events, matters, acts, occurrences, statements, representations, omissions or any other matter, thing or cause whatsoever, or any series thereof, embraced, involved or set forth in, or referred to or otherwise related, directly or indirectly, in any way to the Action or that relate in any way to Thunder.

1.22 "Released Parties" means the Defendants and any and all of their present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parents, subsidiaries, associates, affiliates, employers, employees, agents, consultants, insurers, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other

advisors, investment bankers, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns and Persons, firms, trusts, corporations, officers, directors, other individuals or entities in which a Defendant has a controlling interest or which is related to or affiliated with it, or any other representatives of any of these Persons and entities. Without limiting the foregoing, Released Parties shall include Bryan Gordon, Seth Wolkov, Robert Walker, Barbara O'Hare, KAABOO, LLC, KAABOOWorks Services, LLC, KAABOOWorks, LLC, Calahan Ventures, LLC, Kingoschu Family Partners, LLC, Stanley Holdings, LLC, Rdub Ventures, LLC, KAABOO - Del Mar, LLC, WarDawgz, LLC, KAABOO Management, LLC, Eventpro Management, LLC, Surf's Up Legacy Partners, LLC, KB Eventpro, LLC, Eventpro Production Services, LLC, Eventpro Del Mar, LLC, KAABOO Contract Services, LLC, Eventpro Contract Services, LLC, KAABOO Contract Services, LLC, Eventpro Works, LLC, and KSD Ownco, LLC.

1.23 "Releasing Parties" means the Class Representative and any Class Member (whether individual, direct, class, derivative, representative, legal, equitable or any other type in any other capacity).

1.24 "Request for Exclusion" means a request by a Class Member to be excluded from the Settlement, in the form specified by Paragraph 3.6 of this Agreement.

1.25 "Settlement Agreement" or "Settlement" means this Settlement Agreement, including the exhibits hereto.

ARTICLE II - SETTLEMENT CONSIDERATION

2.1 Discontinuation of Challenge to Kansas Judgment. In consideration of a full, complete, and final settlement of the Action, dismissal of the Action with prejudice in its entirety, and the releases below, and subject to the Court's approval, the Defendants will withdraw their

various procedural and substantive defenses in this Action and their challenge to the Kansas Judgment and will conclude the Global Settlement so that the Class promptly receives and retains the benefit of the prior settlement of the Williams Action.

2.2 Non-Opposition to Payment of Class Counsel's Fees and Costs and Class Representative Award from Global Settlement. Defendants shall not oppose Plaintiffs' request that the additional total sum of $17,500.00 be paid to Class Counsel with $15,000.00 from the Global Settlement for his attorneys' fees and costs and to provide a $2,500.00 as a Class Representative Award, as approved by the Court, in addition to any approved payments and costs to Class Counsel authorized by the Williams Settlement.

2.3 Withdrawal and Discharge of Lien in Kansas Action. In consideration of a full, complete, and final settlement of the Action, the receipt of the benefits of the Williams Settlement, and the payments called for by this Settlement, and subject to the Court's approval, the Class and Class Counsel shall file whatever documents are necessary to withdraw, discharge, and/or relinquish the lien authorized by the Williams Settlement and filed on behalf of the Class in the Kansas Action upon payment of the settlement proceeds to Class Counsel.

2.4 Global Settlement. This Settlement is contingent upon consummation of the Global Settlement and shall have no force or effect if the Global Settlement does not occur. The Global Settlement shall be the sole mechanism for Plaintiffs, the Class, and Class Counsel to recover from the Defendants.

ARTICLE III– SETTLEMENT NOTICE AND ADMINISTRATION

3.1 Class Notice. Class Counsel shall provide notice of this Settlement and of the Class Members' rights with respect to this Settlement pursuant to Ark. R. Civ. Pro. 23 and due process of law, and substantially in the form of **Exhibit C** hereto (the "Notice").

3.2 Notice. Within seven (7) days after the Court's entry of the Preliminary Approval Order, Class Counsel shall provide Email Notice by sending an email substantially in the form of **Exhibit C** to each Class Member for which Class Counsel has received an email address. For every email returned as undeliverable, Class Counsel shall send the Notice by United States Mail ("Mail Notice") to the last known address for each Class Member.

3.3 Press Release. Within seven (7) days after the Court's entry of the Preliminary Approval Order, Class Counsel shall issue a national press release announcing preliminary approval of the Settlement, summarizing the Action and the Settlement, and directing readers to the Settlement's Website for more information. Further, within the same time frame, Class Counsel shall also publish a blog on www.poynterlawgroup.com, which will also be emailed to all subscribers and posted on Class Counsel's firm's social media outlets.

3.4 Internet Notice. Within seven (7) days after the Court's entry of the Preliminary Approval Order, Class Counsel shall cause to be posted the Class Notice on www.thundermountainlawsuit.com and on any other website created for purposes of administering the Settlement.

3.5 Requests for Exclusion. Class Members may exclude themselves from the Class only by submitting a valid Request for Exclusion. All Class Members who do not submit a valid Request for Exclusion will be included in the Class and will be bound by this Settlement Agreement on the Effective Date.

3.6 Validity of Requests for Exclusion. To be valid, a Request for Exclusion must (a) be submitted by a Class Member; (b) be submitted to the Class Counsel and postmarked within thirty (30) days of Email Notice or Mail Notice first being sent; (c) be signed by the Class Member

and clearly request exclusion from the Class; (d) contain the Class Member's name, address and telephone number. Requests for Exclusion shall be mailed, in a timely fashion, to the following:

Scott Poynter
POYNTER LAW GROUP
407 President Clinton Ave., Suite 201
Little Rock, AR 72201

3.7 List of Requests for Exclusion. Within seven (7) days after the last day for Class Members to submit a Request for Exclusion, Class Counsel shall submit to Defendants' Counsel a copy of all Requests, and then file same under seal with the Court. Class Members submitting such requests will not be entitled to receive any relief under this Settlement Agreement, object to this Settlement, or in any way be bound to it.

3.8 Declaration of Compliance. Class Counsel shall prepare a declaration attesting to compliance with the Notice requirements set forth in this Article. Such declaration shall be filed with the Court with the motion for final approval of the Settlement.

3.9 Best Notice. The Parties agree, and the Preliminary Approval Order shall state, that compliance with the procedures described in this Article is the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Class of the pendency of the Action, the terms of this Settlement Agreement, and the Final Approval Hearing, and shall satisfy the requirements of the Arkansas Rules of Civil Procedure, the Arkansas Constitution, the United States Constitution, and any other applicable law.

3.10 Inquiries. Class Counsel will place his phone number in the Class Notice for Class Members to call for more information about the Settlement.

3.11 Notice Costs. Class Counsel shall pay the reasonable costs associated with the Settlement, including the reasonable costs of providing Class Notice as described above from the Global Settlement funds or reimbursed from such funds.

3.12 Claims: A Class Member must file a claim to receive the Settlement's benefits and will be able to do so online and through the mail. Each claimant will attest under oath the purchases made and the amount of money spent, and provide documentary proof of purchase. Class Counsel or a third-party administrator will verify the attestation and proof provided by the claimant against records received in discovery for approval of the claim. The net settlement proceeds (the Settlement amount less Court-approved fees and costs) shall be distributed to the approved claimants in pro-rata shares based upon their verified purchases made. Claimants shall have 180 days after entry of the Preliminary Approval Order to file their claim.

ARTICLE IV – FEES, COSTS, AND INCENTIVE AWARD

4.1 Fees and Costs Award. Class Counsel may seek an award of attorneys' fees and costs up to but not exceeding $15,000.00, to be paid solely from the proceeds of the Global Settlement. Defendants agree not to oppose an award of attorneys' fees of up to $15,000.00 and costs consistent with what is detailed in this paragraph. Such fees and costs will be used to provide appropriate notice to the Class.

4.2 Incentive Award. The Class Representative may be awarded $2,500.00, total, as an incentive award, to be paid solely from the proceeds of the Global Settlement.

4.3 Award of Fees and Costs not a Precondition of Settlement. Neither the resolution of, nor any ruling regarding, any award of attorneys' fees and costs shall be a precondition to this Settlement or to the dismissal with prejudice of the Action as to the Defendants. Notwithstanding anything in this Settlement Agreement to the contrary, the effectiveness of the releases and the other obligations of the Parties under this Settlement (except with respect to the payment of attorneys' fees and costs) shall not be conditioned upon or subject to the resolution of any appeal

from any order, if such appeal relates solely to the issue of any award of attorneys' fees and/or the reimbursement of costs.

ARTICLE V – COURT APPROVAL OF SETTLEMENT

5.1 Motion for Preliminary Settlement Approval. As soon as practicable after execution of this Settlement Agreement, the Class Representative, through Class Counsel, shall apply for entry of the Preliminary Approval Order in the form of **Exhibit A** hereto. The Preliminary Approval Order shall include provisions: (a) preliminarily approving this Settlement and finding this Settlement sufficiently fair, reasonable and adequate to allow the Notice to be disseminated to the Class; (b) approving the form, content, and manner of the Notice; (c) setting a schedule for proceedings with respect to final approval of this Settlement; (d) immediately staying the Action, other than proceedings related to this Settlement; and (e) issuing an injunction against any actions by Class Members to pursue claims released under this Settlement Agreement, pending final approval of the Settlement Agreement.

5.2 Objections. Any Class Member who does not submit a timely and valid Request for Exclusion and who wishes to object to or oppose the approval of (a) this Settlement Agreement, (b) the Fees and Costs Application, (c) the Incentive Award Application, and/or (d) the proposed Final Approval Order shall file a written objection with the Court and serve it on the Parties at least ten (10) days before the Final Approval Hearing. The written objection must include: (1) a statement of the reasons for the objection and any evidence supporting the objection; (2) the objecting Class Member's name, address, and telephone number; (3) proof of the objecting Class Member's membership in the Class; (4) a statement regarding whether the objecting Class Member intends to appear at the Final Approval Hearing and whether he or she is represented by counsel; and (5) any other requirements set forth in the Notice. Any Class Member who fails

to file a timely written objection that meets the requirements of this paragraph shall be deemed to have waived such objection or opposition and forever shall be foreclosed from making such objection or opposition to the fairness, reasonableness, or adequacy of the Settlement, the payment of attorney's fees, costs, expenses, and the incentive award, or the Final Approval Order. Any Class Member who makes an objection shall submit to the jurisdiction of the Court and make him or herself available for deposition by either Party within a reasonable time before the Final Approval Hearing.

5.3 Motion for Final Settlement Approval. The Class Representative, through Class Counsel, shall file with the Court a motion for final settlement approval at least seven (7) days before the Final Approval Hearing.

5.4 Final Approval Hearing. The Parties shall request that the Court conduct a Final Approval Hearing to, among other things: (a) determine whether to grant final approval to this Settlement Agreement; (b) consider any timely objections to this Settlement and the Parties' responses to such objections; (c) rule on the Fees and Costs Application; and (d) rule on the Incentive Award Application. At the Final Approval Hearing, the Class Representative, through Class Counsel, shall ask the Court to give final approval to this Settlement Agreement. If the Court grants final approval to this Settlement Agreement, then the Class Representative, through Class Counsel, shall ask the Court to enter a Final Approval Order, substantially in the form of **Exhibit B** attached hereto, which, among other things, approves this Settlement Agreement, enters final judgment, and dismisses the Action with prejudice.

5.5 Separate Consideration of Applications. The Parties agree that the Fees and Costs Application and Incentive Award Application and any claim or dispute relating thereto will be considered by the Court separately from the remaining matters to be considered at the Final

Approval Hearing as provided for in this Settlement Agreement. Any order or proceedings relating to the Fees and Costs Application and Incentive Award Application, including any appeals from or modifications or reversals of any order related thereto, shall not operate to modify, reverse, terminate, or cancel the Settlement Agreement, affect the releases provided for in the Settlement Agreement, or affect whether the Final Approval Order becomes Final.

ARTICLE VI – TERMINATION

6.1 Termination Due to Requests for Exclusion. The Defendants shall have the right, in their sole discretion, to terminate this Settlement Agreement if ten (10) or more percent of the Class Members submit timely and valid Requests for Exclusion. If the Defendants elect to terminate this Agreement under this section, it must provide written notice to Class Counsel no later than seven (7) days before the Final Approval Hearing.

6.2 Effect of Termination. If this Settlement Agreement is terminated pursuant to its terms, then: (i) this Settlement Agreement shall be rendered null and void; (ii) this Settlement Agreement and all negotiations and proceedings relating hereto shall be of no force or effect and without prejudice to the rights of the Parties; (iii) all Parties shall be deemed to have reverted to their respective status as of the date and time immediately preceding the execution of this Settlement Agreement; and (iv) except as otherwise expressly provided, the Parties shall stand in the same position and shall proceed in all respects as if this Settlement Agreement and any related orders had never been executed, entered into, or filed. Upon termination of this Settlement Agreement, the Parties shall not seek to recover from one another any costs incurred in connection with this Settlement including, but not limited to, any amounts paid for Notice.

6.3 Effect of Failure to Conclude Settlement. This Settlement is made for the sole purpose of attempting to consummate settlement of the Action on a class-wide basis. In the event

that the Court does not enter Final Approval Order, or such Final Approval Order does not become final for any reason, or is modified in any respect, or the Effective Date does not occur, this Settlement shall be deemed null and void, and shall be of no force or effect whatsoever, and shall not be referred to or utilized for any purpose whatsoever; by way of example and not by way of limitation, this Settlement shall be considered under such circumstances an offer of compromise inadmissible under Arkansas Rule of Evidence 408.

ARTICLE VII – RELEASES UPON EFFECTIVE DATE

7.1 Binding and Exclusive Nature of Settlement Agreement. On the Effective Date, the Parties and each and every Class Member shall be bound by this Settlement Agreement and shall have recourse exclusively to the benefits, rights, and remedies provided hereunder. No other action, demand, suit, or other claim may be pursued by the Class Members against the Released Parties with respect to the Released Claims.

7.2 Releases. On the Effective Date, the Class Members shall be deemed to have, and by operation of this Settlement Agreement shall have, fully, finally and forever released, relinquished and discharged the Released Parties from any and all Released Claims.

7.3 Waiver of Unknown Claims. On the Effective Date, the Class Members shall be deemed to have, and by operation of this Agreement shall have, with respect to the subject matter of the Released Claims, expressly waived the benefits of any statutory provisions or common law rule that provides, in substance, that a general release does not extend to claims which the party does not know or suspect to exist in its favor at the time of executing the release, which if known by it, would have materially affected its settlement with any other party. The Parties stipulate and agree that, upon the Effective Date, the Class Representative shall have expressly waived,

relinquished and released any and all rights and benefits related to any unknown claims with respect to the subject matter of the Released Claims and each Class Member shall be deemed to have, and by operation of the Final Approval Order shall have, waived, relinquished and released any and all rights and benefits related to any unknown claims with respect to the subject matter of the Released Claims. The Class Representative acknowledges, and the Class Members shall be deemed by operation of the entry of a Final Approval Order to have acknowledged, that they may discover facts in addition to or different from those now known or believed to be true with respect to the Released Claims, but that it is the intention of the Class Representative and, by operation of law, the Class Members, to completely, fully, finally, and forever, compromise, settle, release, discharge, extinguish, and dismiss any and all Released Claims, known or unknown, suspected or unsuspected, contingent or absolute, accrued or unaccrued, apparent or unapparent, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of additional or different facts. The Class Representative acknowledges, and the Members of the Class shall be deemed by operation of the entry of a Final Approval order to have acknowledged, that the waiver of unknown claims was separately bargained for, is an integral element of the Settlement, and was relied upon by the Defendants in entering into the Settlement.

7.4 Horsepower Shall Have No Responsibility for Administration of the Settlement Fund. It shall be the responsibility solely of Class Counsel to administer and distribute to the Class the proceeds of the Global Settlement and of the Williams Settlement. Any issues concerning or challenges to the administration and/or distribution of said funds, or lack thereof, shall be solely between Class Counsel and the Class, shall not involve Horsepower, and shall have no effect on the release of the Released Parties from the Released Claims.

7.5 Class Counsel has received discovery from the Non-Party responsible for online orders for Thunder, which contains the identities of the Class members and their purchases. Distributions will be made based upon the claims submitted by such members, information provided by them with their claims, and verified against the information received from the Non-Party.

ARTICLE VIII – MISCELLANEOUS

8.1 No Admission of Liability. Neither the acceptance by the Defendants of the terms of this Settlement Agreement nor any of the related negotiations or proceedings constitutes an admission with respect to the merits of the claims alleged in the Action. The Defendants specifically deny any liability or wrongdoing of any kind associated with the claims alleged in the Action. The Defendants further deny Plaintiff's class allegations, and do not waive, but rather expressly reserve, all rights to challenge such allegations on all procedural and factual grounds should the Settlement not be concluded.

8.2 Limitations on Use. This Settlement Agreement shall not be used, offered, or received into evidence in the Action, or in any other action or proceeding for any purpose other than to enforce, to construe, or to finalize the terms of the Settlement Agreement and/or to obtain the preliminary and final approval by the Court of the terms of the Settlement Agreement.

8.3 Cooperation. The Parties agree to support approval of this Settlement Agreement by the Court and to take all reasonable and lawful actions necessary to obtain such approval.

8.4 Binding on Assigns. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, successors, and assigns.

8.5 Captions. Titles or captions contained in this Settlement Agreement are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof.

8.6 Class Member Signatures. It is agreed that, because the Class Members are so numerous, it is impractical to have each Class Member execute this Settlement Agreement. The Notice will advise all Class Members of the binding nature of the Release and of the remainder of this Settlement Agreement, and in the absence of a valid and timely Request for Exclusion, such Notice shall have the same force and effect as if each Class Member executed this Settlement Agreement.

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

8.8 Counterparts. This Settlement Agreement and any amendments hereto may be executed in one or more counterparts, and either Party may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and both of which counterparts taken together shall constitute but one and the same instrument. A facsimile or PDF signature shall be deemed an original for all purposes.

8.9 Governing Law. Construction and interpretation of this Settlement Agreement shall be determined in accordance with the laws of the State of Arkansas without regard to the choice-of-law principles thereof.

8.10 Integration. This Settlement Agreement, including the exhibits referred to herein, which form an integral part hereof, contains the entire understanding of the Parties with respect to the subject matter contained herein. There are no promises, representations, warranties, covenants, or undertakings governing the subject matter of this Settlement Agreement other than those expressly set forth in this Settlement Agreement. This Settlement Agreement supersedes all prior agreements and understandings among the Parties with respect to the settlement of the Action. This Settlement Agreement may not be changed, altered or modified, except in a writing signed by the Parties; if any such change, alteration or modification of the Settlement Agreement is material, it must also be approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

8.11 Jurisdiction. The Court shall retain jurisdiction, after entry of the Final Approval Order, with respect to enforcement of the terms of this Settlement, and all Parties and Class Members submit to the exclusive jurisdiction of the Court with respect to the enforcement of this Settlement and any dispute with respect thereto.

8.12 No Collateral Attack. This Settlement Agreement shall not be subject to collateral attack by any Class Member at any time on or after the Effective Date. Such prohibited collateral attacks shall include, but shall not be limited to, claims that a Class Member's Claim was improperly denied and/or that a Class Member failed to receive timely notice of the Settlement Agreement.

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

8.14 Receipt of Advice of Counsel. The Parties acknowledge, agree, and specifically warrant to each other that they have read this Settlement Agreement, have received legal advice with respect to the advisability of entering into this Settlement, and fully understand its legal effect.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the _____ day of June, 2020.

_____
Michael Florence
Individually and as Class Representative

_____
Horsepower Entertainment, LLC and The Madison Companies, LLC,
Defendants
By: Lawrence P. Kolker
Special Litigation Counsel and Authorized Person