

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “**Settlement Agreement**”), effective as of the date of the last signature below, is made by and between Plaintiff Moises Serrano (“**Serrano**”), individually and on behalf of the class of the Settlement Class (as further defined herein), and Open Road Delivery Holdings, Inc., d/b/a Amuse (“**Amuse**”) (collectively, Serrano, the Settlement Class and Amuse are the “**Parties**”), subject to Court approval as required by Rule 23 of the Federal Rules of Civil Procedure. As provided herein, Class Counsel and the Parties hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Settlement Agreement and upon entry by the Court of a Final Approval Order and Final Judgment, all claims of the Settlement Class against Amuse consistent with the claims asserted in *Moises Serrano, individually and on behalf of all others similarly situated, v. Open Road Delivery Holdings, Inc., d/b/a Amuse*, Case No. 2:22-cv-07245-SB-AS, pending before the United States District Court for the Central District of California, shall be settled and compromised upon the terms and conditions set forth herein.

RECITALS

A. There is pending in the United States District Court for the Central District of California, a civil action entitled *Moises Serrano, individually and on behalf of all others similarly situated, v. Open Road Delivery Holdings, Inc., d/b/a Amuse*, Case No. 2:22-cv-07245-SB-AS (the “**Action**”).

B. Serrano commenced the Action on October 4, 2022 against Amuse by filing a putative class action complaint (the “**Complaint**”) asserting causes of action for: (1) negligent violations of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227(b); (2) willful violations of the TCPA, 47 U.S.C. § 227(b); (3) negligent violations of the TCPA, 47 U.S.C. § 227(c); and (4) willful violations of the TCPA, 47 U.S.C. § 227(c). Serrano alleges that Amuse violated the TCPA by sending text messages to Serrano’s cellular telephone using an automatic telephone dialing system (“**ATDS**”) and an artificial and prerecorded voice without obtaining prior express consent to do so. He also alleges that Amuse violated the TCPA by sending text messages to Serrano’s cellular telephone using an ATDS and an artificial and prerecorded voice after Serrano had revoked his prior express consent. He further alleges that he had placed his phone number on the federal Do Not Call Registry and that Amuse, after receiving his request not to receive further text messages, texted Serrano more than once in a twelve month period. Amuse denies these allegations.

C. On February 22, 2023, Amuse filed a motion to dismiss the Complaint. On March 2, 2023, Serrano filed his amended complaint (the “**First Amended Complaint**”). The First Amended Complaint expanded on the allegations of the Complaint to include a claim that Amuse had violated the TCPA by failing to maintain proper procedures and policies on the use of do-not-call lists and internal do-not-call lists. Amuse denies these allegations.

C. The Parties have actively litigated the Action. Among other things, the Parties have briefed and argued a motion to compel arbitration; fully briefed two (2) motions to dismiss; and exchanged informal discovery, including voluminous documents.

D. On April 12, 2023, the Parties attended an all-day mediation with the Honorable Suzanne Segal (Ret.). Taking into account the burdens, uncertainty and risks inherent in this litigation, the Parties have concluded that further prosecution and defense of the Action could be protracted, unduly burdensome, and expensive, and that it is desirable, fair, and beneficial to the class that the Action now be fully and finally compromised, settled and terminated in the manner and upon the terms and conditions set forth in this Settlement Agreement.

E. Amuse denies that it committed any wrongful act or violated any law or duty. Amuse also denies that Serrano, or the class he seeks to represent, is entitled to any form of damages or relief based on the conduct alleged in the Action. In addition, Amuse maintains that it has meritorious defenses to all claims alleged in the Action (including that it only called or texted consumers with their prior express consent for such communications) and it is prepared to defend the Action. This Settlement Agreement, and all related documents, shall not be construed as any admission or concession by Amuse, or any of the Released Parties (defined in Section 16 below), of any fault, liability, wrongdoing or damage whatsoever.

F. Serrano and his counsel believe that the claims asserted in the Action have merit. However, taking into account the risks of continued litigation, as well as the delays and uncertainties inherent in such litigation and any subsequent appeal, Serrano and his counsel believe that it is desirable that the Action be fully and finally compromised, settled and terminated now with prejudice, and forever barred pursuant to the terms and conditions set forth in this Settlement Agreement. Serrano and his counsel have concluded that the terms and conditions of this Settlement Agreement are fair, reasonable and adequate to the proposed class, and that it is in the best interests of the proposed class to settle the Action.

WHEREFORE, in consideration of the promises, covenants, representations and warranties contained herein, and for good and valuable consideration given hereunder, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties hereby agree, subject to approval by the Court, as follows:

1. Definitions

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

1.1 “Action” means *Moises Serrano, individually and on behalf of all others similarly situated, v. Open Road Delivery Holdings, Inc., d/b/a Amuse*, Case No. 2:22-cv-07245-SB-AS, pending before the United States District Court for the Central District of California.

1.2 “Amuse” means Defendant Open Road Delivery Holdings, Inc., d/b/a Amuse.

1.3 “CAFA Notice” means the notice required under 28 U.S.C. § 1715.

1.4 “Claims Administrator” means P&N Consulting.

1.5 “Class Counsel” means Todd M. Friedman and Adrian Bacon of The Law Offices of Todd M. Friedman, P.C.

1.6 “Class Period” means the period from October 3, 2018 to April 12, 2023.

1.7 “Court” means the United States District Court for the Central District of California.

1.8 “Defendant” means Open Road Delivery Holdings, Inc., d/b/a Amuse.

1.9 “Escrow Account” means the account to be established consistent with the terms and conditions described below.

1.10 “Final Approval” means the date that the Court enters an order and judgment granting final approval of the Settlement and determines the amount of fees, costs, and expenses awarded to Class Counsel and the amount of the Service Award to Plaintiff.

1.11 “Final Approval Order” means the order that the Court enters upon finally approving the Settlement. The Parties shall tender the form of Final Approval Order attached hereto as **Exhibit E** for the Court’s consideration.

1.12 “Final Hearing Date” means the date set by the Court for the hearing on final approval of the Settlement.

1.13 “Final Judgment” means the entry by the Court of a judgment finally approving the settlement of the Action pursuant to the terms of this Settlement Agreement. That judgment shall have become final either by expiration of time for appeal or, if a Class Member objects to the settlement and files an appeal, by either a dismissal of said appeal or final appellate court decision in favor of, and affirming, the judgment and the Settlement Agreement in all material respects.

1.14 “Mail Notice” means the form of notice to be mailed by the Claims Administrator to all Class Members with a known address. Mail Notice shall take a form substantially the same as that attached hereto as **Exhibit A**.

1.15 “Notice Deadline” means (30) days from the date the Court grants Plaintiff’s Motion for Preliminary Approval.

1.16 “Opt-Out and Objection Deadline” means one hundred and thirty (130) days from the date the Court grants the Motion for Preliminary Approval.

1.17 “Parties” means Plaintiff and Defendant, who are “Parties” to this Settlement Agreement.

1.18 “Plaintiff” means Moises Serrano.

1.19 “Preliminary Approval” means the date that the Court enters the Preliminary Approval Order.

1.20 “Preliminary Approval Order” means the order that the Court enters upon preliminarily approving the Settlement. The Parties shall tender the form of Preliminary Approval Order attached hereto as **Exhibit D** for the Court’s consideration.

1.21 “Q & A Notice” means the notice concerning the Settlement to be posted on the Settlement Website as described in Section 9.2 of this Agreement.

1.22 “Released Claims” means all claims to be released as specified in Section 16 of this Agreement. The “Releases” means all of the releases contained in Section 16 of this Agreement.

1.23 “Released Parties” means those persons and entities released in Section 16 of this Agreement.

1.24 “Releasing Parties” means Plaintiff and all members of the Settlement Class who do not timely and properly opt out of the Settlement, and each of their respective heirs, assigns, beneficiaries, and successors.

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

1.26 “Settlement Class” means the proposed class as defined at Section 2.1 of this Agreement.

1.27 “Settlement Fund” means the fund established under Section 4 of this Agreement.

1.28 “Settlement Website” means the website to be created and operated by the Claims Administrator to facilitate Class Members’ access to settlement-related information and necessary settlement-related forms.

1.29 “Service Award” means any Court-ordered payment to Plaintiff beyond any payment due Plaintiff as a Class Member.

1.30 “Communications” means any and all calls and/or SMS messages sent by Amuse and/or agents of Amuse to the cellular telephones of any Class Members between October 3, 2018 until April 12, 2023.

1.31 “Valid Exclusion Request” means a timely-submitted opt-out or exclusion request that satisfies the criteria set forth at Section 11 of this Agreement.

2. Settlement Class

2.1 Proposed Class Definition. For settlement purposes, the Parties have agreed to define the class as follows:

All persons in the United States whose phone number appears on the unsub sms master.csv provided in discovery, and who thereafter received a text message from the Happy Cabbage Platform, as delineated in the call logs provided in discovery, between October 3, 2018 to April 12, 2023.

2.2 Estimated Class Size. The Parties have entered into this Settlement Agreement on the basis of their estimation that the Class consists of approximately 1,772 members (“**Class Members**”). Amuse has made no representations about the estimated class size, and instead the foregoing is based upon information provided by third-party service providers engaged by Amuse to make the Communications described above. However, should the numbers of the class members deviate by more than 10%, the Parties reserve the right to renegotiate in good faith the terms of the Settlement Agreement.

3. Certification of Settlement Class and CAFA Compliance

3.1 The Parties desire and intend to seek Court approval of the settlement and a final judgment and order dismissing with prejudice the claims of Serrano and the Class Members as set forth in this Settlement Agreement. The Parties agree to undertake all steps necessary to effectuate the purpose of the settlement, to secure the Court’s approval of the settlement, and to oppose any interventions and objections to the settlement, including objections by any regulatory authority. Class Counsel reserves the right to appeal any award of attorneys’ fees and costs that is less than, and Amuse’s counsel reserves the right to appeal any award of attorneys’ fees and costs that is more than, the amount the Parties agreed to in Section 6 below. The proposed Preliminary

Approval Order is attached as **Exhibit D** hereto. The proposed Final Approval Order is attached as **Exhibit E** hereto.

3.2 Upon full execution of this Settlement Agreement, Plaintiff will file a Motion for Preliminary Approval of Class Action Settlement (“**Motion for Preliminary Approval**”) in accordance with the terms of this Settlement Agreement. Amuse will not oppose a motion to certify the Settlement Class for that purpose only, and reserves all its defenses and objections to certification of the proposed class. The Motion for Preliminary Approval will seek an order that: (a) preliminarily approves the settlement of the Action; (b) certifies a Class for settlement purposes as defined in Section 2.1 above; (c) approves and appoints Serrano as representative of the Class; (d) approves and appoints Todd M. Friedman and Adrian Bacon of The Law Offices of Todd M. Friedman, P.C. as Class Counsel; (e) approves the forms provided for in this Settlement Agreement for giving notice of the Settlement to the Class, as provided in Section 9 of this Agreement (the “**Notice Forms**”); (f) approves the methods provided for in this Agreement for giving notice of the Settlement as provided in Section 9 of this Agreement; (g) approves the claims process described in Section 10; and (h) sets deadlines for providing notice to the Class and for Class Members to submit requests for exclusion/opt-out, entry of an appearance, or objections to the proposed settlement. The Parties will thereafter seek final approval of the settlement and entry of a “Final Judgment” (as defined in Section 14 below).

3.3 If the Court declines to approve the Settlement, or if the Court changes the Settlement Class composition or the terms of the Settlement in any way not acceptable to one or more of the Parties after reasonable consultation with the other Party, or if certification of the Settlement Class or approval of the Settlement is reversed, or if certification of the Settlement Class or approval of the Settlement is changed upon appeal or review in any way not acceptable to one or more of the Parties, that Party or those Parties shall, after reasonable consultation with the other, have the right to terminate the Settlement. In that event, there will have been no admission of liability and no waiver of any claim or defense of any kind whatsoever.

3.4 Amuse shall be responsible for providing the CAFA Notice, as required by 28 U.S.C. § 1715. Prior to the deadline for Class Members to opt out and/or object to this Settlement, Amuse shall file notice of certification of compliance with CAFA Notice requirements of 28 U.S.C. § 1715.

4. The Settlement Fund

4.1 In exchange for the mutual promises and covenants in this Agreement, including, without limitation, the Releases as set forth in Section 16 and the dismissal of the Action upon Final Approval, within fourteen (14) days following Final Approval Amuse shall deposit the sum of Four Hundred Thousand Dollars (\$400,000) into an Escrow Account held by the Claims Administrator to create the Settlement Fund.

4.2 The Settlement Fund shall be used to provide the exclusive recovery and relief for the Class, any reasonable attorneys’ fees and costs approved and awarded by the Court, any Service Award approved and awarded by the Court, and the costs of claims administration, including class notice. Amuse shall not, under any circumstances, be obligated to pay any other additional amounts, besides those referenced in this paragraph, to the Settlement Fund in connection with this Settlement Agreement. No interest shall accrue on the Settlement Fund.

4.3 The Settlement Fund at all times shall be deemed a “qualified settlement fund” within the meaning of United States Treasury Reg. § 1.468B-1. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Settlement Fund or otherwise, including any taxes or tax detriments that may be imposed on Amuse or its counsel or Plaintiff and Class Counsel with respect to income earned by

the Settlement Fund during any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for the purpose of federal or state income taxes or otherwise (collectively “**Taxes**”), shall be paid out of the Settlement Fund. Amuse and its counsel and/or Plaintiff and Class Counsel shall have no liability or responsibility for any of the Taxes.

4.4 The amount of the Settlement Fund shall not be reduced as a result of any member(s) of the Settlement Class electing to opt out or be excluded from the Settlement or for any other reason.

5. Recovery for the Class

Class Members will automatically be sent relief without a claim form, and will receive a share of the Settlement Fund based on the number of text messages they were sent according to the Happy Cabbage master.csv records, in proportion to the total number of texts sent to all Participating Class Members per those same records. Relief will be sent in the form of a check (after any attorneys’ fees and costs awarded by the Court, any Service Award to Serrano awarded by the Court, and any costs of claims administration are deducted from the Settlement Fund).

6. Attorneys’ Fees and Costs for Class Counsel

Class Counsel shall move the Court for an award of attorneys’ fees and costs incurred in connection with the Action to be paid to Class Counsel from the Settlement Fund. Amuse shall not object to such a motion so long as the attorneys’ fees requested are not more than 25% of the Settlement Fund and the litigation costs do not exceed \$10,000. Any attorneys’ fees and costs approved by the Court shall be paid to Class Counsel from the Settlement Fund. This Settlement Agreement is not conditioned on the Court’s approval of any attorneys’ fees and costs sought by Class Counsel. No interest will accrue on any attorneys’ fees or costs awarded by the Court to Class Counsel.

7. Service Award for Named Plaintiff

Class Counsel shall move the Court for a Service Award for Serrano for his service as class representative in this Action, in an amount not to exceed \$10,000, to be paid from the Settlement Fund. Court approval of any Service Award will not be a condition of the Settlement. Amuse shall not object to a Service Award that does not exceed \$10,000.

8. Third-Party Claims Administrator

8.1 The costs and expenses related to claims administration shall be paid from the Settlement Fund. Because the costs and expenses of claims administration will affect each Class Member’s share of the Settlement Fund, the costs and expenses of claims administration shall be overseen by Class Counsel. Amuse’s counsel may also oversee the claims administration process as they deem necessary. The Parties will use good faith efforts to minimize the costs of claims administration.

8.2 Claims administration shall be conducted by a third-party administrator, P&N Consulting (the “**Claims Administrator**”), which is located at 8550 United Plaza, Blvd. Suite 1001, Baton Rouge, LA 70809. The Claims Administrator’s telephone number is (225) 922-4600.

8.3 Subject to the oversight of Class Counsel and Amuse’s counsel, the Claims Administrator shall be responsible for, among other things, the following: (a) providing notice to Class Members as set forth in Section 9 below; (b) providing settlement checks to Class Members entitled to receive a settlement check pursuant to Section 15 below; (c) creating and maintaining

the Settlement Website as set forth in Section 9.2 below; (d) maintaining a toll-free telephone number as set forth in Section 9.3 below; and (e) acting as a liaison between Class Members and the Parties regarding the settlement. In addition, at Amuse's election, the Claims Administrator will be responsible for providing the CAFA Notice referenced in Section 3.4. The Claims Administrator shall be permitted to communicate without restriction with Class Counsel and Amuse's counsel.

8.4 All costs and expenses related to claims administration shall be paid from the Settlement Fund as invoiced by the Claims Administrator in order to do what is necessary for claims administration. The costs and expenses related to claims administration shall not exceed \$65,000.

9. Notice of Settlement

9.1 Mail Notice.

9.1.1 In the event of Preliminary Approval, Amuse shall create a list of Class Members, including the telephone number and last known address for each Class Member to the extent available from its existing business records. As soon as practicable, but in no event more than ten (10) days after Preliminary Approval, Amuse shall deliver the list of Class Members to the Claims Administrator. The Claims Administrator will treat the information regarding the Class Members in a confidential manner pursuant to the protective order entered in the Action.

9.1.2 The Claims Administrator will provide individual notice by sending the Mail Notice to all Class Members with known addresses via First Class U.S. Mail. Prior to mailing the Mail Notice, the Claims Administrator will update the address information provided by Amuse through the National Change of Address ("NCOA") database maintained by the U.S. Postal Service. Any Mail Notice returned to the Claims Administrator with a new forwarding address will be re-mailed to the Class Member at the new forwarding address.

9.1.3 The Claims Administrator will perform a reverse telephone number lookup for the Class Members for whom Defendant does not have address information. The address information obtained through a reverse phone number lookup will be used to facilitate Mail Notice to the Class Members.

9.1.4 The Claims Administrator will mail the Class Members the Mail Notice as soon as reasonably practicable but no later than thirty (30) days from the date the Court grants the Motion for Preliminary Approval (the "**Notice Deadline**"). The Claims Administrator will file a declaration with the Court, as part of the final approval papers, stating that these procedures were followed.

9.1.5 The Mail Notice to the Class will consist of a double postcard that contains a summary description of the Settlement Agreement, identifies the Claims Administrator, and directs recipients to the Settlement Website from which additional information about the settlement can be obtained.

9.2 Settlement Website Notice.

9.2.1 The Claims Administrator shall create the Settlement Website for this Action, where settlement information and claim submission will be made available. The Settlement Website will: (a) inform Class Members of the basis of the claims raised in the Action and the payment under this settlement; (b) advise Class Members about how to submit opt out/exclusion notices from the settlement and notify them of the Opt-Out and Objection Deadline;

(c) instruct that Class Members should direct questions about the Action or proposed settlement to Class Counsel; and (d) inform Class Members to their right to appear in the Action through their own attorney. This notice will be in a question-and-answer format and will contain a full copy of the release (the “**Q & A Notice**”) and will be substantially in the form of **Exhibit B** attached hereto.

9.2.2 In addition, the Settlement Website will provide access to copies of the Mail Notice, Q & A Notice, the Settlement Agreement, the Preliminary Approval Order, Serrano’s fee brief, and any other materials the Parties agree to include. These documents shall be available on the Settlement Website no later than the Notice Deadline and remain so at least until Final Approval. The Claims Administrator shall secure a URL for the Settlement Website selected by Class Counsel and approved by Amuse. The content and format of the website will be agreed upon by the Parties. Ownership of the Settlement Website URL shall be transferred to Amuse within ten (10) days of the date on which operation of the Settlement Website ceases. The Settlement Website shall be maintained for at least one hundred and eighty (180) days, and shall be fully operational on the day the Mail Notice is sent to Class Members.

9.3 Settlement Call Center.

The Claims Administrator shall designate a toll-free number for receiving calls related to the settlement (“**Settlement Call Center**”). Anyone may call the Settlement Call Center from anywhere in the United States to ask questions of the Claims Administrator about the settlement. The Parties shall jointly resolve any dispute that may arise regarding the operation of the Settlement Call Center. The Mail Notice and Website Notice shall include the toll-free number for the Settlement Call Center. The Settlement Call Center shall be maintained from the date Mail Notice is provided through at least the next ninety (90) days. Once this time period has expired, for a period of at least thirty (30) days, either a live person or a recording will advise any caller to the Settlement Call Center that the details regarding the settlement may be reviewed on the Settlement Website.

10. **Claims Process**

10.1 Potential Claimants

There are no claim forms required to receive benefits from this class settlement. Each Class Member who does not timely and validly request exclusion from the settlement as required in this Settlement Agreement shall be a Class Member bound by this Settlement Agreement and Final Judgment to be entered following the hearing for final approval of the settlement. Each Class Member shall be entitled to make only one claim per cell phone number texted by Amuse regardless of the number of Communications received during the class period.

11. **Right to Opt Out of Settlement**

11.1 Class Members have the right to opt out and exclude themselves from the settlement by mailing a valid exclusion request (“**Valid Exclusion Request**”) to the Claims Administrator. The Valid Exclusion Request must be postmarked on or before the Opt-Out and Objection Deadline specified on the Notice Forms, which is one hundred and thirty (130) days from the date the Court grants the Motion for Preliminary Approval. The Claims Administrator will provide copies of such exclusion requests to Class Counsel and counsel for Amuse promptly upon receipt.

11.2 The Valid Exclusion Request shall also: (1) be in writing; (2) include the name and number of this case, as well as the Class Member’s name, address, and telephone number; and (3) be signed by the Class Member. A Valid Opt Out Form that will be electronically available on the settlement website is attached hereto as **Exhibit C**.

11.3 Except for those Class Members who have properly and timely mailed a Valid Exclusion Request, all Class Members will be bound by this Settlement Agreement and the Final Judgment to be entered following the hearing for final approval of the Settlement Agreement.

11.4 If 400 or more Class Members opt-out of the Settlement Agreement by timely submitting a Valid Exclusion Request, then Amuse, in its sole discretion, shall have the right to terminate the settlement. In the event that the settlement is terminated pursuant to this Section, the Parties will be returned to the status quo ante as if no settlement had been negotiated or entered into as set forth in Section 17 below.

12. Right to Object to Settlement

12.1 Any Class Member who intends to object to this Settlement Agreement must mail his or her objection(s) (the “**Objection**”) in writing to the Court at:

Clerk of the Court
Central District of California
Courtroom 6C
350 W. First Street
Los Angeles, CA 90012

and must mail a copy of the Objection to Class Counsel and Amuse’s counsel at the following addresses:

Class Counsel
Todd M. Friedman, Esq.
Adrian Bacon, Esq.
The Law Offices of Todd M. Friedman, P.C.
21031 Ventura Blvd. Suite 340
Woodland Hills, CA 91364

and

Open Road Delivery Holdings, Inc.’s Counsel
Brian P. Cadigan, Esq.
REED SMITH, LLP
355 South Grand Avenue, Suite 2900
Los Angeles, CA 90071

To be considered timely, an Objection must be postmarked on or before the Opt-Out and Objection Deadline specified on the Settlement Website, which is one hundred and thirty (130) days from the date the Court grants the Motion for Preliminary Approval.

12.2 Any Objection must set forth the name and case number of this matter; the objecting Class Member’s name, address, telephone number; all arguments, citations and evidence supporting the Objection; and a statement concerning whether the objecting Class Member intends to appear at the hearing for final approval of the class action settlement, and whether the objecting Class Member intends to appear at the hearing with or without counsel. Additionally, the Objection shall include the name and case number for all other cases in which the Class Member has submitted an objection to a proposed class action settlement and whether any such objection to a proposed class action settlement was submitted on the Class Member’s own behalf or on behalf

of a represented third party. The Claims Administrator will provide to Class Counsel and Amuse's Counsel all copies of any objections mailed or otherwise transmitted to the Claims Administrator.

12.3 Any Class Member who fails to submit a timely Objection pursuant to this Section and as detailed on the Settlement Website shall have waived any right to object to the Settlement Agreement and shall not be permitted to object to this Settlement Agreement at the Final Approval Hearing, and shall be foreclosed from seeking any review of this Settlement Agreement by appeal or other means.

13. Right to Enter an Appearance

On or before the date specified on the Settlement Website, which is one hundred and thirty (130) days after the date the Court grants the Motion for Preliminary Approval, a Class Member may enter an appearance through an attorney if he or she so desires. The Class Member is solely responsible for any fees, costs or expenses of his or her attorney.

14. Final Judgment

14.1 Amuse shall not be obligated to pay any sum pursuant to this Settlement Agreement except upon Final Judgment. However, in the event that Final Approval of this Settlement is not granted, Amuse will reimburse the Claims Administrator for reasonable costs incurred in administering the settlement, including but not limited to time spent to prepare documents and testimony in support of the Motion for Preliminary Approval or final approval motion. Any appeal regarding the attorneys' fees or costs or Service Award to Serrano shall not affect other payments that are not the subject of such an appeal.

14.2 By entering Final Judgment, the Court shall:

14.2.1 Approve the Settlement Agreement and the proposed settlement as fair, reasonable and adequate as to, and in the best interests of, the Class Members; direct the Parties and their counsel to implement and consummate the Settlement Agreement, to the extent the Parties have not done so already, according to its terms and provisions; and declare the Settlement Agreement to be binding on, and have res judicata and preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of Serrano and all other Class Members, as well as their heirs, executors and administrators, successors and assigns;

14.2.2 Certify the Class pursuant to Federal Rule of Civil Procedure 23 for settlement purposes;

14.2.3 Find that the Notice Forms and the Notice Program implemented pursuant to the Settlement Agreement: (a) constitute the best practicable notice, (b) constitute notice that is reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action, their right to accept, object to or exclude themselves from the proposed settlement and to appear at the fairness hearing, (c) constitute reasonable, due, adequate and sufficient notice to all persons entitled to receive notice, and (d) meet all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution and any Rules of the Court;

14.2.4 Find that Class Counsel and Serrano adequately represented the Class for purposes of entering into and implementing the settlement;

14.2.5 Incorporate the Release set forth in Section 16 below, make the Release effective as of the date of the Final Judgment, and forever discharge the Released Parties

from any claims or liabilities arising from or related to the facts, circumstances, or subject matter of this Action;

14.2.6 Bar and enjoin Serrano and all Class Members who have not been excluded from the Class from: (a) filing, commencing, prosecuting, intervening in, promoting, or participating (as class members or otherwise) in, any lawsuit in any jurisdiction based on or arising out of the claims and causes of action, or the facts and circumstances relating thereto, in this Action; and (b) organizing Class Members who have not been excluded from the Class into a separate class for purposes of pursuing as a purported class action any lawsuit (including by seeking to amend a pending complaint to include class allegations, or seeking class certification in a pending action) based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in this Action.

15. Payments Upon Final Judgment

15.1 Within thirty (30) days of Final Judgment, the Claims Administrator shall pay to Class Counsel, from the Settlement Fund, any reasonable attorneys' fees and costs awarded by the Court. However, in the event Final Judgment occurs prior to creation of the Escrow Account, such payment shall be made within thirty (30) days of creation of the Escrow Account. Class Counsel may request that attorneys' fees and costs be paid into a qualified settlement fund, pursuant to United States Treasury Reg. § 1.468B.

15.2 Within thirty (30) days of Final Judgment, Service Award shall be paid to Serrano from the Settlement Fund. However, in the event Final Judgment occurs prior to creation of the Escrow Account, such payment shall be made within thirty (30) days of creation of the Escrow Account.

15.3 Within thirty (30) days of Final Judgment, and after all attorneys' fees and costs awarded to Class Counsel and all costs of claims administration have been paid out of the Settlement Fund, the Claims Administrator shall calculate the share that each Class Member is entitled to receive and mail a settlement check to each Class who has a Valid Address equal to his or her share of the Settlement Fund. However, in the event Final Judgment occurs prior to creation of the Escrow Account, such payments shall be made within thirty (30) days of creation of the Escrow Account. The settlement checks to Class Members shall state on their face that the check will expire and become void if not cashed within ninety (90) days of the date of the check.

15.4 The settlement checks shall be sent via U.S. Mail to the addresses ascertained by the claim administrator. In the event a settlement check is returned to the Class Administrator as undeliverable, the Class Administrator shall attempt to identify a new Valid Address pursuant to the process described at Section 9.1.2 above or other reasonable means and shall re-send the settlement check if a valid address can be identified.

15.5 Any funds from uncashed settlement checks, including settlement checks to Class Members whose current Valid Address could not ultimately be determined, shall be delivered to EPIC – Electronic Privacy Information Center as a *cy pres* recipient.

16. Release Upon Final Judgment

16.1 Serrano and each Class Member (other than those persons who have timely and properly filed an Exclusion Request), on behalf of themselves and their agents, administrators, servants, employees, representatives, assigns, heirs, executors, trustees, joint venturers, partners, successors, predecessors and attorneys, and each of them (collectively the “**Releasing Persons**”), hereby jointly and severally release and discharge Amuse and all of its former, present and future direct and indirect parents, affiliates, subsidiaries, successors and predecessors and all of their

respective former, present and future officers, directors, shareholders, employees, servants, agents, attorneys, representatives, independent contractors and vendors (collectively the “**Released Parties**”) from any and all actions, causes of action, obligations, costs, expenses, damages, losses, claims, liabilities, and demands, of whatever character, known or unknown, to the date hereof, arising out of, relating to, or in connection with the Communications, any other communications by Amuse or any of its agents, or the administration of this settlement.

16.2 Serrano acknowledges that he may hereafter discover facts different from, or in addition to, those which he now claims or believes to be true with respect to the claims released herein, and agrees that this Settlement Agreement shall remain effective in all respects notwithstanding the discovery of such different, additional or unknown facts. Serrano hereby expressly waive any rights he may have under California Civil Code Section 1542, which section reads as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her would have materially affected his or her settlement with the debtor or released party.

Serrano further expressly waives any rights he may have under any similar statute of any other state.

The California Civil Code Section 1542 release herein shall be expressly limited to claims relating to conduct alleged in the First Amended Complaint—*i.e.*, those legal claims arising from the transmission of Communications by Amuse.

16.3 In entering into this Settlement Agreement, each Party assumes the risk of any misrepresentation, concealment or mistake by any other Party or by any third party. If either Party should discover subsequent to Final Judgment that any fact relied upon by it/him in entering into this Settlement Agreement was untrue, or that any fact was concealed from it/him, or that its/his understanding of the facts or of the law was incorrect, such party shall not be entitled to any relief in connection therewith, including without limitation, any alleged right or claim to set aside or rescind this Settlement Agreement. This Settlement Agreement is intended to be, and is final and binding between the Parties hereto, regardless of any claims of misrepresentation, promise made without the intention to perform, concealment of fact, mistake of fact or law, or any other circumstance whatsoever.

17. Effect of Court’s Denial of Preliminary or Final Approval of Settlement

There is no settlement if the Court does not preliminarily approve the settlement and finally approve the settlement in substantially the same form as set forth herein, or if the settlement or the judgment approving the settlement is appealed and not approved on appeal in substantially the same form as set forth herein. In such event, (a) this Settlement Agreement is terminated and is of no force and effect and no party shall be bound by any of its terms; (b) to the extent applicable, any preliminary order approving the settlement, certifying the Class, approving the Notice Forms or Notice Program, and providing notice to the Class shall be vacated; (c) the Settlement Agreement and all of its provisions and all negotiations, statements, and proceedings relating to the Settlement Agreement shall be without prejudice to the rights of any of the Parties; (d) each of the Parties shall be restored to their respective positions as of the date this Settlement Agreement was fully executed; and (e) neither the settlement nor any of its provisions or the fact that this Settlement Agreement has been made shall be admissible in this Action or in any other action for any purpose whatsoever.

18. Representations and Warranties

Each of the Parties to this Settlement Agreement acknowledges, represents, warrants and/or agrees as follows:

18.1 Assignment of Claims.

He/It has not hereto assigned, transferred or granted, or purported to assign, transfer, or grant, any of the claims, demands and cause(s) of action disposed of by this Settlement Agreement.

18.2 Legal Advice.

He/It has had the opportunity to consult with independent legal counsel with respect to the advisability of making the settlement provided for herein and of executing this Settlement Agreement and all other matters contained herein, including the waiver of rights under California Civil Code Section 1542 or any other similar statute of any other state.

18.3 Investigation.

He/It has been represented in the negotiations for, and in preparation of, this Settlement Agreement by counsel of his/its choice; he/it has read this Settlement Agreement and has had it fully explained to them by such counsel to the extent necessary; and that he/it is fully aware of the contents of this Settlement Agreement and of the legal effect of each and every provision thereof. He/It has made such investigation of the facts pertaining to this Settlement Agreement and of all of the matters pertaining thereto as it deems necessary.

18.4 Authority and Capacity to Execute Settlement Agreement.

The person executing this Settlement Agreement on his/its behalf has full authority and capacity to execute this Settlement Agreement and to give the releases and other promises contained herein.

19. No Admission of Liability

This Settlement Agreement affects the settlement of claims that are denied and contested, and nothing contained herein shall be construed as an admission by Amuse of any liability of any kind. Amuse denies any liability in connection with any such claims and intends merely to avoid further litigation of the Action.

20. Return of Confidential Documents

Within thirty-five (35) days of Final Judgment, the original and all copies of all confidential or highly confidential documents and/or information subject to the Protective Order entered in this Action shall be returned to the designating party or destroyed with a certification that no copies have been retained or that all copies have been destroyed by the receiving party.

21. No Publicity Beyond Notice Procedure

Neither Class Counsel nor Serrano will issue press releases or make other public statements regarding the settlement unless Amuse agrees to such press releases or public statements in advance. However, Class Counsel may post Court orders regarding the Action and brief summaries of those orders on their website/s without permission from Amuse, so long as any reference in such order(s) to materials subject to the Protective Order in the Action is properly redacted. Neither Class Counsel nor Serrano will make a statement of any kind to any third party regarding the settlement prior to applying for preliminary approval, with the exception of

communications with the Claims Administrator. The Parties may make public statements to the Court as necessary to obtain preliminary or final approval of the settlement. This provision shall not prohibit Class Counsel from communicating with any Class Member regarding the Action or the settlement; provided, however, that Class Counsel must comply with all confidentiality agreements and any Protective Order in the Action in communicating with Class Members and will not disclose information that is not a part of the public record.

22. Choice of Law and Jurisdiction

This Settlement Agreement is being executed in the State of California, and it shall be deemed to be made under, and shall be interpreted in accordance with, the internal laws of the State of California.

23. Construction of Agreement

Each Party has participated in the drafting and preparation of this Settlement Agreement. Hence, in construing this Settlement Agreement, none of the Parties hereto shall have any term or provision, or any uncertainty or ambiguity as to any term or provision herein, construed against such Party solely by reason of such Party having drafted the same, as a result of the manner of the preparation of this Settlement Agreement, or otherwise. Each term and provision of this Settlement Agreement shall be construed and interpreted so as to render it enforceable. In the event any provision of this Settlement Agreement is held to be illegal or unenforceable, the remainder of this Settlement Agreement shall be binding and enforceable.

24. Headings or Pronouns

Headings or captions contained in this Settlement Agreement are solely for the convenience of the Parties, are not a part of this Settlement Agreement, and shall not be used for the interpretation of, or determination of the validity of, this Settlement Agreement or any provision hereof. Whenever the context may so require, the masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular shall be deemed to refer to and include the plural, and vice versa.

25. Entire Agreement

This Settlement Agreement contains the entire agreement and understanding between the Parties concerning the subject matter hereof, and any and all prior oral or written agreements or understandings between the Parties related hereto are superseded. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Settlement Agreement, have been made by any party hereto.

26. Waiver, Modification and Amendment

No provision of this Settlement Agreement may be waived unless in writing signed by all Parties hereto. Waiver of any one provision shall not be deemed to be a waiver of any other provision hereof. This Settlement Agreement may not be altered, amended or otherwise changed or modified, except in writing signed by all Parties.

27. Successors and Assigns

This Settlement Agreement is binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors, assigns, heirs, agents, employees, attorneys, representatives, officers, parents, affiliates, and subsidiaries.

28. Execution in Counterparts

This Settlement Agreement may be executed in counterparts and all of said counterparts shall collectively constitute one agreement binding on all Parties.

29. Further Cooperation

The Parties hereto agree to execute all such further and additional documents and instruments, as shall be necessary or expedient to carry out the provisions of this Settlement Agreement, and shall promptly and in good faith undertake all reasonable acts to effectuate the provisions of this Settlement Agreement.

30. Notices

All letters, notices, requests, demands and other communication required or permitted to be given to the parties pursuant to this Settlement Agreement, excluding communications directed to Class members, shall be in writing and addressed as follows:

For Named Plaintiff
and the Class:

Todd M. Friedman, Esq.
The Law Offices of Todd M. Friedman, P.C.
21031 Ventura Blvd. Suite 340
Woodland Hills, CA 91364

For Amuse:

Brian P. Cadigan, Esq.
REED SMITH LLP
355 South Grand Avenue, Suite 2900
Los Angeles, CA 90071

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed as of the dates set forth below.

6/1/2023
DATED: _____

DocuSigned by:
Moises Serrano
B98035940808432...

MOISES SERRANO, as an Individual
and as Class Representative

DATED: _____

OPEN ROAD DELIVERY HOLDINGS, INC.

By _____
Name:
Title:

APPROVED AS TO FORM AND CONTENT

DATED: June 1, 2023

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

Todd M. Friedman
By _____
Todd M. Friedman, Attorneys for Plaintiff
Moises Serrano

DATED: _____

REED SMITH LLP

By _____
Timothy R. Carwinski, Attorneys for Defendant
Open Road Delivery Holdings, Inc.

28. Execution in Counterparts

This Settlement Agreement may be executed in counterparts and all of said counterparts shall collectively constitute one agreement binding on all Parties.

29. Further Cooperation

The Parties hereto agree to execute all such further and additional documents and instruments, as shall be necessary or expedient to carry out the provisions of this Settlement Agreement, and shall promptly and in good faith undertake all reasonable acts to effectuate the provisions of this Settlement Agreement.

30. Notices

All letters, notices, requests, demands and other communication required or permitted to be given to the parties pursuant to this Settlement Agreement, excluding communications directed to Class members, shall be in writing and addressed as follows:

For Named Plaintiff
and the Class:

Todd M. Friedman, Esq.
The Law Offices of Todd M. Friedman, P.C.
21031 Ventura Blvd. Suite 340
Woodland Hills, CA 91364

For Amuse:

Brian P. Cadigan, Esq.
REED SMITH LLP
355 South Grand Avenue, Suite 2900
Los Angeles, CA 90071

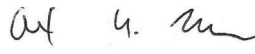
IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed as of the dates set forth below.

DATED: _____

MOISES SERRANO, as an Individual
and as Class Representative

DATED: 06/01/2023

OPEN ROAD DELIVERY HOLDINGS, INC.

By 

Name: Alexander Becker
Title: CRO

28. Execution in Counterparts

This Settlement Agreement may be executed in counterparts and all of said counterparts shall collectively constitute one agreement binding on all Parties.

29. Further Cooperation

The Parties hereto agree to execute all such further and additional documents and instruments, as shall be necessary or expedient to carry out the provisions of this Settlement Agreement, and shall promptly and in good faith undertake all reasonable acts to effectuate the provisions of this Settlement Agreement.

30. Notices

All letters, notices, requests, demands and other communication required or permitted to be given to the parties pursuant to this Settlement Agreement, excluding communications directed to Class members, shall be in writing and addressed as follows:

For Named Plaintiff
and the Class:

Todd M. Friedman, Esq.
The Law Offices of Todd M. Friedman, P.C.
21031 Ventura Blvd. Suite 340
Woodland Hills, CA 91364

For Amuse:

Brian P. Cadigan, Esq.
REED SMITH LLP
355 South Grand Avenue, Suite 2900
Los Angeles, CA 90071

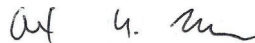
IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be executed as of the dates set forth below.

DATED: _____

MOISES SERRANO, as an Individual
and as Class Representative

DATED: 06/01/2023

OPEN ROAD DELIVERY HOLDINGS, INC.

By 

Name: Alexander Becker
Title: CRO