

IN THE CIRCUIT COURT OF THE  
11TH JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

COMPLEX BUSINESS LITIGATION

CASE NO. 2020-024684-CA-01  
SECTION CA 43

CHRISTIAN CONTI,

Plaintiff,

v.

CITY OF MIAMI BEACH, FLORIDA,

Defendant.

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**STIPULATION OF SETTLEMENT**

This Stipulation of Settlement is made and entered into by and among Christian Conti (“Conti” or “Class Representative”), on behalf of himself and each of the Settlement Class Members, and Defendant City of Miami Beach, Florida (the “City” or “Defendant”).

**I. RECITALS**

WHEREAS, on November 16, 2020, Plaintiff Christian Conti filed a class action against Defendant in the Circuit Court for the Eleventh Judicial Circuit in and for Miami-Dade County, Florida as *Christian Conti v. City of Miami Beach, Florida*, Case No. 2020-024684-CA-01 (Miami-Dade Cir. Ct.). Conti filed suit on behalf of a proposed class of property owners who were charged for violating the City’s short term rental laws, Sections 142-905(b)(5) and 142-1111 of the City of Miami Beach Code of Ordinances (collectively, the “Short Term Rental Ordinances”).<sup>1</sup> Conti alleged three counts for violation of equal protection, excessive fines, and state preemption

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<sup>1</sup> Each individual proposed Settlement Class Member violation is referred to as “Violation” and proposed Settlement Class Member violations are collectively referred to as “Violations.”

and sought damages, including the total amount of fines paid by proposed class members from March 19, 2016 through October 24, 2020 under the Short Term Rental Ordinances in excess of the permitted statutory amount of \$1,000 for a first violation and \$5,000 for a second or subsequent violation (the “Litigation”); and

WHEREAS, on June 11, 2021, Conti voluntarily dismissed all claims against individual City officials that were sued in their official capacity as well as his excessive fines claim. On September 3, 2021, the Court entered an Order granting in part and denying in part the City’s motion to dismiss; and

WHEREAS, Defendant has denied and continues to deny each and all of the claims alleged by the Class Representative and all charges of wrongdoing or liability arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Litigation; and

WHEREAS, the Parties and their respective counsel, have engaged in litigation, arm’s length negotiation, mediation, and analysis, and have agreed upon certain terms and conditions to settle and resolve the Litigation in a manner that is fair, reasonable, and reflects the best interests of the Settlement Class as a whole and avoids the expense, burden, and risks associated with further protracted litigation; and

WHEREAS, based upon documentation from the City, the total of potential Settlement Class Members is 82 and the total amount of fines paid to the City by the potential Settlement Class Members in excess of the statutory amount is \$322,500.00. As stated more fully below, the City will pay 67 percent of the total amount of fines paid by the Settlement Class in excess of the statutory amount. Therefore, the maximum amount of the Settlement Fund is \$216,075.00 (this maximum amount will be reduced based on the fine amounts paid in excess of the statutory amount

by Potential Class Members who exclude themselves from the Class Settlement, if any); and

WHEREAS, the Class Representative and Class Counsel agreed to settle the Litigation pursuant to the provisions of this Stipulation after considering, among other things: (1) the substantial benefits available to the Settlement Class under the terms herein; (2) the attendant risks and uncertainty of litigation, especially in complex actions such as this, as well as the difficulties and delays inherent in such litigation; and (3) the desirability of consummating this Stipulation to provide effective relief to the Settlement Class and to end the conduct at issue; and

WHEREAS, based upon Class Counsel's investigation and analysis, Class Counsel finds this settlement is fair, reasonable, and adequate; and

WHEREAS, Defendant has concluded that further defense of the Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in the Stipulation, and Defendant also has taken into account the uncertainty and risks inherent in any litigation, and, therefore, has determined that it is desirable and beneficial that the Litigation be settled in the manner and upon the terms and conditions set forth in the Stipulation; and

WHEREAS, this Stipulation effectuates the resolution of disputed claims and is for settlement purposes only.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, Defendant City of Miami Beach, Florida and the Class Representative, on behalf of himself and the Settlement Class, hereby agree to the full and complete settlement of the Litigation, subject to Court approval, under the terms and conditions set forth herein.

## **II. DEFINITIONS**

A. As used in this Stipulation the following capitalized terms have the meanings

specified below. Unless otherwise indicated, defined terms include the plural as well as the singular.

1. “Claim Form” means the documents to be submitted by Claimants seeking payment pursuant to this Stipulation that will be mailed by the City to each potential Claimant at the address contained in the Claimant’s respective Violation.

2. “Claimant” means a Settlement Class Member who submits a claim for a Claims Payment as described in this Stipulation.

3. “Claimant Claims Payment” means the monetary payment to a Claimant as described in this Stipulation.

4. “Claims Deadline” is fifteen (15) days before the Fairness Hearing and means the date by which Claim Forms must be postmarked to be eligible for a Claims Payment.

5. “Claims Payment” means the monetary payment made by the City as described in this Stipulation.

6. “Claims Payment Date” is thirty (30) days after the Effective Date and means the date by which the City must mail Claims Payments in the form of a check to eligible Settlement Class Members.

7. “Class Action Settlement Administrator” or “Settlement Administrator” means the City of Miami Beach, which will provide the Class Notice and administer the claims process.

8. “Class Counsel” means, subject to Court approval to represent the Settlement Class, the following law firms and their attorneys:

**ARMAS BERTRAN ZINCONE**

Francesco Zincone, Esq.  
Suite 206  
4960 SW 72nd Avenue  
Miami, Florida 33155  
Telephone: (305) 461-5100  
fzincone@armaslaw.com

**ERIC J. SANCHEZ, P.A.**

Eric J. Sanchez, Esq.  
Suite 206  
4960 SW 72nd Avenue  
Miami, Florida 33155  
Telephone: (305) 461-5100  
eric@ericjsanchezpa.com

9. “Class Notice” means the “Notice of Class Action Settlement,” substantially in the form attached hereto as Exhibit A, which will be mailed by the City.

10. “Class Representative” means Christian Conti.

11. “Court” means the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.

12. “Defendant” for purposes of this Stipulation means City of Miami Beach, Florida.

13. “Defendant’s Counsel” means the following attorneys on behalf of the City of Miami Beach and the following law firm:

**CARLTON FIELDS, P.A.**

Enrique D. Arana, Esq.  
Scott E. Byers, Esq.  
Rachel A. Oostendorp, Esq.  
2 MiamiCentral, Suite 1200  
700 NW 1st Avenue  
Miami, Florida 33136

**CITY OF MIAMI BEACH**

Rafael A. Paz, Esq.  
Robert F. Rosenwald, Jr., Esq.  
1700 Convention Center Drive, 4th Floor  
Miami Beach, Florida 33139

14. “Effective Date” means the date on which the Final Judgment approving the Settlement becomes final and not subject to further appeal, or, if no appeal is taken from the Final Judgment, then the date on which the time to appeal therefrom has expired. The events and conditions precedent to the Effective Date are further enumerated in § IX of this Stipulation, and are incorporated in this definition.

15. “Fairness Hearing” means the hearing(s) to be held by the Court to consider

and determine whether the proposed Settlement of this Litigation as contained in this Stipulation should be finally approved as fair, reasonable, and adequate, and whether the Final Judgment approving the Settlement contained in this Stipulation should be entered. Class Counsel and Defendant's Counsel shall jointly ask the Court to schedule the Fairness Hearing on \_\_\_\_\_, or within least ninety (90) days of the date that the Court enters the Preliminary Approval Order.

16. "Final Judgment" means the Final Judgment and Order Approving Proposed Settlement and Dismissing Action to be entered by the Court, substantially in the form attached hereto as Exhibit B, which, among other things, fully and finally approves the Settlement and dismisses the Litigation with prejudice.

17. "Litigation" means the lawsuit captioned *Christian Conti v. City of Miami Beach, Florida*, Case No. 2020-024684-CA-01 (Miami-Dade Cir. Ct.).

18. "Non-Claimant Settlement Class Member" means a Settlement Class Member who does not request to be excluded from the Class Settlement before the Objection and Exclusion Deadline and who does not submit a Claims Form by the Claims Deadline.

19. "Non-Claimant Claims Payment" means a Claims Payment being made for a Non-Claimant Settlement Class Member which will be paid to a charity agreed upon by the Class Representative and the City as described in this Stipulation.

20. "Objection and Exclusion Deadline" is fifteen (15) days before the Fairness Hearing, or as the Court otherwise may direct, and means the deadline for members of the Settlement Class to file and serve any objections to the Settlement, or to request exclusion from the Settlement Class.

21. "Party" or "Parties" means the Class Representative, the Settlement Class Members, and the Defendant in this Litigation and Settlement.

22. “Person” means a natural person or individual.

23. “Plaintiffs’ Counsel” means the attorneys on behalf of the law firms identified above as “Class Counsel.”

24. “Preliminary Approval Order” means the Order on Plaintiffs’ Motion For Preliminary Approval Of Class Action Settlement, Certification of Settlement Class, And Other Relief, substantially in the form of Exhibit C attached hereto.

25. “Released Claims” shall be construed as broadly as possible to effect complete finality over this Litigation, and means any and all claims, liabilities, rights, demands, complaints, disputes, debts, suits, matters, obligations, damages, enrichment, restitution, disgorgement, losses or costs, attorney’s fees or expenses, rights of action, and causes of action of every nature whatsoever, that the Releasing Parties had or have, including assigned claims, whether in arbitration, administrative, or judicial proceedings, whether as individual claims or as claims asserted on a class basis or on behalf of the general public, whether based on federal, state, or local law, statute, ordinance, regulation, common law, private contract, agreement or any other authority (collectively, “Claims”), whether known or unknown, asserted or unasserted, suspected or unsuspected, latent or patent, that are, have been, could reasonably have been or in the future might reasonably be brought or asserted by the Releasing Party either in the Litigation or in any other similar action in any state or federal court in the United States against any of the Released Parties arising out of, resulting from or relating in any way to the allegations in the Litigation or any similar state or federal court action, or arising out of the Releasing Parties’ payment of fines for violation of the Short Term Rental Ordinances, prior to October 24, 2020, including but not limited to all Claims that were brought or could have been brought in the Litigation or any similar action in any state or federal court in the United States. “Released Claims” shall not include any

claims for property damage or personal injury.

26. “Released Parties” shall be defined and construed broadly to effectuate a complete and comprehensive release, and means and includes the City of Miami Beach, Florida and its past and present officials, employees, shareholders, agents, attorneys, administrators, successors, predecessors, insurers, spokespersons, public relations firms, advertising and production agencies, and assigns of all such persons or entities.

27. “Releasing Parties” means the Class Representative, each Settlement Class Member, and any Person claiming by or through him/her/it as his/her/its spouse, parent, child, heir, guardian, associate, co-owner, attorney, agent, administrator, devisee, predecessor, successor, assignee, representative of any kind, shareholder, partner, director, employee, or affiliate.

28. “Service Award” means any award sought by application to and approved by the Court that is payable to the Class Representative.

29. “Settlement” means the settlement embodied in this Stipulation.

30. “Settlement Class” means all Persons who paid fines to the City of Miami Beach for violation of Miami Beach Code Sections 142-905(b)(5) and 142-1111 from March 19, 2016 to October 24, 2020, in excess of the statutory amount of \$1,000 for a first violation and \$5,000 for a second or subsequent violation. Excluded from the Settlement Class are: (a) Defendant, its officials, employees, and agents; (b) Persons who timely and properly exclude themselves from the Settlement Class as provided herein; and (c) the Court, the Court’s immediate family, and Court staff.

31. “Settlement Class Member(s)” means a member of the Settlement Class who has not been properly excluded from the Settlement Class.

32. “Settlement Class Period” or “Class Period” means the period from the date



of the original ordinances (March 19, 2016) to the date of the amendment of the ordinances (October 24, 2020).

33. “Settlement Fund” means 67 percent of the amount of fines paid to the City by the Settlement Class Members (remaining class members who do not request exclusion before the Objection and Exclusion Deadline) in excess of the statutory amount.

34. “Short Term Rental Ordinances” means Sections 142-905(b)(5) and 142-1111 of the City of Miami Beach Code of Ordinances.

35. “Stipulation” means this Stipulation of Settlement, including its attached exhibits (which are incorporated herein by reference), duly executed by Class Counsel, Class Representative, and Defendant.

B. Other capitalized terms used in this Stipulation but not defined above shall have the meaning ascribed to them in this Stipulation and the exhibits attached hereto.

### **III. CERTIFICATION OF THE SETTLEMENT CLASS**

Defendant hereby consents, solely for purposes of the Settlement, to the certification of the Settlement Class, to the appointment of Class Counsel as counsel for the Settlement Class, and to the conditional approval of the Class Representative as a suitable representative of the Settlement Class; provided, however, that if this Stipulation fails to receive Court approval or otherwise fails to be consummated, including, but not limited to, the Final Judgment not becoming final as provided in § IX.D of this Stipulation, then Defendant retains all rights held immediately preceding the execution of this Stipulation to object to the maintenance of this Litigation as a class action, and in that event, nothing in this Stipulation or other papers or proceedings related to the Settlement shall be used as evidence or argument by any Party concerning whether the Litigation may properly be maintained as a class action, whether the Settlement Class is ascertainable, or whether Class

Counsel or the Class Representative can adequately represent the Settlement Class Members under applicable law.

#### **IV. SETTLEMENT RELIEF/SETTLEMENT FUND**

The Settlement relief includes monetary relief.

##### **A. Payment to Qualified Claimants**

Based upon documentation from the City, the total of potential Settlement Class Members is 82 and the total amount of fines paid to the City by the potential Settlement Class Members in excess of the statutory amount is \$322,500.00. The City will pay 67 percent of the total amount of fines paid by the Settlement Class in excess of the statutory amount. Thus, the maximum amount of the Settlement Fund is \$216,075.00. Therefore, the final Settlement Fund will be determined based on the calculation of the total number of Settlement Class Members remaining who do not request exclusion before the Objection and Exclusion Deadline.

Subject to the limitations in this Stipulation, Defendant agrees to compensate Settlement Class Members (both Claimants and Non-Claimant Settlement Class Members) as follows:

1. Claimants will receive 67 percent of the amount paid in excess of the statutory amount of \$1,000 for a first violation and \$5,000 for a second or subsequent violation. Of that amount, 30 percent will be paid to Class Counsel as a Fee Award.

2. For Non-Claimant Settlement Class Members, the City will pay 67 percent of the amount paid in excess of the statutory amount of \$1,000 for a first violation and \$5,000 for a second or subsequent violation for each respective Non-Claimant Settlement Class Member to a Miami Beach charity agreed upon by the Class Representative and the City. Of that amount, 30 percent will be paid to Class Counsel as a Fee Award.

3. The City will pay \$3,000 to the Class Representative as a Service Award. This payment is separate and apart from the Settlement Fund. Class Representative will receive this award in addition to any Claims Payment he receives.

4. The Claim Form will be mailed to potential Settlement Class Members by the City.

5. To be eligible for a Claimant Claims Payment, Claim Forms must be postmarked or submitted online no later than the Claims Deadline. Claim Forms postmarked or submitted online after the Claims Deadline shall be denied by the Class Action Settlement Administrator, and Defendant will not be obligated to make any payment on such claims. The Settlement Class Member must sign and complete the Claim Form and submit it to the Settlement Administrator.

6. Claimants must submit a Claim Form by mail. Each Claim Form must be timely, and complete, and must be signed by the Settlement Class Member certifying that all information contained in the Claim Form is true and correct under penalty of perjury, and acknowledging that the information may be subject to a request by the Settlement Administrator for further identifying information.

7. The Settlement Administrator may permit corrections to deficient Claim Forms or deem them invalid, in its discretion. If the Settlement Administrator determines that a Claim Form is deficient but subject to possible correction, a deficiency letter will be mailed via first class mail to the Settlement Class Member's address indicated on the Claim Form. A Settlement Class Member's time to cure any deficiencies where allowed by the Settlement Administrator shall expire on or before the Claims Deadline or 15 calendar days from when the deficiency letter was mailed, whichever is later. If a Settlement Class Member fails to respond to

a deficiency letter and correct the deficiency by the Claims Deadline or within 15 calendar days from when the deficiency letter was mailed, whichever is later, or the Settlement Administrator is unable to send a deficiency letter as result of omitted or insufficient information, the Settlement Administrator will reject such Settlement Class Member's Claim Form as invalid. Claim Forms deemed invalid will not be paid.

8. Within fifteen (15) days of Final Judgment, the Class Action Settlement Administrator shall provide to Class Counsel and Defendant's Counsel final information regarding the valid and invalid Claim Forms. Within thirty (30) days after the Effective Date (the "Claims Payment Date"), the Class Action Settlement Administrator will mail payment in the form of a check directly to Claimants. Invalid claims will not be paid. Any check that is remitted to a Claimant and that is not negotiated within ninety (90) days after issuance shall be cancelled (the checks shall state in bold font, "void after 90 days"), and Defendant shall not have any further obligation to continue efforts to distribute a payment to such Claimant. After a check is remitted to a Claimant and not negotiated within 90 days after its issuance, said payment is deemed to be a Non-Claimant Payment and the funds shall be paid to the Miami Beach charity agreed upon by the Class Representative and the City.

9. Copies of submitted Claim Forms shall be provided to Class Counsel and to Defendant's Counsel upon request. The Settlement Administrator will provide a report to the Parties of all invalid Claim Forms following the Claims Deadline and the Parties and the Claims Administrator will work in good faith to resolve any disputes regarding the invalidity of the Claim Forms.

10. The Class Representative and Settlement Class Members shall look solely to Defendant's payment as set forth above as satisfaction of all claims that are released hereunder.

The Class Representative and Settlement Class Members acknowledge that as of the Effective Date, the Release given herein shall become effective immediately by operation of the Final Judgment and shall be permanent, absolute and unconditional

**V. NOTICE AND COMMUNICATIONS WITH MEMBERS OF THE SETTLEMENT CLASS**

**A. Class Notice**

1. The Class Notice shall set forth the following general information:
  - a. inform Settlement Class Members that, if they do not exclude themselves from the Settlement Class, they may be eligible to receive the relief under the proposed Settlement;
  - b. contain a short, plain statement of the background of the Litigation, the definition of the Settlement Class and the proposed Settlement;
  - c. describe the proposed Settlement relief outlined in this Stipulation and important deadlines relating to the same;
  - d. explain that a Settlement Class Member may enter an appearance through an attorney if the Settlement Class Member so desires; and
  - e. state that any relief to Settlement Class Members is contingent on the Court's final approval of the proposed Settlement.
2. The Class Notice shall inform members of the Settlement Class of the following regarding notices of exclusion, objections, and other rights:
  - a. that members of the Settlement Class may exclude themselves from the Settlement Class by submitting a written exclusion request postmarked no later than the Objection and Exclusion Deadline;
  - b. that any Settlement Class Member who has not submitted a written

request for exclusion may, if he or she desires, object to the proposed Settlement no later than the Objection and Exclusion Deadline, and in accordance with the procedure for objecting;

c. that any Settlement Class Member who has filed and served written objections to the proposed Settlement may, if he or she so requests, enter an appearance at the Fairness Hearing either personally or through counsel;

d. that any Judgment entered in the Litigation, whether favorable or unfavorable to the Settlement Class, shall include, and be binding on, all Settlement Class Members, even if they have objected to the proposed Settlement and even if they have any other claim, lawsuit or proceeding pending against Defendant;

e. that any Settlement Class Member (subject to restrictions in Section IV.A.1.) may submit a completed and signed Claim Form seeking a Claims Payment under this Settlement that must be postmarked no later than the Claims Deadline; and

f. the terms of the Release.

## **VI. APPROVAL PROCEDURES AND RELATED PROVISIONS**

### **A. Preliminary Approval and Fairness Hearing**

Promptly after execution of this Stipulation, Class Counsel shall submit this Stipulation to the Court and shall apply for entry of a Preliminary Approval Order substantially in the form of Exhibit C attached hereto, which, for settlement purposes only, would certify a Settlement Class under Florida Rule of Civil Procedure 1.220, approve the Class Representative as adequate, preliminarily approve this Stipulation as fair, reasonable, and adequate, approve the proposed notice plan and form of Class Notice as consistent with all legal requirements, including but not limited to the Due Process Clause of the United States Constitution, provide for dissemination of

the Class Notice, approve the Class Action Settlement Administrator, appoint Class Counsel, and schedule a Fairness Hearing.

**B. Requests for Exclusion**

1. Any member of the Settlement Class who wishes to be excluded from the Settlement Class must mail or deliver a written request for exclusion to the Class Action Settlement Administrator, care of the address provided in the Class Notice, postmarked or delivered no later than the Objection and Exclusion Deadline. The request for exclusion must include the following information: (a) the name, current address and telephone number of the member of the Settlement Class seeking exclusion; and (b) a statement that the member of the Settlement Class has elected to be excluded from the Settlement Class. The request for exclusion must be personally signed by the member of the Settlement Class requesting exclusion. Any request for exclusion postmarked after the Objection and Exclusion Deadline shall not be valid. A sealed list reflecting all requests for exclusion shall be filed with the Court at or before the Fairness Hearing.

2. Any member of the Settlement Class who does not submit a timely written request for exclusion shall be bound by all subsequent proceedings, orders and the Final Judgment in this Litigation relating to this Stipulation, even if he or she has pending, or subsequently initiates, litigation, arbitration, or any other proceeding against Defendant relating to the Released Claims.

3. Exclusion or “opt out” rights may not be exercised by counsel representing or purporting to represent any member of the Settlement Class. So-called “mass,” “collective,” “group,” “representative,” or “class” opt-outs, or any request for exclusion which purports to request exclusion of other or multiple members of the Settlement Class, shall not be allowed.

4. Members of the Settlement Class who validly exclude themselves from the Settlement Class shall not be bound by the Stipulation, shall not release their claims as provided

in this Stipulation, may not file an objection to the Settlement, may not object to the Settlement at the Fairness Hearing, and shall be deemed to have waived any rights or benefits under this Stipulation.

5. Any Settlement Class Member who has not timely requested exclusion from the Settlement Class will be bound by the terms of the Stipulation upon entry of the Final Judgment.

6. The Parties agree that they will not solicit or encourage requests for exclusions or objections by putative or actual Settlement Class Members.

### **C. Objections to Settlement**

1. Any Settlement Class Member who wishes to object to or oppose the approval of this Settlement shall submit to the Clerk of the Court and serve on Class Counsel and on Defendant's Counsel a written objection postmarked or delivered no later than the Objection and Exclusion Deadline. The written objection must contain the following:

- a. the name of this Litigation;
- b. the objecting Class Member's full name, address, and telephone number;
- c. a statement that the objector has reviewed the definition of the Class and that he or she is a Settlement Class Member, and has not opted out of the Settlement Class;
- d. a statement under oath as to the violation date and address and fine paid for violation of the Short Term Rental Ordinances;
- e. all grounds for the objection, accompanied by any legal support known to the objecting Class Member or his or her counsel;
- f. the identity of all counsel, including the lawyer's name, address and



telephone number, who represent the objecting Class Member, including any former or current counsel who may be entitled to compensation for any reason related to the objection;

g. a statement confirming whether the objecting Class Member or any counsel representing the objecting Class Member intends to personally appear and/or testify at the Fairness Hearing;

h. a list of any persons who may be called to testify or seek to present argument at the Fairness Hearing in support of the objection;

i. a list of all class action settlements where the objector or their counsel has submitted an objection in the last five years as well as any ongoing or previously filed litigation related to any objection; and

j. the signature of the objecting Class Member.

2. The Parties reserve the right to challenge the standing or other grounds for the submission of the objection.

3. The written objection must be filed with the Clerk of the Court with copies sent to the following Class Counsel and Defendant's Counsel:

Defendant's Counsel

Scott E. Byers, Esq.  
Carlton Fields, P.A.  
2 MiamiCentral, Suite 1200  
700 NW 1st Avenue  
Miami, FL 33136

Class Counsel

Francesco Zincone, Esq.  
Armas Bertran Zincone  
Suite 206  
4960 SW 72nd Avenue  
Miami, Florida 33155

4. Any objection filed with the Court and served on Class Counsel and Defendant's Counsel after the Objection and Exclusion Deadline shall be untimely and invalid. Settlement Class Members who fail to file and serve timely written Objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from

making any objection (whether by objection, appeal or otherwise) to the Settlement and this Stipulation.

5. No Settlement Class Member shall be entitled to be heard at the Fairness Hearing (whether individually or through counsel), and no written objections or briefs submitted by any Settlement Class Member shall be considered by the Court at the Fairness Hearing, unless a written Notice of Intent to appear at the Fairness Hearing and copies of any written objection or briefs have been filed with the Court by the Settlement Class Member or their counsel, and served on counsel for the Parties at the addresses set forth in this Stipulation on or before the Objection and Exclusion Deadline.

## **VII. CLASS RELEASE AND INJUNCTION**

### **A. Release**

Except as expressly provided in subsection VII.B. below, as of the Effective Date, the Class Representative, and all Settlement Class Members, on behalf of themselves and all heirs, guardians, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns (collectively, the Releasing Parties), shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever irrevocably waived, released, relinquished, and discharged Defendant City of Miami Beach, Florida and all of its past and present officials, employees, shareholders, agents, attorneys, administrators, successors, predecessors, insurers, spokespersons, public relations firms, advertising and production agencies, and assigns of all such persons or entities (the Released Parties) from any and all claims, liabilities, rights, demands, complaints, disputes, debts, suits, matters, obligations, damages, enrichment, restitution, disgorgement, losses or costs, attorney's fees or expenses, rights of action, and causes of action of every nature whatsoever, that the Releasing Parties had or have, including assigned

claims, whether in arbitration, administrative, or judicial proceedings, whether as individual claims or as claims asserted on a class basis or on behalf of the general public, whether based on federal, state, or local law, statute, ordinance, regulation, common law, private contract, agreement or any other authority (collectively, "Claims"), whether known or unknown, asserted or unasserted, suspected or unsuspected, latent or patent, that are, have been, could reasonably have been or in the future might reasonably be brought or asserted by the Releasing Parties either in the Litigation or in any other similar action in any state or federal court in the United States against any of the Released Parties arising out of, resulting from or relating in any way to the allegations in the Litigation or any similar state or federal court action, or arising out of the Releasing Parties' payment of fines for violation of the Short Term Rental Ordinances, prior to October 24, 2020, including but not limited to all Claims that were brought or could have been brought in the Litigation or any similar action in any state or federal court in the United States. The Class Representative and Settlement Class Members and their counsel acknowledge and agree that they are aware that they may hereafter discover Claims presently unknown or unsuspected, or facts in addition to or different from those they believe to be true with respect to the subject matter of this Stipulation. Nevertheless, it is the intention of the Settlement to fully, finally, and forever settle and release all such matters and Claims relating thereto, which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action). The Parties agree that, notwithstanding the discovery of any additional or different facts that, if known, would materially affect its decision to enter into this Stipulation, the releases herein given shall be and remain in effect as a full, final, and complete general release of the Released Claims and the Parties shall not be entitled to modify or set aside this Stipulation, either in whole or in part, by reason thereof. The Parties hereby expressly waive and relinquish, to the fullest extent permitted by law,

the rights and benefits of any statute or principal of law which might otherwise limit or render unenforceable a release contained in this Stipulation.

**B. Permanent Injunction**

As of the date of the Final Judgment, the Class Representative and each Settlement Class Member shall be permanently barred and enjoined from filing, commencing, asserting, prosecuting, intervening in, and/or participating in (individually or in a representative capacity) any lawsuit, action, or proceeding in any jurisdiction asserting or based upon any claims or causes of action released in the Settlement and Final Judgment; and from bringing a class action on behalf of any Settlement Class Members or seeking to certify a class which includes any Settlement Class Members in any such lawsuit, action, or proceeding. This Stipulation shall be the sole and exclusive remedy available to the Releasing Parties for any and all Released Claims against the Released Parties. None of the Released Parties shall be subject to liability or expense of any kind to any Releasing Party with respect to any Released Claim.

**VIII. CLASS COUNSEL'S ATTORNEYS' FEES, COSTS, AND EXPENSES AND CLASS REPRESENTATIVE SERVICE AWARD**

A. The City will pay \$3000 to the Class Representative as a Service Award.

B. 30 percent of the Settlement Fund shall be paid to Class Counsel as a Fee Award.

The Parties agree that the Fee Award represents Defendant's all-inclusive full payment for any and all attorneys' fees, costs, and other expenses in relation to the claims covered by the Settlement, Stipulation, and Release provided for herein and any implementation or administration of the Settlement including appeals. The Class Representative and Class Counsel shall not seek to recover any such fees, costs or expenses from Defendant.

C. Class Counsel shall allocate and distribute the Fee Award among Class Counsel and any other counsel, Person, or entity entitled to any share of the Fee Award. Defendant shall have

no liability or other responsibility for allocation of any such Fee Award, and, in the event that any dispute arises relating to the allocation of fees, Class Counsel agree to hold Defendant harmless from any and all such liabilities, costs, and expenses of such dispute.

D. The Fee Award shall be paid by Defendant within thirty (30) days after the Effective Date if Class Counsel has provided Defendant's Counsel with W9 forms and wire instructions by that time.

E. The Fee Award to Class Counsel is contingent on the Court's determination of whether to approve the Settlement and this Stipulation. If the Court declines to approve the Settlement and this Stipulation, no award of fees, costs and expenses shall be paid. The Parties have negotiated and reached agreement on the Class Counsel's fees, costs and expenses only after reaching agreement on all other material terms of Settlement and this Stipulation set forth herein.

#### **IX. FINAL JUDGMENT, CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION**

A. On or before seven (7) days prior to the Fairness Hearing, or such other date as may be designated by the Court, Class Counsel shall petition the Court for a Final Judgment substantially in the form of Exhibit B attached hereto, which:

1. finds that the Court has personal jurisdiction over all Settlement Class Members, that subject matter jurisdiction exists over the claims asserted in this Litigation, and that venue is proper;

2. finally certifies the Settlement Class for settlement purposes only;

3. finds that the form and means of disseminating the Class Notice complied with all laws, including, but not limited to, the Due Process Clause of the United States Constitution;

4. enters the Final Judgment with respect to the claims of all Settlement Class

Members and dismisses the claims of all Class Representative and Settlement Class Members and this Litigation, with prejudice;

5. decrees that neither the Final Judgment nor this Stipulation constitutes an admission of liability, fault, or wrongdoing on the part of Defendant;

6. incorporates the Release provisions of this Stipulation and forever discharges the Released Parties from any Claims or liabilities for any Released Claims;

7. permanently bars and enjoins the Class Representative, Settlement Class Members, and all of the Releasing Parties from filing, commencing, prosecuting, intervening in, or participating in (as class members or otherwise) any action in any jurisdiction based on or relating to any of the Released Claims;

8. permanently bars and enjoins the Class Representative, Settlement Class Members, and all of the Releasing Parties from bringing a class action on behalf of any Settlement Class Members or seeking to certify a class that includes any Settlement Class Members in any lawsuit (including by seeking to amend a pending complaint to include class action allegations, or seeking class certification in a pending action ) based on or relating to any of the Released Claims;

9. finds that this Stipulation is entered into in good faith, and that the Settlement is reasonable, fair, and adequate, and is in the best interest of the Settlement Class Members;

10. authorizes the Parties to implement the terms of the Stipulation;

11. retains jurisdiction relating to the administration, consummation, enforcement, and interpretation of the Stipulation, the Final Judgment, and for any other necessary purpose; and

12. makes such orders as are necessary and appropriate to effectuate the terms

and conditions of this Stipulation.

B. The Court shall schedule and conduct a Fairness Hearing so that the Court may review any objections to this Stipulation, consider the fairness, reasonableness and adequacy of this Stipulation and consider the Parties' petition for final approval of the Settlement. The date of the Fairness Hearing shall be included with the Claim Forms mailed by the City. No further notice is required to be published to Settlement Class Members.

C. The Effective Date of this Stipulation shall be the first date after which all of the following events and conditions have been met or have occurred:

1. the Court has preliminarily approved this Stipulation and entered the Preliminary Approval Order;
2. the Court has entered the Final Judgment; and
3. unless the Parties otherwise agree in writing to waive all or any portion of the following provision, there has occurred: (i) the expiration (without the filing or noticing of an appeal) of the time to appeal from the Final Judgment; (ii) the final dismissal of all appeals from the Final Judgment; or (iii) final affirmance on appeal of the Final Judgment, which means, if a ruling or decision is entered by an appellate court with respect to affirmance of the Final Judgment, the time to petition for rehearing or re-argument, petitions for rehearing en banc and petitions for certiorari or any other form of review with respect to such ruling or decision has expired; or, if a petition for rehearing or re-argument, petitions for rehearing en banc and petitions for certiorari or any other form of review with respect to the Final Judgment is filed, any such petition has been denied or dismissed or, if granted, has resulted in affirmance of the Final Judgment.

D. This Stipulation is contingent on the final certification of the Settlement Class and the entry of Final Judgment, and occurrence of the conditions necessary to the Effective Date, as

defined above. Class Counsel or Defendant's Counsel may terminate this Stipulation in its entirety at any time and without further obligation if: (1) any court rejects or denies approval of any term or condition of this Stipulation; (2) any court makes any order purporting to alter, amend or modify any term or condition of this Stipulation, including without limitation any alteration, amendment or modification of any term or condition of this Stipulation that potentially increases in any way Defendant's financial responsibility or financial obligation in connection with the Settlement; or (3) any court fails to certify the Settlement Class as defined above for purposes of settlement only.

E. In the event Class Counsel or Defendant's Counsel exercises the right to terminate this Stipulation, that party shall promptly notify the Court and all counsel of record in writing and cause the Class Action Settlement Administrator to notify the Settlement Class Members by mail.

F. In the event Class Counsel or Defendant's Counsel exercises the right to terminate this Stipulation, this Stipulation shall be considered null and void and will have no force or effect, no Person or entity shall be bound by any of its terms or conditions, and the rights of all Persons or entities with respect to the claims and defenses asserted in this Litigation shall be restored to their respective status in the Litigation.

G. Except as otherwise provided herein, in the event the Stipulation is terminated in accordance herewith, vacated, or fails to become effective for any reason, then the Parties to this Stipulation shall be deemed to have reverted to their respective status in the Litigation and, except as otherwise expressly provided, the Parties shall proceed in all respects as if this Stipulation and any related orders had not been entered.

## **X. MISCELLANEOUS PROVISIONS**

A. **Best Efforts**. The Parties and their counsel agree to undertake their best efforts and mutually cooperate to promptly effectuate this Stipulation and the terms of the Settlement set forth



herein, including taking all steps and efforts contemplated by this Stipulation and any other steps and efforts which may become necessary by order of the Court or otherwise.

B. **Entire Agreement; Joint Preparation.** The exhibits to this Stipulation are an integral part of the Settlement and are hereby incorporated and made a part of this Stipulation. This Stipulation, including all exhibits hereto, contains the entire agreement among the Parties with regard to the subject of this Stipulation, and supersedes any prior agreements representations, communications, and understandings among the Parties with respect to the subject matter of this Stipulation. The Recitals are a material part of this Stipulation and are incorporated herein in their entirety. All terms of this Stipulation are contractual and shall be construed as if drafted by all Parties. Any presumption generally recognized in the laws of the United States of America or of any state or territory thereof, or of the common law or civil law, that uncertainties in a contract are interpreted against the party causing an uncertainty to exist hereby, is waived by all Parties.

C. **Collateral Attack.** This Stipulation shall not be subject to collateral attack by any Settlement Class Member or any recipient of the notices to the Class after the Final Judgment is entered. Such prohibited collateral attacks shall include claims made before the Fairness Hearing that a Settlement Class Member's settlement amount was improperly calculated or adjusted.

D. **Binding Effect.** The terms of this Stipulation are and shall be binding upon each of the Releasing Parties and members of the Settlement Class, and their agents, attorneys, employees, successors and assigns.

E. **Notice.** Whenever this Stipulation requires or contemplates that one Party shall or may give notice to the other, notice shall be provided by facsimile, email and/or next day (excluding Sunday) express delivery service as follows:

If to the Class Representative, then to:

**ARMAS BERTRAN ZINCONE**

Francesco Zincone, Esq.  
fzincone@armaslaw.com  
Suite 206  
4960 SW 72nd Avenue  
Miami, Florida 33155  
Telephone: (305) 461-5100

If to Defendant, then to:

**CARLTON FIELDS, P.A.**

Enrique D. Arana, Esq.  
earana@carltonfields.com  
Scott E. Byers, Esq.  
sbyers@carltonfields.com  
Rachel A. Oostendorp, Esq.  
roostendorp@carltonfields.com  
2 MiamiCentral, Suite 1200  
700 NW 1st Avenue  
Miami, Florida 33136  
Telephone: (305) 530-0050  
Facsimile: (305) 530-0055

F. **Modification.** This Stipulation may not be changed, modified, or amended except in writing signed by all Parties. Notwithstanding the foregoing, however, the claims process set forth above may be modified by mutual agreement of the Parties without Court approval and the Parties may agree to reasonable extensions of time in which to accomplish the tasks required by the terms and conditions of this Stipulation, which shall not be unreasonably withheld.

G. **Computation of Time.** In computing any period of time prescribed or allowed by this Stipulation or by order of the Court, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, or, when the act to be done is the filing of a paper in Court, a day in which weather or other conditions have made the Office of the Clerk or the Court inaccessible, in which event the period shall run until the end of the next day as not one of the aforementioned days.

H. **Assignment of Claims.** The Parties warrant and represent that no claim or any portion of any claim referenced or released in this Stipulation has been sold, assigned, conveyed, or otherwise transferred to any other entity or Person.

I. **Reading and Understanding.** The Parties warrant and represent that they have carefully read this Stipulation, have consulted their attorneys regarding this Stipulation and the advisability of entering into this Stipulation, and fully understand and voluntarily accept the terms and conditions of this Stipulation.

J. **Reliance on Own Judgment.** The Parties warrant and represent that they have relied upon their own judgment and that of their legal counsel regarding the sufficient and agreed upon consideration for this Stipulation and that no statement or representation by any of the other Parties or their agents, employees, officers, directors or legal representatives influenced or induced them to execute this Stipulation.

K. **No Admission of Liability.** The Parties acknowledge that Defendant contests the claims asserted in this Litigation and denies the material allegations made by the Class Representative. By agreeing to settle the Litigation, Defendant does not acknowledge, admit, or concede the validity of any Released Claim or any wrongdoing, fault, violation of law or any liability of any kind whatsoever. This Stipulation, whether or not consummated, and any communications exchanged or actions taken pursuant to or during the negotiation of this Stipulation are for settlement purposes only. Neither the fact of, nor the contents of this Stipulation or its exhibits, nor any communications exchanged nor actions taken pursuant to or during the negotiation of this Stipulation, shall constitute, be construed as, or be admissible in evidence as an admission of the validity of any claim asserted or fact alleged in this Litigation or of any wrongdoing, fault, violation of law or liability of any kind on the part of Defendant.

L. **Non-Admissibility.** This Stipulation and all negotiations, correspondence and communications leading up to its execution shall be deemed to be within the protection of Florida Statutes section 90.408 and any analogous state or federal rules or principles. Neither this Stipulation, nor any terms, conditions, contents or provisions hereof or exhibits hereto, nor any negotiations, correspondence or communications leading up to the execution of this Stipulation shall constitute a precedent or be admissible for any purpose in any proceeding; provided, however, that this Stipulation shall be admissible in any proceeding related to the approval of the Settlement, to enforce any of its terms and conditions, to support or defend this Stipulation in an appeal from the Final Judgment, or to enforce or assert a claim or defense of *res judicata*, collateral estoppel, claim preclusion, issue preclusion, settlement, release, merger and bar, or any similar claim or defense against the Class Representative, any Settlement Class Member, or any third party.

M. **Retained Jurisdiction.** The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of this Stipulation, and all Parties hereto submit to the jurisdiction of the Court for purposes of: (a) implementing and enforcing the Settlement embodied in this Stipulation; (b) the administration and enforcement of the Final Judgment; (c) the enforcement of all releases executed in connection with the Settlement; (d) any disputes or controversies with respect to the interpretation, enforcement, or implementation of this Stipulation; and (e) any and all other matters related to the Settlement and this Stipulation.

N. **Governing Law.** This Stipulation shall be construed under and governed by the laws of the State of Florida, applied without giving effect to any laws or principles of choice of law or conflict of law.

O. **Headings and Captions.** The headings and captions used in this Stipulation are

for convenience and identification purposes only and are not part of this Stipulation.

P. **Waiver.** The waiver of any term or condition or breach of this Stipulation shall not be deemed to be a waiver of any other term or condition or breach of this Stipulation and shall not be deemed to be a continuing waiver.

Q. **Good Faith.** The Parties, their successors and assigns, and their attorneys undertake to implement the terms of this Stipulation in good faith and to use good faith in resolving any disputes between the Parties that may arise in the implementation of the terms of this Stipulation.

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

S. **No Liability.** The Parties agree that Defendant is in no way liable or responsible for any taxes that Class Counsel, the Class Representative, Settlement Class Members or others may be required or obligated to pay as a result of the receipt of settlement benefits or payments relating to the Settlement or under this Stipulation.

T. No Settlement Class Member or other Person shall have any claim against the Class Representative, Class Counsel, Defendant, the Released Parties, the Class Action Settlement Administrator, or any designated agent thereof, based on any eligibility determinations, distributions or payments made in accordance with the Settlement, or based on the payments made or other relief provided and made substantially in accordance with this Stipulation or with further orders of the Court or any appellate court.

U. **Execution.** This Stipulation shall be deemed to have been executed upon the last

date of execution by all of the undersigned.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

This Stipulation may be executed by facsimile or email signatures in multiple counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same valid and binding agreement.

IN WITNESS THEREOF, this Stipulation has been duly executed as indicated below:

**CLASS REPRESENTATIVE AND CLASS COUNSEL**

Dated: March \_\_, 2022

By: \_\_\_\_\_  
Christian Conti

Dated: March \_\_, 2022

By: \_\_\_\_\_  
**ARMAS BERTRAN ZINCONI**  
Francesco Zincone, Esq.  
Suite 206  
4960 SW 72nd Avenue  
Miami, Florida 33155  
Telephone: (305) 461-5100  
fzincone@armaslaw.com

Dated: March \_\_, 2022

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

**ERIC J. SANCHEZ, P.A.**

Eric J. Sanchez, Esq.

Suite 206

4960 SW 72nd Avenue

Miami, Florida 33155

Telephone: (305) 461-5100

eric@ericjsanchezpa.com

**DEFENDANT**

Dated: March \_\_, 2022

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

Rafael A. Paz

City Attorney

City of Miami Beach, Florida



# **EXHIBIT A**

## LEGAL NOTICE

# Our records indicate that you are likely eligible for a payment from a class action settlement.

A settlement has been proposed in a class action lawsuit involving fines paid by property owners who were charged for violating the City of Miami Beach's (the "City") short term rental laws, Sections 142-905(b)(5) and 142-1111 of the City of Miami Beach Code of Ordinances (collectively, the "Short Term Rental Ordinances"). The lawsuit claims that the City imposed fines for violation of its Short Term Rental Ordinances in excess of the permitted statutory amount of \$1,000 for a first violation and \$5,000 for a second or subsequent violation. The Settlement will provide refund payments to property owners who paid fines for violation of the Short Term Rental Ordinances in excess of the fines permitted under Florida statute.

The Eleventh Judicial Circuit Court in Miami-Dade County, Florida has preliminarily approved the Settlement and authorized this notice. Before any money is paid, the Court will have a hearing to decide whether the Settlement is fair and adequate.

### **WHO'S INCLUDED?**

The Settlement includes all Persons who paid fines to the City of Miami Beach for violation of the Short Term Rental Ordinances from March 19, 2016 to October 24, 2020, in excess of the statutory amounts.

### **WHAT DOES THE SETTLEMENT PROVIDE?**

Class members who submit a valid Claim Form will receive 67 percent of the amount they paid in excess of the statutory amounts,

with 30 percent of that amount being deducted from the Settlement Payment which will be paid to Class Counsel for attorneys' fees.

### **HOW DO YOU GET BENEFITS?**

You must submit a valid Claim Form mail postmarked by \_\_\_\_\_, 2022. [15 days before the Fairness Hearing]

### **WHAT ARE YOUR OTHER OPTIONS?**

If you don't want to be legally bound by the Settlement, you must exclude yourself by \_\_\_\_\_, 2022 [15 days before the Fairness Hearing], or you won't be able to sue the City about the legal claims in the Settlement. If you exclude yourself, you can't get any benefits from the Settlement. If you stay in the Settlement, you may object to it in writing by \_\_\_\_\_, 2022 [15 days before Fairness Hearing]. If you do not exclude yourself, you will be bound by any judgment entered, whether favorable or unfavorable.

The Court will hold a Fairness Hearing in this case (*Christian Conti v. City of Miami Beach*, Case No. 2020-024684), in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, at 73 W. Flagler St., Miami, Florida, Courtroom 3-3 on \_\_\_\_\_, 2022, to consider whether to approve (1) the Settlement; (2) a Fee Award to Class Counsel of 30 percent of the Settlement Fund; and (3) a Service Award to the Class Representative in the amount of \$3,000 to be paid by the City. You may appear at the hearing, but you don't have to. You may also hire your own attorney, at your own expense, to appear for you at the hearing.

City of Miami Beach  
c/o \_\_\_\_\_  
1700 Convention Center Drive  
Miami Beach, Florida 33139

## CLASS ACTION CLAIM FORM

*Christian Conti v. City of Miami Beach*, Case No. 2020-024684 (Miami-Dade County, Florida)

PLEASE FULLY COMPLETE THIS CLAIM FORM. COMPLETE AND CORRECT INFORMATION IS REQUIRED TO PROCESS YOUR CLAIM. If you have any questions about how to complete this form, **CALL [XXX-XXX-XXXX]**.

If you wish to make a claim to receive monetary compensation in this Settlement, you must submit this Claim Form to the Class Action Settlement Administrator, by completing it and mailing it to: **City of Miami Beach c/o \_\_\_\_\_, 1700 Convention Center Drive, Miami Beach Florida 33139**. The Claim Form must be completed, signed, and postmarked on or before \_\_\_\_\_, 2022 [15 days before Fairness Hearing] for it to be valid.

Our records indicate that you paid a fine for violation(s) of Section 142-905(b)(5) and/or Section 142-1111 of the City of Miami Beach Code in excess of the statutory amount of \$1,000 for a first violation and \$5,000 for a second or subsequent violation.

Claim Forms must be mailed to: **City of Miami Beach, 1700 Convention Center Drive, Miami Beach Florida 33139**.

**Please provide the following required Claimant information:**

**Violation(s) Number:** \_\_\_\_\_ [this information will be filled in by the City prior to mailing Notice]

\_\_\_\_\_  
Your Name (First, MI, Last)

\_\_\_\_\_  
Daytime Phone

\_\_\_\_\_  
Current Street Address

\_\_\_\_\_  
Apartment/Unit

\_\_\_\_\_  
City

\_\_\_\_\_  
State/Zip

\_\_\_\_\_  
E-mail address (optional)

**IN ORDER TO SUBMIT A VALID CLAIM FORM, YOU MUST PROVIDE YOUR SIGNATURE BELOW**

**Certification and Signature**

Please sign the statement below. This is required for all claims. Unsigned Claim Forms will be rejected by the Settlement Administrator as invalid. Invalid claims will not be paid.

**I swear under penalty of perjury under the laws of the United States that all of the information provided on this Claim Form is true and correct to the best of my knowledge.**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

If you have any questions about this Claim Form, call the Claims Administrator at [XXX-XXX-XXXX].

# **EXHIBIT B**

IN THE CIRCUIT COURT OF THE  
11TH JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

COMPLEX BUSINESS LITIGATION

CASE NO. 2020-024684-CA-01  
SECTION CA 43

CHRISTIAN CONTI,

Plaintiff,

v.

CITY OF MIAMI BEACH, FLORIDA,

Defendant.

\_\_\_\_\_ /

**[PROPOSED] FINAL JUDGMENT AND ORDER APPROVING  
PROPOSED SETTLEMENT AND DISMISSING ACTION**

On \_\_\_\_\_, 2022, this Court granted preliminary approval of the proposed class action settlement set forth in the Stipulation of Settlement between Plaintiff, on behalf of himself and all members of the Settlement Class, and Defendant City of Miami Beach. The Court also certified the Settlement Class for settlement purposes, approved the procedure for giving Class Notice to the members of the Settlement Class, and set a Fairness Hearing to take place on \_\_\_\_\_, 2022.

On \_\_\_\_\_, 2022, the Court held a duly noticed Fairness Hearing to consider: (1) whether the terms and conditions of the Stipulation of Settlement are fair, reasonable, and adequate; (2) whether a judgment should be entered dismissing the Plaintiff's Class Action Complaint on the merits and with prejudice in favor of Defendant and against all persons or entities who are Settlement Class Members herein who have not requested exclusion from the Settlement

Class; and (3) whether to finally approve the Fee Award to Class Counsel and the Service Award to the Class Representative.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that:

1. This Final Judgment and Order of Dismissal with Prejudice hereby incorporates by reference the definitions in the Stipulation of Settlement between the Parties on file with this Court, and all capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Stipulation of Settlement.

2. The Court has personal jurisdiction over the Parties and all Settlement Class Members, venue is proper, and the Court has subject matter jurisdiction to approve the Settlement, including the Stipulation of Settlement and all exhibits thereto and to enter this Final Judgment.

3. The Court finds that the prerequisites for a class action under Fla. R. Civ. P. 1.220(a) and (b) have been satisfied for settlement purposes for each Settlement Class Member in that: (a) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of the Class Representative are typical of the claims of the Settlement Class he seeks to represent; (d) the Class Representative have and will continue to fairly and adequately represent the interests of the Settlement Class for purposes of entering into the Settlement; (e) the questions of law and fact common to the Settlement Class Members predominate over any questions affecting any individual Settlement Class Member; and (f) a class action is superior to the other available methods for the fair and efficient adjudication of the controversy.

4. Pursuant to Fla. R. Civ. P. 1.220, this Court hereby finally certifies the Settlement Class for settlement purposes only, as identified in Stipulation of Settlement, which shall consist of the following:

All persons who paid fines to the City of Miami Beach for violation of Miami Beach Code Sections 1420905(b)(5) and 142-1111 from March 19, 2016 to October 24, 2020, in excess of the statutory amount of \$1,000 for a first violation and \$5,000 for a second or subsequent violation.

Excluded from the Settlement Class are:

- (a) Defendant, its officials, employees, and agents;
- (b) Persons who timely and properly excluded themselves from the Settlement Class;<sup>1</sup> and
- (c) The Court, the Court's immediate family, and Court staff.

5. The Court finally appoints Plaintiff Christian Conti as Class Representative for the Settlement Class and recognizes that he has continued to adequately and fairly represent the Settlement Class.

6. The Court finally appoints the following counsel as Class Counsel for the Settlement Class and recognizes that they have continued to adequately and fairly represent the Settlement Class:

**ARMAS BERTRAN ZINCONE**  
Francesco Zincone, Esq.  
Suite 206  
4960 SW 72nd Avenue  
Miami, Florida 33155  
Telephone: (305) 461-5100  
fzincone@armaslaw.com

**ERIC J. SANCHEZ, P.A.**  
Eric J. Sanchez, Esq.  
Suite 206  
4960 SW 72nd Avenue  
Miami, Florida 33155  
Telephone: (305) 461-5100  
eric@ericjsanchezpa.com

7. The Court finds that Class Notice was given in the manner ordered by the Court; constituted the best practicable notice under the circumstances; constituted notice reasonably calculated to apprise members of the Settlement Class of the pendency of the action, their right to object or exclude themselves from the proposed Settlement Class, and their right to appear at the

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<sup>1</sup> A list of members of the Settlement Class who timely and properly excluded themselves from the Settlement Class was filed under seal by Defendant.



Fairness Hearing; was fair and reasonable and constituted adequate and sufficient notice to all persons entitled to receive notice, including all Settlement Class Members; and complied fully with the requirements of Florida Rule of Civil Procedure 1.220, the Due Process Clause of the United States Constitution, the Rules of this Court, and any other applicable law.

8. Due and adequate notice of the proceedings having been given to the Settlement Class and a full opportunity having been offered to the Settlement Class to participate in the Fairness Hearing, it is hereby determined that the terms of the Stipulation of Settlement, including all exhibits thereto, and of this Final Judgment are forever binding on, and shall have *res judicata* and preclusive effect in all pending and future lawsuits maintained by the Class Representative and all other Settlement Class Members, as well as their agents, attorneys, heirs, executors, administrators, successors, and assigns.

9. The Stipulation of Settlement was entered into in good faith and negotiated at arm's length by experienced counsel who were fully informed of the facts and circumstances of this litigation and of the strengths and weaknesses of their respective positions. The Stipulation of Settlement was reached after the Parties engaged in significant litigation and motion practice. Further, Settlement occurred under the supervision of a professional mediator. Counsel for the Parties therefore were well positioned to evaluate the benefits of the Stipulation of Settlement, taking into account the expense, risk, and uncertainty of protracted litigation with respect to numerous, difficult, and complex questions of fact and law. In addition, the Court finds as follows regarding the factors set forth in *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984):

- a. the Settlement was not the product of collusion between Plaintiff and Defendant or their respective counsel, but rather was the result of bona fide and arm's length negotiations before an experienced mediator;

- b. this case was complex, expensive, and time consuming, and would have continued to be so if the case had not settled;
- c. the factual record of the action has been sufficiently developed to enable Class Counsel to make a reasoned judgment;
- d. Class Counsel, the Class Representative, and the Settlement Class would have faced numerous and substantial risks with respect to class certification and on the merits if they had decided to continue to litigate rather than settle;
- e. the benefits provided by the Settlement are fair, adequate, and reasonable compared to the range of possible recovery; and
- f. the opinions of Class Counsel, the Class Representative, and absent Settlement Class Members favor approval of the Settlement.

10. The Stipulation of Settlement is finally approved in all respects as fair, reasonable, and adequate pursuant to Fla. R. Civ. P. 1.220 and any applicable law and is in the best interest of the Settlement Class Members.

11. The Court confirms the appointment of the City of Miami Beach to carry out the duties and responsibilities set forth in the Stipulation of Settlement.

12. The Parties are hereby directed to implement and consummate the Stipulation of Settlement according to its terms and provisions. The Court expressly approves the Settlement benefit provisions as fair, reasonable, adequate and consistent with Due Process.

13. The Court hereby approves Class Counsel's Fee Award of 30 percent of the Settlement Fund, payable pursuant to the terms of the Stipulation of Settlement.

14. The Court hereby approves a Service Award in the amount of \$3,000 (three thousand dollars) to Plaintiff Christian Conti to be paid by Defendant separate and apart from any funds Plaintiff is entitled to from the Settlement Fund.

15. The following Release, as set forth in Section VII of the Stipulation of Settlement, is effective as of the Effective Date defined in the Stipulation of Settlement, and the Released Parties are forever released, relinquished, and discharged from all Released Claims by the Releasing Parties as set forth below.

a. As of the Effective Date, the Class Representative, and all Settlement Class Members, on behalf of themselves and all heirs, guardians, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns (collectively, the Releasing Parties), shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever irrevocably waived, released, relinquished, and discharged Defendant City of Miami Beach and all of its past and present officials, employees, shareholders, agents, attorneys, administrators, successors, predecessors, insurers, spokespersons, public relations firms, advertising and production agencies, and assigns of all such persons or entities (the Released Parties) from any and all claims, liabilities, rights, demands, complaints, disputes, debts, suits, matters, obligations, damages, enrichment, restitution, disgorgement, losses or costs, attorney's fees or expenses, rights of action, and causes of action of every nature whatsoever, that the Releasing Parties had or have, including assigned claims, whether in arbitration, administrative, or judicial proceedings, whether as individual claims or as claims asserted on a class basis or on behalf of the general public, whether based on federal, state, or local law, statute, ordinance, regulation, common law, private contract, agreement or any other authority (collectively, "Claims"), whether known or unknown, asserted or unasserted, suspected or

unsuspected, latent or patent, that are, have been, could reasonably have been or in the future might reasonably be brought or asserted by the Releasing Parties either in the Litigation or in any other similar action in any state or federal court in the United States against any of the Released Parties arising out of, resulting from or relating in any way to the allegations in the Litigation or any similar state or federal court action, or arising out of the Releasing Parties' payment of fines for violation of the Short Term Rental Ordinances, prior to October 24, 2020, including but not limited to all Claims that were brought or could have been brought in the Litigation or any similar action in any state or federal court in the United States. The Class Representative and Settlement Class Members and their counsel acknowledge and agree that they are aware that they may hereafter discover Claims presently unknown or unsuspected, or facts in addition to or different from those they believe to be true with respect to the subject matter of this Stipulation. Nevertheless, it is the intention of the Settlement to fully, finally, and forever settle and release all such matters and Claims relating thereto, which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action). The Parties agree that, notwithstanding the discovery of any additional or different facts that, if known, would materially affect its decision to enter into this Stipulation, the releases herein given shall be and remain in effect as a full, final, and complete general release of the Released Claims and the Parties shall not be entitled to modify or set aside this Stipulation, either in whole or in part, by reason thereof. The Parties hereby expressly waive and relinquish, to the fullest extent permitted by law, the rights and benefits of any statute or principal of law which might otherwise limit or render unenforceable a release contained in this Stipulation.

b. The Release is intended to be a comprehensive general release except for the limited exception expressly set forth in this subsection. Notwithstanding the language set forth

in paragraph 15(a) above and found in Section VII.A. of the Stipulation of Settlement, the Release will not apply to any claim for property damage or personal injury. The limited exception to the Release in this paragraph and found in Section VII.B. of the Stipulation of Settlement will be strictly construed.

16. The Release was bargained for and is a material element of the Stipulation of Settlement.

17. The Release does not affect the rights of members of the Settlement Class who timely and properly submitted a Request for Exclusion from the Settlement Class in accordance with the requirements of the Preliminary Approval Order and Stipulation of Settlement.

18. The Settlement shall be the exclusive remedy for any and all Settlement Class Members, and the Released Parties shall not be subject to liability or expense for any of the Released Claims to any Settlement Class Member.

19. The Release shall not preclude any action to enforce the terms of the Stipulation of Settlement, including participation in any of the processes detailed therein. The Release set forth herein and in the Stipulation of Settlement was not intended to include the release of any rights or duties of the Parties arising out of the Stipulation of Settlement, including the express warranties and covenants contained therein.

20. The Class Representative and all Settlement Class Members are hereby permanently barred and enjoined from filing, commencing, asserting, prosecuting, intervening in, and/or participating in (individually or in a representative capacity) any lawsuit, action, or proceeding in any jurisdiction asserting or based upon any claims or causes of action released in the Settlement and Final Judgment; and from bringing a class action on behalf of any Settlement Class Members or seeking to certify a class which includes any Settlement Class Members in any

such lawsuit, action, or proceeding. The Stipulation shall be the sole and exclusive remedy available to the Releasing Parties for any and all Released Claims against the Released Parties. None of the Released Parties shall be subject to liability or expense of any kind to any Releasing Party with respect to any of the Released Claims.

21. This Final Judgment and the Stipulation of Settlement may be filed in any action against or by any Released Person to support a defense of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

22. In the event that the Settlement does not become final as contemplated by the Stipulation of Settlement, this Final Judgment shall automatically be rendered null and void and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void.

23. This action, including all individual claims and class claims presented herein, is hereby dismissed on the merits and with prejudice in favor of the Defendant and against the Plaintiff and all other Settlement Class Members, without fees or costs to any party except as otherwise provided herein.

24. Neither the Stipulation of Settlement nor this Final Judgment constitutes an admission of liability, fault, or wrongdoing on the part of Defendant.

25. This Court retains exclusive jurisdiction over the Settlement, including the administration, consummation, enforcement, and interpretation of the Stipulation of Settlement, and of this Final Judgment.

DONE AND ORDERED in Chambers at Miami, Florida this \_\_\_\_\_ day of \_\_\_\_\_,  
2022.

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HONORABLE MICHAEL HANZMAN  
CIRCUIT COURT JUDGE

Copies furnished to all counsel of record

# **EXHIBIT C**



IN THE CIRCUIT COURT OF THE  
11TH JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

COMPLEX BUSINESS LITIGATION

CASE NO. 2020-024684-CA-01  
SECTION CA 43

CHRISTIAN CONTI,

Plaintiff,

v.

CITY OF MIAMI BEACH, FLORIDA,

Defendant.

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**[PROPOSED] ORDER ON PLAINTIFF’S MOTION FOR  
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT,  
CERTIFICATION OF SETTLEMENT CLASS, AND OTHER RELIEF**

THIS CAUSE is before the Court upon Plaintiff Christian Conti’s Motion for Preliminary Approval of Class Action Settlement, Certification of Settlement Class, and Other Relief (the “Motion for Preliminary Approval”). In accordance with Rule 1.220 of the Florida Rules of Civil Procedure, the Court has considered the Stipulation of Settlement executed by Plaintiff Christian Conti and Defendant City of Miami Beach. Defendant does not oppose the Motion for Preliminary Approval. Upon review of the Stipulation of Settlement and Plaintiff’s Motion for Preliminary Approval, and upon a preliminary approval hearing held on \_\_\_\_\_, 2022, it is hereby ORDERED as follows:

1. All defined terms contained herein shall have the same meaning as set forth in the Parties’ Stipulation of Settlement which is attached as Exhibit 1 to the Motion for Preliminary Approval.

2. **Settlement.** With the assistance of a respected mediator, Robert Dulberg, Plaintiff and Defendant have negotiated a potential settlement of this Litigation to avoid the expense, uncertainties, and burden of further, protracted litigation, and to resolve any and all claims or causes of action which have been or could have been asserted by Plaintiff and/or other members of the Settlement Class in the Litigation.

3. **Review.** This Court has reviewed the Stipulation of Settlement as well as the files, records, and proceedings to date in this matter, and has overseen this sometimes contentious Litigation.

4. **Class Findings.** Given the Parties' Stipulation of Settlement and the other filings in support of preliminary approval, with respect to the Settlement Class the Court finds that the class certification prerequisites set forth in Rule 1.220, numerosity, commonality, typicality, and adequacy of representation, have been met, that common issues predominate over questions affecting only individual members of the Settlement Class, and resolution of the claims in the Litigation by way of settlement is superior to other available methods for the fair and efficient adjudication of the claims of the Settlement Class.

5. **Certification of Settlement Class.** For purposes of settlement only, the Court hereby certifies the following Settlement Class:

All persons who paid fines to the City of Miami Beach for violation of Miami Beach Code Sections 1420905(b)(5) and 142-1111 from March 19, 2016 to October 24, 2020, in excess of the statutory amount of \$1,000 for a first violation and \$5,000 for a second or subsequent violation.

Excluded from the Settlement Class are:

(a) Defendant, its officials, employees, and agents;

(b) Persons who timely and properly exclude themselves from the Settlement Class;  
and

(c) The Court, the Court's immediate family, and Court staff.

6. **Class Representative and Class Counsel.** The Court appoints Plaintiff Christian Conti as Class Representative of the Settlement Class for the sole purpose of seeking a settlement of the Litigation. The Court appoints the following Plaintiff's counsel as Class Counsel for the Settlement Class:

**ARMAS BERTRAN ZINCONE**  
Francesco Zincone, Esq.  
Suite 206  
4960 SW 72nd Avenue  
Miami, Florida 33155  
Telephone: (305) 461-5100  
fzincone@armaslaw.com

**ERIC J. SANCHEZ, P.A.**  
Eric J. Sanchez, Esq.  
Suite 206  
4960 SW 72nd Avenue  
Miami, Florida 33155  
Telephone: (305) 461-5100  
eric@ericjsanchezpa.com

7. **Preliminary Approval of Proposed Settlement.** The Court finds that the Stipulation of Settlement was reached after arm's length negotiations between experienced counsel who are familiar with the legal and factual issues of this case and after substantial factual and legal analyses by the Parties. The terms of the Settlement are within the range of reasonableness and accordingly are preliminarily approved as fair, reasonable, and adequate, subject to further consideration at the Fairness Hearing.

8. **Fairness Hearing.** The Fairness Hearing will be held before this Court at the Miami-Dade County Courthouse, on \_\_\_\_\_ **2022** at \_\_\_\_\_ **am/pm** in Courtroom 3-3, located at 73 West Flagler Street, Miami Florida, 33131. At the Fairness Hearing, the Court will consider, among other things, (a) whether the Settlement should be finally approved as fair, reasonable, and adequate; (b) whether the Court should finally approve the Fee Award to Class Counsel; (c) whether the Court should finally approve the Service Award to be made to the Class Representative; (d) whether Settlement Class Members should be bound by the Release and

permanent injunction set forth in the Stipulation of Settlement; and (e) whether entry of a Final Judgment terminating this action, in the form submitted by the Parties with the Stipulation of Settlement, should be entered. The date of the Fairness Hearing shall be included with the Claim Forms mailed by the City. No further notice is required to be published to Settlement Class Members.

9. **Notice to the Settlement Class.** The Court approves, as to form and content, the notice plan and forms of Class Notice (Exhibit A to the Stipulation of Settlement). In accordance with the notice plan, the City of Miami Beach will provide the Class Notice and administer the claims process. The Class Notice and Claim Form will be mailed to potential Settlement Class Members by the City of Miami Beach.

The Class Notice will apprise members of the Settlement Class of the following, among other information: the pendency of this action; a description of the Settlement; that any Settlement Class Member may object to the Settlement and, if he or she desires, enter an appearance either personally or through counsel; a date by which members of the Settlement Class must make a claim, exclude themselves from the Settlement Class, or object to the Settlement; and that any judgment, whether favorable or unfavorable, will include all Settlement Class Members.

The Court finds that the procedures described herein and in the Stipulation of Settlement meet the requirements of Rule 1.220 of the Florida Rules of Civil Procedure and due process, and provide the best notice practicable under the circumstances.

10. **Appointment of Settlement Administrator.** The Court appoints the City of Miami Beach as Settlement Administrator, which will provide the Class Notice and administer the claims process.

11. **Implementation of Class Notice.** The Court directs the Settlement Administrator, consistent with the Stipulation of Settlement, to mail the Claim Form and Class Notice to potential Settlement Class Members.

12. **Costs of Notice and Administration.** Defendant shall bear all costs and expenses related to the Settlement administration, including the cost of mailing the Class Notice and Claim Form.

13. **Claims Deadline.** The Court approves the proposed form and content of the Claim Form (Exhibit A to the Stipulation of Settlement). Any Settlement Class Member who wishes to receive money from the Settlement shall complete the Claim Form in accordance with the instructions therein, and the Claim Form shall be postmarked or submitted online to the Settlement Administrator no later than \_\_\_\_\_, 2022 [15 days before the Fairness Hearing].

14. **Exclusion from the Settlement Class.** Any member of the Settlement Class may, upon his or her request, be excluded from the Settlement Class. To request exclusion from the Settlement Class, a member of the Settlement Class must submit a written request for exclusion, that includes the person's name, current address, and telephone number, and that is personally signed by the person requesting exclusion, to the Settlement Administrator, care of the address provided in the Class Notice. The request must be delivered or postmarked no later than \_\_\_\_\_, 2022 (the "Objection and Exclusion Deadline") [15 days before Fairness Hearing], as set forth in the Class Notice. Requests for exclusion signed only by counsel or requests purportedly filed on behalf of groups of persons are prohibited and will be deemed void.

Any member of the Settlement Class who does not send a completed, signed request for exclusion to the Settlement Administrator postmarked or delivered before the Objection and Exclusion Deadline will be deemed to be a Settlement Class Member for all purposes and will be

bound by all further orders of the Court in this action and by the terms of the Settlement, if finally approved by the Court. All persons who submit valid and timely requests for exclusion shall not be bound by the Stipulation of Settlement or the Final Judgment, shall not be considered Settlement Class Members, and shall have no rights under the Settlement. A sealed list of all persons who submitted requests for exclusion will be filed with the Court at or before the Fairness Hearing.

15. **Objections to the Settlement.** Any Settlement Class Member who wishes to object to or oppose the approval of the Settlement, Class Counsel's motion for attorneys' fees and costs or motion for a Service Award for the Class Representative must timely file with the Clerk of Court and timely serve on Class Counsel and Defendant's Counsel a written objection, together with all papers the Settlement Class Member desires to submit to the Court no later than \_\_\_, 2022 (the Objection and Exclusion Deadline). The Court will only consider those objections received by the Court and sent to Class Counsel and Defendant's Counsel on or before the Objection and Exclusion Deadline provided in the Class Notice.

All objections must be in writing and contain the following:

- a. The name of this Litigation;
- b. The objecting Settlement Class Member's full name, address, and telephone number;
- c. A statement that the objector has reviewed the definition of the Settlement Class and that he or she is a Settlement Class Member and has not requested to be excluded from the Settlement Class;
- d. A statement under oath as to the violation date and address and fine paid for violation of the Short Term Rental Ordinances;
- e. All grounds for the objection, accompanied by any legal support known to the objecting Settlement Class Member or his or her counsel;
- f. The identity of all counsel, including the lawyer's name, address, and telephone number, who represent the objecting Settlement Class Member, including any

former or current counsel who may be entitled to compensation for any reason related to the objection;

- g. A statement confirming whether the objecting Settlement Class Member or any counsel representing the objecting Settlement Class Member intends to personally appear and/or testify at the Fairness Hearing;
- h. A list of any persons who may be called to testify or seek to present argument at the Fairness Hearing in support of the objection;
- i. A list of all class action settlements where the objecting Settlement Class Member or his or her counsel has submitted an objection in the last five (5) years, as well as any ongoing or previously filed litigation related to any objection; and
- j. The signature of the objecting Settlement Class Member.

Any objection that the Settlement Class Member wishes the Court to consider shall be provided to each of the following by the Objection and Exclusion Deadline:

Clerk of the Court  
Eleventh Judicial Circuit  
Miami-Dade County Courthouse  
73 West Flagler St.  
Miami, Florida 33310  
Re: Case No. 2020-024684

Class Counsel:  
Francesco Zincone, Esq.  
Armas Bertran Zincone  
Suite 206  
4960 SW 72nd Avenue  
Miami, Florida 33155

Defendant's Counsel:  
Scott E. Byers, Esq.  
Carlton Fields, P.A.  
2 MiamiCentral, Suite 1200  
700 NW 1st Avenue  
Miami, Florida 33136

Subject to the terms set forth above and in the Stipulation of Settlement, any Settlement Class Member who files and serves a timely written objection may appear at the Fairness Hearing either in person or through counsel, at the Settlement Class Member's expense. Settlement Class Members or their counsel intending to appear at the Fairness Hearing must deliver to Class Counsel and Defendant's Counsel and file with the Court at the addresses specified in this Order on or before the Objection and Exclusion Deadline, written notice of intent to appear and any written objection as set forth herein.

Any Settlement Class Member who does not make an objection in the manner provided herein shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, adequacy, or reasonableness of the Settlement, or Class Counsel's

Fee Award and the Service Award for the Class Representative, and shall be foreclosed from seeking any review of the Settlement or the terms of the Stipulation of Settlement by appeal or other means. No Settlement Class Member shall be entitled to be heard at the Fairness Hearing (whether individually or through counsel), and no written objections or briefs submitted by any Settlement Class Member shall be considered by the Court at the Fairness Hearing, unless a written Notice of Intent to appear at the Fairness Hearing and copies of any written objection or briefs have been filed with the Court by the Settlement Class Member or their counsel, and served on counsel for the Parties at the addresses set forth above on or before the Objection and Exclusion Deadline

16. **Attorneys' Fees and Costs and Class Representative Service Awards.** The Court preliminarily approves a \$3000 Service Award that the Defendant will pay to the Class Representative, Plaintiff Christian Conti, which is separate and apart from any funds Plaintiff is entitled to from the Settlement Fund. The Court also preliminarily approves a Fee Award of 30 percent of the Settlement Fund to be paid to Class Counsel.

17. **Motion for Final Approval of Settlement.** On or before \_\_\_\_\_, 2022 [7 days prior to Fairness Hearing], Plaintiff shall submit a motion for final approval of the Settlement, seeking entry of the Final Judgment.

18. **Preliminary Injunction.** Upon implementation of all components of the notice plan described above in ¶ 9, all members of the Settlement Class who do not timely exclude themselves from the Settlement Class are hereby preliminarily enjoined from filing, commencing, asserting, prosecuting, intervening in, and/or participating in (individually or in a representative capacity) any lawsuit, action, or proceeding in any jurisdiction asserting or based upon any claims or causes of action in the Litigation or the Released Claims; and from bringing a class action on



behalf of any Settlement Class Members or seeking to certify a class which includes any Settlement Class Members in any such lawsuit, action, or proceeding.

19. **Termination of Settlement.** This Order shall become null and void, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions in the Litigation before this Court entered this Order, if (i) the proposed Settlement is not finally approved by the Court, or does not become final pursuant to the terms of the Stipulation of Settlement; or (ii) the Stipulation of Settlement is terminated based to the terms set forth therein for any reason. In such event, and except as provided therein, the proposed Settlement and Stipulation of Settlement shall become null and void and be of no further force and effect; the preliminary certification of the Settlement Class for settlement purposes shall be automatically vacated; neither the Stipulation of Settlement nor the Court's Orders, including this Order, shall be used or referred to for any purpose whatsoever; and the Parties shall retain, without prejudice, any and all objections, arguments, and defenses with respect to class certification.

20. **Use of Order Following Termination of Settlement.** This Order shall be of no force and effect if the Settlement does not become final and shall not be construed or used as an admission, concession, or declaration by or against the Defendant of any fault, wrongdoing, breach, or liability, or by or against Plaintiff or the Settlement Class Members that their claims lack merit or that the relief requested in the Litigation is inappropriate, improper, or unavailable, or as a waiver by any party of any claims or defenses they may have.

21. **Retention of Jurisdiction.** The Court retains jurisdiction of this action for all purposes and authorizes the Parties to take all necessary and appropriate steps to implement the Settlement Agreement.

DONE AND ORDERED in Chambers at Miami, Florida this \_\_\_\_\_ day of \_\_\_\_\_,  
2022.

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HONORABLE MICHAEL HANZMAN  
CIRCUIT COURT JUDGE

Copies furnished to all counsel of record