

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**GREG'S GREATER CHICAGO )  
CHIROPRACTIC, LLC, on behalf of )  
itself and all others similarly situated, )**

**Plaintiff, )**

**v. )**

**THE TERMINIX INTERNATIONAL )  
COMPANY, LP, and THE )  
SERVICEMASTER COMPANY LLC, )  
and JOHN DOES 1-10, )**

**Defendants. )**

**Case No. 1:15-CV-01959**

**Honorable Milton I. Shadur**

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**SETTLEMENT AGREEMENT AND RELEASE**

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This Settlement Agreement and Release (“Agreement”) is entered into as of this 9<sup>th</sup> day of March, 2016 by and among named plaintiff Greg’s Greater Chicago Chiropractic, LLC (the “Named Plaintiff”), individually and as representative of the Class, and defendants The Terminix International Company, LP (“Terminix”) and The ServiceMaster Company, LLC (“Defendants”), by and through their attorneys. The Named Plaintiff and Defendants are referred to collectively as the “Parties.”

**I. PREAMBLE**

WHEREAS, on March 4, 2015, Named Plaintiff’s Counsel filed the above-captioned action (the “Action”) in the U.S. District Court for the Northern District of Illinois;

WHEREAS, on May 18, 2015, Named Plaintiff’s Counsel filed an Amended Class Action Complaint, which is the operative complaint in the Action;

WHEREAS, the Action is a putative class action that alleges Defendants violated the federal Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227(b), by sending unsolicited fax advertisements in the absence of an established business relationship with the recipients, and which fax advertisements did not contain the opt-out notice described in 47 U.S.C. § 227;

WHEREAS, Defendants deny any wrongdoing and any liability based on the allegations contained in the Complaint and/or Amended Complaint filed in the Action;

WHEREAS, between May 28, 2015 and September 29, 2015, the Parties negotiated and agreed upon the principal terms to resolve the Action, which principal terms are set forth and included in this Agreement;

WHEREAS, the settlement reduced to writing in this Agreement was negotiated extensively among the Parties in good faith and at arm’s length; and

NOW THEREFORE, it is agreed, by and among the undersigned, that this Action shall be settled and dismissed on the merits, without costs to the Named Plaintiff or either of the Defendants (except as expressly hereinafter provided), subject to the approval of the Court on the terms and conditions outlined herein.

## **II. DEFINITIONS**

As used herein, the following terms shall have the respective meanings specified, which shall be equally applicable to both the singular and plural forms:

2.1 “Action” means the litigation captioned *Greg’s Greater Chicago Chiropractic, LLC v. The Terminix International Company, LP, et al.*, No. 1-15-CV-01959 (N.D. Ill.) (J. Shadur).

2.2 “Administration Costs” shall mean (i) all costs and expenses associated with the production and dissemination of the Class Notice, (ii) all costs and expenses of the Settlement Administrator, and (iii) any other cost or expense associated with the Settlement of this Litigation.

2.3 “Amended Complaint” means the Amended Class Action Complaint filed by Named Plaintiff’s Counsel on May 18, 2015, which is the operative complaint in the Action;

2.4 “Attorneys’ Fees” means reasonable attorneys’ fees, costs and expenses to be paid to Named Plaintiff’s Counsel for all of their past, present, and future work, efforts, and expenditures in connection with this Action.

2.5 “Business Day” means any day that is not a Saturday, Sunday or the day set aside for observing New Year’s Day, Martin Luther King Jr.’s Birthday, Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, or Christmas Day, and any other day declared a holiday by the President or Congress.

2.6 “Claimant” means a Settlement Class Member who submits a valid and timely Claim Form.

2.7 “Claim” means any and all claims, demands, debts, rights, causes of action, suits, actions, damages, costs, expenses, compensation, requests for compensation, restitution, repayment or reimbursement, obligations, liabilities, penalties, attorneys’ fees, or losses in law or equity, of whatever kind or nature, whether or not known, ripe or mature.

2.8 “Claim Form” shall mean the form, as approved by the Court, that Settlement Class Members are required to complete in order to receive a distribution from the Distributable Settlement Fund, and identical in all material respects to that attached hereto as Exhibit A. The Claim Form will include a written and signed certification that the claimant received one or more unsolicited fax advertisements from or on behalf of Terminix in the absence of an established business relationship and that the fax advertisements did not contain an opt-out notice.

2.9 “Class” means all persons with Illinois fax numbers who, between June 1, 2014 through and including March 5, 2015, were sent unsolicited fax advertisements from Terminix’s branch office in Elmhurst, Illinois promoting Terminix services in the absence of an established business relationship, and which fax advertisements did not contain an opt-out notice as described in 47 U.S.C. § 227, who are on the Class List.

2.10 “Class List” means the potential Class Members that will be identified by using records in Terminix’s possession showing the Illinois facsimile numbers of persons that were sent potentially unsolicited fax advertisements from Terminix’s branch office in Elmhurst, Illinois during the Class Period.

2.11 “Class Member” means any Person that is a member of the Class. For the avoidance of doubt, Named Plaintiff is a Class Member.

2.12 “Class Notice” means the notice, as approved by the Court, to be provided to Class Members pursuant to Paragraph 8.8 in the form attached as Exhibit B.

2.13 “Class Period” means the period beginning on June 1, 2014, through and including March 5, 2015.

2.14 “Court” means the United States District Court for the Northern District of Illinois, Eastern Division, and any appellate court reviewing the orders, judgments or rulings thereof.

2.15 “Day” or “day” means calendar day unless identified as “Business Day.”

2.16 “Defendants’ Counsel” means Sidley Austin LLP, together with any successor, replacement or additional counsel.

2.17 “Distributable Settlement Fund” shall have the meaning ascribed to it in paragraph 5.2 hereof.

2.18 “Effective Date” means the last possible date on which the time for filing an appeal expires without any appeal being filed from a Final Judgment and Order of the Court approving the Settlement. In the event that one or more such appeal(s) from such a final decision of the Court is timely brought, the Effective Date will be the date on which such appeal(s) are finally resolved in favor of upholding the Settlement without any modification, except any adjustment in Attorneys’ Fees or Incentive Award that may be ordered by the Court or an appellate court, and without any possibility of remand to the Court or a further appeal to, or any discretionary review by, any court superior to the Court.

2.19 “Escrow Account” shall mean an account at an established financial institution agreed upon by the Parties that is established for the deposit of any amounts relating to the Settlement as funded by or on behalf of Defendants pursuant to the terms of this Agreement. At

all times, the Escrow Account shall be held *in custodia legis*, subject to the approval of the Court. The parties will identify the Escrow Account in the Preliminary Approval Order.

2.20 “Fairness Hearing” shall mean the hearing to be held before the Court pursuant to Federal Rule of Civil Procedure 23(e) to determine whether the Settlement should receive Final Approval by the Court.

2.21 “Final Approval” means the entry of the Final Judgment and Order.

2.22 “Final Judgment and Order” means a final order entered by the Court after the Fairness Hearing, identical in all material respects to that attached hereto as Exhibit D, granting its approval of the Settlement, or in a form that otherwise may be agreed to hereafter by the Parties and approved and entered by the Court.

2.23 “Incentive Award” shall have the meaning ascribed to it in paragraph 6.1 hereof.

2.24 “Named Plaintiff” means Greg’s Greater Chicago Chiropractic, LLC.

2.25 “Named Plaintiff’s Counsel” means the law firm Edelman, Combs, Lattuner & Goodwin, LLC, together with any successor, replacement or additional counsel.

2.26 “Opt-Out List” means the complete, final, and accurate list of all properly submitted exclusion requests received by Named Plaintiff’s Counsel and provided to Defendants’ Counsel, as required under the Agreement.

2.27 “Parties” means Named Plaintiff and Defendants, collectively.

2.28 “Person” means any natural person, any legal entity, including a limited or general partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, sole proprietorship, an unincorporated organization, any other form of legal entity, and/or any governmental body (including any department, agency,

commission, authority, administration, or political subdivision thereof), whether federal, state, local or other.

2.29 “Pre-Effective Date Administration Costs” means the Administration Costs to provide the Class Notice and to track any submitted Claim Forms that are received prior to fourteen (14) days after the Effective Date.

2.30 “Preliminary Approval Order” means an order entered by the Court preliminarily approving the Settlement pursuant to Paragraphs 8.3 and 8.4 in the form attached as Exhibit C.

2.31 “Released Claims” means any and all Claims set forth in Section XI hereof.

2.32 “Released Parties” means Terminix and The ServiceMaster Company LLC, as well as their direct or indirect subsidiaries, divisions, partners, limited partners, owners, investors, holding companies, parents, affiliates (regardless of the form of the legal entity, e.g., corporation, limited liability company, general or limited partnership), including their predecessors and successors, and their present and former officers, directors, employees, principals, agents, attorneys, and/or any other Person for which any of these Persons shall have a direct or indirect interest, or for which they may otherwise be responsible, as of any given date.

2.33 “Releases” means collectively the Released Claims.

2.34 “Settlement” means the overall terms and conditions of the Parties’ agreed upon settlement resolving the Action, as reflected and embodied in this Agreement.

2.35 “Settlement Administrator” means Dahl Administration, which shall also act as escrow agent for any portion of the Settlement Amount deposited in or accruing in the Escrow Account pursuant to this Agreement.

2.36 “Settlement Amount” means the total lump sum amount of two hundred fifty thousand dollars (\$250,000.00).



2.37 “Settlement Class” means all Class Members who do not opt out of this Settlement in a timely and valid manner in accordance with the procedures set forth in Paragraph 8.11.

2.38 “Settlement Class Member” means the Named Plaintiff and any Person who is a member of the Settlement Class.

2.39 “Suit” means any lawsuit, suit, action, proceeding, litigation, legal representation or complaint brought or pending in any federal, state, administrative, judicial, arbitral, or other forum, whether direct, derivative or representational.

2.40 “TCPA” means the federal Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*

2.41 “Terminix” means The Terminix International Company, LP, and all of its parents, affiliates, and subsidiaries at any point during the Class Period.

### **III. NAMED PLAINTIFF’S VIEW OF BENEFITS OF SETTLEMENT**

3.1 The Named Plaintiff and Named Plaintiff’s Counsel believe the Claim asserted in the Action has merit. However, the Named Plaintiff and Named Plaintiff’s Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Action against Defendants through trial and through appeals. Named Plaintiff and Named Plaintiff’s Counsel have also taken into account the uncertain outcome and the risk of any litigation, especially in a complex action such as this Action, as well as the difficulties and delays inherent in such litigation. Named Plaintiff’s Counsel are also mindful of the inherent problems of proof and possible defenses to the Claim asserted in the Action. Based on their evaluation, Named Plaintiff’s Counsel have determined that the Class relief and Releases set forth herein are fair, reasonable, and adequate, and that Settlement confers substantial benefits on and is in the best interests of the Class.

#### **IV. DENIAL OF WRONGDOING OR LIABILITY**

4.1 This Agreement constitutes the resolution of disputed claims and is for settlement purposes only. Each of the Defendants denies it has violated any law; denies that it has violated the TCPA as to the Named Plaintiff or the Class Members (or anyone else); denies any liability to the Named Plaintiff or the Class Members (or anyone else); and denies all the allegations of wrongdoing recited in the Amended Complaint.

4.2 Notwithstanding anything else herein, neither the fact of, nor any provision contained herein, nor any action taken hereunder, shall constitute or be construed as an admission of any liability or wrongdoing, or recognition of the validity of any allegation of fact or contention of law made by Named Plaintiff in this Action or in any other Suit.

4.3 This Agreement, and statements made in negotiating this Settlement, and any actions taken by any of the Defendants hereunder, shall not be offered or be admissible in evidence or used in any fashion against any Released Party in any Suit for any purpose, except in a Suit pursuant to Paragraph 12.1 seeking an order from the Court finding that one or both of the Defendants are in material breach of their commitments hereunder. Nothing herein shall be construed to preclude the Released Parties from offering this Agreement and the Releases in defense of any Claims, including Suits brought by Class Members, at any time.

#### **V. PAYMENTS TO THE SETTLEMENT CLASS**

In consideration for the full, complete, irrevocable, and final Settlement of this Action and in consideration for dismissal of this Action with prejudice and in consideration for the Releases contained herein, Defendants will provide benefits to the Settlement Class Members as follows:

5.1 *The Settlement Amount.*

(a) The Settlement Administrator shall provide the Parties with an estimate of the Pre-Effective Date Administration Costs within seven (7) days from the date that this Agreement is signed by all Parties. Defendants shall cause that estimated amount to be deposited by wire transfer into the Escrow Account within fourteen (14) days after entry of the Preliminary Approval Order, and that amount shall be deducted from the Settlement Amount. Defendants shall cause the remainder of the Settlement Amount to be deposited by wire transfer into the Escrow Account within fourteen (14) Business Days after the Effective Date.

(b) The Settlement Amount shall be used to pay all aspects of this Settlement, including all Claims, all Pre-Effective Date Administration Costs, any other Administration Costs, any Attorneys' Fees approved by the Court, any Incentive Award approved by the Court, and Taxes and Tax-Related Costs (as defined in Paragraph 5.1(g)).

(c) Subject to Court approval and oversight, the Escrow Account will be controlled by the Settlement Administrator, which shall be solely liable for its acts and omissions. The Settlement Administrator shall not disburse the Settlement Amount or any portion thereof except as provided for in this Agreement, by an order of the Court, or with prior written consent of Defendants' Counsel and Named Plaintiff's Counsel.

(d) All funds held in the Escrow Account shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until the funds are distributed in accordance with this Settlement Agreement and the Final Judgment and Order or further order of the Court.

(e) The Settlement Administrator shall, to the extent practicable, invest the Settlement Amount deposited pursuant to paragraph 5.1(a) above in discrete and identifiable

instruments backed by the full faith and credit of the United States Government, or fully insured by the United States Government or an agency thereof, and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. The Settlement Administrator shall maintain records identifying in detail each instrument in which the Settlement Amount or any portion thereof has been invested, and identifying the precise location (including safe deposit box number) of each such instrument. Neither the Settlement Amount nor any portion thereof shall be commingled with any other monies in any instruments. Any cash portion of the Settlement Amount not invested in instruments of the type described in the first sentence of this paragraph shall be maintained by the Settlement Administrator, and not commingled with any other monies, at a bank account, which shall promptly be identified to Defendants' Counsel and/or Named Plaintiff's Counsel at either counsel's request by account number and any other identifying information. The Settlement Administrator and Class Members shall bear all risks related to investment of the Settlement Amount. All income, gain, or loss earned by the investment of the Settlement Amount shall be credited to the Escrow Account.

(f) The Escrow Account is intended to be a "Qualified Settlement Fund" within the meaning of Treasury Regulation §1.468B-1. The Settlement Administrator, as administrator of the Qualified Settlement Fund within the meaning of Treasury Regulation §1468B-2(k)(3), shall be solely responsible for filing tax returns for the Escrow Account and paying from the Escrow Account any Taxes owed with respect to the Escrow Account. Defendants agree to provide the Settlement Administrator with the statement described in Treasury Regulation §1.468B-3(e). Neither Defendants, Defendants' Counsel, the Named

Plaintiff, or Named Plaintiff's Counsel shall have any liability or responsibility of any sort for filing any tax returns or paying any taxes with respect to the Escrow Account.

(g) All (i) taxes on the income of the Escrow Account ("Taxes") and (ii) expenses and costs incurred in connection with the taxation of the Escrow Account (including, without limitation, expenses of tax attorneys and accountants) ("Tax-Related Costs") shall be timely paid by the Settlement Administrator out of the Escrow Account.

## 5.2 *Distribution to Settlement Class Members.*

(a) The money remaining from the Settlement Amount, including any accrued interest thereon, after all Administration Costs (including, but not limited to, Pre-Effective Date Administration Costs), any approved Attorneys' Fees, any approved Incentive Award, and Taxes and Tax-Related Costs, shall be available for distribution to Settlement Class Members (the "Distributable Settlement Fund").

(b) Each Settlement Class Member who submits a valid and timely Claim Form, in accordance with paragraphs 5.7-5.9 below, shall be entitled to a payment from the Distributable Settlement Fund on a pro rata basis per fax transmission.

(c) It is possible that Settlement Class Members may recover more than \$599.99. In the event the recovery to a Settlement Class Member exceeds \$599.99, the Settlement Class Member will be required to submit a W-9 form or have their taxes withheld by the Settlement Administrator in order to receive payment. The W-9 forms will be issued to Settlement Class Members as required within twenty-one (21) days after entry of the Final Approval Order and before any settlement checks are issued. Settlement Class Members will have 30 days to return a completed W-9 form to the Settlement Administrator.

(d) The Settlement Administrator will begin disbursing the Settlement Amount as soon as reasonably practicable, but in no event earlier than within sixty (60) days after the funding of the Escrow Account that shall occur within fourteen (14) Business Days after the Effective Date pursuant to paragraph 5.1(a). For Settlement Class Members who have submitted valid claims, the Settlement Administrator will mail checks made payable to such persons 30 days after the deadline expires to submit a W-9 form.

5.3 ***Deadline for Cashing Checks.*** Settlement Class members shall have 180 days from the date a settlement check is issued to cash the check. After 180 days, the check will be null and void and the amount associated with that check will be returned to the Distributable Settlement Fund.

5.4 ***Treatment of Undistributed Funds.*** Any funds remaining in the Distributable Settlement Fund after all payments have been made to Settlement Class Members pursuant to paragraph 5.2, and after all monies have been returned to the Distributable Settlement Fund pursuant to paragraph 5.3, shall be re-distributed on a pro rata basis to those Settlement Class Members who cashed their initial settlement checks pursuant to paragraphs 5.2 and 5.3; provided, however, that such an additional settlement payment shall be made only if the additional pro rata settlement payment to be made to each such Settlement Class Member is equal to ten dollars (\$10.00) or more. If any such additional settlement payment is made to Settlement Class Members pursuant to this paragraph, those Settlement Class members shall have 180 days from the date the additional settlement check is issued to cash the check. After 180 days, the check will be null and void and the amount associated with that check will be returned to the Distributable Settlement Fund. Any funds that remain undistributed more than 30 days following the void date on any additional settlement check sent pursuant to this

paragraph shall be contributed to a *cy pres* organization to be agreed upon by the Parties and approved by the Court. The parties shall propose a *cy pres* organization at the Final Approval Hearing. There will be no reversion of the Settlement Fund to Defendants.

5.5 If no additional settlement payment is made to Settlement Class Members pursuant to the preceding paragraph because the additional pro rata settlement payment to be made to each Settlement Class Members who cashed their initial settlement checks pursuant to paragraphs 5.2 and 5.3 would be less than ten dollars (\$10.00), any funds remaining in the Distributable Settlement Fund after all payments have been made to Settlement Class Members pursuant to paragraph 5.2 and after all monies have been returned to the Distributable Settlement Fund pursuant to paragraph 5.3 shall be contributed to a *cy pres* organization to be agreed upon by the Parties and approved by the Court. The parties shall propose a *cy pres* organization at the Final Approval Hearing. There will be no reversion of the Settlement Fund to Defendants.

5.6 ***Entire Monetary Obligation.*** It is understood and agreed that the Defendants' monetary obligations under this Settlement Agreement to Class members will be fully discharged by payment of the Settlement Amount in compliance with paragraph 5.1(a) above, and that neither of the Defendants shall have any other monetary obligations to the Class or to any other person or entity, or obligations to make any other payments above or in addition to the Settlement Amount under this Agreement or otherwise under any circumstances.

5.7 ***Claim Process.*** Settlement Class Members shall be entitled to a portion of the Distributable Settlement Fund only if they submit a timely and valid Claim Form. The Settlement Administrator shall match the fax number provided by the Settlement Class Member on a returned Claim Form to a fax number on the Class List, and determine the number of fax transmissions associated with each unique fax number on the Class List. The Settlement

Administrator shall also determine whether the claim is a duplicate, whether the Claim Form is signed, and shall examine the Claim Form for completeness and validity. If the fax number does not match, then Named Plaintiff's Counsel or the Settlement Administrator shall follow-up with the Settlement Class Member and inquire if such Settlement Class Member employed other fax numbers during the Class Period (to ascertain if any different fax number is a number on the Class List), in an effort to determine whether the claim is a valid claim.

5.8 If the fax number or fax numbers provided on a Claim Form do not match a fax number on the Class List, and the follow-up with the Settlement Class Member has not resolved the issue, then the Settlement Administrator shall disallow the claim. If a claim is deemed disallowed by the Settlement Administrator, the Settlement Administrator must communicate that disallowance of the claim to the Settlement Class Member and Named Plaintiff's Counsel and allow Named Plaintiff's Counsel an opportunity to investigate the basis for disallowing the claim. In the event the Parties disagree as to the validity of any Claim Form or whether to disallow a claim, then Named Plaintiff's Counsel will present the disputed claim to the Court for resolution.

5.9 Settlement Class members shall have 60 days from the date that the Class Notice is first faxed to return the Claim Form. Settlement Class Members who do not submit a Claim Form, or who do not submit a timely and valid Claim Form, shall not be entitled to receive any portion of the Distributable Settlement Fund.

## **VI. INCENTIVE AWARD**

6.1 Named Plaintiff may seek an incentive award ("Incentive Award") only by making a timely and appropriate written request to the Court and obtaining the Court's approval for such an award as reflected in a signed and dated order by the Court. Any Incentive Award shall be subject to the Court's review and approval. If the request to the Court seeking an



Incentive Award by or on behalf of Named Plaintiff seeks an award of no more than a total gross amount of five thousand dollars (\$5,000.00), Defendants agree not to object to such request. If the request to the Court seeking an Incentive Award by or on behalf of Named Plaintiff seeks an award greater than the total gross amount of five thousand dollars (\$5,000.00), Defendants may, in their sole discretion, object to all or any part of such request as they deem appropriate. The Parties recognize that the Court has ultimate authority to approve or disapprove any Incentive Award. Because this Settlement is for the benefit of the Settlement Class, however, the Parties further agree that any downward adjustment in an Incentive Award that may be ordered by the Court, or the amount of any Incentive Award ultimately awarded to the Named Plaintiff, will not be a basis or reason for terminating the Settlement under any provision hereof. Notwithstanding any other provision of this Agreement to the contrary, the procedure for and the allowance or disallowance (in whole or in part) by the Court of any Incentive Award are to be considered by the Court separately from its consideration of the fairness, reasonableness, and adequacy of the Agreement.

6.2 Any Incentive Award approved by the Court shall be paid by the Settlement Administrator thirty (30) days after the Effective Date. Named Plaintiff, at its individual election, may choose to have the Settlement Administrator direct any Incentive Award to a charity of its choice, in which case such amount shall be treated as a charitable contribution by the Qualified Settlement Fund on behalf of Named Plaintiff. The Incentive Award shall be paid by the Settlement Administrator solely out of the Distributable Settlement Fund and shall be deducted (to the extent approved by the Court) from the Settlement Amount on or after the Effective Date and prior to the distribution to the Class Members.

## VII. ATTORNEYS' FEES

7.1 Named Plaintiff's Counsel may seek an award of Attorneys' Fees, which shall be paid solely from the Settlement Amount, only by making an appropriate application to the Court as required by the Preliminary Approval Order and obtaining the Court's approval for such an award as reflected in a signed and dated order entered by the Court. Named Plaintiff's Counsel's Petition for Attorney's Fees shall request fees in an amount not to exceed one-third (1/3) of the Settlement Amount less Administration Costs. Any award of Attorneys' Fees, in any and all amounts, shall be subject to the Court's review and approval. The Parties recognize that the Court has ultimate authority to approve or disapprove any award of Attorneys' Fees. Because this Settlement is for the benefit of the Settlement Class, the Parties agree that the amount of Attorneys' Fees ultimately awarded to Named Plaintiffs' Counsel will not be a basis or reason for terminating the Settlement under any provision hereof. Pursuant to Paragraph 5.1 herein, any award of Attorneys' Fees, in any and all amounts, shall be paid solely from the Settlement Amount, and neither of the Defendants shall have any additional or other monetary obligations other than payment of the Settlement Amount as a result of any award of Attorneys' Fees.

7.2 Settlement Class Members and Named Plaintiff's Counsel agree that the amount of Attorneys' Fees awarded by the Court will be paid solely from the Settlement Amount.

7.3 Notwithstanding any other provision of this Agreement to the contrary, the procedure for and the allowance or disallowance (in whole or in part) by the Court of Attorneys' Fees are to be considered by the Court separately from its consideration of the fairness, reasonableness, and adequacy of the Agreement. Also notwithstanding any other provision of this Agreement to the contrary, the procedure for and the allowance or disallowance (in whole or in part) by the Court of any contributions from the Distributable Settlement Fund to any *cy pres*

organizations are to be considered by the Court separately from its consideration of the fairness, reasonableness, and adequacy of the Agreement.

7.4 Named Plaintiff's Counsel shall file a Petition for Attorney's Fees pursuant to Paragraph 7.1 herein thirty (30) days after the Class Notice has been sent to the Class Members by fax.

7.5 Thirty (30) days after the Effective Date, the Settlement Administrator shall pay the Attorneys' Fees authorized by the Court.

## **VIII. IMPLEMENTATION OF THE SETTLEMENT**

Upon execution hereof by all Parties, the Parties will respectively undertake the following actions to implement and obtain approval of the Settlement:

8.1 ***Use of Reasonable Efforts.*** Named Plaintiff, Named Plaintiff's Counsel, Defendants, and Defendants' Counsel will use reasonable efforts to obtain the entry of the Preliminary Approval Order, Final Approval of this Settlement, and the entry of a Final Judgment and Order that dismisses this Action and binds the Named Plaintiff and all Settlement Class Members. All parties agree to cooperate fully and completely with all other parties with respect to any and all appeals, including of the Final Judgment and Order, and in obtaining the dismissal of any and all subsequent Suits against the Released Parties asserting Released Claims. Defendants' Counsel and Named Plaintiff's Counsel agree to cooperate to draft and execute any additional documents to effectuate the terms of this Settlement and to adjust the case schedule and deadlines in the Action pursuant to the terms hereof as may be reasonably requested by the other Party.

8.2 ***Jurisdiction for Approval of Settlement.*** The filing and approval of this Settlement shall occur in the United States District Court for the Northern District of Illinois.

8.3 ***Preliminary Approval.*** As soon as practicable after execution of this Agreement, Named Plaintiff's Counsel shall move the Court, pursuant to Federal Rules of Civil Procedure 23(e) and 23(g), for (i) preliminary approval of the Settlement, including entry of an order identical in all material respects to the form of the Preliminary Approval Order attached hereto as Exhibit C, (ii) preliminary appointment of a class representative and class counsel, and (iii) for purposes of this Settlement only, preliminary and conditional certification of the following settlement class (the "Settlement Class"):

All persons with Illinois fax numbers who, between June 1, 2014 through and including March 5, 2015, were sent unsolicited fax advertisements from Terminix's branch office in Elmhurst, Illinois promoting Terminix services in the absence of an established business relationship, and which fax advertisements did not contain an opt-out notice as described in 47 U.S.C. § 227, who are on the Class List.

8.4 Counsel for the Parties will take all appropriate steps to obtain the entry of a Preliminary Approval Order that (i) appoints Named Plaintiff's Counsel as counsel representing the Class and all Class Members; (ii) conditionally certifies the Class for purposes of this Settlement only; (iii) preliminarily approves this Agreement and determines the Settlement to be sufficiently fair, reasonable, and adequate as to allow notice to be disseminated to the Class; (iv) approves the Class Notice; and (v) schedules a Fairness Hearing to determine, after such notice to the Class, whether this Settlement should be finally approved as fair, reasonable, and adequate; and (vi) provides that, pending the Final Judgment and Order, neither Plaintiff nor any Class Member shall either directly, representatively, or in any other capacity, commence or prosecute any action or proceeding in any court or tribunal asserting any Released Claims against any Released Parties unless such person has opted out of this Action according to the terms of the Settlement. The Preliminary Approval Order will remain in effect until (i) the Effective Date

occurs, (ii) the Court enters an order declaring this Settlement terminated and no longer binding, or (iii) Defendants terminate the Settlement under Paragraph 12.2.

8.5 ***Basis for Certification of Settlement Class.*** Named Plaintiff's motion for preliminary approval and memorandum in support of final approval will seek certification of the Settlement Class for settlement purposes only under Rule 23(b)(3).

8.6 Any certification of the Settlement Class hereunder, or otherwise, shall be for settlement purposes only and shall not constitute and shall not be construed (in this Action or in any other Suit) as an admission on the part of Defendants, or as the basis of a finding, or as evidence, that this Action or any other proposed or certified class action is appropriate for class treatment in a contested certification proceeding. This Agreement is without prejudice to the rights of Defendants to oppose (i) any requests for class certification in this Action should this Agreement be terminated or fail to be approved or implemented for any reason, or (ii) any requests for class certification in any Suit involving a proposed or certified class action.

8.7 If this Agreement is not approved, does not become effective, or if it is terminated or fails to be implemented for any reason, any certification, either preliminary or final, of the Class or of any other alleged class shall be deemed null and void *ab initio* and without force or effect.

8.8 ***Methods of Notifying Potential Class Members.*** Within five (5) days of entry of the Preliminary Approval Order, Defendants' Counsel shall provide the Settlement Administrator with the Class List in the format(s) in which the Class List is maintained by Defendants in the ordinary course of their businesses. No later than thirty-five (35) days after the entry of the Preliminary Approval Order, the Settlement Administrator shall notify potential Class Members of the Settlement as follows.

(a) The Settlement Administrator shall send by facsimile the Class Notice and Claim Form (Exhibits A-B) to the last known fax number of each potential Class Member, as this information has been retained by Terminix in the ordinary course of business. The Settlement Administrator shall make at least two attempts to transmit the notice by facsimile to those numbers where the initial transmission failed.

(b) If a Class Member's last known mailing address is reasonably identifiable from Terminix's business records, the Settlement Administrator shall also send by United States first-class mail the Class Notice and Claim Form to the Class Member's last known address. Prior to sending any Notices by U.S. Mail, the Settlement Administrator shall run the addresses through the National Change of Address database. The postage rate selected for the mailing of the Class Notice shall provide for notification of forwarding addresses.

(c) If the Notices are returned by the U.S. Postal Service as undeliverable, Named Plaintiff's Counsel or the Settlement Administrator may undertake further reasonable efforts to locate that Person to re-send the Notice to that Settlement Class Member. If the Notice is returned by the U.S. Postal Service with a forwarding address or other error that can be ascertained and corrected, then the Settlement Administrator shall re-send the Notice by U.S. First Class Mail to that new address within five (5) days.

(d) Within twenty-one (21) days after the date that the Notice was first sent by facsimile, the Settlement Administrator shall send the Class Notice and Claim Form by facsimile to each Class Member identified on the Class List who did not submit a Claim Form or otherwise respond to the Class Notice by that date ("Supplemental Notice"). The Settlement Administrator shall make at least two attempts to transmit the notice where the initial transmission failed.

(e) Named Plaintiff's Counsel will post the Class Notice, Petition for Attorney's Fees, and this Settlement Agreement (excluding exhibits) on its website. Named Plaintiff's Counsel or the Settlement Administrator shall provide any Settlement Class Member who contacts either of them and requests a copy of the Class Notice and/or the Claim Form with the documents requested.

(f) The Settlement Administrator may create a website which allows for electronic submission of claim forms. Any website created by the Settlement Administrator may also post the Class Notice, Claim Form, Petition for Attorney's Fees, Settlement Agreement (excluding exhibits) and the Preliminary Approval Order, and any other documents agreed upon by the Parties and approved by the Court.

(g) Named Plaintiff's Counsel and/or the Settlement Administrator shall retain all documents and records generated during the administration of the settlement including records of notice given to the Settlement Class Members, confirmations of transmittals or such notices by facsimile, unconfirmed facsimile transmissions, records of undeliverable mail, claim forms, and payments to the Settlement Class Members for a period of one year following the issuance of the Final Judgment and Order, and the expiration of all deadlines for appeal therefrom.

8.9 The Class List and all other documents and records generated during the administration of the settlement shall be used solely for purposes consistent with Class Notice and administration of the settlement and for no other purpose. Named Plaintiff's Counsel and Defendants' Counsel need not obtain prior approval from any source for communicating with any potential or actual Class Member relating to: (a) any communications initiated by a potential or actual Class Member, or (b) the delivery of the documents required pursuant to Paragraph 8.8.

For the avoidance of doubt, if a potential or actual Class Member initiates a communication with Defendants' Counsel regarding any aspect of this Settlement, Defendants and/or Defendants' Counsel shall be entitled, without the need for prior approval from Named Plaintiff's Counsel, or the Court, to respond to that person's communication by any means whatsoever, including by e-mail or any other cost-effective means of communication. Likewise, for the avoidance of doubt, if a potential or actual Class Member initiates a communication with Named Plaintiff's Counsel, Named Plaintiff's Counsel shall be entitled, without the need for prior approval from Defendants' Counsel or the Court, to respond to that person's communication by any means whatsoever. Notwithstanding anything in this Paragraph to the contrary, Defendants and/or their affiliates shall be free to communicate in any manner with potential or actual Class Members in the normal course of Defendants' businesses, so long as such communication is not related to the Settlement.

8.10 At least thirty (30) days prior to the Fairness Hearing, the Settlement Administrator will provide Defendants' Counsel and Named Plaintiff's Counsel and the Court with a declaration from a competent declarant stating that the Class Notice has occurred. At least seven (7) days prior to the Fairness Hearing, the Settlement Administrator will provide Defendants' Counsel and Named Plaintiff's Counsel and the Court with a declaration from a competent declarant detailing the number of claims, exclusions, and objections received.

8.11 ***Exclusions from the Settlement Class.*** Any Class Member may request exclusion from the Settlement Class. Any Class Member who would like to request exclusion from the Settlement Class must make the request in accordance with the procedures and requirements set forth in the Preliminary Approval Order and the Class Notice. A request for exclusion must be in writing and state the name, address, and fax number (to which the fax was



sent) of the Person seeking exclusion. Each request must also contain a signed statement providing that “I hereby request that I be excluded from the proposed Settlement Class in the Action.” The request must be mailed to Named Plaintiff’s Counsel or the Settlement Administrator at the address provided in the notice and postmarked or received on the date set by the Court. A request for exclusion that does not include all of the foregoing information, or that is sent to an address other than the one designated in the notice, or that is not postmarked or received by the Named Plaintiff’s Counsel or the Settlement Administrator within the time specified, shall be invalid and the person making such a request shall remain a Settlement Class Member and shall be bound by the terms of the Settlement Agreement, if approved. Within fourteen (14) days after expiration of the deadline for Class Members to request exclusion from the Settlement Class, Named Plaintiff’s Counsel or the Settlement Administrator shall furnish the Opt-Out List to Defendants’ Counsel. Exclusions may not be submitted on behalf of a putative class or subclass of similarly situated Class Members. Defendants’ Counsel and Named Plaintiff’s Counsel shall take no affirmative action to encourage Class Members to exclude themselves from the Settlement Class. Settlement Class Members shall have sixty (60) days from the date the notice is sent to opt out of the Settlement.

8.12 ***Written Objections to the Settlement.*** Any Settlement Class Member may present written objections explaining why the Settlement should not be approved as fair, reasonable, or adequate, or why Attorneys’ Fees should not be awarded to Named Plaintiff’s Counsel in the amount or in the manner set forth herein. The requirements for filing an objection shall be as set forth in the Preliminary Approval Order. Any Settlement Class Member may object to the Settlement by filing with the Court and mailing a copy of the objection to Named Plaintiff’s Counsel and Defendants’ Counsel. Any objection must include: (a) the name, address

and fax number (to which the fax was sent) of the Person objecting to the Settlement; (b) a statement of the objection to the Settlement; (c) an explanation of the legal and factual basis for the objection; and (d) documentation, if any, to support the objection. Objections may not be submitted on behalf of a putative class or subclass of similarly situated Class Members.

Defendants' Counsel and Named Plaintiff's Counsel shall take no affirmative action to encourage Class Members to object to the Settlement. Settlement Class Members shall have sixty (60) days from the date the notice is sent to object to the Settlement.

8.13 ***Final Judgment and Order.*** On the schedule directed by the Court, Named Plaintiff's Counsel will file a memorandum, pursuant to Rules 23(e) and 23(g), in support of (i) final approval of the Settlement, (ii) final appointment of the class representative and class counsel, and (iii) final certification of the Settlement Class. This Final Judgment and Order shall, among other things, permanently foreclose and bar all Released Claims (including Claims for additional recovery, penalties, interest, attorneys' fees, costs, and expenses) and all other Claims that any Settlement Class Members have alleged or could have alleged in connection with this Action.

8.14 ***Dismissal Without Prejudice.*** The Parties shall file with the Court a Stipulation of Dismissal without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1) dismissing the entire Action without prejudice thirty (30) days after the Effective Date, and requesting that the Court retain jurisdiction solely to enforce the terms of the Agreement. The Parties agree that the Stipulation of Dismissal without prejudice shall be converted to a Stipulation of Dismissal with prejudice sixty (60) days after the later of (a) the date on which the final payment from the Distributable Settlement Fund has been made by the Settlement Administrator to a Settlement Class Member in accordance with paragraphs 5.2 and 5.4 herein, or (b) the date on which the

final contribution has been made to an authorized *cy pres* organization or charity in accordance with paragraphs 5.4 and 5.5 herein. The Stipulation of Dismissal without prejudice shall include language stating that the judgment is being entered to allow the Parties to enforce the terms of the Agreement and that the “without prejudice” language shall not allow either party to reopen issues resolved by the judgment.

8.15 Defendants shall file proof of compliance with the notice requirements of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715(b) prior to the Fairness Hearing.

## **IX. PAYMENT METHOD AND INSTRUCTIONS**

9.1 Before the Effective Date, Named Plaintiff’s Counsel will transmit wiring instructions to the Settlement Administrator for the payment of approved Attorneys’ Fees from the Escrow Account to Named Plaintiff’s Counsel, and to the Settlement Administrator for payment of the approved Incentive Award to Named Plaintiff.

9.2 Within thirty (30) days after the Effective Date, once Named Plaintiff’s Counsel’s wiring instructions have been received by the Settlement Administrator, the Settlement Administrator may cause funds on deposit in the Escrow Account to be reduced and paid out in accordance with this Agreement and the Final Judgment and Order.

(a) Funds may be paid out of the Escrow Account for the benefit of Named Plaintiff’s Counsel only upon a written payment instruction from Named Plaintiff’s Counsel, addressed to the Settlement Administrator with copies to Defendants, that is in accordance with the Final Judgment and Order, or as otherwise directed by the Court. Defendants shall have an opportunity to respond if they believe the instruction from Named Plaintiff’s Counsel is erroneous.

(b) Any accrued interest or funds remaining in the Escrow Account after a payment instruction from Named Plaintiff's Counsel has been executed shall be included in the Distributable Settlement Fund.

9.3 Named Plaintiff's Counsel shall be solely responsible for ensuring that Named Plaintiff's Counsel receives the appropriate allocation of the funds in the Escrow Account. Defendants will have no obligation, liability, or responsibility whatsoever (i) for any taxes or other charges relating to money paid out of the Escrow Account, or (ii) to ensure that the funds are allocated among Named Plaintiff's Counsel fairly, correctly, or appropriately. To the extent any attorney or firm serving as Named Plaintiff's Counsel or otherwise contests their or its portion of the total award for Attorneys' Fees provided for hereby or approved by the Court, such attorney or firm must look solely to Named Plaintiff's Counsel, and not to Defendants or the Settlement Amount, for their remedy. Under no circumstances will Defendants have any obligation whatsoever arising from this Action to any attorney or firm serving as Named Plaintiff's Counsel or otherwise representing Class Members other than the express obligations set forth herein.

9.4 Should the Agreement be terminated for any reason, the Escrow Account shall be closed and its funds (including any interest remaining in the Escrow Account after deduction of any costs of the Settlement Administrator) disbursed to Defendants, as directed by Defendants, but only after an order from the Court.

9.5 Not later than thirty (30) days following the final closing of the Escrow Account, the Settlement Administrator shall file with the Court a statement disclosing the distribution of funds from the Escrow Account.

9.6 Upon disbursement of all funds in the Escrow Account upon any termination of the Agreement, the Settlement Administrator shall be released and relieved of all liabilities and obligations, if any, arising out of or relating to the administration of the Escrow Account and any such liabilities and obligations shall become the liabilities of Defendants.

## **X. SETTLEMENT ADMINISTRATION.**

10.1 The Settlement Administrator shall administer the Settlement consistent with this Agreement subject to the supervision of the Parties' counsel, and with the supervision of the Court as circumstances may require.

10.2 The Parties and their counsel shall have no responsibility for, interest in, or liability whatsoever with respect to:

(a) any act, omission or determination of the Settlement Administrator, other Parties or their counsel, or designees or agents of other Parties or their counsel or the Settlement Administrator; or

(b) any act, omission or determination of another party's counsel or their designees or agents in connection with the administration of the Settlement.

10.3 The Settlement Administrator shall provide such information as may be reasonably requested by Defendants' Counsel or Named Plaintiff's Counsel to implement and facilitate any distribution of funds under this Agreement.

## **XI. RELEASE AND DISMISSAL OF CLAIMS**

11.1 Upon the Effective Date, the Settlement Class Members, on behalf of themselves, their predecessors, successors, assigns, beneficiaries, and additional insureds, shall be deemed to have, and by operation of the Final Judgment and Order shall have, fully, finally, and forever

released, relinquished and discharged all claims, known and unknown, that they may have against the Released Parties, through the date of preliminary approval, under the TCPA, any comparable TCPA-like statutes of any state, and any other federal or state statutory or common law, and for relief under any equitable theory, or for prospective or retrospective relief that could have been asserted based on or relating to the conduct alleged in the Amended Complaint.

11.2 In consideration of the benefits described herein, Named Plaintiff agrees, and each Settlement Class Member shall be deemed to have agreed, to the dismissal with prejudice of this Action.

## **XII. ENFORCEMENT AND TERMINATION**

12.1 Upon any alleged material breach by one of the Parties of its obligations hereunder, the Party or Class Member asserting a breach may, after giving the Parties reasonably specific notice of the alleged material breach, and allowing a period of no less than forty-five (45) days for the breaching Party to correct the alleged breach, seek an order from the Court finding that the breaching Party is in fact in material breach of its commitments hereunder. In the event the Court makes a finding of material breach, the Court shall direct the breaching Party to come into compliance with this Agreement within forty-five (45) days or such other period of time that the Court deems appropriate. In seeking such an order from the Court, the Party or Class Member asserting a breach must not oppose any request by the breaching Party to be allowed a fair opportunity to present evidence and argument to the Court.

12.2 Any of the Defendants will have the option to terminate this Settlement, in its sole discretion, if the number of requests for exclusion from the Settlement exceeds 4% of the persons in the Settlement Class. Defendants will have fourteen (14) days from their receipt of the final Opt-Out List in which to exercise, in their sole discretion, this right to terminate. In addition, this Agreement may also be terminated by either or both of the Defendants, in their sole

discretion, in the event that any of the following occur: (i) a motion seeking preliminary approval or final approval of this Settlement is denied or is granted but later reversed on appeal; (ii) the entry of the Final Judgment and Order is reversed on appeal; (iii) the Court modifies this Agreement or fails to enforce any provision hereof, except as expressly provided below; or (iv) any federal or state authorities object to or request material modifications to the Agreement. Notwithstanding the foregoing, any downward modification of the Final Judgment and Order either by the Court or on appeal regarding the amount of Attorneys' Fees to be awarded to Named Plaintiff's Counsel, or any Incentive Award awarded to Named Plaintiff, or any modifications to the Class Notice, Claim Form, Preliminary Approval or Final Approval Orders shall not give Defendants, Named Plaintiff, Class Members, or Named Plaintiff's Counsel the option to terminate this Agreement. Any termination pursuant to this Paragraph shall be accomplished by filing with the Court a notice of termination, which shall be served on Named Plaintiff's Counsel. Upon the filing of such a termination notice, this Settlement and Agreement shall be deemed to be terminated.

12.3 Notwithstanding any termination of this Agreement, Paragraphs 4.2, 4.3, 8.6, 8.7, 12.3, 13.4, 13.7, 13.12, 13.17, 13.19, 13.20, 13.21, 13.22, 13.23, and 13.24 (and the defined terms used therein) shall remain in full force and effect. In the event this Settlement is terminated before the Effective Date for any reason, all other provisions of this Agreement, and the Settlement itself, shall be deemed null and void *ab initio* and without force or effect. In such event, this Agreement shall not be offered in evidence or used in this or any other Suit for any purpose, including the existence, suitability for certification, or maintenance of any purported class. In such event, this Agreement and all negotiations, statements, proceedings, and documents prepared in connection herewith (including all legal briefs and exhibits thereto) shall

not be deemed or construed to be an admission or confession by any party of any fact, matter, or proposition of law and shall not be offered by anyone adverse to either or both of the Defendants for any purpose whatsoever in any Suit. In the event of such termination, all Parties to this Action shall stand in the same position as if this Agreement had not been negotiated, signed, or filed with the Court, except as expressly provided in this Paragraph.

### **XIII. MISCELLANEOUS PROVISIONS**

13.1 ***Entire Agreement.*** This Agreement, including all Exhibits attached hereto and hereby incorporated by reference, shall supersede any previous agreements or understandings between the Parties with respect to this Action. This Agreement is the entire agreement of the Parties with respect to this Action and may not be changed, modified, or amended except as expressly set forth in Paragraph 13.2.

13.2 ***Modification By Writing Only.*** This Agreement may be amended or modified only by a written instrument, signed by both Named Plaintiff's Counsel and Defendants' Counsel. The Agreement, as modified or amended under this Paragraph, is subject to Court approval before the Effective Date.

13.3 ***Expenses.*** Except as otherwise expressly set forth herein, each party hereto will pay all costs and expenses incident to its negotiation and preparation hereof and to its performance and compliance with all agreements and conditions contained herein on its part to be performed or complied with, including the fees, expenses and disbursements of its counsel, independent public accountants, and other advisors, whether or not the Final Judgment and Order shall have been entered by the Court. Nothing herein shall require either of the Defendants, any Released Party, Named Plaintiff or Named Plaintiff's Counsel to pay out or expend any monies other than as expressly provided herein.



13.4 ***Invalidity or Unenforceability of Provisions.*** In the event that any one or more of the provisions contained herein shall for any reason be held in whole or in part to be invalid or unenforceable in any respect by any federal, state, administrative, judicial, arbitral, or other forum, bar association, or committee of competent jurisdiction, such invalidity or unenforceability shall not affect any other provision hereof if the Parties hereto agree in writing to proceed as if such invalid or unenforceable provision had never been included herein. Absent such agreement, this Agreement shall be terminated. Further, in the event that paragraphs 5.4 or 5.5 are held in whole or in part to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof and shall not serve as a basis to terminate the Settlement. In the event that the Court finds that contribution of any portion of the Settlement Amount to any agreed upon *cy pres* organization is impermissible, then the parties shall meet and confer to determine one that may be acceptable to the Court. If there is a finding that *cy pres* is completely unacceptable, then all monies that would have been contributed to such *cy pres* organizations shall be redistributed *pro rata* to those Class Members that submitted valid claim forms after subtracting for any additional Administration Costs in connection with such redistribution. There shall be no reversion of Settlement Funds to Defendants.

13.5 ***Amount Paid Not a Penalty.*** No consideration or amount or sum paid, credited, offered, or expended by either of the Defendants in the performance hereof constitutes a penalty, fine, punitive damages, or other form of penalty for any alleged Claim or offense.

13.6 ***Agreement Mutually Prepared; Construction.*** This Agreement shall be deemed to have been mutually prepared by the Parties and shall not be construed against any one of them by reason of authorship. Accordingly, no party hereto shall be considered to be the drafter of any of its provisions for the purpose of any statutes, case law, or rule of interpretation or

construction that might otherwise cause any provision or paragraph hereof to be construed against its purported drafter. Otherwise, this Agreement shall be construed in accordance with the four corners of the agreement and otherwise in accordance with the contract construction rules applicable to contracts made within the State of Illinois. References in this Agreement to: (1) “herein,” “hereto,” “herewith” and “hereunder” shall refer to this Agreement as a whole; (2) any paragraph or section shall be to a paragraph or section hereof, unless otherwise specified; (3) Exhibits shall refer to Exhibits attached hereto; and (4) “including” shall be deemed to be immediately followed by “without limitation.” The preamble is hereby incorporated herein by reference.

13.7 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. For purposes hereof, a facsimile signature shall be deemed an original.

13.8 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties, each of the Defendants, the Named Plaintiff, the Class Members, and their representatives, heirs, successors, and assigns. The Parties expressly agree that the terms hereof, including all promises and covenants stated herein, are contractual and shall survive the execution hereof and entry of the Final Judgment and Order and shall continue in full force and effect thereafter in accordance with their terms.

13.9 **Headings.** The headings and subheadings (if applicable) hereof are included for convenience only and shall not be deemed to constitute part hereof or to affect its construction.

13.10 **Waiver.** Any party may waive rights belonging to it hereunder or defaults or breaches hereof committed by the opposing party. No waiver by any party of any provision hereof or any default or breach hereunder, whether intentional or not, shall be valid, however,

unless the same shall be in writing and signed by the party making such waiver. Nor shall such waiver be deemed to extend to any prior or subsequent default or breach hereunder or affect in any way any rights arising by virtue of any prior or subsequent such default or breach.

13.11 **Full Authority.** All counsel executing this Agreement or any related documents warrant and represent that they have full authority to do so and that they have the authority to make binding commitments in regards to the actions required or permitted to be taken hereunder in order to effectuate its terms.

13.12 **Receipt of Advice of Counsel.** The Parties acknowledge, agree, and specifically warrant to each other that they have fully read this Agreement, received independent legal, tax, and financial advice with respect to the advisability of entering into it and with respect to the legal effect hereof. The Parties further acknowledge, agree, and specifically warrant that they fully understand the legal effect hereof.

13.13 **Opportunity to Investigate.** The Parties acknowledge, agree, and specifically warrant to each other that they and their counsel have had adequate opportunity to make whatever investigation and inquiries are deemed necessary or desirable in connection with the subject matter of the Settlement and the advisability of entering into this Agreement. The Parties further agree that Named Plaintiff's Counsel have sufficient information to date, through discovery or otherwise, to allow them to determine that the Settlement is in the best interests of the Class, and no further information, through discovery or otherwise, is necessary or will be sought in connection with the Settlement.

13.14 **Good Faith Settlement.** The Parties acknowledge, agree, and specifically warrant to each other that they are entering into this Agreement freely, without duress, in good faith, and at arms length. The benefits, procedures and offers set forth in this Agreement constitute the

entire consideration provided to the Class under this Agreement and are agreed by all Parties to constitute fair, reasonable and adequate consideration for the Releases and the other agreements and obligations of the Class reflected in this Agreement. Neither of the Defendants nor any of the Released Parties shall have any obligations to any Class Members in respect of the Released Claims, except as expressly provided for in this Agreement.

13.15 *Unknown Claims.* The Parties acknowledge, agree, and specifically warrant to each other that they are familiar with California Civil Code Section 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Being aware of California Civil Code Section 1542, all Parties releasing Claims hereby expressly waive any and all rights they may have under this law and under any other federal or state law of similar effect with respect to the matters released herein.

13.16 *Notices.* Unless otherwise provided herein, any notice, request, waiver, instruction, application for Court approval, or application for Court order sought in connection herewith or other document to be given by any party or to the other party shall be in writing and delivered personally or sent by registered or certified mail, postage pre-paid, with copies by email (with read receipt) to the attention of Named Plaintiff's Counsel or Defendants' Counsel (as well as to any other recipients that a court may specify), or if applicable via use of the e-filing and e-service system for the United States District Court for the Northern District of Illinois. As of the date hereof, the respective representatives are as follows:

For Defendants:     **Rachel B. Niewoehner**  
Sidley Austin LLP  
1 South Dearborn Street  
Chicago, IL 60603  
rniewoehner@sidley.com

For Plaintiff:           **Daniel A. Edelman**  
Edelman, Combs, Lattuner &  
Goodwin LLC  
20 South Clark Street, Suite 1500  
Chicago, IL 60603  
dedelman@edcombs.com

13.17 *Extensions of Time.* The Parties may agree, subject to the approval of a court where required, to reasonable extensions of time to carry out the provisions hereof.

13.18 *No Beneficiaries.* No portion hereof shall provide any rights to, or be enforceable by, any Person other than Named Plaintiff, the Class Members, Named Plaintiff's Counsel, or the Released Parties. No third-party beneficiaries are created or intended to be created hereby. No Class Member may assign or otherwise convey any right to enforce any provisions hereof.

13.19 *Preservation of Privilege.* Nothing contained herein or in any order of a court, and no act required to be performed pursuant hereto or any order of a court, is intended to constitute, cause, or effect any waiver (in whole or in part) of any attorney-client privilege, work product protection, or common interest/joint defense privilege.

13.20 *No Public Announcement.* Except as expressly provided in this Paragraph, neither the Named Plaintiff, Named Plaintiff's Counsel, or the Defendants shall, without prior written approval, make any press release or other public announcement concerning this Agreement, except as and to the extent that any such party shall be so obligated by law, in which case the other party shall be advised and the Parties shall use their reasonable efforts to cause a mutually agreeable release or announcement to be issued; provided, however, that the foregoing shall not apply to communications or disclosures necessary for a party to meet its obligations hereunder or to comply with the accounting and/or the Securities and Exchange Commission disclosure provisions or the rules of any stock exchange. The provisions of this Paragraph

exclude postings on Named Plaintiff's Counsel's firm's website pursuant to Paragraph 8.8 herein, any website created by the Settlement Administrator in accordance with paragraph 8.8 herein, or any other public announcement ordered by the Court.

13.21 ***Confidentiality and Return of Documents.*** With respect to all information and documents obtained by, through, or from Defendants, through formal and informal discovery, Named Plaintiff's Counsel and Named Plaintiff represent that they have not shared such information with any individuals or third Parties, other than the Named Plaintiff, its own legal and support staff and retained experts. This Agreement shall remain confidential until the motion for preliminary approval of this Settlement is presented pursuant to Paragraph 8.3, at which point the fact and terms of this Agreement shall become a matter of public record. All information related to this Action including that reflected in Named Plaintiff's Counsel's files shall be maintained in the strictest confidence to be used only in carrying out the express terms hereof. Forty-five (45) days of the Effective Date, the Named Plaintiff and Named Plaintiff's Counsel will return to Defendants any and all documents, data, and other materials provided by Defendants in their files, including all copies thereof or an affidavit that documents provided by Defendants marked as Confidential have been destroyed. Upon satisfaction of this duty and responsibility, Named Plaintiff's Counsel will certify in writing that all such data, documents, and materials, and all copies thereof, have been returned. This Paragraph shall not operate to prohibit: (1) disclosures by Named Plaintiff and/or Named Plaintiff's Counsel that, after reasonable notice to Defendants, are legally required to respond to legal processes or requests from government agencies, nor of any legally required disclosure not specified herein; (2) disclosures to the Named Plaintiff and Named Plaintiff's Counsel's fiduciaries, insurers, personal attorneys, or financial representatives, provided an express agreement to maintain the

confidentiality of such information is in place and being adhered to; and (3) Named Plaintiff's Counsel from filing all documents necessary to obtain approval and confirmation of the Settlement and/or to enforce the Settlement as provided herein.

**13.22 Confidentiality of Defendants' Proprietary Information.** Information regarding the identity, including without limitation the names, addresses, telephone numbers, facsimile numbers, and email addresses, of Class Members (the "Compilation of Class Members") is and shall remain at all times confidential, proprietary information and trade secrets of Defendants. Notwithstanding anything herein to the contrary, Defendants have no obligations to provide the Compilation of Class Members to Named Plaintiff's Counsel, the Court, or any other third-party, except that Defendants may provide (a) to the Settlement Administrator in connection with providing Class Notice the Compilation of Class Members, and (b) to the Court in connection with the Fairness Hearing a list of the Class Members who validly excluded themselves from this Settlement pursuant to Paragraph 8.11. Notwithstanding anything to the contrary herein, if a Person initiates contact with Named Plaintiff's Counsel to ascertain whether that Person is a member of the Class, Named Plaintiff's Counsel may contact the Settlement Administrator, which may inform Named Plaintiff's Counsel whether that Person is a Class Member. Named Plaintiff's Counsel may then inform that Person whether that Person is a Class Member.

**13.23 Governing Law.** This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Illinois without giving effect to any choice or conflict of law provision or rule (whether of the State of Illinois or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Illinois.

**13.24 Defamation.** The Named Plaintiff and Named Plaintiff's Counsel agree that they (i) will not make any false statements of fact concerning the Released Parties with respect to the

Released Claims; and (ii) will not make any statements to third Persons that could constitute slander, libel, or which would have a tendency to subject to ridicule or disparagement the Released Parties with respect to the Released Claims.



IN WITNESS WHEREOF, Named Plaintiff and Defendants have executed this Settlement Agreement and Release on this 9<sup>th</sup> March, 2016.

Heather Kolbus  
Daniel A. Edelman  
Heather Kolbus  
On behalf of the Named Plaintiff, the Class,  
and Edelman, Combs, Lattuner & Goodwin  
LLC

\_\_\_\_\_  
Rachel B. Niewoehner  
On behalf of The Terminix International  
Company, LP, The ServiceMaster Company,  
LLC, and Sidley Austin LLP

GREG'S GREATER CHICAGO CHIROPRACTIC, LLC

By: Greg W Kolbinger  
Its: Greg Kolbinger

THE TERMINIX INTERNATIONAL COMPANY, LP

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

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

THE SERVICEMASTER COMPANY, LLC


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

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

**IN WITNESS** WHEREOF, Named Plaintiff and Defendants have executed this Settlement

Agreement and Release on this 9<sup>th</sup> March, 2016.

\_\_\_\_\_  
Daniel A. Edelman  
Heather Kolbus  
On behalf of the Named Plaintiff, the Class,  
and Edelman, Combs, Lattuner & Goodwin  
LLC

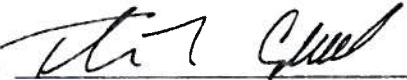
  
\_\_\_\_\_  
Rachel B. Niewoehner  
On behalf of The Terminix International  
Company, LP, The ServiceMaster Company,  
LLC, and Sidley Austin LLP

GREG'S GREATER CHICAGO CHIROPRACTIC, LLC

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

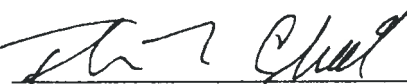
Its: \_\_\_\_\_

THE TERMINIX INTERNATIONAL COMPANY, LP

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

Its: Vice President

THE SERVICEMASTER COMPANY, LLC

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

Its: Vice President