

## SETTLEMENT AGREEMENT & RELEASE

This Settlement Agreement and Release (the "Settlement Agreement") is entered into by and between Plaintiff Douglas Proudlove, for himself and the Settlement Class Members (as defined below), and Defendants Seed Consulting LLC, Erik Gantz, and Kevin Tussy (collectively, "Defendants"). Plaintiff and Defendants are referred to collectively in this Settlement Agreement as the "Parties."

### I. RECITALS

This Settlement Agreement is made with reference to and in contemplation of the following facts and circumstances:

1. On May 22, 2020, Plaintiff initiated a lawsuit, captioned *Proudlove v. Seed Consulting LLC*, No. 20-2-09220-7 SEA, against Defendant Seed in King County Superior Court. Plaintiff amended his complaint to add Defendants Gantz and Tussy on December 1, 2020.
2. The Court certified a class and sub-class in an order dated October 16, 2021.
3. Plaintiff alleges in the First Amended Complaint, on behalf of himself and the Class and Sub-Class, that Defendants violated Washington's Credit Services Organization Act, 15 U.S.C. § 1692, *et seq.* ("CSOA"), and the Washington Consumer Protection Act, RCW 19.86.010, *et seq.* ("CPA") because Seed acted as credit services organization but failed to comply with all requirements of the CSOA, and because Seed's entire business model was unfair or deceptive to consumers. Plaintiff alleges that Gantz and Tussy are personally liable for Seed's unfair or deceptive conduct.
4. Defendants deny all claims asserted in the Action. Defendants also deny all allegations of wrongdoing and liability in this Action. Defendants seek to settle this Action for the sole purpose of avoiding the burden and expense of continuing to litigate this Action.
5. The Parties and their counsel have conducted investigations of the facts and law underlying the claims asserted in this Action. In addition, the Parties and their counsel have conducted extensive discovery, including written discovery and depositions. The Parties and their counsel have also conducted a thorough assessment of the strengths and weaknesses of their respective cases.
6. The Parties and their counsel have engaged in arm's-length negotiations concerning settlement of the claims asserted in the Action, including participating in private mediation with The Honorable Betsy Gonzalez (Ret.), an experienced judge and mediator.
7. Plaintiff and Class Counsel have concluded, based upon their investigation and thorough assessment, and taking into account Defendants' defenses, the expense and time necessary to continue to litigate the Action through trial and post-judgment collection, the risks

and costs associated with any further proceedings and potential appeals, and the substantial benefits to be received pursuant to this Settlement Agreement, that a settlement with Defendants and the terms of this Settlement Agreement are fair and reasonable, as well as in the best interest of Plaintiff and the Settlement Class Members.

8. Plaintiff, on behalf of himself and the Settlement Class Members, and Class Counsel agree to the terms of this Settlement Agreement and to have judgment entered without trial or adjudication of any factual or legal issue other than those already resolved by the Court. Plaintiff and Class Counsel also agree that this Settlement Agreement, including any of its exhibits, does not constitute any evidence against, or any admission by Defendants.

**THEREFORE**, the Parties hereby stipulate and agree that, in consideration of the agreements, promises, and covenants set forth in this Settlement Agreement, and subject to approval of the Court, the Action shall be completely, fully, and finally settled and dismissed with prejudice as follows:

## II. DEFINITIONS

In addition to the terms defined in other Sections of this Settlement Agreement, the following defined terms apply to this Settlement Agreement and its exhibits:

9. “Class Administrator” means the third-party selected by Class Counsel to prepare and send notice to the Classes and to administer the Settlement, including issuing payments to eligible Settlement Class Members.

10. “Class Counsel” means the law firms of Terrell Marshall Law Group, PLLC; Leonard Law; and the Law Office of Paul Arons.

11. “Class Member” means a member of the Class and Subclass defined in the Court’s order granting class certification who did not submit a request for exclusion from the Class on or before February 28, 2022:

**Umbrella Class:** All Washington residents who signed an agreement with Seed Capital in substantially the form of Exhibit A to the First Amended Complaint, paid any money to Seed Capital, and received only consumer credit cards or lines of credit as a result of Seed Capital’s services, at any time starting four years preceding the filing of this action.

**Response Marketing Sub-class:** All persons in the Umbrella Class who purchased Seed Capital’s services in connection with a program operated by Response Marketing Group or any related entity.

12. “Court” means the King County Superior Court.

13. "Effective Date" means the fifth day after the later of the following events:
  - a. The final disposition of any appeals from or review of the Final Approval Order; or
  - b. In the case of no appeal or review being filed, expiration of the applicable appellate period.
14. "Final Approval Hearing" means the hearing held by the Court to determine whether to finally approve the Settlement, and whether to approve Class Counsel's requested fees and expenses and the amount of the service awards to Plaintiff.
15. "Final Approval Order" means the order and judgment that the Court enters after finally approving the Settlement.
16. "Notice" means the notice that will be mailed to Class Members pursuant to Section VII.3 of this Settlement Agreement.
17. "Notice Plan" means the proposed plan of sending notice to the Settlement Class of the proposed Settlement as set forth in Section VII.3 of this Settlement Agreement.
18. "Objection Deadline" means 45 calendar days from the Settlement Notice Date.
19. "Opt-Out Deadline" means 45 calendar days from the Settlement Notice Date.
20. "Preliminary Approval Order" means the order that the Court enters upon preliminarily approving the Settlement.
21. "Released Claims" means all claims to be released as set forth in Section XI.2 of this Settlement Agreement.
22. "Released Parties" means Defendants Seed Consulting, LLC, Erik Gantz, and Kevin Tussy.
23. "Releasing Parties" means the named Plaintiff and members of the Classes to whom the Notice is mailed and who do not exercise their right to opt out.
24. "Settlement" means the settlement contemplated by this Settlement Agreement.
25. "Settlement Award" means a cash payment that may be available to eligible Settlement Class Members.
26. "Settlement Class Members" means all persons in the Classes who do not request to be excluded from this Settlement.

27. “Settlement Fund” means the total cash sum of \$1,575,000 to be paid by Defendants pursuant to Section III of this Settlement Agreement. Once established, the full Settlement Fund will be maintained in an escrow account managed by the Class Administrator. The Class Administrator will act in accordance with the terms of this Settlement Agreement, the orders of the Court, and the directions of Class Counsel.

28. “Settlement Notice Date” means the date the Notices are sent pursuant to the Notice Plan.

29. “Settlement Website” means the website that will be established and maintained by Class Counsel as set forth in this Settlement Agreement.

### **III. SETTLEMENT CONSIDERATION**

30. Notice of Settlement. Upon full execution of this Agreement, the Parties shall jointly notify the Court that they have reached an agreement to resolve this matter, subject to funding as set forth below.

31. Settlement Fund. Defendants shall pay \$1,575,000 in full and complete satisfaction of all obligations under this Settlement. The Settlement Fund shall be non-reversionary. The Settlement Fund shall be allocated to Settlement Awards, a service award to Plaintiff, attorneys’ fees and costs, and settlement administration expenses, in amounts to be determined by Class Counsel, and subject to approval by the Court.

32. Payment. Within fourteen (14) calendar days from the date this Settlement Agreement is executed, Defendants will deposit 50% of the Settlement Fund (\$787,500) (the Settlement Fund Deposit) into the trust account of Mix Sanders Thompson, PLLC to be held in trust for the benefit of the Class. Advance payment pursuant to this Paragraph 32 is a material term of and a condition precedent to this Settlement Agreement being enforceable. Within sixty (60) calendar days from the date this Settlement Agreement is executed, Defendants will deposit the other half of the Settlement Fund (\$787,500) with the Class Administrator (to be timely identified by Class Counsel). Within five (5) days of Class Counsel filing a motion for preliminary approval, Mix Sanders Thompson, PLLC will transfer the Settlement Fund Deposit to the Class Administrator.

33. Separate Payment of Fee Award. Within three (3) days of the date this Settlement Agreement is executed, Defendants agree to separately pay Class Counsel \$12,438 above and beyond the Settlement Fund to satisfy the Court’s September 6, 2022 Order Granting [sic] Determining Amount of Fee Award Regarding Plaintiff’s Motion for Sanctions.

34. Security of Defendants’ Payment Obligations. Defendants’ payment obligations under this Settlement Agreement are joint and several. Each Defendant agrees, as a material term to this Settlement Agreement, to execute a Confession of Judgment, in the form attached

as Ex. A to this Settlement Agreement. By their signatures below, Defendants waive all defenses to enforcement of any judgment entered as provided herein, in any state or federal court in the United States of America, including all defenses of personal jurisdiction.

35. Defendants Will Not File for Bankruptcy or Receivership. Defendants affirm that, prior to fulfilling the terms and conditions under this Agreement, they shall not file any claim for protection from creditors under the United States bankruptcy laws or for similar protection under any state's bankruptcy or receivership laws. If any Defendant files a Petition for Bankruptcy prior to the expiration of 90 days from the date of making all payments due under this Settlement Agreement, Plaintiff may, at his option, void this Agreement.

36. Distributions to Settlement Class Members. Each Settlement Class Member for whom the Class Administrator has a deliverable address (which shall be determined based on whether the Notice is returned undeliverable) shall be paid a single Settlement Award of their pro-rata share of the Settlement Fund based on the total amount they paid in fees.

37. Unclaimed Settlement Funds. Settlement Award checks that are not cashed within 90 days after the issue date on the check shall be voided.

38. Cy pres Award. If there are undistributed amounts remaining in the Settlement Fund after the check-cashing period described in the preceding paragraph and a second distribution is not administratively feasible, the parties agree that these amounts shall be paid to *cy pres* recipients as follows:

- a. 50% to the Legal Foundation of Washington; and
- b. 50% to the Northwest Consumer Law Center.

39. Prospective Relief. As additional consideration, Defendants agree to the following injunctive relief, which shall be included in the Preliminary and Final Approval Orders:

- a. Neither Erik Gantz nor Kevin Tussy shall ever offer or provide to Washington consumers any service involving the submission of consumer credit applications in the consumer's name, nor shall Erik Gantz or Kevin Tussy be an officer or employee of any business offering any service involving the submission of consumer credit applications in consumers' names to consumers in Washington.

#### **IV. AWARDS TO PLAINTIFF AND ATTORNEYS' FEES AND COSTS**

37. Payment to Plaintiff. Plaintiff may move the Court for a service award for his time and effort in connection with this Action. Plaintiff will ask the Court to approve a service award in an amount of not more than \$10,000. The Class Administrator shall issue any approved service award from the Settlement Fund to Plaintiff within two (2) days after the Effective Date.

38. Litigation Expenses and Attorney's Fees. Class Counsel will move the Court for an award of reasonable attorneys' fees and expenses to be paid from the Settlement Fund. Class Counsel will file their motion for an award of attorneys' fees, costs, and service awards to Plaintiff within 30 days of the Settlement Notice Date. Class Counsel shall either directly or indirectly post on the Settlement Website Class Counsel's motion for an award of fees, costs, and service awards within one business day after it is filed with the Court. The Class Administrator shall issue the award of attorneys' fees and expenses from the Settlement Fund to Class Counsel within two (2) days after the Effective Date.

## **VI. PRELIMINARY APPROVAL**

39. Motion for Preliminary Approval. Within thirty (30) days of the execution of this Agreement, Plaintiff will move the Court for entry of an order granting preliminary approval of the settlement and authorizing notice of the Settlement to the Class.

## **VII. ADMINISTRATION AND NOTICE**

40. Class Administrator. The Class Administrator shall be responsible for administration of this Settlement. The Class Administrator shall be allowed to communicate freely with the Parties' counsel, and will provide updates on a monthly basis to and as requested by the Parties' counsel.

41. Payment of Administration and Notice. All costs of administering this Settlement will be paid from the Settlement Fund.

42. Notice and Fund Distribution Plan. The Class Administrator shall provide notice as detailed below within thirty (30) calendar days after the issuance of the Preliminary Approval Order:

- a. The Class Administrator will provide individual Notice through:
  - i. U.S. mail to the most recent address for each Settlement Class Member reflected in the records produced by Defendants in this Action, and corrected through the National Change of Address or equally reliable database.
  - ii. For each Notice returned undeliverable, the Class Administrator shall complete at least one advanced address search or skip trace and re-mail the notice to any new address identified for a Class Member. The Class Administrator may perform additional address searches at the direction of Class Counsel.

- iii. Email to the last known email address for each Settlement Class Member.
  
- b. Settlement Website. Within fourteen (14) calendar days from entry of the Preliminary Approval Order, Class Counsel will also establish and maintain the Settlement Website, which will display, at a minimum, the operative Complaint, Notice, this Settlement Agreement, opt-out form, the class certification order, and the Preliminary Approval Order. Within one business day after Class Counsel files a motion for an award of attorneys' fees, costs and service award to Plaintiff, that motion will also be displayed on the Settlement Website.

### **VIII. OPT-OUT PROCESS**

43. Opt-Out Requirements. Individuals in the Class may exclude themselves from the Settlement by advising the Class Administrator in writing no later than the Opt-Out Deadline that they do not want to be a class member. All such writings must include the name and address of the individual opting out and be postmarked no later than the Opt-Out Deadline. All persons in the Class will be bound by this Settlement and judgments of this Court in this Action unless they exclude themselves in writing by the Opt-Out Deadline. If more than 50 class members opt out of the Settlement, Defendants shall have the right, but not the obligation, to terminate this Agreement.

44. Retention of Opt-Outs. The Class Administrator will retain a copy of all opt-out requests and will provide copies to the Parties' counsel upon request.

### **IX. OBJECTIONS**

45. Right to Object. Any Settlement Class Member who desires to object to the fairness of this Settlement must file a written objection with the Court by the Objection Deadline. The written objection must provide the objector's name, address, and telephone number, and the reason(s) for the objection. If a Class Member submits both an opt-out and an objection to the settlement, the opt-out will be honored and will invalidate the objection.

46. Right to Appear at Final Approval Hearing. Anyone who properly objects, as described herein, may appear at the Final Approval Hearing, including through an attorney hired at the objector's expense. Such objectors or their attorneys intending to appear at the Final Approval Hearing should file a notice of appearance with the Court no later than ten (10) days before the Final Approval Hearing.

### **X. FINAL APPROVAL**

47. Declaration of Notice by Class Administrator. Not later than twelve (12) judicial days before the Final Approval Hearing, the Class Administrator shall provide to the Parties'

counsel a declaration stating that the Notice required by this Settlement Agreement has been completed pursuant to the Preliminary Approval Order.

48. Motion for Final Approval Order. After completion of the Notice Plan and the expiration of the Opt-Out and Objection Deadlines, and no later than nine (9) judicial days before the Final Approval Hearing, Class Counsel shall move the Court to enter the Final Approval Order. Class Counsel's motion will address any valid objections, and Defendants' counsel may, but is not required to, file an additional memorandum in response.

49. Final Approval Order. This Settlement Agreement is subject to and conditioned upon the issuance by the Court of a Final Approval Order that grants approval of this Settlement and:

- a. Finds that the notice under the Notice Plan satisfies the requirements of Due Process and CR 23;
- b. Finds that the Settlement Agreement is fair, reasonable, and adequate to the Settlement Class Members;
- c. Finds that Plaintiff and Class Counsel have adequately represented the Settlement Class Members;
- d. Finds that each Settlement Class Member shall be bound to this Settlement Agreement, including the release and covenant not to sue in Section XI;
- e. Approves this Settlement;
- f. Dismisses on the merits with prejudice all claims of the Settlement Class Members asserted in this Action; and
- g. Retains jurisdiction of all matters relating to the administration, implementation, interpretation, and enforcement of this Settlement.

#### **XI. RELEASE OF CLAIMS**

50. Release. As of the Effective Date, Plaintiff and each Settlement Class Member, their respective heirs, executors, administrators, representatives, agents, attorneys, partners, affiliates, successors, predecessors-in-interest, and assigns hereby release, resolve, relinquish, and discharge forever each of the Released Parties and their respective directors, officers, employees, heirs, executors, administrators, representatives, agents, attorneys, partners, affiliates, successors, parents, subsidiaries, predecessors-in-interest, insurers, and assigns from each of the Released Claims as defined below.



51. Released Claims. The Releasing Parties release all claims based on claims certified by the Court.

## **XII. TERMINATION OF AGREEMENT**

52. The Parties' Right to Terminate Settlement. The Parties shall have the right to unilaterally terminate this Settlement Agreement by providing written notice of its election to do so to the other party within fourteen (14) calendar days of any of the following events:

- a. The Court rejects, materially changes or modifies, or declines preliminary or final approval of the Settlement Agreement. A material change or modification shall include a change to the Settlement Proceeds, the Released Claims, or injunctive relief;
- b. An appellate court reverses the Final Approval Order;
- c. The Effective Date does not occur; or
- d. A party, its counsel or the Class Administrator breaches the terms of this Settlement Agreement prior to the Effective Date.

## **XIII. NO ADMISSION OF LIABILITY**

53. Denial of Liability. Defendants deny any liability or wrongdoing of any kind in connection with the claims alleged in this Action. Defendants have denied and continue to deny each and every material factual allegation in this Action. Nothing in this Settlement Agreement or acts performed in furtherance of this Settlement Agreement shall constitute an admission by Defendants of wrongdoing or liability in this Action. Nothing in this Settlement Agreement or acts performed in furtherance of this Settlement Agreement shall constitute an admission by Defendants of the truth of any factual allegations in this Action. While Defendants deny any liability, they have concluded that further litigating this Action would be expensive and waste time and resources. Thus, Defendants have concluded that it is desirable to fully and finally settle this Action.

54. Washington Rule of Evidence 408. Pursuant to ER 408, this Settlement Agreement and any related documents filed or created in connection with this Settlement Agreement shall be inadmissible as evidence in any proceeding, except as necessary to approve, interpret, or enforce this Settlement Agreement.

## **XIV. GENERAL PROVISIONS**

55. Entire Agreement. This Settlement Agreement and its exhibits constitute the entire agreement between the Parties.

56. Jurisdiction. This Court shall retain continuing and exclusive jurisdiction over the Parties to this Settlement Agreement, including the Settlement Class Members, and the administration and enforcement of this Settlement Agreement.

57. No Construction Against Drafter. This Settlement Agreement will be deemed to have been drafted by the Parties, and any rule that a document shall be interpreted against the drafter will not apply.

58. Authority. Each person executing this Settlement Agreement on behalf of any of the Parties hereto represents that such person has the authority to so execute this Settlement Agreement.

59. No Oral Modifications. This Settlement Agreement may not be amended or modified in any manner except by a writing signed by Defendant and Class Counsel, and approved by the Court.

60. No Assignment. No party to this Settlement Agreement has heretofore assigned, transferred, or granted, or attempted to do so, any of the claims or causes of action disposed of by this Settlement Agreement.

61. Agreement Binding on Successors in Interest. This Settlement Agreement is binding on and shall inure to the benefit of the respective heirs, successors, and assigns of the Parties.

62. Severability; Severance. In the event that any portion of this Agreement is held to be invalid or unenforceable for any reason, it is hereby agreed that such invalidity or unenforceability shall not affect the other portions of this Agreement and that the remaining covenants, terms and conditions or portions hereof shall remain in full force and effect, and any court of competent jurisdiction may so modify the objectionable provision as to make it valid, reasonable and enforceable.

63. Resolution of Disputes. Any disputes regarding the administration of this Settlement Agreement that the Parties cannot resolve between themselves will be decided by the Court.

64. Execution in Counterparts. This Settlement Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

65. Notices. All notices to counsel provided herein shall be sent by electronic mail with a hard copy sent by overnight mail to:

As to Plaintiff and Settlement Class Members:

TERRELL MARSHALL LAW GROUP PLLC  
Beth E. Terrell  
Email: bterrell@terrellmarshall.com  
Blythe H. Chandler  
Email: bchandler@terrellmarshall.com  
936 North 34th Street, Suite 300  
Seattle, Washington 98103-8869  
Telephone: (206) 816-6603  
Facsimile: (206) 319-5450

As to Defendants:

MIX SANDERS THOMPSON, PLLC  
Michael G. Sanders  
Email: michael@mixsanders.com  
1420 Fifth Avenue, Suite 2200  
Seattle, Washington 98101  
Telephone: (206) 521-5989  
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Seattle, Washington 98104  
Telephone: (206) 292-8930  
Facsimile: (206) 386-5130

*Attorneys for Defendant Kevin Tussy*

IN WITNESS HEREOF the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

DOUGLAS PROUDLOVE

By: Douglas Proudlove  
Plaintiff

9-29-2022  
Date

KEVIN TUSSY

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

\_\_\_\_\_  
Date

ERIK GANTZ

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

\_\_\_\_\_  
Date

SEED CONSULTING LLC

By: \_\_\_\_\_  
Defendant  
By Erik Gantz

\_\_\_\_\_  
Date

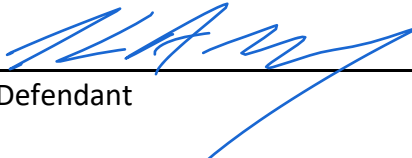
IN WITNESS HEREOF the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.


DOUGLAS PROUDLOVE

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

\_\_\_\_\_  
Date

KEVIN TUSSY

By:   
Defendant

  
\_\_\_\_\_  
Date

ERIK GANTZ

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

\_\_\_\_\_  
Date

SEED CONSULTING LLC

By: \_\_\_\_\_  
Defendant  
By Erik Gantz

\_\_\_\_\_  
Date

IN WITNESS HEREOF the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

DOUGLAS PROUDLOVE

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

\_\_\_\_\_  
Date

KEVIN TUSSY

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

\_\_\_\_\_  
Date

ERIK GANTZ

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

9/28/22  
\_\_\_\_\_  
Date

SEED CONSULTING LLC

By: \_\_\_\_\_  
Defendant  
By Erik Gantz

9/29/22  
\_\_\_\_\_  
Date