

FIRST AMENDED CLASS ACTION SETTLEMENT AGREEMENT

This class action settlement agreement (“Agreement” or “Settlement Agreement”) is entered into as of January 26, 2024 by and among Todd Bobo (“Plaintiff”), individually and on behalf of the class of persons he seeks to represent (the “Settlement Class” defined below), and Clover Network, LLC (“Defendant”). This Settlement Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle this Action (defined below) and the Released Claims (defined below) with prejudice, upon and subject to the terms and conditions of this Agreement, and subject to the final approval of the Court.

RECITALS

WHEREAS, Defendant sells and operates point-of-sale (“POS”) systems for businesses that, among other things, allow these businesses to take payments from their customers.

WHEREAS, Defendant’s POS systems also allow these businesses to engage with their customers via text message by sending digital receipts, marketing promotions, and reward points information.

WHEREAS, Plaintiff contends that he received reward point text messages, sent by or on behalf of Clover or one of Clover’s customers, while his phone number was registered with the national do-not-call registry.

WHEREAS, on July 26, 2022, Plaintiff filed a putative class action complaint against Defendant in the United States District Court for the Southern District of Florida, Case No. 1:22-cv-22338-BB, that alleged that Defendant violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the “TCPA”), and its implementing regulation, 47 C.F.R. § 64.1200, by sending text messages to Plaintiff and members of the putative class whose phone numbers are registered

with the national do-not-call registry (the “Federal Complaint”). On September 19, 2022, Plaintiff dismissed the claims in the Federal Complaint without prejudice.

WHEREAS, on September 21, 2022, Plaintiff filed a putative class action complaint against Defendant in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Case No. 2022-018257-CA-01, containing substantially the same allegations as the Federal Complaint (the “Florida State Complaint”).

WHEREAS, this Action has been actively litigated, with the Parties having engaged in written discovery, exchanging documents and data, investigating the facts and issues related to the allegations asserted in the Action, and briefing and arguing a dispositive motion to dismiss.

WHEREAS, based on their respective discovery and investigatory efforts and the information available to them, the Parties were well versed in the underlying facts and the law, and they had sufficient information to negotiate the terms of this Settlement Agreement.

WHEREAS, on August 4, 2023, the Parties participated in a full-day mediation session in Miami, Florida with Mr. Rodney Max of Upchurch Watson White & Max, an experienced and well-regarded mediator chosen by the Parties, that resulted in this Settlement Agreement.

WHEREAS, this Settlement Agreement resulted from good faith, arm’s-length settlement negotiations after the Parties held separate pre-mediation conference calls with the mediator and Defendant submitted a detailed mediation submission to Mr. Max setting forth its views as to the strengths of its case.

WHEREAS, on August 8, 2023, Plaintiff dismissed the claims in the Florida State Complaint without prejudice, and, thereafter, on August 10, 2023, filed a putative class action complaint against Defendant in the Circuit Court of the Eighteenth Judicial Circuit in and for

DuPage County, Illinois, Case No. 2023CH000168, containing substantially the same allegations as the Florida State Complaint.

WHEREAS, Plaintiff believes that the claims asserted in the Action have merit.

WHEREAS, Defendant denied and continues to deny Plaintiff's allegations in the Complaint and maintains that it complied with the TCPA and all applicable laws. Defendant further maintains that if this Action were to be litigated, the Action would not be appropriate for class treatment.

WHEREAS, the Parties are entering into this Agreement to avoid the expense, time, and risk associated with the continued pursuit of the claims, as well as the defense of the Action through dispositive motions, class certification, trial, and any subsequent appeals. The Parties and their respective counsel have considered the uncertainty, difficulty, and delays inherent in litigation, especially in this complex class action. Therefore, the Parties believe it is desirable that this Action and the Released Claims be fully and finally compromised, settled, dismissed with prejudice, and barred pursuant to the terms set forth herein. Plaintiff and Plaintiff's counsel have concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate for the Settlement Class, and that it is in the best interests of the Settlement Class to settle the Released Claims pursuant to the terms and provisions of this Agreement.

WHEREAS, neither the fact of Settlement, this Agreement, nor any consideration thereof, nor any actions taken to implement the terms of this Agreement are intended to be, nor may they be, deemed or construed to be an admission or concession of liability or of the validity of any claim or of any point of law or fact based upon, arising out of, relating to, or otherwise in connection with the allegations asserted or that could have been asserted in this Action.

WHEREAS, the Parties understand, acknowledge, and agree that the execution of this Settlement Agreement constitutes the settlement and compromise of the disputed allegations, facts, and claims alleged or that could have been alleged in this Action. The Parties further understand, acknowledge, and agree that this Settlement Agreement, including all terms hereof, shall be inadmissible as evidence against any of the Parties in any proceeding whatsoever except any such proceeding to enforce the terms of this Settlement Agreement. The Parties further understand, acknowledge, and agree that this Settlement Agreement is not an admission of wrongdoing or liability on the part of any Party to this Settlement Agreement. The Parties desire and intend to effect a full, complete, and final settlement and resolution of all existing disputes and claims based upon, arising out of, related to, or otherwise in connection with the allegations in this Action, as set forth herein.

IT IS HEREBY STIPULATED AND AGREED by and among the Parties, through their undersigned respective counsel, and in consideration of the benefits flowing from the Settlement Agreement, that the Action and the Released Claims shall be finally and fully compromised, settled, and released, and the Action shall be dismissed with prejudice under the terms and conditions of this Agreement. This Settlement Agreement is subject to final approval by the Court after a hearing or hearings as provided for in this Settlement Agreement. Neither Party admits or concedes any liability or damages based upon, arising out of, related to, or otherwise in connection with the allegations asserted in this Action.

AGREEMENT

As used in this Agreement and the exhibits attached hereto, the terms set forth below shall have the meanings set forth below. The singular of a term shall include the plural of the

term, and the plural of a term shall include the singular of the term. A masculine, feminine, or neutral pronoun shall include each of the other genders.

1. DEFINITIONS

As used in this Settlement Agreement, the following terms have the meanings specified below:

1.1 “**Action**” means collectively the following matters:

a. *Bobo v. Clover Network, LLC*, Case No. 1:22-cv-22338-BB, in the United States District Court for the Southern District of Florida;

b. *Bobo v. Clover Network, LLC*, Case No. 2022-CA-018257-CA-01, in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida; and

c. *Bobo v. Clover Network, LLC*, Case No. 2023CH000168, in the Circuit Court of the Eighteenth Judicial Circuit in and for DuPage County, Illinois.

1.2 “**Agreement**” or “**Settlement Agreement**” means this Class Action Settlement Agreement.

1.3 “**Attorneys’ Fees and Costs**” means the total recovery that may be awarded to Class Counsel to compensate them for all attorneys’ fees, costs, and adequately supported expenses of any kind (including, but not limited to, mediation fees, travel, filing fees, expert fees and costs, and document review and production costs) incurred by Plaintiff or Class Counsel in connection with the Action. The Attorneys’ Fees and Costs shall be paid exclusively from the Settlement Fund.

1.4 “**Cash Benefit**” means the cash payment to a Settlement Class Member from the Settlement Fund pursuant to this Settlement Agreement.

1.5 **“Claim Deadline”** means the post-mark date no later than ninety (90) calendar days after entry of the Preliminary Approval Order, or such other date as may be ordered by the Court.

1.6 **“Claim Form”** means the claim form attached hereto as Exhibit 1, which shall be posted to the Settlement Website and sent via email or mail to Settlement Class Members’ last known addresses as described in this Settlement Agreement.

1.7 **“Class Counsel”** means:

Andrew Shamis
Garrett Berg
SHAMIS & GENTILE, P.A.
14 NE 1st Ave., Suite 705
Miami, FL 33132
Telephone: (305) 479-2299

Scott Edelsberg
Christopher Gold
EDELSBERG LAW, P.A.
20900 NE 30th Ave., Suite 417
Aventura, FL 33180
Telephone: (786) 289-9471

1.8 **“Class Data”** means data sufficient to identify and provide notice to the persons who, according to Defendant’s records, may be Settlement Class Members. This Data currently consists of over 1 million people. Defendant is in the process of refreshing and updating as necessary.

1.9 **“Class List”** means the list of phone numbers in Defendant’s possession that will be provided to the Settlement Administrator to provide Class Notice.

1.10 **“Class Notice”** means any type of notice that has been or will be provided to the Settlement Class pursuant to this Agreement and any additional notice that might be ordered by

the Court, including, but not limited to, the Postcard Notice, Claim Form, and the Long Form Notice.

1.11 **“Class Period”** means the period of time between July 1, 2018 and November 30, 2023.

1.12 **“Class Representative”** or **“Plaintiff”** means Todd Bobo.

1.13 **“Court”** means the Circuit Court of the Eighteenth Judicial Circuit Court in and for DuPage County, Illinois.

1.14 **“Defendant’s Counsel”** means:

Steven D. Allison
Samrah R. Mahmoud
TROUTMAN PEPPER HAMILTON SANDERS LLP
5 Park Plaza, Suite 1400
Irvine, CA 92614
Telephone: (949) 622-2700

Andrew D. Atkins
TROUTMAN PEPPER HAMILTON SANDERS LLP
301 S. College Street
Suite 3400
Charlotte, NC 28202
Telephone: (704) 998-4050

1.15 **“Effective Date”** means the last date by which all of the following events have occurred: (i) the Court entering the Final Approval Order and Judgment without material change; and (ii) the expiration of thirty-five (35) days following entry of the Final Approval Order and Judgment without any appeal, or, in the instance of an appeal or motion to accept jurisdiction of an appeal of the Final Approval Order and Judgment, entry of an order affirming the Final Approval Order and Judgment without material change or denying jurisdiction of an appeal, and

all appeals have been exhausted; and (iii) the Final Approval Order and Judgment has become Final.

1.16 **“Fee Award”** means the amount of attorneys’ fees and reimbursement of costs and litigation expenses awarded by the Court to Class Counsel. The Fee Award shall be paid exclusively from the Settlement Fund.

1.17 **“Final”** means the Final Approval Order and Judgment has been entered in the Action and one (1) business day following the later of the following events: (i) the date upon which the time expires for filing or noticing any appeal of the Court’s Final Approval Order and Judgment; (ii) if there is an appeal or appeals of any matter, topic, ruling, order, or issue in the Action, other than an appeal or appeals solely with respect to the Fee Award, the date of final dismissal or completion of such appeal or appeals in a manner that finally affirms and leaves in place unmodified the Final Approval Order and Judgment; or (iii) the Court, following the resolution of any appeal or appeals of any matter, topic, ruling, order, or issue in the Action, other than an appeal or appeals solely with respect to the Fee Award, enters a further order or orders approving the Settlement without material modification of the terms set forth herein, and no further appeal is taken from such order(s) or, in the event any further appeal is taken from such order(s), any such appeal results in the affirmation of such order(s). Neither the pendency of any motion or decision on the Fee Award, nor any appeal pertaining solely to a decision on the Fee Award, shall in any way delay or preclude the Final Approval Order and Judgment from becoming Final.

1.18 **“Final Approval Hearing”** means the hearing before the Court, scheduled to take place no sooner than one hundred and twenty (120) days after entry of the Preliminary

Approval Order, at which: (i) the Parties shall request and the Court shall consider final approval of the Settlement, final certification of the Settlement Class, and entry of the Final Approval Order and Judgment; (ii) the Court shall consider any timely objection to this Settlement and all responses thereto; (iii) the Court shall consider the Fee and Cost Motion; and (iv) the Court shall dismiss the Action with prejudice.

1.19 **“Final Approval Order and Judgment”** means the Court’s final approval of this Settlement Agreement through an order, substantially in the form of Exhibit 2 attached hereto without material change, to be entered by the Court through the entry of an order following the Final Approval Hearing in which the Court grants final approval of this Settlement Agreement, finally certifies the Settlement Class, and authorizes the entry of a final judgment and dismissal of the Action with prejudice. The form of the Final Approval Order and Judgment is a material term of this Settlement Agreement.

1.20 **“Service Award”** means the payment to the Class Representative pursuant to this Settlement Agreement. The Service Award shall be paid exclusively from the Settlement Fund.

1.21 **“Long Form Notice”** means the notice of this Settlement Agreement and Final Approval Hearing, which is to be provided to the Settlement Class in accordance with this Agreement and substantially in the form of Exhibit 3 hereto, or in such similar form as may be ordered by the Court. The Long Form Notice shall be made available on the Settlement Website.

1.22 **“Maximum Settlement Amount”** means the combined total of funds that shall be used to pay any and all: (i) Settlement Class Recovery to Settlement Class Members; (ii) Fee Award for Attorneys’ Fees and Costs; and (iii) Service Award. In no event shall the Maximum Settlement Amount exceed Fifteen Million Dollars (\$15,000,000.00).

1.23 **“Objection/Exclusion Deadline”** means the date no later than ninety (90) calendar days after entry of the Preliminary Approval Order, or such other date as may be ordered by the Court, by which (i) a written objection to this Settlement Agreement must be filed in the Action, or (ii) a Request for Exclusion must be postmarked. The Objection/Exclusion Deadline shall be posted to the Settlement Website described in this Settlement Agreement.

1.24 **“Parties”** means Plaintiff, the Settlement Class, and Defendant.

1.25 **“Postcard Notice”** means the postcard notice that is to be provided to the Settlement Class in accordance with this Agreement and substantially in the form of Exhibit 4 hereto, or in such similar form as may be ordered by the Court.

1.26 **“Preliminary Approval Order”** means the Court’s preliminary approval of this Settlement through entry of a Court order, substantially in the form of Exhibit 5 attached hereto without material modification, in which the Court: (i) preliminarily approves the terms and conditions of this Settlement Agreement as fair and reasonable; (ii) approves the manner and form of Class Notice; (iii) approves of and authorizes the dissemination of Class Notice to the Settlement Class; (iv) directs the manner in which and deadline by which Settlement Class Members may submit a Request for Exclusion; (v) appoints the Settlement Administrator; and (vi) schedules a Final Approval Hearing. The Form of the Preliminary Approval Order is a material term of this Settlement Agreement.

1.27 **“Release”** means the releases set forth in Section 5 of this Settlement Agreement.

1.28 **“Released Parties”** means Defendant and its respective assigns, heirs, successors, predecessors, parents (including, but not limited to Fiserv, Inc.), subsidiaries, officers, directors, affiliates, clients (including any merchant clients of Defendant), commonly controlled entities,

companies, enterprises, joint ventures, shareholders, members, managers, partners, principals, insurers, investors, attorneys, representatives, employees, and agents.

1.29 **“Releasing Parties”** means Plaintiff and each Settlement Class Member, and their respective assigns, heirs, successors, predecessors, parents, subsidiaries, officers, directors, shareholders, members, managers, partners, principals, representatives, employees, and any other person acting on their behalf.

1.30 **“Request for Exclusion”** means the written submission submitted by any person in the Settlement Class to opt out of the Settlement pursuant to this Settlement Agreement.

1.31 **“Settlement”** means the settlement contemplated by this Agreement, including all exhibits attached hereto.

1.32 **“Settlement Administration Expenses”** means any and all fees, costs, and expenses incurred by the Settlement Administrator, including, but not limited to, such fees, costs, and expenses incurred in disseminating Class Notice, publishing Class Notice, creating, administering, maintaining, and hosting the Settlement Website, and providing Cash Benefits to Settlement Class Members. Settlement Administration Expenses shall be paid exclusively by Defendant as such expenses are incurred, except Class Counsel has agreed to fund \$150,000 of this expense. Specifically, based on reasonable assumptions, the Settlement Administration Expenses are estimated to be between \$730,000 and \$780,000 and Class Counsel has agreed to fund \$150,000 of this cost.

1.33 **“Settlement Administrator”** means Epiq.

1.34 **“Settlement Class”** means all persons in the United States who from July 1, 2018 to November 30, 2023 (1) were sent a text message by or on behalf of Defendant; (2) more than

one time within any 12-month period; (3) where the person's telephone number had been listed on the National Do Not Call Registry for at least thirty days; (4) for the purpose of selling Defendant's and/or Defendants' customers' products and services; and (5) for whom Plaintiff claims the Defendant did not have a prior established business relationship as defined in 47 C.F.R. § 64.1200(f)(5). Excluded from the Settlement Class are (a) any officers, directors or employees, or immediate family members of the officers, directors or employees, of Defendant or any entity in which Defendant has a controlling interest; (b) any legal counsel or employee of legal counsel for Defendant; and (c) the presiding Judge in the Action.

1.35 **“Settlement Class Member”** means Plaintiff and any person who is in the Settlement Class and who has not timely submitted a valid Request for Exclusion by the Objection/Exclusion Deadline pursuant to this Settlement Agreement.

1.36 **“Settlement Class Recovery”** means the amount of the Settlement Fund available for distribution to the Settlement Class Members, after payment of any Fee Award for any Attorneys' Fees and Costs and any Service Award.

1.37 **“Settlement Fund”** means the reversionary fund that shall be used to pay any and all: (i) Settlement Class Recovery to Settlement Class Members; (ii) Fee Award for Attorneys' Fees and Costs; and (iii) Service Award.

1.38 **“Settlement Website”** means the internet website to be created, operated, maintained, and hosted by the Settlement Administrator pursuant to this Settlement Agreement.

1.39 **“TCPA”** means the Telephone Consumer Protection Act, 47 U.S.C. § 227, and any and all rules and regulations promulgated thereunder.

2. NO ADMISSION OF LIABILITY OR ELEMENTS OF CLASS CERTIFICATION

2.1 **Defendant's Denial of Wrongdoing or Liability.** Defendant has asserted and continues to assert many defenses in this Action and has expressly denied and continues to deny any fault, wrongdoing, or liability whatsoever based upon, arising out of, relating to, or otherwise in connection with the conduct alleged in the Action. Defendant expressly denied and continues to deny fault, wrongdoing, or liability whatsoever, as well as the validity of each of the claims and prayers for relief asserted in the Action. Defendant expressly acknowledges and agrees that neither the fact of, nor any provision contained in, this Settlement Agreement, nor any of the implementing documents or actions taken under them, nor Defendant's willingness to enter into the Settlement and this Agreement, nor the content or fact of any negotiations, communications, and discussions associated with the Settlement and this Agreement shall constitute or be construed as an admission by or against Defendant or any of the Released Parties of any fault, wrongdoing, violation of law or liability whatsoever, the validity of the claims or allegations in the Action, or any infirmity of any defenses asserted by the Defendant in the Action.

3. SETTLEMENT RELIEF

3.1 **Settlement Fund.** Defendant agrees to deposit up to the Maximum Settlement Amount of Fifteen Million Dollars (\$15,000,000) into the reversionary Settlement Fund, which Settlement Fund shall be established and maintained by the Settlement Administrator for the benefit of the Settlement Class, Class Representative, and Class Counsel. The Settlement Fund is to be established and maintained for the explicit purpose of issuing and/or paying the Settlement Class Recovery and Cash Benefits with respect to all Settlement Class Members, any Service

Award to the Class Representative, any Fee Award for Attorneys' Fees and Costs to Class Counsel, and any other expenditure authorized by the Court. Defendant shall fund the Settlement Fund with funds sufficient to pay the Settlement Class Recovery and Cash Benefits with respect to all Settlement Class Members, any Service Award to the Class Representative, and any Fee Award for Attorneys' Fees and Costs to Class Counsel, within fifteen (15) days of the Effective Date, provided that, in no event shall Defendant be required to deposit more than the Maximum Settlement Amount into the Settlement Fund.

3.2 All of the monies deposited by Defendant into the Settlement Fund shall be placed into an interest bearing escrow account established and maintained by the Settlement Administrator at a financial institution selected by Defendant. The interest generated on the monies deposited by Defendant into the Settlement Fund shall, if any, accrue to the benefit of the Defendant.

3.3 **Remedial Measures.** Defendant agrees to implement process changes to ensure that individuals' cellular phone numbers are checked against the federal do not call registry and that registered individuals who do not have an established business relationship with Defendant or its customers are removed from telemarketing communications. Such changes shall be implemented prior to the Effective Date of this Settlement.

3.4 **Payments From The Settlement Fund**

a. As soon as practicable, but no later than thirty (30) days after the Effective Date or such other date after the Effective Date as the Court may order, the Settlement Administrator shall pay from the Settlement Fund the Settlement Class Recovery to all Settlement Class Members who file a valid claim pursuant to this Settlement Agreement. The

Settlement Class Administrator shall pay the sum of \$60.00 to each Class Member who files a valid claim, unless the Maximum Settlement Amount is insufficient to pay claims in the amount of \$60.00 to each class member who files a claim after such funds are reduced by the payment of the Service Award and the Fee Award, in which case the claims of those class members who file a claim shall be reduced and paid on a *pro rata* basis.

b. The Settlement Administrator will distribute the Cash Benefit digitally to all Settlement Class Members who file a valid claim pursuant to this Settlement Agreement. The Settlement Administration shall provide a number of digital payment options to Settlement Class Members, such as PayPal, Venmo, Zelle, and Digital Mastercard.

c. Any amount remaining in the Settlement Fund after the payment of the Settlement Class Recovery and Cash Benefits with respect to all Settlement Class Members, any Service Award to the Class Representative, and any Fee Award for Attorneys' Fees and Costs to Class Counsel shall be returned to Defendant. Defendant and the Claims Administrator may agree separately on the form of the return of such funds.

4. CLAIMS PROCESS AND DETERMINATION FOR ELIGIBILITY FOR COMPENSATION FROM CLASS SETTLEMENT RECOVERY

4.1 As described in the Class Notice, any Settlement Class Member who seeks distribution from the Settlement Class Recovery as described in this Settlement Agreement must complete, sign, and return a Claim Form to the Settlement Administrator, which Claim Form shall be available on the Settlement Website or by contacting the Settlement Administrator. The Claim Form must be signed and submitted electronically or postmarked before the Claims Deadline, and sent to the address stated in the Class Notice. Any Settlement Class Member who fails to timely return a completed and signed Claim Form by the Claims Deadline shall not be

eligible to participate in any distribution from the Settlement Class Recovery as described in this Settlement Agreement. Settlement Class Members who timely return a valid completed Claim Form will receive a distribution from the Settlement Class Recovery as described herein.

4.2 The Settlement Administrator shall review all submitted Claim Forms to determine if such forms were signed, timely submitted or postmarked, and otherwise comply with any requirement set forth in this Agreement. The Settlement Administrator shall review all submitted Claim Forms to determine if the submitting person is eligible for distribution from the Settlement Class Recovery under this Agreement by confirming that the submitting person's identity and/or information is reflected on the Class List. As necessary, the Settlement Administrator may contact such submitting persons to gather additional or omitted information in order to determine their eligibility for distribution from the Settlement Class Recovery.

5. RELEASES

5.1 **Released Claims.** Plaintiff and each member of the Class identified on the Class List and not opting out, and their respective assigns, heirs, successors, predecessors, parents, subsidiaries, officers, directors, shareholders, members, managers, partners, principals, representatives, and employees, do hereby release and forever discharge Defendant and the Released Parties from any claims, controversies, losses, liabilities, liens, demands, causes of actions, suits, damages (whether actual, statutory, trebled, exemplary, or punitive), fines, fees (including attorney's fees), expenses, and obligations, whether known or unknown, fixed or contingent, claimed or unclaimed, direct or indirect, individual or representative, arising out of or related to any text messages received from Defendant during the Class Period, including, but not

limited to, claims asserted in the Action or arising out of the facts and circumstances asserted in the Action.

6. NOTICE TO THE CLASS

6.1 Upon entry of the Preliminary Approval Order, Defendant—if it has not already done so—will provide to the Settlement Administrator Class Data sufficient for the Settlement Administrator to identify and provide Notice to the Settlement Class Members.

6.2 Upon entry of the Preliminary Approval Order, the Settlement Administrator shall cause Class Notice to be disseminated to all persons in the Settlement Class as provided herein. Such Class Notice shall comport with 735 Ill. Comp. Stat. 5/2-803 of the Illinois Code of Civil Procedure.

6.3 Class Notice was developed in consultation with the Settlement Administrator and includes:

a. *Reverse Append.* The Settlement Administrator will conduct research to identify the owners of the cell phones contained on the Class List. The Settlement Administrator will then compare the results of such research to the names, addresses, and email addresses associated with these numbers as contained in Defendant's records. The Settlement Administrator will use its research and Defendant's records to provide notice to the individuals associated with the telephone numbers on the Class List.

b. *Emailed Notice.* Subject to the approval of the Court, within sixty (60) calendar days following entry of the Preliminary Approval Order, the Settlement Administrator shall cause a short-form notice, substantially in the form provided in Exhibit 4 hereto, be sent via email to all individuals on the Class List for whom Defendant has email addresses in its records

or for whom Settlement Administrator obtains email addresses through research as set forth in Section 6.2a.

c. *Mailed Notice.* The Settlement Administrator shall also cause a “double” Postcard Notice (i.e., Postcard Notice with a tear-off claims form that class members can mail back), substantially in the form provided in Exhibit 4 hereto, to be mailed first-class U.S. mail, return service requested, to the names and addresses associated with the telephone numbers of the Settlement Class as reflected in the Class List for whom Settlement Administrator obtains email addresses through research as set forth in Section 6.2a. The Settlement Administrator shall perform investigations deemed appropriate by the Settlement Administrator to attempt to identify complete and current address information for each person in the Settlement Class. The Settlement Administrator shall promptly re-mail any Postcard Notice returned as non-deliverable with a forwarding address. For all other returned mail, the Settlement Administrator shall perform data searches of the U.S. Postal Services National Change of Address database and/or any other reasonably available databases available to the Settlement Administrator, and perform any other reasonable steps to obtain current address information for any Postcard Notice returned to the Settlement Administrator, and shall re-mail such Postcard Notice one additional time to the most current address information obtained by the Settlement Administrator. All costs associated with the Postcard Notice, including, but not limited to, all costs of research, address determination and confirmation, data searches, and printing, publishing, mailing, and re-mailing shall be considered Settlement Administration Expenses to be paid by Defendant separate and apart from the Settlement Fund, except that Class Counsel has agreed to fund \$150,000 of this expense as set forth in Section 1.32 of this Agreement.

d. *Settlement Website.* Following entry of the Preliminary Approval Order, but prior to the date of the transmission of the Emailed Notice pursuant to this Settlement Agreement, the Settlement Administrator shall create, maintain, operate, and host a dedicated Settlement Website to assist in the administration of this Settlement. The Settlement Website shall provide persons in the Settlement Class access to copies of the Complaint, this Agreement with all exhibits referenced herein, Class Notice, including, but not limited to, the Long Form Notice and Claim Form, the Motion for Preliminary Approval, and the Preliminary Approval Order. All costs associated with the creation, operation, maintenance, and hosting of the Settlement Website, including the preparation of all documents provided therein, shall be considered Settlement Administration Expenses to be paid by Defendant except as set forth in Section 1.32 of this Agreement. This website will also allow Settlement Class Members to file claims electronically, although any Settlement Class Member will also be able to submit a paper copy of a claim form. Settlement Administrator shall remove the Settlement Website from the Internet promptly if the Settlement is terminated or if the Court denies Final Approval of the Settlement, and, in any event, within ninety (90) Days after the Effective Date.

e. *Toll-Free Telephone Number.* The Settlement Administrator shall establish a toll-free telephone number with IVR only to provide general information about the Settlement. The toll-free telephone number shall be active beginning on the date on which the transmittal of Class Notice commences through the Distribution Date.

6.3 *Declaration of Compliance.* The Settlement Administrator shall prepare and execute a declaration attesting to compliance with the Class Notice requirements of this Agreement and the Preliminary Approval Order. Such declaration shall be provided to Class

Counsel and Defendant's Counsel and filed with the Court no later than ten (10) calendar days prior to the Final Approval Hearing.

7. SETTLEMENT ADMINISTRATION

7.1 The Settlement Administrator shall, under the supervision of the Court, administer the relief provided by this Settlement Agreement by completing its duties in a rational, reasonable, responsive, cost effective, and timely manner. The Settlement Administrator shall maintain reasonably detailed records of its activities under the Settlement and this Agreement. The Settlement Administrator shall maintain all such records as are required by the Court and applicable law in accordance with its normal business practices, including, but not limited to, a summary of work performed by the Settlement Administrator, including an accounting of all amounts paid from the Settlement Fund to Settlement Class Members. Such records shall be provided to Class Counsel and Defendant's Counsel upon reasonable request. Without limiting the foregoing, the Settlement Administrator shall receive objections and Requests for Exclusion forms, and upon such receipt shall promptly provide copies of such objections and Requests for Exclusion forms to Class Counsel and Defendant's Counsel.

7.2 The Settlement Administrator shall be responsible for all matters relating to the administration of this Settlement, including, but not limited to:

- a. Performing a reverse append on the Class List;
- b. Preparing and completing Class Notice;
- c. Obtaining complete email and address information for Settlement Class Members, including new addresses for any returned Class Notice, Cash Benefits, or any other documents;

d. Creating, operating, maintaining, and hosting a Settlement Website, from which Settlement Class Members can access copies of the Complaint, this Agreement, Class Notice, the Preliminary Approval Order, and other pertinent documents, materials, and information about this Settlement;

e. Acting as a liaison between Settlement Class Members and the Parties;

f. Issuing Cash Benefits;

g. Preparing and providing a declaration to Class Counsel and Defendant's Counsel prior to the submission of the Plaintiff's Motion for Final Approval of the Class Action Settlement: (i) attesting to its compliance with the provisions of this Settlement Agreement concerning Class Notice; and (ii) listing each Settlement Class Member who timely and validly submitted a Request for Exclusion opting out of the Settlement as described in Section 12 of this Settlement Agreement;

h. Maintaining a toll-free number with IVR service;

i. Assist in providing supplemental notice if ordered by the Court or agreed by the Parties; and

j. Performing any other tasks reasonably required to effectuate the Settlement and this Agreement, including, but not limited to, all responsibilities, obligations, and tasks referenced in any Section of this Agreement.

7.3 In the exercise of its duties outlined in this Agreement, the Settlement Administrator shall have the right to reasonably request additional information from the Parties or any Settlement Class Member as it relates to the Settlement.

8. EFFECTIVE DATE

8.1 The Effective Date of this Settlement Agreement shall not occur unless and until each of the following events has occurred and shall be the date upon which the last (in time) of the following events occurs:

- a. This Agreement has been signed by Plaintiff, Defendant, Class Counsel, and Defendant's Counsel;
- b. The Court has entered the Preliminary Approval Order;
- c. The Court has entered the Final Approval Order and Judgment, following Class Notice, as provided in the Preliminary Approval Order, and a Final Approval Hearing, as provided in the Illinois Code of Civil Procedure;
- d. The expiration of thirty-five (35) days following entry of the Final Approval Order and Judgment without any appeal, or, in the instance of an appeal or motion to accept jurisdiction of an appeal of the Final Approval Order and Judgment, entry of an order affirming the Final Approval Order and Judgment without material change or denying jurisdiction of an appeal, and all appeals and/or dates to file an appeal have been exhausted; and
- e. The Final Approval Order and Judgment has become Final, as defined in this Settlement Agreement.

9. TERMINATION OF SETTLEMENT

9.1 The Parties' willingness to enter into this Agreement and to agree to the certification of a conditional settlement class is dependent upon achieving finality in this Action and avoiding the uncertainties, risks, costs, and delays associated with this Action. Accordingly, the Parties shall each have the unilateral right to terminate this Agreement, declare it null and

void, and have no further obligations under this Agreement by providing written notice to the Court and all other Parties hereto within twenty (20) business days of any Party's actual notice of any of the following events:

a. the Court rejects, materially modifies, materially amends or changes, or declines to issue a Preliminary Approval Order or a Final Approval Order and Judgment with respect to the Settlement;

b. an appellate court reverses the Final Approval Order and Judgment, and the Settlement is not reinstated without material change by the Court on remand;

c. any court incorporates into, or deletes or strikes from, or modifies, amends, or changes, the Preliminary Approval Order, the Final Approval Order and Judgment, or this Settlement Agreement in a way that Plaintiff or Defendant reasonably considers material, unless such incorporation, deletion, modification, amendment, or change is accepted in writing by all Parties;

d. the Effective Date of the Settlement does not occur for any reason;

e. the Final Approval Order does not become Final; or

f. any other ground for termination provided elsewhere in this Settlement Agreement occurs.

10. PRELIMINARY APPROVAL ORDER

10.1 **Preliminary Approval Order.** Promptly following the execution of this Agreement, Class Counsel shall submit this Agreement together with all exhibits referenced herein to the Court, and shall apply to the Court, and Defendant's Counsel shall file a notice joining such application or otherwise not opposing such application, for entry of the Preliminary

Approval Order in the form of Exhibit 5 hereto. The proposed Preliminary Approval Order shall, among other things:

- a. preliminarily approve this Settlement Agreement (subject to the Final Approval Hearing) as fair and reasonable;
- b. appoint Plaintiff's undersigned counsel as Class Counsel;
- c. appoint Plaintiff as the Class Representative;
- d. appoint Epiq as the Settlement Administrator;
- e. set a schedule for proceedings concerning final approval of this Settlement, including, but not limited to, scheduling a Final Approval Hearing date, which shall be scheduled no earlier than one hundred and twenty (120) days after entry of the Preliminary Approval Order;
- f. approve the manner and form of Class Notice and authorize same for dissemination in accordance with this Agreement;
- g. approve the manner in which and deadline by which persons in the Settlement Class may submit a Request for Exclusion;
- h. schedule a Final Approval Hearing;
- i. provide, pending entry of a Final Approval Order and Judgment, that the Parties shall cooperate in seeking orders that no person in the Settlement Class shall commence or continue any action, in any capacity, against Defendant or any other Released Parties asserting any of the Released Claims;
- j. issue a stay in the Action, other than such proceedings as are related to this Settlement Agreement; and

k. provide Defendant has made no admissions of liability or fault in relation to the negotiation or execution of this Settlement Agreement or any document based upon, arising out of, related to, or otherwise in connection therewith.

The Preliminary Approval Order shall further authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications, and expansions of this Settlement Agreement and its implementing documents, including, but not limited to, all exhibits hereto, so long as such amendments, modifications, and expansions are consistent in all material respects with the proposed terms of the Final Approval Order and Judgment as set forth in Exhibit 2 to this Settlement Agreement.

11. FINAL APPROVAL AND JUDGMENT ORDER

11.1 No later than ten (10) calendar days prior to the Final Approval Hearing, the Settlement Administrator shall file with the Court and serve on Defendant's Counsel a declaration as described in this Settlement Agreement.

11.2 Upon all conditions precedent to the Settlement having been satisfied, including, but not limited to, the issuance of the Preliminary Approval Order, not later than ten (10) calendar days prior to the Final Approval Hearing:

a. All Parties will request, individually or collectively, that the Court enter the Final Approval Order in substantially the form attached as Exhibit 2 hereto;

b. Class Counsel and/or Defendant's Counsel may file a memorandum addressing any objections submitted regarding the Settlement as described in this Settlement Agreement.

11.3 At the Final Approval Hearing, the Court will consider the proposed Final Approval Order and Judgment, which shall, among other things:

- a. certify the Settlement Class for settlement purposes only;
- b. find that the Court has personal jurisdiction over all Settlement Class Members;
- c. find that the Court has subject matter jurisdiction over the Action and the Released Claims such that the Court may approve this Agreement and all exhibits hereto;
- d. find final approval of this Settlement Agreement and the Settlement to be fair, reasonable and adequate as to, and in the best interests of, the Settlement Class Members, and that each Settlement Class Member shall be bound by this Settlement Agreement, including the Released Claims and the covenant not to sue as described in Section 5 of this Settlement Agreement, and that this Settlement Agreement should be and is approved;
- e. direct the Parties and their counsel to implement this Agreement according to its terms and provisions;
- f. declare this Agreement to be binding on, and have preclusive effect on, all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiff, the Settlement Class Members, and the Releasing Parties;
- g. find that the Class Notice as described in this Agreement satisfies the requirements of the Illinois Code of Civil Procedure, the Due Process Clause of the United States Constitution, and all applicable rules of the Court, constitutes the best practicable notice under the circumstances, constitutes notice that is reasonably calculated to apprise the Settlement Class Members of the pendency of the Action, their right to object to or exclude themselves from the

proposed Settlement, and to appear at the Final Approval Hearing, and is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice of the Settlement.

h. find that the Class Representative and Class Counsel adequately represented the Settlement Class for purposes of entering and implementing the Agreement;

i. approve Class Counsel's request for attorneys' fees as reasonable;

j. approve a Service Award to Plaintiff;

k. dismiss the Action, including, without limitation, all Released Claims against the Released Parties, on the merits and with prejudice, without fees or costs to any Party except as provided in this Settlement Agreement;

l. approve and incorporate the releases described in Section 5 of this Agreement, make such releases effective as of the date of entry of the Final Approval Order and Judgment, and forever discharge the Released Parties from the Released Claims as described in Sections 5.1 of this Agreement;

m. without affecting the finality of the Final Approval Order and Judgment, retain jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of this Settlement Agreement; and

n. permanently enjoin each Settlement Class Member from bringing, joining, or continuing to prosecute any Released Claims against Defendant or any of the Released Parties.

11.4 If the Court refuses to issue the Final Approval Order and Judgment in substantially the same form as Exhibit 2, then the Settlement and this Agreement in its entirety

shall become null and void, unless the Parties promptly agree in writing to proceed with the Settlement and this Agreement consistent with the change or modification under which the Settlement and this Agreement is otherwise rendered null and void. In the event the Settlement and this Agreement becomes null and void, the Parties shall be restored without prejudice to their respective litigation positions in the Action prior to execution of this Agreement.

12. OPT-OUTS AND OBJECTIONS

12.1 **Opting Out.** The Class Notice shall contain information about how a person in the Settlement Class may opt-out of the Settlement (*i.e.*, a request to be excluded from the Settlement Class) by mailing a Request for Exclusion by first-class mail, postage prepaid, and postmarked to the address of the Settlement Administrator as specified in the Class Notice. Such Request for Exclusion shall clearly indicate the name, address, telephone number, the name and case number of the Action, a clear and unequivocal statement that the person wishes to be excluded from the Settlement Class, and the signature of such person or, in the case of a person in the Settlement Class who is deceased or incapacitated, the signature of the legally authorized representative of such person. Each written request for exclusion can only request exclusion for the named individual; mass or class exclusions are not permissible.

12.2 **Objections.** The Class Notice shall contain information about how a person in the Settlement Class who does not properly and timely submit a Request for Exclusion pursuant to this Settlement Agreement, may object to the Settlement by filing a written objection with the Court by the Objection/Exclusion Deadline, with a copy served on the Settlement Administrator, at the address provided in the Class Notice, which written objection must contain the following:

a. the full name, address, telephone number, and personal signature of the objecting Settlement Class Member;

b. the specific reasons for the objecting Settlement Class Member's objection to the Settlement, and a detailed statement of the factual and legal basis for such objections;

c. the identity of all witnesses, including the witness's name and address, and a summary of such witness's proposed testimony, who the objecting Settlement Class Member may call to testify at the Final Approval Hearing, and describe and produce copies of all evidence such objecting Settlement Class Member may offer at the Final Approval Hearing;

d. a statement identifying the number of class action settlements objected to by the Settlement Class Member in the last three years, and listing those cases by case name and number; and

e. a statement whether the objecting Settlement Class Member and/or his/her/its attorney(s) intend to appear at the Final Approval Hearing. Any attorney of an objecting Settlement Class Member who intends to appear at the Final Approval Hearing must enter a written Notice of Appearance of Counsel with the Clerk of the Court no later than the date set by the Court in its Preliminary Approval Order and shall include the full caption and case number of each previous class action case in which such counsel has represented an objector. If the objecting Settlement Class Member is represented by counsel and such counsel intends to speak at the Final Approval Hearing, the written objection must include a detailed statement of the specific legal and factual basis for each and every objection and a detailed description of any and all evidence the objecting Settlement Class Member may offer at the Final

Approval Hearing, including copies of any and all exhibits that the objecting Settlement Class Member may introduce at the Final Approval Hearing.

13. CLASS COUNSEL’S FEE AWARD AND COST REIMBURSEMENT; SERVICE AWARD.

13.1 **Attorneys’ Fees and Costs.** Class Counsel will request, and Defendant will not oppose, an award of Attorneys’ Fees and Expenses of 22.5% of the capped cash amount of \$15,000,000.00 but not to exceed \$3,375,000.00, to be paid by Defendant from the Settlement Fund. Class Counsel shall be responsible for allocating and shall allocate among Class Counsel any Attorneys’ Fees and Expenses, and Defendant shall have no responsibility, role, or liability in connection with such allocation. All Attorneys’ Fees and Expenses shall be paid to Class Counsel within thirty (30) days of the Effective Date.

13.2 **Service Award.** Class Counsel will request, and Defendant will not oppose, a Service Award not to exceed Five Thousand Dollars and Zero Cents (\$5,000.00) for Plaintiff, to be paid by Defendant from the Settlement Fund. If the Court awards the Service Award, Defendant will deliver to Class Counsel a check made payable to Plaintiff within fifteen days of the Effective Date. .

14. MISCELLANEOUS PROVISIONS

14.1 The Parties (a) acknowledge that it is their intent to consummate this Settlement Agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise reasonable efforts to accomplish the foregoing terms and conditions of this Agreement. Class Counsel and Defendant’s Counsel agree to cooperate with one another in seeking Court approval of the Preliminary Approval Order, the Settlement Agreement, and the

Final Approval Order and Judgment, and to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Agreement.

14.2 The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Plaintiff and the Settlement Class, and each or any of them, on the one hand, against the Released Parties, and each or any of the Released Parties, on the other hand.

14.3 The Parties have relied upon the advice and representation of their respective counsel concerning their respective legal liability for the claims hereby released. The Parties have read and understand fully the above and foregoing Agreement and have been fully advised as to the legal effect thereof by counsel of their own selection and intend to be legally bound by the same.

14.4 Unless the context of this Agreement requires otherwise, the plural includes the singular, the singular includes the plural, and “including” has the inclusive meaning of “including without limitation.” The words “hereof,” “herein,” “hereby,” “hereunder,” and other similar terms of this Agreement refer to this Agreement as a whole and not exclusively to any particular provision of this Agreement. All pronouns and any variations thereof will be deemed to refer to masculine, feminine, or neuter, singular, or plural, as the identity of the person or persons may require.

14.5 The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Agreement.

14.6 Except as otherwise provided herein, each Party shall bear its own costs and attorneys’ fees.

14.7 Each counsel or other Party executing this Settlement Agreement, any of its exhibits, or any related settlement documents on behalf of any Party hereto hereby warrants and represents that such Party has the full authority to do so and has the authority to take appropriate action required or permitted to be taken pursuant to the Agreement to effectuate its terms.

14.8 This Agreement may be executed by the Parties 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. Facsimile signatures or scanned and e-mailed signatures shall be treated as original signatures and shall be binding.

14.9 This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors, representatives, and assigns of the Parties, the Settlement Class Members, and the Released Parties.

14.10 This Agreement, the exhibits hereto, and the terms and conditions herein constitute the entire agreement between the Parties. No representations, warranties, or inducements have been made to any of the Parties, other than those representations, warranties, and inducements contained in this Agreement.

14.11 This Agreement shall be governed by the laws of the United States and, to the extent there is no applicable federal law, the laws of the state of Illinois.

14.12 This Agreement may not be amended, modified, altered, or otherwise changed in any manner, except by a writing signed by all of the Parties and approved by the Court.

14.13 Unless otherwise stated herein, any notice to the Parties required or provided under this Agreement shall be in writing and may be sent by electronic mail, overnight delivery

by a national recognized courier service (*i.e.*, UPS, FedEx, or the equivalent), or hand delivery as follows:

a. If to Class Counsel:

Andrew Shamis
Garrett Berg
SHAMIS & GENTILE, P.A.
14 NE 1st Ave., Suite 705
Miami, FL 33132
Telephone: (305) 479-2299

Scott Edelsberg
Christopher Gold
EDELSBERG LAW, P.A.
20900 NE 30th Ave., Suite 417
Aventura, FL 33180
Telephone: (786) 289-9471

b. If to Defendant's Counsel:

Steven D. Allison
Samrah R. Mahmoud
TROUTMAN SANDERS LLP
5 Park Plaza, Suite 1400
Irvine, CA 92614
Telephone: (949) 622-2700

Andrew D. Atkins
TROUTMAN PEPPER HAMILTON SANDERS LLP
301 S. College Street
Suite 3400
Charlotte, NC 28202
Telephone: (704) 998-4050

14.14 This Agreement is deemed to have been prepared by counsel for all Parties, as a result of arm's-length negotiations among the Parties with the aid of a neutral mediator. Whereas all Parties have contributed substantially and materially to the preparation of this Agreement, it shall not be construed more strictly against one Party than another.

14.15 The Court shall retain exclusive and continuing jurisdiction over this Agreement and over all Parties and Settlement Class Members to interpret, effectuate, enforce, and implement this Agreement. The Court shall have exclusive jurisdiction to resolve any disputes involving this Agreement.

14.16 No Party will make public statements about the Settlement (including specifically the amount of the Settlement), except to the extent contained in materials available to the public in the Court's files.

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed.

Class Counsel, For Plaintiff and the Settlement Class:

Garrett Berg

Date: Jan. 26, 2024


Todd Bobo (Jan 26, 2024 16:13 EST)

Jan 26, 2024

For Defendant:

Clover Network, LLC
Authorized Representative

Date: _____

Printed Name and Title

Defendant's Counsel:

Date: _____







Final Bobo v. Clover - Amended Class Settlement Agreement

Final Audit Report

2024-01-26

Created:	2024-01-26
By:	Garrett Berg, Esq. (gberg@shamisgentile.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAyA8pLC3_kZ94pJGI4pGCJ8Qypi7XHML-

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