

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Agreement”) is entered into as of the date of the last signature hereto once fully executed (the “Effective Date”) by and between Ignacio Perez (“PEREZ”, as defined further below), KBR, Inc., d/b/a Rash Curtis & Associates (“RASH CURTIS”, as defined further below), and Indian Harbor Insurance Company (“INDIAN HARBOR”, as defined further below). The above-identified parties are sometimes individually referred to as “Party” or collectively referred to as the “Parties.”

RECITALS

A. WHEREAS, INDIAN HARBOR issued policies of insurance to RASH CURTIS (the “Policies”, as defined further herein);

B. WHEREAS, on June 17, 2016, Ignacio Perez and two other plaintiffs, on behalf of themselves and a putative class, filed a Class Action Complaint against RASH CURTIS, alleging violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*, among other statutes, in Case Number 4:16-cv-03396-YGR, filed in the United States District Court for the Northern District of California (the “Underlying Lawsuit”, as defined further herein);

C. WHEREAS, on September 6, 2017, the court granted class certification and appointed Ignacio Perez as the Class Representative in the Underlying Lawsuit [ECF No. 81];

D. WHEREAS, on May 13, 2019, the jury in the Underlying Lawsuit returned a verdict in favor of Ignacio Perez and the four certified classes that Ignacio Perez represented [ECF No. 347];

E. WHEREAS, on September 9, 2019, the court in the Underlying Lawsuit entered Final Judgment, consistent with the jury’s verdict, ordering that each member of the classes shall recover from RASH CURTIS the amount of \$500 per call made in violation of the TCPA for an aggregated award in favor of the classes of \$267,349,000 and, as to Ignacio Perez’s individual claim under the TCPA, ordering that Ignacio Perez, individually, shall recover \$500 per call made in violation of the TCPA for an aggregate award in favor of Ignacio Perez individually of \$7,000, with post-judgment interest on the jury’s award at a rate of 2.36% per annum [ECF No. 370];

F. WHEREAS, on May 4, 2020, after post-judgment motions, the court in the Underlying Lawsuit entered an amended Final Judgment in favor of the classes and against RASH CURTIS for \$267,349,000, with post-judgment interest on the jury’s award at a rate of 2.36% per annum running from September 9, 2019, and awarding class counsel Bursor & Fisher, P.A., attorneys’ fees of 33.33 percent of the award (\$89,116,333.33) [ECF No. 430];

G. WHEREAS, on October 11, 2019, RASH CURTIS entered into an “Assignment of Cause of Action in Exchange for Covenant Not to Execute” with Ignacio Perez, on behalf of himself and the certified class in the Underlying Lawsuit (“Assignment”, as defined further herein), which provided in Paragraph 40 as follows:

In consideration of Perez's covenants and undertakings hereunder, RASH CURTIS HEREBY ASSIGNS AND TRANSFERS TO PEREZ all claims and causes of action Rash Curtis may have or hereafter acquire against XL based on XL's failure and refusal to settle with Perez as hereinabove recited, except any claim for emotional distress or punitive damages against XL based on said acts.

H. WHEREAS, on October 17, 2019, plaintiff in the Underlying Lawsuit filed a Notice of Motion and Motion to Approve the October 11, 2019 Assignment [ECF No. 386];

I. WHEREAS, on October 25, 2019, the court in the Underlying Lawsuit entered an Order to Approve the October 11, 2019 Assignment pursuant to Fed. R. Civ. P. 23(d)(1)(C), subject to the following two conditions:

(1) Plaintiff, through Class Counsel, shall promptly notify the Court of the recovery, if any, obtained on behalf of Class Members as a result of the Assignment; and

(2) Any recovery obtained as a result of the Assignment shall be held in trust until this Court approves a fair, reasonable, and adequate method for distributing the proceeds of the recovery to Class Members.

[ECF No. 392];

J. WHEREAS, on November 5, 2019, PEREZ filed a lawsuit against INDIAN HARBOR, styled *Perez v. Indian Harbor Insurance Company, et al.*, Case No. 4:19-cv-07288-YGR, in the United States District Court for the Northern District of California ("Bad Faith Lawsuit", as defined further herein);

K. WHEREAS, after motions, PEREZ filed an Amended Complaint in the Bad Faith Lawsuit on May 18, 2020, with a single cause of action for Breach of Contract, based on INDIAN HARBOR's alleged breach of Policy No. MPP9032852, "including but not limited to the implied covenant of good faith and fair dealing" based on an alleged "bad faith failure to settle a class action lawsuit within policy limits and refusal to negotiate settlement" and attaching the Assignment as Exhibit 1 to the Amended Complaint;

L. WHEREAS, INDIAN HARBOR filed an Answer on June 1, 2020 and an Amended Answer on June 22, 2020 in the Bad Faith Lawsuit;

M. WHEREAS, PEREZ and INDIAN HARBOR have completed fact and expert discovery in the Bad Faith Lawsuit;

N. WHEREAS, INDIAN HARBOR disputes that it is liable to PEREZ or RASH CURTIS in the Bad Faith Lawsuit, the Underlying Lawsuit or otherwise;

O. WHEREAS, the Parties wish to resolve the disagreements between them asserted in, based upon, arising out of, or in any way involving or relating to the Underlying Lawsuit, Bad Faith Lawsuit, the Assignment, or the Policies, and the Parties shall each release, discharge, acquit,

compromise, and settle all Claims against one another asserted in, based upon, arising out of, or in any way involving or relating to the Underlying Lawsuit, the Bad Faith Lawsuit, the Assignment, or the Policies.

AGREEMENT

NOW, THEREFORE, based on the foregoing Recitals, and in consideration of the mutual covenants, promises and agreements reflected herein, the Parties hereto agree as follows:

1. Recitals. The Parties incorporate the foregoing Recitals and the facts set forth therein and expressly make those facts a substantive part of this Agreement.

2. Definitions. The following terms shall have the following meanings solely for the purposes of this Agreement:

- a. "INDIAN HARBOR" means: (i) Indian Harbor Insurance Company; (ii) X.L. America, Inc.; (iii) XL Group, Ltd.; (iv) any past, present, and future affiliates, direct and indirect parents, subsidiaries, divisions, partners, owners and principals of any of the foregoing listed in (i) through (iii) of this paragraph; (v) any past, present, and future officers, directors, employees, agents, representatives, partners, owners, principals, members, shareholders, insurers, and attorneys of any of the foregoing listed in (i) through (iv) of this paragraph; and (vi) any past, present, and future predecessors, successors, beneficiaries, heirs, assigns, executors, trustees, and administrators of any of the foregoing listed in (i) through (v) of this paragraph.
- b. "PEREZ" means: (i) Ignacio Perez; on behalf of himself and the certified classes as defined in the Final Judgment in the Underlying Lawsuit; (ii) Ignacio Perez's attorneys or other representatives; (iii) any of Ignacio Perez's beneficiaries, heirs, assigns, executors, trustees, and administrators; (iv) Omni Bridgeway (Fund 4) Invt. 5 L.P.; (v) any past, present, and future affiliates, direct and indirect parents, subsidiaries, divisions, partners, owners and principals of Omni Bridgeway (Fund 4) Invt. 5 L.P.; (vi) any past, present, and future officers, directors, employees, agents, representatives, partners, owners, principals, members, shareholders, insurers, and attorneys of any of the foregoing listed in (iv) and (v) of this paragraph; and (vii) any past, present, and future predecessors, successors, beneficiaries, heirs, assigns, executors, trustees, and administrators of any of the foregoing listed in (iv) through (vi) of this paragraph.
- c. "RASH CURTIS" means: (i) KBR, Inc., d/b/a Rash Curtis & Associates; (ii) any past, present, and future affiliates, direct and indirect parents, subsidiaries, divisions, partners, owners and principals of any of the foregoing listed in (i) of this paragraph, including but not limited to any person or entity listed or named as a named insured, insured, or additional insured in the Policies and any person or entity that is, was, or may claim to be a named insured, insured, or additional

insured under or arising out of the Policies or otherwise claims any coverage, rights, or benefits under or arising out the Policies; (iii) any past, present, and future officers, directors, employees, agents, representatives, partners, owners, principals, members, shareholders, and attorneys of any of the foregoing listed in (i) or (ii) of this paragraph, including but not limited to any person or entity listed or named as a named insured, insured, or additional insured of the Policies and any person or entity that is, was, or may claim to be a named insured, insured, or additional insured under or arising out of the Policies or otherwise claims any coverage, rights, or benefits under or arising out of the Policies; and (iv) any past, present, and future predecessors, successors, beneficiaries, heirs, assigns, executors, trustees, and administrators of any of the foregoing listed in (i), (ii), or (iii) of this paragraph.

- d. “Assignment” means the October 11, 2019 “Assignment of Cause of Action in Exchange for Covenant Not to Execute” between PEREZ and RASH CURTIS (and any prior version of such assignment), and all allegations and claims asserted in or that could have been asserted in same and the Court Order in the Underlying Lawsuit granting the Motion to Approve the October 11, 2019 Assignment [ECF No. 392].
- e. “Bad Faith Lawsuit” means *Perez v. Indian Harbor Insurance Company, et al.*, Case No. 4:19-cv-07288-YGR, filed in the United States District Court for the Northern District of California, and all allegations, causes of action, or claims asserted in or that could have been asserted in same.
- f. “Claims” means the assertion of any right, including but not limited to any and all actual or potential, threatened or alleged, past, present, or future claims, actions, counts, cross-claims, counter-claims, third party claims, rights, obligations, liabilities, duties, demands, requests, lawsuits, petitions, administrative proceedings, notices, letters, statutory or regulatory obligations, orders, directives, arbitrations, mediations, controversies, agreements, promises, representations, causes of action and any other assertions of liability, obligations, judgments, damages, costs, fees (including attorneys’ fees), expenses, interest (including prejudgment or post-judgment interest), or interests or demands of any type, nature, or kind, whether legal or equitable, and whether currently known or unknown, fixed or contingent, mature or not mature, liquidated or unliquidated, direct or consequential, foreseen or unforeseen and whether sounding in tort, contract, equity, nuisance, trespass, negligence, strict liability, product liability or any other statutory, regulatory, administrative or common law cause of action of any type, nature, or kind.
- g. “Class Counsel” means the firm Bursor & Fisher, P.A. and each and every attorney who worked on or is working on the Underlying Lawsuit on behalf of plaintiffs and the classes’ members in that lawsuit including, without limitation, Scott Bursor, Timothy Fisher, and Yeremey Krivoshey.

- h. “Defense Counsel” means: (1) the firm Ellis Law Group LLP and each and every attorney from that firm who worked on or is working on the Underlying Lawsuit on behalf of RASH CURTIS, including without limitation Mark Ellis, Anthony Valenti, Amanda Griffith, and Andrew Steinheimer; and (2) the firm Horvitz & Levy LLP and each and every attorney from that firm who worked on or is working on the Underlying Lawsuit on behalf of RASH CURTIS, including without limitation Robert Wright, Felix Shafir, and Rebecca Powell.

- i. “Payment Trigger Date” means the date when all of the following events have occurred: (a) the Agreement has been executed by all Parties; (b) INDIAN HARBOR receives a W-9 and wire information for the Administrator to which the Settlement Amount is to be paid; and (c) the court in the Underlying Lawsuit enters an Approval Order as specified in section 4 and the order becomes final. The Approval Order becomes “final” for purposes of this Agreement when the later of the following events occurs: (1) in the event there are no objections to the motion for distribution approval, the day the court issues an order granting approval; (2) in the event an objection to the motion for distribution approval is made, the period for filing any appeal, writ, or other appellate proceeding opposing the Approval Order has elapsed without any appeal, writ, or other appellate proceeding having been filed; (3) any appeal, writ, or other appellate proceeding opposing the Approval Order has been dismissed finally and conclusively with no right by any appellant or objector to pursue further remedies or relief; or (4) any appeal, writ, or other appellate proceeding has upheld the Approval Order with no right by any appellant or objector to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Agreement shall not require payment until the court’s Approval Order is completely final, and there is no further recourse by an appellant or objector who seeks to contest the Approval Order. The occurrence of the Payment Trigger Date is a prerequisite to any obligation of INDIAN HARBOR to pay the Settlement Amount.

- j. “Policies” means: (1) Policy No. MPP9032852 issued by Indian Harbor Insurance Company to “KBR, INC. DBA RASH CURTIS & ASSOCIATES”, in effect November 1, 2015 to November 1, 2016; (2) Policy No. MPP903285201 issued by Indian Harbor Insurance Company to “KBR, INC. DBA RASH CURTIS & ASSOCIATES”, in effect November 1, 2016 to November 1, 2017; (3) Policy No. MPP903285202 issued by Indian Harbor Insurance Company to “KBR, INC. DBA RASH CURTIS & ASSOCIATES”, in effect November 1, 2017 to November 1, 2018; (4) Policy No. MPP903285203 issued by Indian Harbor Insurance Company to “KBR, INC. DBA RASH CURTIS & ASSOCIATES”, in effect November 1, 2018 to November 1, 2019; and (5) any other insurance policies issued at any time by INDIAN HARBOR to KBR, Inc. dba Rash Curtis & Associates.

- k. “Underlying Lawsuit” means *McMillion, et al. v. Rash Curtis & Associates*, Case No. 4:16-cv-03396-YGR, filed in the United States District Court for the

Northern District of California, and the appeal of same, Case No. 20-15946, filed in the United States Court of Appeals for the Ninth Circuit, and all allegations, causes of action, or claims asserted in or that could have been asserted in same.

3. Cash Consideration.

a. INDIAN HARBOR shall pay \$75,600,000 (the “Settlement Amount”), to be held in trust by PEREZ through the class action administrator approved in the Underlying Lawsuit (the “Administrator”) within 21 calendar days after the Payment Trigger Date. PEREZ agrees to accept the Settlement Amount as full satisfaction of the Final Judgment in the Underlying Action. Such payment will exhaust any and all remaining limits of liability of Policy No. MPP9032852, and the Parties agree that Policy No. MPP9032852 shall have no further payment obligations after such payment.

b. No monetary payment will be made by INDIAN HARBOR to RASH CURTIS.

4. Requirement of Approval Order. Within 10 business days of this Agreement being fully executed by all Parties, PEREZ shall file in the Underlying Lawsuit a notice of motion and motion for the court to approve the distribution of the Settlement Amount (“Motion”). The Motion shall request an order that is final and appealable (“Approval Order”), making the following findings: (1) confirmation of the prior approval of the Assignment; (2) approval that PEREZ’s entry into this Agreement as fiduciary and class representative for the class was authorized and fair, reasonable, and equitable; (3) approval of the Administrator for distribution of the Settlement Amount; (4) approval of plan for distribution of the Settlement Amount as fair, reasonable and adequate; (5) determination that the Final Judgment is deemed satisfied upon the Administrator’s receipt of the Settlement Amount; and (6) dismissal of the Bad Faith Lawsuit with prejudice, per the Agreement. RASH CURTIS shall file a statement of joinder to the Motion.

5. Nullification of the Agreement. If:

a. the court in the Underlying Lawsuit should for any reason decline to approve or issue the Approval Order as set forth in section 4 or approval of the Approval Order is reversed, modified, or declared or rendered void; or

b. any appeal of the Approval Order is filed, and within 30 days thereafter PEREZ gives notice of his election to nullify this Agreement;

then the Agreement shall be considered null and void, and neither the Agreement nor any of the related negotiations or proceedings shall be of any force or effect, and the Parties shall stand in the same position, without prejudice, as if the Agreement had never been entered. Notwithstanding the foregoing, the Parties may attempt in good faith to cure any

perceived defects to facilitate approval or otherwise amend this Agreement to address such developments.

6. Disposition of Lawsuits.

- a. Within 5 business days of the Effective Date, PEREZ and INDIAN HARBOR agree to file a stipulation and proposed order: (1) vacating the trial date and all pre-trial dates in the Bad Faith Lawsuit, to be reset if this Agreement becomes null and void; and (2) for dismissal of the Bad Faith Lawsuit with prejudice, with each side to bear its own fees and costs (including the costs of each side's experts that were deposed by the other side) as between each other, that shall become effective and will be entered by the court upon notice of the Administrator's receipt of the Settlement Amount.
- b. Within 5 business days of the Effective Date, RASH CURTIS and INDIAN HARBOR shall direct Defense Counsel to notify the Ninth Circuit Court of Appeals of a contingent settlement pursuant to the Agreement and to request a postponement of oral argument in the pending appeal of the Underlying Lawsuit. RASH CURTIS and INDIAN HARBOR agree to dismiss the pending appeal of the Underlying Lawsuit within 5 business days after notice of the Administrator's receipt of the Settlement Amount.
- c. Within 5 business days of the Effective Date, RASH CURTIS shall retain independent defense counsel for the trial court proceedings in the Underlying Lawsuit and have such counsel substitute in as counsel of record in the trial court in place of Defense Counsel that currently are counsel of record in such court. INDIAN HARBOR agrees to pay RASH CURTIS's choice of independent counsel for the reasonable and necessary amounts incurred in defending RASH CURTIS in the Underlying Lawsuit through conclusion of that lawsuit, provided such amounts do not exceed \$25,000 and consistent with section 3.a., *above*, all invoices are received at least 21 calendar days before the Settlement Amount is due to be paid. Such amounts shall be invoiced monthly, and payment shall be due within 30 days of INDIAN HARBOR's receipt of such invoice. In no event will INDIAN HARBOR have any obligation to pay for the defense of RASH CURTIS by its choice of independent counsel as provided in this paragraph in excess of \$25,000.

7. Release.

- a. Each of the Parties hereby fully and forever releases, acquits, and discharges each other Party, Class Counsel, and Defense Counsel from, and covenants not to sue (except as necessary to enforce this Agreement) each other Party, Class Counsel, and Defense Counsel for, any and all Claims that the releasing Party had, now has, or hereafter may have, that are asserted in, based upon, arise out of, or in any way involve or relate to the Underlying Lawsuit, the Bad Faith Lawsuit, the Assignment, or the Policies, including but not limited to any and

all Claims for (i) any coverage, rights, breaches, or benefits under or arising out of the Policies asserted in, based upon, arising out of, or in any way involving or relating to the Underlying Lawsuit, the Bad Faith Lawsuit, or the Assignment, or (ii) any act, error, omission, breach of contract, breach of promise, breach of duty (including but not limited to any duty of good faith and fair dealing, fiduciary duty, statutory, regulatory, administrative, or common law duty), fraud, bad faith, unfair or deceptive insurance or trade practices, extra-contractual, or misconduct of any type, nature, or kind in any handling, evaluating, investigating, adjusting, litigating, or resolving the Underlying Lawsuit, including without limitation as asserted in, based upon, arising out of, or in any way involving or relating to the Underlying Lawsuit, the Bad Faith Lawsuit, the Assignment, or the Policies.

- b. Each of the Parties understands, acknowledges, and agrees that this Agreement shall be effective as a full, final, and complete release and accord and satisfaction of each and every Claim asserted in, based upon, arising out of, or in any way involving or relating to the Underlying Lawsuit, Bad Faith Lawsuit, the Assignment, or the Policies, except as specifically set forth in this Agreement. In furtherance of this intention and except as set forth in section 7.c., *below*, each of the Parties expressly waives and releases any and all rights that each of the Parties had, now has, or hereafter may have under Section 1542 of the California Civil Code and any similar rights that existed, now exist, or hereafter may exist in any other state, jurisdiction, or territory or under any other court decision, statute, regulation, or law.

Section 1542 of the California Civil Code provides in relevant part as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Each of the Parties understands, acknowledges, and agrees to the significance and consequences of this waiver. Each of the Parties further understands, acknowledges, and agrees that this waiver is an essential and material term of this Agreement, and that this Agreement would not have been entered by the Parties without this waiver. As a result, each of the Parties hereby assumes full responsibility for this waiver, and hereby fully and forever releases, acquits, and discharges any and all, Claims that may hereafter occur or arise or that later become known to the Party.

Each of the Parties understands, acknowledges, and agrees that each of the Parties is aware that facts or circumstances may hereafter be discovered or exist

in addition to or different from those now known or believed to be true with respect to this Agreement, but that it is the intention of each of the Parties to enter into the releases in this Agreement, and thus all such releases shall remain in effect as full, final, and complete releases notwithstanding any such later discovery or existence of any such additional or different fact or circumstance.

Each of the Parties understands, acknowledges, represents, and agrees that this waiver was separately bargained for and that each of the Parties has consulted with counsel of its choice regarding this waiver. Each of the Parties understands, acknowledges, represents, and agrees that this waiver shall be given full force and effect in accordance with each and every term and condition of this waiver, including but not limited to those terms and conditions relating to the waiver of unknown or unsuspected Claims.

- c. Notwithstanding the foregoing, the releases above shall not include nor be construed to include any release by or of the other members of the four certified classes in the Underlying Lawsuit.
- d. Each of the Parties hereby represents and warrants that: (i) each of the Parties has the sole, full, and complete right, interest, authority, control, and capacity as to any and all of the Claims, including but not limited to sole, full, and complete right, interest, authority, control, and capacity as to any and all Claims asserted in, based upon, arising from, or in any way involving or relating to the Underlying Lawsuit, the Bad Faith Lawsuit, the Assignment, or the Policies; (ii) no other person or entity, including but not limited to any creditor, lienholder, or attorney, has any right, interest, authority, control, or capacity as to any Claims or the Underlying Lawsuit, the Bad Faith Lawsuit, the Assignment, or the Policies; (iii) each of the Parties has the sole, full, and complete right, interest, authority, control, and capacity as to execution of this Agreement on behalf of all of the persons and entities described as above with respect to each Party; and (iv) each of the Parties has not in any manner assigned, pledged or otherwise transferred to any person or entity any right, interest, authority, control, or capacity as to any Claims or the Underlying Lawsuit, the Bad Faith Lawsuit, the Assignment, or the Policies, except that this provision does not apply to the Assignment itself or the litigation funding agreement with Omni Bridgeway (Fund 4) Invt. 5 L.P.

8. Fair Settlement. The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Bad Faith Lawsuit, and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.

9. Acknowledgment – Representations and Warranties. Each of the Parties specifically represents and warrants to each of the other Parties that it has not been induced to enter into this Agreement by any act, omission, statement, or representation of any type, nature, or kind, other than any matter, statement, or representation specifically stated in writing in this Agreement.

Each Party has read this Agreement and understands its terms, conditions, and provisions. No Party, nor any of its officers, directors, employees, attorneys, agents, representatives, partners, principals, shareholders, administrators, or trustees, has made any representations or warranties not contained in writing in this Agreement to another Party. This Agreement has been negotiated at arms-length between persons knowledgeable in the matters dealt with herein and in any rights each may have.

10. Non-Admission of Liability.

- a. It is expressly understood, acknowledged, and agreed by the Parties that (a) entering into this Agreement, and (b) each of the terms, conditions, and provisions of this Agreement (including the releases of any Claims), constitute the compromise of disputed Claims as between the Parties, and the compromise is made solely for the purpose of avoiding the risk, time and expense involved in further prosecution or defense of any Claims released in this Agreement. It is further expressly understood and agreed by the Parties that (a) the fact that the Parties have entered into this Agreement, and (b) any of the terms, conditions, or provisions of this Agreement (including the releases of any Claims), are not intended to be, and shall not be, construed as an admission of liability on the part of any Party, or an admission of liability with respect to any Claims released herein.
- b. The Parties expressly understand, acknowledge, and agree that this settlement is a compromise of disputed allegations and is not to be construed as an admission of liability on the part of INDIAN HARBOR for any purpose, by whom liability is expressly denied. The Parties further understand, acknowledge and agree that this compromise and settlement carries no precedential value and shall not be treated or viewed as precedent-setting in any way in the adjustment of any potential present or future Claims, including but not limited to any potential Claims that present facts and circumstances that are the same or similar to the facts and circumstances presented by the subject Claims. This Agreement and the settlement which led to it are entirely without prejudice to the future interpretation by INDIAN HARBOR of any contracts, agreements, relationships, or arrangements. The Parties further understand, acknowledge, and agree that they may not base any claim of waiver or estoppel in any other matter upon execution of this Agreement, or the payment of consideration described herein.
- c. It is expressly understood, acknowledged, and agreed by the Parties that this Agreement is not to be relied upon by any third party and that it carries no precedential value and shall not be relied upon by any person or entity as evidence of any obligation by any party other than the obligations contained in this Agreement.

11. No Assignment. Each Party warrants and represents that it has made no assignment, voluntary or involuntary, of all or any part of the Claims released herein to any other

persons or entities, except that this provision does not apply to the Assignment or the litigation funding agreement with Omni Bridgeway (Fund 4) Inv. 5 L.P.

12. Representation by Attorneys. Each Party to this Agreement hereby acknowledges that Party's representation by an attorney or attorneys in connection with this Agreement. Each Party to this Agreement further acknowledges that the full import of the provisions of this Agreement has been explained to that Party by his, her, or its attorneys. Each Party enters into this Agreement knowingly, intelligently, and voluntarily. In addition, each and all the provisions of this Agreement are acceptable to each Party to this Agreement and are fully agreed and understood.

13. Severability. If any term, condition, or provision of this Agreement as applied to any Party or to any circumstances shall be adjudged by a court to be void and unenforceable, then such term, condition, or provision should be severed and inoperative, and the same shall in no way affect any other provision to this Agreement, the application of such provision in any other circumstances, or the validity or enforceability of the Agreement as a whole, and the other provisions to this Agreement should be liberally construed in order to carry out the intentions of the Parties as nearly as may be possible (including without limitation that the releases in this Agreement should be given the broadest possible interpretation). Upon such determination that any term, condition, or provision is void and unenforceable, the court or other tribunal making such determination is authorized and instructed to modify this Agreement so as to effect the original intent of the Parties as closely as possible so that the transactions and agreements contemplated herein are consummated as originally contemplated to the fullest extent possible, including without limitation that the releases in this Agreement should be given the broadest possible interpretation.

14. Warranty of Signatories. Each signatory of this Agreement warrants that he or she is legally competent and authorized to execute this Agreement on behalf of the Party whose name is subscribed at or above the signatory's signature. Each Party to this Agreement acknowledges and agrees that one signature on behalf of a corporate Party to this Agreement is sufficient to legally bind that entity to the terms and conditions of this Agreement.

15. Counterparts and Facsimile or Electronic Signatures. This Agreement may be executed in counterparts, and facsimile or electronically transmitted original signatures shall be deemed originals, all of which taken together shall constitute one and the same Agreement.

16. Binding on Successors. This Agreement is binding on and shall inure to the benefit of the Parties, their respective heirs, successors, assigns and representatives.

17. Construction of Agreement. Where the context requires, the singular shall be deemed to include the plural and *vice versa*; and use of the masculine, feminine, or neutral gender shall be deemed to include every gender. Headings and titles to sections are for reference only, and do not constitute parts of this Agreement.

18. Entire Agreement. This Agreement constitutes the entire and exclusive agreement between the Parties pertaining to the subject matter hereof and supersedes any and all prior or contemporaneous agreements, understandings, promises, representations, warranties, covenants, negotiations and discussions, whether oral or written, whether express, implied or apparent in connection with the subject matter hereof, except that this paragraph shall not apply to the Assignment or the litigation funding agreement with Omni Bridgeway (Fund 4) Inv. 5 L.P. No supplements or modifications or waivers or terminations of this Agreement shall be binding unless executed in writing by the Party to be bound.

19. Interpretation. Each Party acknowledges and agrees that it has been given the opportunity to independently review this Agreement with legal counsel or has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof and does so understand and agree. Each Party represents that it participated in the negotiation and drafting of this Agreement, and as a result, each Party to this Agreement shall be considered as a draftsman of said Agreement. This Agreement shall not be construed in favor of or against any Party hereto, but shall be construed as if all Parties to this Agreement prepared the Agreement.

20. Execution of Document(s) and Cooperation through Dismissal of Bad Faith Lawsuit. The Parties agree to cooperate fully and execute and deliver any and all documents and instruments and to take all additional actions which may be reasonably necessary or appropriate to give full force and effect to the terms and intent of this Agreement. PEREZ and INDIAN HARBOR agree that they intend there will be no further litigation activity in the Bad Faith Lawsuit as of the Effective Date (except as necessary to implement this Agreement or as required by the Court), unless and until this Agreement is rendered null and void.

21. Non-waiver of Provisions of Agreement. No waiver of any provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided in writing. No breach of any portion hereof can be waived unless in writing. Waiver of any one breach of any provision in this Agreement shall not be deemed to be a waiver of any other breach of the same or other provisions hereof.

22. Governing Law and Jurisdiction. This Agreement is made and is deemed to be performed in California, and shall be construed in accordance with the laws of the State of California. Any action to enforce any provision in this agreement shall be brought within a court of competent jurisdiction located in the State of California.

23. Notice. Any notices or communications required or permitted to be given by this Agreement must be (a) given in writing, and (b) personally delivered or mailed by US Certified or Registered Mail, postage prepaid, or transmitted by facsimile or email to the party to whom such notice or communication is directed, to the following addresses:

To PEREZ:
Scott A. Bursor
Bursor & Fisher, P.A.

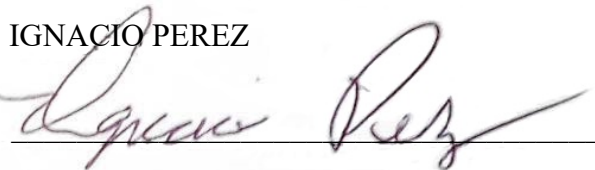
701 Brickell Avenue, Suite 1420
Miami, FL 33131
scott@bursor.com

To RASH CURTIS:
Amanda N. Griffith
Berman Berman Berman Schneider & Lowary LLP
2390 Professional Drive
Roseville, CA 95661
anriffith@b3law.com

To INDIAN HARBOR:
Max H. Stern
Duane Morris LLP
One Market, Spear Tower, Suite 2200
San Francisco, CA 94105
mhstern@duanemorris.com

IN WITNESS WHEREOF, the Parties have caused this Agreement to be entered into and executed and have signed their respective names after having read the foregoing Agreement and while fully understanding it.

Dated: August 13, 2021

IGNACIO PEREZ


By: Ignacio Perez

Its: N/A

Dated: August __, 2021

OMNI BRIDGEWAY (FUND 4) INVT. 5 L.P.

By: _____

Its: _____

Dated: August __, 2021

KBR, Inc. d/b/a/ RASH CURTIS & ASSOCIATES

By: Terrence Paff

701 Brickell Avenue, Suite 1420
Miami, FL 33131
scott@bursor.com

To RASH CURTIS:
Amanda N. Griffith
Berman Berman Berman Schneider & Lowary LLP
2390 Professional Drive
Roseville, CA 95661
angriffith@b3law.com

To INDIAN HARBOR:
Max H. Stern
Duane Morris LLP
One Market, Spear Tower, Suite 2200
San Francisco, CA 94105
mhstern@duanemorris.com

IN WITNESS WHEREOF, the Parties have caused this Agreement to be entered into and executed and have signed their respective names after having read the foregoing Agreement and while fully understanding it.

Dated: August __, 2021


IGNACIO PEREZ

By: Ignacio Perez

Its: N/A

Dated: August 12, 2021

OMNI BRIDGEWAY (FUND 4) INVT. 5 L.P.



By: Christopher J. Young

Its: General Counsel, North America

Dated: August __, 2021

KBR, Inc. d/b/a/ RASH CURTIS & ASSOCIATES

By: Terrence Paff

701 Brickell Avenue, Suite 1420
Miami, FL 33131
scott@bursor.com

To RASH CURTIS:
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IN WITNESS WHEREOF, the Parties have caused this Agreement to be entered into and executed and have signed their respective names after having read the foregoing Agreement and while fully understanding it.

Dated: August __, 2021

IGNACIO PEREZ

By: Ignacio Perez

Its: N/A

Dated: August __, 2021

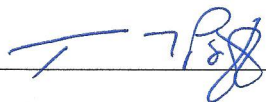
OMNI BRIDGEWAY (FUND 4) INVT. 5 L.P.

By: _____

Its: _____

Dated: August 10, 2021

KBR, Inc. d/b/a/ RASH CURTIS & ASSOCIATES



By: Terrence Paff

Dated: August 10, 2021

Its: President, CEO, and Owner

KBR, Inc. d/b/a/ RASH CURTIS & ASSOCIATES

Natasha Paff

By: Natasha Paff

Its: Chief Operations Officer

Dated: August __, 2021

KBR, Inc. d/b/a/ RASH CURTIS & ASSOCIATES

By: Bob Keith

Its: Vice President of Operations

Dated: August __, 2021

INDIAN HARBOR INSURANCE COMPANY

By: _____

Its: _____

Dated: August __, 2021

Its: President, CEO, and Owner

KBR, Inc. d/b/a/ RASH CURTIS & ASSOCIATES

By: Natasha Paff

Its: Chief Operations Officer

Dated: August 10, 2021

KBR, Inc. d/b/a/ RASH CURTIS & ASSOCIATES



By: Bob Keith

Its: Vice President of Operations

Dated: August __, 2021

INDIAN HARBOR INSURANCE COMPANY

By: _____

Its: _____

Dated: August __, 2021

Its: President, CEO, and Owner

KBR, Inc. d/b/a/ RASH CURTIS & ASSOCIATES

By: Natasha Paff

Its: Chief Operations Officer

Dated: August __, 2021

KBR, Inc. d/b/a/ RASH CURTIS & ASSOCIATES

By: Bob Keith

Its: Vice President of Operations

Dated: August 11th, 2021

INDIAN HARBOR INSURANCE COMPANY

James M. DiVirgilio

By: James M. DiVirgilio

Its: Chief Regional Claims Officer Americas