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10  
 11 **UNITED STATES DISTRICT COURT**  
 12 **NORTHERN DISTRICT OF CALIFORNIA**  
 13 **SAN FRANCISCO DIVISION**

14 VINTERACTIVE, LLC,

15 Plaintiff,

16 v.

17 OPTIREV, LLC,

18 Defendant.

19 \_\_\_\_\_  
 20 OPTIREV, LLC,

21 Counterclaimant,

22 v.

23 VINTERACTIVE, LLC,

24 Counterdefendant.  
 25 \_\_\_\_\_

Case No.: 3:15-cv-02903-SI

**STIPULATED SETTLEMENT  
 AGREEMENT**



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27 ///

28 ///

1 Plaintiff/Counterdefendant VinterActive, LLC, (hereafter "Plaintiff") and  
2 Defendant/Counterclaimant, OptiRev, LLC (hereafter "Defendant") hereafter collectively  
3 referred to as the "Parties" or individually as the "Party" who, by and through their  
4 undersigned counsel, state as follows:

5 WHEREAS, there is currently pending in the United States District Court, Northern  
6 District of California, San Francisco Division, an action entitled *VinterActive, LLC, v.*  
7 *Optirev, LLC*, and docketed as Case No. 3:15-cv-02903-SI (the "Action"). The Action  
8 involves Plaintiff's claims for alleged copyright infringement relating to unauthorized  
9 copying of websites developed and owned by VinterActive, LLC, alleged unauthorized  
10 access to a computer/system/server, alleged unauthorized copying and theft of computer  
11 files, alleged passing-off of Plaintiff's websites as being developed by OptiRev, LLC, and  
12 alleged unjust enrichment for failure to fully compensate VinterActive, LLC, for the  
13 development of websites;

14 WHEREAS, on June 22, 2015, Plaintiff filed its Complaint for (1) Copyright  
15 Infringement, 17 U.S.C. § 101; (2) Computer Fraud and Abuse Act, 18 U.S.C. § 1030; (3)  
16 California Computer Crime Law, Cal. Penal Code § 502; (4) Cal. Bus. and Prof. Code §  
17 14200; (5) Cal. Bus. and Prof. Code § 17200 (6) Cal. Trade Secrets Act; and (7) Unjust  
18 Enrichment, alleging 23 causes of action total. Defendant specifically denies all of  
19 Plaintiff's allegations of wrongdoing;

20 WHEREAS, on August 7, 2015, OptiRev filed its affirmative defenses and  
21 counterclaims. Plaintiff specifically denies all of Defendant's allegations of wrongdoing;

22 WHEREAS, without admission by any party of any liability, and for the purpose of  
23 compromise and settlement only, the Parties now wish to formally and forever resolve and  
24 settle any and all claims, disputes and disagreements which exist, or which may exist,  
25 between them which arise out of or are connected to the Action;

26 WHEREAS, the parties wish to resolve their dispute with respect to the use and  
27 ownership of images and copy compiled for websites ("Website Materials") in copyright  
28 applications and accompanying deposited materials filed by the Plaintiff. The parties agree

1 that payment of the amount noted below and execution of this Agreement serve solely as  
2 a settlement between the parties, and is not intended and does not constitute an admission  
3 of copyright infringement or other wrongdoing by the Defendants, nor approval by Plaintiff  
4 for the use of any third-party images or software contained therein. In return for the  
5 consideration given in this Agreement, Plaintiff agrees that the Website Materials, listed  
6 below, may be utilized by the Defendant going forward. This agreement does not constitute  
7 permission to utilize any third –party images or software requiring licensing from other  
8 sources contained in those materials.

9 WHEREAS, the Parties also wish to resolve their dispute regarding the originality of  
10 the computer code written by Plaintiff for use with the Website Materials (“CSS Code”),  
11 listed below, submitted in copyright applications and accompanying deposited materials  
12 filed by the Plaintiff. The Parties agree that the CSS Code Applications and the four  
13 registered CSS Code copyrights shall remain the property of the Plaintiff, and shall not be  
14 used by the Defendant without permission and appropriate licensing agreements.

15 WHEREAS, the Parties agree that this Agreement is intended to cover the entirety of  
16 the Website Materials and the CSS Code, including the documents, text, graphics, images,  
17 photographs, materials, trademarks, HTML code, CSS code, or any other programming  
18 code, whether listed below or not, that Plaintiff and Defendant ever produced, collaborated  
19 on, or otherwise worked on during their business relationship. Furthermore, Plaintiff agrees  
20 that this Agreement covers the entire scope of Website Materials and the CSS Code,  
21 including the documents, text, graphics, images, photographs, materials, trademarks, HTML  
22 code, CSS code, or any other programming code, whether listed below or not, that Plaintiff  
23 and Defendant ever produced, collaborated on, or otherwise worked on during their  
24 business relationship, that would allegedly give rise to any State or Federal action, including  
25 but not limited to claims for alleged violations of copyright, trademark, or intellectual  
26 property by Defendant, related to or arising out of the present Action.

1           **Website Materials:**

2           VinterActiveSFMotelCapry Website SR1-2427193080

3           VinterActivePresidioInn Website SR 1-2427134519 (Copyright Registered)

4           VinterActive Oakley ComfortSuites Website SR 1-2427192670

5           VinterActiveHostelSF Website SR-2427134590

6           VinterActiveGreenwichInn Website SR 1-2427192740

7           VinterActiveGearParkway Website DR 1-2427193010

8           VinterActiveBerkeleyRI Website SR 1-2427089401

9           VinterActiveBenbowinn Website SR 1-2427192940

10          VinterActiveOptiRev Website SR 1-2427192810

11  
12          **CSS Code:**

13          VinterActiveSFMotelCapriCSS SR 1-2427193155 (Copyright Registered)

14          VinterActivePresidioInn SR-12427134555 (Copyright Registered)

15          VinterActive Oakley ComfortSuites CSS SR 1-2427192705 (Copyright Registered)

16          VinterActiveHostelSF CSS SR 1-2427192625 (Copyright Registered)

17          VinterActiveGreenwichInn CSS SR 1-2427192775

18          VinterActiveGearParkway CSS SR 1-2427193045

19          VinterActiveBerkeleyRI CSS SR 1-2427089508

20          VinterActiveBenbowinn CSS SR 1-2427192975 (Copyright Registered)

21          VinterActiveOptiRev CSS SR 1-2427192865

22  
23           WHEREAS, the Parties intend that this Agreement shall constitute a complete  
24 settlement and compromise of the Action and all potential or actual claims of the Parties  
25 against each other based on or arising out of in whole or in part, the events alleged in the  
26 Complaint and/or which in any way constitute(d) part of this Action. The Parties, having  
27 agreed upon the terms of a settlement in this action, set forth the essential terms of the  
28 agreement. This Agreement shall constitute the mutual and final understanding between the

1 Parties with respect to the subject matter herein.

2 WHEREAS, Plaintiff and Defendant, through their authorized representatives, and  
3 without any admission or adjudication of the issues of fact or law with respect to Plaintiff's  
4 claims, have reached a settlement resolving the claims raised in Plaintiff's Complaint and  
5 the Counterclaims raised in Defendant's Answer.

6 NOW, THEREFORE, for good and valuable consideration, the adequacy and  
7 sufficiency of which is hereby acknowledged, the Parties hereby stipulate and agree as  
8 follows:

9 **AGREEMENT**

10 1. Paragraphs A through D, inclusive, of the above Recitals are fully  
11 incorporated herein and are true and correct. These Recitals are intended and shall be  
12 deemed and construed to be a material and integral portion of this Agreement.

13 2. In consideration for the agreements and releases contained herein, Plaintiff  
14 shall receive payment in the total sum of FIFTEEN THOUSAND DOLLARS (\$15,000.00)  
15 in full and final settlement of any and all claims which were or could have been asserted in  
16 the Action, as well as all other Plaintiff's claims against the Defendant based on, or arising  
17 out of, in whole or in part, the events alleged in the Complaint and/or which in any way  
18 constitute(d) part of this Action.

19 The payment shall be structured as follows:

20 a. \$9,000, payable to Bryan St. Amant, as CEO and President of  
21 VinterActive, LLC, and \$6,000 payable to Laura C. Rosenthal, Attorney at Law, on behalf  
22 of Bernard IP Law, LLC, within 20 days of the Execution of the Agreement.

23 b. The Parties shall execute such documents as necessary and appropriate  
24 to comply with the terms of the agreement.

25 c. The Parties mutually agree that the facts and circumstances of this  
26 Action and Agreement will remain confidential, with exceptions, as detailed in paragraph  
27 28, below.

28 3. Within five days of the final payment set forth in paragraph 2(b) above,

1 Plaintiff will cause its claims against Defendant to be dismissed, and Defendant will cause  
2 its counterclaims against Plaintiff to be dismissed, with prejudice, by filing a jointly fully  
3 executed Request for Dismissal with the court, so that each party can be provided with a  
4 court-endorsed copy of the Request for Dismissal.

5 4. Plaintiff agrees and represents that it shall not, at any time hereafter,  
6 commence, maintain, or prosecute any action, suit, proceeding, investigation, complaint,  
7 claim, grievance or charge with any court, administrative agency, arbitrator, or any other  
8 body or person, whether Federal, State, contractual or otherwise, or aid or assist others in  
9 prosecuting such action, suit, proceeding, investigation, complaint, claim, grievance, or  
10 charge, except in response to governmental agency or court inquiries as compelled by legal  
11 process, against Defendant, or the employees, officers, directors, insurers, attorneys, or  
12 other representatives of this Defendant, based in whole or part upon, or arising out of or in  
13 any way connected, in whole or in part, with the events alleged in the Complaint and/or  
14 which in any way constitute(d) part of this Action.

15 5. Defendant agrees and represents that it shall not, at any time hereafter,  
16 commence, maintain, or prosecute any action, suit, proceeding, investigation, complaint,  
17 claim, grievance or charge with any court, administrative agency, arbitrator, or any other  
18 body or person, whether Federal, State, contractual or otherwise, or aid or assist others in  
19 prosecuting such action, suit, proceeding, investigation, complaint, claim, grievance, or  
20 charge, except in response to governmental agency or court inquiries as compelled by legal  
21 process, against Plaintiff, or the employees, officers, directors, insurers, attorneys, or other  
22 representatives of this Plaintiff, based in whole or part upon, or arising out of or in any way  
23 connected, in whole or in part, with the events alleged in its counterclaims asserted in its  
24 Answer to the Complaint and/or which in any way constitute(d) part of this Action.

25 6. If any of the payments made under this Agreement result in tax consequences  
26 for Plaintiff, then it shall be solely responsible for those tax consequences and for the  
27 payment of any and all tax that may be due. In no event will the dollar amount of the  
28 settlement to be paid under this agreement be changed or increased as a result of any tax

1 consequence to any of the Parties. Plaintiff agrees to indemnify and hold Defendant, its  
2 attorneys, and their insurers harmless from any tax consequences to Plaintiff arising out of  
3 the payments referred to in paragraph 2. Plaintiff is not relying on any statement,  
4 representation, or advice from Defendant, its attorneys, insurers, or representatives as to tax,  
5 or any other, consequences of this Agreement.

6 7. The Parties will bear their own attorneys' fees and costs incurred to date.

7 8. In consideration of the mutual promises set forth in this Agreement, and  
8 except for the obligations to be performed under this Agreement, the Parties absolutely,  
9 fully and forever release, waive, relinquish, and discharge each of Parties and their  
10 successors, assigns, heirs, executors, administrators, personal representatives, members,  
11 agents, employees, representatives, attorneys, subsidiaries, affiliates, and each of them (the  
12 "Released Parties"), of and from any and all manner of action or actions, cause or causes of  
13 action, suits, debts, liabilities, demands, wages, sums of money in controversy, damages,  
14 accounts, reckonings, and liens of every kind or nature whatsoever whether known,  
15 suspected or unsuspected which it shall or may have, own or hold, which it at any time  
16 heretofore had, owned or held, or could, shall or may hereafter own, or hold, by reason of,  
17 arising out of, or in connection with any matter, cause or thing whatsoever, including  
18 without limitation such matters which relate to or in any way arise out of, or could relate to  
19 or arise out of the facts and circumstances of the business relationship between Plaintiff and  
20 Defendant. Except as to the executory provisions of this Agreement, the parties each  
21 acknowledge they are aware it is the intention of the parties hereto, as to which intention  
22 each of the parties agree, that, upon execution by the parties, this Agreement shall be  
23 effective as a full and final accord and satisfaction in settlement of and as a bar to any and  
24 all Claims heretofore referred to and released which any party hereto has, may have in the  
25 future, or has had against the other party hereto. In connection with such waiver and  
26 relinquishment, the parties hereto acknowledge that each is aware that it, or its attorneys,  
27 may hereafter discover facts different from or in addition to facts now known or believed  
28 true with respect to the subject matter of this Agreement, but that it is each parties' intention

1 hereby to fully, finally, absolutely and forever settle any and all Claims referred to which  
2 do now exist, may exist or have existed between any of the parties to this Agreement, and  
3 that, in furtherance of such intention, the Releases given shall be and remain in effect as full  
4 and complete Releases, notwithstanding the discovery of any such different or additional  
5 facts. Each of the parties does hereby waive and relinquish all rights and benefits each has  
6 or may have under any unknown or future Claim to the fullest extent that each may lawfully  
7 waive such rights and benefits pertaining to the subject matter of this Agreement, and  
8 acknowledges that this waiver is a material inducement to the other party's execution of the  
9 Agreement.

10 9. Plaintiff expressly waives all rights it has or may have under California  
11 Business and Professions Code section 6149.5, which requires that a copy of the cover letter  
12 accompanying the settlement funds paid as described in this release be sent to Plaintiff.  
13 Plaintiff authorizes and directs that the settlement monies to be paid as described in this  
14 release be sent/delivered as described in paragraph 2(a), above, on Plaintiff's behalf.

15 10. The Parties each waive the right to recover any attorneys' fees, costs of suit,  
16 or any other expenses incurred by either party in pursuing or defending the claims in this  
17 action. Should such lien claims arise related to this Action against the Plaintiff's settlement  
18 proceeds provided by the Defendant, the Plaintiff agrees to resolve, litigate, or settle those  
19 without further action against the Defendant, its attorneys, or its insurers.

20 11. The Parties acknowledge that there is a risk that subsequent to the execution  
21 of this Agreement, the Parties may discover, incur, or suffer claims which were unknown or  
22 unanticipated at the time this Agreement is executed, including, without limitation,  
23 unknown or unanticipated claims which arise from, are based upon, or are related to the  
24 Action or some aspect thereof, which if known by the Parties on the date of this Agreement  
25 being executed, may have materially affected the Parties' decision to execute this  
26 Agreement. The Parties expressly assume the risk of such unknown and unanticipated  
27 claims and agree that the releases provided by this Agreement apply to all such claims.

28 12. With respect to the mutual releases described above, the Parties acknowledge



1 that they are familiar with section 1542 of the California Civil Code which provides as  
2 follows:

3 **A GENERAL RELEASE DOES NOT EXTEND TO**  
4 **CLAIMS WHICH THE CREDITOR DOES NOT KNOW**  
5 **OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME**  
6 **OF EXECUTING THE RELEASE, WHICH IF KNOWN**  
7 **BY HIM MUST HAVE MATERIALLY AFFECTED HIS**  
8 **SETTLEMENT WITH THE DEBTOR.**

9 The Parties waive and relinquish any right or benefit which they have, or may have,  
10 under California Civil Code section 1542 regarding all matters arising out of or in any way  
11 connected with this Action and Plaintiff's claims, and as set forth in the Lawsuit.

12 The Parties understand and acknowledge that the significance and consequence of  
13 this waiver of section 1542 of the California Civil Code is that even if they should  
14 eventually suffer any additional damages arising out of the acts or omissions giving rise to  
15 this Action, they will not be permitted to make any claim against each other.

16 The Parties indicate that they have read and understand the above waiver of the  
17 provisions of California Civil Code section 1542 by initialing here:

18 \_\_\_\_\_  
19 Rene Byck

20 \_\_\_\_\_  
21 Bryan St. Amant

22 \_\_\_\_\_  
23 Holly Michalek

24 13. As a condition of this Agreement, each of the Parties represents and warrants  
25 that there has been no actual assignment or purported assignment or other transfer of any  
26 claim or other matter or any interest which is being released by this Agreement. Further,  
27 each of the Parties represent and warrant that they are sole owners and real parties in  
28 interest regarding the claims and further matters being released in this Agreement.

14. Defendants have defended and denied the claims made by Plaintiff, and  
Plaintiff has defended and denied the counterclaims made by the Defendants, and this  
Agreement is entered into with the understanding that it is the result of a compromise of  
disputed claims and shall never at any time for any purpose be considered an admission of

1 unknown or unanticipated claims which arise from, are based upon, or are related to the  
2 Action or some aspect thereof, which if known by the Parties on the date of this Agreement  
3 being executed, may have materially affected the Parties' decision to execute this  
4 Agreement. The Parties expressly assume the risk of such unknown and unanticipated  
5 claims and agree that the releases provided by this Agreement apply to all such claims.

6 12. With respect to the mutual releases described above, the Parties acknowledge  
7 that they are familiar with section 1542 of the California Civil Code which provides as  
8 follows:

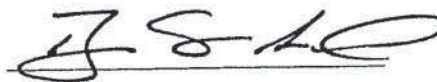
9 **A GENERAL RELEASE DOES NOT EXTEND TO**  
10 **CLAIMS WHICH THE CREDITOR DOES NOT KNOW**  
11 **OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME**  
12 **OF EXECUTING THE RELEASE, WHICH IF KNOWN**  
13 **BY HIM MUST HAVE MATERIALLY AFFECTED HIS**  
14 **SETTLEMENT WITH THE DEBTOR.**

15 The Parties waive and relinquish any right or benefit which they have, or may have,  
16 under California Civil Code section 1542 regarding all matters arising out of or in any way  
17 connected with this Action and Plaintiff's claims, and as set forth in the Lawsuit.

18 The Parties understand and acknowledge that the significance and consequence of  
19 this waiver of section 1542 of the California Civil Code is that even if they should  
20 eventually suffer any additional damages arising out of the acts or omissions giving rise to  
21 this Action, they will not be permitted to make any claim against each other.

22 The Parties indicate that they have read and understand the above waiver of the  
23 provisions of California Civil Code section 1542 by initialing here:

24 \_\_\_\_\_  
25 Rene Byck



26 Bryan St. Amant

27 \_\_\_\_\_  
28 Holly Michalek

13. As a condition of this Agreement, each of the Parties represents and warrants  
that there has been no actual assignment or purported assignment or other transfer of any

1 the truth of any of the allegations, claims, or contentions made by any Party against any  
2 other Party. The Parties further warrant that this Agreement has been entered into in good  
3 faith for the purpose of resolving such disputed and uncertain claims.

4 15. The Parties hereby acknowledge, agree and stipulate that each has the right to  
5 enforce any provision of this Agreement by filing any appropriate action, proceeding or  
6 motion including, without limitation, a motion pursuant to California Code of Civil  
7 Procedure section 664.6 or analogous federal law in the appropriate department of the  
8 United States District Court, Northern District of California, San Francisco Division, where  
9 the action is venued. Notwithstanding the dismissal of this action, however, the Parties  
10 further acknowledge, agree, and stipulate that the Court in the Action shall retain  
11 jurisdiction to oversee compliance with the terms of this Agreement, reopen the Action after  
12 they, or their claims, are dismissed, and to hear any motion brought pursuant to Code of  
13 Civil Procedure section 664.6 or analogous federal law. (See *Kokkonen v. Guardian Life*  
14 *Ins. Co. of Am.*, 511 U.S. 375 (1994)). Furthermore, the Parties will request that the Court  
15 Order closing the case embody the settlement agreement and retain jurisdiction over the  
16 settlement agreement pursuant to the above. To the extent that any party to this Agreement  
17 must file any part of this Agreement with the Court, any party filing a motion to enforce the  
18 Agreement shall only file that portion of this Agreement that is necessary to enforce the  
19 Agreement.

20 16. Each of the Parties has obtained and utilized the advice of independent legal  
21 counsel with regard to this Agreement, and each of the Parties has read this Agreement and  
22 is fully aware of and understands its contents.

23 17. Each of the Parties represents and warrants that that party has had this  
24 Agreement explained and described to that party in a language and in terms that are  
25 understandable, and that they understand that this is a full and complete release.

26 18. Each of the Parties to this Agreement warrants that no promise or inducement  
27 has been made or offered by any of the Parties hereto except as set forth herein and that this  
28 Agreement is not executed in reliance upon any statement or representation of any of the

1 parties hereto or their representatives concerning the nature and extent of the injuries,  
2 damages, or legal liability thereof.

3 19. This Agreement may be executed in any number of original counterparts.  
4 Any such counterpart, when executed, shall constitute an original of this Agreement, and all  
5 the counterparts together shall constitute one and the same Agreement. However, this  
6 Agreement will not be deemed effective until each Party has executed at least one original  
7 counterpart of the Agreement.

8 20. No waiver, modification, or amendment of any term, condition or provision of  
9 this Agreement shall be valid or have any force or effect, unless made in writing and signed  
10 by all the Parties.

11 21. This Agreement shall, in all respects, be interpreted, enforced and governed  
12 by and under federal law, and to the extent that federal law may not be applicable then  
13 under the laws of the State of California (see Paragraph 14 above), excluding its conflict of  
14 law rules.

15 22. This Agreement (after full execution and delivery) memorializes and  
16 constitutes the entire agreement and understanding between the Parties and supersedes and  
17 replaces all prior negotiations, proposed agreements, and agreements, whether written or  
18 unwritten.

19 23. This Agreement is and shall be binding upon and shall inure to the benefit of  
20 predecessors, subsidiaries, successors, assigns, parties, agents, officers, employees,  
21 associates, legal representatives, heirs, insurers, executives, and/or administrators of each of  
22 the parties to the Agreement.

23 24. Each and every provision of the Agreement is severable from each and all of  
24 the other provisions of the Agreement. In the event that any provision of the Agreement is  
25 found by the Court to be invalid or unenforceable, the remaining provisions of the  
26 Agreement shall nonetheless remain in full force and effect.

27 25. This Agreement is the result of arm's length negotiations. The Parties  
28 acknowledge that (1) this Agreement and its reduction to final form is the result of

1 extensive good faith negotiations between the parties to it; (2) the Parties have carefully  
2 reviewed and examined this Agreement for execution; and (3) any statute or rule of  
3 construction that ambiguities are to be resolved against the drafting party should not be  
4 employed in the interpretation of this Agreement.

5       26. The Parties agree that part of the consideration for this Agreement is that the  
6 Parties shall not publicly disparage or make any public statement adverse to the other Party  
7 or to any of their respective properties or interests, or otherwise take any action which could  
8 reasonably be expected to adversely affect the other Party's reputation or public image, or  
9 assist any third party in so doing. For purposes of this Agreement, the term "disparage" and  
10 "disparaging" shall mean derogatory statements, whether written (paper or electronic  
11 format) or oral, regarding the other Party, including but not limited to this Agreement,  
12 business, client(s), product(s), service(s), or operations, and the like. The Parties agree and  
13 acknowledge that this non-disparagement provision is a material term of this Agreement,  
14 the absence of which would have resulted in one or both Parties not entering into this  
15 Agreement.

16       27. This Agreement may be used by any one or more of the Parties as a full and  
17 complete defense to, and the parties hereby consent that it may be used as the basis for an  
18 injunction against, any action, suit, or proceeding based on any claim released by this  
19 Agreement as to any one or of the Parties.

20       28. If litigation or any other legal proceeding is instituted to interpret or enforce  
21 this Agreement, the Agreement will be construed as if all parties to this Agreement drafted  
22 the same. This Agreement may be introduced as evidence and attached to a pleading in any  
23 such action. The party prevailing in such litigation shall be entitled to reasonable attorneys'  
24 fees incurred in addition to any other relief granted. The Court shall retain jurisdiction over  
25 the Action to enforce this Agreement.

26       29. As a consideration and part of this Agreement, the Parties, their heirs,  
27 executors, administrators, attorneys and agents, spouses and assigns or representatives of  
28 any kind, agree that from the Execution of this Agreement and thereafter, to keep the terms

1 of this Agreement, including, but not limited to, the settlement amount, the terms and  
2 conditions of this Agreement, and the negotiations leading to it, including any previously  
3 unknown information learned therein about the Parties, confidential, and not to divulge the  
4 contents of this Agreement, nor the settlement amount, to any person or entity. The Parties  
5 agree that no disclosure or statement shall be made to third parties concerning the outcome  
6 of the Action, other than stating that the Action was settled, and the terms are confidential,  
7 with the exception of any required disclosure (1) for tax purposes or by any government or  
8 administrative laws, statutes, or regulations; (2) as necessary to enforce the terms of  
9 Agreement; (3) by the court or any other legal proceeding; and (4) to the attorneys or  
10 representatives for the Parties in this action.

11 Furthermore, the Parties, their heirs, executors, administrators, attorneys and agents,  
12 spouses and assigns or representatives of any kind, including any court reporting services,  
13 agree that from the Execution of this Agreement and thereafter, to keep this entire matter,  
14 including, but not limited to, all documents, communications of any kind, written discovery,  
15 document production, deposition transcripts and all exhibits thereto, if any, confidential,  
16 and not to divulge their contents to any person or entity with the following exceptions (1)  
17 for tax purposes or as required by any government or administrative laws, statutes, or  
18 regulations; (2) as necessary to enforce the terms of Agreement or Stipulated Judgment; (3)  
19 to the court or as required by any other legal proceeding; or (4) to the attorneys or  
20 representatives for the Parties in this action.

21 30. The terms of this Agreement shall become effective upon entry of an order by  
22 the Court ratifying the Agreement.

23  
24 **THE PARTIES HEREBY WARRANT THAT THEY HAVE READ THIS**  
25 **STIPULATED SETTLEMENT AGREEMENT IN ITS ENTIRETY AND FULLY**  
26 **UNDERSTAND AND APPRECIATE ITS TERMS AND THEIR CONSEQUENCES.**  
27 **ADDITIONALLY, THIS AGREEMENT HAS NOT BEEN EXECUTED BY ANY OF**  
28 **THE PARTIES BY REASON OF ANY UNDUE INFLUENCE, FRAUD, ORDURESS.**

**AGREED TO:**

injunction against, any action, suit, or proceeding based on any claim released by this Agreement as to any one or of the Parties.

28. If litigation or any other legal proceeding is instituted to interpret or enforce this Agreement, the Agreement will be construed as if all parties to this Agreement drafted the same. This Agreement may be introduced as evidence and attached to a pleading in any such action. The party prevailing in such litigation shall be entitled to reasonable attorneys' fees incurred in addition to any other relief granted. The Court shall retain jurisdiction over the Action to enforce this Agreement.

29. As a consideration and part of this Agreement, the Parties, their heirs, executors, administrators, attorneys and agents, spouses and assigns or representatives of any kind, agree that from the Execution of this Agreement and thereafter, to keep the terms of this Agreement, including, but not limited to, the settlement amount, the terms and conditions of this Agreement, and the negotiations leading to it, including any previously unknown information learned therein about the Parties, confidential, and not to divulge the contents of this Agreement, nor the settlement amount, to any person or entity. The Parties agree that no disclosure or statement shall be made to third parties concerning the outcome of the Action, other than stating that the Action was settled, and the terms are confidential, with the exception of any required disclosure (1) for tax purposes or by any government or administrative laws, statutes, or regulations; (2) as necessary to enforce the terms of Agreement; (3) by the court or any other legal proceeding; and (4) to the attorneys or representatives for the Parties in this action.

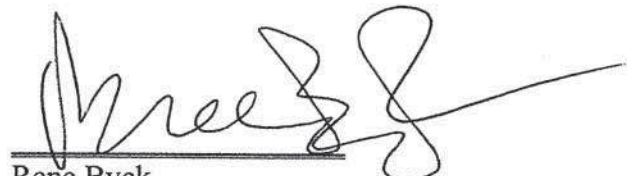
Furthermore, the Parties, their heirs, executors, administrators, attorneys and agents, spouses and assigns or representatives of any kind, including any court reporting services, agree that from the Execution of this Agreement and thereafter, to keep this entire matter, including, but not limited to, all documents, communications of any kind, written discovery, document production, deposition transcripts and all exhibits thereto, if any, confidential, and not to divulge their contents to any person or entity with the following exceptions (1) for tax purposes or as required by any government or administrative laws, statutes, or regulations; (2) as necessary to enforce the terms of Agreement or Stipulated Judgment; (3) to the court or as required by any other legal proceeding; or (4) to the attorneys or representatives for the Parties in this action.

30. The terms of this Agreement shall become effective upon entry of an order by the Court ratifying the Agreement.

**THE PARTIES HEREBY WARRANT THAT THEY HAVE READ THIS STIPULATED SETTLEMENT AGREEMENT IN ITS ENTIRETY AND FULLY UNDERSTAND AND APPRECIATE ITS TERMS AND THEIR CONSEQUENCES. ADDITIONALLY, THIS AGREEMENT HAS NOT BEEN EXECUTED BY ANY OF THE PARTIES BY REASON OF ANY UNDUE INFLUENCE, FRAUD, OR DURESS.**

**AGREED TO:**

Dated: March 28, 2017



Rene Byck  
CFO for Defendant/Counterclaimant  
OptiRev, LLC

Dated: March 28, 2017



Holly Michalek-Byck  
CEO for Plaintiff/Counterdefendant  
OptiRev, LLC

Dated: March \_\_, 2017

Bryan St. Amant  
CEO for Plaintiff/Counterdefendant  
VinterActive, LLC

**APPROVED AS TO FORM:**

Dated: March \_\_, 2017

KRANKEMANN | PETERSEN LLP

W. Christian Krankemann  
Attorneys for Defendant/Counterclaimant  
OptiRev, LLC

Dated: March \_\_, 2017

BERNARD IP LAW, LLC

Laura C. Rosenthal  
Attorneys for Plaintiff/Counterdefendant  
VinterActive, LLC



1 regulations; (2) as necessary to enforce the terms of Agreement or Stipulated Judgment; (3)  
2 to the court or as required by any other legal proceeding; or (4) to the attorneys or  
3 representatives for the Parties in this action.

4 30. The terms of this Agreement shall become effective upon entry of an order by  
5 the Court ratifying the Agreement.  
6

7 **THE PARTIES HEREBY WARRANT THAT THEY HAVE READ THIS**  
8 **STIPULATED SETTLEMENT AGREEMENT IN ITS ENTIRETY AND FULLY**  
9 **UNDERSTAND AND APPRECIATE ITS TERMS AND THEIR CONSEQUENCES.**  
10 **ADDITIONALLY, THIS AGREEMENT HAS NOT BEEN EXECUTED BY ANY OF**  
11 **THE PARTIES BY REASON OF ANY UNDUE INFLUENCE, FRAUD, OR DURESS.**

12 **AGREED TO:**

13 Dated: March \_\_, 2017

14 \_\_\_\_\_  
15 Rene Byck  
16 CFO for Defendant/Counterclaimant  
17 OptiRev, LLC

18 Dated: March \_\_, 2017

19 \_\_\_\_\_  
20 Holly Michalek-Byck  
21 CEO for Plaintiff/Counterdefendant  
22 VinterActive, LLC

23 Dated: March 23, 2017

24 \_\_\_\_\_  
25   
26 Bryan St. Amant  
27 CEO for Plaintiff/Counterdefendant  
28 VinterActive, LLC

29 **APPROVED AS TO FORM:**

30 Dated: March \_\_, 2017

31 KRANKEMANN | PETERSEN LLP


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W. Christian Krankemann  
Attorneys for Defendant/Counterclaimant  
OptiRev, LLC

Dated: March 28, 2017

BERNARD IP LAW, LLC



Laura C. Rosenthal  
Attorneys for Plaintiff/Counterdefendant  
VinterActive, LLC