

*Arnold v. DMG Mori, USA Inc.*

## SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release is made by and between Plaintiff Steven Arnold (hereinafter "Plaintiff Arnold"), individually and on behalf of the settlement class he seeks to represent, and Defendant, DMG Mori, USA, Inc. ("DMG") and is subject to preliminary approval and final Court approval as required by Rule 23 of the Federal Rules of Civil Procedure.

As provided herein, DMG, Class Counsel (as defined below), and Plaintiff hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Agreement and upon entry by the Court of a Final Order and Judgment, all claims of the Settlement Class (as defined below) against DMG in the action titled *Arnold, et al. v. DMG Mori, USA, Inc.* currently pending in the United States District Court for the Northern District of California, Case No. 3:18-cv-02373, shall be settled and compromised upon the terms and conditions contained herein.

### DEFINITIONS

1. "Action" means the civil action captioned entitled *Arnold, et al. v. DMG Mori, USA, Inc.*, as amended and currently pending in the United States District Court for the Central District of California, Case No. 2:14-cv-03471-FMO-AS.

2. "Agreement" or "Settlement" means this Class Action Settlement Agreement and Release, including all exhibits attached hereto.

3. "Attorneys' Fees Fund" shall mean \$450,000 designated by the Parties as the amount Class Counsel shall ask the Court to award as Attorneys' Fees. Should the Attorneys' Fees Fund be reduced by the Court, any excess shall be added to the Class Distribution Fund. Defendants do not intend to object to a reasonable request for attorneys' fees and costs. This is not, and shall not be construed as, a "clear sailing" provision

4. "Class Counsel" means:

DESAI LAW FIRM, P.C.

Aashish Y. Desai, [aashish@desai-law.com](mailto:aashish@desai-law.com)

Adrienne De Castro, [adrienne@desai-law.com](mailto:adrienne@desai-law.com)

5. "Class Distribution Fund" shall mean the \$375,000 designated by the Parties as the amount that shall be distributed to the Settlement Class inclusive of actual costs, any Service Award for the class representative, and all costs of settlement administration. Any excess from the Attorneys' Fees Fund due to any reduction from by the Court shall be added to the Class Distribution Fund.

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6. "Class Period" means the period from April 19, 2016 through May 21, 2021.
7. "Court" means the Honorable James Donato, United States District Court for the Northern District of California, or other such judge to whom the Action may hereafter be assigned.
8. "Defendant" means Defendant DMG Mori, USA, Inc.
9. "DMG" means Defendant DMG Mori, USA, Inc.
10. "Effective Date" means the date on which the Final Order and/or Final Judgment in the Action become "Final." "Final" means one (1) business day after the Final Approval Order and Final Judgment have been entered.
11. "Final Approval" means the date that the Court enters an order and judgment granting final approval to this Settlement without modification unless expressly agreed to by DMG and Plaintiff, and the Court further determines the amount of fees, costs, and expenses awarded to Class Counsel and the amount of the Service Award to Plaintiff (the "Final Approval Order"). In the event that the Court issues separate orders addressing the foregoing matters, then Final Approval means the date of the last of such orders.
12. "Gross Settlement Fund" means the \$825,000 that DMG shall pay inclusive of the "Attorneys' Fees Fund" (\$450,000) and the "Class Distribution Fund" (\$375,000).
13. "Net Distribution Fund" shall be calculated by subtracting from the Class Distribution Fund the actual costs of litigation, the cost of administering the settlement and disseminating the notice ("Administration Costs"), and the proposed "Service Award" from the Class Distribution Fund
14. "Notice" means the notice of proposed class action settlement that the Parties will ask the Court to approve in connection with the motion for preliminary approval of the Settlement.
15. "Notice Deadline" means 45 days after the Preliminary Approval.
16. "Objection Deadline" means 45 days after the Notice Deadline. The Objection Deadline will be specified in the Notice.
17. "Opt-Out Deadline" means 45 days after the Notice Deadline. The Opt-Out Deadline will be specified in the Notice.

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18. "Parties" means Plaintiff on behalf of himself and the Settlement Class, and DMG.

19. "Plaintiff" or "Named Plaintiff" means Steven Arnold, on behalf of himself and the Settlement Class.

20. "Preliminary Approval" means the date that the Court enters, without material change, an order preliminarily approving the Settlement.

21. "Released Claims" means all claims to be released as specified in Section 50 hereof.

22. "Releasing Parties" means Plaintiff and all Settlement Class Members who do not timely and properly opt out of the Settlement, and each of their respective heirs, assigns, beneficiaries, successors, agents, administrators, servants, employees, representatives, executors, trustees, joint venturers, partners, predecessors, and attorneys.

23. "Service Award" shall mean the amount approved by the Court for payment to Plaintiff in recognition of his efforts on behalf of the Settlement Class in the Action. The Service Award, if approved by the Court, shall be \$5,000 or any such amount approved by the Court.

24. "Settlement" means the settlement into which the Parties have entered to resolve the Action. The terms of the Settlement are set forth in this Agreement.

25. "Settlement Administrator" means           . The Settlement Administrator shall be responsible for providing the Class Notice as well as services related to administration of the settlement.

26. "Settlement Class" means all persons residing in the United States for whom DMG procured or caused to be procured a consumer report for employment purposes on or after April 19, 2016 to May 21, 2021. Defendant represents, based on Defendant's diligence in investigating the allegations in the Action, that the Settlement Class consists of approximately 738 individuals.

27. "Settlement Class Member" means any person included in the Settlement Class who does not exclude himself or herself from the Settlement.

**SETTLEMENT CONSIDERATION**

28. The maximum total cash consideration to be paid by DMG pursuant to the Settlement shall be Eight Hundred and Twenty-five Dollars (\$825,000), which includes all amounts that DMG agrees to pay in full settlement of these claims, including but not limited

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to payments to the Settlement Class Members, actual litigation costs, costs of notice and administration, and Class Counsel's attorney's fees, and any Service Award.

### SETTLEMENT APPROVAL

29. Upon execution of this Agreement by all Parties, Class Counsel shall promptly move the Court for an Order granting preliminary approval of this Settlement ("Preliminary Approval Order"). Class Counsel may represent to the Court that the preliminary motion is unopposed by DMG.

### TERMS AND CONDITIONS

30. NOW THEREFORE, in consideration of the promises and warranties set forth below, and intending to be legally bound and acknowledging the sufficiency of the consideration and undertakings therein, the Parties agree that the Action shall be, and is finally and fully compromised and settled, on the following terms and conditions:

31. Non-Admission of Liability. The Parties enter into this Settlement Agreement to resolve the dispute that has arisen between them and to avoid the burden, expense, and risk of continued litigation. Plaintiff, through Class Counsel, investigated the claims as alleged in the First Amended Complaint in the Action, and determined this settlement is in the best interests of the Settlement Class.

(a) Defendant does not admit, and specifically denies, any wrongdoing; that it has violated any federal, state or local law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations or legal requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation or deception; engaged in any other unlawful conduct with respect to its applicants or employees; or the propriety of certifying a litigation class in the Action, or any other proceeding. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Defendant of any such violation(s) or failure(s) to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement Agreement, this Settlement Agreement and its terms and provisions shall not be used for any purpose whatsoever in any legal proceeding, other than a proceeding to enforce the terms of the Settlement Agreement. In addition, the Parties intend this Settlement to be contingent upon the preliminary and final approval of this Settlement Agreement; and the Parties do not waive, and instead expressly reserve, their respective rights to prosecute and defend this Action as if this Settlement Agreement never existed

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in the event that the Settlement is not fully and finally approved on the terms precisely as set forth herein.

33. Release of Claims. As of the Effective Date, Plaintiff and all Settlement Class Members shall be deemed to have forever and fully released all Released Claims defined below.

(a) "Released Claims" mean any and all claims asserted in an individual and/or class action, collective action or mass action, asserting any claims based on the facts alleged in the First Amended Complaint in the Action including but not limited to claims under the federal Fair Credit Reporting Act ("FCRA") during the period from and including April 19, 2016 through and including May 21, 2021. The Released Claims include claims under the FCRA including but not limited to all statutory, compensatory, actual and punitive damages, restitution, declaratory, injunctive and equitable relief, and attorneys' fees and expenses, arising from or related to background checks, investigative consumer reports, and/or consumer reports, including the right to seek relief for such Released Claims by means of a class action, collective action or mass action or proceeding. The Settlement Notice to the Settlement Class will inform the Settlement Class that they are releasing FCRA.

34. Gross Settlement Fund. Subject to final court approval and the conditions specified in this Settlement Agreement, Defendant agrees to make a total payment under this Settlement Agreement not to exceed Eight Hundred Twenty Five Thousand and Zero Cents (\$825,000.00).

35. Two Funds: Attorneys' Fees Fund and Class Distribution Fund. The Parties agree that the Gross Settlement Fund shall be divided into two separate funds: an (1) Attorneys' Fees Fund of \$450,000, and a (2) Class Distribution Fund of \$375,000. The "Class Distribution Fund" includes payments to be made to Settlement Class Members, payment of the proposed Service Award to Plaintiff Arnold, the actual costs of litigation (approximately \$13,000), and the cost of administering the settlement and notice. Defendant does not intend to object to the request for the Attorneys' Fees Fund and will defer entirely to the Court in assessing the application for such fees and costs. Should the Court reduce the requested Attorneys' Fees, any excess shall be added to the Class Distribution Fund.

36. Individual Settlement Payments and Calculation of Individual Settlement Payments. The Individual Settlement Payment to each Settlement Class Member shall be a *pro rata* distribution from the Net Distribution Fund based on the total number of

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Settlement Class Members who do not timely and validly opt-out or exclude themselves from the settlement.

37. Service Award. Class Counsel shall request \$5,000 as a Service Award for Plaintiff Arnold in recognition of his efforts on behalf of the Settlement Class in the Action. Should the proposed Service Award be reduced by the Court, any excess shall be added to the Class Distribution Fund.

38. No Reversion: There shall be no reversion of any uncashed check or unclaimed funds to DMG. To the extent any check is not deposited or cashed within one hundred and twenty (180) calendar days or forty-five (45) calendar days after the date of the reissued check, whichever is later, that amount shall be sent to the California State Controllers' Office (SCO), Unclaimed Property Division under the Settlement Class Member's name.

39. Tax Treatment of Service Award and Individual Settlement Payments. The Settlement Administrator will issue an IRS Form 1099 for the amount of each Class Representative's Service Awards and to all Settlement Class Members for their individual settlement payments to the extent required by law. The Parties and Class Counsel make no representations regarding the taxability of the Individual Settlement Payments.

40. Preliminary Approval and Provisional Class Certification. Plaintiff shall file his motion for preliminary approval of the Settlement Agreement as soon as feasibly possible. The motion for preliminary approval of the class action settlement and provisional class certification must request the Court to:

- (a) preliminarily approve this Settlement Agreement;
- (b) preliminarily approve the form, manner, and content of the Class Notice, Mail Notice attached as **Exhibit A**;
- (c) set the date and time of the Fairness Hearing;
- (d) provisionally certify the Settlement Class under F.R.C.P. Rule 23 for settlement purposes only;
- (e) stay all proceedings in the Action against DMG until the Court renders a final decision on approval of the Settlement and sets a briefing schedule for the papers in support of the Final Order and Final Judgment;
- (f) conditionally appoint Plaintiff Steven Arnold as the Class Representative for settlement purposes only; and

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- (g) conditionally appoint the law firms of Desai Law Firm, P.C. as Class Counsel for settlement purposes only.

41. Notice Procedure. The Claims Administrator shall distribute the Settlement Notices and the Individuals Settlement Payments.

(a) Within ten (10) days after Preliminary Approval is granted, DMG will provide to the Settlement Administrator the data files that identify, subject to the availability of information in reasonably accessible electronic form, the names and last known mail addresses of the identifiable Settlement Class Members. Then, at the direction of Class Counsel, the Settlement Administrator shall implement the Notice Procedure provided herein, using the Notice approved by the Court in the Preliminary Approval Order.

(b) The Notice shall include, among other information: a description of the material terms of the Settlement, a description of the Settlement Class Members' right to "opt out" or exclude themselves from the Settlement and the Opt-Out Deadline; a description of the Settlement Class Members' right to object to the Settlement and the Objection Deadline; the date upon which the Final Approval Hearing is scheduled to occur; and the address of the Settlement Website at which Settlement Class Members may access this Agreement and other related documents and information.

(c) Within twenty (20) calendar days of the Court entering the Preliminary Approval Order, the Claims Administrator shall mail the Class Notice to each Settlement Class Member.

42. Opt-out and Objections. Settlement Class Member will have 45-days from the initial mailing of the Class Notice to submit their opt-out or request for exclusion, or otherwise object to the settlement.

(a) *Exclusion/Opt-Out.* Any Class Member may exclude himself or herself from the Settlement, and from the Settlement's binding effect, by sending to the Settlement Administrator, postmarked by the Opt-Out Deadline, a written request to opt out or be excluded from the Settlement. The request must include the individual's name and address; a statement that he or she wants to be excluded from the settlement in *Arnold, et al. v. DMG Mori, USA, Inc.*, Case No. 2:14-cv-03471-FMO-AS; and the individual's signature. The Settlement Administrator shall provide the Parties with copies of all completed opt-out requests, and Plaintiff shall file a list of all who have opted out with the Court no later than ten (10) days prior to the Final Approval Hearing. Any Settlement Class Member who does not timely and validly request to opt-out shall be bound by the terms of this Agreement.

(b) *Objections.* Any written objection to the Settlement must (i) clearly identify the case name and number; (ii) be submitted to the Court by filing the written objection through

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the Court's Case Management/Electronic Case Files ("CM/ECF") system, by mailing the written objection to the Claims Administrator, the Class Action Clerk for United States District Court for the Northern District of California, or by filing the written objection in person at any location of the United States District Court for the Northern District of California; and (iii) be filed or postmarked before the end of the Objection Period. Only Settlement Class Members who do not opt-out may file objections.

43. Proof of Notice. No later than ten (10) calendar days before the Final Approval Hearing, the Claims Administrator will serve upon Class Counsel a declaration confirming that notice to the Class has been provided in accordance with the Settlement Agreement.

44. Final Order and Final Judgment. Before the Final Approval Hearing, Plaintiff must apply for Court approval of a Final Order and Final Judgment. Subject to the Court's approval, the Final Order and Judgment shall, among other things:

- (a) finally approve the Settlement Agreement as fair, reasonable and adequate;
- (b) finally certify the Settlement Class for settlement purposes only, pursuant to F.R.C.P. Rule 23;
- (c) find that the notice and the notice dissemination methodology complied with the Settlement Agreement and the Federal Rules of Civil Procedure;
- (d) issue an order related to the relief provided for in the Settlement Agreement, including distribution of the Class Distribution Fund, payment of Service Award, and payment of Attorneys' Fees Fund;
- (e) incorporate the releases set forth in the Settlement Agreement;
- (f) dismiss the Action with prejudice; and
- (g) retain jurisdiction over the Action and the Parties relating to the administration, consummation, and/or enforcement of the Agreement and/or the Final Order and Final Judgment, and for any other necessary purpose.

45. Distribution of Settlement. Within two (2) business days after the Effective Date, the Claims Administrator shall provide written notice to Defense Counsel and Class Counsel of the total Settlement Class Members, the total amount to be distributed to the Settlement Class Members, and the pro rata amount each Settlement Class Member will receive.

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(a) Within seven (7) business days of receipt of the written notice described above, Defendant shall remit to the Claims Administrator the Gross Settlement Sum of \$825,000.

(b) Within twenty-one (21) calendar days after remittance of the Gross Settlement Sum, the Claims Administrator, after deducting the costs of administration, the actual costs of litigation, and any Service Award approved by the Court, will distribute one check to each Settlement Class Member equal to a pro rata share of the Net Distribution Fund.

(c) Within twenty-one (21) calendar days and if approved by the Court, the Claims Administrator will distribute any approved Service Award to Plaintiff Arnold and the Attorneys' Fees Fund.

(d) The checks to Settlement Class Members shall be valid for one hundred and eighty (180) calendar days. If the Settlement Class Member requests a check to be reissued within the 180-day period, the Claims Administrator will, upon confirming that the Settlement Class Member's check was not cashed, reissue that Settlement Class Member's check. Reissued checks will be valid for forty-five (45) calendar days after the date of the reissued check.

(e) To the extent any check is not deposited or cashed within one hundred and twenty (180) calendar days or forty-five (45) calendar days after the date of the reissued check, whichever is later, that amount shall be sent to the California State Controllers' Office (SCO), Unclaimed Property Division under the Settlement Class Member's name.

46. Non-interference With Claims Procedure. The Parties and their counsel agree that they shall not seek to solicit or otherwise encourage Settlement Class Members to submit requests for exclusion or objections to the Settlement or to appeal from, attack or challenge the Final Order and Final Judgment.

47. Ongoing Cooperation. Plaintiffs and Defendants and each of their respective counsel shall execute all documents and perform all acts necessary and proper to effectuate the terms of this Settlement Agreement. The executing of documents must take place prior to the Final Settlement Hearing.

48. Binding on Successors. This Settlement Agreement shall be binding and shall inure to the benefit of the Parties and their respective successors, assigns, executors, administrators, heirs, and legal representatives.

49. Entire Agreement. This Settlement Agreement constitutes the full, complete, and entire understanding, agreement, and arrangement between Plaintiffs and the

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Settlement Class Members on the one hand and Defendant on the other hand with respect to the settlement of the Action.

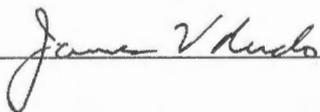
50. Released Claims against the Released Parties. This Settlement Agreement supersedes any and all prior oral or written understandings, agreements, and arrangements between the Parties with respect to the settlement of the Action and the Released Claims against the Released Parties. Except those set forth expressly in this Settlement Agreement, there are no other agreements, covenants, promises, representations or arrangements between the Parties with respect to the settlement of the Action and the Released Claims against the Released Parties.

51. Governing Law. This Settlement Agreement shall be interpreted, construed, enforced, and administered in accordance with the laws of the State of California, without regard to conflict of law rules.

52. Reservation of Jurisdiction. Notwithstanding the dismissal of this Action and entry and filing of Final Judgment, the Court shall retain jurisdiction for purposes of interpreting and enforcing the terms of this Settlement Agreement. Should any court in which this Action is pending lose jurisdiction over the Action before this Settlement is fully and finally effectuated, the Parties agree that it is their intent for the terms of this Agreement to be enforced, and agree that Plaintiff will re- file this Action, for settlement purposes only, in a mutually acceptable court of competent jurisdiction, if it has not already been remanded to such a court.

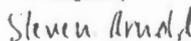
Dated: July, 13th, 2021

By: DMG Mori, USA Inc.

  
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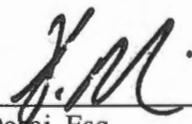
Dated: 7/13/2021, 2021

By: Steven Arnold

DocuSigned by  
  
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**APPROVED AS TO FORM:**

Dated: July 13, 2021

By:   
\_\_\_\_\_ Aashish Desai, Esq.  
Desai Law Firm, P.C.