

## **SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE**

This Settlement Agreement (hereinafter “Agreement”) is entered into as of the Effective Date by and between Alan Elliott, Amazing Grace Movie LLC, Al’s Records and Tapes Inc. and Elliott Parties Qualified Settlement Fund (“QSF”) (together, the “Elliott Parties”), on the one hand; and Barry Tyerman and Jackoway Austen Tyerman Wertheimer Mandelbaum Morris Bernstein Trattner Auerbach Hynick Jaime LeVine Sample & Klein (formerly Jackoway Austen Tyerman Wertheimer Mandelbaum Morris Bernstein Trattner & Klein) (together, “Defendants”), on the other hand. For purposes of this Agreement, Alan Elliott, Amazing Grace Movie LLC, Al’s Records and Tapes Inc., QSF, Barry Tyerman, and/or Jackoway Austen Tyerman Wertheimer Mandelbaum Morris Bernstein Trattner Auerbach Hynick Jaime LeVine Sample & Klein may be referred to individually as a “Party,” or referred to collectively as “the Parties.” The “Effective Date” of this Agreement is the date of final and complete execution of this Agreement by all Parties.

### **RECITALS**

**WHEREAS**, on November 5, 2020, the Elliott Parties filed a lawsuit against Defendants in the Superior Court of California, County of Los Angeles, captioned *Elliott et al. v. Tyerman et al.* (Case No. 20STCV42553) (the “Lawsuit”);

**WHEREAS**, on January 12, 2021, in connection with the Lawsuit, the Elliott Parties filed the operative First Amended Complaint For Damages (the “First Amended Complaint”) against Defendants;

**WHEREAS**, the Lawsuit arises out of, among other things, the Elliott Parties’ efforts to market and sell distribution rights to a documentary titled *Amazing Grace* (the “Film”), which was created from footage directed by Sydney Pollack (“Pollack”) of Aretha Franklin (“Franklin”) performing and recording her “Amazing Grace” gospel album live at a church in Los Angeles in January of 1972;

**WHEREAS**, the Elliott Parties allege that Barry Tyerman, who served as the longtime lawyers for Pollack and, after Pollack’s passing, his heirs, related trusts, representatives and estate (the “Pollack Estate”), wrongfully claimed that the Pollack Estate retained rights in the Film;

**WHEREAS**, the Elliott Parties allege, among other things, that Defendants made defamatory statements that reduced the market value of the Film; that Defendants wrongfully entered into an attorney-client relationship with one or more of the Elliott Parties, while also representing the Pollack Estate as an adversary to the Elliott Parties; and that Defendants otherwise interfered with the Elliott Parties’ attempts to sell rights in the Film to potential distributors;

**WHEREAS**, Defendants deny all the Elliott Parties’ allegations and deny any liability arising out of any matters referenced or asserted in the Lawsuit;

**WHEREAS**, the Parties now desire to resolve and settle, once and forever, all disputes, conflicts, differences, claims and liability between them, known or unknown, whether as set forth or referenced in this Agreement, or arising out of or relating to the Film or any other matters

referenced in the First Amended Complaint or otherwise asserted in the Lawsuit, or as may otherwise exist between them, in accordance with the terms and provisions of this Agreement, and without any admission of liability, and agree to the following.

### **AGREEMENT AND GENERAL RELEASE**

**NOW, THEREFORE**, in consideration of the covenants, agreements, warranties, conditions, obligations and promises set forth below, the Parties agree as follows:

1. **Settlement Payment**. The Parties each agree that, as consideration for the Releases, dismissals, and additional terms described herein, Defendants, jointly and severally, shall cause to be delivered a payment of U.S. \$3,200,000.00 (three million two hundred thousand U.S. dollars) as follows:

(a) A wire transfer in the amount of \$1,888,888.00 (One Million and Eight Hundred and Eighty-Eight Thousand and Eight Hundred and Eighty Eight Dollars) to the QSF by no later than thirty (30) days after full execution of this Agreement and Defendants' receipt of a completed and fully executed W-9 form from the QSF (the "Settlement Payment"). Counsel for the Elliott Parties shall provide the wire instructions. Any IRS Forms 1099 or other tax reporting forms that are issued shall be issued only to the QSF, not to any of the Elliott Parties or their counsel.

(b) A wire transfer in the amount of \$1,311,112.00 to the Douglas Hicks Attorney Trust Account by no later than thirty (30) days after full execution of this Agreement and Defendants' receipt of a completed and fully executed W-9 form from the Douglas Hicks Law Firm for attorneys' fees and costs. Counsel for the Elliott Parties will provide the wire instructions. Any IRS Forms 1099 or other tax reporting forms for this amount shall be issued solely to the Douglas Hicks Law Firm and not to the Elliott Parties.

2. **Dismissal of the Complaint**. Within five (5) calendar days after the Elliott Parties' receipt of the Settlement Payment, the Elliott Parties shall file a request for dismissal with prejudice of all claims asserted in the Lawsuit.

3. **Elliott Parties' Release**. With the limited exception of the Parties' specific obligations promised herein, the Elliott Parties, on behalf of themselves and each of their respective predecessors, successors, family members, subsidiaries, affiliates, current and former officers, directors, executives, owners, shareholders, members, employees, attorneys, principals, heirs, trustees, executors, insurers, if any, past and present, and any other person or entity claiming by or through them (collectively, the "Elliott Party Releasers"), hereby absolutely and forever release and discharge Defendants, and each of their respective predecessors, successors, subsidiaries, affiliates, current and former officers, directors, executives, owners, shareholders, members, law partners, employees, attorneys, administrators, executors, trustees, principals, heirs, insurers, if any, past and present, and any other person or entity claiming by or through them (collectively, the "Defendant Releasees"), from all known and unknown charges, complaints, claims, grievances, liabilities, obligations, promises, agreements, controversies, damages, actions,

causes of action, suits, rights, demands, costs, losses, debts, penalties, fees, wages, medical costs, pain and suffering, mental anguish, emotional distress, expenses (including attorneys' fees and costs actually incurred), and punitive damages, of any nature whatsoever, whether at law or in equity, or arising under the law or regulation of the United States or any state or locality or otherwise, or known or unknown, which the Elliott Party Releasors have, or may have had, against the Defendant Releasees, whether or not apparent or yet to be discovered, and whether or not asserted in the Lawsuit, or which may hereafter develop, for any acts or omissions relating to matters of any kind occurring on or before the Effective Date. Collectively, the claims referred to in and released by this paragraph shall be known as "Released Elliott Party Claims." For the avoidance of doubt, the Released Elliott Party Claims include but are not limited to any allegations or claims arising from or related to any alleged attorney-client relationship between any of the Defendant Releasees and any of the Elliott Party Releasors. Furthermore, the Elliott Party Releasors forever release and discharge the Pollack Estate, Rachel Sorman, Rebecca Pollack Parker, and/or any of Sydney Pollack's heirs, executors, trustees, associated trusts and entities (together, the "Estate Releasees") for any claims asserted in the Lawsuit resulting from Defendants' conduct in their capacity as the attorneys, representatives and/or agents of the Estate Releasees including but not limited to interference and trade libel. In the unlikely event that the Estate Releasees should file a legal proceeding against Plaintiffs in connection with Plaintiffs' actions relating to the subject matter of the Lawsuit, this release of the Estate Releasees would become null and void automatically upon filing of such a proceeding. For the avoidance of doubt, the Released Elliott Party Claims include but are not limited to any allegations or claims that were asserted or could have been asserted by the Elliott Party Releasors in the Lawsuit. The release in this Paragraph 1 is not intended, and shall not be construed, as a release of claims (known or unknown) as to Neon Rated, LLC or its officers, employees or representatives.

4. Covenant Not To Sue By The Elliott Parties. The Elliott Parties irrevocably covenant to refrain from, directly or indirectly, asserting any Released Elliott Party Claims or demands or commencing, instituting, or causing to be commenced, or encouraging or assisting others in commencing or instituting, any proceeding of any kind (including but not limited to judicial, arbitral, administrative, or governmental proceedings) relating to the Released Elliott Party Claims against the Defendant Releasees. The Elliott Parties also irrevocably covenant to refrain from, directly or indirectly, invoking or referencing any information not in the public domain relating to the Lawsuit, the subject matter or covenant thereof, this Agreement, or any Released Elliott Party Claims in any proceeding of any kind (including but not limited to judicial, arbitral, administrative, or governmental proceedings), with the exception of a proceeding to enforce the terms of this Agreement, or unless compelled to do so by law pursuant to Paragraph 9 herein.

5. Defendants' Release. With the limited exception of the Parties' specific obligations promised herein, the Defendants, on behalf of themselves and each of their respective predecessors, successors, subsidiaries, affiliates, current and former officers, directors, executives, owners, shareholders, members, law partners, employees, attorneys, principals, heirs, insurers, if any, past and present, and any other person or entity claiming by or through them (collectively, the "Defendant Releasors"), hereby absolutely and forever release and discharge the Elliott Parties, and each of them, and each of their respective predecessors, successors, subsidiaries, affiliates, current and former officers, directors, executives, owners, shareholders, members, employees,

attorneys, administrators, principals, insurers, if any, past and present, and any other person or entity claiming by or through them (collectively, the “Elliott Party Releasees”), from all known and unknown charges, complaints, claims, grievances, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties, fees, wages, medical costs, pain and suffering, mental anguish, emotional distress, expenses (including attorneys’ fees and costs actually incurred), and punitive damages, of any nature whatsoever, whether at law or in equity, or arising under the law or regulation of the United States or any state or locality or otherwise, or known or unknown, which the Defendant Releasers have, or may have had, against the Elliott Party Releasees, whether or not apparent or yet to be discovered, and whether or not asserted in the Lawsuit, or which may hereafter develop, for any acts or omissions relating to matters of any kind occurring on or before the Effective Date. Collectively, the claims referred to in and released by this paragraph shall be known as “Released Defendant Claims.”

6. Covenant Not To Sue By Defendants. Defendants irrevocably covenant to refrain from, directly or indirectly, asserting any Released Defendant Claims or demands or commencing, instituting, or causing to be commenced, or encouraging or assisting others in commencing or instituting, any proceeding of any kind (including but not limited to judicial, arbitral, administrative, or governmental proceedings) relating to the Released Defendant Claims against the Elliott Party Releasees. Defendants also irrevocably covenant to refrain from, directly or indirectly, invoking or referencing this Agreement, or any Released Defendant Claims in any proceeding of any kind (including but not limited to judicial, arbitral, administrative, or governmental proceedings), with the exception of a proceeding to enforce the terms of this Agreement, or unless compelled to do so by law pursuant to Paragraph 9 herein.

7. Waiver of Civil Code Section 1542. The Parties acknowledge that they are aware that statutes exist which render null and void releases and discharges of any claims, rights, demands, liabilities, actions and causes of action which are unknown to the releasing or discharging Party at the time of execution of said release and discharge. The Parties expressly waive, surrender and agree to forego any protection to which they would otherwise be entitled by virtue of the existence of any statute in any jurisdiction, including, but not limited to, California. The Parties acknowledge that they are familiar with Section 1542 of the California Civil Code, which provides 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.**

It is expressly understood and agreed that all rights under Section 1542 of the Civil Code of the state of California are expressly waived by the Parties to the full extent allowed by law. The Parties agree that this Agreement shall extend and apply to all unknown, unsuspected and unanticipated claims, demands, injuries, or damages within the scope of this Agreement and the releases therein. The Parties expressly waive any equivalent provision of any statute of the United

States or any other state or jurisdiction with respect to such claims, demands, injuries, or damages within the scope of this Agreement.

8. Complete Defense to Further Claims. The Elliott Parties understand, acknowledge, and agree that this Agreement may be pleaded by Defendants as a full and complete defense to any Released Elliott Party Claims and may be produced by Defendants as a basis for an injunction against any action, suit, claim, or other proceeding that may be instituted, prosecuted, or attempted in whole or in part based on any Released Elliott Party Claims. Defendants understand, acknowledge, and agree that this Agreement may be pleaded by the Elliott Parties as a full and complete defense to any Released Defendant Claims and may be produced by the Elliott Parties as a basis for an injunction against any action, suit, claim, or other proceeding that may be instituted, prosecuted, or attempted in whole or in part based on any Released Defendant Claims.

9. Confidentiality. Subject to the terms and conditions contained in Paragraph 12 and 13 below, the Parties agree that the terms of this Agreement, the fact or amount of payment and the negotiations relating to this settlement are and shall remain confidential and the Parties shall not disclose to any third party either orally or in writing the terms of the Agreement or anything regarding the Parties' negotiations relating to them. Notwithstanding the foregoing, the terms of this Agreement may only be disclosed: (i) to the Parties' respective legal counsel on a need to know basis; (ii) to any person who is necessary to carry out the provisions of the Agreement; (iii) to the Parties' respective professional representatives, including financial advisors, tax preparers and insurance carriers; (iv) to the extent such disclosure is required for enforcement of the Agreement, but only to the extent that the disclosure is necessary; and (v) to the extent disclosure is required by a document request, subpoena or by court order, provided, however, that the disclosing party must give sufficient advance notice to the non-disclosing party to permit the non-disclosing party to seek a protective order or otherwise object. The above parties to whom the terms of the Agreement or anything regarding the Parties' negotiations relating to them are disclosed must keep the terms strictly confidential.

10. No Prevailing Party; Attorneys' Fees and Costs. The Parties agree that no Party to this Agreement is a prevailing party under any applicable law of in any other sense with respect to the Lawsuit, any Released Elliott Claims, or any Released Defendant Claims. The Parties shall each bear their own costs and expenses, including but not limited to attorneys' fees, that the Parties have incurred or may incur in connection with the Lawsuit, the preparation and execution of this Agreement, and each Party's performance of its respective obligations under this Agreement.

11. No Admissions. The Parties expressly agree that this Agreement is made in compromise of disputed claims and for the sole purpose of avoiding the expense, burden and uncertainty of further litigation, with no admission as to fault or liability. Each Party denies that it has or should have any liability to any other Party or that it has engaged in any wrongdoing or violation of any legal or contractual obligation. The Parties agree that entering into this Agreement or taking any action pursuant to the Agreement does not, and shall not be construed to, constitute an admission for any purpose. The Parties agree and acknowledge that this Agreement is subject to all applicable settlement privileges under law and cannot be introduced in any action or proceeding by anyone for any purpose except to effectuate or enforce its terms.

12. Non-Disparagement. The Parties mutually agree that they will not disparage or defame any other Party in any manner. For the avoidance of doubt, this non-disparagement obligation on the part of the Parties obligates the Parties to refrain from making any disparaging comments on social media, podcasts, or otherwise. To the extent provided by law, the Parties may only reference the existence of allegations in a publicly-filed lawsuit, subject to this non-disparagement provision. The Parties are not permitted to discuss the conduct alleged, the evidence in support or against any of the claims asserted in the Lawsuit, elaborate on the claims in a narrative form, and/or say that there is any alleged truth or falsity to the allegations set forth in the Lawsuit. If the fact or subject matter of this Lawsuit are raised by any third party in any current or future legal proceeding involving one or more of the Parties, such Parties and their counsel may use, and otherwise reference, the information, including the substance of the allegations of the Lawsuit, and any evidence adduced in connection therewith, as required in such legal proceeding, subject to the protective order in this Lawsuit. To the extent deposition testimony is required, the Parties and/or their counsel shall cause any such testimony to be designated “Confidential” per the applicable protective order in any such pending proceeding, or the protective order in this Lawsuit.

13. Press Contacts. In the event a member of the press, trade publication, general media, or a legal outlet contacts a Party, or a lawyer or agent for a Party, seeking comment on the Lawsuit and/or this Agreement, that Party, lawyer, or agent may only respond, if at all, as follows: “The parties have settled the matter amicably.” As used herein, “the press, trade publication, general media, or legal outlets” shall refer to and include newspapers, periodicals, magazines, online publications, and television and radio stations and programs, and any representative or freelance worker of the foregoing.

14. Dispute Resolution. This Agreement shall be governed by and may be enforced pursuant to California Code of Civil Procedure section 664.6. The Parties agree that, pursuant to California Code of Civil Procedure Section 664.6, the Court where the Lawsuit is pending should retain jurisdiction to enforce this Agreement. The Parties reserve the right to seek enforcement pursuant to section 664.4 by *ex parte* or on shortened notice. In the event of any suit, action, or proceeding brought by any Party in any way relating to this Agreement, or to enforce any provision herein, or with respect to any action undertaken by any Party in connection with the actions contemplated herein, the prevailing party shall be entitled to reasonable attorney’s fees in addition to court costs and other expenses of litigation in said action or proceeding including but not limited to expert costs and costs that may be incurred in obtaining or collecting any judgment.

15. Other Provisions.

15.1 Representation by Counsel and Full Knowledge of Terms of Agreement. Each Party has been represented by counsel in the negotiation and execution of this Agreement, and enters into this Agreement voluntarily and because he, she, or it has determined that doing so is in his, her, or its best interests. Each Party represents and warrants that he, she, or it has fully discussed the meaning and effect of this Agreement with his, her, or its attorneys and fully understand the meaning and effect of all of its terms.

15.2 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective officers, directors, shareholders, owners, partners, principals, agents, representatives, distributors, servants, employees, suppliers, parents, subsidiaries, affiliates, successors, assigns, and all those in active concert or participation with them.

15.3 Severance of Provisions. Should any part or provision of this Agreement be held unenforceable or in conflict with any law or jurisdiction, the validity of the remaining parts or provisions shall not be affected by such holdings so long as the primary purposes and intentions of the Parties can still be accomplished.

15.4 Drafting Ambiguities. This Agreement is deemed to have been jointly drafted by each Party. Any uncertainty or ambiguity shall not be construed for or against any Party based on the attribution of drafting to any Party. It is agreed and understood that the general rule that ambiguities are to be construed against the drafter shall not apply to this Agreement.

15.5 No Other Representations. Each of the Parties represents, warrants, and agrees that, in executing this Agreement, it has relied solely on the statements expressly set forth within this Agreement. Each of the Parties further represents, warrants, and agrees that, in executing this Agreement, it has placed no reliance whatsoever on any statement, representation, or promise of any other Party, or any other person or entity, that is not expressly set forth within this Agreement, or upon the failure of any other Party, or any other person or entity, to make any statement, representation, or disclosure.

15.6 Full and Complete Integration. This Agreement is the final written expression and the complete and exclusive statement of all agreements, conditions, promises, representations, and covenants between the Parties with respect to the subject matter of this Agreement. This Agreement replaces and supersedes all prior, former, or contemporaneous agreements, negotiations, understandings, representations, discussions, or warranties between and among the Parties.

15.7 Modification or Amendment. Any modification, alteration, or amendment of this Agreement shall be non-binding, ineffective, and invalid, unless in a writing that specifically refers to this Agreement and is signed by Parties, or a duly authorized representative of both Parties.

15.8 Governing Law. This Agreement shall be deemed to have been entered into and will be construed and enforced in accordance with the laws of the State of California as applied to contracts made and to be performed entirely within California. The Parties expressly consent to the exclusive jurisdiction of the Court where the Lawsuit is pending for any and all disputes arising out of or related to this Agreement, and expressly waive any defense they may have to the exercise of such jurisdiction including but not limited to *forum non conveniens*.

15.9 Counterparts. This Agreement may be executed and exchanged in counterparts and may be delivered via facsimile or electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, *e.g.*, [www.docusign.com](http://www.docusign.com)). All

counterparts so executed and exchanged shall together constitute one and the same instrument. When this Agreement is fully executed and exchanged, a fully executed PDF file of the Agreement shall be circulated, which shall constitute the original.

15.10 Authority to Execute. Each of the Parties to this Agreement represents and warrants that the individual who signs this Agreement below on behalf of the respective Party has the authority to bind the Party.

15.11 Warranties. The Parties expressly warrant that they have carefully read and fully understand all of the terms of this Agreement and that they are executing this agreement voluntarily and without coercion of any kind. The Parties further warrant that they have received advice and counsel from attorneys of their own choosing, and that they have had a full and fair opportunity to consult with their attorneys prior to executing this Agreement. The Parties further warrant that they are authorized to enter into this Agreement.

15.12 Non-Assignment. All Parties who execute this Agreement represent and warrant that they are the owners of all rights and claims being dismissed, discharged, and/or released herein and that no portion of those rights have been transferred, encumbered by or assigned to any other person or entity as of the Effective Date.

15.13 Lack of Duress. The Parties represent and warrant that they have each read this Agreement and that this Agreement has been executed of their own free will, without promises, threats or the exertion of duress upon them.

15.14 Headings. The headings in this Agreement are for reference only and shall not in any way control the meaning or interpretation of this Agreement.

15.15. Recitals. The recitals to this Agreement are hereby deemed incorporated into this Agreement.

15.16 Qualified Settlement Fund. The Elliott Parties warrant and represent the QSF is a bona fide "Qualified Settlement Fund" duly organized and in full compliance with applicable law, including 26 CFR § 1.468B-1 (Qualified Settlement Funds).

16. Notices. Any notice, request, authorization, demand or other communication hereunder shall be in writing, sent by overnight mail and email, and shall be deemed to have been duly given once sent:

If to Defendants:

A. Sasha Frid, Esq.  
sfrid@millerbarondess.com  
Colin H. Rolfs, Esq.  
crolfs@millerbarondess.com  
2121 Avenue of the Stars, 26th Floor  
Los Angeles, CA 90067

If to the Elliott Parties:

Carl E. Douglas  
carl@douglashicksllaw.com  
Douglas / Hicks Law, APC  
5120 W. Goldleaf Circle, Suite 140  
Los Angeles, CA 90056-1661

Maryann P. Gallagher  
mail@mpg-law.com  
Law Offices of Maryann P. Gallagher  
205 S Broadway, Suite 920  
Los Angeles, CA 90012

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS THEREOF, the Parties voluntarily, freely, and knowingly execute this Agreement.

ALAN ELLIOTT

BARRY TYERMAN

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Date:

AMAZING GRACE MOVIE LLC

JACKOWAY AUSTEN TYERMAN  
WERTHEIMER  
MANDELBAUM MORRIS  
BERNSTEIN TRATTNER  
AUERBACH HYNICK JAIME  
LEVINE SAMPLE & KLEIN, A  
PROFESSIONAL CORPORATION

\_\_\_\_\_  
By:  
Its:  
Date:

\_\_\_\_\_  
By: James Mandelbaum  
Its: Co-President  
Date:

AL'S RECORDS AND TAPES INC.

\_\_\_\_\_  
By:  
Its:  
Date:

ELLIOTT PARTIES QUALIFIED  
SETTLEMENT FUND

\_\_\_\_\_  
By:  
Its:  
Date: