

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made and entered into as of the last day set forth on the signature page (the “Effective Date”) by and among (i) Randy Sally (hereinafter “Plaintiff”), (ii) the “Settlement Class,” as defined herein, and (iii) adidas America, Inc. (hereinafter “adidas” and/or “Defendant”), each individually a “Party,” and, collectively, the “Parties,” for the purpose of resolving by compromise and settlement of all claims, controversies, alleged liabilities, and disputes between them.

RECITALS

- A. Plaintiff contends Defendant over collected improper tax rather than applicable use tax on purchases of tangible personal property by Plaintiff and the Settlement Class in online sales transactions in which the property was shipped by, or on behalf of, Defendant from a “ship-from” location outside the state of Missouri to the purchaser’s delivery address within the state of Missouri. The dispute is more fully set forth in the pleading filed in a lawsuit in the Circuit Court of St. Louis County, Missouri, captioned *Randy Sally v. adidas America, Inc.*, 20SL-CC03903 (hereinafter referred to as the “Action”).
- B. The Defendant has denied and continues to deny the claims and denies that Plaintiff and the Settlement Class are entitled to the relief sought.
- C. Each Party to this Agreement and the Action is fully apprised of the facts set forth in these Recitals, of the matters described herein, and of the facts and contentions raised in or that could have been raised in the Action.
- D. Notwithstanding the above, and solely in order to avoid the cost, delay, and uncertainty of further litigation, the Parties desire to compromise and settle the Action and all disputes and claims which exist or which may exist between them arising out of the facts, matters, and events set forth above, without admitting any liability, and to settle their rights and obligations in connection with the transaction and the Action.

THEREFORE, in consideration of the facts, releases, and promises contained herein, and for other good and valuable consideration, the sufficiency and receipt of which is acknowledged by each Party hereto, the Parties promise and agree as follows:

Administrative Refund Process

1. Administrative Refund Claim

- a. As provided for in Missouri Revised Statutes Sections 144.190.1, 144.190.2, and 144.190.3, the Parties agree to request a refund on behalf of Defendant from the Missouri Department of Revenue (“MDOR”) to obtain a refund of tax that Plaintiff alleges Defendant collected and submitted to the MDOR that was in excess of the amount that should have been collected at time of sale (the “Sally Refund Claim”). Any amount obtained through the Sally Refund Claim shall be called the “Refund Proceeds,” and subject to court approval, shall serve, as set forth in more detail below,

as the source of funding for any payments to the Settlement Class and attorneys' fees awarded to Plaintiff's counsel.

- b.** Defendant has provided to Plaintiff a data set that reflects the transactions that will provide the principal support for the Sally Refund Claim. Plaintiff has reviewed and accepts the data as good and sufficient for purposes of filing for a refund as contemplated herein. The Parties acknowledge that MDOR may request a sample of transactional level detail (including, but not limited to, receipts or other documents) from adidas that has not been provided to Plaintiff. adidas agrees to provide data requested by MDOR that is in adidas' possession. According to Plaintiff's legal theory, the Parties agree that the tax refund supported by the data is \$785,178.44, ("Refund Target") exclusive of any interest.
- c.** Unrelated to the subject matter of the Action and the Sally Refund Claim, Defendant is in the process of seeking a refund of sales tax paid to the MDOR for commercial activities surrounding its "Hype Platform." The amount sought through the Hype Platform refund request is \$244,154.18. Any allowance of a refund by the MDOR for the Hype Platform shall not be part of and is excluded expressly from the Refund Proceeds.
- d.** Defendant represents that it will act and respond timely with proper and as complete responses as possible to perfect the Sally Refund Claim.
- e.** At the request of the MDOR auditor, and with acquiescence of Plaintiff, Defendant has submitted the data set identified in 1. b. above to the MDOR auditor to review. Defendant agrees to continue to provide, with the agreement of Plaintiff, which shall be timely and not withheld unreasonably, additional data and information as is reasonably necessary to process the Sally Refund Claim.
- f.** Defendant will assign the right to any refund obtained from the Sally Refund Claim to the Settlement Class, and will execute a limited power of attorney that allows the MDOR to discuss the refund claims with Plaintiff's counsel. Plaintiff identifies Adam M. Goffstein, Daniel J. Orłowsky, Scott Riley and Dan Cook as counsel that will, subject to their limited power of attorneys, interface with the MDOR on behalf of the Plaintiff with respect to the Sally Refund Claim. As soon as practicable, Defendant will introduce Plaintiff's counsel to the MDOR auditor and explain their role in the Sally Refund Claim.
- g.** Defendant agrees to communicate as soon as possible (knowing that timing is of the essence) with Plaintiff regarding any verbal or written communications with the MDOR about the Sally Refund Claim, and will as soon as possible (knowing that timing is of the essence) provide copies of any such written communications to Plaintiff as soon as possible (knowing that timing is of the essence). Defendant agrees to provide any proposed response, including data, to a request from the MDOR to Plaintiff to review with sufficient time for Plaintiff to comment and request changes. For purposes of this provision, five (5) business days before the due date set by the MDOR or the date Defendant intends to respond, if there is no due date, will be deemed sufficient

time for review. Defendant will coordinate with Plaintiff before engaging in telephone calls with the MDOR auditor about the Sally Refund Claim so that one of Plaintiff's representatives can participate. Defendant will provide MDOR a Power of Attorney to ensure that Plaintiff receives all correspondence and communications related to the Sally Refund Claim between adidas and MDOR. Defendant will "CC" Plaintiff on all communication it sends to MDOR related to the Refund Claim.

- h.** If in the future, the MDOR auditor or anyone in authority at the MDOR determines that Defendant must prepare amended returns to perfect the Sally Refund Claim, then Defendant agrees to prepare such amended returns at its own cost within the time reasonably requested by the MDOR, as may be extended by agreement of the MDOR.
- i.** To the extent that the MDOR auditor or anyone else at the MDOR challenges Plaintiff's substantive position for the refund claim (as set forth more fully in Section 4(b)(2)), then Plaintiff's counsel will address that challenge, subject to prior review and approval by Defendant, in whatever form (verbally or in writing). Defendant will not take a position in Missouri adverse to the merits of Plaintiff's legal position for the refund in the Sally Refund Claim, unless Defendant in good faith believe such position is required by law or court order.
- j.** If the MDOR denies the Sally Refund Claim (in part or in full), then Defendant agrees to file an appeal of the denials to the Administrative Hearing Commission ("AHC") if Plaintiff's counsel requests that Defendant appeal, and a non-frivolous basis for appeal exists. If this matter is appealed to the AHC, then Defendant, on the one hand, and Plaintiff on the other hand, shall cooperate fully with each other, including the furnishing or making available during normal business hours of records, personnel (as reasonably required), books of account, powers of attorney or other materials necessary or helpful for the preparation or conduct of the appeal and to adequately develop a factual record before the AHC. If the AHC denies the refund claims (in material part or in full), Defendant agrees to file an appeal of the denials to the Missouri Supreme Court if Plaintiff's counsel requests that the Defendant appeal and non-frivolous basis for appeal exists. Plaintiff's counsel, subject to Defendant's review and approval, will be responsible for drafting any appeal documents, and for any other action necessary for these appeals, including, but not limited to, record preparation, briefing, and oral argument. Defendant will not be responsible for any other work or any costs, expenses or fees related to an appeal; provided, however, Defendant, at its own cost and expense, reserves the right to participate in any appeal or negotiations with the MDOR and/or its counsel, including the hiring of its own legal counsel to represent Defendant's interest, and to take exclusive control over the appeal at any point if, within its sole discretion, Defendant believes its best interests are not being represented in the appeal, including, but not limited to, the safekeeping of confidential information or casting Defendant in a negative light. Plaintiff shall not settle or compromise any such appeal without the prior written consent of Defendant, which consent shall not be withheld, conditioned, or delayed unreasonably.
- k.** Upon the execution of this Release Agreement Plaintiff will file a Motion for stay in this litigation. The stay will incorporate check-ins with the Court every 90 days.

Preliminary Approval Process

2. **Dismissal of the Action:** If the Sally Refund Claim is denied, after the time for any appeals set forth above, then the Parties will seek an order from the Court dismissing the Action with prejudice and Plaintiff and the Settlement Class hereby waive any right to challenge, appeal, or otherwise contest such dismissal with prejudice.
3. **Preliminary Approval:** If the Sally Refund Claim is approved, then Plaintiff and Defendant will jointly submit a motion for a Preliminary Approval Order by such date as agreed to by the Parties but no later than thirty (30) days from obtaining the refund. Defendant's counsel will draft the Preliminary Approval Order. Plaintiff's counsel will draft the motion for preliminary approval, the memorandum in support of preliminary approval, and any necessary exhibits (such as declarations in support of the motion). The documents will be consistent with the terms of this Agreement and will address the requirements of Missouri Rule of Civil Procedure 52.08. The Parties will exchange draft documents and subsequently will work together in good faith to ensure that the documents are mutually agreeable. Documents must be reviewed and approved in their final form by all parties prior to being submitted to the Court.
4. **Settlement Class:** If the Sally Refund Claim is ultimately approved, in whole or part, then the Parties agree to the conditional certification, for settlement purposes only, of a Settlement Class consisting of "all persons who, from July 27, 2015 through October 31, 2020, purchased tangible personal property from adidas in a remote sales transaction in which: 1) such property was shipped by, or on behalf of, adidas from a "ship-from" location outside the state of Missouri to the purchaser's delivery address within the state of Missouri; and 2) the purchaser was charged Missouri tax at more than the proper Missouri state and local use tax rate applicable at the delivery address. Excluded from the class are: Defendant, any entity in which Defendant has a controlling interest or which has a controlling interest in a Defendant, and Defendant's legal representatives, predecessors, successors, assigns, and employees; Class Counsel and members of the immediate family of Class Counsel; and the judge and staff to whom this case was assigned, and any member of the judge's immediate family and any customers who returned the product for a full refund."

The Settlement Class, and this entire Agreement, shall be approved by the Court on a schedule to be agreed to by the Parties. This Agreement will be approved but not filed with the Court.

- (a) **Notice and Notice Plan:** Plaintiff's counsel are responsible for preparing a Notice and Notice Plan, subject to Defendant's review and approval. Plaintiff's counsel will be responsible for implementing and administering the Notice Plan. The costs of implementing and administering the Notice Plan will be paid from the Refund Proceeds, if any. Under no circumstances will Defendant pay the costs of implementing and administering the Notice Plan.
- (b) **Refund Proceeds:**

- (1) The Refund Proceeds will consist of any refund or credit that Defendant receives from the MDOR attributable to online sales of tangible goods sold by Defendant that were shipped from a location outside of the State of Missouri to an address within the State of Missouri where the sale was assessed an improper higher tax rate instead of a proper use tax rate. If the MDOR offsets a refund to Defendant by decreasing the tax due on other transactions of Defendant, and Defendant does not successfully contest such offset, then Defendant will pay that offset amount into the Refund Proceeds such that the Refund Proceeds will not be reduced by the amount of that offset. The same applies (adidas will pay the offset amount) if MDOR refuses the refund in part or in whole based on a similar or prior refund issued to adidas.
- (2) Plaintiff's substantive position is that Missouri state and local use tax is due on adidas' remote sales of tangible personal property when such property was shipped by, or on behalf of, adidas from a "ship-from" location outside the state of Missouri to a purchaser's delivery address within the state of Missouri. If the MDOR agrees that Plaintiff is correct on the substantive merits but declines to approve a refund (in whole or material part) due solely to adidas' actions or inactions with respect to providing available data, forms or information reasonably required to support or to confirm the amount of the Sally Refund Claim, then adidas shall, after exhausting its appeal rights, contribute to the Refund Proceeds the amount not allowed by the MDOR with respect to the Sally Refund Claim, up to the amount identified in 1. b. above. Plaintiff may participate in any such appeals filed by adidas at Plaintiff's counsels' discretion, but adidas has the final decision as to submissions on appeal.
- (3) adidas will put the Refund Proceeds into the Settlement Fund. If the Refund Proceeds is less than the Refund Target because of a matter or matters solely within adidas' control, adidas additionally will put into the Settlement Fund an amount of money equal to the amount by which the matter or matters solely within adidas' control caused the Refund Proceeds to fall below the Refund Target. If, on the other hand, the Refund Proceeds is less than the Refund Target because of a matter or matters not solely within adidas' control, adidas will have no obligation to put any money into the Settlement Fund beyond the Refund Proceeds.
- (4) If the Refund Proceeds are less than the Refund Target, the Parties will attempt to agree in good faith regarding whether a particular matter affecting the Refund Amount was solely within adidas' control, but if they cannot agree, either Party may file a motion with the Court seeking an adjudication of this issue after adidas exhausts its appeal rights on the Sally Refund Claim. Any deadlines in this Settlement Agreement will be tolled from the date of filing of the motion until the date on which both Parties have received notice of the Court's decision.

- (5) The following is a non-exclusive list of hypothetical reductions to the Refund Amount that the Parties agree would be because of matters solely within adidas' control if they occur:
- (a) MDOR reduces the Refund Amount to offset tax that adidas owes to MDOR, whether or not that tax is related to the Refund Claim.
 - (b) If adidas refuses to provide, or agrees to provide but fails to provide, documents or information within its possession that are requested by MDOR and that refusal or failure to provide causes MDOR to issue a Refund Amount that is less than it would have issued had adidas provided such documents or information to the MDOR.
 - (c) adidas agrees to provide, and does provide, documents or information requested by MDOR, but provides such documents or information after the time frame detailed by MDOR and adidas' tardiness in providing such documents or information causes MDOR to issue a Refund Amount that is less than it would have issued had Adidas provided such documents or information within the time frame detailed by MDOR.
 - (d) MDOR reduces the Refund Amount because adidas has received a previous refund on the same or similar tax issue as that raised by the Refund Claim, as pursuant to 144.190.8.

- (c) **Distribution of Class Payments:** The Refund Proceeds will be distributed to the Settlement Class members on a pro-rata basis, net of attorneys' fees, costs, and payments to class representatives, subject to Court approval.
- (d) **Undistributed Refund Proceeds:** Undistributed Refund Proceeds will not be retained by Defendant. The disposition of undistributed Refund Proceeds will be determined at a later time and subject to Court approval.

Go-Forward Relief

5. If the MDOR agrees with Plaintiff's substantive position that use tax applies to Defendant's remote sales of tangible personal property shipped by, or on behalf of, adidas from a "ship-from" location outside the state of Missouri to a purchaser's delivery address within the state of Missouri, then Defendant agrees to collect state and local use tax at the proper applicable tax rate on such remote sales going forward unless and until there is a change in law or the MDOR changes its policy. Defendant will agree that this relief provides imputed value equal to the amount of refund to the Settlement Class for purposes of calculating Plaintiff's attorneys' fees.

Release of Liability

6. Plaintiff and the Settlement Class hereby unconditionally, irrevocably, forever and fully release, waive, acquit, and discharge Defendant and each of its predecessors, principals, parents, heirs, successors, assigns, subsidiaries, affiliates, commonly controlled entities, companies, enterprises, ventures, partners, insurers, investors, attorneys, officers, shareholders, directors, officers, members, managers, agents, representatives, present and former employees, clients, administrators, executors, personal representatives, and investors and their predecessors, heirs or successors in interest and assigns, and each of them (the "Releasees"), of and from claims, disputes, controversies, demands (whether written or oral), actions, causes of action, suits, lawsuits, litigation, proceedings, liens, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, variances, covenants, trespasses, obligations, promises, agreements, costs, damages, liabilities, losses, adjustments, executions, offsets, interest, expenses, attorneys' fees, expert or consulting fees, judgments, and/or any rights whatsoever of any kind, nature, or amount whether in law or equity, whether fixed or contingent, whether foreseen or unforeseen, whether known or unknown, whether anticipated or unanticipated, whether hidden or concealed, whether suspected or unsuspected, whether matured or unmatured, whether accrued or not accrued, whether liquidated or unliquidated, and/or whether based on any federal law, state law (including but not limited to the Missouri Merchandising Practices Act), foreign law, common law, statute or any other law, rule, or regulation whatsoever, including any and all claimed or unclaimed compensatory damages, consequential damages, interest, costs, expenses and fees (including reasonable or actual attorneys' fees), arising from the beginning of time to the Release Date, which is defined as either: (1) the date of dismissal of the action if the administrative refund claims are denied after exhaustion of all appeals; or (2) the date the Court enters the Order Granting Final Class Approval if the administrative refund claim is approved, which were raised in this Action. It is the intention and effect of this release to discharge all claims of the improper taxing stated in the Action that the Plaintiff and/or Settlement Class has or may have against the Releasees up until and including the date of the execution of this Agreement.

Defendant will not admit liability, and is cooperating in the Administrative Refund Claim only to permit the MDOR to render a decision in a timely fashion. Plaintiffs and the Settlement Class are not entitled to any relief from Defendant other than as expressly stated in this Agreement.

Miscellaneous Provisions

7. **Plaintiff's Attorneys' Fees:** Plaintiff's and the Settlement Class's attorneys' fees will be paid only out of the Refund Proceeds, if any. Under no circumstances will Defendant pay attorneys' fees, and any payment of attorneys' fees shall be from the Refund Proceeds, if any. Plaintiff's counsel are responsible for filing any necessary documents to receive Court approval for attorneys' fees. Defendant will not object to attorneys' fees.
8. **Costs and Expenses:** Costs and expenses will be paid only out of the Refund Proceeds, if any. Under no circumstances will Defendant be liable for any costs or expenses, and any payment of costs or expenses shall be from the Refund Proceeds, if any, except as addressed in paragraph 4(b).

9. **Incentive Payments to Class Representative:** Incentive payments to the class representative (namely, Randy Sally may be paid only out of the Refund Proceeds, if any. Under no circumstances will Defendant make incentive payments to Mr. Sally, and any incentive payment to Mr. Sally shall be from the Refund Proceeds, if any, and subject to Court approval.
10. **Release Limitations:** This Agreement does not release: (1) claims arising out of the failure of any Party to perform in conformity with the terms of this Agreement; or (2) any disputes between the Parties or any Releasee arising after the Release Date that is not otherwise released herein.
11. **Acknowledgments:** Each of the Parties acknowledges and agrees that:
- (a) This Agreement is entered into and executed voluntarily by each of the Parties hereto and without any duress or undue influence on the part of, or on behalf of, any such Party.
 - (b) Each of the Parties hereto has been represented by counsel of its/his/her own choice, or has had the opportunity to be represented by counsel and to seek advice in connection with the negotiations for, and in the preparation of, this Agreement and that he, she, or it has read this Agreement and that he, she or it is fully aware of its contents and legal effects. This is an agreement of settlement and compromise, made in recognition that the Parties may have different or incorrect understandings, information, and/or contentions, as to the facts and/or the law, and with each Party compromising and settling any potential differences in the Parties' respective understandings, information, and contentions as to the facts and/or the law. As such, the Parties agree that no misunderstanding shall be a ground for rescission hereof.
 - (c) The drafting and negotiation of this Agreement has been undertaken by all Parties hereto and their respective counsel. For all purposes, this Agreement shall be deemed to have been drafted jointly by all of the parties hereto with no presumption in favor of one party over another in the event of any ambiguity.
12. **Compromise of Disputed Claims:** It is understood and agreed that this Agreement is the compromise of disputed claims, and that the terms of settlement contained herein and the releases executed are not intended to be and shall not be construed as admissions of any liability or responsibility whatsoever and each released Party expressly denies any liability or responsibility whatsoever.
13. **Severability:** If any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, then the validity and enforceability of the remaining provisions shall not be affected thereby.
14. **Binding Effect:** This Agreement shall be binding on, and shall inure to the benefit of, the Parties hereto and their respective parents, subsidiaries, affiliates, administrators, representatives, executors, heirs, successors, assigns, agents, officers, directors, and trustees.

- 15. **Governing Law:** This Agreement shall be governed by the laws of Missouri (exclusive of that state’s choice of law provisions) and any question arising hereunder shall be construed or determined according to such law.
- 16. **Further Assurances:** The Parties agree to do all reasonable acts and things and to make, execute, acknowledge and deliver such written documents, instructions and/or instruments in such form as shall from time to time be reasonably required to carry out the terms and provisions of this Agreement, including but not limited to, the execution, filing or recording of any reporting documents, affidavits, or agreements. The Parties further agree to give reasonable cooperation and assistance to any other Party or Parties hereto in order to enable such other Party or Parties to secure the intended benefits of this Agreement.
- 17. **Counterparts:** This Agreement may be executed by the Parties in any number of counterparts, including by way of facsimile, and each of which shall be deemed to be an original and all of which, collectively, shall be deemed to be one and the same instrument.
- 18. **Integration Clause:** This Agreement contains the entire agreement between and among the Parties hereto, and supersedes all prior and contemporaneous discussions, negotiations, understandings and agreements, whether oral or written, express or implied, between or among them relating to the subject matter of this Agreement. The Parties have not made, nor have the Parties relied on, any representations, promises, or agreements of any kind in connection with their decision to enter into this Agreement, except for those set forth in this Agreement. This Agreement may not be amended orally, nor shall any purported oral amendment (even if accompanied by partial or complete performance in accordance therewith) be of any legal force or effect or constitute an amendment of this Agreement, but rather this Agreement may be amended only by an agreement in writing signed by the Parties.
- 19. **Headings and Captions:** The headings and captions inserted into this Agreement are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.

IN WITNESS WHEREOF, each of the Parties hereto has executed this Agreement on the date set forth opposite his or its name below. The undersigned hereby certify that they have read and fully understand all of the terms, provisions, and conditions of this Agreement and have executed this Agreement voluntarily.

Dated: _____, 2021

Dated: 04.10.2021 _____, 2021

 Randy Sally
 DocuSigned by:

 83F527CA879245A...
 Authorized representative of
 adidas America, Inc.
 Name:
 Title:

representatives, executors, heirs, successors, assigns, agents, officers, directors, and trustees.

15. **Governing Law:** This Agreement shall be governed by the laws of Missouri (exclusive of that state's choice of law provisions) and any question arising hereunder shall be construed or determined according to such law.
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Dated: 10 - 5, 2021


Randy Sally

Dated: 04.10.2021
_____, 2021

DocuSigned by:
paul elertich
51CA9298C2EF408...

Authorized Representative of
adidas America, Inc.

Name:

Title: