

This Settlement Agreement (“Settlement Agreement”), including its attached Exhibits, is entered into as of this \_\_\_ day of January, 2020, by and among Plaintiffs, on behalf of himself and on behalf of the Settlement Class Members, and Defendant Sig Sauer, Inc., to settle and compromise the Action and to discharge the Released Parties as set forth herein.

## I. RECITALS

WHEREAS, Sig Sauer, Inc. (“SIG Sauer”) designs, manufactures and sells the P320 model striker-fired pistol (the “P320 Pistol”) to various government entities, law enforcement agencies and individual consumers in the United States and abroad;

WHEREAS, SIG Sauer commenced selling the P320 Pistol on January 1, 2014;

WHEREAS, as originally designed, the P320 Pistol did not include a mechanical disconnecter;

WHEREAS, on August 8, 2017, SIG Sauer announced the implementation of the P320 Voluntary Upgrade Program (the “Upgrade Program”), under which the design of the P320 Pistol was modified to enhance the performance, reliability and safety of the pistol and all P320 Pistols manufactured after August 8, 2017, included the new, upgraded design features;

WHEREAS, this upgraded design includes the addition of a mechanical disconnecter, as well as an exchange of the trigger, sear and striker with thinner, lighter versions of these components. Any P320 Pistol manufactured and sold prior to the implementation of the Upgrade Program and which has not been upgraded pursuant to the Upgrade Program is hereinafter referred to as a “P320 Original Design Pistol”;

WHEREAS, the Upgrade Program has been available to all P320 owners since the implementation of the Upgrade Program in August 2017, and remains available to all P320 owners currently;

WHEREAS, Plaintiff’s Counsel filed a putative class actions against SIG Sauer in the United States District Court for the Western District of Missouri, *David Hartley, et al. v. Sig Sauer, Inc.*, Case No. 4:18-cv-00267 (hereinafter “the putative class action”);

WHEREAS, the Plaintiff in the putative class action claims that the P320 Original Design Pistol was defectively designed because it allegedly allows the pistol to discharge where the pistol’s slide and barrel are in an unlocked condition due to the absence of a mechanical disconnecter. Plaintiff further alleges that the value and utility of P320 Original Design Pistols have been diminished as a result of the alleged defective design;

WHEREAS, the plaintiffs in the putative class action seeks damages and equitable relief, on behalf of himself and other class members, premised on alleged economic losses, and does not seek damages or other relief for personal injury or property damage claims;

WHEREAS, SIG Sauer filed a motion to dismiss the putative class action, which ultimately resulted in the dismissal of some, but not all, claims in the putative class action;

WHEREAS, the Parties have served written discovery demands, all of which have been responded to, including, in some instances, by objection and whereas documents have been produced;

WHEREAS, Plaintiff's Counsel conducted extensive investigations into the facts and circumstances related to this litigation, including consulting with experts, interviewing potential witnesses, conducting inspections of firearms, talking with many putative class members, and researching and studying legal principles applicable to the issues of liability, damages, jurisdiction and procedure;

WHEREAS, Plaintiff's Counsel took the corporate deposition of SIG Sauer;

WHEREAS, Plaintiff's Counsel retained an expert witness who has provided opinions regarding the alleged design defect;

WHEREAS, while discovery was being conducted, the Parties engaged in one in-person and multiple telephonic meetings conducted by Jill A. Morris through the Mediation and Assessment Program during which the Parties discussed and negotiated a preliminary settlement term sheet;

WHEREAS, prior to, during and after the mediation sessions, the Parties exchanged information which allowed each side to further evaluate their claims and defenses and discuss the parameters of a potential class-wide resolution of the putative class action;

WHEREAS, Plaintiff believes that the claims asserted in the Action have substantial merit; however, taking into account the extensive burdens and expense of litigation, including the risks and uncertainties associated with protracted trials and appeals, as well as the fair, cost-effective and assured method of resolving the claims of the Settlement Classes, Plaintiff and his Counsel have concluded that the Settlement Agreement provides substantial benefits to the Settlement Classes, and is fair, reasonable, adequate, and in the best interests of Plaintiff and the Settlement Classes;

WHEREAS, SIG Sauer denies that the design of the P320 Pistol – either the P320 Original Design Pistol or pistols that have been upgraded through the Upgrade Program – are defective and can result in discharges where the slide and barrel are in an unlocked condition, and SIG Sauer further denies Plaintiff's remaining allegations, wrongdoing of any kind, and believes that the Action is without merit, SIG Sauer has also taken into account the uncertainty, risk, delay, and costs inherent in litigation and agreed to enter into the Settlement Agreement to avoid any further litigation expenses and inconvenience, to remove the distraction of burdensome and protracted litigation, and to provide customers with the benefits outlined below rather than spending this money on costly litigation;

WHEREAS, SIG Sauer has agreed to class treatment of the claims asserted in the Action solely for the purpose of effectuating the compromise and Settlement of those claims on a class basis, as set forth herein, and deny that the Action properly could proceed on class bases for purposes of litigation or for trial;

WHEREAS, it is the intention and desire of the Parties to compromise, resolve, dismiss and release all allegations, disputes, and claims for damages (other than personal injury or personal property damages) or equitable relief arising out of, or relating to, the sale, marketing, design, and/or use of the P320 Pistol with respect to any and all claims that the pistols are able to discharge when the slide and barrel are in an unlocked condition, with respect to both the P320 Original Design Pistol and P320 Pistols that have been upgraded pursuant to the Upgrade Program, pursuant to the terms

set forth in the Settlement Agreement that have been or could have been brought by Plaintiffs themselves and on behalf of Settlement Class Members against Defendant;

WHEREAS, the Parties agree that the Settlement is fair, reasonable, and adequate, and is an appropriate nationwide resolution accomplished through the benefits, releases, and orders set forth in or attached to this Settlement Agreement;

NOW, THEREFORE, without an admission or concession on the part of Plaintiff on the lack of merit of the Action or an admission or concession of liability or wrongdoing or the lack of merit of any defense by SIG Sauer, it is stipulated and agreed by SIG Sauer and Plaintiff, acting for himself and on behalf of the Settlement Classes, that, on the following terms and conditions, the Action shall be settled and dismissed with prejudice as among Plaintiff, the Settlement Classes, and SIG Sauer upon Final Approval of the Court after the hearing(s) provided for in the Settlement; and the Settlement Class Members shall release all Released Claims against Defendant and all Released Parties.

## **II. DEFINITIONS**

1. As used in this Settlement Agreement, the following terms shall have the defined meanings set forth below.
2. “Action” means the case originally captioned *David Hartley, et al. v. Sig Sauer, Inc.*, No. 4:18-cv-00267, originally filed in the United States District Court for the Western District of Missouri on April 6, 2018.
3. “Appropriate Ammunition” means factory-new ammunition of the correct caliber manufactured to the appropriate SAAMI or NATO specification and excluding all handloads, reloads or remanufactured ammunition.
4. “Attorneys’ Fees and Expenses” means the amounts approved by the Court for payment to Class Counsel, including attorneys’ fees, costs, litigation expenses, fees and expenses of experts.
5. “Cartridge Failure Event” means a P320 pistol that has sustained damage caused by a ruptured cartridge; the type of damage caused by a Cartridge Failure Event includes a blown-out extractor and/or cracking or other damage to the grip module and/or frame of the pistol.
6. “Claim Form” means the claim form, substantially in the form set forth in Exhibit X to this Settlement Agreement, which must be timely and fully completed and submitted by any Settlement Class Member in order to be eligible for any settlement benefits.
7. “Claims Period” means the time during which any Settlement Class Member may submit a Claim Form under the Settlement. The Claims Period begins upon entry of the Preliminary Approval Order and expires twenty-four (24) months after the Effective Date.
8. “Claims Process” means the process by which Settlement Class Members may request and receive settlement benefits.

9. “Class Counsel” means Bonner Walsh, of Walsh PLLC; Tim Dollar, of Dollar Burns & Becker, L.C.; and Matthew D. Schelkopf, of Sauder Schelkopf.

10. “Court” means the United States District Court for the Western District of Missouri.

11. “Defendant” means Sig Sauer, Inc.

12. “Defendant’s Counsel” means the following, either individually or collectively:

Robert L. Joyce  
B. Keith Gibson  
LITTLETON PARK JOYCE UGHETTA &  
KELLY LLP  
The Centre at Purchase  
4 Manhattanville Road, Suite 202  
Purchase, NY 10577  
Phone: (914) 417-3400

Amy M. Crouch  
Brent Dwerlkotte  
SHOOK, HARDY & BACON LLP  
2555 Grand Blvd.  
Kansas City, MO 64108  
Phone: (816) 474-6550

13. “Effective Date” means the latest date on which the Final Approval Order approving this Agreement becomes final. For purposes of this Agreement: (a) if no appeal has been taken from the Final Order, the Effective Date is the date on which the time to appeal therefrom has expired; or (b) if any appeal has been taken from the Final Order, the Effective Date means the date on which all appeals therefrom, including petitions for rehearing or reargument, petitions for rehearing en banc and petitions for certiorari or any other form of review, have been finally disposed of and/or have expired in a manner that affirms the Final Order; or (c) if Plaintiffs’ Counsel and Defendant agree in writing, the Effective Date can occur on any other agreed date.

14. “Mediator” means Jill Morris from the Court’s Mediation and Assessment Program.

15. “Notice of Settlement” means the Court-approved form of notice of this Settlement Agreement to the Settlement Classes, as described in Section V below, and substantially in the form attached hereto as Exhibit A.

16. “Notice Program” means the process by which Plaintiffs’ Counsel and Defendant will work together to provide the Notice of Settlement to all potential Settlement Class Members, as described more fully in Section V, below.

17. “P320 Pistol” means the Sig Sauer P320 model pistol in all grip module sizes, slide lengths, calibers and variations, including all models known as “M17 or “M18.”.

18. “P320 Original Design Pistol” means a P320 model pistol that was distributed by Sig Sauer, Inc. prior to the implementation of the P320 Voluntary Upgrade Program and which has not been previously upgraded through the upgrade program.

19. “Parties” means Plaintiffs and Defendant.

20. “Plaintiffs” means David Hartley, Timothy Delisle and David Foster.

21. “Plaintiffs’ Counsel” means the following, either individually or collectively, in whole or in part:

Tim Dollar  
DOLLAR BURNS & BECKER, L.C.  
1100 Main Street, Suite 2600  
Kansas City, MO 64105

Bonner Walsh  
WALSH, PLLC  
1561 Long Haul Road  
Grangeville, Idaho 83530

Matthew D. Schelkopf  
SAUDER SCHELKOPF  
1109 Lancaster Ave.  
Berwyn, PA 19312

22. “Preliminary Approval Order” means the order to be entered by the Court pursuant to the Settlement Agreement, substantially in the form that shall be transmitted to the Courtroom Deputy concurrently with the Motion for Preliminary Approval.

23. “Released Claims” means all claims, demands, rights, damages, obligations, suits, debts, liens, contracts, agreements, and causes of action of every nature and description whatsoever, ascertained or unascertained, suspected or unsuspected, existing now or arising in the future, whether known or unknown, both at law and in equity which were or could have been brought against Defendant, or any of them, based upon or related in any way to the P320 design as it relates to an actual or potential Cartridge Failure Event subject to the Settlement Agreement, whether arising under statute, rule, regulation, common law or equity, and including, but not limited to, any and all claims, causes of action, rights or entitlements under any federal, state, local or other statute, law, rule and/or regulation, any consumer protection, consumer fraud, unfair business practices or deceptive trade practices laws, any legal or equitable theories, any claims or causes of action in tort, contract, products liability, negligence, fraud, misrepresentation, concealment, consumer protection, restitution, quasi-contract, unjust enrichment, express warranty, implied warranty, and/or any injuries, losses, damages or remedies of any kind, in law or in equity, under common law, statute, rule or regulation, including, but not limited to, compensatory damages, economic losses or damages, exemplary damages, punitive damages, statutory damages, restitution, or any other legal or equitable relief. Released claims also include any claim for attorneys’ fees, expenses, costs, and catalyst fees under any state’s law or under federal law. This release expressly exempts and does not include all claims for personal injury and personal property damage other than direct damage to a P320.

24. “Released Party” means Defendant Sig Sauer, Inc.; all manufacturers and assemblers of P320 Pistols, and each of their component parts; the entities supplying the aforementioned

companies with component parts; and all past, present and future officers, directors, shareholders, employees, predecessors, affiliates, parents, subsidiaries, partners, limited partners, insurers, administrators, agents, servants, successors, trustees, vendors, subcontractors, independent contractors, attorneys, representatives, heirs, executors, experts, consultants, and assigns of all the foregoing persons.

25. “Releasing Persons” shall include Plaintiffs and all Settlement Class Members, and each of their respective heirs, executors, representatives, agents, assigns, and successors.
26. “Settlement” means the settlement set forth in this Settlement Agreement.
27. “Settlement Agreement” means this document which describes the Settlement.
28. “Settlement Classes” means all P320 Pistol owners who fall under Settlement Class 1 / Category I Settlement Class; Settlement Class 2 / Category II Settlement Class; or Settlement Class 3 / Category III Settlement Class, as defined in ¶ 33.
29. “Settlement Class Member” means any person who falls into one of the Settlement Classes.
30. “Settlement Firearm” means all P320 Pistols.
31. “Settling Parties” means Settlement Class Members and Defendant.
32. “SIG Sauer” means Sig Sauer, Inc.
33. “United States” means the United States and its territories.

### **III. REQUIRED EVENTS**

34. In conjunction with filing the executed Settlement Agreement with the Court, Plaintiffs shall file a motion for leave to file an Amended Class Action Complaint naming David Hartley, Timothy Delisle and David Porter as Plaintiffs and seeking certification of the following Settlement Classes:

#### Settlement Class 1:

All current owners of a P320 Pistol whose pistols *have not* previously experienced a Cartridge Failure Event or have previously experienced a Cartridge Failure Event and have not previously returned their P320 Pistol to Sig Sauer for repair. Excluded from the class are: (a) persons who are neither citizens nor residents of the United States or its territories; (b) any Judge or Magistrate Judge presiding over the action and members of their families; (c) governmental and law enforcement agency purchasers; (d) Sig Sauer, Inc. and any of its employees, parents, subsidiaries and affiliates (“Category I Settlement Class”).

Settlement Class 2:

All individuals who previously returned their P320 Pistol to SIG Sauer after experiencing a Cartridge Failure Event and were told that their pistol could not be repaired. Excluded from the class are: (a) persons who are neither citizens nor residents of the United States or its territories; (b) any Judge or Magistrate Judge presiding over the action and members of their families; (c) governmental and law enforcement agency purchasers; (d) Sig Sauer, Inc. and any of its employees, parents, subsidiaries and affiliates (“Category II Settlement Class”).

Settlement Class 3:

All individuals who previously returned their P320 Pistol to SIG Sauer after experiencing a Cartridge Failure Event and were charged any amount, including shipping costs, for the repair and return of the pistol. Excluded from the class are: (a) persons who are neither citizens nor residents of the United States or its territories; (b) any Judge or Magistrate Judge presiding over the action and members of their families; (c) governmental and law enforcement agency purchasers; (d) Sig Sauer, Inc. and any of its employees, parents, subsidiaries and affiliates (“Category III Settlement Class”).

35. The Parties shall file a joint Motion for Conditional Certification of Settlement Class, Preliminary Approval of Settlement, Approval of Notice Plan and Appointment of Class Counsel (“Motion for Preliminary Approval”). The Motion for Preliminary Approval shall, among other things, seek entry of a proposed Preliminary Approval Order which would, for settlement purposes only, conditionally certify the Settlement Classes; preliminarily approve the Settlement Agreement; approve the proposed Notice Plan, including the Notice of Settlement, as set forth in Exhibit A and Section V of this Settlement Agreement; approve the Claim Forms, attached as Exhibit B; appoint Class Counsel; schedule the Final Approval Hearing; and set a briefing schedule for the Final Approval Hearing.

36. In accordance with the Court’s Preliminary Approval Order, the Parties shall subsequently file a joint Motion for Final Approval of Settlement (“Motion for Final Approval”). The Motion shall seek entry of a proposed Final Approval Order that would, among other things: grant final approval of the Settlement Agreement and direct its implementation pursuant to its terms and conditions; discharge and release the Released Party, and each of them, from the Released Claims; permanently bar and enjoin all Releasing Persons from instituting, maintaining, or prosecuting, either directly or indirectly, any lawsuit that asserts Released Claims; direct that the action be dismissed with prejudice and without costs; state pursuant to Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the Final Approval Order and Judgment is a final, appealable order; and reserve to the Court continuing and exclusive jurisdiction over the Settling Parties with respect to the Settlement Agreement and the Final Approval Order. In particular, the proposed Final Approval Order shall specify that, without in any way affecting the finality of the Final Approval Order, the Court expressly retains exclusive and continuing

jurisdiction over the Parties, including the Settlement Class, in all matters relating to the administration, consummation, validity, enforcement and interpretation of the Settlement Agreement and the Final Approval Order, including, without limitation, for the purpose of: (a) enforcing the terms and conditions of the Settlement Agreement and negotiations and resolving any disputes that arise out of the implementation or enforcement of the Settlement Agreement; (b) entering such additional orders, if any, as may be necessary or appropriate to protect or effectuate the Final Order and the Settlement Agreement (including, without limitation, orders enjoining persons or entities pursuing any claims), or to ensure the fair and orderly administration of the Settlement; and (c) entering any other necessary or appropriate orders to protect and effectuate this Court's retention of continuing jurisdiction over the Settlement Agreement, and the Parties in matters relating to the implementation or enforcement of the Settlement Agreement.

#### **IV. SETTLEMENT BENEFITS**

##### **37. P320 Voluntary Upgrade Program**

Sig Sauer agrees to renew notice of the P320 Voluntary Upgrade Program, which allows all P320 Original Design Pistol owners to have their pistols upgraded by Sig Sauer free of charge, and to keep this program in place and available to all P320 Original Design Pistol owners for a period of twenty-four (24) months following certification of the settlement class. Information regarding the details of the P320 Voluntary Upgrade Program can be found on Sig Sauer's website at: <https://www.sigsauer.com/support/p320-voluntary-upgrade/>.

Additionally, Sig Sauer agrees to provide additional information on its website about the inclusion of a mechanical disconnecter as part of the upgrade, including a statement that it provides an additional level of safety to prevent a Cartridge Failure Event, as part of the P320 Voluntary Upgrade Program. Sig Sauer also agrees to supplement its notice program to all class members further advising them of the availability and scope of the P320 Voluntary Upgrade Program inclusive of the information outlined above regarding the mechanical disconnecter, as follows:

- (a) **Sig Sauer Website:** Sig Sauer will update the information contained on the P320 Voluntary Upgrade Program page of its website<sup>1</sup> to provide additional information about the inclusion of a mechanical disconnecter which will include a statement that it provides an additional level of safety to prevent a Cartridge Failure Event. Sig Sauer will include a link to the P320 Voluntary Upgrade Page on the home page of its website. Additionally, Sig Sauer will post the supplemental Upgrade Notice (substantially in the form attached hereto as Exhibit C) as a press release on the home page of its website.
- (b) **Direct Notice via E-Mail:** The Upgrade Notice will be sent *via e-mail* to all individuals listed in any of Sig Sauer's internal databases, regardless of whether Sig Sauer has a record of the individual having purchased a P320 pistol or P320-related product. The internal Sig Sauer databases that will be used to collect individual information for purposes of this Direct Notice include:

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<sup>1</sup> Located at <https://www.sigsauer.com/support/p320-voluntary-upgrade>.



- Sig Sauer’s Warranty Registration Database, which includes all individuals who have returned a warranty registration card for a Sig Sauer product, either by mailing in the card copy warranty registration card or by submitting it electronically;
  - Sig Sauer’s Customer Account Database, which includes all individuals who have contacted Sig Sauer’s customer service department (either by telephone or through the Sig Sauer website) in order to return a firearm or place an order; and
  - Sig Sauer’s Webstore Database, which includes individuals who have made P320-related purchases (P320 components such as grip modules, barrels, magazines, etc.) through the Sig Sauer Webstore.<sup>2</sup>
  - Additionally, Sig Sauer will obtain a list of individuals who purchased P320 model pistols from distributors and/or dealers through their Individual Officer Program.
- (c) **Direct Notice via U.S. Mail:** To the extent Sig Sauer does not have a valid e-mail address for any individual listed in any of the Sig Sauer internal databases described in Paragraph 2, above, who purchased a P320 Original Design Pistol or made a P320-related purchase (i.e., P320 magazines, grip modules, barrels or other parts), Sig Sauer will send the Upgrade Notice by U.S. Mail, proper postage prepaid, to each such individual. *(Note: This Direct Notice via U.S. Mail is limited to those individuals who purchased a P320 Original Design Pistol or any P320 component parts or accessories. It does not include customers who only purchased non-P320 products.)*
- (d) **Social Media Announcement:** Sig Sauer will post the Upgrade Notice to its various social media platforms, along with a link to the P320 Voluntary Upgrade Program page on the Sig Sauer website (where allowed). Specifically, Sig Sauer will post the Upgrade Notice on the following social media websites:
- Facebook (<https://www.facebook.com/SIGSAUERInc/>);
  - Twitter (<https://twitter.com/sigsauerinc/>); and
  - Instagram (<https://www.instagram.com/sigsauerinc/>).

38. **Incentive Awards.** Sig Sauer agrees to provide an incentive award to named plaintiff David Hartley in the amount of \$2,800. Sig Sauer also agrees to provide incentive awards to Timothy Delisle in the amount of \$2,800 and to David Porter in the amount of \$1,400.

39. **Category I Settlement Class Members – P320 Owners who have not experienced a Cartridge Failure Event or experienced a Cartridge Failure Event but did not previously return their P320 pistol to Sig Sauer for repair.** Category I Settlement Class will be entitled to

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<sup>2</sup> <https://www.sigsauer.com/store/>

receive a Voluntary Upgrade during the twenty-four (24) months following settlement class certification in the event they have not already participated in that program. All Category I Settlement Class members also will maintain a transferable Sig Sauer Limited Lifetime Warranty against any future Cartridge Failure Events resulting from the use of Appropriate Ammunition on their P320 pistols. To the extent these Category I Settlement Class members experienced a Cartridge Failure Event but did not previously return their P320 pistol for repair or experience a Cartridge Failure Event in the future, Sig Sauer agrees to repair the P320 pistol at no charge (including shipping costs) to the class member. In the event the P320 pistol cannot be repaired, Sig Sauer agrees to provide the Category I Settlement Class member their choice of either: (1) a refund amount that is the greater of the original purchase price of their P320 Pistol or the Manufacturer's Suggested Retail Price, *or* (2) a new P320 pistol of the same or similar version to the extent permitted by state and local law. Class members must submit proof of purchase (including receipt) if making a claim that the original purchase price is greater than the MSRP. Sig Sauer further agrees that a Category I Settlement Class member will not be denied repair coverage for a Cartridge Failure Event under this category based on normal wear and tear or lack of maintenance on the pistol. **However, the Cartridge Failure Event must arise out of the use of Appropriate Ammunition for coverage under this Category to apply.**

40. **Category II Settlement Class Members – P320 Owners who previously returned pistols for repair following a Cartridge Failure Event and were told their P320 Pistols were unrepairable.** Category II Settlement Class members will be entitled to their choice of either: (1) a refund amount that is the greater of the original purchase price (with proof of purchase, including receipt) of their P320 Pistol or the Manufacturer's Suggested Retail Price; *or* (2) a new P320 pistol of the same or similar version to the extent permitted by state and local law. Additionally, Category II Settlement Class members are entitled to a full refund of any costs related to the evaluation of their P320 Pistol, including any costs incurred by the class member in shipping the P320 Pistol to and from SIG Sauer for evaluation. Any Category II Settlement Class member who elects to participate in this Settlement must return their P320 Pistol to Sig Sauer. All costs associated with returning the P320 Pistol will be covered by Sig Sauer.

41. **Category III Settlement Class Members – P320 Owners who previously returned their P320 Pistol for repair following a Cartridge Failure Event and were charged for any repairs to their P320 Pistol related to that Cartridge Failure Event.** Category III Settlement Class members will be entitled to a full refund of the amount of money they were charged in connection with the return and repair of the P320 Pistol following a Cartridge Failure Event, including costs incurred for the shipping of their P320 Pistol to and from SIG Sauer for evaluation. All Category III Settlement Class members also will maintain a transferable Sig Sauer Limited Lifetime Warranty against any future Cartridge Failure Events resulting from the use of Appropriate Ammunition on their P320 pistols.

42. In order to obtain the benefits described above in ¶¶ 40-41, the Category II Class Member or Category III Class Member must submit and execute a Claim Form.

43. The Claims Period shall commence upon entry of the Preliminary Approval Order. The Claims Period shall expire twenty-four (24) months after the Effective Date. Claim Forms must be received no later than twenty-four (24) months following the Effective Date.

44. **Claims Process Review.** Any class member who is not satisfied with Sig Sauer's handling of their claim pursuant to this settlement agreement will be provided with the opportunity to contact an independent third party (to be identified by the parties) to investigate the correct administration of the terms of this settlement. For the avoidance of doubt, this is not an opportunity to re-negotiate the terms of this settlement, but rather is limited to the administration of the terms of this settlement as to a class member's particular claim. Sig Sauer may also request the involvement of this independent third party in the event it disputes the legitimacy of a claim submitted or the reasonableness of a demand made in connection with the claims process.

#### **V. NOTICE OF PROPOSED SETTLEMENT TO SETTLEMENT CLASS MEMBERS**

45. Notice of the Settlement to Settlement Class Members shall be provided pursuant to orders of the Court.

46. Plaintiffs' Counsel and Defendant agree that reasonable notice of this Agreement consistent with Due Process requirements of the United States Constitution shall be given to any and all Settlement Class Members. To effectuate such notice, Plaintiffs' Counsel and Defendant have agreed to provide notice of the Settlement to Settlement Class Members a combination of: (a) a joint press release; (b) distribution of the Notice of Settlement, as described in ¶ 48, below; and (c) notice through SIG Sauer's social media web pages, as described in ¶ 49, below. The text of the Notice of Settlement and the mechanisms for distributing the notice shall be subject to the approval of the Court and shall be the responsibility of the Parties.

47. Within a reasonable time following the Motion for Preliminary Approval, the Parties will issue a joint press release.

48. **Distribution of Notice of Settlement.** SIG Sauer agrees to provide the Notice of Settlement as follows:

- (a) **Sig Sauer Website:** Sig Sauer will post the Notice of Settlement on both the home page and the P320 pistol page of its website.<sup>3</sup> Additionally, Sig Sauer will post the press release jointly issued with Plaintiffs' Counsel regarding the Settlement as a press release on its website.
- (b) **Direct Notice via E-Mail:** The Notice of Settlement will be sent *via e-mail* to all individuals listed in any of Sig Sauer's internal databases, regardless of whether Sig Sauer has a record of the individual having purchased a P320 pistol or P320-related product. The internal Sig Sauer databases that will be used to collect individual information for purposes of this Direct Notice include:
  - Sig Sauer's Warranty Registration Database, which includes all individuals who have returned a warranty registration card for a Sig Sauer product, either by mailing in the card copy warranty registration card or by submitting it electronically;

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<sup>3</sup> Located at <https://www.sigsauer.com/support/p320-voluntary-upgrade>.

- Sig Sauer’s Customer Account Database, which includes all individuals who have contacted Sig Sauer’s customer service department (either by telephone or through the Sig Sauer website) in order to return a firearm or place an order; and
- Sig Sauer’s Webstore Database, which includes individuals who have made P320-related purchases (P320 components such as grip modules, barrels, magazines, etc.) through the Sig Sauer Webstore.<sup>4</sup>
- Additionally, Sig Sauer will obtain a list of individuals who purchased P320 model pistols from distributors and/or dealers through their Individual Officer Program.

(c) **Direct Notice via U.S. Mail:** To the extent Sig Sauer does not have a valid e-mail address for any individual listed in any of the Sig Sauer internal databases described in ¶ 48(b), above, who purchased a P320 Original Design Pistol or made a P320-related purchase (i.e., P320 magazines, grip modules, barrels or other parts), Sig Sauer will send the Notice of Settlement by U.S. Mail, proper postage prepaid, to each such individual. (*Note: This Direct Notice via U.S. Mail is limited to those individuals who purchased a P320 Original Design Pistol or any P320 component parts or accessories. It does not include customers who only purchased non-P320 products.*) This Direct Notice is attached as Exhibit D.

49. **Social Media Announcement:** Sig Sauer will post the Notice of Settlement to its various social media platforms, specifically:

- Facebook (<https://www.facebook.com/SIGSAUERInc/>);
- Twitter (<https://twitter.com/sigsauerinc/>); and
- Instagram (<https://www.instagram.com/sigsauerinc/>).

50. Not later than twenty-one (21) days before the date of the Final Approval Hearing, the Parties shall file with the Court a list of those persons who have opted out of or objected to the Settlement. The Parties shall also file with the Court proof, by affidavit or declaration, of the aforesaid publications and mailings as well as the details outlining the scope, method and results of the Notice Program.

51. The Parties shall promptly after receipt provide copies of any requests for exclusion, objections and/or related correspondence to each other.

## **VI. OBJECTIONS AND REQUESTS FOR EXCLUSION**

### **A. Requests for Exclusion**

52. A Settlement Class Member may opt out of his or her designated Settlement Class. To exercise this exclusion right, the Settlement Class Member must send a written notification of the

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<sup>4</sup> <https://www.sigsauer.com/store/>.

decision to request exclusion via certified or first class mail to one of the Class Counsel listed above. The request for exclusion must bear the signature of the Settlement Class Member (even if represented by counsel), the Settlement Class Member's full name, current address and telephone number, state the firearm's serial number, and include the following statement or equivalent language: "I request to be excluded from the settlement in the Sig Sauer P320 Class Action Settlement." No request for exclusion will be valid unless all of the information described above is included. No Settlement Class Member, or any person acting on behalf of or in concert or participation with that Settlement Class Member, may exclude any other Settlement Class Member from the Settlement Class. If the Settlement Class Member has entered into a written or oral agreement to be represented by counsel, the request for exclusion shall also be signed by the attorney who represents the Settlement Class Member. Such requests must be postmarked or personally delivered on such schedule as the Court may direct. In seeking Preliminary Approval of this Agreement, the parties will request that the deadline for submission of requests for exclusion shall be set on a date no less than sixty (60) days after the publication of the final notice to be published pursuant to Section V. Exclusions sent by any Settlement Class Member to incorrect locations shall not be valid. The Party who receives notice of exclusion from any Settlement Class member shall promptly forward copies of any written requests for exclusion to the other Party's designated counsel. A list reflecting all requests for exclusion shall be filed with the Court by the Parties no later than twenty-one (21) days before the Final Approval Hearing. If a potential Settlement Class Members files a request for exclusion, he or she may not file an objection under ¶ 55.

53. Any Settlement Class Member who has not timely and properly filed a written request for exclusion as provided in ¶ 51 shall be bound by the Settlement and all subsequent proceedings, orders, and judgments, including, but not limited to, the Release and Final Approval Order. Any Settlement Class Member who elects to opt out of the Settlement Class pursuant to this Agreement shall not be entitled to relief under or affected by this Agreement.

54. Class Counsel shall have the right to contact persons who file exclusion requests and to challenge the timeliness and validity of any exclusion requests, as well as the right to effect the withdrawal of any exclusion filed in error and any exclusion request which a Settlement Class Member wishes to withdraw for purposes of participating in the Settlement as set forth in this Agreement. The Court shall determine whether any of the contested opt-outs are valid.

## **B. Objections**

55. A Settlement Class Member may object to the Settlement. To exercise this certified or objection right, the Settlement Class Member must provide written notice of the objection via certified or first class mail to the Court, Class Counsel and Defendant's Counsel. Such notice shall state: (1) the objector's full name, address, telephone number, and e-mail address; (2) documents or information required on the Claim Form and sufficient to identify the objector as a Settlement Class Member, including but not limited to the pistols serial number; (3) a written statement of all grounds for the objection accompanied by any legal support for the objection; (4) the identity of all counsel representing the objector; (5) the identity of all counsel representing the objector who may appear at the Final Fairness Hearing; (6) all other cases in which the objector (directly or through counsel) or the objector's counsel (on behalf of any person or entity) has filed an objection to any proposed class action settlement, or has been a named plaintiff in any class action or served

as lead plaintiff class counsel, including the case name, court, and docket number for each; (7) a list of all persons who will be called to testify at the Final Fairness Hearing in support of the objection; (8) a statement confirming whether the objector intends to personally appear and/or testify at the Final Fairness Hearing; and (9) the objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation). Any Settlement Class Member who fails to file and serve timely a written objection containing all of the information listed in the items listed above in the previous paragraph, including notice of his/her intent to appear at the final approval hearing, shall not be permitted to object to the Settlement and shall be foreclosed from seeking any review of the settlement or the terms of the Settlement Agreement by any means, including but not limited to an appeal. Such objection must be postmarked or personally delivered on such schedule as the Court may direct. The submission of an objection allows Class Counsel of SIG Sauer's Counsel to take the deposition of the objecting Settlement Class Member pursuant to the Federal Rules of Civil Procedure at an agreed-upon time and location, and to obtain any evidence relevant to the objection. Failure by an objector to make himself or herself available for a deposition or to comply with expedited discovery requests may result in the Court striking the objection. The Court may tax the costs of any such discovery to the objector or the objector's counsel if the Court determines that the objection is frivolous or is made for an improper purpose. In seeking Preliminary Approval of this Agreement, the Parties will request that the deadline for submission of notice of objections shall be set on a date no less than sixty (60) days after the publication of the final notice to be published pursuant to Section V. Objections sent by any Settlement Class Member to incorrect locations shall not be valid.

56. Any Settlement Class Member who fails to comply with the provisions of ¶ 55 above shall waive and forfeit any and all rights he or she may have to appear separately and/or to object, and shall be bound by all the terms of this Settlement Agreement and by all subsequent proceedings, orders and judgments, including, but not limited to, the Release, the Final Order and the Final Judgment in the Actions. The exclusive means for any challenge to this Settlement shall be through the provisions of this Section VI.B. Without limiting the foregoing, any challenge to the Settlement or Final Approval Order shall be pursuant to appeal under the Federal Rules of Appellate Procedure and not through a collateral attack.

57. Any Settlement Class Member who objects to the Settlement shall be entitled to all of the benefits of the Settlement if this Settlement Agreement and the terms contained herein are approved, as long as the objecting Settlement Class Member complies with all requirements of this Settlement Agreement applicable to Settlement Class Members, including the timely submission of a Claim Form and other requirements herein.

## **VII. ATTORNEYS' FEES**

58. In advance of the date set by the Court for Objections, Class Counsel agrees to request approval of an award of all attorneys' fees, costs, and expenses in a total amount not to exceed \$850,000. Defendant agrees to pay any fees and costs awarded by the Court in an amount not to exceed \$850,000, and will do so within thirty (30) days of the Effective Date. The amount of attorneys' fees, costs, and expenses was negotiated after the substantive terms of the Settlement, including the benefits to Settlement Class Members. The Motion for Preliminary Approval and

Notice of Settlement shall state that Class Counsel will seek an award of attorneys' fees, costs, and expenses in an amount not to exceed \$850,000.

59. If the request for an award of attorneys' fees, costs, and expenses is finally approved by the Court and upheld on any appeal, then SIG Sauer shall pay the amount ordered by the Court via electronic transfer to Class Counsel within thirty (30) business days after the Effective Date, provided that Class Counsel has submitted appropriate routing information and payment information reasonably necessary for SIG Sauer to process such transfer.

60. The distribution of the attorneys' fees, costs and expenses will be determined by Class Counsel separate and apart from this Agreement. Should a dispute arise regarding the distribution among Class Counsel, the costs to resolve this dispute shall be borne solely by Class Counsel, and Class Counsel agree to defend, indemnify and hold harmless, SIG Sauer against any claim for attorneys' fees by any other counsel not included in this Agreement or from any claim by any member of Class Counsel regarding the sufficiency of the attorneys' fees.

## **VIII. RELEASE**

61. As consideration for the relief provided under the Settlement Agreement, the Releasing Persons agree to release the Released Party from any and all claims, demands, rights, damages, obligations, suits, debts, liens, contracts, agreements and causes of action of every nature and description whatsoever, ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, including those unknown, both at law and in equity which were or could have been brought against Defendant based upon the Design of the P320 Pistols it relates to an actual or potential Cartridge Failure Event, including but not limited to those claims asserted in the Action, whether sounding in tort, contract, breach of warranty, violation of any state or federal statute or regulation, fraud, unjust enrichment, money had and received, restitution, equitable relief, punitive or exemplary damages or any other claims whatsoever under federal law or the law of any state. Released claims also include any claim for attorneys' fees, expenses, costs, and catalyst fees under any state's law or under federal law. This release expressly exempts and does not include all claims for personal injury and personal property damage other than direct damage to a P320.

62. If any Settlement Class Member brings an action or asserts a claim against Defendant that is contrary to the terms of the Settlement Agreement, that Defendant shall provide Class Counsel with a copy of the Settlement Class Member's complaint. Class Counsel agrees to contact counsel of record for the Settlement Class Member and advise him or her of the Settlement Agreement.

## **IX. MISCELLANEOUS PROVISIONS**

### **A. For Settlement Purposes Only/No Admissions**

63. The Settlement Agreement is for settlement purposes only, and neither the fact of, nor any provision contained in, this Agreement or its Exhibits, nor any action taken hereunder shall constitute, be construed as, or be admissible in evidence as an admission of: (a) the validity of any claim or allegation by Plaintiffs, or of any defense asserted by Defendant in the Action; (b) the propriety of class certification or proceeding in whole or in part on a class wide basis for purposes of litigation and/or trial in this Action or any future action against Defendant or any Released

Party; or (3) any wrongdoing, fault, violation of law, or liability if any kind on the part of Defendant or any Released Party.

64. The Settlement Agreement is without prejudice to the rights of Defendant or any Released Party to oppose class certification in the Action for purposes of litigation and trial should the Settlement not be finally approved or implemented for any reason.

65. In the event that this Agreement does not become effective for any reason, this Agreement shall become null and void and of no further force and effect. In such instance, this Agreement and any negotiations, statements, communications, proceedings, and pleadings relating thereto, and the fact that the Parties agreed to the Agreement, shall be without prejudice to the rights of Plaintiffs or Defendant or any Settlement Class Member, shall not be used for any purpose whatsoever in any subsequent proceeding in this action or in any other action in any court or tribunal, and shall not be construed as an admission or concession by any party of any fact, matter, or allegation. In the event that this Agreement does not become effective, Plaintiffs, Defendant, and the Settlement Class Members shall be restored without prejudice to their respective positions as if the Agreement and any application for its approval by the Court had not been made, submitted, or filed. Notwithstanding the foregoing, in the event that the Court should refuse to approve any material part of this Agreement or the Exhibits thereto or if, on appeal, an appellate court fails to affirm the judgment entered pursuant to this Agreement, then the Parties may (but are not obligated to) agree in writing to amend this Agreement and proceed with the Settlement as so amended. Neither any award to a representative plaintiff in an amount less than that sought, nor an award of attorneys' fees, costs, and disbursement to Class Counsel in an amount less than that requested by Class Counsel, nor a reversal on appeal of any such award shall be deemed to be a modification of a material part of this Agreement that causes the Agreement to become null and void pursuant to this section.

**B. Arms' Length Negotiations and Disputes Among Counsel**

66. The Mediator has agreed to submit a declaration regarding the arms' length nature of the negotiation and overall fairness of the settlement, which shall be submitted with the Parties' Motion for Preliminary Approval.

**C. Alternative Dispute Resolution**

67. So that the Settling Parties do not have to return to court, if any disputes arise out of finalization of the settlement documentation or out of the Settlement itself, said disputes are to be resolved by the Mediator first by way of mediation, and if mediation is unsuccessful then by way of final binding non-appealable arbitration. If for any reason the Mediator is unavailable or has a conflict, the Settling Parties will agree on a substitute neutral so that this clause may be enforced without returning to Court. If the Settling Parties cannot agree upon a substitute neutral, they will jointly petition either the Mediator or the Court to select a neutral for them to enforce this clause. The Court shall retain jurisdiction to enter and enforce any award arising from such arbitration.

68. The Court will retain jurisdiction to enforce the terms of this Agreement, including all terms that are not arbitrable issues and will otherwise retain jurisdiction to compel arbitration in



accordance with the above provision, as well as to enforce the terms of any award in arbitration to the extent required by law.

69. Nothing in this provision is intended to prevent the Court from exercising its authority to inquire about the bases for settlement, settlement terms, the implementation of the settlement, or the information provided to the Court in connection with preliminary or final approval of the Settlement.

**D. Exclusive Remedy; Dismissal of Actions; Continuing Jurisdiction of the Court; Agreement Subject to Missouri Law**

70. Each and every Settlement Class Member who has not requested exclusion pursuant to this Agreement submits to the jurisdiction of the Court and will be bound by the terms of this Settlement (including, without limitation, any and all releases).

71. This Agreement shall be the sole and exclusive remedy for any and all Released Claims, and upon entry of the Final Judgment by the Court, each Settlement Class Member who has not opted out of the Class shall be barred from initiating, asserting, or prosecuting any such Released Claims against Defendant.

72. Upon the entry of the Final Approval Order, this action will be dismissed with prejudice.

73. The laws of the state of Missouri govern this Agreement.

**E. Best Efforts**

74. The Parties, Plaintiffs' Counsel, and Defendant's Counsel agree to use their best efforts to obtain Court approval of this Settlement, and agree to support all terms of the Settlement Agreement in documents filed with the Court. They further agree to execute all such additional documents as shall be reasonably necessary to carry out the provisions of this Agreement.

**F. Administrative Costs**

75. Except as otherwise expressly provided in this Settlement Agreement, each of the Plaintiffs and the Defendant shall be solely responsible for his, her, or its own costs and expenses.

**G. Taxes**

76. Plaintiffs, Settlement Class Members, and Plaintiffs' Counsel shall be responsible for paying any and all federal, state, and local taxes due on any payments made to them pursuant to the Settlement Agreement.

**H. Public Statements**

77. The Parties, Plaintiffs' Counsel, and Defendant's Counsel shall not disparage the terms of this Settlement Agreement.

**I. Complete Agreement**

78. This Settlement Agreement and its Exhibits represent the complete agreement as to each and every term agreed to by and among Plaintiffs, the Settlement Class(es), and Defendant. The Settlement contemplated by this Agreement is not subject to any condition not expressly provided for herein, and there exist no collateral or oral agreements relating to the subject matter of the Agreement. In entering into this Settlement Agreement, no Party has made or relied on any warranty, promise, inducement or representation not specifically set forth herein. Any agreement purporting to change or modify the terms of this Agreement or the Exhibits hereto must be in writing, signed by Class Counsel and Defendant's Counsel.

79. All the Exhibits attached hereto or referred to herein are incorporated as if fully set forth in the body of the Agreement.

**J. Headings for Convenience Only**

80. The headings in this Settlement Agreement are for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement.

**K. Severability**

81. In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, this Settlement Agreement shall continue in full force and effect without said provision.

**L. No Party Is the Drafter**

82. None of the Parties shall be considered to be the primary drafter of this Settlement Agreement or any provision hereof for the purpose of any rule of interpretation or construction that might cause any provision to be construed against the drafter.

**M. Binding Effect**

83. This Settlement Agreement shall be binding according to its terms upon, and inure to the benefit of Plaintiffs, the Settlement Class, Defendant, the Settling Parties, and their respective successors and assigns.

**N. Authorization to Enter Settlement Agreement**

84. Plaintiffs' Counsel represents that they are fully authorized to conduct settlement negotiations with counsel for Defendant on behalf of Plaintiffs and the Settlement Class, and to enter into, and to execute, this Settlement Agreement on behalf of Plaintiffs and the Settlement Class, subject to Court approval pursuant to Federal Rule of Civil Procedure 23(e).

85. Defendant represents and warrants that: (a) it has all requisite corporate power and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby; (b) the execution, delivery, and performance of this Agreement have been duly authorized by all necessary corporate action on the part of Defendant; (c) its signatory to the Agreement has full authority to sign on behalf of and to bind Defendant to its terms; and (d) this

Agreement has been duly and validly executed and delivered by Defendant and constitutes its legal, valid and binding obligations.

86. The undersigned counsel represent that they have been fully authorized to execute this Agreement on behalf of their respective clients.

**O. Execution in Counterparts**

87. This Settlement Agreement may be executed in counterparts, and the execution of counterparts shall have the same effect as if all Parties had signed the same instrument. Facsimile signatures shall be considered as valid signatures as of the date signed, although the original signature dates shall thereafter be appended to the Settlement Agreement. This Settlement Agreement shall not be deemed executed until signed by Class Counsel and Defendant's Counsel.

**P. California Civil Code § 1542**

88. The Parties have read, understood, and consulted with their attorneys and have been fully advised by them as to the contents and meaning of Section 1542 of the Civil Code of California, which provides that:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Releasing Persons shall be deemed to have knowingly and voluntarily waived and relinquished all rights and benefits afforded by California Civil Code Section 1542, and by any comparable statutory provision or common law rule that provides, in sum or substance, that a general release does not extend to claims which the party does not know or suspect to exist in its favor at the time of executing the release, which if known by it must have materially affected the settlement. The Parties hereby agree and acknowledge that this waiver is an essential term of this Settlement Agreement without which the consideration given herein by Defendant would not have been given.

**Q. Right to Cancellation**

89. SIG Sauer shall be entitled, at its option, and in its sole and absolute good-faith discretion, to cancel the Settlement and rescind its agreement to the Settlement Agreement if all Required Events have not occurred or will not occur without a substantive modification to the terms and conditions of this Agreement or 5,000 or more Settlement Class Members exclude themselves from the Settlement. . To cancel the settlement, SIG Sauer must provide written notice to Plaintiffs' Counsel and to the Court no later than 21 days prior to the Final Approval Hearing. In the event of cancellation of the Final Approval Hearing or this Settlement Agreement, all costs shall be borne by the Parties that incurred the expenses.

IN WITNESS THEREOF, the Parties have executed this Settlement Agreement as of the dates set forth below, by their duly authorized attorneys.

By: \_\_\_\_\_  
Tim E. Dollar  
**DOLLAR BURNS & BECKER, L.C.**  
1100 Main Street, Suite 2600  
Kansas City, MO 64105

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Bonner Walsh  
**WALSH PLLC**  
1561 Long Haul Road  
Grangeville, ID 83530

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Matthew D. Schelkopf (*pro hac vice forthcoming*)  
**Sauder Schelkopf**  
1109 Lancaster Ave.  
Berwyn, PA 19312

Dated: \_\_\_\_\_

*Attorneys for Representative Plaintiffs and Class Counsel*

By: \_\_\_\_\_  
Robert L. Joyce  
**LITTLTON PARK JOYCE UGHETTA & KELLY LLP**  
4 Manhattanville Road, Suite 202  
Purchase, New York 10577

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Amy M. Crouch  
Brent Dwerlkotte  
**SHOOK, HARDY & BACON, LLP**  
2555 Grand Blvd.  
Kansas City, Missouri 64108-2613

Dated: \_\_\_\_\_

*Attorneys for Sig Sauer, Inc.*

**Representative Plaintiff Signatures**

\_\_\_\_\_  
David Hartley

\_\_\_\_\_  
Timothy DeLisle

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
David Porter

Dated: \_\_\_\_\_