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IN THE THIRD DISTRICT COURT  
SALT LAKE COUNTY, STATE OF UTAH

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JERRY LUKENS, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

UTAH IMAGING ASSOCIATES, INC., a  
Utah corporation,

Defendant.

SETTLEMENT AGREEMENT

Case No.: 210906618

Honorable Laura Scott

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This Settlement Agreement (“Agreement” or “Settlement Agreement”) is entered into by and between Utah Imaging Associates, Inc. (“Defendant”), and Jerry Lukens (“Plaintiff”), both individually and on behalf of the Settlement Class, in the case of *Lukens v. Utah Imaging Associates, Inc.*, No. 210906618, currently pending in the Third Judicial District Court of Salt Lake County, Utah (the “Litigation”). Defendant and Plaintiff are each referred to as a “Party” and are collectively referred to herein as the “Parties.”

## **I. RECITALS**

1. Utah Imaging Associates, Inc. is a corporation organized and existing under the laws of the State of Utah with its headquarters in Farmington, Utah.

2. This Litigation arises out of a data security incident, defined below as a “Data Incident,” and alleges that an unauthorized third party accessed Defendant’s computer systems and data on or around September 4, 2021, resulting in the third party’s access to personal information belonging to Plaintiff and members of the Settlement Class.

3. Defendant denies all claims asserted against it in the Litigation, denies all allegations of wrongdoing and liability, and denies all material allegations of the Class Action Complaint filed on December 8, 2021 (“CAC”) (and any prior complaints filed) against it regarding the Data Incident.

4. Plaintiff and Class Counsel believe that the legal claims asserted in the Litigation have merit. Class Counsel has investigated the facts relating to the claims and defenses alleged and the underlying events in the Litigation, have made a thorough study of the legal principles applicable to the claims and defenses asserted in the Litigation, and have conducted a thorough assessment of the strengths and weaknesses of the Parties’ respective positions.

5. The Parties' desire to settle the Litigation and all claims arising out of or related to the allegations or subject matter of the CAC and Litigation on the terms and conditions set forth herein for the purpose of avoiding the burden, expense, risk, and uncertainty of continuing to litigate the Litigation.

6. Beginning in May of 2022, Counsel for the Parties engaged in extensive arm's-length negotiations and mediation concerning a possible settlement of the claims asserted in the Litigation.

7. Plaintiff and Class Counsel, on behalf of the Settlement Class, have concluded, based upon their investigation, and taking into account the contested issues involved, the expense and time necessary to prosecute the Litigation through trial, the risks and costs associated with further prosecution of the Litigation, the uncertainties of complex litigation, the desired outcome from continued litigation, and the substantial benefits to be received pursuant to this Settlement Agreement, that a settlement with Defendant on the terms set forth herein is fair and reasonable and in the best interest of Plaintiff and the Settlement Class. Plaintiff and Class Counsel believe that the Settlement confers substantial benefits upon the Settlement Class.

8. The Parties agree and understand that neither this Settlement Agreement, nor the Settlement it represents, shall be construed as an admission by Defendant of any wrongdoing whatsoever, including an admission of a violation of any statute or law or of liability on the claims or allegations in this Litigation or any other similar claims in other proceedings, or that any such claims would be suitable for class treatment.

9. The Parties, by and through their respective duly authorized counsel of record, and intending to be legally bound hereby, agree that the Litigation, and all matters and claims in the CAC, and all matters and claims arising out of or related to the allegations or subject matter of the

CAC and Litigation, shall be settled, compromised, and dismissed, on the merits and with prejudice, upon the following terms and conditions.

**II. DEFINITIONS**

10. As used herein and in the related documents attached hereto as exhibits, the following terms have the meaning specified below:

a. “Claims Deadline” means the deadline for filing claims under the Settlement set at a date certain that is exactly ninety (90) Days from the date notice of the Settlement is mailed or otherwise provided to the Settlement Class Members.

b. “Claim Form” means the form members of the Settlement Class must complete and submit on or before the Claims Deadline to be eligible for the benefits described herein, and substantially in the form of Exhibit A to this Settlement Agreement. The Claim Form shall require a sworn affirmation under penalty of perjury but shall not require a notarization or any other form of verification.

c. “Claims Period” means the period for filing claims up until a date certain no more than ninety (90) Days from the date notice is mailed or otherwise provided to the Settlement Class Members.

d. “Claimants” shall have the meaning given in Paragraph 35.

e. “Class Counsel” shall mean Ben Barnow and Anthony L. Parkhill of Barnow and Associates, P.C. located at 205 W. Randolph Street, Suite 1630, Chicago, Illinois 60606; and Andrew W. Ferich of Ahdoot & Wolfson, PC located at 201 King of Prussia Road, Suite 650, Radnor, PA 19087.

f. “Court” means the Third Judicial Circuit of Salt Lake County, Utah.

g. “Day(s)” means calendar days, but does not include the day of the act, event, or default from which the designated period of time begins to run. Further and notwithstanding the above, when computing any period of time prescribed or allowed by this Settlement Agreement, “Days” includes the last day of the period unless it is a Saturday, a Sunday, or a federal or Utah state legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or federal or Utah state legal holiday.

h. “Data Incident” means the potential exposure of sensitive information of Plaintiff and members of the Settlement Class as a result of a third-party’s unauthorized access to Defendant’s computer systems on or around September 4, 2021.

i. “Defendant’s Counsel” means David Ross and other attorneys at Wilson Elser Moskowitz Edelman & Dicker LLP, located at 1500 K Street, NW, Suite 330, Washington, D.C. 20005.

j. “Effective Date” means the date defined in Paragraph 95 of this Settlement Agreement.

k. “Fee Award and Costs” means the amount of attorneys’ fees, expenses, and reimbursement of Litigation Costs awarded by the Court to Class Counsel.

l. “Final” with respect to a judgment or order means that all of the following have occurred: (i) the time expires for noticing any appeal; (ii) if there is an appeal or appeals, completion, in a manner that finally affirms and leaves in place the judgment or order without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration, rehearing en banc, or petitions for review and/or certiorari, all proceedings ordered on remand, and all proceedings

arising out of any subsequent appeal or appeals following decisions on remand); or (iii) final dismissal of any appeal or the final dismissal of any proceeding on certiorari.

m. “Final Approval Hearing” means the hearing to determine whether the Settlement should be given final approval and whether the applications of Class Counsel for attorneys’ fees, costs and expenses should be approved.

n. “Final Approval Order” means the order of the Court finally approving this Settlement.

o. “Final Judgment” means the dismissal with prejudice in the Litigation, entered in connection with the Settlement and Final Approval Order.

p. “Litigation” means the lawsuit entitled *Lukens v. Utah Imaging Associates, Inc.*, No. 210906618, currently pending in the Third Judicial District Court of Salt Lake County, Utah.

q. “Litigation Costs” means costs and expenses incurred by Class Counsel in connection with commencing, prosecuting, settling the Litigation, and obtaining an order of final judgment.

r. “Long-Form Notice” means the written notice substantially in the form of Exhibit B to this Settlement Agreement.

s. “Net Settlement Fund” means the amount of funds that remain in the Settlement Fund after funds are paid from or allocated for payment from the Settlement Fund for the following: (i) reasonable Notice and Claims Administration Costs incurred pursuant to this Settlement Agreement, (ii) any taxes owed by the Settlement Fund, (iii) any Service Awards approved by the Court, and (iv) any Attorneys’ Fees, Costs, and Expenses approved by the Court.

t. “Notice and Claims Administration Costs” means all costs incurred or charged by the Settlement Administrator in connection with providing notice to members of the Settlement Class and administering the Settlement. This does not include any separate costs incurred directly by Defendant or any of Defendant’s agents or representatives in this Litigation.

u. “Notice Program” means the notice program described in Section VII.

v. “Non-Profit Residual Recipient” means a 26 U.S.C. 501(c)(3) non-profit organization agreed to by the Parties.

w. “Objection Deadline” shall have the meaning set forth in Paragraph 64 or as otherwise ordered by the Court.

x. “Opt-Out Deadline” means the date certain that is exactly sixty (60) days from the date the Postcard Notice is mailed or as otherwise ordered by the Court.

y. “Opt-Out Members” shall have the meaning set forth in Paragraph 57.

z. “Parties” means Plaintiff and Defendant, collectively, and a “Party” means one of Plaintiff or Defendant.

aa. “Plaintiff’s Released Claims” means all claims and other matters released in and by Section XV of this Settlement Agreement.

bb. “Postcard Notice” or “Short-Form Notice” means the written notice to be sent to Settlement Class Members pursuant to the Preliminary Approval Order substantially in the form of Exhibit C to this Settlement Agreement.

cc. “Preliminary Approval Date” means the date the Preliminary Approval Order has been executed and entered by the Court.

dd. “Preliminary Approval Order” means the order certifying the proposed Class for settlement purposes, preliminarily approving this Settlement Agreement, approving the Notice Program, and setting a date for the Final Approval Hearing.

ee. “Released Class Claims” means all claims and other matters released in and by Section XV of this Settlement Agreement.

ff. “Released Persons” means Defendant and its present and former parents, subsidiaries, divisions, departments, affiliates, employees, servants, members, providers, partners, principals, directors, shareholders, owners, predecessors, successors, assigns, and insurers, and each of the foregoing’s former or present directors, trustees, officers, employees, representatives, agents, providers, consultants, advisors, attorneys, accountants, partners, vendors, customers, insurers, reinsurers, and subrogees.

gg. “Settlement” means the settlement reflected by this Settlement Agreement.

hh. “Settlement Administrator” means the class action settlement administrator, identified in the Motion for Preliminary Approval, that has been retained to carry out the Notice Program and administer the claims and settlement fund distribution process.

ii. “Settlement Agreement” means this Settlement Agreement, including releases and all exhibits hereto.

jj. “Settlement Class” means all persons whose PII and/or PHI was potentially compromised as a result of the Data Incident that Defendant discovered on or about September 4, 2021, including all persons who were sent a letter notifying them of the Data Incident. Defendant’s officers and directors are excluded from the Settlement Class, as well as (i) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (ii) the Judge assigned to evaluate the fairness of this settlement; and (iii) any other Person found by a court of



competent jurisdiction to be guilty under criminal law of perpetrating, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

kk. “Settlement Class Member[s]” means all persons who are members of the Settlement Class.

ll. “Settlement Fund” means the non-reversionary sum of two million one hundred thousand dollars and no cents (\$2,100,000.00), to be paid by Defendant as specified in this Agreement, including any interest accrued thereon after payment.

mm. “Settlement Website” means a dedicated website created and maintained by the Settlement Administrator, which will contain relevant documents and information about the Settlement, including this Settlement Agreement, the Postcard Notice, the Long-Form Notice, and the Claim Form, among other things.

### **III. CERTIFICATION OF THE SETTLEMENT CLASS**

11. For settlement purposes only, Plaintiff will request that the Court certify the Settlement Class.

12. Solely for the purpose of implementing this Settlement Agreement and effectuating the Settlement, Defendant agrees to stipulate to the certification of the Settlement Class and will not oppose Plaintiff’s request for certification. If this Settlement Agreement is terminated or disapproved, or if the Effective Date should not occur for any reason, then Defendant’s stipulation will be withdrawn and deemed to be of no force or effect for any purpose in this or any other proceeding.

#### **IV. THE SETTLEMENT FUND**

13. The Settlement Fund: Defendant agrees to make a payment of Two Million One Hundred Thousand Dollars and No Cents (\$2,100,000.00) and deposit that payment into the Settlement Fund as follows: (i) Defendant shall pay Five Hundred Thousand Dollars and No Cents (\$500,000.00) into the Settlement Fund fifteen (15) business days after the Court enters the Preliminary Approval Order, which shall be available to cover Notice and Claims Administration Costs incurred prior to entry of the Final Approval Order and Final Judgment, (ii) Defendant shall pay the balance of the Settlement Fund, One Million Six Hundred Thousand Dollars and No Cents (\$1,600,000.00), fifteen (15) business days after the Effective Date. For the avoidance of doubt, and for purposes of this Settlement Agreement only, Defendant's liability shall not exceed Two Million One Hundred Thousand Dollars and No Cents (\$2,100,000.00) absent an express written agreement between the Parties to the contrary.

14. Custody of the Settlement Fund: The Settlement Fund shall be deposited in an appropriate trust established by the Settlement Administrator but shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed pursuant to this Agreement or returned to those who paid the Settlement Fund in the event this Agreement is voided, terminated, or cancelled.

- a. In the event this Agreement is lawfully voided, terminated, or cancelled due to lack of approval from the Court or any other reason other than breach of the Agreement by Defendant: (i) the Class Representative and Class Counsel shall have no obligation to repay any of the Notice and Claims Administration Costs that have been paid or incurred in accordance with the terms and conditions of this Agreement; (ii) any amounts remaining in the

Settlement Fund after payment of Notice and Claims Administration Costs paid or incurred in accordance with the terms and conditions of this Agreement, including all interest earned on the Settlement Fund net of any taxes, shall be returned to the insurer paying on behalf of Defendant; and (iii) no other person or entity shall have any further claim whatsoever to such amounts.

15. Non-Reversionary: This Settlement is not a reversionary settlement. As of the Effective Date, all rights of Defendant in or to the Settlement Fund shall be extinguished, except in the event this Settlement Agreement is lawfully voided, cancelled, or terminated, as described in Section XIV of this Agreement. In the event the Effective Date occurs, no portion of the Settlement Fund shall ever be returned to Defendant.

16. Use of the Settlement Fund: As further described in this Agreement, the Settlement Fund shall be used by the Settlement Administrator to pay for: (i) reasonable Notice and Claims Administration Costs incurred pursuant to this Settlement Agreement as approved by the Parties and approved by the Court, (ii) any taxes owed by the Settlement Fund, (iii) any Service Awards approved by the Court, (iv) any Attorneys' Fee Award and Costs and Expenses as approved by the Court, and (v) any benefits to settlement class members, pursuant to the terms and conditions of this Agreement.

17. Financial Account: The Settlement Fund shall be an account established and administered by the Settlement Administrator, at a financial institution recommended by the Settlement Administrator and approved by Class Counsel and Defendant, and shall be maintained as a qualified settlement fund pursuant to Treasury Regulation § 1.468 B-1, *et seq.*

18. Payment/Withdrawal Authorization: No amounts from the Settlement Fund may be withdrawn unless (i) expressly authorized by the Settlement Agreement, and, as may be required (ii) approved by the Court. The Parties, by agreement, may authorize the periodic payment of actual reasonable Notice and Claims Administration Costs from the Settlement Fund as such expenses are invoiced without further order of the Court. The Settlement Administrator shall provide Class Counsel and Defendant with notice of any withdrawal or other payment the Settlement Administrator proposes to make from the Settlement Fund before the Effective Date at least seven (7) business days prior to making such withdrawal or payment.

19. Payments to Class Members: The Settlement Administrator, subject to such supervision and direction of the Court and Class Counsel as may be necessary or as circumstances may require, shall administer and oversee distribution of the Settlement Fund to Claimants pursuant to this Agreement.

20. Treasury Regulations and Fund Investment: The Parties agree that the Settlement Fund is intended to be maintained as a qualified settlement fund within the meaning of Treasury Regulation § 1.468 B-1, and that the Settlement Administrator, within the meaning of Treasury Regulation § 1.468 B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of the Settlement Fund and paying from the Settlement Fund any taxes owed by the Settlement Fund. The Parties agree that the Settlement Fund shall be treated as a qualified settlement fund from the earliest date possible and agree to any relation-back election required to treat the Settlement Fund as a qualified settlement fund from the earliest date possible. Any and all funds held in the Settlement Fund shall be held in an interest-bearing account insured by the Federal Deposit Insurance Corporation ('FDIC') at a financial institution determined by the Settlement Administrator and approved by the Parties. Funds may be placed in a non-interest-

bearing account as may be reasonably necessary during the check clearing process. The Settlement Administrator shall provide an accounting of any and all funds in the Settlement Fund, including any interest accrued thereon and payments made pursuant to this Agreement, upon request of any of the Parties.

21. Taxes: All taxes owed by the Settlement Fund shall be paid out of the Settlement Fund, shall be considered a Notice and Claims Administration Cost, and shall be timely paid by the Settlement Administrator without prior order of the Court. Further, the Settlement Fund shall indemnify and hold harmless the Parties and their counsel for taxes (including, without limitation, taxes payable by reason of any such indemnification payments). The Parties and their respective counsel have made no representation or warranty with respect to the tax treatment by the Class Representative or any Settlement Class Member of any payment or transfer made pursuant to this Agreement or derived from or made pursuant to the Settlement Fund. The Class Representative and each Settlement Class Member shall be solely responsible for the federal, state, and local tax consequences to him, her, or it of the receipt of funds from the Settlement Fund pursuant to this Agreement.

22. Limitation of Liability

a. Defendant and its counsel shall not have any responsibility for or liability whatsoever with respect to (i) any act, omission or determination of Class Counsel, the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design, or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the

payment or withholding of any taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns. Defendant also shall have no obligation to communicate with Class Members and others regarding amounts paid under the Settlement.

b. The Class Representatives and Class Counsel shall not have any liability whatsoever with respect to (i) any act, omission or determination of the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.

#### **V. BENEFITS TO SETTLEMENT CLASS MEMBERS**

23. Compensation to Settlement Class Members. Settlement Class Members must timely submit a valid Claim Form in order to receive a settlement benefit. Claims will be subject to review for completeness and plausibility by the Settlement Administrator. For claims deemed invalid, the Settlement Administrator will provide claimants an opportunity to cure in the manner set forth below. Settlement Class Members may elect to file a claim for either 1) a cash payment (estimated to be approximately \$50) or 2) a claim for reimbursement of certain losses and credit monitoring.

24. Reimbursement/Credit Monitoring Claims. Settlement Class Members who submit a Claim for Reimbursement/Credit Monitoring can seek reimbursement for each of 1) certain

ordinary losses, 2) lost time, and 3) two (2) years of 3 bureau credit monitoring and insurance, all subject to the terms explained below.

a. Compensation For Ordinary Losses. Settlement Class Members not selecting the cash payment of approximately \$50, may claim up to \$150.00 by submitting a valid and timely claim form and supporting documentation for ordinary losses demonstrably incurred as a result of the Data Incident. Ordinary losses can arise from the following categories:

i. *Out of pocket expenses incurred* as a direct result of the Data Incident, including documented bank fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, gasoline for local travel, and bank fees, all of which must be more likely than not attributable to the Data Incident, must not have been previously reimbursed or subject to reimbursement by insurance or a third party, and that are reasonably described and supported by an attestation under penalty of perjury

ii. *Fees for credit reports, credit monitoring, or other identity theft insurance product* purchased between September 4, 2021 and the date of the close of the Claims Period that the claimant attests under penalty of perjury he/she incurred as a result of the Data Incident and not already paid for or reimbursed by a third-party. All such fees must be supported by documentation substantiating the full extent of the amount claimed.

b. Compensation For Lost Time. Settlement Class Members may claim up to 3.5 hours of lost time, at \$25 an hour, if at least one-half hour of documented time was spent dealing with the Data Incident. All such lost time must be reasonably described and supported by an attestation under penalty of perjury that the time spent was reasonably incurred dealing with the Data Incident.

c. Compensation For Extraordinary Losses. Claims under this category must be supported by an attestation under penalty of perjury and documentation substantiating the full extent of the amount claimed. The Settlement Administrator will employ heightened scrutiny in reviewing claims for benefits under this category. Class members may submit claims for up to \$5,000 in compensation by submitting a valid and timely claim form that proves more likely than not a monetary loss directly arising from identity theft or other fraud perpetrated on or against the Settlement Class Member if:

- i. The loss is an actual, documented, and unreimbursed monetary loss;
- ii. The loss was more likely than not the result of the Data Incident;
- iii. The loss is not already covered by the “Compensation for Ordinary Losses” category; and
- iv. the Settlement Class Member made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all available credit monitoring insurance and identity theft insurance and other available insurance.

d. Credit Monitoring. 24 months of 3 bureau credit and identity theft monitoring will be provided for those Settlement Class Members who submit valid claims for such monitoring. The identity theft monitoring will have the following features:

- i. Real time monitoring of the credit file at all three major credit bureaus;
- ii. Identity theft insurance (no deductible) of \$1,000,000; and
- iii. Access to fraud resolution agents to help resolve identity thefts.



25. Cash Compensation. In lieu of all compensation described in Paragraph 24(a)-(d), Settlement Class Members may file a claim for a cash payment that is estimated to be approximately \$50, subject to pro rata increase or decrease as described in Paragraph 38.

26. Remedial Measures/Security Enhancements. Defendant will confirm to Class Counsel that it has made enhancements to its data security systems since the Data Incident through the date of the Claims Period.

## **VI. SETTLEMENT ADMINISTRATION**

27. All Notice and Settlement Administration Costs will be paid from the Settlement Fund.

28. The Parties agree to solicit competitive bids for settlement administration, including Notice and Claims Administration Costs, to rely upon Postcard Notice, and to utilize other appropriate forms of notice where practicable, all in order to contain the administration costs while still providing effective notice to the Settlement Class Members. Based on this competitive bidding process, the Parties agree to select an experienced class action settlement administrator to serve as the Settlement Administrator.

29. The Settlement Administrator will provide written notice by United States First Class mail of the settlement terms to all Settlement Class Members for whom they are provided a valid mailing address. The Settlement Administrator shall perform skip-tracing for any returned mail and shall re-mail notice to any Settlement Class Members whose addresses are uncovered by skip-tracing. Settlement Class Members shall have sixty (60) Days from the date the notice is mailed to opt out of the Settlement Class or object to the Settlement.

30. The Settlement Administrator shall also provide notice via publication if necessary and to the extent such notice is deemed appropriate by the Parties in consultation with the Settlement Administrator in order to provide the best notice practicable under the circumstances.

31. The Settlement Administrator will cause the Notice Program to be effectuated in accordance with the terms of the Settlement and any orders of the Court. The Settlement Administrator may request the assistance of the Parties to facilitate providing notice and to accomplish such other purposes as may be approved by both Class Counsel and Defendant's Counsel. The Parties shall reasonably cooperate with such requests.

32. The Settlement Administrator will administer the claims process in accordance with the terms of the Settlement and any additional processes agreed to by both Class Counsel and Defendant's Counsel, subject to the Court's supervision and direction as circumstances may require.

33. To make a claim, a Settlement Class Member must complete and submit a valid, timely, and sworn Claim Form. A Claim Form shall be submitted online at the Settlement Website or by U.S. mail and must be postmarked no later than the Claim Deadline.

34. The Settlement Administrator will review and evaluate each Claim Form, including any required documentation submitted, for validity, timeliness, and completeness.

35. If, in the determination of the Settlement Administrator, the Settlement Class Member submits a timely but incomplete or inadequately supported Claim Form, the Settlement Administrator shall give the Settlement Class Member notice of the deficiencies, and the Settlement Class Member shall have twenty-one (21) Days from the date of the written notice to cure the deficiencies. The Settlement Administrator will provide notice of deficiencies concurrently to Defendant's Counsel and Class Counsel. If the defect is not cured within the 21-

Day period, then the Claim will be deemed invalid. All Settlement Class Members who submit a valid and timely Claim Form, including a Claim Form deemed defective but cured within the 21-Day period, shall be considered “Claimants.”

36. The Settlement Administrator will maintain records of all Claim Forms submitted until three hundred sixty (360) Days after entry of the Final Judgment. Claim Forms and supporting documentation may be provided to the Court upon request and to Defendant, Class Counsel and Defendant’s Counsel to the extent necessary to resolve claims determination issues pursuant to this Settlement Agreement and Settlement. Defendant or the Settlement Administrator will provide other reports or information that the Court may request or that the Court or Class Counsel may reasonably require. Class Counsel or the Settlement Administrator will provide other reports or information as Defendant may reasonably require.

37. Subject to the terms and conditions of this Settlement Agreement, fourteen (14) Days after the Effective Date, the Settlement Administrator shall mail or otherwise provide Claimants who selected Credit Monitoring services under Paragraph 24(d) with enrollment instructions for those services.

38. Subject to the terms and conditions of this Settlement Agreement, fourteen (14) Days after the Effective Date, the Settlement Administrator shall mail or otherwise provide a payment via check (“Claim Check”) or digital payment selected in consultation with the Settlement Administrator (collectively, “Claim Payment”) to each Claimant in the amount for which each Claimant has submitted a Claim Form approved by the Settlement Administrator or by the Court, for good cause shown, in accordance with the following distribution procedures:

a. The Settlement Administrator will first apply the Net Settlement Fund to pay for Credit Monitoring services as described in Paragraph 24(d) claimed by Claimants. If Net

Settlement Funds remain after paying for the Credit Monitoring services, the Settlement Administrator will next use it to pay for valid claims for Compensation for Ordinary Losses (as described in Paragraph 24(a)), Compensation for Lost Time (as described in Paragraph 24(b)), and Compensation for Extraordinary Losses (as described in Paragraph 24(c)). The amount of the Net Settlement Fund remaining after all payments for Credit Monitoring, Compensation for Ordinary Losses, Compensation for Lost Time, and Compensation for Extraordinary Losses are made shall be referred to as the “Post-Loss Net Settlement Fund.”

b. The Settlement Administrator shall then utilize the Post-Loss Net Settlement Fund to make all Cash Compensation payments as described in Paragraph 25. The amount of each Cash Compensation payment shall be calculated by dividing the Post-Loss Net Settlement Fund by the number of valid claims for Cash Compensation.

39. Each Claim Check shall be mailed to the address provided by the Claimant on his or her Claim Form. All Claim Checks issued under this section shall be void if not negotiated within ninety (90) calendar days of their date of issue and shall contain a legend to that effect. Claim Checks issued pursuant to this section that are not negotiated within ninety (90) calendar days of their date of issue shall not be reissued.

40. To the extent any monies remain in the Net Settlement Fund more than one hundred twenty (120) days after the distribution of Claim Payments to the Claimants, a subsequent payment will be evenly made to all Claimants who cashed or deposited their initial Claim Payments they received, provided that the average payment amount is equal to or greater than Three Dollars and No Cents (\$3.00). The distribution of this remaining Net Settlement Fund shall continue until the average payment amount in a distribution is less than Three Dollars and No Cents (\$3.00), whereupon the amount remaining in the Net Settlement Fund, if any, shall be distributed to the

Non-Profit Residual Recipient. Should any amount remain in the Net Settlement Fund following the redistributions, the parties will petition and obtain approval from the Court as to the Non-Profit Residual Recipient and to distribute the remaining funds to it.

41. For any Claim Check returned to the Settlement Administrator as undeliverable (including, but not limited to, when the intended recipient is no longer located at the address), the Settlement Administrator shall make reasonable efforts to find a valid address and resend the Claim Check within thirty (30) Days after the check is returned to the Settlement Administrator as undeliverable. The Settlement Administrator shall only make one attempt to resend a Claim Check.

42. No portion of the Settlement Fund shall revert or be repaid to Defendant after the Effective Date. Any residual funds remaining in the Net Settlement Fund, after all payments and distributions are made pursuant to the terms and conditions of this Agreement shall be distributed to the Non-Profit Residual Recipient, as approved by the Court.

## **VII. NOTICE TO SETTLEMENT CLASS MEMBERS**

43. The Parties agree the following Notice Program provides reasonable notice to the Settlement Class.

44. Direct Notice shall be provided to Settlement Class Members via email for Settlement Class Members for whom the Settlement Administrator has a valid email address. Direct Notice shall be provided to other Settlement Class Members by U.S. Mail for Settlement Class Members for whom the Settlement Administrator has a valid address. Additional Notice may be provided via publication as described in Paragraph 30, to the extent such notice is deemed appropriate by the Settlement Administrator in consultation with the Parties in order to provide the best notice practicable under the circumstances.

45. Within seven (7) Days of the entry of the Preliminary Approval Order, Defendant shall provide the Settlement Administrator and Class Counsel with the names and last-known addresses known to Defendant for the Settlement Class Members (the “Class List”). The Settlement Administrator shall, by using the National Change of Address database maintained by the United States Postal Service (“Postal Service”), obtain updates, if any, to the mailing addresses.

46. Within twenty-one (21) Days following entry of the Preliminary Approval Order (“Notice Date”), the Settlement Administrator shall mail the Postcard Notice to all Settlement Class Members by first class United States mail. It has been mutually agreed by the Parties that the Settlement Administrator may rely upon Postcard Notice.

47. If any Short-Form Notice is returned by the Postal Service as undeliverable, the Settlement Administrator shall re-mail the Postcard Notice to the forwarding address, if any, provided by the Postal Service on the face of the returned mail. Other than as set forth above, neither the Parties nor the Settlement Administrator shall have any other obligation to re-mail Notices.

48. The mailed notice will consist of the Postcard Notice substantially in the form of Exhibit C. The Settlement Administrator shall have discretion to format this Postcard Notice in a reasonable manner to minimize mailing and administrative costs. Before the mailing of the Postcard Notice is commenced, Class Counsel and Defendant’s Counsel shall first be provided with a proof copy (including what the items will look like in their final form) and shall have the right to inspect the same for compliance with the Settlement Agreement and the Court’s orders.

49. No later than thirty (30) Days following entry of the Preliminary Approval Order, the Settlement Administrator shall effectuate any publication notice made pursuant to Paragraph 30.

50. No later than thirty (30) Days following entry of the Preliminary Approval Order, and prior to the mailing of the Postcard Notice to all Settlement Class Members, the Settlement Administrator will create a dedicated Settlement Website. The Settlement Administrator shall cause the CAC, Postcard Notice, Long-Form Notice, Claim Form, this Settlement Agreement, and other relevant settlement and court documents to be available on the Settlement Website. Any other content proposed to be included or displayed on the Settlement Website shall be approved in advance by counsel for the Parties, which approval shall not be unreasonably withheld. The website address and the fact that a more detailed Long-Form Notice and a Claim Form are available through the website shall be included in the Postcard Notice.

51. Claimants shall be able to submit their claims via the Settlement Website.

52. The Settlement Website shall be maintained from the Notice Date until sixty (60) Days after the Claims Deadline has passed

53. Claim Forms shall be returned or submitted to the Settlement Administrator online or via U.S. mail, postmarked by the Claims Deadline set by the Court, or be forever barred unless such claim is otherwise approved by the Court at the Final Approval Hearing, for good cause shown as demonstrated by the applicable Settlement Class Member.

54. Prior to the Final Approval Hearing, the Settlement Administrator shall provide to Class Counsel to file with the Court, an appropriate affidavit or declaration from the Settlement Administrator respecting compliance with the Court-approved Notice Program.

### **VIII. OPT-OUT PROCEDURE**

55. Each member of the Settlement Class shall have the right to request exclusion from the Settlement Class and not participate in the Settlement Agreement, as provided for in the Preliminary Approval Order.

56. The Short-Form Notices shall inform each Settlement Class Member of his or her right to request exclusion from the Settlement Class and not to be bound by this Settlement Agreement, if, before the Opt-Out Deadline, the Settlement Class Member personally completes and mails a request for exclusion (“Opt-Out Request”) to the Settlement Administrator at the address set forth in the Short-Form Notices.

57. For a Settlement Class Member’s Opt-Out Request to be valid, it must (a) state his or her full name, address, and telephone number; (b) contain the Settlement Class Member’s personal and original signature (or the original signature of a person previously authorized by law, such as a trustee, guardian or person acting under a power of attorney to act on behalf of the Settlement Class Member with respect to a claim or right such as those in the Litigation); and (c) state unequivocally the Settlement Class Member’s intent to be excluded from the Settlement Class and from the Settlement. The Settlement Administrator shall promptly inform Class Counsel and Defendant’s Counsel of all valid and timely Opt-Out Requests, with all such Settlement Class Members being referred to herein as “Opt-Out Member(s).”

58. Opt-Out Members shall receive no benefit or compensation under this Settlement Agreement and shall have no right to object to the proposed Settlement Agreement or address the Court at the Final Approval Hearing.

59. A request for exclusion that does not comply with all of the foregoing, that is not postmarked by the Opt-Out Deadline, or that is sent to an address other than that set forth in the Short-Form Notices shall be invalid, and that Settlement Class Member shall remain in and be treated as being in the Settlement Class and as being bound by this Settlement Agreement and the release contained herein.



60. Prior to the Final Approval Hearing, the Settlement Administrator shall create a comprehensive list of all Opt-Out Members for submission to the Court and to be provided to Class Counsel and Defendant's counsel.

61. Opt-Out Members shall not (a) be bound by any orders or judgments entered in the Litigation or relating to the Settlement; (b) be entitled to relief under, or be affected by, the Settlement Agreement; (c) gain any rights by virtue of the Settlement Agreement; or (d) be entitled to object to any aspect of the Settlement.

#### **IX. OBJECTIONS TO THE SETTLEMENT**

62. Any Settlement Class Member who wishes to object to the proposed Settlement must file with the Court and serve a written objection(s) to the Settlement ("Objection(s)") to Class Counsel and Defendant's Counsel, at the addresses set forth in the Long-Form Notice.

63. Each Objection must (i) set forth the Settlement Class Member's full name, current address, and telephone number; (ii) contain the Settlement Class Member's original signature; (iii) state that the Settlement Class Member objects to the Settlement, in whole or in part; (iv) set forth a statement of the legal and factual basis for the Objection; and (v) provide copies of any documents that the Settlement Class Member wishes to submit in support of his/her position.

64. Objections must be filed with the Court and served on Class Counsel and Defendant's Counsel no later than sixty (60) Days after the Notice Date (the "Objection Deadline"). The Objection Deadline shall be included in the Short-Form and Long-Form Notices.

65. Class Counsel and Defendant's Counsel may, but need not, respond to the Objections, if any, by means of a memorandum of law served prior to the Final Approval Hearing.

66. An objecting Settlement Class Member has the right, but is not required, to attend the Final Approval Hearing. If an objecting Settlement Class Member intends to appear at the Final

Approval Hearing, either with or without counsel, he or she must also file a notice of appearance with the Court (as well as serve the notice on Class Counsel and Defendant's Counsel) by the Objection Deadline.

a. If the objecting Settlement Class Member intends to appear at the Final Approval Hearing through counsel, he or she must also identify the attorney(s) representing the objecting Settlement Class Member who will appear at the Final Approval Hearing and include the attorney(s) name, address, phone number, e-mail address, state bar(s) to which counsel is admitted, as well as associated state bar numbers.

b. Any Settlement Class Member who fails to timely file and serve an Objection and notice, if applicable, of his or her intent to appear at the Final Approval Hearing in person or through counsel pursuant to this Settlement Agreement, as detailed in the Long-Form Notice, and otherwise as ordered by the Court, shall not be permitted to object to the approval of the Settlement at the Final Approval Hearing and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means. Any objecting Settlement Class Member who appeals a grant of the Final Approval Order or Final Judgment will be required to post an appeal bond if and as ordered by the Court.

67. Any Settlement Class Member who does not submit a timely Objection in complete accordance with this Settlement Agreement, the Long-Form Notice, and otherwise as ordered by the Court, shall not be treated as having filed a valid Objection to the Settlement and shall forever be barred from raising any objection to the Settlement.

#### **X. ATTORNEYS' FEES, COSTS AND EXPENSES, AND SERVICE AWARD**

68. Class Counsel shall request the Court to approve an award of attorneys' fees not to exceed \$700,000 and for reasonable costs and expenses incurred in prosecuting the litigation. Class

Counsel's attorneys' fees and expenses awarded by the Court shall be paid no later than twenty-one (21) Days after the Effective Date. For the avoidance of doubt, the Court approved amount shall be paid from the Settlement Fund. The Parties did not discuss payment of attorneys' fees, costs, and expenses until after they agreed on all materials terms of relief to the Settlement Class.

69. Class Counsel shall request the Court to approve a Service Award of \$3,000 for Plaintiff Jerry Lukens, which award is intended to recognize Plaintiff for his efforts in the litigation and commitment on behalf of the Settlement Class ("Service Award"). If approved by the Court, this Service Award will be paid no later than twenty-one (21) Days after the Effective Date. For the avoidance of doubt, the Court approved amount shall be paid from the Settlement Fund. The Parties did not discuss or agree upon payment of service awards until after they agreed on all materials terms of relief to the Settlement Class.

70. Class Counsel will file applications with the Court for the requested Service Award and attorneys' fees, costs, and expenses, and a motion in support of the final approval, at least fourteen (14) Days prior to the Objection Deadline.

71. The Parties agree that the Court's approval or denial of any request for the Service Award or attorneys' fees, costs, and expenses, are not conditions to this Settlement Agreement and are to be considered by the Court separately from final approval, reasonableness, and adequacy of the Settlement. Any reduction to the Service Award or award of attorneys' fees shall not operate to terminate or cancel this Settlement Agreement.

## **XI. NOTICES**

72. All notices to the Parties required by the Settlement Agreement shall be made in writing and communicated by mail to the following addresses:

All notices to Class Counsel or Plaintiff shall be sent to:

Ben Barnow  
Barnow and Associates, P.C.  
205 W. Randolph Street, Suite 1630  
Chicago, Illinois 60606  
Tel: (312) 621-2000

Andrew W. Ferich  
Ahdoot & Wolfson, PC  
201 King of Prussia Road, Suite 650  
Radnor, PA 19087

All notices to Defendant's Counsel or Defendant shall be sent to:

David Ross  
Wilson Elser Moskowitz Edelman & Dicker LLP  
1500 K Street, NW, Suite 330  
Washington, D.C. 20005  
Tel.: (202) 626-7660

73. Other than attorney-client communications or communications otherwise protected from disclosure pursuant to law or rule, the Parties shall promptly provide to each other copies of comments, Objections, Opt-Out Requests, or other documents or filings received from a Settlement Class Member as a result of the Notice Program.

## **XII. SETTLEMENT APPROVAL PROCESS**

74. After execution of this Settlement Agreement, the Parties shall promptly move the Court to enter the Preliminary Approval Order, which:

- a. Preliminarily approves this Settlement Agreement;
- b. Certifies the Settlement Class;

c. Finds the proposed Settlement is sufficiently fair, reasonable, adequate, and in the best interests of the Settlement Class;

d. Finds the Notice Program constitutes valid, due, and sufficient notice to the Settlement Class Members, and constitutes the best notice practicable under the circumstances, complying fully with the requirements of the laws of Utah, the Constitution of the United States, and any other applicable law and that no further notice to the Class is required beyond that provided through the Notice Program;

e. Appoints the Settlement Administrator in accordance with the provisions of Section VI;

f. Directs the Settlement Administrator to provide notice to Settlement Class Members in accordance with the Notice Program provided for in this Settlement Agreement;

g. Approves the Claim Form and directs the Settlement Administrator to administer the Settlement in accordance with the provisions of this Settlement Agreement;

h. Approves the Opt-Out and Objection procedures as outlined in this Settlement Agreement;

i. Schedules a Final Approval Hearing to consider the final approval, reasonableness, and adequacy of the proposed Settlement and whether it should be finally approved by the Court; and,

j. Contains any additional provisions agreeable to the Parties that might be necessary or advisable to implement the terms of this Settlement Agreement and the Settlement.

### **XIII. FINAL APPROVAL HEARING**

75. The Parties will recommend that the Final Approval Hearing shall be scheduled no earlier than one hundred (100) Days after the entry of the Preliminary Approval Order.

76. The Parties may file a response to any objections in further support of Final Approval no later than fourteen (14) Days after the Objection Deadline or after receipt of any timely submitted objection, whichever is the later. In their discretion, the Parties may respond to late-filed objections, as they deem appropriate.

77. Any Settlement Class Member who wishes to appear at the Final Approval Hearing, whether pro se or through counsel, must, by the Objection Deadline, either mail or hand-deliver to the Court or file a notice of appearance in the Litigation, take all other actions or make any additional submissions as may be required in the Long-Form Notice or as otherwise ordered by the Court, and mail that notice and any other such pleadings to Class Counsel and Defendant's Counsel as provided in the Long-Form Notice.

78. The Parties shall ask the Court to enter a Final Approval Order and Judgment which includes the following provisions:

a. A finding that the Notice Program fully and accurately informs all Settlement Class Members entitled to notice of the material elements of the Settlement, constitutes the best notice practicable under the circumstances, constitutes valid, due, and sufficient notice, and complies fully with the laws of Utah, the United States Constitution, and any other applicable law;

b. A finding that after proper notice to the Class, and after sufficient opportunity to object, no timely objections to this Settlement Agreement have been made, or a finding that all timely objections have been considered and denied;

c. Approval of the Settlement, as set forth in the Settlement Agreement, as fair, reasonable, adequate, and in the best interests of the Class, in all respects, finding that the settlement is in good faith, and ordering the Parties to perform the Settlement in accordance with the terms of this Settlement Agreement;

d. A finding that neither the Final Judgment, the Settlement, nor the Settlement Agreement shall constitute an admission of liability by the Parties, or any liability or wrongdoing whatsoever by any Party;

e. Subject to the reservation of jurisdiction for matters discussed in subparagraph (g) below, a dismissal with prejudice of the Litigation;

f. A finding that Plaintiff shall as of the entry of the Final Judgment, conclusively be deemed to have fully, finally, and forever completely released, relinquished, and discharged the Released Persons from the Plaintiff's Released Claims.

g. A finding that all Settlement Class Members not opting out or who have not properly opted out of the Settlement Class shall, as of the entry of the Final Judgment, conclusively be deemed to have fully, finally, and forever completely released, relinquished, and discharged the Released Persons from the Released Class Claims; and

h. A reservation of exclusive and continuing jurisdiction over the Litigation and the Parties for the purposes of, among other things, (i) supervising the implementation, enforcement, construction, and interpretation of the Settlement Agreement, the Preliminary Approval Order, and the Final Judgment; and (ii) supervising the administration and distribution of the relief to the Settlement Class and resolving any disputes that may arise with regard to the foregoing.

79. If and when the Settlement becomes Final, the Litigation shall be dismissed with prejudice, with the Parties to bear their own costs and attorneys' fees, costs, and expenses not otherwise awarded in accordance with this Settlement Agreement.

#### **XIV. TERMINATION OF THIS SETTLEMENT AGREEMENT**

80. Each Party shall have the right to terminate this Settlement Agreement if:

a. The Court denies preliminary approval of this Settlement Agreement (or grants preliminary approval through an order that materially differs in substance to Exhibit D hereto);

b. The Court denies final approval of this Settlement Agreement (or grants final approval through an order that materially differs in substance from Exhibit E hereto);

c. The Final Approval Order and Final Judgment do not become final by reason of a higher court reversing final approval by the Court, and the Court thereafter declines to enter a further order or orders approving the Settlement on the terms set forth herein;

d. More than 1,000 Settlement Class Members Opt-Out of the Settlement; or

e. The Effective Date cannot occur.

81. Class Counsel agrees to work in good faith to effectuate this Settlement Agreement and will not solicit or encourage, in any manner, Settlement Class Members to submit Opt-Out Requests.

82. If a Party elects to terminate this Settlement Agreement under this Section XIV, that Party must provide written notice to the other Party's counsel, by hand delivery, mail, or e-mail within ten (10) Days of the occurrence of the condition permitting termination.

83. Nothing shall prevent Plaintiff or Defendant from appealing or seeking other appropriate relief from an appellate court with respect to any denial by the Court of final approval of the Settlement.

84. If this Settlement Agreement is terminated or disapproved, or if the Effective Date should not occur for any reason, then: (i) this Settlement Agreement, the Preliminary Approval Order, the Final Approval Order (if applicable), and all of their provisions shall be rendered null and void; (ii) the Litigation and all Parties shall be deemed to have reverted to their respective



status in the Litigation as of the date and time immediately preceding the execution of this Settlement Agreement; (iii) except as otherwise expressly provided, the Parties shall stand in the same position and shall proceed in all respects as if this Settlement Agreement and any related orders had never been executed, entered into, or filed; and (iv) no term or draft of this Settlement Agreement nor any part of the Parties' settlement discussions, negotiations, or documentation (including any declaration or brief filed in support of the motion for preliminary approval or motion for final approval), nor any rulings regarding class certification for settlement purposes (including the Preliminary Approval Order and, if applicable, the Final Approval Order and Final Judgment), will have any effect or be admissible into evidence for any purpose in the Litigation or any other proceeding.

85. If the Court does not approve the Settlement or the Effective Date cannot occur for any reason, Defendant shall retain all its rights and defenses in this Litigation. For example, Defendant shall have the right to object to the maintenance of the Litigation as a class action, to move for summary judgment, and to assert defenses at trial, and nothing in this Settlement Agreement or other papers or proceedings related to the Settlement shall be used as evidence or argument by any Party concerning whether the Litigation may properly be maintained as a class action, or for any other purpose.

## **XV. RELEASE**

86. The Final Approval Order and Final Judgment shall provide that the Litigation is dismissed with prejudice as to Plaintiff and all Settlement Class Members who are not Opt-Out Members.

87. On the Effective Date, Plaintiff and each and every Settlement Class Member who is not an Opt-Out Member (i.e., has not been excluded from the Settlement Class by the Court),

shall be bound by this Settlement Agreement and shall have recourse only to the benefits, rights, and remedies provided hereunder. No other action, demand, suit, arbitration, or other claim or proceeding, regardless of forum, may be pursued against Released Persons with respect to the Plaintiff's Released Claims or the Released Class Claims.

88. On the Effective Date and in consideration of the promises and covenants set forth in this Settlement Agreement, Plaintiff will be deemed to have fully, finally, and forever completely released, relinquished, and discharged the Released Persons from any and all past, present, and future claims, counterclaims, lawsuits, set-offs, costs, expenses, attorneys' fees and costs, losses, rights, demands, charges, complaints, actions, suits, causes of action, obligations, debts, contracts, penalties, damages, or liabilities of any nature whatsoever, known, unknown, or capable of being known, in law or equity, fixed or contingent, accrued or unaccrued and matured or not matured that arise out of, are connected to, or relate in any way to the Data Incident, including such claims that were or could have been asserted in the Litigation (the "Plaintiff's Release"). This release does not include claims for personal injuries or medical malpractice that Plaintiff has or may have arising from the treatment he received from Defendant, except to the extent such claims relate in any way to the Data Incident. The Plaintiff's Release shall be included as part of the Final Approval Order so that all claims released thereby shall be barred by principles of res judicata, collateral estoppel, and claim and issue preclusion (the "Plaintiff's Released Claims"). The Plaintiff's Released Claims shall constitute and may be pled as a complete defense to any proceeding arising from, relating to, or filed in connection with the Plaintiff's Released Claims.

89. On the Effective Date and in consideration of the promises and covenants set forth in this Settlement Agreement, each Settlement Class Member who is not an Opt-Out Member will

be deemed to have fully, finally, and forever completely released, relinquished, and discharged the Released Persons from any and all past, present, and future claims, counterclaims, lawsuits, set-offs, costs, expenses, attorneys' fees and costs, losses, rights, demands, charges, complaints, actions, suits, causes of action, obligations, debts, contracts, penalties, damages, or liabilities of any nature whatsoever, known, unknown, or capable of being known, in law or equity, fixed or contingent, accrued or unaccrued and matured or not matured that arise out of, are connected to, or relate in any way to the Data Incident, including such claims that were or could have been asserted in the Litigation (the "Settlement Class Release"). This release does not include claims for personal injuries or medical malpractice that Settlement Class Members have or may have arising from the treatment they received from UIA, except to the extent such claims relate in any way to the Data Incident. The Settlement Class Release shall be included as part of the Final Approval Order so that all claims released thereby shall be barred by principles of res judicata, collateral estoppel, and claim and issue preclusion (the "Released Class Claims"). The Released Class Claims shall constitute and may be pled as a complete defense to any proceeding arising from, relating to, or filed in connection with the Released Class Claims.

90. Subject to Court approval, as of the Effective Date, Plaintiff and all Settlement Class Members who are not Opt-Out Members shall be bound by this Settlement Agreement and the Settlement Class Release and all of Plaintiff's Released Claims and the Released Class Claims shall be dismissed with prejudice and released, irrespective of whether the Settlement Class Members received actual notice of the Litigation or this Settlement.

91. The Plaintiff's Released Claims and the Released Class Claims include the release of Unknown Claims. "Unknown Claims" means claims that could have been raised in the Litigation and that any of the Plaintiff or Settlement Class Members (other than Opt-Out

Members), and each of their respective heirs, executors, administrators, representatives, agents, partners, trustees, successors, attorneys, and assigns do not know to exist or suspects to exist, which, if known by him, her or it, might affect his, her, or its agreement to release Defendant and all other Released Persons, or might affect his, her, or its decision to agree to, or object or not to object to the Settlement. The Plaintiff's Released Claims and the Released Claims include a waiver of the provisions, right, and benefits conferred by California Civil Code § 1542, and also any and all provisions, rights, and benefits conferred by the law of any state, province, or territory of the United States, which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

**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.**

92. On entry of the Final Approval Order and Final Judgment, Plaintiff and Settlement Class Members (other than Opt-Out Members) shall be enjoined from prosecuting, respectively, the Plaintiff's Released Claims and the Released Class Claims, in any proceeding in any forum against any of the Released Persons or based on any actions taken by any Released Persons authorized or required by this Settlement Agreement or the Court or an appellate court as part of this Settlement.

93. Without in any way limiting the scope of the Plaintiff's Release or the Settlement Class Release (the "Releases"), the Releases cover, without limitation, any and all claims for attorneys' fees, costs or disbursements incurred by Class Counsel or any other counsel representing Plaintiff or Settlement Class Members, or any of them, in connection with or related in any manner to the Litigation, the Settlement, the administration of such Settlement and/or the Plaintiff's

Released Claims or the Released Class Claims as well as any and all claims for the Service Award to Plaintiff.

94. Nothing in the Releases shall preclude any action to enforce the terms of this Settlement Agreement, including participation in any of the processes detailed herein.

#### **XVI. EFFECTIVE DATE**

95. The “Effective Date” of this Settlement Agreement shall be the first Day after the date when all of the following conditions have occurred:

a. This Settlement Agreement has been fully executed by all Parties and their counsel;

b. Orders have been entered by the Court certifying the Settlement Class, granting preliminary approval of this Settlement Agreement and approving the Notice Program and Claim Form, all as provided above;

c. The Court-approved Postcard Notice has been mailed and other notice required by the Notice Program has been effectuated and the Settlement Website has been duly created and maintained as ordered by the Court;

d. The Court has entered a Final Approval Order finally approving this Settlement Agreement, as provided above; and

e. The Final Approval Order and Final Judgment have become Final.

#### **XVII. MISCELLANEOUS PROVISIONS**

96. The recitals and exhibits to this Settlement Agreement are integral parts of the Settlement and are expressly incorporated and made a part of this Settlement Agreement.

97. This Settlement Agreement is for settlement purposes only. Neither the fact of nor any provision contained in this Settlement Agreement nor any action taken hereunder shall

constitute or be construed as an admission of the validity of any claim or any fact alleged in the CAC or Litigation or of any wrongdoing, fault, violation of law or liability of any kind on the part of Defendant or any admission by Defendant of any claim in this Litigation or allegation made in any other proceeding, including regulatory matters, directly or indirectly involving the Data Incident or allegations asserted in the CAC and Litigation. This Settlement Agreement shall not be offered or be admissible in evidence against the Parties or cited or referred to in any action or proceeding between the Parties, except in an action or proceeding brought to enforce its terms. Nothing contained herein is or shall be construed or admissible as an admission by Defendant that Plaintiff's claims or any similar claims are suitable for class treatment.

98. In the event that there are any developments in the effectuation and administration of this Settlement Agreement that are not dealt with by the terms of this Settlement Agreement, then such matters shall be dealt with as agreed upon by the Parties, and failing agreement, as shall be ordered by the Court. The Parties shall execute all documents and use their best efforts to perform all acts necessary and proper to promptly effectuate the terms of this Settlement Agreement and to take all necessary or appropriate actions to obtain judicial approval of this Settlement Agreement to give this Settlement Agreement full force and effect.

99. In the event the Net Settlement Fund is insufficient to cover the payment for Credit Monitoring services claimed by Claimants, the duration of the coverage described in Paragraph 24(d) will be reduced to exhaust the fund. In such an event, no Net Settlement Funds would be distributed for the benefits described in Paragraphs 24(a)-(c), 25. In the event the aggregate amount of all payments for Compensation for Ordinary Losses, Compensation for Lost Time, and Compensation for Extraordinary Losses exceeds the total amount of the Net Settlement Fund, then the value of those payments shall be reduced on a pro rata basis, such that the aggregate

value of Compensation for Ordinary Losses, Compensation for Lost Time, and Compensation for Extraordinary Losses and payments for Credit Monitoring services does not exceed the Net Settlement Fund. In such an event, no Net Settlement Funds would be distributed to Claimants seeking Cash Compensation. All such determinations shall be performed by the Settlement Administrator.

100. No person shall have any claim against Plaintiff, Class Counsel, Defendant, Defendant's Counsel, the Settlement Administrator, or the Released Persons or any of the foregoing's agents or representatives based on the administration of the Settlement substantially in accordance with the terms of the Settlement Agreement or any order of the Court or appellate court.

101. This Settlement Agreement constitutes the entire Settlement Agreement between and among the Parties with respect to the Settlement of the Litigation. This Settlement Agreement supersedes all prior negotiations and settlement agreements and may not be modified or amended except by a writing signed by the Parties and their respective counsel. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation or understanding concerning any part of the subject matter of this Settlement Agreement has been made or relied on except as expressly set forth in this Settlement Agreement.

102. There shall be no waiver of any term or condition in this Settlement Agreement absent an express writing to that effect by the non-waiving Party. No waiver of any term or condition in this Settlement Agreement shall be construed as a waiver of a subsequent breach or failure of the same term or condition, or waiver of any other term or condition of this Settlement Agreement.

103. In the event a third party, such as a bankruptcy trustee, former spouse, or other third-party has or claims to have a claim against any payment made to a Settlement Class Member, it is the responsibility of the Settlement Class Member to transmit the funds to such third-party. Unless otherwise ordered by the Court, the Parties will have no, and do not agree to, any responsibility for such transmittal.

104. This Settlement Agreement shall not be construed more strictly against one Party than another merely because it may have been prepared by counsel for one of the Parties, it being recognized that because of the arm's-length negotiations resulting in this Settlement Agreement, all Parties have contributed substantially and materially to the preparation of the Settlement Agreement. All terms, conditions and exhibits are material and necessary to this Settlement Agreement and have been relied upon by the Parties in entering into this Settlement Agreement.

105. This Settlement Agreement shall be construed under and governed by the laws of the State of Utah without regard to its choice of law provisions.

106. If any press release is to be issued by the Parties, including their respective counsel, concerning the Settlement, it will be a joint press release for which the Parties will agree upon the language therein prior to release.

107. In the event that one or more of the provisions contained in this Settlement Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions of the Settlement Agreement, which shall remain in full force and effect as though the invalid, illegal, or unenforceable provision(s) had never been a part of this Settlement Agreement as long as the benefits of this Settlement Agreement to Defendant or the Settlement Class Members are not



materially altered, positively or negatively, as a result of the invalid, illegal, or unenforceable provision(s).

108. This Settlement Agreement will be binding upon and inure to the benefit of the successors and assigns of the Parties, Released Persons, and Settlement Class Members. The Parties waive the right to appeal or collaterally attack the Final Judgment entered under this Settlement Agreement.

109. The headings used in this Settlement Agreement are for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement. In construing this Settlement Agreement, the use of the singular includes the plural (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).

110. The Parties stipulate to stay all proceedings in the Litigation until the approval of this Settlement Agreement has been finally determined, except the stay of proceedings shall not prevent the filing of any motions, affidavits, and other matters necessary to obtain and preserve judicial approval of this Settlement Agreement.


111. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original as against any Party who has signed it and all of which shall be deemed a single Settlement Agreement.

112. Each Party to this Settlement Agreement and the signatories thereto warrant that he, she, or it is acting upon his, her or its independent judgment and the advice of his, her or its counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other Party, other than the warranties and representations expressly made in this Settlement Agreement.


113. Each signatory below warrants that he or she has authority to execute this Settlement Agreement and bind the Party on whose behalf he or she is executing the Settlement Agreement.

IN WITNESS WHEREOF, the Parties have hereby accepted and agreed to the Settlement Agreement.

Approved as to form and content by counsel for Plaintiff and the Settlement Class:


By:   
Ben Barnow  
Anthony L. Parkhill  
Barnow and Associates, P.C.  
205 West Randolph Street, Ste. 1630  
Chicago, IL 60606  
Tel: (312) 621-2000  
b.barnow@barnowlaw.com  
aparkhill@barnowlaw.com

Dated: March 20, 2023

By:   
Andrew W. Ferich  
Ahdoot & Wolfson, PC  
201 King of Prussia Road, Suite 650  
Radnor, PA 19087  
Tel: (310) 474-9111  
aferich@ahdootwolfson.com

Dated: March 20, 2023

Approved as to form and content by counsel for Defendant:

By:   
David Ross  
Wilson Elser Moskowitz Edelman & Dicker LLP  
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Washington, D.C. 20005  
Tel.: (202) 626-7660

David.Ross@wilsonelser.com

Dated: March 20, 2023