

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (the “Agreement” or “Settlement Agreement”) is entered into by and between PostMeds, Inc. d/b/a TruePill (“Defendant” or “PostMeds”) and Richard Reed, Frankie Garcia, Michael Siegel, Linda Johnson, David MacDonald, Lasedrick Toles, John Rossi, Michael Thomas, Marissa Porter, Angela Morgan, Benjamin Fisher, Brittany Hallman, Russell Autry, Jacob Benjamin, Victoria Phillips, Christopher Williams, David Saucedo, James Lowery, Hal Evans, Charles Byrd, Vanessa Wilson, Daniel Cohen, Mayra Mendez, and Meliza Moran (collectively, “Plaintiffs” and, together with Defendant, the “Parties”), both individually, and on behalf of the Settlement Class (as defined below) in the litigation titled *In Re: Post Meds, Inc., Data Breach Litigation*. Case No. 4:23-cv-05710-HSG, in the United States District Court for the Northern District of California (the “Litigation”).

### **I. FACTUAL BACKGROUND AND RECITALS**

1. Defendant is a digital pharmacy that operates a nationwide network of URAC-accredited mail order and specialty pharmacies. Defendant is a Delaware corporation with its principal place of business located at 3121 Diablo Avenue, Hayward, California 94545.

2. The Litigation arose after Defendant began sending a notice letter (the “Notice Letter”) on October 30, 2023, alerting Plaintiffs that their personally identifiable information (“PII”) and protected health information (“PHI”) (collectively referred to as “Private Information”) had been accessed by an unauthorized third party between August 30, 2023 and September 1, 2023 (the “Data Incident”).

3. Plaintiffs filed their respective complaints in the United States District Court for the Northern District of California in or around November 2023. On December 5, 2023 the court issued an order consolidating the Plaintiffs’ individual cases into one consolidated case, the aforementioned Litigation.

4. The Parties have agreed to settle the Litigation on the terms and conditions set forth herein in recognition that the outcome of the Litigation is uncertain and that achieving a final result through litigation would require substantial additional risk, uncertainty, discovery, time, and expense for the Parties.

5. Defendant denies all claims of wrongdoing or liability that Plaintiffs, Settlement Class Members, or anyone else have asserted in this Litigation or may assert in the future. Despite Defendant’s position that it is not liable for and has good defenses to the claims alleged in the Litigation, Defendant desires to settle the Litigation, and thus avoid the expense, risk, exposure, inconvenience, uncertainty, and distraction of continued litigation of any action relating to the matters being fully settled and finally resolved and released in this Settlement Agreement. Neither this Settlement Agreement, nor any negotiation or act performed, or document created in relation to the Settlement Agreement or negotiation, or discussion thereof is, may be deemed to be, or may be used as, an admission of, or evidence of, any wrongdoing or liability of Defendant.

6. The Parties now enter into this Settlement Agreement. Settlement Class Counsel has conducted a pre-suit investigation, reviewed informal discovery materials in preparation for and during the course of a mediation, and fully evaluated the risk of future litigation. Moreover, Settlement Class Counsel has fully evaluated the available facts, applicable law, and comparable settlements related to the Litigation and have concluded that the proposed settlement according to the terms set forth below is fair, reasonable, adequate, and beneficial to and in the best interests of Plaintiffs and the Settlement Class, recognizing: (1) the existence of complex and contested issues of law and fact, (2) the risks inherent in the Litigation, (3) the likelihood that future proceedings will be unduly protracted and expensive if the proceeding is not settled by voluntary agreement, and (4) the magnitude of the benefits derived from the proposed Settlement in light of both the maximum potential and likely range of recovery to be obtained through further litigation and the expense thereof, as well as the potential of no recovery whatsoever.

7. Considering the risks and uncertainties of continued litigation and all factors bearing on the merits of settlement, the Parties are satisfied that the terms and conditions of this Settlement Agreement are fair, reasonable, adequate, and in their respective best interests.

8. In consideration of the covenants, agreements, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and among the undersigned that the Litigation be fully and finally settled and compromised, and that the Releasors release the Released Parties of the Released Claims, without costs as to Released Parties, Plaintiffs, Settlement Class Counsel, or the Settlement Class, except as explicitly provided for in this Settlement Agreement, subject to the approval of the Court, on the following terms and conditions.

## II. DEFINITIONS

As used in this Settlement Agreement, the following terms have the meanings specified below:

9. “**Approved Claims**” shall mean complete and timely Claim Forms submitted by Settlement Class Members that have been approved by the Settlement Administrator.

10. “**Claim Form**” shall mean the form that Settlement Class Members may submit to obtain compensation under this Settlement Agreement, which is attached as **Exhibit A**.

11. “**Claims Deadline**” shall mean the date by which all Claim Forms must be postmarked (if mailed) or submitted (if filed electronically) to be considered timely and shall be set as a date ninety (90) days after the Notice Deadline is entered or such other date as ordered by the Court in the Preliminary Approval Order. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order, as well as in the Notice, on the Settlement Website and the Claim Form.

12. “**Counsel**” or “**Parties’ Counsel**” means both Settlement Class Counsel and Defendant’s Counsel, collectively.

13. “**Court**” shall mean the United States District Court for the Northern District of California.

14. **“Data Incident”** shall mean the cyberattack described in Plaintiffs’ operative complaint in *In Re: Post Meds, Inc. Data Breach Litigation*, N.D. Cal. Case No. 4:23-cv-05710-HSG.

15. **“Defendant”** shall mean PostMeds, Inc. d/b/a TruePill.

16. **“Defendant’s Counsel”** shall mean Marcus McCutcheon and Casie D. Collignon of Baker & Hostetler, LLP.

17. **“Effective Date”** shall mean the date when the Settlement Agreement becomes Final, which is thirty (30) days after the Court’s grant of the Final Approval Order, assuming no appeals have been filed. If an appeal is filed, the Effective Date will be thirty (30) days from when the final appeal is completed, and a final judgment is entered in the Litigation.

18. **“Email Notice”** shall mean is the notice form that will be e-mailed to each available Settlement Class Member for whom Defendant has a current, valid email address, attached as **Exhibit B**.

19. **“Escrow Agent”** shall mean Western Alliance Bank.

20. **“Fee and Expense Application”** shall mean the Motion to be filed by Settlement Class Counsel, in which they seek approval of an award of attorneys’ fees and litigation expenses.

21. **“Fee Award and Expenses”** means the amount of attorneys’ fees and reimbursement of litigation expenses awarded by the Court to Settlement Class Counsel.

22. **“Final”** means the Final Approval Order has been entered on the docket, and: (1) the time to appeal from such order has expired and no appeal has been timely filed; (2) if such an appeal has been filed, all potential appeals have been finally resolved and has resulted in an affirmation of the Final Approval Order; or (3) the Court following the resolution of all potential appeals enters a further order or orders approving settlement on the material terms set forth herein, and either no further appeal is taken from such order(s) or any such appeal results in affirmation of such order(s).

23. **“Final Approval Hearing”** means the hearing before the Court where Plaintiffs will request a judgment to be entered by the Court approving the Settlement Agreement and approving the Fee Award.

24. **“Final Approval Order”** shall mean an order entered by the Court that:

- i. Certifies the Settlement Class for Settlement purposes only;
- ii. Finds that the Settlement Agreement is fair, reasonable, and adequate, was entered into in good faith and without collusion, and approves and directs consummation of this Settlement Agreement;

- iii. Dismisses Plaintiffs' claims pending before it with prejudice and without costs, except as explicitly provided for in this Settlement Agreement;
- iv. Approves the Release provided in Section VIII and orders that, as of the Effective Date, the Released Claims will be released as to Released Parties;
- v. Reserves jurisdiction over the settlement and this Settlement Agreement; and
- vi. Finds that there is no just reason for delay of entry of Final Approval Order with respect to the foregoing.

The Parties shall negotiate and agree upon the form of the Final Approval Order to be submitted to the Court as well as the Motion for Final Approval.

25. “**Frequently Asked Questions**” or “**FAQs**” are questions and answers to those questions that are frequently posed by Settlement Class Members about class action settlements and specifically about this Settlement that will be posted on the Settlement Website.

26. “**Litigation**” shall mean the action captioned *In Re: Post Meds, Inc. Data Breach Litigation*. Case No. 4:23-cv-05710-HSG, in the United States District Court for the Northern District of California.

27. “**Long Form Notice**” is the detailed, long form notice that will be posted on the Settlement Website including robust details about the Settlement. **Exhibit C**.

28. “**Notice**” means the direct notice of this proposed settlement, which is to be provided substantially in the manner set forth in this Settlement Agreement and **Exhibits B, C, and E** and is consistent with the requirements of Due Process.

29. “**Notice Deadline**” means the last day by which Notice must be issued to the Settlement Class Members; the Long Form and Short Form Notices will be posted to the Settlement Website and will occur sixty (60) days after the Court enters the Preliminary Approval Order or such other date as ordered by the Court.

30. “**Notice and Administrative Expenses**” means all of the expenses incurred in the administration of this Settlement, including, without limitation, all expenses or costs associated with providing Notice to the Settlement Class, hosting and maintaining the Settlement Website, locating Settlement Class Members, processing Claim Forms, determining the eligibility of any person to be a Settlement Class Member, and administering, and resolving deficiencies in submitted Claim Forms, and calculating and distributing the Settlement Fund to Settlement Class Members. Administrative Expenses also include all reasonable third-party fees and expenses incurred by the Settlement Administrator in administering the terms of this Settlement Agreement. Notice and Administrative Expenses shall be paid by the Settlement Fund.

31. “**Objection Deadline**” means the date by which a written objection to this Settlement Agreement must be postmarked and/or filed with the Court, which shall be designated

as a date approximately sixty (60) days after Notice Deadline, or such other date as ordered by the Court.

32. **“Opt-Out Deadline”** is the last day on which a Settlement Class Member may file a request to be excluded from the Settlement Class, which will be sixty (60) days after the Notice Deadline, or such other date as ordered by the Court. This Deadline will also be known as the **“Exclusion Deadline.”** Settlement Class Members’ opt-out requests may also be referred to herein as a **“Request for Exclusion.”**

33. **“Out-of-Pocket Losses”** means out-of-pocket costs or expenditures that a Settlement Class Member actually incurred as a result of the Data Incident and that are supported by reasonable documentation. **“Out-of-Pocket Losses”** include things such as unreimbursed losses relating to fraud or identity theft, professional fees including attorneys’ fees, accountants’ fees, and fees for credit repair services, costs associated with freezing or unfreezing credit with any credit reporting agency, credit monitoring costs that were incurred on or after the Data Incident through the date of claim submission, and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges.

34. **“Parties”** shall mean Plaintiffs and Defendant, collectively.

35. **“Plaintiffs,” “Settlement Class Representatives,”** or **“Settlement Class Plaintiffs”** shall mean Richard Reed, Frankie Garcia, Michael Siegel, Linda Johnson, David MacDonald, Lasedrick Toles, John Rossi, Michael Thomas, Marissa Porter, Angela Morgan, Benjamin Fisher, Brittany Hallman, Russell Autry, Jacob Benjamin, Victoria Phillips, Christopher Williams, David Saucedo, James Lowery, Hal Evans, Charles Byrd, Vanessa Wilson, Daniel Cohen, Mayra Mendez, and Meliza Moran.

36. **“Preliminary Approval Order”** shall mean the Court’s Order preliminarily approving the Settlement Agreement, certifying the Settlement Class for settlement purposes, and directing notice of the Settlement to the Settlement Class.

37. **“Private Information”** means Plaintiffs’ and Settlement Class Members’ full names; contact information; demographic information; dates of birth; Social Security numbers; diagnosis information; treatment information; prescription information; medical record numbers; provider names; dates of service; and health insurance information, that TruePill collected and maintained.

38. **“Released Claims”** shall have the meaning ascribed to it as set forth in Section VIII of this Settlement Agreement.

39. **“Released Parties”** shall mean Defendant and its customers and partners impacted in the Data Incident, including their past or present agents, subsidiaries, parents, and affiliates, and their respective employees, officers, directors, shareholders, partners, members, managers, owners, heirs, executors, predecessors, successors, assigns, insurers (including excess insurers and reinsurers), vendors, attorneys, and/or sureties (**“Released Parties”**).

40. “**Releasers**” shall refer, jointly and severally, and individually and collectively, to Plaintiffs, the Settlement Class Members, and to each of their predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing, and anyone claiming by, through, or on behalf of them.

41. “**Remainder Funds**” means any funds that remain in the Settlement Fund after all deductions from the Settlement Fund provided for in this Settlement Agreement. While it is not anticipated that there will be any residual funds after the pro rata Cash Fund payments are made (which will have the practical effect of “sweeping” all the Net Settlement Funds into pro rata payments for valid claimants), residual funds will be redistributed to the class on a pro rata basis until it is uneconomical to do so. The funds remaining in the Settlement Fund after settlement payments have been distributed and the time for reissuing checks has expired will be Remainder Funds. The Remainder Funds will be sent to one or more Court-approved charitable organization(s) as a *cy pres* distribution. The Parties will jointly recommend the entity or entities to the Court that will be the recipient(s) of the *cy pres* distribution.

42. “**Service Awards**” shall have the meaning ascribed to it as set forth in Section IX of this Settlement Agreement. The Service Awards requested in this matter will be \$1,500.00 to each of the Plaintiffs, subject to Court approval. For tax purposes, the Service Award paid to the Plaintiffs shall be treated as a 1099-miscellaneous payment.

43. “**Settlement Administrator**” means, subject to Court approval, Epiq Class Action & Claims Solutions, Inc. (“Epiq”), an entity jointly selected and supervised by Settlement Class Counsel and Defendant to administer the Settlement.

44. “**Settlement Class**” shall mean “All U.S. residents who were sent notice that their Private Information was potentially compromised as a result of the Data Incident experienced by PostMeds, Inc. d/b/a TruePill (“PostMeds” or “Defendant”), on or about October 30, 2023.” Excluded from the Settlement Class are: (1) the judge presiding over the Litigation, and members of their direct family, (2) Defendant, its subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or Defendant’s parent companies have a controlling interest and their current or former officers and directors, and (3) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.

45. “**Settlement Class Counsel**” shall mean Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman PLLC, and James J. Pizzirusso of Hausfeld LLP.

46. “**Settlement Class List**” means a list of each Settlement Class Member’s full names and current or last known contact information (U.S. Mail address where available), which Defendant or Defendant’s agent shall provide to the Settlement Administrator within seven (7) days of the entry of the Preliminary Approval Order.

47. “**Settlement Class Member**” means an individual who falls within the definition of the Settlement Class.

48. “**Settlement Fund**” means the non-reversionary amount to be paid by, or on behalf of Defendant, totaling seven million five hundred thousand dollars and no cents (\$7,500,000.00), including any interest accrued thereon after payment to the Settlement Administrator, this being the full and complete limit and extent of Defendant’s obligations with respect to the Settlement, but for any remedial business practice changes Defendant has agreed to as described below in Paragraph 66.

49. “**Settlement Payment**” means the payment to be made via mailed check and/or electronic payment from the Settlement Administrator from the Settlement Fund to any Settlement Class Members who submitted valid Claim Forms. Payments for valid claims shall be sent or postmarked within thirty (30) days after entry of the Effective Date. All checks shall be void ninety (90) days after issuance. If a check becomes void, the Settlement Class Member shall have until thirty (30) days after the void date to request re-issuance by the Settlement Administrator. Settlement Class Members who do not timely cash their Settlement checks and/or fail to request a reissuance will be considered as having waived any right to a cash payment under the Settlement Agreement.

50. “**Settlement Website**” means a website established and administered by the Settlement Administrator, which shall contain information about the Settlement, including electronic copies of **Exhibits A and C** (or any forms of these documents that are approved by the Court), this Settlement Agreement, and all Court documents related to the Settlement. The Settlement Website will be publicly viewable and contain information about the Settlement, including, but not limited to, copies of the Complaint filed in this matter, a copy of the Long Form Notice, FAQs, Claim Form that may be submitted online through the Settlement Website or mailed to the Settlement Administrator, and the deadlines for filing a Claim, Objection, Exclusion requests, Fee and Expense Application, and the date of the Final Approval Hearing. The Settlement Website is viewed as an important piece of the notice plan to Settlement Class Members. The Settlement Website will remain active until ninety (90) days after the Effective Date.

51. “**Short Form Notice**” is the postcard notice that will be mailed to each available Settlement Class Member for whom the Defendant does not have a current, valid email address, attached as **Exhibit E**.

52. “**Taxes and Tax-Related Expenses**” means any and all applicable taxes, duties, and similar charges imposed by a government authority (including any estimated taxes, interest or penalties) arising in any jurisdiction, if any, with respect to the income or gains earned by or in respect of the Settlement Fund.

### **III. SETTLEMENT FUND**

53. **Establishment of Settlement Fund.** Within forty-five (45) days after the entry of the Preliminary Approval Order, Defendant shall cause to be deposited the Notice and Administrative Expenses through the date of final approval, as estimated by the Settlement Administrator, into an account established and administered by the Settlement Administrator at a financial institution agreed upon by the Settlement Administrator, Defendant, and Settlement Class Counsel, to cover the Settlement Administrator’s reasonable set-up costs, notice, and

administration costs. Defendant shall deposit the balance of the Settlement Fund into the same account within thirty (30) days of the Effective Date. The Settlement Administrator shall provide wiring instructions and a properly completed and duly executed IRS Form W-9, along with any other necessary forms, to Defendant within ten (10) days of the entry of the Preliminary Approval Order.

54. **Qualified Settlement Fund.** The Parties agree that the Settlement Fund is non-reversionary and 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 and Tax-Related Expenses owed with respect to 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. 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 Settlement Agreement, upon request of any of the Parties. Beyond funding the Settlement Fund, Defendant shall have no responsibility for any taxes, interest penalties or other amounts due with respect to the Qualified Settlement Fund.

55. **Oversight of Settlement Fund.** The Settlement Fund shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed pursuant to this Settlement Agreement or the balance returned to those who paid the Settlement Fund in the event this Settlement Agreement is terminated in accordance with Paragraphs 77-78.

56. **Use of the Settlement Fund.** As further described in this Settlement Agreement and in **Exhibit C** (the Long Form Notice), the Settlement Fund shall be used by the Settlement Administrator to pay for the following: (1) Notice and Administrative Expenses, (2) Fee and Expenses Award, as approved and awarded by the Court, (3) Service Awards, as approved and awarded by the Court, (4) Documented Out-of-Pocket Losses, (5) Pro-Rata Cash Compensation, (6) Financial Shield Services, and (7) transfer of Remainder Funds to the extent any exist following the preceding payments. No amounts may be withdrawn from the Settlement Fund unless expressly authorized by the Settlement Agreement or approved by the Court. Responsibility for effectuating payments described in this Paragraph shall rest solely with the Settlement Administrator and neither Defendant nor Defendant's agents shall have any responsibility whatsoever with respect to effectuating such payments.

57. **Taxes and Representations.** Taxes and Tax-Related Expenses relating to the Settlement Fund, if any, shall be considered Notice and Administrative Expenses and shall be timely paid by the Settlement Administrator out of the Settlement Fund without prior order of the Court. Further, the Settlement Administrator shall indemnify and hold harmless the Parties and their counsel for Taxes and Tax-Related Expenses (including, without limitation, taxes payable by reason of any such indemnification payments). The Parties and their respective counsel have made



no representation or warranty, and have no responsibility, with respect to the tax treatment by any Settlement Class Representative or any Settlement Class Member of any payment or transfer made pursuant to this Settlement Agreement or derived from or made pursuant to the Settlement Fund. Each Settlement Class Representative and 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 Settlement Agreement. For tax purposes, payments made pursuant to this Settlement Agreement to Settlement Class Members who are current or former employees of the Defendant shall be allocated as non-wage compensation.

#### IV. SETTLEMENT BENEFITS AND ADMINISTRATION

58. The Settlement Administrator will agree to make the following compensation available to Settlement Class Members who submit valid and timely Claim Forms. Claims will be subject to review for completeness and plausibility by a Settlement Administrator, and Claimants will have the opportunity to seek review by the Parties' counsel, if they dispute the Settlement Administrator's initial determination. Settlement Class Members may submit claims for compensation for Out-of-Pocket Losses and either a Cash Fund Payment or one year of Financial Shield services.

- i. **Compensation for Out-of-Pocket Losses:** The Settlement Administrator, from the Settlement Fund, will provide compensation, up to a total of \$4,000.00 per person who is a member of the Settlement Class, upon submission of a claim and supporting documentation, for out-of-pocket monetary losses incurred as a result of the Data Incident, including, without limitation, unreimbursed losses relating to fraud or identity theft; professional fees including attorneys' fees, accountants' fees, and fees for credit repair services; costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs that were incurred on or after the Data Incident through the date of claim submission; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges.

Settlement Class Members submitting claims for Out-of-Pocket Losses must submit documentation supporting their claims. This can include receipts or other documentation that document the costs incurred but does not include documentation that is "self-prepared" by the claimant. "Self-prepared" documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support to other submitted documentation.

In addition to compensation for Out-of-Pocket Losses, Settlement Class Members may select one of the following:

- ii. **Cash Fund Payment:** All Settlement Class Members are eligible to make a claim for a cash fund payment, regardless of whether they make a claim for Out-of-Pocket Losses. The *pro rata* cash fund payments will evenly distribute the net amount of the Settlement Fund, after payment of all approved claims for Out-of-Pocket

Losses, Notice and Administration Expenses, and any Fee and Expenses Award, and Service Awards, to each Settlement Class Member who submits a timely and valid claim.

- iii. **Financial Shield**: In lieu of a Cash Fund Payment, Settlement Class Members are eligible to make a claim for one year of data protection and monitoring services from Privacy Shield.

59. **Settlement Administration Fees**: Notice and Administrative Expenses, including the cost of Notice, will be paid by the Settlement Administrator entirely from the Settlement Fund. After reviewing competitive bids for the settlement administration fees to minimize the administration costs while still providing effective notice to the Settlement Class, the Parties have agreed to use Epiq as the Settlement Administrator. Notice and Administrative Expenses shall be paid through the Settlement Fund and are limited to the common fund amount.

60. Provided that Final Approval of this Settlement Agreement is granted by the Court without material change, material amendment, or material modification, the Settlement Fund will be used to satisfy Approved Claims for Settlement Class Members in exchange for a full, fair, and complete release of all Released Parties from Released Claims, and dismissal of the Litigation with prejudice.

61. The Settlement Fund represents the total extent of Defendant's monetary obligations under the Settlement Agreement. Defendant's contribution to the Settlement Fund shall be fixed under this Settlement Agreement and shall be final. Defendant shall have no obligation to make further payments into the Settlement Fund and shall have no financial responsibility or obligation relating to the Settlement beyond the Settlement Fund, except insofar as such obligations are explicitly provided for in this Settlement Agreement.

62. Once the Settlement Administrator and the Settlement are preliminarily approved by the Court, the Settlement Administrator will provide Notice in a manner mutually agreed upon by the Parties.

63. After the Court enters the Final Approval Order, the Settlement Administrator shall provide the payments described in this Settlement Agreement to all Settlement Class Members that made an Approved Claim, subject to the procedure set forth herein.

64. The Parties, Settlement Class Counsel, and Defendant's Counsel shall not have any liability whatsoever with respect to: (1) any act, omission or determination of the Settlement Administrator, or any of its respective designees or agents, in connection with the administration of the Settlement or otherwise, (2) the management, investment or distribution of the Settlement Fund, (3) the formulation, design or terms of the disbursement of the Settlement Fund, (4) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund, (5) any losses suffered by or fluctuations in the value of the Settlement Fund, or (6) the payment or withholding of any Taxes and Tax-Related Expenses.

65. In addition to any other indemnification obligations set forth in this Settlement Agreement, the Settlement Administrator shall indemnify and hold harmless Parties, Settlement Class Counsel, and Defendant's Counsel for: (i) any act or omission or determination of the Settlement Administrator, or any of Settlement Administrator's designees or agents, in connection with the Notice and the administration of the Settlement, (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, or (v) any losses suffered by, or fluctuations in the value of the Settlement Fund.

66. **Business Practices Changes**: As part of the settlement negotiations, Settlement Class Counsel received assurances that Defendant implemented a number of business practice changes and security enhancements designed to prevent future data security incidents. Defendant has agreed to provide information regarding the specifics of the changes implemented to Settlement Class Counsel upon request.

## V. **CLASS NOTICE, OPT-OUTS, AND OBJECTIONS**

67. **Notice**. Within seven (7) business days after the date of the Preliminary Approval Order, Defendant shall provide the Settlement Class List to the Settlement Administrator. Notice shall be disseminated via email and U.S. mail to all Settlement Class Members and shall be completed within sixty (60) days of the date of the Preliminary Approval Order (the "Notice Deadline"). The process to issue Notice as described in this Paragraph and the creation and maintenance of the Settlement Website shall constitute the "Notice Plan."

68. **Final Approval Hearing**. The Notice must set forth the time and place of the Final Approval Hearing (subject to change) and state that any Settlement Class Member who does not file a timely and adequate objection in accordance with this Paragraph waives the right to object or to be heard at the Final Approval Hearing and shall be forever barred from making any objection to the Settlement.

69. **Opt-Outs**. The Notice shall explain the procedure for Settlement Class Members to exclude themselves or "opt-out" of the Settlement by submitting a Request for Exclusion to the Settlement Administrator postmarked no later than the Opt-Out Deadline. The Request for Exclusion must include the name of the proceeding, the individual's full name, current address, personal signature, and the words "Request for Exclusion" or a comparable statement that the individual does not wish to participate in the Settlement. The Notice must state that any Settlement Class Member who does not file a timely Request for Exclusion in accordance with this Paragraph will lose the opportunity to exclude himself or herself from the Settlement and will be bound by the Settlement. No later than 10 days after the Opt-Out Deadline, the Settlement Administrator shall distribute the Opt-Out and Objection Report.

70. **Objections**. The Notice shall explain the procedure for Settlement Class Members to object to the Settlement or Fee and Expense Application by submitting written objections to the Court no later than the Objection Deadline. For an objection to be a valid objection under the Settlement, it must be in writing, submitted to the Court either by filing electronically or in person at any location of the United States District Court for the Northern District of California or by

mailing to the Class Action Clerk, United States District Court for the Northern District of California, filed or postmarked by the Objection Deadline, and must include or substantially comply with the following: (1) the name of the proceedings, (2) the Settlement Class Member's full name, current mailing address, email address, and telephone number, (3) a statement of the specific grounds for the objection, as well as any documents supporting the objection, (4) the identity of any attorneys representing the objector, (5) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing, (6) a statement identifying all class action settlements objected to by the Settlement Class Member in the previous five (5) years, and (7) the signature of the Settlement Class Member or the Settlement Class Member's attorney. The Court, in its discretion, may authorize additional discovery of objectors.

71. **Claim Validation, Cure, and Deficiency Process.** After the Settlement Administrator reviews all claims submitted under this Settlement, it will send a summary to the Parties' Counsel identifying the number of Approved Claims and invalid claims. For invalid claims, the Settlement administrator will send Settlement Class Members submitting such claims a deficiency notice giving the Class Members twenty-one (21) days to cure any deficiencies. The cost of the deficiency process shall be included in the Notice and Administrative Expenses. After all Approved Claims have been fully processed, including reviewing all claims that have been cured through the deficiency process, the Settlement Administrator will send a list of all Approved Claims to the Parties' Counsel.

## **VI. PRELIMINARY APPROVAL, FINAL APPROVAL, AND JURISDICTION**

72. **Certification of the Settlement Class.** For purposes of this Settlement only, the Parties stipulate to the certification of the Settlement Class, which is contingent upon both the Court entering the Final Approval Order of this Settlement and the occurrence of the Effective Date. This stipulation is strictly for the purposes of this Settlement Agreement as provided herein and shall not and may not be used in any other proceeding as any authority for or against certification of any other class. If the settlement set forth in this Settlement Agreement is not approved by the Court, or if the Settlement Agreement is terminated or cancelled pursuant to the terms of this Settlement Agreement, this Settlement Agreement, and the certification of the Settlement Class provided for herein, will be vacated and the Litigation shall proceed as though the Settlement Class had never been certified, without prejudice to either Parties' position on the issue of class certification or any other issue.

73. **Preliminary Approval.** Within thirty (30) days of execution of this Settlement Agreement, Settlement Class Counsel shall file a Motion for Preliminary Approval of the Settlement, in a form agreeable to the Parties.

74. **Final Approval.** Settlement Class Counsel shall move the Court for a Final Approval Order of this Settlement fourteen (14) days prior to the date of the Final Approval Hearing. Contemporaneously with seeking Final Approval of the Settlement, Parties' Counsel shall cause to be filed with the Court a declaration from the Settlement Administrator with respect to the Notice program and the Claims process.

75. **Jurisdiction.** The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Settlement Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation, and enforcement of the Settlement Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Settlement Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Plan and the Settlement Administrator. As part of its agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

## VII. MODIFICATION AND TERMINATION

76. **Modification.** The terms and provisions of this Settlement Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however, that after entry of the Preliminary Approval Order the Parties may, by written agreement, effect such amendments, modifications, or expansions of this Settlement Agreement and its implementing documents (including all exhibits hereto) without further notice to the Settlement Class or approval by the Court if such changes are consistent with the Court's Preliminary Approval Order and do not materially alter, reduce, or limit the rights of Settlement Class Members under this Settlement Agreement.

77. **Settlement Not Approved.** If: (1) the Court does not issue the Preliminary Approval Order or Final Approval Order; (2) the Effective Date does not occur; or (3) any court alters or modifies the Final Approval Order in any material respect, the Parties shall have sixty (60) days from the date of such event to work together in good faith in considering, drafting, and submitting reasonable modifications to this Settlement Agreement to address any issues identified by the Court or that otherwise caused the Preliminary Approval Order or Final Approval Order not to issue or the Effective Date not to occur. If such efforts are unsuccessful, either Party may at their sole discretion terminate this Settlement Agreement on seven (7) days written notice to the other Party. For avoidance of any doubt, except as set forth in Paragraph 76, neither Party may terminate the Settlement Agreement while an appeal from an order granting approval of the Settlement is pending.

78. **Termination.** Defendant may also unilaterally terminate this Settlement Agreement on seven (7) days written notice to Settlement Class Counsel if more than 3% of Settlement Class Members submit valid Requests for Exclusion.

79. **Effect of Termination.** In the event of a termination as provided in Paragraph 77 or 78, this Settlement Agreement and the Settlement shall be considered null and void; all of the Parties' obligations under the Settlement Agreement shall cease to be of any force and effect and the Parties shall return to the status quo ante in the Litigation as if the Parties had not entered into this Settlement Agreement. Further, in the event of such a termination, any certification of the Settlement Class for settlement purposes shall be void. In the event of such a termination, all of the Parties' respective pre-Settlement Agreement claims and defenses will be preserved.

## VIII. RELEASES

80. Upon Final Approval of this Settlement Agreement, Settlement Class Members release, acquit, and forever discharge Defendant and the Released Parties and their past or present agents, subsidiaries, parents, and affiliates, and their respective employees, officers, directors, shareholders, partners, members, managers, owners, heirs, executors, predecessors, successors, assigns, insurers (including excess insurers and reinsurers), vendors, attorneys, and/or sureties (“Released Parties”) from any claims, demands, rights, actions, or causes of action, liabilities, damages, losses, obligations, judgments, suits, penalties, remedies, matters, and issues of any kind or nature, whether known or unknown, that each Settlement Class member has, had, or may ever have, now or in the future, known or unknown, arising out of or in any way related to the Data Incident whether or not those claims, demands, rights, actions, or causes of action have been pleaded or otherwise asserted, including any and all damages, losses, or consequences thereof (“Released Claims”). Each Releasor waives any and all defenses, rights, and benefits that may be derived from the provisions of applicable law in any jurisdiction that, absent such waiver, may limit the extent or effect of the release contained in this Settlement Agreement.

81. **Bar to Future Suits.** Upon entry of the Final Approval Order, the Settlement Class Representatives and other Settlement Class Members shall be enjoined from prosecuting any Released Claim. It is further agreed that the Settlement Agreement may be pleaded as a complete defense to any proceeding subject to this Paragraph.

82. **Waiver of California Civil Code Section 1542.** Plaintiffs and by operation of law, Settlement Class Members, hereby acknowledge that they may hereafter discover facts different from, or in addition to, those which they now claim or believe to be true with respect to the claims released herein and agree that this Agreement shall be and remain effective in all respects notwithstanding the discovery of such different or additional facts with respect to the claims released herein. In furtherance of the releases given above, the Plaintiffs and the Settlement Class Members hereby acknowledge that they are knowingly and voluntarily waiving their rights under Section 1542 of the California Civil Code and any equivalent or similar state law to the full extent that they may lawfully waive all such rights and benefits pertaining to the subject matter hereof, and that the consequences of such waiver have been explained to them by legal counsel, the Parties acknowledge that they are familiar with the provisions of Cal. Civ. Code Section 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.**

Furthermore, Plaintiffs herein acknowledge that the effect and import of the provisions of Section 1542 of the California Civil Code, and any equivalent or similar state law, have been explained to them by their own counsel. Plaintiffs further acknowledge and agree that his waiver of rights under Section 1542 of the California Civil Code, and any equivalent or similar state law, has been separately bargained for and are essential and material terms of this Settlement Agreement and, without such waiver, this Settlement Agreement would not have been entered into.

**IX. ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS**

83. **Attorneys' Fees and Expenses.** Within forty-five (45) days after the Notice Deadline, Settlement Class Counsel will file a Fee and Expense Application for an award of attorneys' fees to be paid from the Settlement Fund not to exceed one-third (1/3) of the Settlement Fund for fees, or \$2,500,000.00. Settlement Class Counsel will also seek an award for reimbursement of reasonable case costs and expenses actually incurred, in addition to any attorneys' fee award. Within three (3) days after filing the Fee and Expense Application, the Fee and Expense Application shall be posted on the Settlement Website. Any fee or expense award by the Court shall be disbursed to the trust account of Milberg Coleman Bryson Phillips Grossman LLC, ("Milberg"). Before the disbursement or payment of the Fee Award and Expenses under this Settlement Agreement, Milberg shall provide to the Settlement Administrator a properly completed and duly executed IRS Form W-9. Fee Award and Costs shall be paid by the Settlement Administrator from the Settlement Fund, in the amount approved by the Court, no later than seven (7) days after the Effective Date.

84. **Service Awards.** Within forty-five (45) days after the Notice Deadline, Settlement Class Counsel will file a Fee and Expense Application that will include a request for a Service Award for each of the Settlement Class Representatives not to exceed \$1,500.00 in recognition of their contributions to this Litigation. The Settlement Administrator shall make the Service Award payments to the Settlement Class Representatives from the Settlement Fund. Such Service Award payments shall be paid by the Settlement Administrator in the amount approved by the Court no later than seven (7) days after the Effective Date.

85. **No Effect on Agreement.** In the event the Court declines to approve, in whole or in part, the payment of Service Awards and/or Attorneys' Fees and Expenses in the amounts requested, the remaining provisions of this Settlement Agreement shall remain in full force and effect. No decision by the Court, or modification or reversal or appeal of any decision by the Court concerning the amount of the Service Awards and/or Attorneys' Fees and Expenses shall constitute grounds for termination of this Settlement Agreement.

**X. NO ADMISSION OF LIABILITY**

86. **No Admission of Liability.** The Parties understand and acknowledge that this Settlement Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Settlement Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any Party of any fault, liability, or wrongdoing of any kind whatsoever.

87. **No Use of Agreement.** Neither the Settlement Agreement nor any act performed or document executed pursuant to or in furtherance of it: (1) is, or may be deemed to be, or may be used as, an admission of or evidence of the validity of any claim made by Plaintiffs or on behalf of the Settlement Class; or (2) is or may be deemed to be, or may be used as, an admission of or evidence of any fault or omission by Defendant in the Litigation or in any proceeding in any court, administrative agency or other tribunal.

88. **Non-Disparagement.** The Parties agree not to make any statements, written or verbal, or to cause or encourage any other Person to make any statements, written or verbal, that defame, disparage or in any way criticize the personal or business reputation, practices, or conduct of the Parties and their respective counsel concerning all Released Claims, as well as the Litigation, the Settlement, this Settlement Agreement, and any discussions, interactions, or negotiations of the settlement by the Parties and their counsel.

89. **Integration of Exhibits.** Any exhibits to this Settlement Agreement are a material part of the Settlement and are incorporated and made a part of the Settlement Agreement.

90. **Entire Agreement.** This Settlement Agreement, including all exhibits hereto, shall constitute the entire agreement among the Parties with regard to the subject matter hereof and shall supersede any previous agreements, representations, communications, and understandings among the Parties. This Settlement Agreement may not be changed, modified, or amended except in writing signed by all Parties, subject to Court approval. The Parties contemplate that, subject to Court approval or without such approval where legally permissible and where such changes are non-material, the exhibits to this Settlement Agreement may be modified by subsequent agreement of counsel for the Parties prior to dissemination of the Settlement Class Notice to the Settlement Class.

91. **Severability.** Should any part, term or provision of this Settlement Agreement be declared or determined by any court or tribunal to be illegal or invalid, the Parties agree that the Court may modify such provision to the extent necessary to make it valid, legal and enforceable. In any event, such provision shall be separable and shall not limit or affect the validity, legality or enforceability of any other provision hereunder.

92. **Deadlines.** If any of the dates or deadlines specified herein falls on a weekend or legal holiday, the applicable date or deadline shall fall on the next business day. All reference to “days” in this Settlement Agreement shall refer to calendar days unless otherwise specified.

93. **Construction.** For the purpose of construing or interpreting this Settlement Agreement, the Parties agree that this Settlement Agreement is to be deemed to have been drafted equally by all Parties hereto and shall not be construed for or against any Party on those grounds.

94. **Cooperation of Parties.** The Parties to this Settlement Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, defend Court approval, and to do all things reasonably necessary to complete and effectuate the settlement described in this Settlement Agreement.

95. **Obligation to Meet and Confer.** Before filing any motion in the Court raising a dispute arising out of or related to this Settlement Agreement, the Parties shall meet and confer with each other in good faith prior to seeking Court intervention.



96. **Governing Law.** The Settlement Agreement shall be construed in accordance with, and be governed by, the laws of the State of California, without regard to the principles thereof regarding choice of law.

97. **Counterparts.** This Settlement Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all signatories do not sign the same counterparts. Original signatures are not required. Any signature submitted electronically through e-mail of an Adobe PDF shall be deemed an original.

98. **Waiver.** The failure of a Party hereto to insist upon strict performance of any provision of this Agreement shall not be deemed a waiver of such Party's rights or remedies or a waiver by such Party of any default by another Party in the performance or compliance of any of the terms of this Agreement. In addition, the waiver by one Party of any provision or breach of this Settlement Agreement by any other Party shall not be deemed a waiver of any other provision or any other prior or subsequent breach of this Settlement Agreement.

99. **Notices.** All notices to Settlement Class Counsel provided for herein shall be sent by overnight mail and email to:

Gary M. Klinger  
MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN PLLC  
227 W. Monroe Street, Suite 2100  
Chicago, IL 60606  
(866) 252-0878  
[gklinger@milberg.com](mailto:gklinger@milberg.com)

And

James J. Pizzirusso  
HAUSFELD LLP  
888 16th St., NW  
Washington, DC 20006  
(202) 540-7200  
[jpizzirusso@hausfeld.com](mailto:jpizzirusso@hausfeld.com)

All notices to Defendant provided for herein shall be sent by overnight mail and email to:

Marcus McCutcheon  
**BAKER & HOSTETLER LLP**  
600 Anton Boulevard, Suite 900  
Costa Mesa, CA 92626  
[Mmccutcheon@bakerlaw.com](mailto:Mmccutcheon@bakerlaw.com)

And

Casie D. Collignon  
**BAKER & HOSTETLER LLP**  
1801 California Street, Suite 4400  
Denver, CO 80202  
[ccollignon@bakerlaw.com](mailto:ccollignon@bakerlaw.com)

The notice recipients and addresses designated above may be changed by written notice to the other Party.

100. **Authority.** Any person executing this Settlement Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party or Parties on whose behalf he or she signs this Settlement Agreement to all of the terms and provisions of this Settlement Agreement.

By:  Date: 9/13/2024  
Casie D. Collignon  
Marcus McCutcheon  
*Counsel for Defendant*

By:  Date: 9/13/2024  
Gary M. Klinger  
*Counsel for Plaintiffs and the Settlement Class*

By:  Date: 9/13/2024  
James J. Pizzirusso  
*Counsel for Plaintiffs and the Settlement Class*