

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Settlement Agreement” or “Agreement”) is entered into by and between Richard Smith, Noel Woodard, and Richard Krefting, individually and on behalf of Participating Settlement Class Members (as defined in Paragraph 31 (together “Plaintiffs”), and (2) Kaye-Smith Enterprises, Inc. (“Defendant” or “Kaye-Smith”) (collectively the “Parties”), in the action *Smith et al. v. Kaye-Smith Enterprises, Inc.*, Cause No. 22-01499-AR (Dist. Oregon).

### **RECITALS**

WHEREAS Kaye-Smith is a family-owned marketing execution and supply chain company that contracts to provide statement processing, billing services and data management to businesses including Boeing Employees Credit Union (“BECU”).

WHEREAS in the course of providing business services, Kaye-Smith is provided and stores sensitive customer information which it then masks and stores in “print files.”

WHEREAS between May 18, 2022, and June 2, 2022, a malicious actor gained access to certain Kaye-Smith print files (the “Data Security Incident”).

WHEREAS Kaye-Smith retained a computer forensics firm on June 2, 2022, that determined which files and which data had been potentially accessed and concluded that no social security numbers or credit scores had been accessed.

WHEREAS Kaye-Smith notified its customers, including BECU, about the nature and extent of the information that was potentially accessed during the Data Security Incident.

WHEREAS Plaintiff Richard Smith filed a proposed class action lawsuit in the U.S. District Court for the District of Oregon on behalf of himself and a proposed class of similarly situated individuals on October 6, 2022, against Kaye-Smith relating to the Data Security Incident, entitled *Smith v. Kaye-Smith Enterprises*, 3:22 cv-01499-AR.

WHEREAS Kaye-Smith has incurred and continues to incur losses resulting from the Data Security Incident that threaten its viability to continue as a going concern.

WHEREAS Kaye-Smith was insured for this incident under a single, aggregate insurance policy that diminishes/wastes with incurred defense costs and fees.

WHEREAS Kaye-Smith has received and anticipates continuing to receive from its clients claims that are covered under the single, aggregate insurance policy.

WHEREAS continued litigation regarding liability that may arise from the Data Security Incident threatens Kaye-Smith’s viability to continue as a going concern.

WHEREAS Kaye-Smith continues to deny a) the allegations and all liability with respect to any and all facts and claims alleged in the Litigation; b) that the class representatives in the Litigation and the classes they purport to represent have suffered any damage; and c) that the Litigation satisfies the requirements to be tried as a class action under Federal Rule of Civil Procedure 23. Further, Kaye-Smith recognizes that BECU similarly denies any and all liability related to the Data Security Incident.

WHEREAS Kaye-Smith provided, and commits to provide, certain information requested by counsel for Plaintiffs as confirmatory discovery, which confirms this Settlement as fair, reasonable, and adequate.

WHEREAS, this Agreement resulted from good faith, arm's-length settlement negotiations over the course of several months, including a full-day mediation session facilitated by Louis D. Peterson on March 20, 2023, and a second full-day mediation session facilitated by Judge Wayne Andersen on October 19, 2023.

WHEREAS, the Parties agree that dividing the Settlement Class into a Consumer Settlement Class and a Business Settlement Class is the most fair and equitable settlement for the entire Settlement Class.

WHEREAS, the Business Class consists of business clients of Kaye-Smith that sustained losses as a result of the Data Security Incident.

WHEREAS, the Consumer Class consists of individuals who are customers or clients of the Business Class.

WHEREAS, in light of the financial condition of Kaye-Smith and the amount of insurance funds that remain available, a member of the Business Class opting out of this settlement or otherwise triggering a termination of this Agreement, would reduce the funds available to return to the Consumer Class.

NOW, THEREFORE, in exchange for the mutual promises and valuable consideration provided for in this Agreement, and without any admission or concession by any Party or members of the Business Class, the Parties agree to a full, complete, and final settlement and resolution of the Litigation, subject to Court approval, on the following terms and conditions:

## **I. DEFINITIONS**

In addition to terms defined at various points within this Agreement, the following defined terms shall have the meanings set forth below:

1. "Approved Consumer Claim" means the timely submitted Consumer Claim Form by a Participating Settlement Member that has been approved by the Settlement Administrator.

2. “Approved Business Claim” means the timely submitted Business Claim Form for Business Losses submitted by a Participating Settlement Member that has been approved by the Settlement Administrator.

3. “Attested Time” means time spent remedying issues related to the Data Security Incident, as provided in Section III of this Agreement.

4. “Business Claim Form” or “Business Claim” means the form(s) Participating Settlement Class Members must submit to be eligible for reimbursement for Business Losses, which is attached hereto as **Exhibit 1**.

5. “Business Losses” means: (a) necessary out-of-pocket costs or expenditures that a Settlement Class Member incurred arising out of the Data Security Incident; or (b) without limitation, unreimbursed costs associated with fraud or identity theft, losses due to business interruption, reputational damage, costs incurred in securing alternative services, professional fees including attorneys’ fees, accountants’ fees, and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges, that were incurred on or between May 22, 2022, and the Notice Deadline; or (c) all costs of notices sent out to Business Class customers, all costs of credit monitoring paid with respect to any business class customer, any call center costs, to the extent any third party was engaged to assist, any third party cyber consultant costs; or (d) any and all damages arising from claims for reimbursement and/or indemnity, of any kind or nature that may be asserted against, or recoverable from Kaye-Smith, based on any legal or equitable theory or principal, whether such claim is accruing now or in the future. To resolve any doubt, Business Losses includes any and all losses or damages of any kind or nature whatsoever that a Settlement Class Member incurred, or may hypothetically incur, as a result of the Data Security Incident.

6. “Business Settlement Class” means any and all businesses or entities that had a business relationship with Kaye-Smith, including their past, present, and future officers, directors, employees, stockholders, partners, servants, agents, successors, attorneys, advisors, consultants, representatives, insurers, reinsurers, subrogees and the predecessors, successors, and assigns of any of the foregoing, including Kaye-Smith’s clients, and whether such relationship was by contract or not, and that were affected by the Data Security Incident, excluding those who have resolved their claims against Kaye-Smith prior to October 19, 2023.

7. “Claims Deadline” means the last day to submit a timely Claim Form(s), which will occur ninety (90) days after the Notice Deadline.

8. “Claims Period” means the period of time during which Settlement Class Members may submit Claim Forms to receive Settlement benefits, which will end on the Claims Deadline.

9. “Class Counsel” means

John Heenan  
HEENAN & COOK  
1631 Zimmerman Trail  
Billings, Montana 59102

Ari Brown  
RHODES LEGAL GROUP, PLLC  
918 South Horton Street, Suite 901  
Seattle, Washington 98134; and

Justin Baxter  
BAXTER & BAXTER, LLP  
8835 S.W. Canyon Lane, Suite 130  
Portland, Oregon 97225.

9(a) “Plaintiffs’ Counsel” means

William B. Federman  
FEDERMAN & SHERWOOD  
10205 N. Pennsylvania Ave.  
Oklahoma City, OK 73120

Laura Grace Van Note, Esq.  
COLE & VAN NOTE  
555 12th Street, Suite 2100  
Oakland, California 94607

A. Brooke Murphy  
MURPHY LAW FIRM  
4116 Will Rogers Pkwy, Suite 700  
Oklahoma City, OK 73108

10. “Consumer Claim Form” or “Consumer Claim” means the form(s) Participating Settlement Class Members must submit to be eligible for reimbursement of Out-of-Pocket Losses, Attested Time, and/or to claim Credit Monitoring Services or an Alternative Cash Payment under the terms of the Settlement, which is attached hereto as **Exhibit 2**.

11. “Consumer Settlement Class” means the individuals identified on the Settlement Class List, which consists of all individuals who had any information released, exposed, or impacted by the Data Security Incident, or were notified in writing by BECU, by Kaye-Smith, or by a Kaye-Smith client that their personal information was or may have been released, exposed, or impacted in the Data Security Incident. Excluded from the Settlement Class are: (1) the judges presiding over this Litigation, and members of their direct families; (2) the Defendant, its subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former officers, directors, and employees; (3) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.

12. “Court” means the Honorable Jeffrey Armistead, or such other judge to whom the Litigation may hereafter be assigned.

13. “Credit Monitoring Services” means the Financial Shield identity theft protection services provided by CyEx that provides a number of services designed to protect consumers from identity theft to Participating Settlement Class Members under the Settlement. These services include daily three-bureau credit monitoring with Equifax, Experian, and TransUnion; monthly credit score, high risk transaction monitoring, identity and authentication alerts, dark web monitoring, lost wallet protection, security freeze capability, customer support, and victim assistance; and \$1 million in identity theft insurance, among other features.

14. “Data Security Incident” means the incident that occurred between May 18, 2022, and June 2, 2022 in which a malicious actor gained access to certain Kaye-Smith computer files, and includes all acts or omissions, alleged or otherwise, to have caused, contributed, arising from, or related to the incident.

15. “Effective Date” means one business day following the latest of: (i) the date upon which the time expires for filing or noticing any appeal of the Final Approval Order and Judgment; or (ii) if any appeal, petition, request for rehearing, or other review has been filed, the Final Approval Order and Judgment is affirmed without material change or the appeal is dismissed or otherwise disposed of, no other appeal, petition, rehearing, or other review is pending, and the time for further appeals, petitions, requests for rehearing, or other review has expired.

16. “Fee Application” means any motion for an award of attorneys’ fees, Litigation Costs and Expenses, and Service Award Payments to be paid from the Settlement Fund, as set forth in Paragraphs 104 through 107.

17. “Fee Award and Costs” means the amount of attorneys’ fees and reimbursement of Litigation Costs and Expenses awarded by the Court to Class Counsel and Plaintiffs’ Counsel.

18. “Final Approval Order and Judgment” means an order and judgment that the Court enters after the Final Approval Hearing, which finally approves the Settlement Agreement, certifies the Settlement Class, dismisses the Litigation with prejudice, entering judgment in accord with the terms of this Settlement Agreement, and otherwise satisfies the settlement-related provisions of Federal Rule of Civil Procedure 23, and is consistent with all material provisions of this Settlement Agreement. The Parties agree to the Court entering a Final Approval Order and Judgment consistent with the proposed Final Approval Order and Judgment attached hereto as Exhibit 3.

19. “Final Approval Hearing” means the hearing to be conducted by the Court to determine the fairness, adequacy, and reasonableness of the Settlement pursuant to Federal Rule of Civil Procedure 23 and whether to issue the Final Approval Order and Judgment.

20. “Identity Restoration Services” means identity restoration services provided by CyEx to all Participating Settlement Class Members under the Settlement. These services provide for professional fraud resolution and identity recovery assistance by U.S.-based agents to Participating Settlement Class Members who experience identity theft or fraud.

21. “Litigation Costs and Expenses” means costs and expenses incurred by counsel for Plaintiffs in connection with commencing, prosecuting, and settling the Litigation.

22. “Minor Claim Form” means the form(s) a legal guardian may submit on behalf of a Participating Settlement Class Member who is under the age of eighteen (18) at the time of claim submission seeking reimbursement of Out-of-Pocket Losses and/or Attested Time, which is attached hereto as **Exhibit 3**

23. “Minor Monitoring Services” means Credit Monitoring Services described earlier.

24. “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) Notice and Administrative Expenses, (ii) Taxes and Tax-Related Expenses, (iii) Identity Restoration Services; (iv) Minor Monitoring Services; (v) Credit Monitoring Services; (vi) Service Awards Payments approved by the Court, and (vii) Fee Award and Costs approved by the Court.

25. “Non-Profit Residual Recipient” means a non-profit organization approved by the Court following distribution of Settlement payments for Approved Claims.

26. “Notice” means notice of the proposed class action Settlement to be provided to Settlement Class Members pursuant to the Preliminary Approval Order, substantially in the form attached hereto as **Exhibit 4**.

27. “Notice Deadline” means the last day by which Notice must issue to the Settlement Class Members and will occur within thirty (30) days after entry of the Preliminary Approval Order.

28. “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, locating Settlement Class Members, processing claims, determining the eligibility of any person to be a Settlement Class Member, and administering, calculating and distributing the Settlement Fund to Settlement Class Members. Administrative Expenses also includes all reasonable third-party fees and expenses incurred by the Settlement Administrator in administering the terms of this Agreement.

29. “Objection Deadline” is the last day on which a Settlement Class Member may file an objection to the Settlement or Fee Application, which will be forty-five (45) days after the Notice Deadline.

30. “Opt-Out Deadline” is the last day of the Opt-Out Period.

31. “Opt-Out Period” means the period that begins the day after the earliest date on which the Notice is first mailed or emailed, and that ends 45 days later.

32. “Out-of-Pocket Losses” means documented out-of-pocket costs or expenditures that a Settlement Class Member actually incurred that are fairly traceable to the Data Security Incident, and that have not already been reimbursed by a third party. Out-of-Pocket Losses may include, without limitation, unreimbursed costs associated with fraud or identity theft including professional fees including attorneys’ fees, accountants’ fees, and fees for credit repair services and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges, as well as costs for credit monitoring or other mitigative services that were incurred on or between May 22, 2022, and the Notice Deadline.

33. “Participating Settlement Class Member” means a Settlement Class Member who does not submit a valid Request for Exclusion prior to the Opt-Out Deadline.

34. “Preliminary Approval Order” means an order directing issuance of Notice to Settlement Class Members, determining that the Court will likely be able to approve the Settlement under Federal Rule of Civil Procedure 23(e)(2), and determining that the Court will likely be able to certify the Settlement Class for purposes of judgment, that is consistent with all material provisions of this Settlement Agreement.

35. “Released Claims” means any and all claims or causes of action of every kind and description, including any causes of action in law, claims in equity, complaints, suits or petitions, and any allegations of wrongdoing, demands for legal, equitable or administrative relief (including, but not limited to, any claims for injunction, rescission, reformation, restitution, disgorgement, constructive trust, declaratory relief, compensatory damages, consequential damages, penalties, exemplary damages, statutory damages, punitive damages, attorneys’ fees, costs, interest or expenses) that the Releasing Parties had, have or may claim now or in the future to have (including, but not limited to, negligence, negligence *per se*, breach of implied contract, breach of fiduciary duty, unjust enrichment, breach of confidence, breach of contract, business interruption damages, reputational harm, invasion of privacy, assigned claims and any and all “Unknown Claims” as defined below) that were or could have been asserted or alleged against the Released Parties arising from the Data Security Incident, including but not limited to: 1) negligence, negligence *per se*, breach of implied contract, breach of fiduciary duty, unjust enrichment, breach of confidence, breach of contract, business interruption damages, reputational harm, and invasion of privacy claims that may now or hereafter exists in favor of any Consumer Class Member against any Business Class Member in any way related to the Data Security Incident; 2) the disclosure of the Settlement Class Members’ personal information in the Data Security Incident; 3) Kaye-Smith’s maintenance of Settlement Class Members’ personal information as it relates to the Data Security Incident; 4) Kaye-Smith’s security policies and practices as it relates to the Data Security Incident; 5) Kaye-Smith’s investigation and response to the Data Security Incident; 6) Kaye-Smith’s provision of notice to Settlement Class Members following the Data Security Incident; 7) Kaye-Smith’s inability to provide services to Settlement Class Members as a result of the Data Breach; 8) Kaye-Smith’s contractual or business obligations to vendees or clients; 8) Reimbursement for costs and expenses, including but not limited to legal costs; and 9) any and all claims for damages, reimbursement or indemnity, arising under any legal or equitable theory, including whether in tort or contract, that may be made against Kaye-Smith now or at any time in the future.

36. “Released Parties” means Kaye-Smith, its present, future and former predecessors, successors, assigns, parents, subsidiaries, divisions, affiliates, departments, officers, directors, employees, stockholders, partners, servants, agents, attorneys, advisors, consultants, representatives, insurers, reinsurers, subrogees and the predecessors, successors, and assigns of any of the foregoing, vendees, including but not limited to BECU, and any and all of their past, present, and future officers, directors, employees, stockholders, partners, servants, agents, successors, attorneys, advisors, consultants, representatives, insurers, reinsurers, subrogees and the predecessors, successors, and assigns of any of the foregoing.

37. “Releasing Parties” or “Releasing Party” means Plaintiffs, all persons in the Consumer Settlement Class, and each of their respective heirs, executors, administrators, representatives, agents, partners, successors, attorneys, and assigns, and all members of the Business Settlement Class, and each of their respective heirs, executors, administrators, representatives, agents, partners, successors, attorneys, and assigns, that are subject to this Agreement, as defined above, including those submitting or not submitting a claim form and that have not submitted a Request for Exclusion or formally objected to the Settlement Agreement.

38. “Request for Exclusion” is the timely written communication by or on behalf of a Settlement Class Member that requests to be excluded from the Settlement Class in the form and manner provided for in the Notice. Requests do not include formal objections to the Settlement Agreement.

39. “Service Award Payment” means compensation awarded by the Court and paid to the Settlement Class Representatives in recognition of their role in this litigation.

40. “Settlement” means the settlement of the Litigation by and between the Parties, and the terms thereof as stated in this Settlement Agreement.

41. “Settlement Administrator” means the administrator chosen by Class Counsel. Class Counsel and Defendant’s Counsel may, by agreement, substitute a different Settlement Administrator, subject to Court approval.

42. “Settlement Class List” means the list generated by Kaye-Smith containing the full names, current or last known addresses where known, and if not known, personal email addresses where known, for all persons who fall under the definition of the Settlement Class, which Kaye-Smith shall provide to the Settlement Administrator within seven (7) days of the Preliminary Approval Order. The Settlement Class List will also indicate which individuals on the Settlement Class List are minors, but shall not include their respective birthdates.

43. “Settlement Class Member” means an individual who falls within the definition of the Settlement Class and who does not submit a valid and timely Request for Exclusion prior to the expiration of the Opt-Out Period or formally object to the Settlement Agreement.

44. “Settlement Class Representatives” means Richard Smith, Noel Woodard, and Richard Krefling.



45. “Settlement Fund” means the remaining amount of insurance coverage available to Kaye-Smith to reimburse it for losses arising from the Data Security Incident as of the date of this Agreement, less the amount required to pay Kaye-Smith’s reasonable attorney’s fees and costs to the date of final approval, resulting in an amount that is not less than \$2,000,000. The Settlement Fund is to be paid by Kaye-Smith or its insurance carrier, including any interest accrued thereon after payment, plus the cash value of Credit Monitoring and Minor Credit Monitoring described in Section 48.

46. “Settlement Payment” or “Settlement Check” mean the payment to be made via mailed check and/or electronic payment to a Participating Settlement Class Member pursuant to Paragraphs 47 through 75.

47. “Settlement Website” means the website that the Settlement Administrator will establish as soon as practicable following entry of the Preliminary Approval Order, but prior to the mailing of the Notice, as a means for Settlement Class Members to obtain notice of and information about the Settlement and relevant case documents and deadlines. The Settlement Website shall contain relevant documents, including, but not limited to, the Notice, this Agreement, Plaintiffs’ motion for preliminary approval of the Settlement, the Preliminary Approval Order, Plaintiffs’ Fee Application, and the operative complaints in the Litigation. The Settlement Website shall also include a toll-free telephone number, e-mail address, and mailing address through which Settlement Class Members may contact the Settlement Administrator directly. The Settlement Website shall not include any advertising and shall remain operational until at least sixty (60) days after all Settlement Payments have been distributed.

48. “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, including, without limitation, any taxes that may be imposed upon Kaye-Smith with respect to any income or gains earned by or in respect of the Settlement Fund for any period while it is held in the Settlement Fund.

## **II. CONFIRMATORY DISCOVERY**

49. **Materials to be Provided:** Within thirty (30) days of the execution of this Settlement Agreement, the parties shall stipulate to a revised Stipulated Protective Order that adds all affected Kaye-Smith computer files containing any and all information belonging Kaye-Smith’s business customers to the list of information considered “CONFIDENTIAL” Information or Items in the Stipulated Protective Order entered on July 24, 2023 (Dkt. # 59). Class Counsel is prohibited from sharing with any third parties, other than with Kaye-Smith and the Settlement Administrator, any information located in any affected Kaye-Smith computer file that belongs to Kaye-Smith’s business customers. Kaye-Smith will provide Class Counsel with the documents and information set forth below, sufficient to adequately confirm the following to Class Counsel’s reasonable satisfaction:

- a. The itemization of all computer files potentially accessed in the course of the Data Breach Incident and detailed description of the

Personal information as to each Consumer Class Member contained in each computer file.

- b. An affidavit from Kaye-Smith's insurer confirming the available remaining insurance limits, and that all remaining limits of insurance are being used to fund to the Settlement Fund, as more fully set forth in this Agreement.
- c. 2022 Audited Financial Statements and year unaudited Financial Statements to August 31, 2023, internal financial statements confirming there are no sources other than insurance policies that would potentially be available to pay any liabilities arising from the Data Breach Incident and that show the current state of Kaye-Smith's current financial position.

### **III. SETTLEMENT FUND**

50. **Establishment of Settlement Fund.** Kaye-Smith agrees to fund a Settlement Fund with all insurance funds that remain available after payment of its legal defense costs as stated in this section. Within seven (7) days of the Effective Date, Kaye-Smith will pay to the Claims Administrator to fund the relief provided under the Settlement Agreement the Settlement Fund (\$2,000,000.00) minus the amounts advanced for notice and claims administration cost as described in the next sentence. Within seven (7) days of the entry of the order preliminarily approving the Settlement and approving the Claims Administrator, Kaye-Smith will pay 1) \$300,000 from the Settlement Fund to the Claims Administrator for the actual expenses of notice and claims administration, and 2) \$150,000 to CyEx for the 1 year credit-monitoring available to the Consumer Settlement Class. Any unused amounts of the advanced payment to the Claims Administrator shall be returned to the Consumer Settlement Fund. To the extent this Settlement Agreement is not finally approved, Kaye-Smith will be entitled to the return of any amounts not already incurred by the Claims Administrator in connection with Settlement Administration. Kaye Smith shall have the right to retain insurance funds that remain after the initial funding of \$2,000,000 to the Settlement Fund in an amount up to \$300,000 for payment of its own legal defense costs up to the date of final approval.

51. **Non-Reversionary.** The Settlement Fund is non-reversionary. As of the Effective Date, all rights of Kaye-Smith in or to the Settlement Fund shall be extinguished, except in the event this Settlement Agreement is terminated, as described in Section IX .

52. **Qualified Settlement Fund.** 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 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 Agreement, upon request of any of the Parties.

53. **Custody of Settlement Fund.** The Settlement Fund shall be deemed to be in the custody of the Court and 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 82, 83, 85 and/or 97.

54. **Use of the Settlement Fund.** As further described in this Agreement, the Settlement Fund shall be used by the Settlement Administrator to pay for the following: (i) Notice and Administrative Expenses; (ii) Taxes and Tax-Related Expenses; (iii) Service Awards Payments approved by the Court; (iv) Fee Award and Costs; (v) Credit Monitoring Services; (vii) Minor Monitoring Services; (viii) reimbursement for Approved Consumer Claims; (ix) Alternative Cash Payments; and (x) Approved Business Claims. No amounts may be withdrawn from the Settlement Fund unless expressly authorized by this Agreement or approved by the Court.

55. **Taxes and Representations.** Taxes and Tax-Related Expenses relating to the Settlement Fund 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 Fund 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 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 Agreement or derived from or made pursuant to the Settlement Fund. Each Settlement Class Representative and Participating 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.

#### **IV. PLAN OF ALLOCATION**

56. **Apportionment of Funds:** The Net Settlement Amount shall be allocated between two funds wherein fifty percent (50%) shall be allocated to a fund for reimbursement of Approved Consumer Claims and for Credit Monitoring; fifty percent (50%) shall be allocated to a fund for the reimbursement of Approved Business Claims.

##### **A. REIMBURSEMENT OF CONSUMER CLAIMS**

57. **Reimbursement for Out-of-Pocket Losses.** All Consumer Settlement Class Members may submit a claim for up to \$2,500.00 for reimbursement of Out-of-Pocket Losses. To receive reimbursement for Out-of-Pocket Losses, Consumer Settlement Class Members must submit a valid Claim Form that includes the following: (i) third party documentation supporting

the loss; and (ii) a brief description of the documentation describing the nature of the loss if the nature of the loss is not apparent from the documentation alone. Third-party documentation can include receipts or other documentation not “self-prepared” by the Consumer Settlement Class Member that documents the costs incurred. Self-prepared documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support other submitted documentation. A legal guardian for a Consumer Settlement Class Member who is under the age of eighteen (18) at the time of claim submission may submit a Minor Claim Form seeking reimbursement of Out-of-Pocket Losses on the minor’s behalf.

58. **Assessing Claims for Out-of-Pocket Losses.** The Settlement Administrator shall verify that each person who submits a Consumer Claim Form is a Consumer Settlement Class Member. The Settlement Administrator shall have the sole discretion and authority to determine whether and to what extent documentation for Out-of-Pocket Losses reflects valid Out-of-Pocket Losses actually incurred that are fairly traceable to the Data Security Incident but may consult with Class Counsel in making individual determinations. In assessing what qualifies as “fairly traceable,” the Settlement Administrator will consider (i) whether the timing of the loss occurred on or after May 22, 2022; and (ii) whether the Personal Information used to commit identity theft or fraud consisted of the type of Personal Information identified in Kaye-Smith’s notices of the Data Security Incident. Costs expended for mitigation measures like credit monitoring services, fraud resolution services, and professional services incurred to address identity theft or fraud on or after May 22, 2022 shall be presumed “reasonably incurred.” The Settlement Administrator is authorized to contact any Consumer Settlement Class Member (by e-mail, telephone, or U.S. mail) to seek clarification regarding a submitted claim prior to making a determination as to its validity.

59. **Reimbursement for Attested Time.** All Consumer Settlement Class Members may submit a claim for reimbursement of Attested Time up to five (5) hours at twenty-five dollars (\$25) per hour. Settlement Class Members can receive reimbursement of Attested Time with a brief description of the actions taken in response to the Data Security Incident and the time associated with each action. Claims for Attested Time are capped at \$125 per individual. A claim for Attested Time may be combined with reimbursement for Out-of-Pocket Losses but in no circumstance will a Settlement Class Member be eligible to receive more than the \$2,500.00 individual cap. A legal guardian for a Settlement Class Member who is under the age of eighteen (18) at the time of claim submission may submit a Minor Claim Form seeking reimbursement of Attested Time on the minor’s behalf.

60. **Assessing Claims for Attested Time.** The Settlement Administrator shall have the sole discretion and authority to determine whether the prerequisites have been met in order to award payments of Attested Time, but may consult with Class Counsel in making individual determinations. The Settlement Administrator is authorized to contact any Settlement Class Member (by e-mail, telephone, or U.S. mail) to seek clarification regarding a submitted claim prior to making a determination as to its validity.

61. **Disputes.** To the extent the Settlement Administrator determines a claim for Out-of-Pocket Losses or Attested Time is deficient in whole or part, within a reasonable time of making such a determination, the Settlement Administrator shall notify the Settlement Class Member of the deficiencies and give the Settlement Class Member twenty-one (21) days to cure the

deficiencies. Such notifications shall be sent via e-mail, unless the claimant did not provide an e-mail address, in which case such notifications shall be sent via U.S. mail. If the Settlement Class Member attempts to cure the deficiencies but, at the sole discretion and authority of the Settlement Administrator, fails to do so, the Settlement Administrator shall notify the Settlement Class Member of that determination within ten (10) days of the determination. The Settlement Administrator may consult with Class Counsel in making such determinations.

62. **Alternative Fixed Cash Payments.** In lieu of submitting claims for reimbursement for out-of-pocket losses and for attested time as described above, participating Settlement Class Members may elect to receive a cash payment in an amount equal to a pro rata distribution of the Net Settlement Fund remaining after payment of claims made pursuant to paragraphs 55-58 above (“Alternative Fixed Cash Payments”). Each Alternative Fixed Cash Payments shall be an amount that is not less than \$1.00 per participating Consumer Settlement Class Member (“Minimum Fixed Cash Payment”). In the event the total required to pay the Minimum Fixed Cash Payment exceeds the amount remaining in the Net Settlement Fund, the amounts paid based on Out-Of-Pocket Losses and based on Attested Time shall be reduced pro-rata.

## **B. CREDIT MONITORING AND MINOR MONITORING**

63. **Credit Monitoring Services.** In addition to recoveries from the Settlement Fund described in Section III above, all Participating Consumer Settlement Class Members who are not automatically eligible for Minor Monitoring Services are eligible to enroll in One (1) year of Credit Monitoring Services provided by CyEx, regardless of whether the Consumer Settlement Class Member submits a claim for reimbursement of Out-of-Pocket Losses or Attested Time. The Settlement Administrator shall send an activation code to each Participating Consumer Settlement Class Member who is eligible for Crediting Monitoring Services within thirty (30) days of the Effective Date which can be used to activate Credit Monitoring Services via an enrollment website maintained by CyEx. Such enrollment codes shall be sent via e-mail, unless the claimant did not provide an e-mail address, in which case such codes shall be sent via U.S. mail. Credit Monitoring Services claimants may activate Credit Monitoring Services for a period of at least sixty (60) days from the date the Settlement Administrator sends the activation code. CyEx shall provide Credit Monitoring Services to all valid claimants who timely activate those services for a period of 1 year from the date of activation.

64. **Minor Monitoring Services.** All Participating Consumer Settlement Class Members under the age of eighteen (18) on or before the Claims Deadline are automatically eligible to enroll in Minor Monitoring Services provided by CyEx for a period of One (1) year from the Effective Date, regardless of whether they submit a claim under the Settlement. Enrollment codes shall be mailed or emailed to all eligible Consumer Settlement Class Members within thirty (30) days of the Effective Date.

## **C. REIMBURSEMENTS OF BUSINESS CLAIMS**

65. **Disputes.** To the extent the Settlement Administrator determines a claim for Business Losses is deficient in whole or part, within a reasonable time of making such a determination, the Settlement Administrator shall notify the Business Settlement Class Member of

the deficiencies and give the Business Settlement Class Member twenty-one (21) days to cure the deficiencies. Such notifications shall be sent via e-mail, unless the claimant did not provide an e-mail address, in which case such notifications shall be sent via U.S. mail. If the Business Settlement Class Member attempts to cure the deficiencies but, at the sole discretion and authority of the Settlement Administrator, fails to do so, the Settlement Administrator shall notify the Business Settlement Class Member of that determination within ten (10) days of the determination.

## **V. PAYMENTS TO PARTICIPATING SETTLEMENT CLASS MEMBERS**

66. **Payment Timing.** Payments for Approved Consumer Claims for reimbursement for Out-of-Pocket Losses, Attested Time, and/or Alternative Fixed Cash Payments and Approved Business Claims shall be issued in the form of a check mailed and/or an electronic payment as soon as practicable after the allocation and distribution of funds are determined by the Settlement Administrator following the Effective Date.

67. **Timing.** Settlement Checks shall bear in the legend that they expire if not negotiated within ninety (90) days of their date of issue. If a Settlement Check is not cashed within sixty (60) days after the date of issue, the Settlement Administrator is authorized to send an e-mail and/or place a telephone call to that Participating Consumer Settlement Class Member reminding him/her of the deadline to cash such check.

68. **Uncashed Checks.** To the extent that a Settlement Check is not cashed within ninety (90) days after the date of issue, the Settlement Administrator shall undertake the following actions: (1) attempt to contact the Participating Settlement Class Member by e-mail and/or telephone to discuss how to obtain a reissued check; (2) if those efforts are unsuccessful, make reasonable efforts to locate an updated address for the Participating Settlement Class Member using advanced address searches or other reasonable methods; and (3) reissuing a check or mailing the Participating Settlement Class Member a postcard (either to an updated address if located or the original address if not) providing information regarding how to obtain a reissued check. Any reissued Settlement Checks issued to Participating Settlement Class Members shall remain valid and negotiable for sixty (60) days from the date of their issuance and may thereafter automatically be canceled if not cashed by the Participating Settlement Class Members within that time.

69. **Unclaimed Property.** No portion of the Settlement Fund shall revert or be repaid to Kaye-Smith after the Effective Date. Any undistributed funds from the amount allocated to the Consumer Settlement Class shall be distributed pro rata to Consumer Settlement Class Members who file claims, unless such funds cannot be distributed due to the administrative costs and burden in distributing such residual funds to class members who filed claims, in which case such funds, any remaining monies or funds from uncashed checks shall be distributed to the Classroom Law Project (Portland, OR). Any undistributed funds or funds from uncashed checks remaining from the amount allocated to the Business Settlement Class, and undistributed funds allocated for the credit monitoring provided in Paragraph 63 shall be distributed pro rata to Business Settlement Class Members who file claims.

70. **Deceased Class Members.** If the Settlement Administrator is notified that a Participating Settlement Class Member is deceased, the Administrator is authorized to reissue the

Settlement Check to the Participating Settlement Class Member's estate upon receiving proof the Participating Settlement Class Member is deceased and after consultation with Class Counsel.

## **VI. CLAIMS, CAPS, AND DISTRIBUTION OF SETTLEMENT FUNDS**

71. **Submission of Electronic and Hard Copy Claims.** Participating Settlement Class Members may submit Claim Forms to the Settlement Administrator electronically via a claims website or physically by mail to the Settlement Administrator. Claim Forms must be submitted electronically or postmarked during the Claims Period and on or before the Claims Deadline. Kaye-Smith shall not be entitled to access information regarding which Settlement Class Members submitted a Claim Form or otherwise participated in the Settlement. Kaye-Smith's Counsel may obtain this information on a showing of good cause, including but not limited to any disputes arising out of the claims process.

72. **Individual Caps.** Participating Consumer Settlement Class Members are subject to an individual aggregate cap of \$2,500.00 for payments made under the Settlement for reimbursement of Consumer Claims. Participating Consumer Settlement Class Members may submit Consumer Claims for reimbursement of Attested Time and for Out-of-Pocket Losses, but the Participating Consumer Settlement Class Member's combined claims will be subject to the individual aggregate cap of \$2,500.00.

73. **Categorical Caps.** The aggregate amount of all payments for reimbursement of Approved Business Claims shall not exceed 50% of the Net Settlement Fund. The aggregate amount of all payments for reimbursement of Approved Consumer Claims and for Credit Monitoring and Minor Monitoring shall not exceed 50% of the Net Settlement Fund. In the event Approved Claims exceed the respective amounts available under these caps, the amounts paid to Participating Settlement Class Members will be reduced pro-rata as provided in Paragraph 75 below.

74. **Order of Distribution of Funds to Reimburse Consumer Claims.** The Settlement Administrator must first use the portion of the Net Settlement Fund designated for payment of Approved Consumer Claims to make payments for Approved Claims for Out-of-Pocket Losses, followed by Approved Claims for Attested Time. The Settlement Administrator shall then utilize the remaining funds in the Net Settlement Fund to calculate and to make distributions for Alternative Fixed Cash Payments.

### **75. Pro-Rata Contingencies.**

- a. **Reimbursement of Approved Consumer Claims:** In the event that the aggregate amount of all payments for reimbursement of Approved Consumer Out-of-Pocket Losses and/or Minimum Fixed Cash Payments exceed 50% of the amount of the Net Settlement Fund, then the value of payments to reimburse Out-of-Pocket Losses shall be reduced on a pro rata basis, such that the aggregate value of all payments for Out-of-Pocket Losses and Minimum Fixed Cash Payments do not exceed 50% of the Net Settlement Fund. In such an event, no Net Settlement Funds will be distributed

for Approved Claims of Attested Time. In the event that: (i) the aggregate amount of Approved Claims for Out-of-Pocket Losses and Minimum Fixed Cash Payments do not exceed the Net Settlement Fund; and (ii) the aggregate amount of all Approved Claims for Attested Time is greater than the Net Settlement Fund, less the aggregate amount of Approved Claims for Out-of-Pocket Losses and Minimum Fixed Cash Payments, then the value of each Participating Settlement Consumer Class Members' payment for Attested Time shall be reduced on a pro rata basis such that the aggregate value of all Approved Claims for Out-of-Pocket Losses and Attested Time do not exceed the Net Settlement Fund. All pro rata determinations required by this Paragraph shall be performed by the Settlement Administrator.

- b. **Reimbursement of Business Losses:** In the event that the aggregate amount of all payments for reimbursement of Approved Business Claims exceeds 50% of the Net Settlement Fund, then the value of all payments for Approved Business Losses shall be reduced on a pro rata basis such that the aggregate value of all payments for reimbursement of Approved Business Claims does not exceed 50% of the Net Settlement Fund.
- c. **Satisfaction of All Approved Consumer Claims and Business Claims Prior to Reversion:** In the event Approved Consumer Claims constitute less than 50% of the Net Settlement Fund, and Approved Business Claims exceed 50% of the Net Settlement Fund, then any remaining funds in the Net Settlement Fund shall be distributed on a pro rata basis to satisfy all Approved Business Claims.

76. **Administrative Reports.** After the Notice Date, the Settlement Administrator shall provide a weekly report to Class Counsel and to Kaye-Smith's Counsel setting forth the number of and claimed value of valid Claim Forms that were submitted each week. Within seven (7) days of the Objection/Opt-Out Deadline, the Settlement Administrator shall provide Class Counsel and Kaye-Smith's Counsel a Final Report certifying jointly to both parties which Claim Forms were valid and timely submitted.

## VII. NON-MONETARY RELIEF

77. **Business Practice Changes.** Kaye-Smith agrees to provide Class Counsel information concerning the remedial actions that it has taken, began or planned since the Data Security Incident as part of its ongoing efforts, to enhance, improve, and strengthen its cybersecurity training and awareness programs, data security policies, security measures, restrictions to accessing Personal Information, and its monitoring and response capabilities. Such changes shall include, at minimum:

- (a) Additional SOCs to allow for 24/7 logging and monitoring of our infrastructure,



- (b) Implementing a more robust vulnerability management system with continuous scanning,
- (c) Periodically Performing internal and external penetration tests at least four (4) times each calendar year, and
- (d) Actively reviewing additional security controls from other frameworks, beyond ISO27001, that Kaye-Smith will apply to its environment.

### **VIII. SETTLEMENT CLASS NOTICE**

78. **Identification of Settlement Class Members.** Within five (5) days after the date of the Preliminary Approval Order, Kaye-Smith shall provide the Settlement Class List to the Settlement Administrator that shall specifically identify all Consumer Settlement Class Members and all Business Settlement Class Members who had a direct business relationship with Kaye-Smith that preceded the Data Breach Incident. The Settlement Administrator shall execute a Business Associate Agreement including an agreement to maintain the confidentiality of the Class List and to use the Class List strictly for business purposes of administering the Settlement with any entity involved in providing notice. The Settlement Administrator shall not provide the Class List to Class Counsel.

79. **Class Notice.** Within fourteen (14) days after receipt of Settlement Class List, the Settlement Administrator shall disseminate Notice to the members of the Settlement Class. The court-approved Notice of Proposed Class Action Settlement ("Class Notice") shall be in the form attached as **Exhibit 3**, a Business Claim Form in the form attached as **Exhibit 1** (which shall be sent only to Business Settlement Class Members that Kaye Smith identified as having a direct business relationship with Kaye-Smith that preceded the Data Breach Incident), and a Consumer Claim Form in the form attached as Exhibit 2 which shall be sent to all Consumer Settlement Class Members. Notice shall be disseminated via email where available and U.S. mail where no email is available to all Settlement Class members. Class Counsel may direct the Settlement Administrator to send reminder notices to Settlement Class Members at any time prior to the Claims Deadline.

80. **Toll Free Telephone Number.** The Settlement Administrator shall establish and administer a toll-free telephone number through which Settlement Class members may contact the Settlement Administrator directly.

81. **Settlement Website.** The Settlement Administrator shall establish and administer a settlement website with links to key documents including but not limited to the Notice, this Settlement Agreement, Plaintiffs' motion for preliminary approval of the Settlement, the Preliminary Approval Order, Plaintiffs' Fee Application, the operative complaint in the Litigation, the Business Claim Form, and the Consumer Claim Form. The Settlement Website shall also include a toll-free telephone number, e-mail address, and mailing address through which Settlement Class Members may contact the Settlement Administrator directly.

## **IX. OPT-OUTS AND OBJECTIONS**

82. **Consumer Settlement Class Opt-Outs.** The Notice shall explain the procedure for all Consumer 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 at the top of the communication. 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.

83. **Opt-Out Termination.** If two (2) percent or more of the total number of Consumer Settlement Class Members submit valid requests to opt out this agreement shall automatically be null and void. In no event will Class Counsel, the Settlement Class Representatives, Kaye-Smith’s corporate officers, or Kaye-Smith’s counsel encourage Settlement Class Members to opt-out.

84. **Agreement Termination by Business Settlement Class Member Opt-Out.** Kaye-Smith shall have the right to terminate the Settlement Agreement if a Business Settlement Class Member with identified and validated Business Losses exceeding \$250,000 opts out.

85. **Class Objections.** The Notice shall explain the procedure for Settlement Class Members to object to the Settlement or Fee Application by submitting written objections to the Settlement Administrator postmarked no later than the Opt-Out Deadline. The written objection must include: (i) the name of the proceedings; (ii) the Settlement Class Member’s full name, current mailing address, and telephone number; (iii) an explanation of the basis upon which the objector claims to be a Settlement Class Member; and (iv) the signature of the Settlement Class Member objecting to the settlement (an attorney’s signature is not sufficient). 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. In the event any objection by a Business Class Member is not fully accepted by the Court, said Objector shall be responsible for all attorney fees and costs incurred by Kaye-Smith and Class Counsel related to said objection.

86. **Effect of Opt-Out.** For any Business Settlement Class Member who elects to Opt-Out of the Settlement, said Class Member waives any right to any portion of the Settlement Fund, and said Class Member shall not be entitled to a Release from the Consumer Class as set forth herein. All claims in law or in equity shall be available to the Consumer Class as against an Opt-Out Business Class Member.

## **X. DUTIES OF THE SETTLEMENT ADMINISTRATOR**

87. **Duties of Settlement Administrator.** The Settlement Administrator shall perform the functions and duties necessary to effectuate the Settlement and as specified in this Agreement, including, but not limited to, the following:

- a. Creating, administering, apportioning, and overseeing the Settlement Fund;
- b. Obtaining the Settlement Class List for the purpose of disseminating Notice to Settlement Class Members;
- c. Providing Notice to Settlement Class Members via U.S. mail and e-mail;
- d. Establishing and maintaining the Settlement Website;
- e. Establishing and maintaining a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answering the questions of Settlement Class Members who call with or otherwise communicate such inquiries;
- f. Responding to any mailed or emailed Settlement Class Member inquiries;
- g. Reviewing, determining the validity of, and processing all claims submitted by Settlement Class Members;
- h. Receiving Requests for Exclusion and objections from Settlement Class Members and providing Class Counsel and Kaye-Smith's Counsel a copy thereof no later than three (3) days following the deadline for submission of the same. If the Settlement Administrator receives any Requests for Exclusion, objections, or other requests from Settlement Class Members after the Opt-Out and Objection Deadlines, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and to Kaye-Smith's Counsel;
- i. Working with the provider of Credit Monitoring Services and Minor Monitoring Services to receive and send activation codes within thirty (30) days of the Effective Date;
- j. After the Effective Date, processing and transmitting Settlement Payments to Settlement Class Members;
- k. Providing weekly or other periodic reports to Class Counsel and Kaye-Smith's Counsel that include information regarding the number of Settlement Checks mailed and delivered, Settlement Checks cashed, undeliverable information, and any other requested information relating to Settlement Payments. The Settlement Administrator shall also, as requested by Class Counsel or Kaye-Smith's Counsel and from time to time, provide the amounts remaining in the Net Settlement Fund;
- l. In advance of the Final Approval Hearing, preparing a sworn declaration to submit to the Court that: (i) attests to implementation of Notice in accordance with the Preliminary Approval Order; and (ii) identifies each Settlement Class Member who timely and properly submitted a Request for Exclusion; and

- m. Performing any function related to Settlement administration at the agreed-upon instruction of Class Counsel or Kaye-Smith's Counsel, including, but not limited to, verifying that Settlement Payments have been distributed.

88. **Limitation of Liability.** The Parties, Class Counsel, and Defense Counsel shall not have any liability whatsoever with respect to: (i) 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; (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 and Tax-Related Expenses.

89. **Indemnification.** The Settlement Administrator shall indemnify and hold harmless the Parties, Class Counsel, and Defense 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 Plan 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; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes and Tax-Related Expenses.

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

90. **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 the Court entering the Final Approval Order and Judgment of this Settlement and the occurrence of the Effective Date.

91. **Preliminary Approval.** Following execution of this Agreement, Class Counsel shall file a motion for preliminary approval of the settlement within ten (10) days.

92. **Final Approval.** Class Counsel shall move the Court for a Final Approval Order and Judgment of this Settlement, to be issued following the Final Approval Hearing; within a reasonable time after the Notice Deadline, Objection Deadline, and Opt-Out Deadline.

93. **Jurisdiction.** The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by the Parties. The Court shall retain jurisdiction with respect to the administration, consummation and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice 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.

## **XII. MODIFICATION AND TERMINATION**

94. **Modification.** The terms and provisions of this 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 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 Agreement.

95. **Decertification of the Settlement Class if Settlement Not Approved.** If: (1) the Court does not issue the Preliminary Approval Order or Final Approval Order and Judgment; or (2) the Effective Date does not occur, the certification of the Settlement Class shall be void. Kaye-Smith reserves the right to contest class certification for all other purposes and its lack of opposition to certification of a settlement class is limited to the purposes of this Agreement. Any orders preliminarily or finally approving the certification of any class contemplated by the Settlement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity in support of claims or defenses or in support or in opposition to a class certification motion. In addition, the fact that Kaye-Smith did not oppose certification of a class under the Settlement shall not be used or cited thereafter by any person or entity, including in a contested proceeding relating to class certification.

96. **Termination.** Settlement Class Representatives and Kaye-Smith shall have the right to terminate this Agreement by providing written notice of their or its election to do so ("Termination Notice") within seven (7) days of: (1) the Court's refusal to issue the Preliminary Approval Order; or (2) within fourteen (14) days of any of the following: (i) the Court's refusal to enter the Final Approval Order and Judgment, or (ii) the date upon which the Final Approval Order and Judgment is modified or reversed in any material respect by any appellate or other court. The Court's reduction of the Fee Award of Costs, as requested by Plaintiffs and their counsel shall not be grounds for termination of this Agreement.

97. **Effect of Termination.** In the event of a termination as provided in Paragraphs 82, 83, 85 or 97, this Agreement and the Settlement shall be considered null and void; all of the Parties' obligations under the 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 Agreement or the Settlement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement claims and defenses will be preserved.

## **XIII. RELEASES**

98. **The Release.** Upon the Effective Date, and in consideration of the Settlement benefits described herein, the Releasing Parties shall be deemed to have released, acquitted, and forever discharged any and all Released Claims against the Released Parties. This release expressly includes Kaye-Smith's insurer from all obligations under any part of the insurance policy

applicable to the Released Claims, and from any and all claims arising out of the investigation, handling, adjusting, defense or settlement of the Released Claims including, without limitation, any claims for breach of contract, in tort, and/or violation of the covenant of good faith and fair dealing.

99. **Unknown Claims.** The Released Claims include the release of Unknown Claims. “Unknown Claims” means claims that could have been raised in the Litigation and any claims arising from the Data Security Incident that the Settlement Class Representatives or Participating Business or Consumer Settlement Class Members, or any Releasing Party, does not know or suspect to exist, which, if known by him, her or it, might affect his, her or its agreement to release the Released Parties or the Released Claims or might affect his, her or its decision to agree, object or not to object to the Settlement. Upon the Effective Date, each of the Settlement Class Representatives and Participating Business and Consumer Settlement Class Members, and any Releasing Party shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state, the District of Columbia or territory of the United States, by federal law, or principle of common law, or the law of any jurisdiction outside of the United States. The Settlement Class Representatives and Participating Settlement Class Members, and any Releasing Party acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Release, but that it is their intention to finally and forever settle and release the Released Claims, including but not limited to any Unknown Claims they may have, as that term is defined in this Paragraph.

100. **Release of Class Representative and Class Counsel.** Upon the Effective Date, Kaye-Smith and its representatives, officers, agents, directors, affiliates, employees, insurers, and attorneys shall be deemed to have released, acquitted, and forever discharged the Settlement Class Representatives and Class Counsel from any and all claims or causes of action of every kind and description, including any causes of action in law, claims in equity, complaints, suits or petitions, and any allegations of wrongdoing, demands for legal, equitable or administrative relief (including, but not limited to, any claims for injunction, rescission, reformation, restitution, disgorgement, constructive trust, declaratory relief, compensatory damages, consequential damages, penalties, exemplary damages, punitive damages, attorneys’ fees, costs, interest or expenses), whether known or unknown, that arise out of, are based upon, or relate to prosecution of the Litigation, the Settlement Agreement, or the Settlement claims process (provided, however, that this release and discharge shall not include claims relating to the enforcement of the terms of the Settlement or this Agreement).

101. **Bar to Future Suits.** Upon entry of the Final Approval Order and Judgment, the Settlement Class Representative and other Business and Consumer Settlement Class Members shall be enjoined from prosecuting any Released Claim or Unknown Claim they have released in the preceding paragraphs in any proceeding against any of the Released Parties or based on any actions taken by any of the Released Parties that are authorized or required by this Agreement or by the Final Approval Order and Judgment. Likewise, Kaye-Smith and its representatives, officers, agents, directors, affiliates, employees, insurers, and attorneys shall be enjoined from prosecuting any claim they have released in the preceding paragraphs in any proceeding against Settlement Class Representatives and Class Counsel or based on any actions taken by Settlement Class Representatives and Class Counsel that are authorized or required by this Agreement or by the

Final Approval Order and Judgment. It is further agreed that the Settlement may be pleaded as a complete defense to any proceeding subject to this section.

102. **Satisfaction of Judgment.** Once all obligations in this Settlement Agreement have been satisfied, the Parties agree to file a satisfaction of judgment with the Court.

103. **Dismissal of Actions with Prejudice.** No later than three (3) business days after the Parties sign this Agreement, Noel Woodard will file a stipulation agreeing to BECU's request to dismiss *Woodard v. Kaye-Smith, et al.*, Case No. 3:23-cv-01165-AR (D. Or.) with prejudice, and Richard Krefting will file a stipulation agreeing to BECU's request to dismiss *Krefting v. Kaye-Smith, et al.*, Case No. 3:23-cv-01164-AR (D. Or.) with prejudice.

#### **XIV. SERVICE AWARD PAYMENTS**

104. **Service Award Payments.** No earlier than thirty (30) days after the entry of the Preliminary Approval Order, Class Counsel will file a Fee Application that will include a request for Service Award Payments for the Settlement Class Representatives not to exceed \$5,000.00 in recognition for 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 Payment shall be paid by the Settlement Administrator, in the amount approved by the Court, no later than thirty (30) days after the Effective Date

105. **No Effect on Agreement.** In the event the Court declines to approve, in whole or in part, the payment of service awards in the amount requested, the remaining provisions of this 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 shall constitute grounds for termination of this Agreement.

#### **XV. ATTORNEYS' FEES, COSTS, EXPENSES**

106. **Attorneys' Fees and Costs and Expenses.** Prior to the Final Fairness Hearing, and No earlier than thirty (30) days after the entry of the Preliminary Approval Order, Class Counsel will file a properly documented Fee Application for an award of attorneys' fees and Litigation Costs and Expenses not to exceed thirty three percent (33%) of the Settlement Fund to be paid from the Settlement Fund, along with reimbursement of litigation costs and expenses. Prior to the disbursement or payment of the Fee Award and Costs under this Agreement, Class Counsel shall provide to Kaye-Smith and the Settlement Administrator a properly completed and duly executed IRS Form W-9. Fee Award and Costs (plus any interest accrued thereon) shall be paid by the Settlement Administrator, in the amount approved by the Court, no later than three (3) days after the Effective Date. For the avoidance of doubt, this paragraph only applies to Class Counsel and does not apply to Business Losses sought by members of the Business Settlement Class for attorneys' fees, costs, or expenses from the settlement fund.

107. **Allocation.** Unless otherwise ordered by the Court, Class Counsel shall have the sole and absolute discretion to allocate any approved Fee Award and Costs amongst Plaintiffs'

counsel and any other attorneys for Plaintiffs. Kaye-Smith shall have no liability or other responsibility for allocation of any such attorneys' fees and costs.

#### **XVI. NO ADMISSION OF LIABILITY**

108. **No Admission of Liability.** The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties, or members of the Business class, either previously or in connection with the negotiations or proceedings connected with this 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. Further, Kaye-Smith recognizes that BECU similarly denies any and all liability related to the Data Security Incident.

109. **No Use of Agreement.** Neither the Settlement Agreement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (i) 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 the Business class members; or (ii) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission by Kaye-Smith in the Litigation or in any proceeding in any court, administrative agency or other tribunal.

#### **XVII. MISCELLANEOUS**

110. **Integration of Exhibits.** The exhibits to this Agreement and any exhibits thereto are a material part of the Settlement and are incorporated and made a part of the Agreement

111. **Entire Agreement.** This 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 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, the exhibits to this Agreement may be modified by subsequent Agreement of counsel for the Parties prior to dissemination of the Settlement Class Notice to the Settlement Class.

112. **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 agreement shall refer to calendar days unless otherwise specified.

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

114. **Cooperation of Parties.** The Parties to this 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 Agreement.

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

116. **Governing Law.** The Agreement shall be construed in accordance with, and be governed by, the laws of the state of Oregon, without regard to the principles thereof regarding choice of law.

117. **Counterparts.** This 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.

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

John Heenan  
**HEENAN & COOK**  
1631 Zimmerman Trail  
Billings, Montana 59102  
john@lawmontana.com

Notices to Kaye-Smith provided for herein shall be sent by overnight mail and email to:

Christopher Seusing  
Tim Shea  
Wood Smith Henning & Berman, LLP  
801 Kirkland Avenue, Suite 100  
Kirkland, WA 98033  
cseusing@wshblaw.com  
tshea@wshblaw.com

The notice recipients and addresses designated above may be changed by written notice.

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

By: 

Date: 3/13/24

Printed Name: Alex Smith  
On behalf of Kaye-Smith  
Its: CEO

By: \_\_\_\_\_

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

***Counsel for Defendant***

By:   
John Heenan  
HEENAN & COOK

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

By:   
Ari Brown  
RHODES LEGAL GROUP

Date: 3/14/24

By:   
Justin Baxter  
BAXTER & BAXTER

Date: 3/14/24

***Counsel for Plaintiffs and the Settlement Class***