



private information of individuals saved in its systems. Plaintiff and the putative class sought monetary, declaratory, and equitable relief;

**WHEREAS**, Defendant denies any wrongdoing and liability in connection with the Cyberattack, maintains that it complied with all applicable law, and investigated and strongly considered moving to dismiss the Lawsuit in whole in part;

**WHEREAS**, before incurring the expense of further litigation, including dispositive motion practice and discovery, the Parties agreed to discuss a potential resolution of the matter;

**WHEREAS**, the Parties participated in a facilitative mediation on November 8, 2023, and after additional negotiations following the mediation, the Parties agreed to the terms of a settlement, desiring to resolve any and all claims related to the Cyberattack rather than continue litigating the matter;

**WHEREAS**, Plaintiff and their counsel believe strongly in the merits of their claims and ability to move forward in this Lawsuit, however, in consideration of all the circumstances, including the significant risks and costs associated with protracted litigation, and after prolonged and serious arm's-length settlement negotiations with Defendant, the proposed settlement embodied in the Settlement Agreement is fair, reasonable, and adequate, and is in the best interests of all Members of the Settlement Class (as defined in Paragraph 1 below);

**WHEREAS**, Defendant indicated its intent to contest every claim in the Lawsuit and maintains that it has consistently acted in accordance with governing laws, but and after prolonged and serious arm's-length settlement negotiations with Plaintiffs' counsel and considering the expenses that would be necessary to defend the Lawsuit and the benefits of a final resolution of the Lawsuit, concluded that it is in its best interests to settle the Lawsuit on the terms and conditions in the Settlement Agreement;

**WHEREAS**, the Parties and their respective counsel have engaged in arm's-length settlement negotiations and mutually desire to settle the Lawsuit fully, finally, and forever on behalf of the Settlement Class and for the Released Claims (defined in Paragraph 10 below) in accordance with the terms and conditions of the Settlement Agreement, which the Parties believe constitute a fair and reasonable compromise of the claims and defenses asserted in the Lawsuit and upon final approval of the Court;

**WHEREAS**, based on their evaluation of the facts and the law, Plaintiffs and their counsel (hereinafter "Class Counsel") have agreed to settle the Lawsuit after considering such factors as: (1) the benefits to the Settlement Class; (2) the risk, uncertainty, cost, and delay of litigation; and (3) the desirability of obtaining relief for Plaintiffs and the Settlement Class now rather than later (or not at all);

**WHEREAS**, Plaintiffs and Class Counsel have determined that the Settlement Agreement provides substantial benefits to the Settlement Class and represents a fair, reasonable, and adequate settlement of the claims that are or could have been alleged in the Lawsuit;

**WHEREAS**, Defendant and its counsel have made similar determinations, and, while denying wrongdoing, Defendant enters into the Settlement Agreement to avoid the expense, inconvenience, and inherent risk of litigation, as well as the disruption of its business operations.

### **CERTIFICATION OF SETTLEMENT CLASSES**

**1. The Settlement Class:**

The "Settlement Class" is defined as follows:

All persons whose private information was maintained on Defendant's computer systems that were compromised in the Cyberattack.

Excluded from the Settlement Class are: (a) Defendants' officers and directors; (b) any entity in which Defendant has a controlling interest; and (c) the affiliates, legal representatives, attorneys,

successors, heirs, and assigns of Defendant. Also excluded from the Settlement Classes are members of the judiciary to whom this case is assigned, their families and members of their staff. The Settlement Class consists of approximately 20,599 individuals (each, a “Settlement Class Member”).

2. **Certification of Settlement Class**: Promptly after execution of the Settlement Agreement, Class Counsel will ask the Court to issue an order certifying the Settlement Class for settlement purposes only. Defendant agrees not to object to this request without waiver of its right to contest certification or the merits of the Lawsuit if the settlement does not receive final approval or the Effective Date (defined in Paragraph 19) does not occur.

### **RELIEF TO THE SETTLEMENT CLASS**

3. **Relief to the Settlement Class**: Defendant will provide benefits to Settlement Class Members as follows:

A. **Compensation for Out-of-Pocket Losses and Lost Time**: Defendant will agree to make available the following compensation available to Settlement Class Members who submit valid and timely claim forms (each, a “Claimant”), a copy of which is attached as Exhibit A.

- i. *Compensation for Ordinary Losses*: Defendant will provide compensation for unreimbursed, documented, losses, up to a total of \$500.00 per person, upon submission of a claim and supporting documentation, such as the following losses:
  - (a) *Out of pocket expenses incurred* as a result of the Cyberattack, including bank fees, card reissuance fees, overdraft fees, charges related to unavailability of funds, late fees, over-limit fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), text messages (only if

charged by the message and incurred solely as a result of the Cyberattack), charges from banks or credit card companies, and other losses incurred by Settlement Class Members determined by the Settlement Administrator to be fairly traceable to the Data Incident, including, but not limited to, the cost of postage, or gasoline for local travel;

- (b) *Fees for credit reports, credit monitoring, or other identity theft insurance product* purchased between July 8, 2022, and the close of the Claims Period;
- (c) *Up to 3 hours of lost time*, at \$25/hour for time spent dealing with the Cyberattack. Claimants may submit claims for up to 3 hours of lost time with an attestation that they spent the claimed time responding to issues raised by the Data Security Incident.<sup>1</sup>

ii. *Compensation for Extraordinary Losses*: Defendant will provide up to \$2,000.00 in compensation to each Claimant for proven monetary loss if:

- (a) The loss is an actual, documented, and unreimbursed monetary loss;
- (b) The loss was more likely than not caused by the Cyberattack;
- (c) The loss occurred during a time period from July 8, 2022 to the close of the Claims Period; and
- (d) The loss is not already covered by one or more of the items listed in the Ordinary Losses category; and the Settlement Class Member made reasonable efforts to avoid or seek reimbursement for the loss, including but not limited to exhaustion of all available credit monitoring insurance and identity theft insurance.

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<sup>1</sup> Claims for lost time are included within the \$500.00 cap on ordinary losses.

B. *Credit Monitoring*: All Settlement Class Members shall be automatically offered a 30-month membership of One Bureau credit monitoring with at least \$1 million in fraud protection. “Automatic” shall be understood to mean that Settlement Class Members will not be required to file a formal claim to obtain this benefit, but rather will merely need to enroll and activate the service after the Effective Date. Promptly after the Effective Date, codes for the service will be sent to Settlement Class Members. Settlement Class Members may claim the credit monitoring in addition to claims for Compensation for Out-of-Pocket Losses and Lost Time, Ordinary Losses, or Extraordinary Losses per Paragraphs (3)(A)(i) and (3)(A)(ii), above. The 30-month credit monitoring membership shall include, at least, the following, or similar, services:

- Up to \$1 Million Dollars reimbursement insurance covering losses due to identity theft and stolen funds; 1 Bureau real-time credit monitoring, providing immediate notifications (via alerts, both text and email) to any Settlement Class Member whose credit profile has changed due to a recent inquiry or event;
- Monthly credit reports to measure the credit health and worthiness of Settlement Class Members;
- Continuous monitoring for high-risk transactions, including payday loans, wire transfers, and account openings, that involve the Settlement Class Member’s personal information;
- Notification of attempts to use the Settlement Class Member’s Social Security Number as part of an identity verification event, such as requesting a replacement credit or debit card; filing an

insurance claim; updating personal information on an existing account; and/or opening a new account;

- Dark web monitoring for Settlement Class Members' personal information found on the dark web;
- Fictitious identity monitoring, which notifies the Settlement Class Member when his or her Social Security Number is being used in association with someone else's name and/or address;
- Online tax fraud monitoring and alerts, which monitors online income tax filings through TurboTax and alerts the Settlement Class Member if a tax return is filed using his or her Social Security Number;
- Customer support and victim assistance, providing Settlement Class Members with access to experienced customer care representatives to help fix an identity event or to answer any questions the Settlement Class Members may have;
- Credit security freeze assistance, which provides the Settlement Class Member a central location to link to nine different consumer reporting agencies to freeze and unfreeze his or her credit files;
- Lost wallet protection, which provides a customer support line where the Settlement Class Member can receive help in canceling and replacing lost credit cards; and

- Insight and tips newsfeed, which provides Settlement Class Members with interesting stories and new threats in a centralized location.

(a) The Enrollment Period for the Credit Monitoring benefit described in this Paragraph (3)(A)(iii)(a) will be 90 days, beginning five days after the Effective Date.

(b) The retail value for the credit monitoring is **\$13.99 per month**.

C. Claims for monetary losses and lost time will be subject to review for completeness, plausibility, and reasonable traceability to the Cyberattack by the Claims Administrator. Settlement Class Members will have the opportunity to seek review by a third-party claims referee at Defendant's expense if they dispute the Claims Administrator's initial determination, as described in Paragraph 8(D). Upon receipt of an incomplete or unsigned Claim Form or a Claim Form that is not accompanied by sufficient documentation to determine whether the claim is facially valid, the Claims Administrator shall request additional information and give the claimant thirty (30) days to cure the defect before rejecting the claim. If the defect is not cured, then the claim will be deemed invalid and there shall be no obligation to pay the claim.

D. Compensation for the losses described in Paragraph 3(A) shall be paid only if:

- i. the loss is an actual, documented, and unreimbursed monetary loss;
- ii. it is determined by the Claims Administrator, or in the course of the appeals process, that the loss was more likely than not caused by the Cyberattack;
- iii. the loss occurred on or after July 8, 2022 through the end of the Claims Period;

- iv. the Claimant made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all available credit monitoring insurance and identity theft insurance; and
- v. documentation of the claimed losses is not “self-prepared.” Self-prepared documents, such as handwritten receipts, are, by themselves, insufficient to receive reimbursement. Claimants must submit reasonable documentation in support of their claim for out-of-pocket losses, to be evaluated by the Claims Administrator.

E. No payment shall be made for emotional distress, personal/bodily injury, or punitive damages;

F. Business Practices Changes. Plaintiffs have received assurances that Defendant has implemented and/or will implement certain reasonable steps to adequately secure its systems and environments. These business practice changes are not identified here due to their sensitive nature, however, Defendant has agreed to provide confirmatory information to Class Counsel upon request. The costs associated with these measures (a.k.a. injunctive relief) shall be paid by Defendant separate and apart from other settlement benefits.

**4. Claims Period:** Settlement Class Members shall have 90 days from the date that the Class Notice (as described in Paragraph 13) is issued to the Settlement Classes to submit a valid claim form (the “Claims Period”).

**5. Proof of Class Membership:** As proof of class membership, any Settlement Class Members filing a claim must submit the unique identifier provided by the Claims Administrator, attest that they received either the Notice of Cyberattack letter or notice of this settlement, and provide the name and address to which either notice was sent.

**6. Claims Payments:**

A. Payments. Any payments will either be mailed to Settlement Class Members, at the address to which Notice was provided or to an address provided by the Settlement Class Member at the time of their claim submission, or transmitted through an electronic payment method selected by the Class Member. Payment will be sent within 30 days following the Effective Date and after Defendant's or the Claims Administrator's confirmation through review of Defendant's records that the Settlement Class Member is entitled to relief, or the Claims Administrator's confirmation through review of the Settlement Class Member's submission of sufficient documentation demonstrating an entitlement to relief under the settlement whichever is later.

B. Returned Checks. If a check is returned as undeliverable, the Claims Administrator will re-mail the check if a forwarding address is provided. If a forwarding address is not provided, or if the check is re-mailed and returned, the check will be cancelled, and Defendant will have no further obligation to attempt to make a payment to that Settlement Class Member.

C. Uncashed/Cancelled Checks. Checks shall be valid for at least 120 days from the date of issue. Upon request, Defendant or the Claims Administrator will provide Class Counsel with a report on uncashed or cancelled checks.

D. Residual funds. All residual funds remaining in any account maintained by the Claims Administrator for purposes of administering this settlement shall revert back to, and be the property of, Defendant and/or its insurers at the conclusion of the settlement administration process. Such funds shall be transferred back to Defendant or its insurers within 10 business days of the close of the settlement administration period pursuant to wire instructions to be provided by counsel for Defendant.

**7. Attorneys' Fees, Costs, and Service Award:**

A. Attorneys' Fees and Costs.

Class Counsel will seek, and Defendant agrees not to oppose, and order from the Court awarding Class Counsel attorneys' fees and reimbursement of reasonable costs associated with the Lawsuit in a total amount not to exceed \$225,000, inclusive of costs ("Class Counsel Payment"). Class Counsel and Plaintiff agree not to seek or accept attorneys' fees greater than \$225,000. Class Counsel will petition for approval of the Class Counsel Payment at least 14 days before the deadline for Settlement Class Members to exclude themselves or object, or any other deadline set by the Court. Defendant will pay, or cause to be paid, the amount approved by the Court that does not exceed \$225,000. Class Counsel, in their sole discretion, shall allocate and distribute the amount of attorneys' fees, costs, and expenses awarded by the Court.

The Court's consideration of the Class Counsel Payment shall be separate from its consideration of the Settlement Agreement, and the Court's approval of the settlement shall not be contingent upon an attorneys' fees or cost award at all or in any particular amount. If the Court reduces or disapproves Class Counsel's request for an award of attorneys' fees or costs, that will not be grounds to terminate the settlement.

The Court-approved Class Counsel Payment will not affect any benefits provided to Settlement Class Members or Plaintiffs, and will be paid separate and apart from any other sums agreed to under this Settlement Agreement. Defendant will pay, or cause to be paid, the Court-approved Class Counsel Payment within 30 days of the Effective Date by wire transfer to an attorney trust account specified by Class Counsel, so long as the necessary documentation and information is provided by Class Counsel. Defendant's obligations with respect to the Court-approved Class Counsel Payment shall be fully satisfied upon receipt of the funds by Class Counsel. Class Counsel will be responsible for any loss that may occur after receipt of the funds and for allocating the Court-approved Class Counsel Payment among Class Counsel or others.

Defendant will have no responsibility or liability in connection with the allocation of the Court-approved Class Counsel Payment, or for any tax obligations or payments associated with the Class Counsel Payment. Class Counsel will bear all liability, and Defendant will bear no liability (beyond the Court-approved Class Counsel Payment itself), in connection with any claim for payment made by any attorney or service provider who claims to have rendered services to, for, or on behalf of Plaintiff, any Settlement Class Member, or Class Counsel in connection with the Lawsuit and this settlement.

Except for the Court-approved Class Counsel Payment, the Parties will be responsible for their respective fees, costs, and expenses incurred in connection with the Lawsuit. No interest will accrue with respect to the Court-approved Class Counsel Payment.

B. Service Award. Class Counsel will seek, and Defendant agrees not to oppose, an order from the Court awarding service awards to each Plaintiff in an amount not to exceed \$2,500 (a total of \$5,000), for the time and effort expended on behalf of the Settlement Class (the “Service Award”). Class Counsel and Plaintiffs agree not to seek or accept a Service Award greater than \$2,500 to each Plaintiff. Class Counsel will petition for approval of the Service Award at least 14 days before the opt-out or objection deadline, or any other deadline set by the Court. Defendant will pay, or cause to be paid, the amount approved by the Court that does not exceed \$2,500 to each Plaintiff. The Court-approved Service Award will not affect any benefit provided to Class Members, including Plaintiffs. Defendant will pay, or cause to be paid, the Court-approved Service Award within 30 days of the Effective Date by check or by wire transfer pursuant to wire instructions provided by Class Counsel. Defendant’s obligation for payment of any Court-approved Service Award will be fully satisfied upon receipt of the check or wire transfer by Class Counsel. Plaintiffs will bear all liability (beyond the Court-approved Service Award payment

itself), and Defendant will bear no liability, for payment of taxes due, if any, on the Court-approved Service Award. No interest will accrue with respect to the Court-approved Service Award if paid in accordance with the Settlement Agreement.

### **SETTLEMENT ADMINISTRATION**

#### **8. Claims and Settlement Administration:**

A. Claims Administrator. The Parties have selected RG/2 as the third-party claims administrator (“Claims Administrator”) to provide notice of the settlement to the Settlement Class and otherwise administer the settlement, subject to the approval of the Court. The Claims Administrator will administer the settlement, including: (1) providing notification of the proposed settlement to the same population as Defendant’s pre-Lawsuit Cybersecurity incident notification in a manner mutually agreeable to the Parties, which may include email or direct mail notification; (2) creating and hosting a website, publicly accessible through the end of the Claims Period, dedicated to providing information related to this Lawsuit and access to relevant publicly available court documents relating to this Lawsuit, the settlement, and the Settlement Agreement, including the “Short Form Notices” and “Long Form Notice” of the settlement (attached hereto as Exhibits B and C, respectively), and offering Settlement Class Members the ability to submit claims and supporting documentation for relief; (3) maintaining a toll-free telephone number and P.O. Box by which Settlement Class Members can seek additional information regarding the Settlement Agreement; (4) processing claims and supporting documentation submissions, and the provision of approved payments to Settlement Class Members; (5) processing requests for exclusion from Settlement Class Members; and (6) any other provision of the Settlement Agreement that relates to the settlement and settlement administration. Upon reasonable notice, the Claims Administrator and Defendant will make available for inspection by Class Counsel such information as reasonably

necessary for Class Counsel to confirm that the Claims Administrator and Defendant have complied with the settlement administration aspects of the Settlement Agreement.

B. Review and Assistance. Class Counsel will be permitted to audit and review actual (or summary reports on) claims made, claims approved or denied, checks issued, calculation of benefits under the settlement, returned checks and uncashed checks to assist with (1) the effectuation of the settlement, and (2) the Parties' respective desire to reasonably ensure that the benefits are administered in a manner to attempt to reach each Settlement Class Member.

C. Cost of Settlement Administration. Defendant will be responsible for the cost of settlement administration, including the payment of the Claims Administrator. The cost of settlement administration will not affect any benefit provided to Settlement Class Members, including Plaintiffs. Except for the Court-approved Class Counsel Payment and Court-approved Service Award, Defendant will not be responsible for, and will not pay, any additional costs or fees incurred by Plaintiffs or Class Counsel with respect to the negotiation, implementation, or settlement administration, or any costs incurred by any Settlement Class Member in connection with participating in, opting out of, or objecting to the settlement.

D. Dispute Resolution.

- i. The Claims Administrator, in its sole discretion to be reasonably exercised, will determine whether: (1) a Claimant is a Settlement Class Member; (2) a Claimant has provided all information needed to complete the Settlement Class Claim Form, including any documentation that may be necessary to reasonably support the losses and/or reimbursements described in Paragraph 3; and (3) the information submitted could lead a reasonable person to conclude that more likely than not that a Claimant has suffered the claimed losses as a result of the Cyberattack. The Claims

Administrator may, within 60 days of the Claims Deadline, request from a Claimant, in writing, additional information as the Claims Administrator may reasonably require in order to evaluate the claim, documentation requested on the Settlement Class Claim Form, and required documentation regarding the claimed losses. The Claims Administrator's initial review will be limited to a determination of whether the claim is complete and plausible. For any claims that the Claims Administrator determines to be implausible, the Claims Administrator will deem those claims invalid.

- ii. Upon receipt of an incomplete or unsigned Settlement Class Claim Form that is not accompanied by sufficient documentation to determine whether the claim is facially valid, the Claims Administrator shall request via email or U.S. Mail additional information ("Claim Supplementation") and give a Claimant 21 days from the date the request is sent to cure the defect before rejecting the claim. Requests for Claim Supplementation shall be made within 30 days of receipt of such Settlement Class Claim Form or Subclass Claim Form or 30 days from the Claims Deadline, whichever comes later. If the defect is not timely cured, then the claim will be deemed invalid and there shall be no obligation to pay the claim.
- iii. Following receipt of additional information requested by the Claims Administrator, the Claims Administrator shall have 10 days to accept, in whole or lesser amount, or reject each claim. If, after review of the claim and all documentation submitted by a Claimant, the Claims Administrator determines that such a claim is facially valid, then the claim shall be paid. If the Claim Administrator determines that such a claim is not facially valid because the Claimant has not provided all information

needed to complete the Settlement Class Claim Form or Subclass Claim Form and enable the Claim Administrator to evaluate the claim, then the Claims Administrator may reject the claim without any further action. If the claim is rejected in whole or in part for other reasons, then the claim may be referred to the claims referee, who shall be selected by mutual agreement of the Parties should the need arise for said selection.

- iv. Claimants shall have 30 days from receipt of any offer of payment from the Claims Administrator to accept or reject the offer. If a Claimant rejects an offer from the Claims Administrator, the Claims Administrator shall have 15 days to reconsider its offered amount and make a final determination. If the Claimant approves the final determination, then the approved amount shall be the amount to be paid. If the Claimant does not approve the final determination within 30 days of it being made, then the dispute may be submitted to the claims referee within 10 days from the date by which the Claimant was required to approve the final determination.
- v. If any dispute is submitted to the claims referee, the claims referee may approve the Claims Administrator's determination by making a ruling within 15 days of the claims referee's receipt of the submitted dispute. The claims referee may make any other final determination of the dispute or request further supplementation of a claim within 30 days of the claims referee's receipt of the submitted dispute. The claims referee's determination shall be based on whether the claims referee is persuaded that the claimed amounts are reasonably supported in fact and were more likely than not caused by the Cyberattack. The claims referee shall have the power to approve a claim in full or in part. The claims referee's decision will be final and non-appealable. Any

Claimant referred to the claims referee shall reasonably cooperate with the claims referee, including by either providing supplemental information as requested or, alternatively, signing an authorization allowing the claims referee to verify the claim through third party sources, and failure to cooperate shall be grounds for denial of the claim in full. The claims referee shall make a final decision within 30 days of the latter of the following events: its receipt of the submitted dispute or its receipt of all supplemental information requested.

9. **No Other Financial Obligations on Defendant:** Defendant will not be obligated to pay any fees, expenses, or costs in connection with the Lawsuit or the Settlement Agreement other than the amounts and categories specifically provided for in the Settlement Agreement.

**RELEASE**

10. **Release:**

A. As of the Effective Date, Plaintiffs named in this Settlement Agreement and Release and every Settlement Class Member (except those who timely opt out), for themselves, their attorneys, spouses, beneficiaries, executors, representatives, heirs, successors, and assigns, in consideration of the relief set forth in the Settlement Agreement, fully and finally release Defendant, its parents, subsidiaries, predecessors, shareholders, members, and affiliates, and all of their present and former officers, directors, employees, agents, consultants, advisors, attorneys, representatives, insurers, and legal representatives from any and all claims or causes of action, whether known or unknown, that concern, refer or relate to (a) the Cyberattack; and (b) all other claims arising out of the Cyberattack that were asserted, or that could have been asserted, in the Lawsuit. The claims released in this Paragraph are referred to as the “Released Claims,” and the parties released are referred to as the “Released Parties.”

B. Plaintiff and the Settlement Class Members waive any principles of law similar to and including Section 1542 of the California Civil Code, 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.

C. Plaintiffs and the Settlement Class Members agree that Section 1542 and all similar federal or state laws, rules, or legal principles of any other jurisdiction are knowingly and voluntarily waived in connection with the claims released in the Settlement Agreement and agree that this is an essential term of the Settlement Agreement. Plaintiffs and the Settlement Class Members acknowledge that they may later discover claims presently unknown or suspected, or facts in addition to or different from those which they now believe to be true with respect to the matters released in the Settlement Agreement. Nevertheless, Plaintiffs and the Settlement Class Members fully, finally, and forever settle and release the Released Claims against the Released Parties.

**11. No Release of Unrelated Claims:** Notwithstanding the foregoing, the Parties expressly agree and acknowledge that the Release negotiated herein shall not apply to any litigation or claim not related to or arising out of the Cyberattack.

#### **SETTLEMENT APPROVAL PROCESS**

**12. Preliminary Approval Order:** As soon as practicable after the execution of the Settlement Agreement, the Parties shall jointly submit this Settlement Agreement to the Court, and Plaintiffs will file a motion for preliminary approval of the settlement, requesting entry of a preliminary approval order, which:

A. Preliminarily approves the Settlement Agreement;

- B. Certifies the Settlement Class for settlement purposes only pursuant to Paragraph 2;
- C. Finds that the proposed Settlement is sufficiently fair, reasonable, and adequate to warrant providing notice to the Settlement Class Members;
- D. Appoints the Claims Administrator in accordance with Paragraph 8(A);
- E. Approves the notice program (as described in Paragraphs 8(A) and 13 of the Settlement Agreement) and directs the Claims Administrator and Defendant to provide notice to Settlement Class Members in accordance with said notice program;
- F. Approves the Short Form Notice to be mailed to Settlement Class Members and the Long Form Notice;
- G. Approves the Settlement Class Claim Form and Subclass Claim Form and directs the Claims Administrator to conduct Settlement Administration in accordance with the provisions of the Settlement Agreement;
- H. Approves the Exclusion (*e.g.* opt-out) and Objection procedures outlined in the Settlement Agreement;
- I. Schedules a Final Approval Hearing to consider the fairness, reasonableness, and adequacy of the proposed Settlement and whether it should be finally approved by the Court;
- J. Appoints Plaintiffs as the Settlement Class Representatives;
- K. Appoints Cafferty Clobes Meriwether & Sprengel LLP, and Milberg Coleman Bryson Phillips Grossman PLLC as Settlement Class Counsel; and
- L. Contains any additional provisions agreeable to the Parties that might be necessary or advisable to implement the terms of the Settlement Agreement.

A copy of the proposed Preliminary Approval Order is attached as Exhibit D. Should the Court decline to preliminarily approve any aspect of the Settlement Agreement, the Settlement Agreement will be null and void, the Parties will have no further obligations under it, and the Parties will revert to their prior positions in the Lawsuit as if the settlement had not occurred.

**13. Class Notice:** By no later than 30 days following entry of the Preliminary Approval Order (the “Notice Completion Deadline”), the Claims Administrator will notify Settlement Class Members of the settlement with the Short Form Notice sent by U.S. mail and/or by e-mail. The Notice of Proposed Settlement (the “Class Notice”) will advise that Settlement Class Members have 90 days from the date that the Class Notice is sent to submit a claim (the “Claims Deadline”). Before mailing the notice, the Claims Administrator will update the Settlement Class Member’s address through a reliable service of the Claims Administrator’s choosing that is consistent with its customary business practices. If a notice is returned to the Claims Administrator as undelivered and a forwarding address is provided, the Claims Administrator will re-mail one additional time to the new address. For those notices returned to the Claims Administrator as undeliverable with no forwarding address, the Claims Administrator will perform a skip trace search and/or make other reasonable efforts to locate an updated address and, where such an address is found, will re-mail the notice to the updated address.

**14. Right of Exclusion:** Settlement Class Members who submit a timely, written request for exclusion from the Settlement Class will be excluded from the Settlement Class. A request for exclusion must be in writing and signed by the Settlement Class Member, and the written request must state the name and address of the person seeking exclusion. The written request also must clearly manifest a person’s intent to be excluded from the Settlement Class. The request must be mailed to the Claims Administrator at the address provided in the Class Notice no later than 60

days from the date the Class Notice is issued, or any other date set by the Court. A request for exclusion that does not include all of the foregoing information, or that is sent to an address other than the one designated in the Class Notice, or that is not mailed by the deadline will be invalid, and the person submitting the request will remain a Settlement Class Member. A Settlement Class Member who submits a valid Settlement Class Claim Form is not eligible for exclusion, and any subsequent request for exclusion will be invalid. All persons who submit valid, timely notices of their intent to opt out of the Settlement Class shall not receive any benefits of and/or be bound by the terms of the Settlement Agreement. All persons falling within the definition of the Settlement Class who do not request to be excluded from the Settlement Class in the manner described in this Paragraph shall be bound by the terms of the Settlement Agreement. Class Counsel will file a list of Settlement Class Members requesting exclusion with the Court.

**15. Right to Object:** Any Settlement Class Member who objects to the settlement may appear in person or through counsel, at his or her own expense, at the Final Approval Hearing to present any relevant evidence or argument. No Settlement Class Member will be heard and no papers submitted by any Settlement Class Member will be considered unless, no later than 60 days from the date the Class Notice is issued, or any other date set by the Court, the Settlement Class Member files with the Court and mails to Class Counsel and Defendant's counsel written objections that include: (a) the case name and docket number; (b) the objector's name and address; (c) all legal and factual bases for any objection; (d) copies of any documents that the objector wants the Court to consider; (e) the identity of any and all counsel representing the objector in connection with the objection; (f) a statement whether the objector and/or his or her counsel will appear at the Final Fairness Hearing; and (g) the objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative (if any) representing him or her in connection with

the objection. Should the objector wish to appear at the Final Approval Hearing, he or she must so state, and must identify any documents or witnesses the Settlement Class Member intends to call on his or her behalf. Any Settlement Class Member who fails to object in this manner will be deemed to have waived and forfeited any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement, and the Settlement Class Member shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders, and judgments in this Lawsuit. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions set forth in this Paragraph. Without limiting the foregoing, any challenge to the Settlement Agreement, the Final Judgment and Order approving this Settlement Agreement, or the judgment to be entered upon final approval shall be pursuant to appeal under the Hawai'i Rules of Appellate Procedure and not through a collateral attack.

**16. Final Approval Hearing:** At the time of the submission of the Settlement Agreement to the Court for preliminary approval, the Parties shall request that the Court hold a hearing on final approval of the settlement (the “Final Approval Hearing”) approximately 120 days after entry of the Preliminary Approval Order.

**17. Motion for Final Approval:** At least 14 days prior to the Final Approval Hearing, or by some other date if so directed by the Court, Plaintiffs will move for final approval of the Settlement Agreement.

**18. Final Judgment and Order:** At the Final Approval Hearing, the Parties will ask the Court to enter final judgment (the “Final Judgment and Order”). A copy of the proposed Final Judgment and Order is attached as Exhibit E.

**19. Finality of Judgment:** The Final Judgment and Order will be deemed final, and the “Effective Date” will occur: (a) 35 days after the Final Judgment and Order is entered if no notice

of appeal or motion tolling the time for appeal is filed; or (b) if any such document is filed, 14 days after all appellate proceedings (including proceedings in this Court in the event of a remand) have been finally terminated and the Settlement Agreement has been finally approved in all material respects.

### **MISCELLANEOUS PROVISIONS**

**20. Right to Terminate Settlement:** If more than 100 of the Settlement Class Members opt out of the Settlement Class, Defendant shall have the right, but not the obligation, to terminate the Settlement Agreement. If Defendant opts to terminate the settlement agreement, the Parties shall return to their respective positions immediately prior to entering into the Settlement Agreement and the Parties' settlement negotiations shall not be admissible in any legal proceeding or construed as an admission of liability by Defendant or a concession by Plaintiff in any manner.

**21. Integration and Drafting:** The Settlement Agreement was drafted and negotiated by counsel for the Parties at arm's length. It sets forth the entire agreement among the Parties.

**22. Amendment, Court Approval, Extensions:** The Settlement Agreement may not be amended without the written consent of all Parties and approval of the Court; provided, however, that the Parties may agree to reasonable extensions of time to carry out any provision of the Settlement Agreement, and provided further that any extension of more than 30 days must be approved by the Court.

**23. Construction:** The Settlement Agreement has been drafted by all Parties and shall not be construed for or against any of the Parties.

**24. Integration of Exhibits:** The exhibits to the Settlement Agreement are incorporated by reference and are an integral part of the Settlement Agreement.

25. **Counterparts**: The Settlement Agreement may be executed in counterparts, each of which will be considered an original. Executed signature pages are valid and enforceable whether they are originals or copies, and whether transmitted by facsimile, email, or any other means.

26. **Advice of Counsel**: The Parties have relied upon the advice and representation of counsel, selected by them, concerning their respective legal liability for the claims hereby released. The Parties have read and understand fully this Settlement Agreement, including its exhibits, and have been fully advised as to the legal effect thereof by counsel of their own selection and intend to be legally bound by the same.

27. **No Evidence, No Admission**: In no event shall the Settlement Agreement, any of its provisions, or any negotiations, statements, or proceedings relating to it be offered or received as evidence in the Lawsuit or in any other proceeding, except in a proceeding to enforce the Settlement Agreement (including its release). Without limiting the foregoing, neither the Settlement Agreement nor any related negotiations will be offered or received as evidence, or as an admission or concession, by any person of any matter, including, but not limited to, any alleged wrongdoing on the part of Defendant or the appropriateness of certification of any class.

28. **Tax Consequences**: Defendant gives no opinion as to the tax consequences of the settlement to Settlement Class Members or anyone else. Each Settlement Class Member's or other person's tax obligations, if any, and the determination of those obligations, are the sole responsibility of the Settlement Class Member or other person. Defendant and Class Counsel will act as they determine are required by the Internal Revenue Code in reporting any settlement benefit provided or attorneys' fees or costs received pursuant to the Settlement Agreement.

29. **Cooperation in Effecting Settlement**: The Parties, their successors and assigns, and their attorneys will implement the Settlement Agreement in good faith, use good faith in resolving any

disputes that may arise in the implementation of the Settlement Agreement, cooperate with one another in seeking Court approval of the Settlement Agreement, and use their best efforts to effect the prompt consummation of the Settlement Agreement. Defendant agrees to provide confirmatory discovery establishing the appropriateness of the settlement terms.

**30. Publicity:** The Parties will cooperate with each other regarding public statements about the settlement and may issue a joint statement/press release if they mutually agree to do so. The Parties reserve their right to rebut, in a matter that such Party determines to be appropriate, any contention made in any public forum that the Litigation was brought or defended in bad faith or without a reasonable basis. Notwithstanding the foregoing, the Parties may include on their websites or provide to Settlement Class Members the notice and any signed orders from the Court regarding the settlement and may respond to inquiries from Settlement Class Members regarding the substance of the settlement; provided however, that such responses shall in no way be disparaging to a Party. Defendant may, at its sole discretion, make a public statement about its operating procedures, or changes to these procedures, relating to cybersecurity.

**31. Authority to Execute Agreement:** Each person executing the Settlement Agreement represents that he or she is authorized to execute it.

**32. No Assignment:** The Parties represent and warrant that they have not assigned any claim or right or interest therein as against the Released Parties to any other person or party.

**33. Successors and Assigns:** This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto and the Released Parties.

**34. Jurisdiction:** The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement Agreement, and the Parties hereby submit to the

jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Settlement Agreement.

**35. Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the state of Hawai'i, without regard for its choice-of-law rules.

**ROSE SPENCER**

**ALOHA NURSING REHAB CENTRE**

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

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

Its: \_\_\_\_\_

**LEWELYN TRENHAILIE**

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

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

**Approved as to form:**

**CAFFERTY CLOBES MERIWETHER & SPRENGEL LLP**  
Attorneys for Plaintiffs and the Putative Settlement Class

**MCDONALD HOPKINS LLC**  
Attorneys for Defendant

\_\_\_\_\_  
Nickolas J. Hagman  
Date: \_\_\_\_\_

\_\_\_\_\_  
David W. Schelberg  
Date: \_\_\_\_\_

**BRONSTER FUJICHAKU ROBBINS**  
Attorneys for Plaintiffs and the Putative Settlement Class

**YAMAMOTO CALIBOSO HETHERINGTON**  
Attorneys for Defendant

\_\_\_\_\_  
Margery S. Bronster  
Date: \_\_\_\_\_

\_\_\_\_\_  
J. George Hetherington  
Date: \_\_\_\_\_