

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

RICHARD ARCHIBEQUE, on behalf
of himself and all others similarly
situated,

Plaintiff,

vs.

FPI MANAGEMENT, INC.,

Defendant.

Case No. 34-2021-00300923-CU-MT-
GDS

SETTLEMENT AGREEMENT

1 This Settlement Agreement, dated March 25, 2024, is made and entered into
2 by and among Plaintiff Richard Archibeque (“Representative Plaintiff”), individually
3 and on behalf of the Settlement Class and FPI Management, Inc. (“FPI” or
4 “Defendant”), by and through their respective counsel.

5 **RECITALS**

6 WHEREAS, on May 17, 2021, Mr. Archibeque filed a class action complaint
7 (the “Complaint”) in the Superior County of the State of California, County of
8 Sacramento (the “Court”) entitled, *Archibeque v. FPI Management, Inc.*, Case No.
9 34-2021-00300923-CU-MT-GDS (the “Litigation”);

10 WHEREAS, the operative Complaint asserts claims against Defendant for: (1)
11 negligence; (2) breach of written contract; (3) breach of implied contract; (4) invasion
12 of privacy; (5) breach of confidence; (6) violation of the California Unfair
13 Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*; (7) violation of
14 California’s Consumer Privacy Act, Cal. Civ. Code. § 1798.150; and (8) violation of
15 the California Customer Records Act, § 1798, *et seq.*, all arising from the Data
16 Security Incident (as such term is defined below);

17 WHEREAS, Defendant has denied and continues to deny (a) each and every
18 allegation and all charges of wrongdoing or liability of any kind whatsoever asserted
19 or which could have been asserted in this Litigation, (b) that the Representative
20 Plaintiff in the Action and the class he purports to represent have suffered any
21 damage, and (c) that the Action satisfies the requirements to be tried as a class action
22 under Cal. Civ. Proc. Code § 382. Without acknowledging any fault or liability on
23 the part of the Defendant, the Settling Parties have agreed to enter into this
24 Agreement as an appropriate compromise of Representative Plaintiff’s and Class
25 Members’ claims to put to rest all controversy and to avoid the uncertainty, risk,
26 and/or expense of burdensome, protracted, and costly litigation that would be
27 involved in prosecuting and defending this Action. This agreement is for settlement
28 purposes only, and nothing in this agreement shall constitute, be construed as, or be

1 admissible in evidence as any admission of the validity of any claim or any fact
2 alleged by Representative Plaintiff in this action or in any other pending or
3 subsequently filed action, or of any wrongdoing, fault, violation of law, or liability
4 of any kind on the part of Defendant or admission by any of the parties of the validity
5 or lack thereof of any claim, allegation, or defense asserted in this Litigation or in
6 any other action;

7 WHEREAS, the Settling Parties participated in good faith, arms-length
8 settlement discussions over the course of several months, through which the basic
9 terms of a settlement were negotiated and finalized;

10 WHEREAS, Class Counsel conducted a thorough examination and evaluation
11 of the relevant law and facts to assess the merits of the claims to be resolved in this
12 settlement and how best to serve the interests of the putative class in the Litigation.
13 Based on this investigation and the negotiations described above, Class Counsel have
14 concluded, taking into account the sharply contested issues involved, the risks,
15 uncertainty and cost of further prosecution of this Litigation, and the benefits to be
16 provided to the Settlement Class pursuant to this Agreement, that a settlement with
17 Defendant on the terms set forth in this Agreement is fair, reasonable, adequate and
18 in the best interests of the putative class;

19 WHEREAS, this Settlement Agreement is intended to fully, finally and forever
20 resolve all claims and causes of action asserted, or that could have been asserted
21 based upon the facts alleged in the Complaint, against Defendant and the Released
22 Persons, by and on behalf of the Representative Plaintiff and Settlement Class
23 Members, and any other such actions by and on behalf of any other putative classes
24 of individuals against Defendant originating, or that may originate, in jurisdictions in
25 the United States, reasonably related to the operative facts alleged in the Complaint.

26 NOW, THEREFORE, IT IS HEREBY AGREED, by and between the
27 Representative Plaintiff, Class Counsel, and Defendant, that, subject to the approval
28 of the Court as provided for in this Agreement, the Litigation and Released Claims

1 shall be fully and finally settled, compromised, and released, on the following terms
2 and conditions:

3 **I. DEFINITIONS**

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

6 1.1 “Agreement” or “Settlement Agreement” means this agreement.

7 1.2 “California Sub-Class” means all individuals to whom Defendant sent,
8 to a mailing address in California, notice of a Data Security Incident discovered on
9 or about August 14, 2020.

10 1.3 “Claims Administration” means the processing and payment of claims
11 received from Settlement Class Members by the Claims Administrator.

12 1.4 “Claims Administrator” means a company to be selected by Defendant,
13 with the approval of Class Counsel which approval shall not be unreasonably
14 withheld, experienced in administering class action claims generally and specifically
15 those of the type provided for and made in data breach litigation.

16 1.5 “Claims Deadline” means the postmark and/or online submission
17 deadline for valid claims submitted pursuant to ¶ 2 below. The Claims Deadline is
18 90 days after the Notice Commencement date.

19 1.6 “Claim Form” means the claim form to be used by Settlement Class
20 Members to submit a Settlement Claim, either through the mail or online through the
21 Settlement Website, substantially in the form as shown in **Exhibit A**.

22 1.7 “Class Members” means all individuals residing in the United States to
23 whom Defendant or its authorized representative sent notice of a Data Security
24 Incident discovered on or about August 14, 2020. Class Members specifically
25 excludes: (i) FPI and FPI’s parents, subsidiaries, affiliates and any entity in which
26 FPI has a controlling interest; and (ii) all judges assigned to hear any aspect of this
27 Litigation as well as their immediate family members. Class Members consists of
28

1 approximately 21,417 individuals. These individuals constitute the “Settlement
2 Class” solely for purposes of certifying a settlement class in this Litigation.

3 1.8 “Costs of Claims Administration” means all actual costs associated with
4 or arising from Claims Administration. Defendant shall pay all Costs of Claims
5 Administration.

6 1.9 “Court” means the Superior Court of the State of California, County of
7 Sacramento.

8 1.10 “Data Security Incident” means the cyberattack perpetrated on FPI
9 beginning on or around August 14, 2020, and which Defendant learned about on or
10 around August 14, 2020.

11 1.11 “Dispute Resolution” means the process for resolving disputed
12 Settlement Claims as set forth in this Agreement.

13 1.12 “Effective Date” means the first date by which all of the events and
14 conditions specified in ¶ 11.1 herein have occurred and been met.

15 1.13 “Final” means the occurrence of all of the following events: (i) the
16 settlement pursuant to this Settlement Agreement is approved by the Court; (ii) the
17 Court has entered a Judgment (as that term is defined herein); and (iii) the time to
18 appeal or seek permission to appeal from the Judgment has expired or, if appealed,
19 the appeal has been dismissed in its entirety, or the Judgment has been affirmed in its
20 entirety by the court of last resort to which such appeal may be taken, and such
21 dismissal or affirmance has become no longer subject to further appeal or review.
22 Notwithstanding the above, any order modifying or reversing any attorneys’ fee
23 award or service award made in this case shall not affect whether the Judgment is
24 “Final” as defined herein or any other aspect of the Judgment.

25 1.14 “Judgment” means a judgment rendered by the Court.

26 1.15 “Long Notice” means the long form notice of settlement posted on the
27 Settlement Website, substantially in the form as shown in **Exhibit B**.
28

1.16 “Notice Commencement Date” means thirty days (30) following entry of the Preliminary Approval Order.

1.17 “Notice Program” means steps taken by the Claims Administrator to notify Class Members of the settlement as set forth below.

1.18 “Objection Date” means the date by which Settlement Class Members must file with the Court, with service to counsel for the Settling Parties, their objection to the Settlement Agreement for that objection to be effective. The Objection Date is 60 days after the Notice Commencement Date.

1.19 “Opt-Out Date” means the date by which Class Members must mail their requests to be excluded from the Settlement Class for that request to be effective. The postmark date shall constitute evidence of the date of mailing for these purposes. The Opt-Out Date is 60 days after the Notice Commencement Date.

1.20 “Person” means an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity, and their respective spouses, heirs, predecessors, successors, representatives, or assignees.

1.21 “Preliminary Approval Order” means the order preliminarily approving the Settlement Agreement and ordering that notice be provided to Class Members substantially in the form attached hereto as **Exhibit C**.

1.22 “Proposed Settlement Class Counsel” and “Class Counsel” means M. Anderson Berry of Clayco C. Arnold, A Professional Corp., and John A. Yanchunis of Morgan & Morgan.

1.23 “Related Entities” means FPI’s respective past or present officers, directors, employees, servants, members, partners, principals, shareholders, owners, parents, subsidiaries, divisions, partnerships, and related or affiliated entities, and each of their respective predecessors, successors, directors, officers, employees,

1 principals, agents, attorneys, executors, heirs, administrators, joint ventures, personal
2 representatives, assigns, transferees, trustees, insurers, and reinsurers, and includes,
3 without limitation, any Person related to any such entity who is, was, or could have
4 been named as a defendant in any of the actions in the Litigation.

5 1.24 “Released Claims” shall collectively mean any and all past, present, and
6 future claims, causes of action, lawsuits, set-offs, costs, expenses, attorneys’ fees,
7 losses, rights, demands, charges, complaints, actions, suits, petitions, obligations,
8 debts, contracts, penalties, damages, or liabilities of any nature whatsoever, whether
9 known or unknown, liquidated or unliquidated, accrued or unaccrued, fixed or
10 contingent, direct or derivative, matured or unmatured, in law or equity, and any other
11 form of legal or equitable relief that has been asserted, was asserted, or could have
12 been asserted, by any Settlement Class Member against any of the Released Persons
13 reasonably related to the operative facts alleged in or otherwise described by the
14 Complaint. Released Claims shall not include the right of any Settlement Class
15 Member or any of the Released Persons to enforce the terms of the settlement
16 contained in this Settlement Agreement, and shall not include the claims of Class
17 Members who have timely excluded themselves from this settlement proceeding
18 using the protocol described herein.

19 1.25 “Released Persons” means FPI and its Related Entities.

20 1.26 “Settlement Claim” means a claim for settlement benefits made under
21 the terms of this Settlement Agreement.

22 1.27 “Settlement Class Member(s)” means Class Members who do not
23 timely and validly opt-out of the Agreement by excluding themselves from this
24 settlement proceeding using the protocol described herein.

25 1.28 “Settlement Class Representative” or “Representative Plaintiff” means
26 Richard Archibeque.

27 1.29 “Settling Parties” means, collectively, FPI and Representative Plaintiff,
28 individually and on behalf of the Settlement Class Members.

1 1.30 “Settlement Website” means a website, the URL for which to be
2 mutually selected by the Settling Parties, that will inform Class Members of the terms
3 of this Settlement Agreement, their rights, dates and deadlines and related
4 information, as well as provide the Class Members with the ability to submit a
5 Settlement Claim online.

6 1.31 “Short Notice” means the short form notice of the proposed class action
7 settlement, substantially in the form as shown in **Exhibit D**. The Short Notice will
8 direct recipients to the Settlement Website and inform Class Members of, among
9 other things, the Claims Deadline, the Opt-Out Date and Objection Date, and the date
10 of the Final Fairness Hearing.

11 1.32 “United States” as used in this Settlement Agreement includes all 50
12 states, the District of Columbia, and all territories.

13 1.33 “Valid Claims” means Settlement Claims in an amount approved by the
14 Claims Administrator or found to be valid through the claims processing and/or
15 Dispute Resolution process, or through the process for review and challenge set forth
16 in the section entitled, “Administration of Claims.”

17 **II. SETTLEMENT CLASS BENEFITS**

18 2.1 Identity Theft Protection and/or Credit Monitoring. All Settlement Class
19 Members are eligible for two (2) years of free identity-theft protection and/or credit
20 monitoring. The two years of free identity-theft protection and/or credit monitoring
21 provided under this Settlement Agreement shall be in addition to any other identity-
22 theft protection and/or credit monitoring received by Settlement Class Members from
23 Defendant. Settlement Class Members must submit a Claim Form before the Claims
24 Deadline to be provided with this benefit. The opportunity for Class Members to
25 enroll in Identity Theft Protection and/or Credit Monitoring services will begin upon
26 the Effective Date of the settlement and will remain available for commencement for
27 90 days thereafter. Protection and monitoring provided shall include, at a minimum:

- 28 a) Credit monitoring at TransUnion.

1 b) Identity restoration and recovery services.

2 c) \$1,000,000 identity theft insurance with no deductible.

3 2.1.1 Settlement Class Members can enroll for these identity protection
4 and credit monitoring services whether or not they are eligible for a monetary
5 recovery under this Settlement.

6 2.1.2 Those Settlement Class Members who enroll in monitoring and
7 protection services and who already have obtained monitoring and protection
8 services offered through Defendant as a result of the Data Security Incident will
9 receive an additional two (2) years of monitoring and protection services from the
10 expiration date of the monitoring and protection services already received.

11 2.2 Cash Benefits. Defendant agrees to make available the below
12 compensation to Settlement Class Members who submit valid and timely Claim
13 Forms. Claims will be reviewed for completeness and plausibility by the Claims
14 Administrator. For claims deemed invalid, the Claims Administrator shall provide
15 claimants an opportunity to cure, unless an inability to cure is apparent from the face
16 of the claim, e.g., the claimant is not a Class Member.

17 2.2.1 Compensation for Ordinary Losses: Defendant will provide up to
18 \$400 in compensation to each Settlement Class Member upon submission of a valid
19 and timely Claim Form attesting under penalty of perjury that the Settlement Class
20 Member incurred expenses, fees, and/or lost time as a direct result of the Data
21 Security Incident and providing supporting documentation of out of pocket expenses
22 and fees. Ordinary losses can arise from the following categories of expenses, fees
23 and lost time:

24 a) Documented out of pocket expenses incurred as a direct
25 result of the Data Security Incident, namely, documented (1) costs incurred
26 associated with accessing or freezing/unfreezing credit reports with any credit
27 reporting agency or other entity; and (2) other expenses incurred, namely, postage,
28 copying, scanning, faxing, mileage and other travel-related charges, parking, notary

1 charges, research charges, cell phone charges (only if charged by the minute), long
2 distance phone charges, data charges (only if charged based on the amount of data
3 used), bank fees, accountant fees, and attorneys' fees, all of which must be fairly
4 traceable to the Data Security Incident and must not have been previously reimbursed
5 by a third party. Expenses must be supported by documentation substantiating the
6 full extent of the amount claimed and attested to under penalty of perjury;

7 b) Documented fees for credit reports, credit monitoring, or
8 other identity theft insurance product purchased between August 14, 2020 and the
9 Claims Deadline. These fees must be supported by documentation substantiating the
10 full extent of the amount claimed and the fees, as attested to under penalty of perjury,
11 and must be fairly traceable to the Data Security Incident;

12 c) Reimbursement for Lost Time: Settlement Class Members
13 may submit claims to be compensated for lost time they reasonably spent responding
14 to the Data Security Incident. Settlement Class Members may claim up to three (3)
15 hours of time compensated at the rate of \$20 per hour. All such lost time must be
16 fairly traceable to the Data Security Incident, reasonably described by type of lost
17 time incurred, and supported by an attestation under penalty of perjury that the time
18 spent was reasonably incurred dealing with the Data Security Incident.

19 2.2.2 Compensation for Extraordinary Losses: Defendant will provide
20 up to \$4,250 in compensation to each Settlement Class Member who submits a valid
21 and timely claim form and who proves monetary loss directly arising from
22 documented identity theft perpetrated on or against the Settlement Class Member if:

- 23 a) The loss is an actual, documented, and unreimbursed
24 monetary loss;
25 b) The loss was fairly traceable to the Data Security Incident;
26 c) The loss occurred after August 14, 2020 and before the date
27 of the close of the Claims Period;
28

- d) The loss is not already covered by the “Compensation for Ordinary Losses” category; and
- e) 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.

2.2.3 Settlement Class Members seeking reimbursement under ¶¶ 2.2.1 and/or 2.2.2 must complete and submit to the Claims Administrator a Claim Form in a form substantially similar to the one attached as **Exhibit A**, postmarked or submitted online on or before the Claims Deadline. The notice to the Class Members will specify this deadline and other relevant dates described herein. The Claim Form must be verified by the Settlement Class Member with a statement that his or her claim is true and correct, to the best of his or her knowledge and belief, and is being made under penalty of perjury. Notarization shall not be required. Claims for extraordinary losses and out of pocket expenses and fees must be supported by documentation substantiating the full extent of the amount claimed and attested to under penalty of perjury. Failure to provide such supporting documentation, as requested on the Claim Form, shall result in denial of a claim. No documentation is needed for lost-time expenses. Disputes as to claims submitted under this paragraph are to be resolved pursuant to the provisions stated in ¶¶ 2.4, 10.1.

2.2.4 All California Sub-Class Members to whom Defendant sent, to a mailing address in California, notice of a Data Security Incident discovered on or about August 14, 2020, may claim a cash payment of \$100, in addition to the benefits provide herein.

2.3 Business Practice Enhancements, Including Monetary Investment into Data Security. Defendant has and will continue to undertake certain reasonable steps to enhance the security deployed to secure access to its data network. Defendant

estimates the cost or value of these enhancements will exceed \$415,000. Defendant has or will take the following steps:

- A) Replace Corporate Office Firewalls with Next Generation Layer 4 equipment;
- b) Migrate servers to AWS;
- c) Add Sophos Endpoint Detection and Response agents on servers;
- d) Add Security Information & Event Management and Data Loss Prevention to corporate network.

2.4 Dispute Resolution. The Claims Administrator, in its discretion to be reasonably exercised, will determine whether: (1) the claimant is a Settlement Class Member; (2) the claimant has provided all information needed to complete the Claim Form, including any documentation that may be necessary to reasonably support the out-of-pocket expenses, ordinary fees, and extraordinary losses described in ¶¶ 2.2.1 and/or 2.2.2; and (3) the information submitted could lead a reasonable person to conclude that more likely than not the claimant has suffered the claimed losses as a result of the Data Security Incident. The Claims Administrator may, at any time, request from the claimant, in writing, additional information as the Claims Administrator may reasonably require in order to evaluate the claim (e.g., documentation requested on the Claim Form, information regarding the claimed losses, available insurance and the status of any claims made for insurance benefits, and claims previously made for identity theft and the resolution thereof). For any such Settlement Claims that the Claims Administrator determines to be implausible, the Claims will be deemed invalid and submitted to counsel for the Settling Parties. If counsel for the Settling Parties agree that any such claim is a Valid Claim, the Claims Administrator shall follow counsel's joint direction regarding the disposition of the claim.

2.4.1 Upon receipt of an incomplete or unsigned Claim Form or a Claim Form that is not accompanied by sufficient documentation to determine

1 whether the claim is facially valid, the Claims Administrator shall request additional
2 information and give the claimant thirty (30) days to cure the defect before rejecting
3 the claim. If the defect is not cured, then the claim will be deemed invalid and there
4 shall be no obligation to pay the claim.

5 2.4.2 Following receipt of additional information requested by the
6 Claims Administrator, the Claims Administrator shall have thirty (30) days to accept,
7 in whole or lesser amount, or reject each claim. If, after review of the claim and all
8 documentation submitted by the claimant, the Claims Administrator determines that
9 such a claim is valid, then the claim shall be paid, subject to the review and challenge
10 process set forth in ¶ 10.1. If the claim is determined to be invalid, then the Claims
11 Administrator will submit it to counsel for the Settling Parties. If counsel for the
12 Settling Parties agree that any such claim is a Valid Claim, the Claims Administrator
13 shall follow counsel's joint direction regarding the disposition of the claim.

14 2.4.3 Settlement Class Members shall have thirty (30) days from
15 receipt of the offer to accept or reject any offer of partial payment received from the
16 Claims Administrator. If a Settlement Class Member rejects an offer from the Claims
17 Administrator, the Claims Administrator shall have fifteen (15) days to reconsider its
18 initial adjustment amount and make a final determination. If the claimant approves
19 the final determination, then the approved amount shall be the amount to be paid. If
20 the claimant does not approve the final determination within thirty (30) days, then
21 the dispute will be submitted to counsel for the Settling Parties within an additional
22 ten (10) days. The Claims Administrator shall follow counsel for the Settling Parties'
23 joint direction regarding the disposition of the claim.

24 **III. CLASS CERTIFICATION**

25 3.1 The Settling Parties agree, for purposes of this settlement only, to the
26 certification of the Settlement Class. If the settlement set forth in this Settlement
27 Agreement is not approved by the Court, or if the Settlement Agreement is terminated
28 or cancelled pursuant to the terms of this Settlement Agreement, this Settlement

1 Agreement, and the certification of the Settlement Class provided for herein, will be
2 vacated and the Litigation shall proceed as though the Settlement Class had never
3 been certified, without prejudice to any Person's or Settling Party's position on the
4 issue of class certification or any other issue. The Settling Parties' agreement to the
5 certification of the Settlement Class is also without prejudice to any position asserted
6 by the Settling Parties in any other proceeding, case or action, as to which all of their
7 rights are specifically preserved.

8 **IV. NOTICE AND CLAIMS ADMINISTRATION**

9 4.1 Upon reaching an agreeable resolution of the claims of the Class
10 Members, Defendant will select, subject to Plaintiff's approval with such approval
11 not to be unreasonably withheld, a Claims Administrator who will be charged with
12 delivering sufficient notice (including direct notice) and administering the claims
13 process. Defendant will pay the entirety of the settlement administration fees,
14 including the cost of notice.

15 4.2 After the Court enters an order finally approving the Settlement, the
16 Claims Administrator shall provide the requested relief to all Settlement Class
17 Members that made valid and timely claims, subject to the individual caps on
18 Settlement Class Member payments set forth in Paragraph 2 above.

19 **V. PRELIMINARY APPROVAL**

20 5.1 As soon as practicable after the execution of the Settlement Agreement,
21 Proposed Settlement Class Counsel and counsel for FPI shall jointly submit this
22 Settlement Agreement to the Court, and Proposed Settlement Class Counsel will file
23 an unopposed motion for preliminary approval of the settlement with the Court
24 requesting entry of a Preliminary Approval Order in a form substantially similar to
25 the one attached as **Exhibit C**, requesting, among other things:

- 26 a) certification of the Settlement Class for settlement purposes only
27 pursuant to ¶ 3.1;
28

- b) preliminary approval of the Settlement Agreement as set forth herein;
- c) appointment of Proposed Settlement Class Counsel as Settlement Class Counsel;
- d) appointment of Representative Plaintiff as Settlement Class Representative;
- e) approval of a customary form of Short Notice to be mailed to Class Members, in a form substantially similar to **Exhibit D** (the “Settlement Class Notice”);
- f) approval of the Long Notice to be posted on the Settlement Website in a form substantially similar to **Exhibit B**, which, together with the Short Notice, shall include a fair summary of the parties’ respective litigation positions, the general terms of the settlement set forth in the Settlement Agreement, instructions for how to object to or opt-out of the settlement, the process and instructions for making claims to the extent contemplated herein, and the date, time and place of the Final Fairness Hearing; and
- g) appointment of the Claims Administrator.

The Short Notice and Long Notice will be reviewed and approved by the Claims Administrator but may be revised as agreed upon by the Settling Parties prior to submission to the Court for approval.

5.2 FPI shall pay for providing notice to Class Members in accordance with the Preliminary Approval Order, and the costs of such notice, together with the Costs of Claims Administration. Attorneys’ fees, costs, and expenses of Settlement Class Counsel, and service awards to Class Representatives, as approved by the Court, shall be paid by FPI as set forth in ¶ 9 below.

5.3 Notice shall be provided to Class Members by the Claims Administrator as follows:

1 5.3.1 Class Member Information: No later than fourteen (14) days after
2 entry of the Preliminary Approval Order, FPI shall provide the Claims Administrator
3 with the name and last known physical address of each Class Member (collectively,
4 “Class Member Information”) that FPI used to notify Class Members of the Data
5 Security Incident. The Class Member Information and its contents shall be used by
6 the Claims Administrator solely for the purpose of performing its obligations
7 pursuant to this Settlement Agreement and shall not be used for any other purpose at
8 any time. Except to administer the settlement as provided in this Settlement
9 Agreement or provide all data and information in its possession to the Settling Parties
10 upon request, the Claims Administrator shall not reproduce, copy, store, or distribute
11 in any form, electronic or otherwise, the Class Member Information.

12 5.3.2 Settlement Website: Prior to the dissemination of the Settlement
13 Class Notice, the Claims Administrator shall establish the Settlement Website that
14 will inform Class Members of the terms of this Settlement Agreement, their rights,
15 dates and deadlines and related information. The Settlement Website shall include,
16 in .pdf format and available for download, the following: (i) the Long Notice; (ii) the
17 Claim Form; (iii) the Preliminary Approval Order; (iv) this Settlement Agreement;
18 (v) the operative Complaint filed in the Litigation; and (vi) any other materials agreed
19 upon by the Parties and/or required by the Court. The Settlement Website shall
20 provide Class Members with the ability to complete and submit the Claim Form
21 electronically.

22 5.3.3 Short Notice: Within thirty (30) days after the entry of the
23 Preliminary Approval Order and to be substantially completed not later than forty-
24 five (45) days after entry of the Preliminary Approval Order, and subject to the
25 requirements of this Agreement and the Preliminary Approval Order, the Claims
26 Administrator will provide notice to Class Members as follows:

- 27 a) Via U.S. mail to all Class Members. Before any mailing
28 under this paragraph occurs, the Claims Administrator

1 shall run the postal addresses of Class Members through
2 the United States Postal Service (“USPS”) National
3 Change of Address database to update any change of
4 address on file with the USPS;

- 5 i. In the event that a mailed Short Notice is returned to
6 the Claims Administrator by the USPS because the
7 address of the recipient is no longer valid, and the
8 envelope contains a forwarding address, the Claims
9 Administrator shall re-send the Short Notice to the
10 forwarding address within seven (7) days of
11 receiving the returned Short Notice;
- 12 ii. In the event that subsequent to the first mailing of a
13 Short Notice, and at least fourteen (14) days prior to
14 the Opt-Out and Objection Deadline, a Short Notice
15 is returned to the Claims Administrator by the USPS
16 because the address of the recipient is no longer
17 valid, *i.e.*, the envelope is marked “Return to
18 Sender” and does not contain a new forwarding
19 address, the Claims Administrator shall perform a
20 standard skip trace, in the manner that the Claims
21 Administrator customarily performs skip traces, in
22 an effort to attempt to ascertain the current address
23 of the particular Class Member in question and, if
24 such an address is ascertained, the Claims
25 Administrator will re-send the Short Notice within
26 seven (7) days of receiving such information. This
27 shall be the final requirement for mailing.
28

1 b) Publishing, on or before the Notice Commencement Date,
2 the Short Notice, Claim Form, and Long Notice on the
3 Settlement Website, as specified in the Preliminary
4 Approval Order, and maintaining and updating the website
5 throughout the claim period;

6 5.3.4 A toll-free help line shall be made available to provide Class
7 Members with additional information about the settlement. The Claims
8 Administrator also will provide copies of the forms of Short Notice, Long Notice,
9 and paper Claim Form, as well as this Settlement Agreement, upon request; and

10 5.3.5 Contemporaneously with seeking Final Approval of the
11 Settlement, Proposed Settlement Class Counsel and FPI shall cause to be filed with
12 the Court an appropriate affidavit or declaration with respect to complying with this
13 provision of notice.

14 5.4 The Short Notice, Long Notice, and other applicable communications to
15 the Settlement Class may be adjusted by the Claims Administrator, respectively, in
16 consultation and agreement with the Settling Parties, as may be reasonable and
17 consistent with such approval. The Notice Program shall commence within thirty
18 (30) days after entry of the Preliminary Approval Order and shall be completed
19 within forty-five (45) days after entry of the Preliminary Approval Order.

20 5.5 Proposed Settlement Class Counsel and FPI's counsel shall request that
21 after notice is completed, the Court hold a hearing (the "Final Fairness Hearing") and
22 grant final approval of the settlement set forth herein.

23 **VI. OPT-OUT PROCEDURES**

24 6.1 Each Person wishing to opt-out of the Settlement Class shall
25 individually sign and timely submit written notice of such intent to the designated
26 Post Office box established by the Claims Administrator. The written notice must
27 clearly manifest a Person's intent to opt-out of the Settlement Class. To be effective,
28 written notice must be postmarked by the Opt-Out Date.

1 6.2 Persons who submit valid and timely notices of their intent to opt-out of
2 the Settlement Class, as set forth in ¶ 6.1 above, referred to herein as “Opt-Outs,”
3 shall not receive any benefits of and/or be bound by the terms of this Settlement
4 Agreement. All Persons falling within the definition of the Settlement Class who do
5 not opt-out of the Settlement Class in the manner set forth in ¶ 6.1 above shall be
6 bound by the terms of this Settlement Agreement and Judgment entered thereon.

7 6.3 In the event that within ten (10) days after the Opt-Out Date as approved
8 by the Court, there have been more than four hundred twenty-eight (428) timely and
9 valid Opt-Outs submitted, Defendant may, by notifying Settlement Class Counsel
10 and the Court in writing, within five (5) business days from the date the Claims
11 Administrator provides written notice to Defendant of the number of opt-outs, void
12 this Settlement Agreement. If Defendant voids the Settlement Agreement, Defendant
13 shall be obligated to pay all settlement expenses already incurred, excluding any
14 attorneys’ fees, costs, and expenses of Class Counsel and Plaintiffs’ Counsel and
15 service awards and shall not, at any time, seek recovery of same from any other party
16 to the Litigation or from counsel to any other party to the Litigation.

16 **VII. OBJECTION PROCEDURES**

17 7.1 Each Settlement Class Member desiring to object to the Settlement
18 Agreement shall submit a timely written notice of his or her objection by the
19 Objection Date. Such notice shall state: (i) the objector’s full name and address; (ii)
20 the case name and docket number – *Richard Archibeque v. FPI Management, Inc.*,
21 Case No. 34-2021-00300923-CU-MT-GDS (Sacramento County, Cal.); (iii)
22 information identifying the objector as a Settlement Class Member, including proof
23 that the objector is a Settlement Class Member (e.g., copy of the objector’s settlement
24 notice, copy of original notice of the Data Security Incident, or a statement explaining
25 why the objector believes he or she is a Settlement Class Member); (iv) a written
26 statement of all grounds for the objection, accompanied by any legal support for the
27 objection the objector believes applicable; (v) the identity of any and all counsel
28 representing the objector in connection with the objection; (vi) a statement whether

1 the objector and/or his or her counsel will appear at the Final Fairness Hearing; and
2 (vii) the objector's signature or the signature of the objector's duly authorized
3 attorney or other duly authorized representative (if any) representing him or her in
4 connection with the objection. To be timely, written notice of an objection that
5 substantially complies with 7.1(i)-(vii) must be mailed, with a postmark date no later
6 than the Objection Date, to Proposed Settlement Class Counsel: M. Anderson Berry,
7 Clayeo C. Arnold, A Professional Corp., 865 Howe Avenue, Sacramento, CA 95825;
8 and John A. Yanchunis, 201 N. Franklin St., 6th Floor, Tampa, FL 33602; and
9 counsel for FPI, Jon P. Kardassakis, Lewis Brisbois Bisgaard and Smith, 633 West
10 5th Street, Suite 4000, Los Angeles, California 90071. For all objections mailed to
11 Proposed Settlement Class Counsel and counsel for FPI, Proposed Settlement Class
12 Counsel will file them with the Court with the Motion for Final Approval of
13 Settlement.

14 7.2 Although the Court shall determine whether or not to hear from any
15 class member who attends the Final Approval Hearing and asks to speak regarding
16 his or her objection to the settlement, the Parties reserve the right to challenge the
17 objection of any Settlement Class Member who fails to comply with the requirements
18 for objecting in ¶ 7.1 as having waived and forfeited any and all rights he or she may
19 have to appear separately and/or to object to the Settlement Agreement, and assert
20 that such Settlement Class Member is bound by all the terms of the Settlement
21 Agreement and by all proceedings, orders and judgments in the Litigation. The
22 exclusive means for any challenge to the Settlement Agreement shall be through the
23 provisions of ¶ 7.1. Without limiting the foregoing, any challenge to the Settlement
24 Agreement, the final order approving this Settlement Agreement, or the Judgment to
25 be entered upon final approval shall be pursuant to appeal under the California Rules
26 of Appellate Procedure and not through a collateral attack.

27 **VIII. RELEASES**

1 8.1 Upon sixty (60) days after the Effective Date, each Settlement Class
2 Member, including Representative Plaintiff, shall be deemed to have, and by
3 operation of the Judgment shall have, fully, finally, and forever released,
4 relinquished, and discharged all Released Claims. Further, upon the Effective Date,
5 and to the fullest extent permitted by law, each Settlement Class Member,
6 excluding Opt-Outs but including Representative Plaintiff, shall directly, indirectly,
7 or in any representative capacity, be permanently barred and enjoined from
8 commencing, prosecuting, or participating in any recovery in any action in this or
9 any other forum (other than participation in this Settlement Agreement as provided
10 herein) in which any of the Released Claims is asserted.

11 8.2 Upon sixty (60) days after the Effective Date, FPI shall be deemed to
12 have, and by operation of the Judgment shall have, fully, finally, and forever released,
13 relinquished, and discharged, the Settlement Class Representative, the Settlement
14 Class Members, and Proposed Settlement Class Counsel, of all claims, based upon
15 the institution, prosecution, assertion, settlement, or resolution of the Litigation or
16 the Released Claims, except for enforcement of the Settlement Agreement. Any other
17 claims or defenses FPI may have against the Settlement Class Representative, the
18 Settlement Class Members, and the Proposed Settlement Class Counsel including,
19 without limitation, any claims based upon any lease, debtor-creditor, contractual, or
20 other business relationship with such Persons not based on the institution,
21 prosecution, assertion, settlement, or resolution of the Litigation are specifically
22 preserved and shall not be affected by the preceding sentence.

23 8.3 Notwithstanding any term herein, neither FPI nor its Related Entities
24 shall have or shall be deemed to have released, relinquished or discharged any claim
25 or defense against any Person other than Representative Plaintiff, each and all of the
26 Settlement Class Members, and Proposed Settlement Class Counsel.

27 **IX. SERVICE AWARD AND ATTORNEYS' FEES AND EXPENSES**
28

1 9.1 After an agreement had been reached as to the essential terms of a
2 settlement (i.e., Settlement Class benefits), the Parties negotiated the amount of a
3 service award to the Representative Plaintiff. The Representative Plaintiff shall seek,
4 and Defendant agrees to pay, a service award not to exceed \$5,000 to the
5 Representative Plaintiff subject to Court approval. Defendant shall pay the service
6 award separate and apart from any other sums agreed to under this Settlement
7 Agreement. If the Court approves a lesser service award, Defendant will be
8 responsible to pay only the approved amount. Representative Plaintiff shall provide
9 properly executed tax reporting forms prior to payment.

10 9.2 After an agreement had been reached as to the essential terms of a
11 settlement (i.e., Settlement Class benefits), the Parties negotiated the amount of
12 Plaintiff's attorneys' fees and litigation expenses. Plaintiff shall seek an award of
13 attorneys' fees and litigation expenses not to exceed \$297,000. Defendant shall pay
14 the attorneys' fees and litigation expenses award amount separate and apart from any
15 other sums agreed to under this term sheet. If the Court approves a lesser award of
16 attorneys' fees and litigation expenses, Defendant will be responsible to pay only the
17 approved amount. Class Counsel shall provide properly executed tax reporting forms
18 prior to payment.

19 9.3 Defendant shall pay the attorneys' fees and expenses and service award
20 awarded by the Court to Clayeo C. Arnold, A Professional Corp. within fourteen (14)
21 days after the Effective Date or within fourteen (14) days of Class Counsel providing
22 properly executed tax reporting forms, whichever is later. The attorneys' fees and
23 expenses award will be allocated among Proposed Settlement Class Counsel by M.
24 Anderson Berry and John A. Yanchunis. Defendant bears no responsibility or
25 liability relating to the allocation of the attorneys' fees and expenses among Proposed
26 Settlement Class Counsel.

27 9.4 The finality or effectiveness of the Settlement Agreement shall not
28 depend upon the Court awarding any particular attorneys' fees and expenses award

1 or service award. No order of the Court, or modification or reversal or appeal of any
2 order of the Court concerning the amount(s) of any attorneys' fees and expenses,
3 and/or service awards ordered by the Court to Proposed Settlement Class Counsel or
4 Representative Plaintiff shall affect whether the Judgment is final or constitute
5 grounds for cancellation or termination of this Settlement Agreement.

6 **X. ADMINISTRATION OF CLAIMS**

7 10.1 The Claims Administrator shall administer and calculate the claims
8 submitted by Settlement Class Members under ¶¶ 2.2.1 and/or 2.2.2. Proposed
9 Settlement Class Counsel and counsel for FPI shall be given reports as to both claims
10 and distribution, and have the right to challenge the claims and distribution set forth
11 in the reports, including by requesting and receiving, for any approved claim, the
12 name of the Settlement Class Member, a description of the approved claim, including
13 dollar amounts to be paid as extraordinary or ordinary losses, and all supporting
14 documentation submitted. If counsel for the Settling Parties agree that any such claim
15 is improper, the Claims Administrator shall follow counsel's joint direction regarding
16 the disposition of the claim. If the Settling Parties cannot agree on the disposition of
17 a claim, the Settling Parties, upon the election of either Settling Party, will submit the
18 claim for disposition to a jointly agreed upon impartial third-party claim referee for
19 determination. The Claims Administrator's determination of whether a Settlement
20 Claim is a Valid Claim shall be binding, subject to the above right of review and
21 challenge and the Dispute Resolution process set forth in ¶ 2.4. All claims agreed to
22 be paid in full by FPI shall be deemed Valid Claims.

23 10.2 Checks for Valid Claims shall be mailed and postmarked, and
24 electronic payments shall be issued electronically, within sixty (60) days of the
25 Effective Date, or within thirty (30) days of the date that the claim is approved,
26 whichever is later.

27 10.3 All Settlement Class Members who fail to timely submit a claim for
28 any benefits hereunder within the time frames set forth herein, or such other period

1 as may be ordered by the Court, or otherwise allowed, shall be forever barred from
2 receiving any payments or benefits pursuant to the settlement set forth herein, but
3 will in all other respects be subject to, and bound by, the provisions of the Settlement
4 Agreement, the releases contained herein and the Judgment.

5 10.4 No Person shall have any claim against the Claims Administrator, FPI,
6 Proposed Settlement Class Counsel, Proposed Class Representative, and/or FPI's
7 counsel based on distributions of benefits, or the denial of benefits, to Settlement
8 Class Members.

9 **XI. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL,**
10 **CANCELLATION, OR TERMINATION**

11 11.1 The Effective Date of the settlement shall be conditioned on the
12 occurrence of all of the following events:

- 13 a) The Court has entered the Preliminary Approval Order, as
14 required by ¶ 5.1;
15 b) The Court has entered the Judgment granting final approval to the
16 settlement as set forth herein; and
17 c) Judgment has become Final, as defined in ¶ 1.13.

18 11.2 If all conditions specified in ¶ 11.1 hereof are not satisfied and the
19 Effective Date does not occur, the Settlement Agreement shall be canceled and
20 terminated unless Proposed Settlement Class Counsel and FPI's counsel mutually
21 agree in writing to proceed with the Settlement Agreement.

22 11.3 Within seven (7) days after the Opt-Out Date, the Claims Administrator
23 shall furnish to Proposed Settlement Class Counsel and to FPI's counsel a complete
24 list of all timely and valid requests for exclusion (the "Opt-Out List").

25 11.4 In the event that the Settlement Agreement is not approved by the Court
26 or the settlement set forth in this Settlement Agreement is terminated in accordance
27 with its terms, (a) the Settling Parties shall be restored to their respective positions in
28 the Litigation and shall jointly request that all scheduled litigation deadlines be

1 reasonably extended by the Court so as to avoid prejudice to any Settling Party or
2 Settling Party's counsel, and (b) the terms and provisions of the Settlement
3 Agreement shall have no further force and effect with respect to the Settling Parties
4 and shall not be used in the Litigation or in any other proceeding for any purpose, and
5 any judgment or order entered by the Court in accordance with the terms of the
6 Settlement Agreement shall be treated as vacated, *nunc pro tunc*. Notwithstanding
7 any statement in this Settlement Agreement to the contrary, no order of the Court or
8 modification or reversal on appeal of any order reducing the amount of attorneys'
9 fees, costs, expenses, and/or service awards shall constitute grounds for cancellation
10 or termination of the Settlement Agreement. Further, notwithstanding any statement
11 in this Settlement Agreement to the contrary, FPI shall be obligated to pay amounts
12 already billed or incurred for costs of notice to the Settlement Class, Claims
13 Administration, and Dispute Resolution pursuant to ¶ 4.1 above and shall not, at any
14 time, seek recovery of same from any other party to the Litigation or from counsel to
15 any other party to the Litigation. In the event any of the releases or definitions set
16 forth in ¶¶ 1.23, 1.24, 1.25, 8.1, or 8.2 are not approved by the Court as written, the
17 Settlement Agreement shall be terminated and provisions (a) and (b) of this paragraph
18 shall apply to the Settling Parties and this Agreement unless Proposed Settlement
19 Class Counsel and FPI's counsel mutually agree in writing to proceed with the
20 Settlement Agreement.

21 **XII. MISCELLANEOUS PROVISIONS**

22 12.1 The Settling Parties (i) acknowledge that it is their intent to
23 consummate this agreement; and (ii) agree to cooperate to the extent reasonably
24 necessary to effectuate and implement all terms and conditions of this Settlement
25 Agreement, and to exercise their best efforts to accomplish the terms and conditions
26 of this Settlement Agreement.

27 12.2 The Settling Parties intend this settlement to be a final and complete
28 resolution of all disputes between them with respect to the Litigation. The settlement

1 compromises claims that are contested and shall not be deemed an admission by any
2 Settling Party as to the merits of any claim or defense. The Settling Parties each agree
3 that the settlement was negotiated in good faith by the Settling Parties, and reflects a
4 settlement that was reached voluntarily after consultation with competent legal
5 counsel. The Settling Parties reserve their right to rebut, in a manner that such party
6 determines to be appropriate, any contention made in any public forum that the
7 Litigation was brought or defended in bad faith or without a reasonable basis. It is
8 agreed that no Party shall have any liability to any other Party as it relates to the
9 Litigation, except as set forth herein.

10 12.3 Neither the Settlement Agreement, nor the settlement contained herein,
11 nor any act performed or document executed pursuant to or in furtherance of the
12 Settlement Agreement or the settlement (i) is or may be deemed to be or may be used
13 as an admission of, or evidence of, the validity or lack thereof of any Released Claim,
14 or of any wrongdoing or liability of any of the Released Persons; or (ii) is or may be
15 deemed to be or may be used as an admission of, or evidence of, any fault or omission
16 of any of the Released Persons in any civil, criminal or administrative proceeding in
17 any court, administrative agency or other tribunal. Any of the Released Persons may
18 file the Settlement Agreement and/or the Judgment in any action that may be brought
19 against them or any of them in order to support a defense or counterclaim based on
20 principles of *res judicata*, collateral estoppel, release, good faith settlement,
21 judgment bar, or reduction or any other theory of claim preclusion or issue preclusion
22 or similar defense or counterclaim.

23 12.4 The Settlement Agreement may be amended or modified only by a
24 written instrument signed by or on behalf of all Settling Parties or their respective
25 successors-in-interest.

26 12.5 This Settlement Agreement contains the entire understanding between
27 FPI and Plaintiff individually and on behalf of the Class Members regarding the
28 Litigation settlement and this Agreement, and this Agreement supersedes all previous

1 negotiations, agreements, commitments, understandings, and writings between FPI
2 and Plaintiff, including between counsel for FPI and Class Counsel, in connection
3 with the Litigation settlement and this Agreement. Except as otherwise provided
4 herein, each party shall bear its own costs.

5 12.6 Proposed Settlement Class Counsel, on behalf of the Settlement Class,
6 is expressly authorized by Plaintiff to take all appropriate actions required or
7 permitted to be taken by the Settlement Class pursuant to the Settlement Agreement
8 to effectuate its terms, and also are expressly authorized to enter into any
9 modifications or amendments to the Settlement Agreement on behalf of the
10 Settlement Class which they deem appropriate in order to carry out the spirit of this
11 Settlement Agreement and to ensure fairness to the Settlement Class.

12 12.7 Each counsel or other Person executing the Settlement Agreement on
13 behalf of any party hereto hereby warrants that such Person has the full authority to
14 do so.

15 12.8 The Settlement Agreement may be executed in one or more
16 counterparts. All executed counterparts and each of them shall be deemed to be one
17 and the same instrument.

18 12.9 The Settlement Agreement shall be binding upon, and inure to the
19 benefit of, the successors and assigns of the parties hereto.

20 12.10 The Court shall retain jurisdiction with respect to implementation and
21 enforcement of the terms of the Settlement Agreement, and all parties hereto submit
22 to the jurisdiction of the Court for purposes of implementing and enforcing the
23 settlement embodied in the Settlement Agreement.

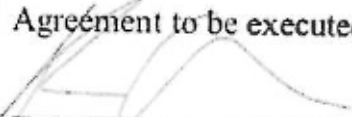
24 12.11 All dollar amounts are in United States dollars (USD).


25 12.12 All settlement checks shall be void ninety (90) days after issuance and
26 shall bear the language: "This check must be cashed within ninety (90) days, after
27 which time it is void." If a check becomes void, the Settlement Class Member shall
28 have until six months after the Effective Date to request re-issuance. If no request for

1 re-issuance is made within this period, the Settlement Class Member will have failed
2 to meet a condition precedent to recovery of settlement benefits, the Settlement Class
3 Member's right to receive monetary relief shall be extinguished, and FPI shall have
4 no obligation to make payments to the Settlement Class Member under
5 ¶¶ 2.2.1 and/or 2.2.2 or any other type of monetary relief. The same provisions shall
6 apply to any re-issued check. For any checks that are issued or re-issued for any
7 reason more than one hundred eighty (180) days from the Effective Date, requests
8 for further re-issuance will not be honored after such checks become void. For
9 monetary relief not cashed by Settlement Class Members and on the expiration of all
10 Settlement Class Members' right to receive said monetary relief, the Claims
11 Administrator shall submit the total of all such uncashed monetary relief to the
12 Electronic Privacy Information Center, which promotes internet privacy.

13 12.13 All agreements made and orders entered during the course of the
14 Litigation relating to the confidentiality of information shall survive this Settlement
15 Agreement.

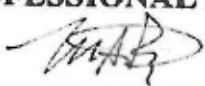
16 IN WITNESS WHEREOF, the parties hereto have caused the Settlement
17 Agreement to be executed.

18
19 
20 RICHARD ARCHIBEQUE
21 Plaintiff


22 
23 Mike Watembach
24 On behalf of FPI Management, Inc.

25 Approved as to Form:

26 CLAYEO C. ARNOLD, A
27 PROFESSIONAL CORP.

28 
M. Anderson Berry (262879)
865 Howe Avenue
Sacramento, CA 95825
Telephone: (916) 239-4778
Fax: (916) 924-1829

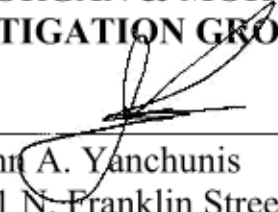
LEWIS BRISBOIS BISGAARD &
SMITH, LLP


Jon Kardassakis

Attorneys for Defendant
FPI Management, Inc.

1 aberry@justice4you.com

2 **MORGAN & MORGAN COMPLEX**
3 **LITIGATION GROUP**

4 
5 _____
6 John A. Yanchunis
7 201 N. Franklin Street, 7th Floor
8 Tampa, Florida 33602
9 (813) 223-5505
10 jyanchunis@ForThePeople.com

11 *Attorneys for Plaintiff and the*
12 *Settlement Class*