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3 **IN THE UNITED STATES DISTRICT COURT**
4 **FOR THE DISTRICT OF ARIZONA**

5 **RAUL SANTOS**, et al., individually and on
6 behalf of all others similarly situated,

7 Plaintiff,

Case No. CV-24-03690-PHX-JJT

8 v.

9 **BACKCHECKED, LLC**,

10 Defendant.

11 **SETTLEMENT AGREEMENT**

12 This Settlement Agreement¹ is entered into between Plaintiffs, on behalf of themselves and
13 the Settlement Class, and Defendant, as of the date last signed below. The Parties hereby agree to
14 the following terms in full settlement of the Action, subject to a Final Approval Order entered by
15 the Court.

16 **I. Procedural History**

17 1. Defendant is a background screening platform. In the course of operating its
18 business, Defendant and its customers and/or agents collect, maintain, and store information,
19 including highly sensitive personally identifiable information.

20 2. On or about September 26, 2024, Defendant noticed suspicious activity on its
21 network. In response, Defendant launched an investigation and determined that a cybercriminal
22 gained access to Defendant's system and may have obtained certain data, including names,
23 addresses, dates of birth, driver's license numbers, and Social Security numbers.

24 3. On or about December 13, 2024, Defendant began notifying impacted customers
25 that Private Information may have been impacted by the Data Incident.

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¹ All capitalized terms herein shall have the same meanings as those defined in Section II herein.
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1 4. On December 22, 2024, Plaintiff, Raul Santos, filed a complaint against Defendant
2 asserting several causes of action related to its role in the Data Incident. [ECF No. 1].

3 5. Following the filing of Plaintiff Santos' complaint, Plaintiffs Peralta and Jackson
4 filed a putative class action in the United States District Court for the Central District of California
5 naming BackChecked and a separate entity as Defendants. After initial discussion amongst
6 counsel regarding jurisdictional issues, Plaintiffs Peralta and Jackson dismissed BackChecked from
7 that litigation and filed a separate putative class action complaint against it in this district² which
8 is materially and substantively identical to the Santos Complaint, as they have overlapping claims,
9 seek to represent the same putative class members, and arise out of the same Data Incident.

10 6. On February 11, 2025, Plaintiffs in the Related Actions filed a Motion to
11 Consolidate Actions. [ECF No. 18].

12 7. On April 14, 2025, the Court entered an order consolidating the Related Action into
13 the first-filed action and set a deadline for Plaintiffs to file a consolidated complaint. [ECF No.
14 23].

15 8. On May 30, 2025, Plaintiffs filed the Consolidated Complaint in this Action
16 alleging negligence, negligence *per se*, breach of third-party beneficiary contract, breach of
17 implied contract, invasion of privacy, violation of the California Unfair Competition Law, Cal.
18 Bus. & Prof. Code 17200 *et seq.*, violation of the California Consumer Records Act, and
19 declaratory judgment. [ECF No. 25].

20 9. Thereafter, the Parties decided to explore early resolution and scheduled a
21 mediation for August 22, 2025, with experienced data breach class action mediator Steven R. Jaffe
22 of UWWM.

23 10. On June 6, 2025, to conserve resources in anticipation of mediation, Defendant
24 filed a motion to stay the case pending the outcome of the mediation, [ECF No. 26], which the
25 Court granted. [ECF No. 27].

27 ² *Peralta, et al. v. Backchecked, LLC*, No. 2:25 cv-00391-ESW (Feb. 5, 2025).

1 11. In advance of the mediation, Plaintiffs consulted with their damage and liability
2 experts, propounded informal discovery requests on Defendant to which Defendant responded by
3 providing information related to, among other things, the nature and cause of the Data Incident,
4 the number and geographic location of victims impacted by the Data Incident, and the specific
5 type of information breached.

6 12. The Parties attended mediation on August 22, 2025. After a full day of arm's length
7 negotiations, the Parties reached an agreement on the material terms of this Settlement.

8 13. The Parties now agree to settle the Action (including all allegations made in the
9 Related Actions) entirely, without any admission of liability or wrongdoing, with respect to all
10 Released Claims of the Releasing Parties. Defendant has entered into this Agreement to resolve
11 all controversies and disputes arising out of or relating to the allegations made in the Complaint,
12 and to avoid the litigation costs and expenses, distractions, burden, expense, and disruption to its
13 business operations associated with further litigation. Defendant does not in any way acknowledge,
14 admit to, or concede any of the allegations made in any of the Complaints (and similarly does not
15 concede any of the allegations in the other complaints in the Related Actions), and expressly
16 disclaims and denies any fault or liability, or any charges of wrongdoing that have been or could
17 have been asserted in the Complaint. Nothing contained in this Agreement shall be used or
18 construed as an admission of liability, and this Agreement shall not be offered or received in
19 evidence in any action or proceeding in any court or other forum as an admission or concession of
20 liability or wrongdoing of any nature or for any other purpose other than to enforce the terms of
21 this Agreement. Plaintiffs have entered into this Agreement to recover on the claims asserted in
22 the Complaint, and to avoid the risk, delay, and uncertainty of continued litigation. Plaintiffs do
23 not in any way concede that the claims alleged in the Complaint lack merit or are subject to any
24 defenses. The Parties intend this Agreement to bind Plaintiffs, Defendant, and all Settlement Class
25 Members.

26 NOW, THEREFORE, in light of the foregoing, for good and valuable consideration, the
27 receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree, subject to
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approval by the Court, as follows.

II. Definitions

14. “**Action**” means the consolidated class action lawsuit entitled: *Santos, et al. v. Backchecked, LLC*, Case No. CV-24-03690-PHX-JJT (D. Ariz.).

15. “**Agreement**” or “**Settlement Agreement**” or “**Settlement**” means this agreement between Plaintiffs and Defendant, including all exhibits.

16. “**Application for Attorneys’ Fees, Costs and Service Awards**” means the application made with the Motion for Final Approval seeking Class Counsel’s attorneys’ fees and costs, and Service Awards for the Class Representatives.

17. “**CAFA Notice**” means the notice the Settlement Administrator shall serve pursuant to 28 U.S.C. § 1715 of the Class Action Fairness Act of 2005.

18. “**Cash Payment**” means compensation paid to Settlement Class Members who submitted a Claim and elected either Cash Payment A – Documented Losses or Cash Payment B – Alternate Cash Payment.

20. “**Cash Payment A – Documented Losses**” means the Settlement Class Member Benefit consisting of a maximum payment of \$2,500.00, that Settlement Class members, who incurred documented losses, may elect pursuant to Section V herein.

21. “**Cash Payment B – Alternative Cash Payment**” means the Settlement Class Member Benefit consisting of an *estimated* \$50.00 cash payment, that Settlement Class members may elect under Section V herein, which may increase or decrease *pro rata* depending on the number of Valid Claims.

22. “**Claim**” means the submission of a Claim Form by a Claimant for Settlement Class Member Benefits.

23. “**Claim Form**” means the proof of claim, substantially in the form attached hereto as *Exhibit 3*, which may be modified, subject to the Parties’ approval, to meet the requirements of the Settlement Administrator.

24. “**Claim Form Deadline**” shall be 15 days before the initial scheduled Final

Approval Hearing and is the last day by which a Claim Form may be submitted to the Settlement Administrator for a Settlement Class member to be eligible for a Cash Payment and/or Credit Monitoring.

25. **“Claimant”** means an individual who submits a Claim Form.

26. **“Claims Process”** means the process by which Claimants may submit Claim Forms online at the Settlement Website or by mail to the Settlement Administrator, including the procedure to approve or reject Claims.

27. **“Class Counsel”** means Andrew J. Shamis of Shamis & Gentile, P.A and Jeff Ostrow of Kopelowitz Ostrow P.A.

28. **“Class List”** means a list of Settlement Class members’ full names, current addresses, email addresses if available, and last known telephone numbers, as reflected in Defendant’s records, that Defendant shall prepare and provide to the Settlement Administrator following Preliminary Approval.

29. **“Class Representatives”** means the Plaintiffs.

30. **“Complaint”** or **“Consolidated Complaint”** means the Consolidated Class Action Complaint filed by Plaintiffs on May 30, 2025.

31. **“Court”** means the U.S. District Court for the District of Arizona and the Judge(s) assigned to the Action.

32. **“Credit Monitoring”** means one year of three credit bureau identity monitoring that Settlement Class members may elect to receive pursuant to Section V herein.

33. **“Data Incident”** means the cybersecurity incident experienced by Defendant on or about September 26, 2024.

34. **“Defendant”** means Backchecked, LLC.

35. **“Defendant’s Counsel”** means Michael Jervis of Mullen Coughlin LLC.

36. **“Effective Date”** means the day after the following events have occurred (1) This Settlement Agreement has been fully executed by all Settling Parties and their counsel; (2) the Court has entered the Preliminary Approval Order without material change; (3) The Court-

1 approved Short Notice has been sent and the Settlement Website has been duly created and
2 maintained as ordered by the Court; and (4) the Settlement Agreement has not been terminated for
3 any reason;. and (5) (a) the time to appeal from the Final Approval Order has expired and no appeal
4 has been timely filed; (b) if such an appeal has been filed, it has been finally resolved and has
5 resulted in an affirmation of the Final Approval Order; or (c) the Court, following the resolution
6 of the appeal, enters a further order or orders approving the Settlement on the material terms set
7 forth herein, and either the time to further appeal from such order has expired and no further appeal
8 is taken from such order(s) or any such appeal has been finally resolved and results in affirmation
9 of such order(s).

10 37. “**Escrow Account**” means the interest-bearing account to be established by the
11 Settlement Administrator consistent with the terms and conditions described herein.

12 38. “**Final Approval**” means the final approval of the Settlement, which occurs when
13 the Court enters the Final Approval Order, substantially in the form attached hereto as *Exhibit 5*.

14 39. “**Final Approval Hearing**” means the hearing held before the Court during which
15 the Court will consider granting Final Approval of the Settlement and the Application for
16 Attorneys’ Fees, Costs and Service Awards and shall be scheduled no sooner than 120 days after
17 the Settlement Administrator has issued CAFA Notice.

18 40. “**Final Approval Order**” means the final order the Court enters granting Final
19 Approval of the Settlement. The proposed Final Approval Order shall be in a form agreed upon by
20 the Parties and shall be substantially in the form attached as an exhibit to the Motion for Final
21 Approval. Final Approval Order also includes the orders, which may be entered separately,
22 determining the amount of attorneys’ fees and costs awarded to Class Counsel and Service Awards
23 to the Class Representatives.

24 41. “**Long Form Notice**” means the long form notice of the Settlement, substantially
25 in the form attached hereto as *Exhibit 2*, that shall be posted on the Settlement Website and shall
26 be available to Settlement Class members by mail on request made to the Settlement
27 Administrator.

42. **“Motion for Final Approval”** means the motion that Plaintiffs and Class Counsel shall file with the Court seeking Final Approval of the Settlement, including Class Counsel’s Application for Attorneys’ Fees, Costs, and Service Awards.

43. **“Motion for Preliminary Approval”** means the motion that Plaintiffs shall file with the Court seeking Preliminary Approval of the Settlement.

44. **“Notice”** means the Postcard Notice and Long Form Notice that Plaintiffs will ask the Court to approve in connection with the Motion for Preliminary Approval.

45. **“Notice Program”** means the methods provided for in this Agreement for giving Notice to the Settlement Class and consists of the Postcard Notice and Long Form Notice.

46. **“Notice of Deficiency”** means the notice sent by the Settlement Administrator to a Settlement Class member who has submitted an invalid Claim.

47. **“Objection Deadline”** means 15 days before the initial scheduled Final Approval Hearing.

48. **“Opt-Out Deadline”** means 15 days before the initial scheduled Final Approval Hearing..

49. **“Party”** means each of the Plaintiffs and Defendant, and **“Parties”** means Plaintiffs and Defendant, collectively.

50. **“Plaintiffs”** means Raul Santos and Karlo Peralta.

51. **“Postcard Notice”** means the postcard notice of the Settlement, substantially in the form attached hereto as *Exhibit 1* that the Settlement Administrator shall disseminate to Settlement Class members by mail.

52. **“Preliminary Approval”** means the preliminary approval of the Settlement, which occurs when the Court enters the Preliminary Approval Order, substantially in the form attached to the Motion for Preliminary Approval.

53. **“Preliminary Approval Order”** means the order preliminarily approving the Settlement and proposed Notice Program, substantially in the form attached hereto as *Exhibit 4*.

54. **“Private Information”** means the information collected by Defendant and its

1 customers and/or agents that was impacted in the Data Incident.

2 55. **“Related Actions”** means the actions filed in the U.S. District Court for the District
3 of Arizona (*Peralta, et al.*) regarding the Data Incident, including first-filed *Santos* action.

4 56. **“Releases”** means the releases and waiver set forth in Section XIII of this
5 Agreement.

6 57. **“Released Claims”** means any and all actual, potential, filed or unfiled, known or
7 unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected claims, demands,
8 liabilities, rights, causes of action, damages, punitive, exemplary or multiplied damages, expenses,
9 costs, indemnities, attorneys’ fees and/or obligations, whether in law or in equity, accrued or
10 unaccrued, direct, individual or representative, of every nature and description whatsoever, based
11 on any federal, state, local, statutory or common law or any other law, against the Released Parties,
12 or any of them, arising out of or relating to actual or alleged facts, transactions, events, matters,
13 occurrences, acts, disclosures, statements, representations, omissions or failures to act relating to
14 the Data Incident.

15 58. **“Released Parties”** means Defendant and Certified Employment Screening Inc.
16 d/b/a Americheck and each entity which is controlled by, controlling or under common control
17 with either of them and their past, present, and future direct and indirect heirs, assigns, associates,
18 corporations, investors, owners, parents, subsidiaries, affiliates, divisions, officers, directors,
19 shareholders, members, agents, servants, employees, partners, attorneys, insurers, reinsurers,
20 benefit plans, predecessors, successors, managers, administrators, executors, and trustees,
21 including Certified Employment Screening Inc. d/b/a Americhek.

22 59. **“Releasing Parties”** means Plaintiffs and Settlement Class Members and their
23 respective past, present, and future heirs, devisees, beneficiaries, conservators, executors, estates,
24 administrators, assigns, trustees, receivers, agents, attorneys, accountants, financial and other
25 advisors, and any other representatives of any of these persons and entities.

26 60. **“Settlement Administrator”** means or Simpluris, Inc.

27 61. **“Service Awards”** means the awards that Class Counsel will request the Court
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1 approve for the Plaintiffs for serving as Class Representatives.

2 62. **“Settlement Administration Costs”** means all costs and fees of the Settlement
3 Administrator regarding Notice and Settlement administration, including the cost of CAFA Notice.

4 63. **“Settlement Class”** means all living individuals residing in the United States
5 whose Private Information may have been impacted in the Data Incident. Excluded from the
6 Settlement Class are (a) all persons who are employees, directors, officers, and agents of
7 Defendant; (b) governmental entities; and (c) the Judge assigned to the Action, that Judge’s
8 immediate family, and Court staff.

9 64. **“Settlement Class Member”** means any member of the Settlement Class who has
10 not opted out of the Settlement.

11 65. **“Settlement Class Member Benefit”** means the Cash Payment A or B and/or
12 Credit Monitoring that Settlement Class members may elect to Claim pursuant to Section V herein.

13 66. **“Settlement Fund”** means the \$535,000.00 fund that Defendant is obligated to
14 fund under the terms of the Settlement.

15 67. **“Settlement Website”** means the website the Settlement Administrator will
16 establish as a means for the Settlement Class members to submit Claim Forms and obtain notice
17 and information about the Settlement, including hyperlinked access to this Agreement, the
18 Preliminary Approval Order, Long Form Notice, Claim Form, Motion for Final Approval,
19 Application for Attorneys’ Fees, Costs, and Service Awards, and Final Approval Order, as well as
20 other documents as the Parties agree to post or the Court orders posted. The Settlement Website
21 shall remain online and operable for at least six months after Final Approval.

22 68. **“Valid Claim”** means a Claim Form submitted by a Settlement Class member that
23 is: (a) submitted in accordance with the provisions of the Settlement; (b) accurately, fully, and
24 truthfully completed and executed, with all of the information requested in the Claim Form, by a
25 Settlement Class Member; (c) signed physically or by e-signature by a Settlement Class Member
26 personally, subject to the penalty of perjury; (d) returned via mail and postmarked by the Claim
27 Form Deadline, or, if submitted online, submitted by 11:59 p.m. Eastern time on the Claim Form
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Deadline; and (e) determined to be valid by the Settlement Administrator. The Settlement Administrator may require additional information from the Claimant to validate the Claim, including, but not limited to, answers related to questions regarding the validity or legitimacy of the physical or e-signature. Failure to respond to the Settlement Administrator's Notice of Deficiency may result in a determination that the Claim is not a Valid Claim.

III. Settlement Fund

69. Within 21 days following Preliminary Approval, Defendant shall pay or cause to be paid an amount estimated the Settlement Administrator to be sufficient to pay the Settlement Administrator Costs expected to be incurred before Final Approval. Within seven days of Preliminary Approval, the Settlement Administrator shall provide an estimate of this amount along with a W-9 form and instructions for funding the Escrow Account. Within 20 days following the Effective Date, Defendant shall pay or cause to be paid the remaining amount required to fully fund the \$535,000.00 Settlement Fund. The Settlement Fund shall be used to pay all Settlement Administration Costs, any Court-awarded attorneys' fees, costs, and Service Awards, and all Settlement Class Member Benefits. For the avoidance of doubt, Defendant's financial obligations pursuant to this Settlement shall not exceed \$535,000.00.

70. The funds in the Escrow Account shall be deemed a "qualified settlement fund" within the meaning of United States Treasury Reg. § 1.468B-1 at all times from the earliest date possible and agree to any relation-back election required to treat the Settlement Fund as a qualified settlement fund from the earliest date possible. The Settlement Administrator, within the meaning of Treasury Regulation § 1.468 B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of the Settlement Fund and paying from the Settlement Fund any Taxes and Tax-Related Expenses owed with respect to the Settlement Fund. Taxes and Tax-related Expenses relating to the Settlement Fund, if any, shall be considered Settlement Administration Costs. Funds may be placed in a non-interest bearing account as may be reasonably necessary during the check clearing process. The Settlement Administrator shall provide an accounting of any and all funds in the Settlement Fund, including any interest accrued thereon and payments

made pursuant to this Agreement, upon request of any of the Parties. The funds held in the Escrow Account shall be held in an interest-bearing account insured by the Federal Deposit Insurance Corporation.. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Escrow Account or otherwise, including any taxes or tax detriments that may be imposed upon Defendant, Defendant's Counsel, Plaintiffs, and/or Class Counsel with respect to income earned by the Escrow Account shall be paid out of the Escrow Account. Defendant, Defendant's Counsel, Plaintiffs, and Class Counsel shall have no liability or responsibility for any of the taxes. The Escrow Account shall indemnify and hold Defendant, Defendant's Counsel, Plaintiffs, and Class Counsel harmless for all taxes (including, without limitation, taxes payable by reason of any such indemnification).

71. The Settlement Fund shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed pursuant to this Settlement Agreement or the balance returned to those who paid the Settlement Fund in the event this Settlement Agreement is terminated in accordance with Paragraphs 115-116.

72. The Parties and their respective counsel have made no representation or warranty, and have no responsibility, with respect to the tax treatment by any Settlement Class Representative or any Settlement Class Member of any payment or transfer made pursuant to this Agreement or derived from or made pursuant to the Settlement Fund. Each Class Representative and Settlement Class Member shall be solely responsible for the federal, state, and local tax consequences to him, her, or it of the receipt of funds from the Settlement Fund pursuant to this Agreement.

73. No amounts may be withdrawn from the Settlement Fund unless expressly authorized by this Agreement or approved by the Court. Responsibility for effectuating payments described in this paragraph shall rest solely with the Settlement Administrator and neither Defendant nor Defendant's agents shall have any responsibility whatsoever with respect to effectuating such payments.

1 **IV. Certification of the Settlement Class**

2 74. In the Motion for Preliminary Approval, Plaintiffs shall propose and request to the
3 Court that the Settlement Class be certified for Settlement purposes only. The Parties stipulate,
4 solely for purposes of the Settlement provided for in this Agreement, and the implementation of
5 such Settlement, to the certification of the Settlement Class; provided however, that if a Final
6 Approval Order is not issued, then any certification shall be null and void and, for the avoidance
7 of doubt, Defendant shall retain all rights to object to any future requests to certify a class. Nothing
8 in this Agreement shall be referenced or relied upon in support of class certification in any future
9 motion or proceeding.

10 **V. Settlement Consideration**

11 75. Settlement Class Members are entitled to submit Claims to receive Cash Payments
12 and Credit Monitoring. There are two different types of Cash Payments (Cash Payment A –
13 Documented Losses or Cash Payment B – Alternate Cash Payment). When submitting a Claim,
14 Settlement Class members must choose either Cash Payment A or Cash Payment B. Additionally,
15 Settlement Class members may elect to receive Credit Monitoring. If a Settlement Class Member
16 does not submit a Valid Claim or opt-out of the Settlement, the Settlement Class Member will
17 release his or her claims against Defendant without receiving a Settlement Class Member Benefit.

18 **a. Cash Payment A – Documented Losses**

19 Settlement Class Members may submit a Claim for a Cash Payment for up to \$2,500.00
20 per Settlement Class Member upon presentment of documented losses reasonably traceable to the
21 Data Incident. To receive a documented loss payment, a Settlement Class Member must elect Cash
22 Payment A on the Claim Form attesting under penalty of perjury to incurring documenting losses.
23 Settlement Class Members will be required to submit reasonable documentation supporting the
24 losses. Such reasonable documentation includes, without limitation and by way of example,
25 unreimbursed losses relating to fraud or identity theft; costs associated with freezing or unfreezing
26 credit with any credit reporting agency; and miscellaneous expenses such as notary, fax, postage,
27 copying, mileage, and long-distance telephone charges, if (i) the loss is an actual, documented, and
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unreimbursed monetary loss; (ii) the loss was more likely than not caused by the Data Breach; and (iii) the loss was incurred after the date of the Data Incident. Settlement Class Members shall not be reimbursed for expenses if they have been reimbursed for the same expenses by another source, including compensation provided in connection with the identity protection and credit monitoring services offered as part of the notification letter provided by Defendant or otherwise. If a Settlement Class Member does not submit reasonable documentation supporting a loss, or if their Claim is rejected by the Settlement Administrator for any reason, and the Settlement Class Member fails to cure his or her Claim, the Claim will be rejected.

b. Cash Payment B – Alternate Cash Payment

As an alternative to Cash Payment A, a Settlement Class Member may submit a Claim to receive Cash Payment B, which is a cash payment in an estimated amount of \$50.00. As described hereinbelow, the amount will increase or decrease *pro rata* depending on the aggregate dollar amount of Valid Claims submitted.

c. Credit Monitoring

All Settlement Class Members may make a Claim for one year of three-bureau Credit Monitoring, regardless of whether or not they have made a Claim for one of the Cash Payments described above.

76. ***Pro Rata Adjustments on Cash Payments*** – Settlement Class Cash Payments will be subject to a *pro rata* increase in the event the aggregate dollar amount of Valid Claims is insufficient to exhaust the entire Settlement Fund. Similarly, in the event the aggregate dollar amount of Valid Claims exhausts the amount of the Settlement Fund, the amount of the Cash Payments will be reduced *pro rata* accordingly. For purposes of calculating the *pro rata* increase or decrease, the Settlement Administrator must distribute the funds in the Settlement Fund first for payment of Credit Monitoring and then for Cash Payments. Any *pro rata* increases or decreases to Cash Payments will be on an equal percentage basis.

VI. Settlement Approval

77. Within 10 days following execution of this Agreement, Plaintiffs shall file the

1 Motion for Preliminary Approval. The proposed Preliminary Approval Order shall be attached to
 2 the motion as an exhibit and shall be in a form agreed to by Class Counsel and Defendant.

3 78. The Motion for Preliminary Approval shall, among other things, request the Court:
 4 (1) preliminarily approve the terms of the Settlement as being within the range of fair, adequate,
 5 and reasonable; (2) provisionally certify the Settlement Class for settlement purposes only;
 6 (3) approve the Notice Program set forth herein and approve the form and content of the Notices
 7 of the Settlement; (4) approve the Claim Process set forth herein and approve the Claim Form; (5)
 8 approve the procedures for Settlement Class Members to opt-out of the Settlement or for
 9 Settlement Class Members to object to the Settlement; (6) appoint Plaintiffs as Class
 10 Representatives and Andrew Shamis and Jeff Ostrow as Class Counsel for Settlement purposes;
 11 (7) stay the Action pending Final Approval of the Settlement; and (8) schedule a Final Approval
 12 Hearing for a time and date mutually convenient for the Court, the Parties, Class Counsel, and
 13 Defendant's Counsel.

14 **VII. Settlement Administrator**

15 79. The Parties agree that, subject to Court approval, Simpluris, Inc. shall be the
 16 Settlement Administrator. The Parties shall jointly oversee the Settlement Administrator. The
 17 Settlement Administrator shall fulfill the requirements set forth in the Preliminary Approval Order
 18 and the Agreement and comply with all applicable laws, including, but not limited to, the Due
 19 Process Clause of the United States Constitution.

20 80. The Settlement Administrator shall administer various aspects of the Settlement as
 21 described in the next paragraph and perform such other functions as are specified for the Settlement
 22 Administrator elsewhere in this Agreement, including, but not limited to, effectuating the Notice
 23 Program, handling the Claims Process, administering the Settlement Fund, and distributing the
 24 Cash Payments to Settlement Class Members who submit Valid Claims.

25 81. The Settlement Administrator's duties include:

26 a. Serving CAFA Notice on the appropriate state and federal officials within
 27 10 days following the Motion for Preliminary Approval of the Settlement being filed;
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1 b. Completing the Court-approved Notice Program by noticing the Settlement
2 Class by Postcard Notice, sending out Long Form Notices and paper Claim Forms on request from
3 Settlement Class members, reviewing Claim Forms, notifying Claimants of deficient Claim Forms
4 using the Notice of Deficiency, and sending Settlement Class Member Benefits to Settlement Class
5 Members who submit Valid Claims;

6 c. Establishing and maintaining the Settlement Fund in the Escrow Account
7 approved by the Parties;

8 d. Establishing and maintaining a post office box to receive opt-out requests
9 from the Settlement Class, objections from Settlement Class members, and Claim Forms;

10 e. Establishing and maintaining the Settlement Website to provide important
11 information and to receive electronic Claim Forms;

12 f. Establishing and maintaining an automated toll-free telephone line for
13 Settlement Class Members to call with Settlement-related inquiries, and answer the frequently
14 asked questions of Settlement Class Members who call with or otherwise communicate such
15 inquiries;

16 g. Responding to any mailed Settlement Class Member inquiries;

17 h. Processing all opt-out requests from the Settlement Class;

18 i. Providing weekly reports to Class Counsel and Defendant's Counsel that
19 summarize the number of Claims submitted, Claims approved and rejected, Notices of Deficiency
20 sent, opt-out requests and objections received that week, the total number of opt-out requests and
21 objections received to date, and other pertinent information;

22 j. In advance of the Final Approval Hearing, preparing a declaration for the
23 Parties confirming that the Notice Program was completed in accordance with the terms of this
24 Agreement and the Preliminary Approval Order, describing how the Notice Program was
25 completed, indicating the number of Claim Forms received and the amount of each benefit
26 claimed, providing the names of each Settlement Class Member who timely and properly requested
27 to opt-out from the Settlement Class, indicating the number of objections received, and other
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1 information as may be necessary to allow the Parties to seek and obtain Final Approval;

2 k. Distributing, out of the Settlement Fund, Cash Payments by electronic
3 means or by paper check;

4 l. Sending Settlement Class Members who elect Credit Monitoring emails
5 instructing how to activate their Credit Monitoring service.

6 m. Paying Court-approved attorneys' fees, costs, and Service Awards out of
7 the Settlement Fund;

8 n. Paying Settlement Administration Costs out of the Settlement Fund
9 following approval by Class Counsel and Defendant's Counsel; and

10 o. Any other Settlement administration function at the instruction of Class
11 Counsel and Defendant, including, but not limited to, verifying that the Settlement Fund has been
12 properly administered and that the Cash Payments and Credit Monitoring access information have
13 been properly distributed.

14 **VIII. Notice to the Settlement Class, Opt-Out Procedures, and Objection Procedures**

15 82. Defendant will make available to Class Counsel and the Settlement Administrator
16 the Class List no later than 10 days after entry of the Preliminary Approval Order. To the extent
17 necessary, Defendant will cooperate with updating the Class List to accomplish the Notice
18 Program and otherwise administer the Settlement.

19 83. Within 30 days following entry of the Preliminary Approval Order, the Settlement
20 Administrator shall commence the Notice Program using the forms of Notice approved by the
21 Court. Settlement Class members for which a postal address is provided by Defendant shall receive
22 a Postcard Notice by mail.

23 84. The Postcard Notice shall include, among other information: a description of the
24 material terms of the Settlement; how to submit a Claim Form; the Claim Form Deadline; the Opt-
25 Out Deadline for Settlement Class members to opt-out of the Settlement Class; the Objection
26 Deadline for Settlement Class Members to object to the Settlement and/or the Application for
27 Attorneys' Fees, Costs and Service Awards; the Final Approval Hearing date; and the Settlement
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1 Website address at which Settlement Class members may access this Agreement and other related
2 documents and information. Class Counsel and Defendant's Counsel shall insert the correct dates
3 and deadlines in the Notice before the Notice Program commences, based upon those dates and
4 deadlines set by the Court in the Preliminary Approval Order. If the date or time for the Final
5 Approval Hearing changes, the Settlement Administrator shall update the Settlement Website to
6 reflect the new date. No additional notice to the Settlement Class is required if the date or time for
7 the Final Approval Hearing changes.

8 85. The Settlement Administrator shall establish the Settlement Website no later than
9 the day before Notice is first initiated. The Settlement Administrator shall ensure the Settlement
10 Website makes available the Court-approved online Claim Form that can be submitted directly on
11 the Settlement Website or in printable version that can be sent by U.S. Mail to the Settlement
12 Administrator.

13 86. The Long Form Notice shall include a procedure for Settlement Class members to
14 opt-out of the Settlement Class, and the Postcard Notice shall direct Settlement Class members to
15 review the Long Form Notice to obtain the opt-out instructions. A Settlement Class member may
16 opt-out of the Settlement Class at any time during the Opt-Out Period by mailing a request to opt-
17 out to the Settlement Administrator postmarked no later than the last day of the Opt-Out Period.
18 The opt-out request must be personally signed by the Settlement Class member and contain the
19 requestor's name, address, telephone number, and email address (if any), and include a statement
20 indicating a clear and explicit request to be excluded from the Settlement Class. Any Settlement
21 Class Member who does not timely and validly request to opt-out shall be bound by the terms of
22 this Agreement even if that Settlement Class Member does not submit a Valid Claim.

23 87. The Long Form Notice shall include a procedure for Settlement Class Members to
24 object to the Settlement and/or the Application for Attorneys' Fees, Costs and Service Awards,
25 and the Postcard Notice shall direct Settlement Class members to review the Long Form Notice to
26 obtain the objection instructions. Objections must be filed with the Court, and sent by U.S. Mail
27 to Class Counsel, Defendant's Counsel, and the Settlement Administrator. For an objection to be
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1 considered by the Court, the relevant Settlement Class Member must submit the objection no later
2 than the Objection Deadline, as specified in the Notice, and the relevant Settlement Class Member
3 must not have excluded herself from the Settlement Class. If submitted by mail, an objection shall
4 be deemed to have been submitted when posted if received with a postmark date indicated on the
5 envelope if mailed first-class postage prepaid. In other words, objections by mail postmarked later
6 than the Objection Deadline are late and will not be considered by the Court. If submitted by
7 courier (e.g., Federal Express), an objection shall be deemed to have been submitted on the
8 shipping date reflected on the shipping label.

9 88. For an objection to be considered by the Court, the objection must set forth:

10 a. the objector's full name, mailing address, telephone number, and email
11 address (if any);

12 b. all grounds for the objection, accompanied by any legal support for the
13 objection known to the objector or objector's counsel;

14 c. the number of times the objector has objected to a class action settlement
15 within the 5 years preceding the date that the objector files the objection, the caption of each case
16 in which the objector has made such objection, and a copy of any orders related to or ruling upon
17 the objector's prior objections that were issued by the trial and appellate courts in each listed case;

18 d. the identity of all counsel who represent the objector, including any former
19 or current counsel who may be entitled to compensation for any reason related to the objection to
20 the Settlement and/or Application for Attorneys' Fees, Costs, and Service Awards, and whether
21 the counsel intends to appear at the Final Approval Hearing;

22 e. the number of times in which the objector's counsel and/or counsel's law
23 firm have objected to a class action settlement within the 5 years preceding the date of the filed
24 objection, the caption of each case in which counsel or the firm has made such objection and a
25 copy of any orders related to or ruling upon counsel's or the counsel's law firm's prior objections
26 that were issued by the trial and appellate courts in each listed case in which the objector's counsel
27 and/or counsel's law firm have objected to a class action settlement within the preceding 5 years;

1
2 f. a list of all persons who will be called to testify at the Final Approval
3 Hearing in support of the objection (if any);

4 g. a statement confirming whether the objector intends to personally appear
5 and/or testify at the Final Approval Hearing; and

6 h. the objector's signature (an attorney's signature is not sufficient).
7 Class Counsel and/or Defendant's Counsel may conduct limited discovery on any objector or
8 objector's counsel. This includes taking depositions and requesting documents.

9 89. The Settlement Administrator shall perform reasonable address traces for Postcard
10 Notices that are returned as undeliverable. No later than 60 days before the original date set for the
11 Final Approval Hearing, the Settlement Administrator shall complete the re-mailing of Postcard
12 Notice to those Settlement Class members whose new addresses were identified as of that time
13 through address traces.

14 90. The Notice Program shall be completed no later than 45 days before the initial
15 scheduled Final Approval Hearing.

16 **IX. Claim Process and Disbursement of Settlement Class Member Benefits**

17 91. The Notice and the Settlement Website will explain to Settlement Class members
18 that they may be entitled to a Settlement Class Member Benefit and how to submit a Claim Form.

19 92. Claim Forms may be submitted online through the Settlement Website or through
20 U.S. Mail by sending them to the Settlement Administrator at the address designated on the Claim
21 Form.

22 93. The Settlement Administrator shall collect, review, and address each Claim Form
23 received to determine whether the Claim Form meets the requirements set forth in this Settlement
24 and is thus a Valid Claim. The Settlement Administrator shall examine the Claim Form before
25 designating the Claim as a Valid Claim to determine that the information on the Claim Form is
26 reasonably complete. The Settlement Administrator shall have the sole authority to determine
27 whether a Claim by any Claimant is a Valid Claim. However, the Settlement Administrator may
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1 consult with Class Counsel and Defendant's Counsel in making this determination.

2 94. The Settlement Administrator shall use all reasonable efforts and means to identify
3 and reject duplicate claims. No Settlement Class member may submit more than one Claim Form.
4 The Settlement Administrator shall identify any Claim Forms that appear to seek relief on behalf
5 of the same Settlement Class member. If the Settlement Administrator identifies any Claim Form
6 that appears to be a duplication, the Settlement Administrator shall contact the Settlement Class
7 member in an effort to determine which Claim Form is the appropriate one for consideration.

8 95. The Settlement Administrator shall exercise, in its discretion, all usual and
9 customary steps to prevent fraud and abuse and take any reasonable steps to prevent fraud and
10 abuse in the Claim process. The Settlement Administrator may, in its discretion, deny in whole or
11 in part any Claim Form to prevent actual or possible fraud or abuse. By agreement, the Parties can
12 instruct the Settlement Administrator to take whatever steps it deems appropriate if the Settlement
13 Administrator identifies actual or possible fraud or abuse relating to the submission of claims,
14 including, but not limited to, denying in whole or in part any Claim to prevent actual or possible
15 fraud or abuse. If any fraud is detected or reasonably suspected, the Settlement Administrator and
16 Parties may require information from Claimants or deny Claims, subject to the supervision of the
17 Parties and ultimate oversight by the Court.

18 96. Claim Forms that do not meet the requirements of this Settlement shall be promptly
19 rejected by the Settlement Administrator and the Settlement Administrator shall advise the
20 Claimant or Settlement Class member of the reason(s) why the Claim Form was rejected.
21 However, if the Claim Form is rejected for containing incomplete or inaccurate information, and/or
22 omitting required information, the Settlement Administrator may send a Notice of Deficiency
23 explaining what information is missing or inaccurate and needed to validate the Claim and have it
24 submitted for consideration. The Settlement Administrator shall notify the Claimant using the
25 contact information provided in the Claim Form. The additional information and/or documentation
26 can include, for example, answers to questions regarding the validity of the Claimant's physical or
27 e-signature. A Claimant shall have until the Claim Form Deadline, or 15 days from the date the
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1 Notice of Deficiency is sent to the Claimant via mail and postmarked or via email, whichever is
2 later, to reply to the Notice of Deficiency and provide the required information. If the Claimant
3 timely and adequately provides the requested information and/or documentation, the Claim shall
4 be deemed a Valid Claim and processed by the Settlement Administrator. If the Claimant does not
5 timely and completely provide the requested information and/or documentation, the Settlement
6 Administrator shall reduce or deny the Claim unless Defendant and Class Counsel otherwise agree.

7 97. Where a good faith basis exists, the Settlement Administrator may reduce or reject
8 a Claim for, among other reasons, the following:

- 9 a. Failure to fully complete and/or sign the Claim Form;
- 10 b. The Claim Form is illegible;
- 11 c. The Claim Form is fraudulent;
- 12 d. The Claim Form is duplicative of another Claim Form;
- 13 e. The Claimant is not a Settlement Class member;
- 14 f. The Claimant submitted a timely and valid request to opt out of the
15 Settlement Class.
- 16 g. The person submitting the Claim Form requests that payment be made to a
17 person or entity other than the Claimant for whom the Claim Form is submitted;
- 18 h. Failure to submit a Claim Form by the Claim Form Deadline; and/or
- 19 i. The Claim Form otherwise does not comply with the requirements of this
20 Settlement.

21 98. The Settlement Administrator's reduction or denial of a Claim is final, subject to
22 the following dispute resolution procedures:

- 23 a. The Settlement Administrator shall have 30 days from the Claim Form
24 Deadline to approve or reject Claims.
- 25 b. A request for additional information by sending a Notice of Deficiency shall
26 not be considered a denial for purposes of this Paragraph.
- 27 c. If a Claim is rejected, the Settlement Administrator shall notify the Claimant

1 using the contact information provided in the Claim Form. Class Counsel and Defendant's Counsel
2 shall be provided with copies of all such notifications to Claimants.

3 d. The Settlement Administrator's determination as to whether to approve,
4 deny, or reduce a Claim shall be final and binding.

5 99. The Settlement Administrator shall provide all information gathered in
6 investigating Claims, including, but not limited to, copies of all correspondence and email and all
7 notes of the Settlement Administrator, the decision reached, and all reasons supporting the
8 decision, if requested by Class Counsel or Defendant's Counsel. Additionally, Class Counsel and
9 Defendant's Counsel shall have the right to inspect the Claim Forms and supporting documentation
10 received by the Settlement Administrator at any time upon reasonable notice.

11 100. No person or entity shall have any claim against Defendant, Defendant's Counsel,
12 Plaintiffs, the Settlement Class, Class Counsel, and/or the Settlement Administrator based on any
13 eligibility determinations, distributions, or awards made in accordance with this Settlement.

14 101. The Settlement Administrator shall distribute the Settlement Class Member
15 Benefits no later than 25 days after the Effective Date.

16 102. Cash Payments to Settlement Class Members will be made by sending Settlement
17 Class Members with Valid Claims an email to select from alternative forms of electronic payment
18 or by paper check. Settlement Class Members will have a period of 180 days to select their
19 electronic payment or to negotiate their check, as is applicable. In the event of any complications
20 arising in connection with the issuance of an electronic payment, the Settlement Administrator
21 shall provide written notice to Class Counsel and Defendant's Counsel. Absent specific
22 instructions from Class Counsel and Defendant's Counsel, the Settlement Administrator shall
23 proceed to resolve the dispute using its best practices and procedures to ensure that the funds are
24 fairly and properly distributed to the person or persons who are entitled to receive them. In the
25 event the Settlement Administrator is unable to distribute funds to the person or persons entitled
26 to receive them due to incorrect or incomplete information provided to the Settlement
27 Administrator, the funds shall become residual funds, and the Settlement Class Member shall
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1 forfeit their entitlement right to the funds.

2 103. The Settlement Administrator will send an email to Settlement Class Members with
3 Valid Claims that elected Credit Monitoring with information on how to enroll in the Credit
4 Monitoring, including the activation code.

5 **X. Final Approval Order and Final Judgment**

6 104. Plaintiffs shall file their Motion for Final Approval of the Settlement, inclusive of
7 the Application for Attorneys' Fees, Costs and Service Awards, no later than 45 days before the
8 initial date set for the Final Approval Hearing. At the Final Approval Hearing, the Court will hear
9 argument on Plaintiffs' Motion for Final Approval of the Settlement and Application for
10 Attorneys' Fees, Costs and Service Awards. In the Court's discretion, the Court will also hear
11 argument at the Final Approval Hearing from any Settlement Class Members (or their counsel)
12 who object to the Settlement and/or to the Application for Attorneys' Fees, Costs and Service
13 Awards provided the objectors submitted timely objections that meet all of the requirements listed
14 in this Agreement.

15 105. At or following the Final Approval Hearing, the Court will determine whether to
16 enter the Final Approval Order and final judgment thereon, and whether to grant the Application
17 for Attorneys' Fees, Costs and Service Awards. Such proposed Final Approval Order shall, among
18 other things:

- 19 a. Determine that the Settlement is fair, adequate and reasonable;
- 20 b. Finally certify the Settlement Class for settlement purposes only;
- 21 c. Determine that the Notice Program satisfies Due Process requirements;
- 22 d. Bar and enjoin all Releasing Parties from asserting or otherwise pursuing
23 any of the Released Claims at any time and in any jurisdiction, including during any appeal from
24 the Final Approval Order; and retain jurisdiction over the enforcement of the Court's injunctions;
- 25 e. Release Defendant and the other Released Parties from the Released
26 Claims; and
- 27 f. Reserve the Court's continuing and exclusive jurisdiction over the Parties
- 28

1 to this Agreement, including Defendant, Plaintiffs, all Settlement Class Members, and all
2 objectors, to administer, supervise, construe, and enforce this Agreement in accordance with its
3 terms.

4 **XI. Attorneys' Fees, Costs and Service Awards**

5 106. Class Counsel shall apply to the Court for an award of attorneys' fees of up to one-
6 third of the Settlement Fund, plus reimbursement of reasonable costs. The attorneys' fees and cost
7 awards approved by the Court shall be paid by the Settlement Administrator out of the Settlement
8 Fund by wire transfer to an account designated by Class Counsel within 21 day of the Effective
9 Date.

10 107. Class Counsel shall apply to the Court for Service Awards in the amount of
11 \$2,500.00 for each Class Representative. The Service Awards approved by the Court shall be paid
12 by the Settlement Administrator out of the Settlement Fund by wire transfer to an account
13 designated by Class Counsel within 21 day of the Effective Date.

14 108. This Settlement is not contingent on approval of the request for attorneys' fees,
15 costs, and Service Awards, and if the Court denies the request or grants amounts less than what
16 was requested, the remaining provisions of the Agreement shall remain in force. The provisions
17 for attorneys' fees, costs, and Service Awards were negotiated after all material terms of the
18 Settlement.

19 **XII. Disposition of Residual Funds**

20 109. In the event there are funds remaining in the Settlement Fund 20 days following the
21 180-day period to cash checks or for Settlement Class Members to select the form of electronic
22 payment, following payment of Settlement Class Member Payments, any residual shall be
23 distributed to Arizona Legal Center³ as a *cy pres* recipient.

24 **XIII. Releases**

25 110. Upon the Effective Date, and in consideration of the settlement relief and other
26

27 ³ <https://arizonalegalcenter.org/>.
28

1 consideration described herein, the Releasing Parties shall be deemed to have, and by operation of
2 the Final Approval Order shall have, fully, finally, and forever released, acquitted, relinquished,
3 and completely discharged the Released Parties from any and all Released Claims, including but
4 not limited to any state law or common law claims arising out of or relating to the Data Incident
5 that the Releasing Parties may have or had, such as, but not limited to, under California's
6 Consumer Privacy Act, California Civil Code section 1798.100, *et seq.* and/or California's Unfair
7 Competition Law, California Civil Code section 17200 *et seq.* Each Party expressly waives all
8 rights under California Civil Code section 1542, or any similar law, statute, regulation, or
9 provision, which provides:

10 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
11 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
12 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
13 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
14 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
15 DEBTOR OR RELEASED PARTY.

16 The Releasing Parties agree that, once this Agreement is executed, they will not, directly or
17 indirectly, individually or in concert with another, maintain, cause to be maintained, or voluntarily
18 assist in maintaining any further demand, action, claim, lawsuit, arbitration, or similar proceeding,
19 in any capacity whatsoever, against any of the Released Parties based on any of the Released
20 Claims.

21 111. Settlement Class members who opt-out of the Settlement prior to the Opt-Out
22 Deadline do not release their claims and will not obtain any benefits, including any Settlement
23 Class Member Benefit, under the Settlement.

24 112. Upon the Effective Date: (a) this Settlement shall be the exclusive remedy for any
25 and all Released Claims of Plaintiffs and Settlement Class Members; and (b) Plaintiffs and
26 Settlement Class Members stipulate to be and shall be permanently barred and enjoined by Court
27 order from initiating, asserting, or prosecuting any Released Claim against the Released Parties,
28 whether on behalf of Plaintiffs, any Settlement Class Member or others, in any jurisdiction,
including in any federal, state, or local court or tribunal.

XIV. Termination of Settlement

113. This Agreement shall be subject to and is expressly conditioned on the occurrence of all of the following events:

- a. Court approval of the Settlement Agreement;
- b. The Court has entered the Preliminary Approval Order;
- c. The Court has entered the Final Approval Order, and all objections, if any, are overruled, and all appeals taken from the Final Approval Order are resolved in favor of Final Approval; and
- d. The Effective Date has occurred.

114. If any of the conditions specified in the preceding paragraph are not met, or if the Court otherwise imposes any material modification to or condition to approval of the Settlement to which the Parties do not consent, the Parties shall have 60 days from the date of such non-occurrence during which the Parties shall work together in good faith in considering, drafting, and submitting reasonable modifications to this Agreement to address any issues identified by the Court or that otherwise caused the Preliminary Approval Order or Final Approval Order not to issue or the Effective Date not to occur. If such efforts are unsuccessful, either Party may at their sole discretion terminate this Agreement on seven days written notice to the other Party. For avoidance of any doubt, neither Party may terminate the Agreement while an appeal from an order granting approval of the Settlement is pending.

115. In the event this Agreement is terminated or fails to become effective, the Parties shall return to the *status quo ante* in the Action as if the Parties had not entered into this Agreement or the Settlement. Further, in the event of such a termination, the certification of the Settlement Class shall be void. Defendant reserves the right to contest class certification for all purposes other than this Settlement. Any orders preliminarily or finally approving the certification of any class contemplated by the Settlement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity in support of claims or defenses or in support or in opposition to a class certification motion. In addition, the fact that Defendant did not oppose certification of a

1 class under the Settlement shall not be used or cited thereafter by any person or entity, including
2 in a contested proceeding relating to class certification. The Parties may jointly file a status report
3 in the Court seeking to reopen the Action and all papers filed. In such event, the terms and
4 provisions of this Agreement shall have no further force and effect with respect to the Parties and
5 shall not be used in this Action or in any other action or proceeding for any other purpose, and any
6 order entered by this Court in accordance with the terms of this Agreement shall be treated as
7 vacated, *nunc pro tunc*.

8 116. In the event this Agreement is terminated or fails to become effective, all funds in
9 the Settlement Fund shall be promptly returned to Defendant. However, Defendant shall have no
10 right to seek from Plaintiffs, Class Counsel, or the Settlement Administrator the Settlement
11 Administration Costs actually incurred. After payment of any Settlement Administration Costs
12 that have been incurred and are due to be paid from the Settlement Fund, the Settlement
13 Administrator shall return the balance of the Settlement Fund to Defendant within 20 days of
14 termination.

15 **XV. Effect of Termination**

16 117. The grounds upon which this Agreement may be terminated are set forth in Section
17 XIV. In the event of a termination, this Agreement shall be considered null and void; all of
18 Plaintiffs', Class Counsel's, Defendant's, and Defendant's Counsel's obligations under the
19 Settlement shall cease to be of any force and effect; and the Parties shall return to the *status quo*
20 *ante* in the Action as if the Parties had not entered into this Agreement. In addition, in the event of
21 such a termination, all of the Parties' respective pre-Settlement rights, claims, and defenses will
22 be retained and preserved.

23 118. In the event the Settlement is terminated in accordance with the provisions of this
24 Agreement, any discussions, offers, or negotiations associated with this Settlement shall not be
25 discoverable or offered into evidence or used in the Action or any other action or proceeding for
26 any purpose. In such event, all Parties to the Action shall stand in the same position as if this
27 Agreement had not been negotiated, made, or filed with the Court.

XVI. No Admission of Liability

119. This Agreement reflects the Parties' compromise and settlement of disputed claims. This Agreement shall not be construed as or deemed to be evidence of an admission or concession of any point of fact or law. Defendant has denied and continues to deny each of the claims and contentions alleged in the Complaint. Defendant specifically denies that a class could or should be certified in the Action for litigation purposes. Defendant does not admit any liability or wrongdoing of any kind, by this Agreement or otherwise. Defendant has agreed to enter into this Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of any further claims that were asserted or could possibly have been asserted in the Action.

120. Class Counsel believe the claims asserted in the Action have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly, and time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel have investigated the facts and law relevant to the merits of the claims, conducted informal discovery, and conducted independent investigation of the alleged claims. Class Counsel concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class members.

121. This Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties in connection with the negotiations of this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever.

122. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by the Plaintiffs or Settlement Class Members, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may

1 be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties,
2 in the Action or in any proceeding in any court, administrative agency, or other tribunal.

3 123. In addition to any other defenses Defendant or the Released Parties may have at
4 law, in equity, or otherwise, to the extent permitted by law, this Agreement may be pleaded as a
5 full and complete defense to and may be used as the basis for an injunction against, any action,
6 suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of this
7 Agreement or the Releases contained herein.

8 **XVII. Miscellaneous Provisions**

9 124. ***Confidentiality.*** To the extent permitted by ethics rules, the Parties and their
10 counsel shall keep confidential all settlement communications, including communications
11 regarding the negotiation and drafting of this Agreement. The Parties will not make any public
12 statement about the settlement that has not been approved by the other side, except as required or
13 authorized by law. Approval of any proposed public statement of the other side will not be
14 unreasonably withheld. This paragraph shall not be construed to limit or impede the Notice
15 requirements contained in this Agreement, nor shall this paragraph be construed to prevent Class
16 Counsel or Defendant's Counsel from notifying or explaining that the Action has settled or limit
17 the representations that the Parties or their counsel may make to the Court to assist in the Court's
18 evaluation of the Settlement, Preliminary Approval, Final Approval, and any objection to the
19 Settlement's terms. Defendant may also provide information about the Settlement to its attorneys,
20 members, partners, insurers, brokers, agents, and other persons or entities as required by securities
21 laws or other applicable laws and regulations, or as is required to effectuate the Settlement. If any
22 Party believes a statement is made in violation of this provision, the Parties shall meet-and-confer
23 informally in an effort to resolve the dispute. If the dispute cannot be resolved informally, it shall
24 be submitted to the Court for resolution

25 125. ***Gender and Plurals.*** As used in this Agreement, the masculine, feminine or neuter
26 gender, and the singular or plural number, shall each be deemed to include the others whenever
27 the context so indicates.
28

1 126. ***Binding Effect.*** This Agreement shall be binding upon, and inure to and for the
2 benefit of, the successors and assigns of the Releasing Parties and the Released Parties.

3 127. ***Cooperation of Parties.*** The Parties to this Agreement agree to cooperate in good
4 faith to prepare and execute all documents, seek Court approval, uphold Court approval, and do
5 all things reasonably necessary to complete and effectuate the Settlement described in this
6 Agreement.

7 128. ***Obligation to Meet and Confer.*** Before filing any motion in the Court raising a
8 dispute arising out of or related to this Agreement, the Parties shall consult with each other and
9 certify to the Court that they have met and conferred in an attempt to resolve the dispute.

10 129. ***Integration and No Reliance.*** This Agreement constitutes a single, integrated
11 written contract expressing the entire agreement of the Parties relative to the subject matter hereof.
12 This Agreement is executed without reliance on any covenant, agreement, representation, or
13 warranty by any Party or any Party's representative other than those expressly set forth in this
14 Agreement. No covenants, agreements, representations, or warranties of any kind whatsoever have
15 been made by any Party hereto, except as provided for herein.

16 130. ***No Conflict Intended.*** Any inconsistency between the headings used in this
17 Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

18 131. ***Governing Law.*** Except as otherwise provided herein, the Agreement shall be
19 construed in accordance with, and be governed by, the laws of the state of Arizona, without regard
20 to the principles thereof regarding choice of law.

21 132. ***Counterparts.*** This Agreement may be executed in any number of counterparts,
22 each of which shall be deemed an original, but all of which together shall constitute one and the
23 same instrument, even though all Parties do not sign the same counterparts. Original signatures are
24 not required. Any signature submitted by facsimile or through email of a PDF shall be deemed an
25 original.

26 133. ***Jurisdiction.*** The Court shall retain jurisdiction over the implementation,
27 enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any
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suit, action, proceeding, or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Settlement Administrator. As part of the agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose. The Court shall retain jurisdiction over the enforcement of the Court's injunction barring and enjoining all Releasing Parties from asserting any of the Released Claims and from pursuing any Released Claims against the Released Parties at any time and in any jurisdiction, including during any appeal from the Final Approval Order.

134. **Notices.** All notices provided for herein, shall be sent by email with a hard copy sent by overnight mail to:

If to Plaintiffs or Class Counsel:

Andrew J. Shamis
Shamis & Gentile, P.A.
 14 NE 1st Ave, Suite 705
 Miami, FL 33132
 shamis@shamisgentile.com

Jeff Ostrow
Kopelowitz Ostrow P.A.
 1 West Las Olas Blvd., Ste. 500
 Fort Lauderdale, FL 33301
 ostrow@kolawyers.com

If to Defendant or Defendant's Counsel:

Michael Jervis
Mullen Coughlin LLC
 426 W. Lancaster Avenue, Suite 200
 Devon, PA 19333
 mjervis@mullen.law

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice Program.

135. **Modification and Amendment.** This Agreement may not be amended or modified, except by a written instrument signed by Class Counsel and Defendant's Counsel and, if the

1 Settlement has been approved preliminarily by the Court, approved by the Court, provided,
2 however, that, after entry of the Preliminary Approval Order, the Parties may, by written
3 agreement, effect such amendments, modifications, or expansions of this Agreement and its
4 implementing documents (including all exhibits hereto) without further notice to the Settlement
5 Class or approval by the Court if such changes are consistent with the Court's Preliminary
6 Approval Order and do not materially alter, reduce, or limit the rights of Settlement Class Members
7 under this Agreement. Further, the Parties contemplate that, subject to Court approval or without
8 such approval where legally permissible and where such changes are non-material, the exhibits to
9 this Agreement may be modified by subsequent agreement of counsel for the Parties prior to
10 dissemination of the Settlement Class Notice to the Settlement Class

11 136. **No Waiver.** The waiver by any Party of any breach of this Agreement by another
12 Party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent,
13 or contemporaneous, of this Agreement.

14 137. **Authority.** Class Counsel (for the Plaintiffs and the Settlement Class Members),
15 and Defendant's Counsel, represent and warrant that the persons signing this Agreement have full
16 power and authority to bind every person, partnership, corporation, or entity included within the
17 definitions of Plaintiffs and Defendant respectively to all terms of this Agreement. Any person
18 executing this Agreement in a representative capacity represents and warrants that he or she is
19 fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to
20 all of the terms and provisions of this Agreement.

21 138. **Agreement Mutually Prepared.** Neither Plaintiffs nor Defendant shall be
22 considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute,
23 case law, or rule of interpretation or construction that would or might cause any provision to be
24 construed against the drafter of this Agreement.

25 139. **Independent Investigation and Decision to Settle.** The Parties understand and
26 acknowledge they: (a) have performed an independent investigation of the allegations of fact and
27 law made in connection with this Action; and (b) that even if they may hereafter discover facts in
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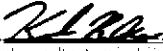
addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. All Parties recognize and acknowledge they reviewed and analyzed data that they and their experts used to make certain determinations, arguments, and settlement positions. The Parties agree this Settlement is fair, reasonable, and adequate, and will not attempt to renegotiate or otherwise void or invalidate or terminate the Settlement irrespective of what any unexamined data later shows. It is the Parties' intention to resolve their disputes in connection with this Action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

140. ***Receipt of Advice of Counsel.*** Each Party acknowledges, agrees, and specifically warrants that he, she, or it has fully read this Agreement and the Releases contained herein, received independent legal advice with respect to the advisability of entering into this Agreement and the Releases, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases.

Signature Page to Follow

1 **PLAINTIFFS**

2
3 Raul Santos

4 
5 Karlo Peralta

6
7
8
9 **CLASS COUNSEL (for Plaintiffs and the Settlement Class)**

10
11 Andrew J. Shamis
12 SHAMIS & GENTILE, P.A.

13 Jeffrey Ostrow
14 Jeff Ostrow
15 KOPELOWITZ OSTROW P.A.

16
17 **DEFENDANT BACKCHECKED, LLC**

18
19 By:
20 Its:

21 **COUNSEL FOR DEFENDANT BACKCHECKED, LLC**

22
23 Michael Jervis
24 Mullen Coughlin LLC
25
26
27
28

ClassAction.org

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