

**UNITED STATES DISTRICT COURT
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

ANGELA BREWER, individually, and
on behalf of all other similarly situated,

Plaintiff,

v.

JUSTPLAY GMBH D/B/A JUSTPLAY
and GIMICA GMBH D/B/A/ GIMICA
GAMES,

Defendants.

CASE No. _____

SETTLEMENT AGREEMENT

This Settlement Agreement¹ is entered into between Plaintiff, individually, and on behalf of the Settlement Class, and Defendants, as of the date last signed below. The Parties hereby agree to the following terms in full settlement of the Action, subject to a Final Approval Order entered by the Court.

I. Procedural History

1. Defendants are Illinois corporations that jointly own and operate the JustPlay mobile application. The application allows users to earn rewards, such as cash or gift cards, based upon playtime.

2. When using the application, Defendants collect and store users' biometric identifiers and biometric information, including face scans taken of users to verify their identities. Plaintiff alleges Defendants obtain the Biometric Information without first obtaining prior written consent.

¹ All capitalized terms herein shall have the same meanings as those defined in Section II below.

3. On October 24, 2024, Plaintiff filed a complaint against Defendants in the United States District Court for the Central District of Illinois alleging three violations of the Illinois Biometric Privacy Act and seeking damages and injunctive relief on behalf of herself and putative class of individuals.

4. Shortly after filing the complaint, in an effort to conserve resources for all concerned, the Parties decided to explore early resolution. In advance of settlement negotiations, Plaintiff consulted with liability and damage experts. They also requested and Defendant produced informal discovery requests related to liability and damages, including, but not limited to, the number of individuals impacted by the alleged violations and the Biometric Information unlawfully obtained by Defendants.

5. Class Counsel and Defendants' counsel, who have litigated many cases in the past, then began negotiating resolution of the litigation. The negotiations took place over several months. They were arms-length and hard fought. During their discussions, the Parties determined that jurisdiction was proper in state court. Consequently, they agreed the federal action would be dismissed and the case would be re-filed in state court. On September ___, 2025, the Parties finally agreed to the material terms of this Settlement which resolves all claims on a classwide basis. The federal case was dismissed on September ___, 2025, and this Action filed on September ___, 2025.

6. The Parties now agree to settle the Action entirely, without any admission by the Defendants of liability or wrongdoing, with respect to all Released Claims of the Releasing Parties. Defendant have entered into this Agreement to resolve all controversies and disputes arising out of or relating to the allegations made in the Complaint and to avoid the litigation costs and expenses, distractions, burden, expense, and disruption to its business operations associated with further litigation. Defendants do not in any way acknowledge, admit to, or concede any of the

allegations made in the Complaint, and expressly disclaims and denies any fault or liability, or any charges of wrongdoing that have been or could have been asserted in the Complaint. Nothing contained in this Agreement shall be used or construed as an admission of liability, and this Agreement shall not be offered or received in evidence in any action or proceeding in any court or other forum as an admission or concession of liability or wrongdoing of any nature or for any other purpose other than to enforce the terms of this Agreement. Plaintiff entered into this Agreement to recover on the claims asserted in the Complaint, and to avoid the risk, delay, and uncertainty of continued litigation. Plaintiff does not in any way concede that the claims alleged in the Complaint lack merit or are subject to any defenses. The Parties intend this Agreement to bind Plaintiff, Defendants, and all Settlement Class Members.

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

II. Definitions

7. “**Action**” means the above-captioned consolidated action, *Angela Brewer v. JustPlay, et al.*, Case No. _____.

8. “**Agreement**” or “**Settlement**” or “**Settlement Agreement**” means this Settlement Agreement, including all exhibits, between Plaintiff and Defendants.

9. “**Application for Attorneys’ Fees, Costs, and Service Award**” means the application made with the Motion for Final Approval seeking attorneys’ fees, costs, and Service Award.

10. “**Biometric Information**” means _____

11. “**Cash Payment**” means the estimated \$15.00 cash payment that Settlement Class

Members may elect to claim under the Settlement.

12. “**Claim Form**” means the proof of claim, substantially in the form attached hereto as *Exhibit 4*, which may be modified as necessary, subject to the Parties’ approval.

13. “**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.

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

15. “**Claim Process**” means the process by which Claimants submit Claims to the Settlement Administrator and the Settlement Administrator determines which Claims are Valid Claims.

16. “**Class Counsel**” means Gary Klinger of Milberg Coleman Bryson Phillips Grossman PLLC and Jeff Ostrow of Kopelowitz Ostrow P.A.,

17. “**Class List**” is the class list provided by Defendant to the Settlement Administrator. The Class List shall include the Settlement Class members’ names and email addresses.

18. “**Class Representative**” means the Plaintiff.

19. “**Complaint**” means the Complaint filed on September ___, 2025.

20. “**Court**” means the _____t, and the Judge(s) assigned to the Action.

21. “**Defendants**” means JustPlay GMBH d/b/a/ JustPlay and Gimica GMBH d/b/a GIMICA Games.

22. “**Defendant’s Counsel**” means Joel Griswold of Baker & Hostetler LLP..

23. “**Effective Date**” means the day after the entry of the Final Approval Order,

provided no objections are made to the Settlement. If there are objections to the Settlement, then the Effective Date shall be the later of: (a) 30 days after entry of the Final Approval Order if no appeals are taken from the Final Approval Order; or (b) if appeals are taken from the Final Approval Order, then the earlier of 30 days after the last appellate court ruling affirming the Final Approval Order or 30 days after the entry of a dismissal of the appeal.

24. “**Email Notice**” means the email form of Notice of the Settlement, if email addresses are maintained by the Defendant, substantially in the form attached hereto as ***Exhibit 1***, and distributed to Settlement Class Members.

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

26. “**Final Approval Hearing**” means the hearing held before the Court during which the Court will consider granting Final Approval of the Settlement and the Application for Attorneys’ Fees, Costs, and Service Award.

27. “**Final Approval Order**” means the final order the Court enters granting Final Approval of the Settlement. The Final Approval Order also includes the orders, which may be entered separately, determining the amount of approved attorneys’ fees, costs, and Service Award.

28. “**JustPlay Mobile Application**” means _____.

29. “**Long Form Notice**” means the long form notice of the Settlement, substantially in the form attached hereto as ***Exhibit 2***, that shall be posted on the Settlement Website and shall be available to Settlement Class Members by mail upon request to the Settlement Administrator.

30. “**Motion for Final Approval**” means the unopposed motion that Plaintiff and Class Counsel shall file with the Court seeking Final Approval of the Settlement.

31. “**Motion for Preliminary Approval**” means the motion that Plaintiff shall file with

the court seeking Preliminary Approval of the Settlement.

32. “**Notice**” means the Email Notice and Long Form Notice that Plaintiff will ask the Court to approve in connection with the Motion for Preliminary Approval.

33. “**Notice Program**” means the methods provided for in this Agreement for giving Notice to the Settlement Class and may consist of Email Notice and Long Form Notice, along with the Settlement Website and the Settlement telephone number.

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

35. “**Objection Deadline**” means 30 days before the initial scheduled Final Approval Hearing and is the last date by which Settlement Class Members may object to the Settlement.

36. “**Opt-Out Deadline**” means 30 days before the initial scheduled Final Approval Hearing and is the last date by which Settlement Class Members may opt-out of the Settlement.

37. “**Party**” means each of the Plaintiff and Defendants, and “**Parties**” means Plaintiff and Defendants collectively.

38. “**Plaintiff**” means Angela Brewer.

39. “**Postcard Notice**” means the postcard notice of the Settlement, substantially in the form attached hereto as ***Exhibit 2***, that the Settlement Administrator may disseminate to Settlement Class members by mail.

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

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

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

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

44. **“Released Parties”** means Defendant and Defendant’s past, present, and future direct and indirect heirs, assigns, associates, corporations, investors, owners, parents, subsidiaries, affiliates, divisions, officers, directors, shareholders, members, agents, employees, attorneys, insurers, reinsurers, benefit plans, predecessors, successors, managers, administrators, executors, and trustees.

45. **“Releasing Parties”** means Plaintiff and Settlement Class Members and their respective past, present, and future heirs, beneficiaries, conservators, executors, estates, administrators, assigns, agents, accountants, financial and other advisors, and any other representatives of any of these persons and entities.

46. **“Service Award”** means the monetary compensation the Court may approve for the Plaintiff for serving as Class Representative.

47. **“Settlement Administrator”** means _____.

48. **“Settlement Administration Costs”** means all costs and fees of the Settlement Administrator regarding Notice and Settlement administration.

49. **“Settlement Class”** means all living Illinois citizens whose Biometrics were collected, captured, possessed, used, transmitted, disseminated, stored, or otherwise obtained by Defendants via the JustPlay Application without prior written consent.

50. **“Settlement Class Member”** means any member of the Settlement Class who has not opted-out of the Settlement.

51. **“Settlement Class Member Benefit”** means the Cash Payment and/or Medical Data Monitoring, elected by Settlement Class Members.

52. **“Settlement Amount”** means the maximum amount of \$4,500,00,00 that the Defendants will pay for Cash Payments, Settlement Administration Costs, Court-awarded attorneys’ fees, costs to Class Counsel, and a Service Award for the Plaintiff, under this Settlement.

53. **“Settlement Website”** means the website the Settlement Administrator will establish as a means for Settlement Class members to submit Claim Forms and obtain notice and information about the Settlement, including hyperlinked access to this Agreement, the Preliminary Approval Order, Long Form Notice, Claim Form, Motion for Final Approval, and Final Approval Order, as well as other documents as the Parties agree to post or the Court orders posted. The Settlement Website shall remain online and operable for at least six months after Final Approval.

54. **“Valid Claim”** means a Claim Form submitted by a Settlement Class Member that is: (a) submitted in accordance with the provisions of the Settlement; (b) accurately, fully, and truthfully completed and executed, with all of the information requested in the Claim Form, by a Settlement Class Member; (c) signed physically or by e-signature by a Settlement Class Member personally, subject to the penalty of perjury; (d) returned via mail and postmarked by the Claim

Form Deadline, or, if submitted online, submitted by 11:59 p.m. central time on the Claim Form 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. Timing of Payments from Defendants

55. Within 30 days of the Effective Date, Defendants shall pay the following: (a) all Cash Payments to Settlement Class Members; (b) all Settlement Administration Costs to the Settlement Administrator; (c) the Service Award to the Class Representative; and (d) 50% of all Court-approved attorneys' fees to Class Counsel. The remaining 50% of the Court-approved attorneys' fees and costs, shall be payable to Class Counsel by Defendants on or before 180 days following the Effective Date.

56. Defendants and the Settlement Administrator shall enter into a separate agreement for the payment of Settlement Administration Costs. Defendants shall pay the Settlement Administration Costs directly to the Settlement Administrator, along with the funds necessary to pay all Cash Payments to Settlement Class Members.

57. The Defendants will pay Class Counsel directly for all Court-awarded attorneys' fees and costs, and for the Service Award.

IV. Certification of the Settlement Class

58. In the Motion for Preliminary Approval, Plaintiff shall propose and request to the Court that the Settlement Class be certified for Settlement purposes only. Defendant agrees solely for purposes of the Settlement provided for in this Agreement, and the implementation of such

Settlement, that this case shall proceed as a class action; provided however, that if a Final Approval Order is not issued, then any certification shall be null and void and, for the avoidance of doubt, Defendant shall retain all rights to object to any future requests to certify a class. Plaintiff and Class Counsel shall not reference this Agreement in support of any subsequent motion for class certification of any class in the Action.

V. Cash Payment and Injunctive Relief

59. To obtain the Cash Payment, Settlement Class Members must submit a Claim by the Claim Form Deadline. If the total dollar amount of all Valid Claims, Settlement Administration Costs, and Court-approved attorneys fees and costs, and the Service Award is greater than the Settlement Amount, the Cash Payment amount will decrease *pro rata* on an equal percentage basis so that the maximum payment by Defendants is the Settlement Amount. If a Settlement Class Member does not submit a Valid Claim, the Settlement Class Member will release his or her claims without receiving a Cash Payment.

60. Upon the Effective Date, Defendant will comply with all BIPA requirements for a minimum of five years. Defendant acknowledges this Action has resulted in business-practice changes to ensure compliance and that there has been a significant financial cost to Defendants related thereto.

VI. Settlement Approval

61. Plaintiff's Motion for Preliminary Approval shall, among other things, request the Court: (1) preliminarily approve the terms of the Settlement as being within the range of fair, adequate, and reasonable; (2) provisionally certify the Settlement Class for settlement purposes only; (3) approve the Notice Program and the form and content of the Notices; (4) approve the Claim Process and the form and content of the Claim Form; (5) approve the procedures for

Settlement Class Members to opt-out of the Settlement or for Settlement Class Members to object to the Settlement; (6) appoint _____ as the Settlement Administrator; (7) appoint Plaintiff as Class Representative and Gary Klinger and Jeff Ostrow as Class Counsel for Settlement purposes; (8) stay the Action pending Final Approval of the Settlement; and (9) schedule a Final Approval Hearing for a time and date mutually convenient for the Court, the Parties, Class Counsel, and Defendant's Counsel.

VII. Settlement Administrator

62. The Parties agree that, subject to Court approval, _____ shall be the Settlement Administrator. Class Counsel shall oversee the Settlement Administrator. The Settlement Administrator shall fulfill the requirements set forth in the Preliminary Approval Order and the Agreement and comply with all applicable laws, including, but not limited to, the Due Process Clause of the Illinois Constitution.

63. The Settlement Administrator shall administer various aspects of the Settlement as described in the next paragraph and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including, but not limited to, effectuating the Notice Program, handling the Claims Process, and collecting and distributing the Cash Payments.

64. The Settlement Administrator's duties include the following:

a. Completing the Court-approved Notice Program by noticing the Settlement Class by Email Notice and sending out Long Form Notices and paper Claim Forms upon request from Settlement Class Members, reviewing Claim Forms, notifying Claimants of deficient Claim Forms using the Notice of Deficiency, and sending Settlement Class Member Benefits to Settlement Class Members who submit a Valid Claim;

b. Establishing and maintaining a post office box to receive opt-out requests

from the Settlement Class, objections from Settlement Class Members, and Claim Forms;

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

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

e. Responding to any mailed Settlement Class Member inquiries;

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

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

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

i. Distributing Cash Payments by electronic means or by paper check;

j. Any other Settlement administration function at the instruction of Class Counsel and Defendants.

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

65. Defendant will provide the Settlement Administrator with the Class List no later than five days after entry of the Preliminary Approval Order. To the extent necessary, Defendant will cooperate with updating the Class List to accomplish the Notice Program and otherwise administer the Settlement.

66. Within 20 days following entry of the Preliminary Approval Order, the Settlement Administrator shall commence the Notice Program provided herein, using the Email Notice and Long Form Notice approved by the Court.

67. All Settlement Class Members will be sent an Email Notice. The Email Notice shall include, among other information: (a) a description of the material terms of the Settlement; (b) how to submit a Claim Form; (c) the Claim Form Deadline; (d) the Opt-out Deadline which is the last for Settlement Class members to opt-out of the Settlement Class; (e) the Objection Deadline which is the last day for Settlement Class Members to object to the Settlement and/or Application for Attorneys' Fees, Costs, and Service Award; (f) the Final Approval Hearing date; and (g) the Settlement Website address at which Settlement Class Members may access this Agreement and other related documents and information. Class Counsel shall insert the correct dates and deadlines in the Notices before the Notice Program commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. If the date or time for the Final Approval Hearing changes, the Settlement Administrator shall update the Settlement Website to reflect the new date. No additional notice to the Settlement Class is required if the date or time for the Final Approval Hearing changes.

68. The Settlement Administrator will attempt to identify better email addresses for

those Settlement Class Members whose emails were undelivered or bounce-back. Those individuals for whom better addresses are found will be sent a new Email Notice.

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

70. The Long Form Notice will include a procedure for Settlement Class Members to opt-out of the Settlement Class, and the Email Notice shall direct Settlement Class Members to review the Long Form Notice to obtain the opt-out instructions. Members of the Settlement Class may opt-out of the Settlement Class at any time before the Opt-Out Deadline by mailing a request to opt-out to the Settlement Administrator postmarked no later than Opt-Out Deadline. The opt-out request must be personally signed by the Settlement Class member and contain the requestor's name, address, telephone number, and email address (if any), and include a statement indicating a request to opt-out of the Settlement Class. Mass or class requests to opt-out filed by third parties on behalf of a mass or class of Settlement Class members or multiple Settlement Class members where the opt-out has not been signed by each and every individual Settlement Class member will not be allowed. Any Settlement Class Member who does not timely and validly request to opt-out shall be bound by the terms of this Agreement even if that Settlement Class Member does not submit a Valid Claim.

71. The Long Form Notice shall also include a procedure for Settlement Class Members to object to the Settlement and/or Application for Attorneys' Fees, Costs, and Service Award and the Email Notice shall direct Settlement Class members to review the Long Form

Notice to obtain the objection instructions. Objections must be sent to the Clerk of Court, and sent by U.S. Mail to Class Counsel, Defendant's Counsel, and the Settlement Administrator. For an objection to be considered by the Court, the objection must be submitted no later than the Objection Deadline, as specified in the Notice, and the Settlement Class Member must not have opted-out of the Settlement Class. Objections submitted by mail must be postmarked on the envelope no later than the last day of the Objection Deadline. If submitted by private courier (e.g., Federal Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label.

72. For an objection to be considered by the Court, the objection must also set forth:
- a. the objector's full name, mailing address, telephone number, and email address (if any);
 - b. all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel;
 - c. the number of times the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior objections that were issued by the trial and appellate courts in each listed case;
 - d. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement and/or Application for Attorneys' Fees, Costs and Service Award;
 - e. the number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the five years preceding the date of the filed

objection, the caption of each case in which counsel or the firm has made such objection and a copy of any orders related to or ruling upon counsel's or the counsel's law firm's prior objections that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding five years;

f. the identity of all counsel (if any) representing the objector, and whether they will appear at the Final Approval Hearing;

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

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

i. the objector's signature (an attorney's signature is not sufficient).

Class Counsel and/or Defendant's Counsel may conduct limited discovery on any objector or objector's counsel, including taking depositions and propounding written discovery

73. The Notice Program shall be completed in its entirety no later than 45 days before the original date set for the Final Approval Hearing.

IX. Claim Process and Disbursement of Cash Payments

74. The Notice and the Settlement Website will explain to Settlement Class Members that they may be entitled to a Settlement Class Member Benefit and how to submit a Claim Form.

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

76. The Settlement Administrator shall collect, review, and address each Claim Form received to determine whether the Claim Form meets the requirements set forth in this Settlement

and is thus a Valid Claim. The Settlement Administrator shall examine the Claim Form before designating the Claim as a Valid Claim to determine that the information on the Claim Form is reasonably complete. The Settlement Administrator shall have the sole authority to determine whether a Claim by any Claimant is a Valid Claim.

77. The Settlement Administrator shall use all reasonable efforts and means to identify and reject duplicate claims. No Settlement Class Member may submit more than one Claim Form. The Settlement Administrator shall identify any Claim Forms that appear to seek relief on behalf of the same Settlement Class Member. The Settlement Administrator shall use its best efforts to determine whether there is any duplication of Claims, and if there is, contact the Settlement Class Member in an effort to determine which Claim Form is the appropriate one for consideration.

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

79. Claim Forms that do not meet the terms and conditions of this Settlement shall be promptly rejected by the Settlement Administrator and the Settlement Administrator shall advise the Settlement Class Member of the reason(s) why the Claim Form was rejected. However, if the

Claim Form is rejected for containing incomplete or inaccurate information, and/or omitting required information, the Settlement Administrator may send a Notice of Deficiency explaining what information is missing or inaccurate and needed to validate the Claim and have it submitted for consideration. The Settlement Administrator shall notify the Settlement Class Member using the contact information provided in the Claim Form. The additional information and/or documentation can include, for example, answers to questions regarding the validity of the physical or e-signature. A Settlement Class Member shall have until the Claim Form Deadline, or 15 days after the date the Notice of Deficiency is sent to reply to the Notice of Deficiency and provide the required information. If the Settlement Class Member timely and adequately provides the requested information and/or documentation, the Claim shall be deemed a Valid Claim and processed by the Settlement Administrator. If the Settlement Class Member does not timely and completely provide the requested information and/or documentation, the Settlement Administrator shall reduce or deny the Claim unless Defendant and Class Counsel otherwise agree.

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

- a. Failure to fully complete and/or sign the Claim Form;
- b. Illegible Claim Form;
- c. The Claim Form is fraudulent;
- d. The Claim Form is duplicative of another Claim Form;
- e. The Claimant is not a Settlement Class Member;
- f. The Claimant submitted a timely and valid request to opt-out of the Settlement Class.
- g. The person submitting the Claim Form requests that payment be made to a

person or entity other than the Claimant for whom the Claim Form is submitted;

h. Failure to submit a Claim Form by the Claim Form Deadline; and/or

i. The Claim Form otherwise does not comply with the requirements of this

Settlement.

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

a. The Settlement Administrator shall have 30 days from the Claim Form Deadline to approve or reject Claims based on findings of fraud or duplication;

b. A request for additional information by sending a Notice of Deficiency shall not be considered a denial for purposes of this paragraph;

c. If a Claim is rejected for fraud or duplication, the Settlement Administrator shall notify the Claimant using the contact information provided in the Claim Form. Class Counsel and Defendant's Counsel shall be provided with copies of all such notifications to Claimants; and

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

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

83. No person or entity shall have any claim against Defendant, Defendants' Counsel, Plaintiff, the Settlement Class, Class Counsel, and/or the Settlement Administrator based on any

eligibility determinations, distributions, or awards made in accordance with this Settlement.

84. The Settlement Administrator shall send an invoice to the Defendants within 15 days of the Effective Date identifying the amount the Defendants must fund to the Settlement Administrator to pay for the Cash Payments. Defendants must wire the funds to the Settlement Administrator for the Cash Payments no later than 30 days after the Effective Date. The Settlement Administrator shall distribute Cash Payments within 60 days of the Effective Date.

85. Cash Payments to Settlement Class Members will be made by electronic payment or by paper check. Following Final Approval, the Settlement Administrator will send Settlement Class Members an email to select a form of electronic payment or to receive payment by paper check. In the event a Settlement Class Member does not make an election or there is a problem with issuance of an electronic payment, a paper check will be sent to the Settlement Class Member's last known address. Settlement Class Members shall have 90 days to select their form of payment. Paper checks must be negotiated within 90 days of issuance. In the event the Settlement Administrator is unable to distribute funds to the Settlement Class Members entitled to receive them due to incorrect or incomplete information provided to the Settlement Administrator, the funds shall become residual funds, and such Settlement Class Members shall forfeit their entitlement right to the funds.

86. In the event there are funds remaining in the Settlement Fund 240 days following the date Settlement Class Members are sent an email to select their form of payment, said funds attributable to unclaimed and undeliverable funds shall be treated as residual funds as described in Section XII.

87. The Settlement Administrator will send an email to Settlement Class Members with Valid Claims that include an election for Credit Monitoring with information on how to enroll in

the Credit Monitoring, including the activation code.

X. Final Approval Order and Final Judgment

88. Plaintiff shall file her Motion for Final Approval of the Settlement, inclusive of the Application for Attorneys' Fees, Costs and Service Award, no later than 45 days before the original date set for the Final Approval Hearing. At the Final Approval Hearing, the Court will hear argument on Plaintiff's Motion for Final Approval of the Settlement and Application for Attorneys' Fees, Costs and Service Award. In the Court's discretion, the Court will also hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement and/or to the Application for Attorneys' Fees, Costs and Service Award, provided the objectors submitted timely objections that meet all requirements listed in this Agreement.

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

- a. Determine that the Settlement is fair, adequate and reasonable;
- b. Finally certify the Settlement Class for settlement purposes only;
- c. Determine the completed Notice Program satisfies Due Process requirements;
- d. Bar and enjoin all Releasing Parties from asserting or otherwise pursuing any of the Released Claims at any time and in any jurisdiction, including during any appeal from the Final Approval Order; and retain jurisdiction over the enforcement of the Court's injunctions;
- e. Release Defendants and the Released Parties from the Released Claims, as

specified in Section XIII below; and

f. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Defendants, Plaintiff, all Settlement Class Members, and all objectors, to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

XI. Attorneys' Fees, Costs, and Service Award

90. *Attorneys' Fees and Costs* - Class Counsel shall apply to the Court for an award of attorneys' fees of up to 37.5% of the Settlement amount, plus reimbursement of costs. The attorneys' fees and cost approved by the Court shall be paid by the Defendants to Class Counsel by wire transfer to an account designated by Class Counsel. The Defendants shall pay one-half of the Court-approved attorneys' fees and costs within 30 days of the Effective Date and the remaining half within 60 days after the Effective Date.

91. *Service Award* – Class Counsel shall apply to the Court for a Service Award for the Class Representative of up to \$2,000.00. The Service Award approved by the Court shall be paid by the Defendants to Class Counsel, on behalf of the Class Representative, within 30 days of the Effective Date.

92. Attorneys' fees, costs, and the Service Award were not negotiated by the Parties until all other material terms of the Settlement had been determined. This Settlement is not contingent on approval of the request for attorneys' fees, costs, and Service Award and if the Court denies the request or grants amounts less than what was requested, the remaining provisions of the Agreement shall remain in force.

XII. Disposition of Residual Funds

93. In the event there are funds remaining in the Settlement Fund 240 days following

the date Settlement Class Members are sent an email to select their form of payment, any residual shall be distributed to the **Electronic Privacy Information Center**, to be approved by the Court.

XIII. Releases

94. Upon the Effective Date, and in consideration of the Settlement relief and other consideration described herein, the Releasing Parties shall be deemed to have, and by operation of the Final Approval Order shall have, fully, finally, and forever released, acquitted, relinquished, and completely discharged Defendants from any and all Released Claims.

95. The Releasing Parties expressly waive all rights under California Civil Code section 1542, which provides:

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

The Releasing Parties also waive the provisions and rights of any law(s) that are comparable in effect to California Civil Code section 1542 (including, without limitation, California Civil Code § 1798.80, et seq., Montana Code Ann. § 28- 1-1602; North Dakota Cent. Code § 9-13-02; and South Dakota Codified Laws § 20-7-11). The Releasing Parties agree that, once this Agreement is executed, they will not, directly or indirectly, individually or in concert with another, maintain, cause to be maintained, or voluntarily assist in maintaining any further demand, action, claim, lawsuit, arbitration, or similar proceeding, in any capacity whatsoever, based on any of the Released Claims.

96. Settlement Class members who opt-out of the Settlement prior to the Opt-Out Deadline do not release their claims arising out of related to the Data Incident and will not obtain

any of the Settlement Class Member Benefits under the Settlement.

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

98. The power to enforce any term of this Settlement is not affected by the releases in this section.

XIV. Termination of Settlement

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

b. Court approval of the Settlement consideration set forth in Section V and the Releases set forth in Section XIII of this Agreement;

c. The Court has entered the Preliminary Approval Order;

d. 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

e. The Effective Date has occurred.

100. If any of the conditions specified in the preceding paragraph are not met, or if the Court otherwise imposes any modification to or condition of approval of the Settlement to which the Parties do not consent, then this Agreement shall be cancelled and terminated.

101. In the event this Agreement is terminated or fails to become effective, then the

Parties shall return to the *status quo ante* in the Action as if the Parties had not entered into this Agreement, and the Parties shall jointly file a status report in the Court seeking to reopen the Action and all papers filed. In such event, the terms and provisions of this Agreement shall have no further force and effect with respect to the Parties and shall not be used in this Action or in any other action or proceeding for any other purpose, and any order entered by this Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

102. In the event this Agreement is terminated or fails to become effective, all funds in the Settlement Fund shall be promptly returned to the Defendants as described hereinabove. However, Defendants shall have no right to seek from Plaintiff, Class Counsel, or the Settlement Administrator the Settlement Administration Costs paid or incurred.

XV. Effect of Termination

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

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

XVI. No Admission of Liability

105. 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 continue to deny each of the claims and contentions alleged in the Complaint. Defendants do not admit any liability or wrongdoing of any kind, by this Agreement or otherwise. Defendants have 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.

106. 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 fully investigated the facts and law relevant to the merits of the claims, conducted 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.

107. 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.

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

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

XVII. Miscellaneous Provisions

110. ***Confidentiality.*** To the extent permitted by ethics rules, the Parties and their counsel shall keep confidential all settlement communications, including communications regarding the negotiation and drafting of this Agreement. This paragraph shall not be construed to limit or impede the Notice requirements contained in this Agreement, nor shall this paragraph be construed to prevent Class Counsel or Defendants' Counsel from notifying or explaining that the Action has settled or limit the representations that the Parties or their counsel may make to the Court to assist in the Court's evaluation of the Settlement, Preliminary Approval, Final Approval, and any objection to the Settlement's terms. Defendants may also provide information about the Agreement to its attorneys, members, partners, insurers, brokers, agents, and other persons or entities as required by securities laws, other applicable laws and regulations, and as necessary to affect the Settlement.

111. ***Gender and Plurals.*** As used in this Agreement, the masculine, feminine, or neuter

gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

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

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

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

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

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

117. ***Governing Law.*** Except as otherwise provided herein, the Agreement shall be construed in accordance with, and be governed by, the laws of the State of Illinois, without regard to the principles thereof regarding choice of law.

118. ***Counterparts.*** This Agreement may be executed in any number of counterparts,

each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required. Any signature submitted through email of a PDF shall be deemed an original.

119. ***Jurisdiction.*** The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by 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.

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

If to Plaintiff or Class Counsel:

Gary Klinger
**Milberg Coleman Bryson
Phillips Grossman PLLC**
227 West Monroe Street, Ste. 2100
Chicago, IL 60606
gklinger@milberg.com

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

ostrow@kolawyers.com

If to Defendants or Defendants' Counsel:

Joel Griswold
Baker & Hostetler LLP
One North Wacker Drive, Ste. 3700
Chicago, Illinois 60606
jgriswold@bakerlaw.com

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 because of the Notice Program.

121. ***Modification and Amendment.*** This Agreement may not be amended or modified, except by a written instrument signed by Class Counsel and Defendants' Counsel and, if the Settlement has been approved preliminarily by the Court, approved by the Court.

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

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

124. ***Agreement Mutually Prepared.*** Neither Plaintiff nor Defendants shall be considered the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

125. ***Independent Investigation and Decision to Settle.*** The Parties understand and acknowledge they: (a) have performed an independent investigation of the allegations of fact and

law made in connection with this Action; and (b) that even if they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the 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.

126. ***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.

Signatures on the following page

PLAINTIFF

ANGELA BREWER

GARY KLINGER
**MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN PLLC**

JEFF OSTROW
KOPELOWITZ OSTROW P.A.

DEFENDANTS

By: _____
Its _____

DEFENDANTS' COUNSEL

JOEL GRISWOLD
BAKER & HOSTETLER LLP