

UNITED STATES DISTRICT COURT
FOR DISTRICT OF NEW JERSEY

EUGENE WENDELKEN, on behalf of
himself individually and on behalf of all
others similarly situated,

Plaintiff,

v.

HAFETZ AND ASSOCIATES LLC,

Defendant.

Case No: 1:24-CV-07755-RMB-AMD

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement”) is entered into by and between (i) Eugene Wendelken (“Plaintiff” or “Settlement Class Representative”), individually and on behalf of the Settlement Class (defined below); and (ii) Hafetz and Associates LLC. (“Defendant” or “Hafetz”) in the case titled *Wendelken v. Hafetz and Associates LLC*, Case No. 1:24-CV-07755-RMB-AMD, United States District Court for the District of New Jersey. Hafetz and Plaintiff are collectively referred to herein as the “Parties.” The lawsuit being resolved is referred to herein as the “Litigation.”

I. FACTUAL BACKGROUND AND RECITALS

1. Plaintiff alleges that, between July 24, 2023, and October 12, 2023, Hafetz experienced unauthorized access to certain employee email accounts (the “Data Incident”). Plaintiff alleged that the Data Incident exposed certain personally identifiable information (“PII”) stored in the Hafetz employee email accounts involved. Specifically, the following types of PII were allegedly involved: names, Social Security numbers, drivers’ license numbers, financial account information, and insurance benefit information. On June 28, 2024, Defendant began notifying Plaintiff and the Settlement Class about the Data Incident.

2. On July 15, 2024, Plaintiff Eugene Wendelken, individually and on behalf of a putative class, filed a putative class action against Hafetz and Associates LLC in the United States District Court for the District of New Jersey, titled *Wendelken v. Hafetz and Associates LLC*, Case No. 1:24-CV-07755-RMB-AMD. Plaintiff’s complaint asserted claims of negligence, negligence *per se*, breach of contract, unjust enrichment, breach of fiduciary duty, invasion of privacy, and New Jersey Consumer Fraud Act.

3. On December 6, 2024, after a period of informal discovery and mutual exchange of information, the Parties engaged in a private mediation with Bennet G. Picker, an experienced

mediator. Throughout their mediation session, the Parties engaged in an extensive evaluation and discussion of the relevant facts and law, and the Parties carefully considered the risk and uncertainties of continued litigation and all other factors bearing on the merits of settlement. As a result of the mediation, the Parties succeeded in reaching agreement on the principal terms of a settlement—subject to final mutual agreement on all the necessary documentation.

4. The Parties have agreed to settle the Litigation on the terms and conditions set forth herein in recognition that the outcome of the Litigation is uncertain and that achieving a final result through litigation would require substantial additional risk, uncertainty, discovery, time, and expense for the Parties.

5. Hafetz denies all claims of wrongdoing or liability that Plaintiff, Settlement Class Members, or anyone else has asserted in this Litigation or may assert in the future based on the circumstances giving rise to the complaint. Despite Hafetz's position that it is not liable for, and has strong defenses to the claims alleged in the Litigation, Hafetz desires to settle the Litigation, and thus avoid the expense, risk, exposure, inconvenience, uncertainty, and distraction of continued litigation of any action relating to the matters being fully settled and finally resolved and released in this Settlement Agreement. Neither this Settlement Agreement, nor any negotiation or act performed or document created in relation to the Settlement Agreement or negotiation or discussion thereof is, or may be deemed to be, or may be used as, an admission of, or evidence of, any wrongdoing or liability.

6. The Parties now enter into this Settlement Agreement. Plaintiff and Class Counsel have conducted an investigation into the facts and the law regarding the Litigation and have concluded that a settlement according to the terms set forth below is fair, reasonable, and adequate, and beneficial to and in the best interests of Plaintiff and the Settlement Class, recognizing: (1) the existence of complex and contested issues of law and fact; (2) the risks inherent in litigation; (3) the likelihood that future proceedings will be unduly protracted and expensive if the proceeding is not settled by voluntary agreement; (4) the magnitude of the benefits derived from the contemplated settlement in light of both the maximum potential and likely range of recovery to be obtained through further litigation and the expense thereof, as well as the potential of no recovery whatsoever; and (5) Plaintiff's determination that the settlement is fair, reasonable, adequate, and will substantially benefit the Settlement Class Members.

7. Considering the risks and uncertainties of continued litigation and all factors bearing on the merits of settlement, the Parties are satisfied that the terms and conditions of this Settlement Agreement are fair, reasonable, adequate, and in their respective best interests.

8. In consideration of the covenants, agreements, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and among the undersigned that the Litigation be settled and compromised, and that the Releasors release the Released Parties of the Released Claims, without costs as to Released Parties, Plaintiff, Class Counsel, or the Settlement Class, except as explicitly provided for in this Settlement Agreement, subject to the approval of the Court, on the following terms and conditions.

II. DEFINITIONS

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

9. “**Approved Claims**” shall mean complete and timely Claim Forms submitted by Settlement Class Members that have been approved by the Settlement Administrator and which shall be paid from the Settlement Fund.

10. “**Claim Form**” shall mean the form that Settlement Class Members may submit to obtain compensation under this Settlement Agreement, which shall substantially be in the same form as **Exhibit C** and approved by the Court.

11. “**Claims Deadline**” shall mean the date by which all Claim Forms must be postmarked (if mailed) or submitted (if filed electronically) to be considered timely and shall be set as a date ninety (90) days after the Notice Date is entered. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order, as well as in the Notice and the Claim Form.

12. “**Class Counsel**” shall mean Raina C. Borrelli of Strauss Borrelli PLLC.

13. “**Counsel**” or “**Counsel for the Parties**” means both Class Counsel and Defendant’s Counsel, collectively.

14. “**Court**” shall mean the Honorable Renee Marie Bumb, Magistrate Judge Ann Marie Donio, or any other District Court or Magistrate Judge of the United States District Court for the District of New Jersey presiding over this Litigation.

15. “**Credit Monitoring Services**” means the credit monitoring services described in Paragraph 61, which include two (2) years of one-bureau credit monitoring, and \$1 million in identity theft insurance, among other features.

16. “**Data Incident**” means the unauthorized access to certain Hafetz employees’ email accounts that occurred between July 24, 2023, and October 12, 2023, and which is the subject of this Litigation.

17. “**Defendant**” shall mean Hafetz and Associates LLC.

18. “**Defendant’s Counsel**” shall mean Eric Fish of Baker & Hostetler LLP.

19. “**Effective Date**” shall mean the date when the Settlement Agreement becomes Final.

20. “**Fee and Expense Application**” shall mean the motion to be filed by Class Counsel, in which they seek approval of an award of attorneys’ fees, as well as Service Awards for the Class Representative.

21. “**Fee Award and Expenses**” means the amount of attorneys’ fees and reimbursement of litigation expenses awarded by the Court to Class Counsel, to be paid from the Settlement Fund.

22. “**Final**” means the Final Approval Order has been entered on the docket, and (1) the time to appeal from such order has expired and no appeal has been timely filed; (2) if such an appeal has been filed, it has been finally resolved and has resulted in an affirmation of the Final Approval Order; or (3) the Court following the resolution of the appeal enters a further order or orders approving settlement on the material terms set forth herein, and either the time to further appeal from such order has expired and no further appeal is taken from such order(s) or any such appeal has been finally resolved and results in affirmation of such order(s).

23. “**Final Approval Hearing**” means the hearing before the Court where the Plaintiff will request a judgment to be entered by the Court approving the Settlement Agreement, approving the Fee Award and Expenses, and approving a Service Award to the Class Representative.

24. “**Final Approval Order**” shall mean an order entered by the Court, in substantially the same form as the one attached hereto as **Exhibit E**, that:

- i. Certifies the Settlement Class pursuant to Federal Rule of Civil Procedure 23;
- ii. Finds that the Settlement Agreement is fair, reasonable, and adequate, was entered into in good faith and without collusion, and approves and directs consummation of this Settlement Agreement;
- iii. Dismisses Plaintiff’s claims pending before it with prejudice and without costs, except as explicitly provided for in this Settlement Agreement;
- iv. Approves the Release provided in Section IX and orders that, as of the Effective Date, the Released Claims will be released as to Released Parties;
- v. Includes as an exhibit a list of individuals who timely and validly opted out of the Settlement;
- vi. Reserves jurisdiction over the Settlement and this Settlement Agreement; and
- vii. Finds that there is no just reason for delay of entry of Final Approval Order with respect to the foregoing.

25. “**Frequently Asked Questions**” or “**FAQs**” are questions and answers to those questions that are frequently posed by Class Members about class action settlements and specifically about this Settlement.

26. “**Litigation**” shall mean the action titled *Wendelken v. Hafetz and Associates LLC*, Case No. 1:24-CV-07755-RMB-AMD, United States District Court for the District of New Jersey.

27. “**Long Form Notice**” is the content of the notice substantially in the same form as **Exhibit B** and approved by the Court, which will be posted on the Settlement Website and will include robust details about the Settlement.

28. “**Net Settlement Fund**” means the amount of funds that remain in the Settlement Fund after funds are paid from or allocated for payment from the Settlement Fund for the following: (1) Settlement Notice and Administrative Expenses; (2) Fee Award and Expenses; (3) Service Award; and (4) Taxes and Tax-Related Expenses.

29. “**Notice**” means the direct notice of this proposed Settlement, which is to be provided substantially in the manner set forth in this Settlement Agreement and **Exhibits A and B** and approved by the Court. The Notice Deadline in this case will be 45 days after the Preliminary Approval Order is entered.

30. “**Notice Deadline**” means the last day by which Notice must be issued to the Settlement Class Members, and will occur 30 days after the Preliminary Approval Order is entered.

31. “**Notice and Administrative Expenses**” means all of the expenses incurred in the administration of this Settlement, including, without limitation, all expenses or costs associated with preparing and sending the required notices to appropriate state and federal officials under the Class Action Fairness Act of 2005, providing Notice to the Settlement Class, locating Settlement Class Members, processing claims, determining the eligibility of any person to be a Settlement Class Member, and administering, calculating and distributing the Settlement Fund to Participating Settlement Class Members. Administrative Expenses also includes all reasonable third-party fees and expenses incurred by the Settlement Administrator in administering the terms of this Agreement.

32. “**Objection Deadline**” means the date by which a written objection to this Settlement Agreement or a request for exclusion submitted by a person within the Settlement Class must be postmarked and/or filed with the Court and sent to the Settlement Administrator, which shall be designated as sixty (60) days after the Notice Deadline, or such other date as ordered by the Court.

33. “**Opt-Out**” means a Settlement Class Member (i) who timely submits a properly completed and executed request for exclusion in accordance with paragraph 78 herein, (ii) who does not rescind that request for exclusion prior to the Opt-Out Deadline, and (iii) as to which there is not a successful challenge to the Request for Exclusion.

34. “**Opt-Out Deadline**” is the last day on which a Settlement Class Member may file a request to be excluded from the Settlement Class, which will be sixty (60) days after the Notice Deadline.

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

36. “**Parties**” shall mean Plaintiff Eugene Wendelken and Defendant, collectively.

37. “**Plaintiff**” or “**Class Representative**” shall mean the named class representative, Eugene Wendelken.

38. “**Preliminary Approval Order**” shall mean the Court’s Order preliminarily approving the Settlement Agreement without material modifications to the proposed order or this Agreement that are unacceptable to the Parties. A proposed Preliminary Approval Order is attached as **Exhibit D**.

39. “**Pro Rata Cash Payment**” means a pro rata cash payment of the Net Settlement Fund after payment of valid claims for Unreimbursed Losses.

40. “**Released Claims**” shall have the meaning ascribed to it as set forth in Section IX of this Settlement Agreement.

41. “**Released Parties**” shall have the meaning ascribed to it as set forth in Section IX of this Settlement Agreement.

42. “**Releasors**” shall refer, jointly and severally, and individually and collectively, to Plaintiff, the Participating Settlement Class Members, and to each of their predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing, and anyone claiming by, through, or on behalf of them.

43. “**Remainder Funds**” means any funds that remain in the Settlement Fund after all deductions from the Settlement Fund authorized by this Settlement Agreement have been paid and Approved Claims to Participating Settlement Class Members have been made. The funds remaining in the Settlement Fund after completion of these disbursements and after the time for cashing and/or depositing checks has expired will be Remainder Funds. The Remainder Funds will be sent to Legal Services of New Jersey, or as approved by the Court, as a *cy pres* distribution.

44. “**Service Award**” shall have the meaning ascribed to it as set forth in Section X of this Settlement Agreement. The Service Award requested in this matter will be \$5,000 to the named Plaintiff, subject to court approval, and is to be paid from the Settlement Fund.

45. “**Settlement Administrator**” means, subject to Court approval, **ADD**, an entity jointly selected and supervised by Class Counsel and Defendant to administer the settlement.

46. “**Settlement Class**” or “**Class**” means and includes all individuals residing in the United States whose PII may have been accessed in the Data Incident, including the approximately 31,590 individuals identified on the Settlement Class List who were sent notice that their personal information may have been involved in the Data Incident. Excluded from the Settlement Class are: (1) the judges presiding over this Litigation, and members of their direct families; (2) the Defendant, their subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or their parents have a controlling interest, and their current or former officers and directors; and (3) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.

47. “**Settlement Class List**” means a list of each Settlement Class Member’s full name and current or last known residential mailing address, which Defendant or Defendant’s agent shall

provide to the Settlement Administrator within fourteen (14) days of the entry of the Preliminary Approval Order.

48. “**Settlement Class Member**” means an individual who falls within the definition of the Settlement Class.

49. “**Settlement Fund**” means the non-reversionary common fund amount of five hundred and five thousand dollars (\$505,000.00) to be paid by, or on behalf of, Defendant, including any interest accrued thereon after payment, this being the full and complete limit and extent of Defendant’s obligations with respect to the Settlement.

50. “**Settlement Payment**” means the payment to be made via mailed check and/or electronic payment to a Participating Settlement Class Member from the Settlement Administrator from the Settlement Fund.

51. “**Settlement Website**” means a website established and administered by the Settlement Administrator, which shall contain information about the Settlement, including electronic copies of **Exhibits A-E** (or any forms of these notices that are approved by the Court), this Settlement Agreement, and all Court documents related to the Settlement. The Settlement Website, will be publicly viewable and contain broad information about the Settlement, including but not limited to, copies of the Complaint filed in this matter, a copy of the Long Form Notice, Short Form Notice, FAQs, Claim Form that may be submitted online through the Settlement Website or mailed to the Settlement Administrator, the deadlines for filing a claim, objection, or exclusion requests, and the date of the Fairness Hearing. The Settlement Website is viewed as an important piece of the notice plan to Class Members. The Settlement Website will remain active until 90 days after the Effective Date.

52. “**Short Form Notice**” is the postcard notice that will be mailed to each available Settlement Class Member in substantially the same form as **Exhibit A** and as approved by the Court.

53. “**Taxes and Tax-Related Expenses**” means any and all applicable taxes, duties, and similar charges imposed by a government authority (including any estimated taxes, interest or penalties) arising in any jurisdiction, if any, with respect to the income or gains earned by or in respect of the Settlement Fund, including, without limitation, any taxes that may be imposed upon Defendant with respect to any income or gains earned by or in respect of the Settlement Fund for any period while it is held in the Settlement Fund.

54. “**Unreimbursed Economic Losses**” means out-of-pocket costs or expenditures that a Settlement Class Member actually incurred that are supported by reasonable third-party documentation. “Unreimbursed Economic Losses” include things such as losses related to fraud and identity theft, the purchase of identity protection services, credit monitoring services, or ID theft insurance, and such expenses must be fairly traceable to the Data Incident and not already reimbursed by a third party.

III. SETTLEMENT FUND

55. **Establishment of Settlement Fund.** Within thirty (30) days of the Effective Date, Defendant shall cause to be deposited the sum of \$505,000, into an account established and administered by the Settlement Administrator at a financial institution agreed upon by the Settlement Administrator, Defendant, and Class Counsel, less any amounts paid by Defendant for Notice and Administrative Expenses prior to the Effective Date. The Settlement Administrator shall provide wiring instructions and a properly completed and duly executed IRS Form W-9 to Defendant within five (5) days of the entry of the Final Approval Order. Following Defendant's payment of the Settlement Fund monies as described in this Paragraph, Defendant shall have no responsibility, financial obligation, or liability whatsoever with respect to the selection of the Settlement Fund account, investment of Settlement Fund account funds, payment of federal, state, and local income, employment, unemployment, excise, and any other Taxes or Tax-Related Expenses imposed on the Settlement Fund account or its distributions, or payment of the administrative, legal, accounting, or other costs occasioned by the use or administration of the Settlement Fund.

56. **Payment of Notice and Administration Expenses:** Any Notice and Administrative Expenses that are required to be paid prior to the Effective Date will be paid for or caused to be paid directly by Defendant within 30 days of the receipt of an invoice, W-9, and wiring/payment instructions from the Settlement Administrator. The total amount of Notice and Administrative Expenses paid prior to the Effective Date shall be treated as if paid from the Settlement Fund and shall reduce the amount that Defendant will be required to pay or cause to be paid into the Settlement Fund after the Effective Date. Any Notice and Administrative Expenses that are owed after the funding of the Settlement Fund pursuant to paragraph 55 of the Settlement Agreement shall be paid directly from the Settlement Fund.

57. **Qualified Settlement Fund.** The Parties agree that the Settlement Fund is intended to be maintained as a qualified settlement fund within the meaning of Treasury Regulation § 1.468 B-1, and that the Settlement Administrator, within the meaning of Treasury Regulation § 1.468 B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of the Settlement Fund and paying from the Settlement Fund any Taxes and Tax-Related Expenses owed with respect to the Settlement Fund. The Parties agree that the Settlement Fund shall be treated as a qualified settlement fund from the earliest date possible and agree to any relation-back election required to treat the Settlement Fund as a qualified settlement fund from the earliest date possible. Any and all funds held in the Settlement Fund shall be held in an interest-bearing account insured by the Federal Deposit Insurance Corporation. All interest on the funds in the Qualified Settlement Fund shall accrue to the benefit of the Class. 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.

58. **Custody of Settlement Fund.** The Settlement Fund shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed pursuant to this Settlement Agreement or the balance returned to those who paid the Settlement Fund in the event this Settlement Agreement is terminated in accordance with Paragraphs 86-88.

59. **Use of the Settlement Fund.** As further described in this Agreement and in Exhibit B, the Settlement Fund shall be used by the Settlement Administrator to pay for the following (although not in this order): (1) reimbursement for Unreimbursed Economic Losses; (2) Pro Rata Cash Payments; (3) Notice and Administrative Expenses; (4) Service Award payments approved by the Court; and (5) the Fee Award and Expenses awarded by the Court. 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.

60. **Taxes and Representations.** Taxes and Tax-Related Expenses relating to the Settlement Fund, if any, shall be considered Notice and Administrative Expenses and shall be timely paid by the Settlement Administrator out of the Settlement Fund without prior order of the Court. Further, the Settlement Fund shall indemnify and hold harmless the Parties and their counsel for Taxes and Tax-Related Expenses (including, without limitation, taxes payable by reason of any such indemnification payments). The Parties and their respective counsel have made no representation or warranty, 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 Participating Settlement Class Member shall be solely responsible for the federal, state, and local tax consequences to him, her, or it of the receipt of funds from the Settlement Fund pursuant to this Agreement.

IV. SETTLEMENT BENEFITS AND ADMINISTRATION

61. The Settlement Administrator will agree to make the following compensation from the Settlement Fund available to Settlement Class Members who submit valid and timely claim forms. Claims will be subject to review for completeness and plausibility by the Settlement Administrator, and Claimants will have the opportunity to seek review by the Parties' counsel, if they dispute the Settlement Administrator's initial determination.

- i. **Compensation for Unreimbursed Economic Losses:** The Settlement Administrator, from the Settlement Fund, will provide compensation, up to a total of \$10,000 per person who is a Participating Settlement Class Member, upon submission of a claim and supporting documentation, for unreimbursed economic losses incurred as a result of the Data Incident, including, without limitation, unreimbursed losses relating to fraud or identity theft; professional fees including attorneys' fees, accountants' fees, and fees for credit repair services; costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs that were incurred on or after the Data Incident through the date of claim submission; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges.

Participating Settlement Class Members with unreimbursed economic losses must submit documentation supporting their claims. This can include receipts or other documentation not "self-prepared" by the claimant that document the

costs incurred. “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support other submitted documentation.

Class Members may receive compensation for both Unreimbursed Economic Losses and Pro Rata Cash Payments.

- ii. **Pro Rata Cash Payment:** In the alternative to claiming Unreimbursed Economic Losses, Participating Settlement Class Members can elect to make a claim for a pro rata share of the Net Settlement Fund, less all valid claims for Unreimbursed Losses and Credit Monitoring. To receive this benefit, Participating Settlement Class Members must submit a valid claim form, but no documentation is required to make a claim. The amount of the Cash Payments will be increased or decreased on a *pro rata* basis, depending upon the number of valid claims filed and the amount of funds available for these payments. Class Counsel predicts the value of pro rata payments will exceed \$50 per valid claimant.
- iii. **Credit Monitoring Services:** All Participating Settlement Class Members shall be offered an opportunity to enroll in two years of Credit Monitoring Services to include credit monitoring through one national credit reporting bureau and with at least \$1,000,000 in identity theft insurance.

62. **Assessing Claims for Unreimbursed Economic Losses.** The Settlement Administrator shall verify that each person who submits a Claim Form is a Settlement Class Member. The Settlement Administrator shall have the sole discretion and authority to determine whether and to what extent documentation for unreimbursed economic losses reflect valid unreimbursed economic losses actually incurred that are fairly traceable to the Data Incident, but may consult with both Class Counsel and Defendant’s Counsel in making individual determinations. The Settlement Administrator is authorized to contact any Settlement Class Member (by e-mail, telephone, or U.S. mail) to seek clarification regarding a submitted claim prior to making a determination as to its validity.

63. **Assessing Claims for Pro Rata Cash Payments.** The Settlement Administrator shall verify that each person who submits a Claim Form is a Settlement Class Member. A Settlement Class Member shall not be required to submit any documentation or additional information in support of their claim for a Pro Rata Cash Payment. The Settlement Administrator is authorized to contact any Settlement Class Member (by e-mail, telephone, or U.S. mail) to seek clarification regarding a submitted claim prior to making a determination as to its validity. In the event of any ambiguities in the Claim Form, the Settlement Administrator must contact the Settlement Class Member prior to making a determination as to its validity and, specifically, to determine whether the Settlement Class Member wishes to file a claim for a Pro Rata Cash Payment or any other benefits made available under this Settlement Agreement.

64. **Order of Distribution of Funds.** The Settlement Administrator must use the funds available in the Net Settlement Fund (after payment of Notice and Administrative Expenses, Taxes and Tax-Related Expenses, the Fee Award and Expenses, and Service Awards) to make payments

for Approved Claims in this order: Unreimbursed Economic Losses, followed by Credit Monitoring, followed by payments for Approved Claims for Pro Rata Cash Payments.

65. **Disputes.** To the extent the Settlement Administrator determines a claim for Unreimbursed Economic Losses is deficient in whole or part, within a reasonable time of making such a determination, the Settlement Administrator shall notify the Settlement Class Member of the deficiencies and give the Settlement Class Member twenty-one (21) days to cure the deficiencies. Such notifications shall be sent via e-mail, unless the claimant did not provide an e-mail address, in which case such notifications shall be sent via U.S. mail. If the Settlement Class Member attempts to cure the deficiencies but, at the sole discretion and authority of the Settlement Administrator, fails to do so, the Settlement Administrator shall notify the Settlement Class Member of that determination within ten (10) days, which shall be final. The Settlement Administrator may consult with Class Counsel and Defendant's Counsel in making such determinations.

66. **Unclaimed Property.** No portion of the Settlement Fund shall revert or be repaid to Hafetz after the Effective Date. To the extent any monies remain in the Remainder Fund more than 150 days after the distribution of Settlement payments to the Participating Settlement Class Members, or 30 days after all reissued Settlement Checks are no longer negotiable, whichever occurs later or as otherwise agreed to by the Parties, the Remainder Funds will be sent to Legal Services of New Jersey, or as approved by the Court, as a *cy pres* distribution.

67. **Returned Checks.** For any Settlement Check returned to the Settlement Administrator as undeliverable (including, but not limited to, when the intended recipient is no longer located at the address), the Settlement Administrator shall make reasonable efforts to locate a valid address and resend the Settlement Payment within thirty (30) days after the check is returned to the Settlement Administrator as undeliverable. In attempting to locate a valid address, the Settlement Administrator is authorized to send an e-mail and/or place a telephone call to that Participating Settlement Class Member to obtain updated address information. Any replacement Settlement Checks issued to Participating Settlement Class Members shall remain valid and negotiable for sixty (60) days from the date of their issuance and may thereafter automatically be canceled if not cashed by the Participating Settlement Class Members within that time.

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

69. **Settlement Administration Fees.** The Settlement Fund amount provided by Defendant, or on behalf of Defendant, will pay the entirety of the Notice and Administrative

Expenses, including the cost of Notice. Class Counsel has solicited competitive bids for the settlement administration fees with the consent of Defendant, and the Parties agree to rely upon postcard reminder notice or email reminder notice where available and/or practicable (to the extent that a reminder notice is necessary), in order to minimize the administration costs while still providing effective notice to the Class. Settlement Administration Fees shall be paid through the Settlement Fund and are limited to the common fund amount.

70. Provided that Final Approval of this Settlement Agreement is granted by the Court without material change, material amendment, or material modification, the Settlement Fund will be used to satisfy Approved Claims for Settlement Class Members in exchange for a full, fair, and complete release of all Released Parties from Released Claims, and dismissal of the Litigation with prejudice.

71. The Settlement Fund represents the total extent of Defendant's monetary obligations under the Settlement Agreement. Defendant's contribution to the Settlement Fund shall be fixed under this Section and shall be final. Defendant shall have no obligation to make further payments into the Settlement Fund and shall have no financial responsibility or obligation relating to the Settlement beyond payment of monies into the Settlement Fund in the amount set forth in Paragraph 55 above.

72. Once a Settlement Administrator is mutually agreed to by the Parties and after the settlement is preliminarily approved by the Court, the Settlement Administrator will provide notice in a manner mutually agreed upon by the Parties, and which shall consist of direct mail notice.

73. After the Court enters an order approving the final Settlement Agreement, the Settlement Administrator shall make payments to all Participating Settlement Class Members that made a valid claim, subject to the procedure set forth herein.

74. The Parties, Class Counsel, and Defendant's Counsel shall not have any liability whatsoever with respect to (i) any act, omission or determination of the Settlement Administrator, or any of its respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes and Tax-Related Expenses.

V. ADDITIONAL SECURITY MEASURES

75. **Additional Security Measures.** Hafetz has confirmed that it has made certain changes to its information security and will attest to these changes in a confidential declaration in support of the Settlement. Costs associated with these security-related measures should be paid by Defendant separate and apart from other settlement benefits and separate and apart from the Settlement Fund.

VI. SETTLEMENT CLASS NOTICE, OPT-OUTS, AND OBJECTIONS

76. **Notice.** Within fourteen (14) days after the entry of the Preliminary Approval Order, Defendant shall provide the Settlement Class List to the Settlement Administrator. Within forty-five (45) days after the Preliminary Approval Order is entered, the Settlement Administrator shall disseminate Notice to the Settlement Class Members. Notice shall be disseminated via U.S. mail to all Settlement Class Members, to the extent mailing addresses are known. To the extent that Class Counsel believes that reminder notices should be sent to Settlement Class Members, Class Counsel may direct the Settlement Administrator to send reminder notices to Settlement Class Members, which shall be sent sixty (60) days after the Notice Date and the cost of which shall be Notice and Administrative Expenses that are paid from the Settlement Fund. The process to issue Notice as described in this Paragraph and the creation and maintenance of the Settlement Website shall constitute the “Notice Plan.”

77. **Final Approval Hearing.** The Notice must set forth the time and place of the Final Approval Hearing (subject to change) and state that any Settlement Class Member who does not file a timely and adequate objection in accordance with this Paragraph waives the right to object or to be heard at the Final Approval Hearing and shall be forever barred from making any objection to the Settlement.

78. **Opt-Outs.** The Notice shall explain the procedure for Settlement Class Members to exclude themselves or “opt-out” of the Settlement by mailing a request for exclusion to the Settlement Administrator postmarked no later than the Opt-Out Deadline. The request for exclusion must include the name of the proceeding, the individual’s full name, current address, personal signature, and the words “Request for Exclusion,” a comparable statement that the individual does not wish to participate in the Settlement, or some other clear manifestation of the intent to opt-out of the Settlement in the written communication. Each request for exclusion must request exclusion only for that one individual whose personal signature appears on the request. The Notice must state that any Settlement Class Member who does not file a timely request for exclusion in accordance with this Paragraph will lose the opportunity to exclude himself or herself from the Settlement and will be bound by the Settlement.

79. In the event that within (10) days after the Opt-Out Date as approved by the Court, there have been more than 35 timely and valid individual opt-outs submitted, Hafetz may, by notifying Class Counsel and the Court in writing, void this Agreement. If Hafetz voids the Agreement under this section, Hafetz shall be obligated to pay the Administrative Expenses incurred by the Settlement Agreement to that date for work performed in connection with the Agreement.

80. **Objections.** The Notice shall explain the procedure for Settlement Class Members to object to the Settlement or Fee and Expense Application by submitting written objections to the Court no later than the Objection Deadline. A written objection must include (i) the name of the proceedings; (ii) the Settlement Class Member’s full name, current mailing address, and telephone number; (iii) a statement of the specific grounds for the objection, as well as any documents supporting the objection and a description of whether the objection applies only to the Settlement Class Member, a subset of the Settlement Class, or the entire Settlement Class; (iv) the identity of any attorneys representing the objector (if any); (v) a statement regarding whether the Settlement

Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; (vi) a description and/or copies of evidence that may be introduced at fairness hearing; (vii) a list of proceedings in which the Settlement Class Member has submitted an objection during the past five years; and (viii) the signature of the Settlement Class Member or the Settlement Class Member's attorney.

VII. PRELIMINARY APPROVAL, FINAL APPROVAL, AND JURISDICTION

81. **Certification of the Settlement Class.** For purposes of this Settlement only, the Parties stipulate to the certification of the Settlement Class, which is contingent upon both the Court entering the Final Approval Order of this Settlement and the occurrence of the Effective Date.

82. **Preliminary Approval.** Following execution of this Agreement, Class Counsel shall file a motion for preliminary approval of the Settlement, in a form agreeable to the Parties, within thirty (30) days thereof or a date thereafter that is agreeable to the Parties and the Court or that is otherwise ordered by the Court.

83. **Final Approval.** Class Counsel shall move the Court for a Final Approval Order of this Settlement, to be issued following the Final Approval Hearing; within a reasonable time after the Notice Deadline, Objection Deadline, and Opt-Out Deadline; and at least 90 days after the Settlement Administrator notifies the appropriate government officials of this Settlement Agreement pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

84. **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 retain jurisdiction with respect to the administration, consummation and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Plan and the Settlement Administrator. As part of its agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

VIII. MODIFICATION AND TERMINATION

85. **Modification.** The terms and provisions of this Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however, that, after entry of the Preliminary Approval Order, the Parties may, by written agreement, effect such amendments, modifications, or expansions of this Agreement and its implementing documents (including all exhibits hereto) without further notice to the Settlement Class or approval by the Court if such changes are consistent with the Court's Preliminary Approval Order and do not materially alter, reduce, or limit the rights of Settlement Class Members under this Agreement.

86. **Settlement Not Approved.** If: (1) the Court does not issue the Preliminary Approval Order or Final Approval Order; (2) the Effective Date does not occur; or (3) the Final

Approval Order is modified or reversed in any material respect by any appellate or other court, 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 (7) days written notice to the other Party. For avoidance of any doubt, neither Party may terminate the Agreement under this provision while an appeal from an order granting approval of the Settlement is pending.

87. **Discretionary Termination.** If more than 25 members of the Settlement Class exclude themselves from the settlement (i.e., opt-out), Defendant, in its sole discretion, may terminate this Settlement Agreement. Defendant will bear all costs for which it is responsible under this settlement through the date of termination, including all costs and fees then due and owing to the Settlement Administrator. For the avoidance of doubt, Defendant will not be obligated to pay attorneys' fees and costs or service award if Defendant terminates the settlement under this provision.

88. **Effect of Termination.** In the event of a termination, this Agreement and the Settlement shall be considered null and void; all of the Parties' obligations under the Agreement shall cease to be of any force and effect and the Parties shall return to the status quo ante in the Litigation as if the Parties had not entered into this Agreement or the Settlement. 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: (a) the fact that Defendant did not oppose certification of a class under the Settlement shall not be used or cited thereafter by any person or entity, including in a contested proceeding relating to class certification and (b) in the event of such a termination, all of the Parties' respective pre-Settlement claims and defenses will be preserved.

IX. RELEASES

89. Upon Final Approval of this Settlement Agreement, Releasors release, acquit, and forever discharge Defendant and each of its present and former parents, subsidiaries, divisions, affiliates, predecessors, successors, and assigns, Board of Trustees, and the present and former directors, officers, employees, agents, insurers, shareholders, attorneys, advisors, consultants, representatives, partners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, and the predecessors, successors, and assigns of each of them as well as any covered entities associated with the Data Incident ("Released Parties") from all liabilities, rights, claims, actions, causes of action, demands, damages, penalties, costs, attorneys' fees, losses, and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, that result from, arise out of, are based upon, or relate to the Data Incident, and conduct that was alleged or could have been alleged in the Litigation, including, without limitation, any claims, actions, causes of action, demands, damages, penalties, losses, or remedies relating to, based upon, resulting from, or arising out of the Data Incident (the

“Released Claims”), provided that nothing in this Release is intended to, does or shall be deemed to release any claims not arising out of, based upon, resulting from, or related to the Data Incident.

90. The Released Claims include the release of Unknown Claims. “Unknown Claims” means claims that could have been raised in the Action and claims Releasing Parties do not know or suspect to exist, which, if known by him, her or it, might affect his, her or its agreement to release the Released Parties or the Released Claims or might affect his, her or its decision to agree, object or not to object to the Settlement. Upon the Effective Date, the Releasing Parties shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides as follows:

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.

Upon the Effective Date, each Releasing Party shall be deemed to have, and shall have, waived any and all provisions, rights, and benefits conferred by any law of any state, the District of Columbia or territory of the United States, by federal law, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to Section 1542 of the California Civil Code. The Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Released Claims or relation of the Released Parties thereto, but that it is their intention to finally and forever settle and release the Released Claims, including but not limited to any Unknown Claims they may have, as that term is defined in this Paragraph. The Parties acknowledge, and the Released Parties shall be deemed by operation of the Agreement to have acknowledged, that the foregoing waiver is a material term of the Agreement. Settlement Class Representative and Class Counsel acknowledge, and each Participating Settlement Class Member by operation of law shall be deemed to have acknowledged, that the inclusion of unknown claims in the Release was separately bargained for and was a key element of the Settlement Agreement.

91. Each Releasor waives any and all claims, defenses, rights, and benefits that may be derived from the provisions of applicable law in any jurisdiction that, absent such waiver, may limit the extent or effect of the release contained in this Settlement Agreement.

92. **Mutual Understanding.** The Parties understand that if the facts upon which this Agreement is based are found hereafter to be different from the facts now believed to be true, each Party expressly assumes the risk of such possible difference in facts, and agrees that this Agreement, including the releases contained herein, shall remain effective notwithstanding such difference in facts. The Parties agree that in entering this Agreement, it is understood and agreed that each Party relies wholly upon its own judgment, belief, and knowledge and that each Party does not rely on inducements, promises, or representations made by anyone other than those embodied herein.

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

94. **Bar to Future Suits.** Upon entry of the Final Approval Order, Releasors shall be enjoined from prosecuting any claim they have released in the preceding paragraphs in any proceeding against Defendant or based on any actions taken by any of the Released Parties that are authorized or required by this Agreement or by the Final Approval Order. Likewise, Defendant and its representatives, officers, agents, directors, principals, affiliates, employees, insurers, and attorneys shall be enjoined from prosecuting any claim they have released in the preceding paragraphs in any proceeding against Settlement Class Representative and Class Counsel or based on any actions taken by Settlement Class Representative and Class Counsel that are authorized or required by this Agreement or by the Final Approval Order. It is further agreed that the Settlement may be pleaded as a complete defense to any proceeding subject to this section.

X. SERVICE AWARD PAYMENTS

95. **Service Award Payments.** At least fourteen (14) days before the Opt-Out and Objection Deadlines, Class Counsel will file a Fee Application that will include a request for Service Award payments for the Settlement Class Representative in recognition for his contributions to this Litigation not to exceed \$5,000. The Settlement Administrator shall make the Service Award payments to the Settlement Class Representative from the Settlement Fund. Such Service Award payment shall be paid by the Settlement Administrator, in the amount approved by the Court, no later than ten (10) days after the Effective Date.

96. **No Effect on Agreement.** In the event the Court declines to approve, in whole or in part, the payment of Service Awards in the amount requested, the remaining provisions of this Agreement shall remain in full force and effect. No decision by the Court, or modification or reversal or appeal of any decision by the Court, concerning the amount of the Service Award shall constitute grounds for termination of this Agreement.

XI. ATTORNEYS' FEES, COSTS, EXPENSES

97. **Attorneys' Fees and Costs and Expenses.** At least fourteen (14) days before the Opt-Out and Objection Deadlines, Class Counsel will file a Fee and Expense Application for an award of attorneys' fees to be paid from the Settlement Fund not to exceed 33.33% of the value of the Settlement, or \$168,316.50. Class Counsel will also seek up to \$20,000 in reasonable expenses.

Fee Award and Expenses (plus any interest accrued thereon) shall be paid by the Settlement Administrator, in the amount approved by the Court, no later than seven (7) days after the Effective Date. Defendant's obligations with respect to the Court-approved attorneys' fees and expenses shall be fully satisfied upon receipt of the funds into the Settlement Fund. Defendant shall have no responsibility for, interest in, or liability whatsoever with respect to any distribution or allocation of attorneys' fees or expenses. Nor shall Defendant be responsible for any tax obligations or payments associated with the amount paid into the Settlement Fund. To the extent the Effective Date does not occur, Defendant shall have no obligation to pay any attorneys' fees or expenses. The amount Class Counsel may seek in attorneys' fees and expenses was negotiated after the primary terms of the Settlement were negotiated.

98. **No Effect on Agreement.** In the event the Court declines to approve, in whole or in part, the payment of the Fee Award and Expenses in the amount requested, the remaining provisions of this Agreement shall remain in full force and effect. No decision by the Court, or modification or reversal or appeal of any decision by the Court, concerning the amount of the Fee Award and Expenses shall constitute grounds for termination of this Agreement.

XII. NO ADMISSION OF LIABILITY

99. **No Admission of Liability.** The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever.

100. **No Use of Agreement.** Neither the Settlement Agreement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (i) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by Plaintiff; or (ii) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission by Defendant in the Litigation or in any proceeding in any court, administrative agency or other tribunal. This Agreement shall not be admissible in any action or proceeding for any reason, other than an action to enforce the terms hereof.

XIII. MISCELLANEOUS

101. **Publicity.** The Parties agree that they shall not publicize this Settlement, Settlement Fund or Settlement Payment, the amount or sum of individual Settlement Class Representative's or Settlement Class Members' shares or the events and negotiations surrounding this Agreement in any way except by joint pleadings or unopposed motions filed with the Court, if required. Subject to prior approval by Defendant's Releasees, which shall not be unreasonably withheld, Class Counsel may post information on their law firm websites about the Settlement that is consistent with the notice program. If any Party believes a statement is made in violation of this provision, the Parties shall meet-and-confer informally in an effort to resolve the dispute. If the dispute cannot be resolved informally, it shall be submitted to the Court for resolution.

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

103. **Entire Agreement.** This Agreement, including all exhibits hereto, shall constitute the entire Agreement among the Parties with regard to the subject matter hereof and shall supersede any previous agreements, representations, communications and understandings among the Parties. This Agreement may not be changed, modified, or amended except in writing signed by all Parties, subject to Court approval. The Parties contemplate that, subject to Court approval or without such approval where legally permissible and where such changes are non-material, the exhibits to this Agreement may be modified by subsequent agreement of counsel for the Parties prior to dissemination of the Settlement Class Notice to the Settlement Class.

104. **Resolution.** The Parties intend this Agreement to be a final and complete resolution of all disputes between them respect to the Litigation. The Parties each agree that the Settlement and this Agreement were negotiated in good faith and at arm's-length and reflects a Settlement that was reached voluntarily after consultation with legal counsel of their choice.

105. **Other Litigation.** Plaintiff and Class Counsel will not cooperate with or encourage any action or filing of claims against Defendant or any Released Parties related to any of the allegations or claims alleged in the Litigation.

106. **Deadlines.** If any of the dates or deadlines specified herein falls on a weekend or legal holiday, including without limitation the Notice Deadline, the applicable date or deadline shall fall on the next business day. All reference to "days" in this agreement shall refer to calendar days unless otherwise specified.

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

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

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

110. **Governing Law.** The Agreement shall be construed in accordance with, and be governed by, the laws of the State of New Jersey, without regard to the principles thereof regarding choice of law.

111. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all signatories do not sign the same counterparts. Original signatures are not required. Any signature submitted electronically through e-mail of an Adobe PDF shall be deemed an original.

112. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the heirs, successors, assigns, executors, and legal representatives of each of the Parties hereto.

113. **Severability.** The waiver or breach by one Party of any provision of this Agreement shall not be deemed a waiver or breach of any other provision of this Agreement.

114. **Headings.** The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

115. **Singular and Plural.** As used in this Agreement, all references to the plural shall also mean the singular and to the singular shall also mean the plural whenever the context so indicates.

116. **Taxability.** Defendant does not make and has not made any representations regarding the taxability of any benefit, fee award, service award, and/or any other payments made pursuant to this Agreement. Plaintiff and Class Counsel (on behalf of themselves and the Settlement Class Members) represent that that they have not relied upon any representation of the Defendant or its attorneys or the Settlement Administrator on the subject of taxability of any consideration provided under this Agreement. Plaintiff and Class Counsel (on behalf of themselves and the Settlement Class Members) understand and expressly agree that any income or other tax, including any interest, penalties or other payment obligations ultimately determined to be payable from or with respect to any benefit, fee award, service award, and/or any other payments made pursuant to this Agreement, as well as any state or federal reporting obligations imposed on them arising therefrom or attributable thereto, shall not be Defendant's responsibility.

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

Raina Borrelli
STRAUSS BORRELLI PLLC
One Magnificent Mile
980 N Michigan Avenue, Suite 1610
Chicago IL, 60611
Telephone: (872) 263-1100
Facsimile: (872) 263-1109
Email: raina@straussborrelli.com

All notices to Defendant provided for herein, shall be sent by overnight mail and email to:

Eric R. Fish
BAKER & HOSTETLER LLP
45 Rockefeller Plaza
New York, NY 10111
Telephone: (212) 589-4647

Facsimile: (212) 589-4201
Email: efish@bakerlaw.com

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

118. **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 or Parties on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

119. **Confidentiality of Discovery Material.** The Parties, Counsel for the Parties, and any retained or consulting experts, agree that each of them remain subject to any confidentiality agreements entered into prior to this Agreement related to or arising from the Litigation.

120. **No Government Third-Party Rights or Beneficiaries.** No government agency or official can claim any rights under this Agreement or Settlement.

121. **No Collateral Attack.** The Settlement Agreement shall not be subject to collateral attack, including by any Settlement Class Member or any recipient of notices of the Settlement after issuance of the Final Approval Order.

122. **Survival.** The Parties agree that the terms set forth in this Settlement Agreement shall survive the signing of the Settlement Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused the Settlement Agreement to be executed,

/s/ 
Plaintiff Eugene Wendelken

/s/ _____
Defendant Hafetz and Associates LLC

Dated:

Dated: 02 / 19 / 2025

/s/ _____

/s/ 

Eric R. Fish
BAKER & HOSTETLER LLP
45 Rockefeller Plaza
New York, NY 10111
Email: efish@bakerlaw.com

Patrick Howard
**SALTZ MONGELUZZI BARRETT &
BENDESKY, P.C.**
8000 Sagemore Drive, Suite 8303
Marlton, NJ 08053

Facsimile: (212) 589-4201
Email: efish@bakerlaw.com

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

118. **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 or Parties on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

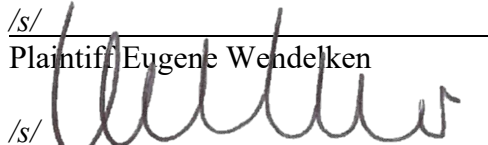
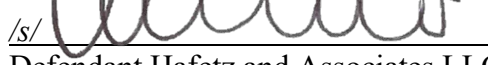
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IN WITNESS WHEREOF, the Parties hereto have caused the Settlement Agreement to be executed,

/s/ 
Plaintiff Eugene Wendelken
/s/ 
Defendant Hafetz and Associates LLC
Veronica Moo, Vice President

Dated: February 24, 2025

Dated:

/s/ *Eric R. Fish*
Eric R. Fish
BAKER & HOSTETLER LLP
45 Rockefeller Plaza
New York, NY 10111
Email: efish@bakerlaw.com

/s/ _____
Patrick Howard
**SALTZ MONGELUZZI BARRETT &
BENDESKY, P.C.**
8000 Sagamore Drive, Suite 8303
Marlton, NJ 08053

*Counsel for Defendant Hafetz and Associates
LLC*

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Facsimile: (872) 263-1109
sam@straussborrelli.com
raina@straussborrelli.com

*Counsel for Plaintiff and Proposed Settlement
Class Counsel*

SETTLEMENT TIMELINE

<u>Grant of Preliminary Approval</u>	
Settlement Administrator provides W-9 to Hafetz	5 days after Preliminary Approval Order
Hafetz provides list of Settlement Class Members to the Settlement Administrator	14 days after Preliminary Approval
Hafetz to Provide CAFA Notice Required by 28 U.S.C. § 1715(b)	Within 10 days of filing of the Preliminary Approval Motion
Long Form and Short Form Notices Posted on the Settlement Website	No later than 28 days after Preliminary Approval, or prior to the Settlement Website going live
Notice Date	45 days after Preliminary Approval.
Reminder Notice	60 days after Notice Date (if needed)
Class Counsel's Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Class Representative Service Award	14 days before Objection and Opt-Out Deadlines
Objection Deadline	60 days after Notice Date
Opt-Out Deadline	60 days after Notice Date
Claims Deadline	90 days after Notice Date
Settlement Administrator Provide List of Objections/Opt-Outs to Counsel for the Parties	70 days after Notice Date
Initially Approved Claims List	35 days after Claims Deadline
Initially Rejected Claims List	35 days after Claims Deadline
Parties' Challenge to Any Claims	35 days from Initially Approved Claims List
<u>Final Approval Hearing</u>	150 days after Preliminary Approval Order (at minimum)
Motion for Final Approval	14 days before Final Approval Hearing Date

Settlement Administrator Provides Court Notice of Opt-Outs and/or Objections	14 days before Final Approval Hearing Date
<u>Final Approval</u>	
Payment of Attorneys' Fees and Expenses Class Representative Service Award	7 days after Effective Date
Settlement Website Deactivation	90 days after Effective Date