

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

IN RE: ORRICK, HERRINGTON &  
SUTCLIFFE LLP DATA BREACH  
LITIGATION

Case No.: 3:23-cv-04089-SI

This Document Relates To: All Actions

**CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release is made as of April 10, 2024, by and between, as hereinafter defined, (a) the Settlement Class Representatives,<sup>1</sup> on behalf of themselves and the Settlement Class, and (b) Orrick, Herrington & Sutcliffe LLP (“Orrick”). This Agreement fully and finally compromises and settles any and all claims that are, were, or could have been asserted in the litigation styled *In Re: Orrick, Herrington & Sutcliffe LLP Data Breach Litigation*, Case No. 3:23-cv-4089-SI pending in the Northern District of California, as set forth herein.

## **1. Recitals**

- 1.1. On or around March 2023, Orrick detected and responded to a third-party criminal attack on its network (i.e., the Data Breach).
- 1.2. On August 11, 2023, Dennis Werley filed a class action complaint against Orrick in the United States District Court for the Northern District of California, asserting claims arising out of the Data Breach.
- 1.3. On August 28, 2023, Robert Jensen filed a class action complaint against Orrick in the United States District Court for the Northern District of California, asserting claims arising out of the Data Breach.
- 1.4. On December 1, 2023, Robert Bass and Jody Frease filed a class action complaint against Orrick in the United States District Court for the Northern District of California, asserting claims arising out of the Data Breach
- 1.5. On December 4, 2023, Kimberly L. McCauley filed a class action complaint against Orrick in the United States District Court for the Northern District of California, asserting claims arising out of the Data Breach.

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<sup>1</sup> All capitalized terms are defined in Section 2 below.

- 1.6. On December 18, 2023, the Court consolidated the four actions for all purposes into the *In re: Orrick, Herrington & Sutcliffe LLP Data Breach Litigation*, Case No. 3:23-cv-04089 (N.D. Cal.) before the Honorable Susan Illston, U.S.D.J.
- 1.7. On January 5, 2024, Plaintiffs Dennis R. Werley, Robert D. Jensen, Rachel Mazanec, Scott Morrissett, Kimberly L. McCauley, Robert Bass, Jody Frease, Joby Childress, and Cathi Soule filed their Consolidated Complaint.
- 1.8. Beginning September 2023 and continuing through December 2023, the Parties exchanged information on a confidential basis and engaged in two full-day mediation sessions before Mr. Antonio Piazza to assess whether a resolution could be reached.
- 1.9. Orrick denies all material allegations of the Consolidated Complaint and specifically denies that it failed to properly protect any personal data, had inadequate data security, was unjustly enriched by the use of personal data of the impacted individuals, breached any fiduciary duty or implied contract, or violated state consumer statutes and other laws.
- 1.10. The Parties recognize the expense and length of proceedings necessary to continue litigation of the Action through further motion practice, discovery, trial, and any possible appeals. The Parties have considered the uncertainty and risk of the outcome of further litigation, and the expense, difficulties, and delays inherent in such litigation. The Parties are also aware of the burdens of proof necessary to establish liability and damages for the claims alleged in the Action and the defenses thereto. The Parties have determined that the settlement set forth in this Agreement is in their respective best interests and that the Agreement is fair, reasonable, and adequate. The Parties have therefore agreed to settle the claims asserted in the Action pursuant to the terms and provisions of this Agreement, subject to Court approval.

1.11. It is the intention of the Parties to resolve the disputes and claims which they have between them on the terms set forth below.

NOW, THEREFORE, in consideration of the promises, covenants, and agreements herein described and for other good and valuable consideration acknowledged by each of the Parties to be satisfactory and adequate, and intending to be legally bound, the Parties do hereby mutually agree as follows:

## **2. Definitions**

As used in all parts of this Agreement, including the recitals above, and the exhibits hereto, the following terms have the meanings specified below:

- 2.1. “Action” means the four actions filed in the Court and consolidated in the class action captioned *In Re: Orrick, Herrington & Sutcliffe LLP Data Breach Litigation*, Case No. 3:23-cv-4089-SI (N.D. Cal.).
- 2.2. “Administration and Notice Costs” means all reasonable costs and expenses incurred by the Settlement Administrator in carrying out its duties under this Agreement, including all costs and expenses incurred in connection with implementing and executing the Notice Plan.
- 2.3. “Agreement” or “Settlement Agreement” means this Class Action Settlement Agreement and Release and all of its attachments and exhibits, which the Parties understand and agree set forth all material terms and conditions of the Settlement of the Action between them and which is subject to approval by the Court.
- 2.4. “Approved Claims” means Settlement Claims completed using a Claim Form and submitted by the Claims Deadline, and found to be valid and in an amount approved by the Settlement Administrator.

- 2.5. “Attorneys’ Fees” means the attorneys’ fees that Class Counsel request the Court to approve for payment from the Settlement Fund as compensation for work in prosecuting and settling the Action.
- 2.6. “California Subclass” means members of the Settlement Class who were residents of the State of California any time between November 19, 2022 and March 13, 2023.
- 2.7. “California Subclass Members” means any person within the definition of California Subclass.
- 2.8. “Consolidated Complaint” means the Consolidated Class Action Complaint, at Docket Entry Number 53, filed in the Action on January 5, 2024.
- 2.9. “Business Days” means Monday, Tuesday, Wednesday, Thursday, and Friday, excluding holidays observed by the U.S. federal government.
- 2.10. “Claims Deadline” means the deadline by which Settlement Class Members must submit any Settlement Claims. Settlement Claims submitted after the Claims Deadline will not be timely and will not qualify for approval and will be rejected. The Claims Deadline shall be set by the Court in the Preliminary Approval Order and shall be ninety (90) days after the Notice Date.
- 2.11. “Claim Form” shall mean the claim form attached as Exhibit A, or a claim form approved by the Court that is substantially similar to Exhibit A.
- 2.12. “Class Counsel” means William B. Federman of Federman & Sherwood, Robert Green of Green & Noblin, P.C. Amber L. Schubert of Schubert Jonckheer & Kolbe LLP, and M. Anderson Berry of Clayco C. Arnold APC.
- 2.13. “Court” means the United States District Court for the Northern District of California, where the Action is pending.

- 2.14. “Data Breach” means the unauthorized third-party access to Orrick’s network that was detected by Orrick on or around March 13, 2023 in which an unauthorized third-party obtained files containing personal information, and which is the subject of the Action.
- 2.15. “Defendant” or “Orrick” means Orrick, Herrington & Sutcliffe LLP.
- 2.16. “Effective Date” means the date when all of the conditions set forth in Section 6.1 of this Agreement have occurred; provided, however, that Orrick has not exercised its right of termination under Section 6.2 or Section 6.3 of this Agreement.
- 2.17. “Entity” means any corporation, partnership, limited liability company, association, trust, or other organization of any type.
- 2.18. “Expenses” means the reasonable costs and expenses incurred in litigating the Action that Class Counsel request the Court to approve for payment from the Settlement Fund.
- 2.19. “Final Approval” means entry of a Final Approval Order and Judgment.
- 2.20. “Final Approval Hearing” means the hearing to be conducted before the Court to determine the fairness, adequacy, and reasonableness of the Agreement pursuant to Federal Rule of Civil Procedure 23 and whether to enter a Final Approval Order and Judgment. The Final Approval Order and Judgment shall be entered no earlier than ninety (90) days after the CAFA notices are mailed to ensure compliance with 28 U.S.C. § 1715.
- 2.21. “Final Approval Order and Judgment” means an order and judgment that the Court enters after the Final Approval Hearing, which, among other things, finally approves the Agreement, finally certifies the Settlement Class for settlement purposes, dismisses all claims in the Action against Defendant with prejudice, releases the Released Parties from the Released Claims as set forth herein, bars and enjoins the Releasing Parties from asserting any of the Released Claims, including during the pendency of any appeal from

the Final Approval Order and Judgment, includes as an exhibit a list of individuals who timely and validly opted out of the Settlement, satisfies the settlement-related provisions of Federal Rule of Civil Procedure 23 in all respects, and in the form of or materially in the form of the proposed Final Approval Order and Judgment attached as Exhibit B.

- 2.22. “Judgment” means the Final Approval Order and Judgment.
- 2.23. “Lead Class Counsel” means William B. Federman of Federman & Sherwood.
- 2.24. “Long Notice” means the long form notice attached as Exhibit C or substantially similar to the long form notice attached as Exhibit C.
- 2.25. “Orrick’s Counsel” means the undersigned attorneys for Orrick from the law firm of Alston & Bird LLP.
- 2.26. “Notice Date” means the date by which notice will be fully commenced, which shall be sixty (60) days after the Court enters the Preliminary Approval Order.
- 2.27. “Notice Plan” means the Settlement notice program attached as Exhibit D to be presented to the Court for approval in connection with a motion seeking a Preliminary Approval Order.
- 2.28. “Objection Deadline” means the deadline by which written objections to the Settlement must be filed in the Action’s electronic docket or postmarked as set forth in the Preliminary Approval Order. Such deadline shall be sixty (60) days after the Notice Date.
- 2.29. “Opt-Out Deadline” means the deadline by which written requests for exclusion from the Settlement must be submitted online or postmarked as set forth in the Preliminary Approval Order. Such deadline shall be sixty (60) days after the Notice Date.
- 2.30. “Parties” means the Settlement Class Representatives, on behalf of themselves and the Settlement Class, and Orrick.

- 2.31. “Parties’ Counsel” means Class Counsel and Orrick’s Counsel.
- 2.32. “Personal Information” is intended to be broadly construed and includes any information that could be used to identify, locate, or contact a person (whether on its own or in combination with other information). The term Personal Information also includes, without limitation, name, address, date of birth, Social Security number, health information, and any and all other personally identifiable information. For the avoidance of doubt, the term Personal Information includes all information compromised as a result of the Data Breach.
- 2.33. “Preliminary Approval Order” means the Court’s order preliminarily approving the Settlement Agreement and, among other things, ordering that notice be provided to the Settlement Class, and in the form of or materially in the form of the proposed Preliminary Approval Order attached as Exhibit E.
- 2.34. “Released Claims” means any and all claims, defenses, demands, actions, causes of action, rights, offsets, setoffs, suits, remedies, damages, lawsuits, costs, relief for contempt, losses, attorneys’ fees, expenses, or liabilities of any kind whatsoever, in law or in equity, for any relief whatsoever, including monetary sanctions or damages for contempt, injunctive or declaratory relief, rescission, general, compensatory, special, liquidated, indirect, incidental, consequential, or punitive damages, as well as any and all claims for treble damages, penalties, interest, attorneys’ fees, costs, or expenses, whether a known or Unknown Claim, suspected or unsuspected, existing or potential, contingent or vested, accrued or not accrued, liquidated or unliquidated, matured or unmatured, that in any way concern, arise out of, or relate to the Data Breach, any legal, factual, or other



allegations in the Action, or any theories of recovery that were, or could have been, raised at any point in the Action.

2.34.1. For the avoidance of doubt, Released Claims are to be construed broadly and include, without limitation, any claims that a Releasing Party may have under the law of any jurisdiction, including, without limitation, those arising under state or federal law of the United States (including, without limitation, any causes of action under the California Consumer Privacy Act, Cal. Civ. Code §§ 1798.100 *et seq.* and any similar statutes in effect in the United States or in any states in the United States); causes of action under the common or civil laws of any state in the United States, including but not limited to: unjust enrichment, negligence, bailment, conversion, negligence *per se*, breach of contract, breach of implied contract, breach of fiduciary duty, breach of implied covenant of good faith and fair dealing, misrepresentation (whether fraudulent, negligent, or innocent), fraudulent concealment or nondisclosure, invasion of privacy, public disclosure of private facts, and misappropriation of likeness and identity; any causes of action based on privacy rights provided for under the constitutions of the United States or of any states in the United States; any statutory claims under state or federal law; and also including, but not limited to, any and all claims in any state or federal court of the United States, for damages, injunctive relief, restitution, disgorgement, declaratory relief, equitable relief, attorneys' fees and expenses, pre-judgment interest, credit or financial account monitoring services, identity theft insurance, the creation of a fund for future damages, statutory penalties, restitution, the appointment of a receiver, and any other form of relief.

2.35. "Released Parties" means:

- 2.35.1. Orrick, and its current and former partners, divisions, and affiliated companies, as well as these entities' respective predecessors, successors, assigns, directors, officers, employees, agents, vendors, insurers, reinsurers, shareholders, attorneys, advisors, consultants, representatives, partners, joint venturers, contractors, wholesalers, resellers, distributors, service providers, and retailers; *and*
- 2.35.2. All Entities, including former and current Orrick clients, whose information was accessed, compromised, or impacted by the Data Breach, as well as those Entities' current and former parents, subsidiaries, divisions, and affiliated companies, whether indirect or direct, as well as directors, officers, agents, vendors, insurers, reinsurers, shareholders, attorneys, advisors, consultants, representatives, and contractors. Released Parties expressly include, but are not limited to, all Entities whose information was accessed, compromised, or impacted by the Data Breach who are identified in any notice of Settlement sent to Settlement Class Members. For the avoidance of doubt, the Released Parties also include the business associates and/or covered entities who were the data owners of the information accessed, compromised, or impacted by the Data Breach. It is the Parties' intent that all Entities that are Released Parties benefit from the Agreement and are entitled to enforce the Agreement fully and directly, including without limitation the Agreement's releases in Section 14.
- 2.36. "Releasing Parties" means the Settlement Class Representatives and all Settlement Class Members who do not timely and validly opt out of the Settlement.
- 2.37. "Service Awards" means any payments made, subject to Court approval, to Settlement Class Representatives, which shall be paid from the Settlement Fund.

- 2.38. “Settlement” means the settlement of the Action by and between the Parties, and the terms and conditions thereof as stated in this Agreement.
- 2.39. “Settlement Administrator” means KCC Class Action Services LLC (“KCC”). A different Settlement Administrator may be substituted if approved by order of the Court.
- 2.40. “Settlement Claim” means a claim or request for settlement benefits as provided for in this Settlement Agreement.
- 2.41. “Settlement Class” means all residents of the United States who were sent notice that their personal information was accessed, stolen, or compromised as a result of the Data Breach, including the California Subclass. The Settlement Class specifically excludes: (i) Orrick, any Entity in which Orrick has a controlling interest, and Orrick’s partners, officers, directors, legal representatives, successors, subsidiaries, and assigns; (ii) any judge, justice, or judicial officer presiding over the Action and the members of their immediate families and judicial staff; and (iii) any individual who timely and validly opts out of the Settlement.
- 2.42. “Settlement Class Member” means any person within the definition of Settlement Class.
- 2.43. “Settlement Class Representatives” means Plaintiffs Dennis Werley, Robert Jensen, Rachel Mazanec, Scott Morrissett, Robert Bass, Jody Frease, Kimberly L. McCauley, Joby Childress, and Cathi Soule.
- 2.44. “Settlement Fund” means the eight million United States Dollars (\$8,000,000.00) that Orrick shall cause to be paid pursuant to Section 3 of this Agreement.
- 2.45. “Settlement Fund Account” means the account described in Section 4 of this Agreement.
- 2.46. “Short Notice” means the short form notice attached as Exhibit F or substantially similar to the short form notice attached as Exhibit F.

2.47. “Taxes” means (i) any applicable taxes, duties, and similar charges imposed by a government authority (including any estimated taxes, interest, or penalties) arising in any jurisdiction 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 the Parties or the Parties’ Counsel with respect to any income or gains earned by or in respect of the Settlement Fund; (ii) any other taxes, duties, and similar charges imposed by a government authority (including any estimated taxes, interest, or penalties) relating to the Settlement Fund that the Settlement Administrator determines are or will become due and owing, if any; and (iii) any and all expenses, liabilities, and costs incurred in connection with the taxation of the Settlement Fund (including without limitation, expenses of tax attorneys and accountants).

2.48. “Unknown Claims” means any and all Released Claims that any Settlement Class Representative or Settlement Class Member does not know or suspect to exist in his or her favor as of the Effective Date and which, if known by him or her, might have affected his or her decision(s) with respect to the Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, Settlement Class Representatives and Settlement Class Members shall have waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, the District of Columbia, or principle of common law or otherwise, which includes or is similar, comparable, or equivalent to Cal. Civ. Code § 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 Settlement Class Representatives and Class Counsel acknowledge, and each Settlement Class Member by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Claims was separately bargained for and was a key element of the Settlement Agreement.

**3. Settlement Fund**

- 3.1. Orrick agrees to make or cause to be made a non-reversionary settlement payment of eight million United States Dollars (\$8,000,000.00) and deposit that settlement payment into the Settlement Fund Account within twenty (20) Business Days of the Effective Date of the Settlement.
- 3.2. The Settlement Fund shall be used to pay for (i) Administration and Notice Costs; (ii) Service Awards approved by the Court; (iii) Attorneys’ Fees approved by the Court; (iv) Expenses approved by the Court; and (v) all Approved Claims. In no event shall Orrick be obligated to pay more than eight million United States Dollars (\$8,000,000.00) in connection with the Settlement of the Action.
- 3.3. Class Counsel and/or the Settlement Administrator shall timely furnish to Orrick any required account information, wiring instructions, or necessary forms (including a properly completed and signed IRS Form W-9 that includes the employer identification number for the Settlement Fund Account) before the deadline for making the settlement payment set forth in Section 3.1.

**4. Settlement Fund Account**

- 4.1. The Settlement Fund monies shall be held in the Settlement Fund Account, which shall be established and maintained by the Settlement Administrator.

- 4.2. All funds held in the Settlement Fund Account shall be deemed to be in the custody of the Court until such time as the funds shall be disbursed pursuant to this Agreement or further order of the Court.
- 4.3. No amounts may be withdrawn from the Settlement Fund Account unless (i) authorized by this Agreement; (ii) authorized by the Notice Plan approved by the Court; or (iii) otherwise approved by the Court.
- 4.4. The Parties agree that the Settlement Fund Account is intended to constitute a “qualified settlement fund” within the meaning of Treasury Regulation § 1.468B-1, *et seq.*, and that the Settlement Administrator shall be the “administrator” within the meaning of Treasury Regulation § 1.468B-2(k)(3). The Parties further agree that the Settlement Fund Account 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 Account as a qualified settlement fund from the earliest date possible.
- 4.5. Upon or before establishment of the Settlement Fund Account, the Settlement Administrator shall apply for an employer identification number for the Settlement Fund Account utilizing IRS Form SS-4 and in accordance with Treasury Regulation § 1.468B-2(k)(4), and shall provide Orrick with that employer identification number on a properly completed and signed IRS Form W-9.
- 4.6. The Settlement Administrator shall file or cause to be filed, on behalf of the Settlement Fund Account, all required federal, state, and local tax returns, information returns, including, but not limited to, any Form 1099-series return, and tax withholdings statements, in accordance with the provisions of Treasury Regulation § 1.468B-2(k)(1) and Treasury Regulation § 1.468B-2(1)(2). Any contract, agreement, or understanding

with the Settlement Administrator relating to the Settlement Fund Account shall require the Settlement Administrator or its agent to file or cause to be filed, on behalf of the Settlement Fund Account, all required federal, state, and local tax returns, information returns, including, but not limited to any Form 1099-series return, and tax withholdings statements, in accordance with the provisions of Treasury Regulation § 1.468B-2(k)(1) and Treasury Regulation § 1.468B-2(1)(2). The Settlement Administrator may, if necessary, secure the advice of a certified public accounting firm in connection with its duties and tax issues arising hereunder the costs of which shall be considered Administration and Notice Costs and paid from the Settlement Fund.

- 4.7. All Taxes relating to the Settlement Fund Account shall be paid out of the Settlement Fund Account, shall be considered to be an Administration and Notice Cost of the Settlement, and shall be timely paid by the Settlement Administrator without prior order of the Court. Further, the Settlement Fund Account shall indemnify and hold harmless the Parties and the Parties' Counsel for Taxes (including, without limitation, taxes payable by reason of any such indemnification payments).
- 4.8. Following its payment of the Settlement Fund monies as described in Section 3.1 of this Agreement, Orrick shall have no responsibility, financial obligation, or liability whatsoever with respect to 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, penalties, interest, or other charges related to Taxes imposed on the Settlement Fund Account or its disbursements, or payment of the administrative, legal, accounting, or other costs occasioned by the use or administration of the Settlement Fund Account.

## **5. Presentation of Settlement to the Court**

- 5.1. As soon as practicable after the execution of the Settlement Agreement, the Settlement Class Representatives and Lead Class Counsel shall submit this Settlement Agreement to the Court and file a motion for preliminary approval of the Settlement with the Court requesting entry of a Preliminary Approval Order substantially in the form attached hereto as Exhibit E, requesting, among other things:
  - 5.1.1. Certification of the Settlement Class for settlement purposes only;
  - 5.1.2. Preliminary approval of the Settlement Agreement;
  - 5.1.3. Appointment of William B. Federman of Federman & Sherwood as Lead Class Counsel; Robert Green of Green & Noblin P.C., Amber L. Schubert of Schubert Jonckheer & Kolbe LLP, and M. Anderson Berry of Claveo C. Arnold APC as Plaintiffs' Steering Committee; and Robert Green of Green & Noblin, P.C. as Liaison Counsel.
  - 5.1.4. Appointment of the Settlement Class Representatives as the settlement class representatives;
  - 5.1.5. Approval of the Notice Plan attached hereto as Exhibit D;
  - 5.1.6. Approval of a Short Notice substantially similar to the one attached hereto as Exhibit F;
  - 5.1.7. Approval of a Long Notice substantially similar to the one attached hereto as Exhibit C;
  - 5.1.8. Approval of a Claim Form substantially similar to the one attached hereto as Exhibit A;  
and
  - 5.1.9. Appointment of the Settlement Administrator.
- 5.2. The Long Notice, Short Notice, and Claim Form shall be reviewed by the Settlement Administrator and may be revised as agreed by the Parties prior to the submission to the Court for approval.



- 5.3. After entry by the Court of a Preliminary Approval Order, and no later than thirty-five (35) days before the Final Approval Hearing, Settlement Class Representatives shall file a motion seeking final approval of the Settlement and entry of a Final Approval Order and Judgment, including a request that the preliminary certification of the Settlement Class for settlement purposes be made final.
- 5.4. Class Counsel shall share drafts of any memoranda in support of preliminary approval, final approval, and attorneys' fees and expenses with Orrick at least two business days before filing same, and shall consider any proposed edits by Orrick in good faith.

## **6. Effective Date and Termination**

- 6.1. The Effective Date of the Settlement shall be the first Business Day after all of the following conditions have occurred:
  - 6.1.1. The Parties execute this Agreement;
  - 6.1.2. The Court enters the Preliminary Approval Order without material change to the Parties' agreed-upon proposed Preliminary Approval Order attached as Exhibit E, which shall include approval of the Notice Plan;
  - 6.1.3. Notice is provided to the Settlement Class in accordance with the Preliminary Approval Order and Notice Plan;
  - 6.1.4. The Court enters the Final Approval Order and Judgment consistent with the requirements of Section 2.21 and without material change to the Parties' agreed-upon proposed Final Approval Order and Judgment attached as Exhibit B; and
  - 6.1.5. The Final Approval Order and Judgment has become final because (i) the time for appeal, petition, rehearing, or other review has expired; or (ii) if any appeal, petition, or request for rehearing or other review has been filed, the Final Approval Order and Judgment is affirmed without material change, or the appeal is dismissed or otherwise

disposed of, and no other appeal, petition, rehearing or other review is pending, and the time for further appeals, petitions, and requests for rehearing or other review has expired.

- 6.2. Orrick may, in its sole discretion, terminate this Agreement if more than two (2) percent of the Settlement Class submit valid and timely requests to exclude themselves from the Settlement, as agreed to by the Parties (and submitted to the Court for *in camera* review, if requested by the Court). If Orrick elects to terminate the Settlement pursuant to this Section 6.2, it shall provide written notice to Class Counsel no later than fifteen (15) Business Days after the Opt-Out Deadline.
- 6.3. This Settlement may be terminated by either Settlement Class Representatives or Orrick by serving on counsel for the opposing Party and filing with the Court a written notice of termination within ten (10) Business Days (or such longer time as may be agreed between Lead Class Counsel and Orrick) after any of the following occurrences:
  - 6.3.1. Lead Class Counsel and Orrick mutually agree to termination before the Effective Date;
  - 6.3.2. The Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement as set forth in this Settlement Agreement;
  - 6.3.3. An appellate court reverses the Final Approval Order and Judgment, and the Settlement is not reinstated and finally approved without material change by the Court on remand;
  - 6.3.4. The Court or any reviewing appellate court incorporates material terms or provisions into, or deletes or strikes material terms or provisions from, or materially modifies, amends, or changes, the proposed Preliminary Approval Order, the Preliminary Approval Order, the proposed Final Approval Order and Judgment, the Final Approval Order and Judgment, or the Settlement; or
  - 6.3.5. The Effective Date does not occur.

- 6.4. If this Agreement is terminated under Section 6.2 or 6.3 above, the following shall occur:
- 6.4.1. Within ten (10) Business Days of receiving notice of a termination event from Orrick's Counsel, the Settlement Administrator shall pay to Orrick an amount equal to the Settlement Fund, together with any interest or other income earned thereon, less (i) any Taxes paid or due with respect to such income and (ii) any reasonable and necessary Administration and Notice Costs already actually incurred and paid or payable from the Settlement Fund pursuant to the terms of this Agreement;
- 6.4.2. The Parties shall return to the status quo in the Action as if the Parties had not entered into this Agreement;
- 6.4.3. Any Court orders approving certification of the Settlement Class and any other orders entered pursuant to this Agreement shall be null and void and vacated, and neither those orders nor any statements made in connection with seeking approval of the Agreement may be used in or cited by any person or Entity in support of claims or defenses or in support or in opposition to a class certification motion in connection with any further proceedings in the Action or in any other action, lawsuit, arbitration, or other proceeding involving a Released Claim; and
- 6.4.4. This Agreement shall become null and void, and the fact of this Settlement and that Orrick did not oppose certification of Settlement Class shall not be used or cited by any person or Entity in support of claims or defenses or in support of or in opposition to a class certification motion in connection with any further proceedings in the Action or in any other action, lawsuit, arbitration, or other proceeding involving any Released Claims.

## **7. Settlement Benefits**

- 7.1. All Settlement Class Members who submit an Approved Claim using the Claim Form, which is attached as Exhibit A to this Settlement Agreement, are eligible to receive:
- 7.1.1. Credit Monitoring: Three years of credit monitoring and identity protection services, which includes (i) Three Credit Bureau Monitoring, (ii) Report and Score, (iii) Dark Web Monitoring, (iv) Identity Protection Services, (v) Identity Resolution Services, and (vi) \$1,000,000.00 in Identity Theft Insurance.
- 7.1.2. Out-of-Pocket Expenses: Reimbursement for documented out-of-pocket losses that were incurred as a result of the Data Breach for one or more of the following, not to exceed a total of \$2,500.00 per Settlement Class Member: (i) costs and expenses spent addressing identity theft or fraud; (ii) preventative costs including purchasing credit monitoring, placing security freezes on credit reports, or requesting copies of credit reports for review; and (iii) other documented losses that were not reimbursed. Settlement Class Members seeking reimbursement under this Section 7.1.2 must submit reasonable documentation to support that the out-of-pocket expenses claimed were the result of the Data Breach. Failure to provide supporting documentation as requested on the Claim Form shall result in denial of the Settlement Claim.
- 7.1.3. Extraordinary Losses: Reimbursement of up to \$7,500.00 for documented actual identity theft losses or other unreimbursed fraudulent charges that are the result of the Data Breach. Settlement Class Members seeking reimbursement under this Section 7.1.3 must submit reasonable documentation to support that the out-of-pocket extraordinary loss claimed was the result of the Data Breach. Failure to provide supporting documentation as requested on the Claim Form shall result in denial of the Settlement Claim.

- 7.1.4. **Attested Time Spent:** Any Settlement Class Member who spent time dealing with repercussions of the Data Breach, will be eligible to submit a Settlement Claim for time spent in an amount of \$25.00 per hour up to five hours (for a total of \$125.00). Settlement Class Members seeking reimbursement under this Section 7.1.4 must attest that the time and/or effort spent was incurred as a result of the Data Breach
- 7.1.5. **Alternative Cash Payment:** In the alternative and in lieu of submitting a claim for out-of-pocket expenses (Section 7.1.2), extraordinary losses (Section 7.1.3), or attested time (Section 7.1.4), Settlement Class Members may instead submit a claim for a \$75.00 cash payment.
- 7.1.6 **CCPA Payment:** California Subclass Members may submit a claim for a \$150.00 cash payment as a result of the CCPA claim they have brought against Defendant as California residents. This relief is in addition to any other claim for settlement benefits that the California Subclass Members would otherwise be entitled to claim pursuant to the Settlement.
- 7.2. Settlement Class Members making claims for any of the relief under Section 7.1 must complete and submit a written Claim Form to the Settlement Administrator, postmarked (or, if submitted electronically in accordance with the requirements for electronic submission of a Claim Form, the date of such submission) on or before the Claims Deadline. The Claim Form must be verified by the Settlement Class Member with a statement that his or her Settlement Claim is true and correct, to the best of his or her knowledge and belief, and is being made under penalty of perjury.
- 7.3. If the total amount of Approved Claims submitted under Section 7.1, when aggregated with Administration and Notice Costs, Attorneys' Fees as approved by the Court,

Expenses as approved by the Court, and Service Awards as approved by the Court exceeds the amount of the Settlement Fund, then Approved Claims under Section 7.1 shall be reduced on a *pro rata* basis such that the total aggregate amount of Approved Claims under Section 7.1, Administration and Notice Costs, Attorneys' Fees, Expenses, and Service Awards, does not exceed the amount of the Settlement Fund. If the total amount of Approved Claims submitted under Section 7.1, when aggregated with Administration and Notice Costs, Attorneys' Fees as approved by the Court, Expenses as approved by the Court, and Service Awards as approved by the Court is less than the amount of the Settlement Fund, then Approved Claims under Section 7.1 shall be increased on a *pro rata* basis such that the total aggregate amount of Approved Claims under Section 7.1, Administration and Notice Costs, Attorneys' Fees, Expenses, and Service Awards, equals (as reasonably close as possible without exceeding) the amount of the Settlement Fund. The Settlement Administrator shall reasonably exercise its discretion for purposes of implementing any *pro rata* increase or decrease provided herein to account for estimated, but not yet incurred, Administration and Notice Costs. For the avoidance of doubt, in no event shall Orrick's liability or obligation under this Settlement Agreement exceed the Settlement Fund.

- 7.4. Any funds that remain after the distribution of all payments for all Approved Claims from the Settlement Fund, including for settlement checks that are not cashed by the deadline to do so, will distributed pro rata to Settlement Class Members who submitted Approved Claims and cashed their initial checks unless the Settlement Administrator determines any additional distribution would not be economically feasible considering the amount of funds remaining (including for instance, if the additional distribution would be *de*

*minimis*), in which case any remaining funds shall be distributed to a charitable organization approved by the Parties and subject to Court approval.

## **8. Information Security Enhancements**

8.1 In response to the Data Breach and the Action, Orrick has further enhanced its data security infrastructure by, among other things, improving its detection and response tools, enhancing its continuous vulnerability scanning at both the network and application levels, deploying additional endpoint detection and response software, and with the help of an industry leading cybersecurity vendor, performing additional 24/7 network managed detection and response.

## **9. Duties of Settlement Administrator**

9.1. The Settlement Administrator shall perform the functions specified in this Agreement, any functions specified in the Notice Plan after Court approval, and any other functions approved by the Court. In addition to other responsibilities that are described elsewhere in this Agreement (and in the Notice Plan, once approved by the Court), the duties of the Settlement Administrator shall include:

9.1.1. Reviewing, determining the validity of, and processing all claims submitted by Settlement Class Members. Specifically, the Settlement Administrator, in its sole discretion to be reasonably exercised, will determine whether: (i) the claimant is a Settlement Class Member; (ii) the claimant has provided all information required to complete the Claim Form by the Claims Deadline, including any documentation that may be necessary to reasonably support amounts claimed under Sections 7.1.2 and 7.1.3; and (iii) the information submitted would lead a reasonable person to conclude, for a Settlement Claim for Documented Out-of-Pocket Expenses and Documented

Extraordinary Losses submitted under Sections 7.1.2 and 7.1.3, respectively, that the alleged expenses, lost time, and extraordinary losses resulted from the Data Breach.

- 9.1.2. The Settlement Administrator may at any time (but is not required) request from the claimant (including via email) supplemental claim information as the Settlement Administrator may reasonably require in order to evaluate the Settlement Claim, e.g., documentation requested on the Claim Form and information regarding the claimed losses. If supplemental claim information is requested, the Settlement Administrator shall give the claimant reasonable time in the Settlement Administrator's discretion but not exceeding 30 days to provide the supplemental information before rejecting the claim. Requests for supplemental claim information shall be made as promptly as reasonably possible after the Claims Deadline (or earlier in the discretion of the Settlement Administrator). If the supplemental claim information does not cure a claim defect as reasonably determined by the Settlement Administrator, then the Settlement Claim will be deemed invalid and there shall be no obligation to pay the Settlement Claim. For the avoidance of doubt, the Settlement Administrator is not required to request supplemental claim information, and in reasonably exercising its discretion, may deny a claim without requesting supplemental claim information.
- 9.1.3. Establishing and maintaining a post office box for receiving requests for exclusion from the Settlement;
- 9.1.4. Establishing and maintaining a Settlement website;
- 9.1.5. Responding to Settlement Class Member inquiries via U.S. mail, email, or telephone;
- 9.1.6. Establishing a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries;



- 9.1.7. Paying all Taxes relating to the Settlement Fund and Settlement Fund Account;
- 9.1.8. Receiving and processing all written requests for exclusion from the Settlement and providing copies thereof to the Parties' Counsel. If the Settlement Administrator receives any requests for exclusion or other requests after the Opt-Out Deadline, the Settlement Administrator shall promptly provide copies thereof to the Parties' Counsel;
- 9.1.9. Providing weekly reports that summarize the number of claims, written requests for exclusion, objections, and any other information requested by the Parties' Counsel;
- 9.1.10. Within five (5) Business Days after the Opt-Out Deadline, providing a final report to the Parties' Counsel summarizing the number of written requests for exclusion (i.e., requests to opt out), a list of all individuals who have timely and validly excluded themselves from the Settlement in accordance with the requirements of the Settlement, and any other information requested by the Parties' Counsel;
- 9.1.11. After the Effective Date, processing and transmitting any and all distributions to Settlement Class Members;
- 9.1.12. Prior to the Final Approval Hearing, preparing and executing an affidavit to submit to the Court that identifies each Settlement Class Member who timely and validly requested exclusion from the Settlement; and
- 9.1.13. Performing any other functions that the Parties jointly agree are necessary to accomplish administration of the Settlement.
- 9.2. As specified in Section 3.2, all Administration and Notice Costs incurred by the Settlement Administrator or otherwise in connection with administering the Settlement shall be paid from the Settlement Fund.

- 9.3. Neither the Parties nor the Parties' Counsel shall have any liability whatsoever with respect to any act or omission of the Settlement Administrator, or any of its designees or agents, in connection with its performance of its duties under this Agreement, or under the Notice Plan once approved by the Court.
- 9.4. The Settlement Administrator shall indemnify and hold harmless the Parties and the Parties' Counsel for any liability arising from any act or omission of the Settlement Administrator, or any of its designees or agents, in connection with its performance of its duties under this Agreement, or under the Notice Plan once approved by the Court.

#### **10. Notice Plan**

- 10.1. The Settlement Administrator shall be responsible for implementing and executing the Notice Plan. Within thirty (30) days after the Court's entry of a Preliminary Approval Order, Orrick shall provide the Settlement Administrator with available contact information for Settlement Class Members.
- 10.2. Should the Settlement be terminated for any of the reasons identified in Sections 6.2 or 6.3, the Settlement Administrator shall immediately destroy all contact information received from Orrick for Settlement Class Members.
- 10.3. As specified in Section 3.2, all costs incurred by the Settlement Administrator or otherwise relating to providing notice to Settlement Class Members shall be paid from the Settlement Fund.

#### **11. CAFA Notice**

- 11.1. Orrick will serve or cause to be served the notice required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, not later than ten (10) days after this Agreement is filed with the Court.

## **12. Covenants Not to Sue**

12.1. The Settlement Class Representatives covenant and agree: (i) not to file, commence, prosecute, intervene in, or participate in (as class members or otherwise) any action in any jurisdiction based on or relating to any Released Claim, or the facts and circumstances relating thereto, against any of the Released Parties; (ii) not to organize or solicit the participation of Settlement Class Members, or persons who would otherwise fall within the definition of Settlement Class Member but who requested to be excluded from the Settlement, in a separate class for purposes of pursuing any action based on or relating to any Released Claim or the facts and circumstances relating thereto, against any of the Released Parties; and (iii) that the foregoing covenants and this Agreement shall be a complete defense to any Released Claim against any of the Released Parties.

## **13. Representations and Warranties**

13.1. Each Party represents that:

- (i) such Party has the full legal right, power, and authority to enter into and perform this Agreement, subject to Court approval;
- (ii) such Party is voluntarily entering into the Agreement as a result of arm's-length negotiations conducted by its counsel;
- (iii) such Party is relying solely upon its own judgment, belief, and knowledge, and the advice and recommendations of its own independently selected counsel, concerning the nature, extent, and duration of their rights and claims hereunder and regarding all matters which relate in any way to the subject matter hereof;
- (iv) such Party has been represented by, and has consulted with, the counsel of its choice regarding the provisions, obligations, rights, risks, and legal effects of this Agreement and has been given the opportunity to review independently this Agreement with such legal counsel and agree to the particular language of the provisions herein;
- (v) the execution and delivery of this Agreement by such Party and the consummation by such Party of the transactions contemplated by this Agreement have been duly authorized by such Party;

- (vi) except as provided herein, such Party has not been influenced to any extent whatsoever in executing the Agreement by representations, statements, or omissions pertaining to any of the foregoing matters by any Party or by any person representing any Party to the Agreement;
- (vii) each of the Parties assumes the risk of mistake as to facts or law;
- (viii) this Agreement constitutes a valid, binding, and enforceable agreement; and
- (ix) no consent or approval of any person or Entity is necessary for such Party to enter into this Agreement.

13.2. The Settlement Class Representatives represent and warrant that they have not assigned or otherwise transferred any interest in any of the Released Claims against any of the Released Parties, and further covenant that they will not assign or otherwise transfer any interest in any of the Released Claims against any of the Released Parties.

13.3. The Settlement Class Representatives represent and warrant that they have no surviving claim or cause of action against any of the Released Parties with respect to any of the Released Claims.

#### **14. Releases**

14.1. As of the Effective Date, all Releasing Parties, on behalf of themselves, their heirs, assigns, beneficiaries, executors, administrators, predecessors, and successors, and any other person purporting to claim on their behalf, hereby expressly, generally, absolutely, unconditionally, and forever release and discharge any and all Released Claims against the Released Parties and any of their current, former, and future affiliates, parents, subsidiaries, representatives, officers, agents, directors, employees, contractors, shareholders, vendors, insurers, reinsurers, successors, assigns, and attorneys, except for claims relating to the enforcement of the Settlement or this Agreement.

14.2. The Parties expressly intend that all Released Parties, including Released Parties who are third-party party beneficiaries (e.g., Orrick's current and former clients whose

information was impacted in the Data Breach), shall have the right to directly enforce the Releases herein.

- 14.3. 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. Notwithstanding any other provision of this Agreement (including, without limitation, this Section), nothing in this Agreement shall be deemed to in any way impair, limit, or preclude the Parties' rights to enforce any provision of this Agreement, or any court order implementing this Agreement, in a manner consistent with the terms of this Agreement.
- 14.4. Within ten (10) Business Days after the Effective Date, Lead Class Counsel and the Settlement Class Representatives shall dismiss with prejudice all claims, Actions, or proceedings that are released pursuant to this Agreement.

### **15. No Admission of Wrongdoing**

- 15.1. This Agreement compromises claims which are contested in good faith, and it shall not be deemed an admission by any of the Parties as to the merits of any claim or defense. This Agreement shall not be offered or received against Orrick as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by Orrick with respect to the truth of any fact alleged by any Settlement Class Representative or any Settlement Class Member or the validity of any claim that has been or could have

been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, breach of duty, or wrongdoing of Orrick.

- 15.2. This Agreement shall not be construed as or received in evidence as an admission, concession, or presumption against any Settlement Class Representative or any Settlement Class Member that any of their claims are without merit, or that any defense asserted by Orrick has any merit, or that damages recoverable in the Action would not have exceeded the Settlement Fund.
- 15.3. The negotiation, terms, and entry of the Parties into this Agreement shall remain subject to the provisions of Federal Rule of Evidence 408, all similar state statutes, rules of evidence, and arbitral rules, and the mediation privilege.
- 15.4. Notwithstanding the foregoing provisions of Section 15 or any other terms in this Settlement, Orrick may use, offer, admit, or refer to this Agreement and to the Settlement, if approved, where it deems necessary to defend itself in any other action, or in any judicial, administrative, regulatory, arbitral, or other proceeding, as it deems necessary to comply with or address regulatory and/or disclosure obligations, to pursue insurance and/or other indemnification, and to enforce this Agreement and the Settlement, including the releases contained therein.

## **16. Opt-Outs**

- 16.1. Any individual who wishes to exclude themselves from the Settlement must submit a written request for exclusion to the Settlement Administrator, which shall be postmarked no later than the Opt-Out Deadline or submitted online through the claims portal and verified no later than the Opt-Out Deadline.
- 16.2. The written request for exclusion must:

- (i) Identify the case name of the Action;
  - (ii) Identify the name and address of the individual seeking exclusion from the Settlement;
  - (iii) Be personally signed by the individual seeking exclusion;
  - (iv) Include a statement clearly indicating the individual's intent to be excluded from the Settlement; and
  - (v) Request exclusion only for that one individual whose personal signature appears on the request.
- 16.3. To be effective and valid, opt-out requests submitted online must verify the request to opt-out no later than the Opt-Out Deadline using the link sent to the individual who submitted the request for exclusion.
- 16.4. Opt-out requests seeking exclusion on behalf of more than one individual shall be deemed invalid by the Settlement Administrator.
- 16.5. Any individual who submits a valid and timely request for exclusion in the manner described herein shall not: (i) be bound by any orders or judgments entered in connection with the Settlement; (ii) be entitled to any relief under, or be affected by, the Agreement; (iii) gain any rights by virtue of the Agreement; or (iv) be entitled to object to any aspect of the Settlement.
- 16.6. Any individual who does not submit a valid and timely request for exclusion in the manner described herein shall be deemed to be a Settlement Class Member upon expiration of the Opt-Out Deadline, and shall be bound by all subsequent proceedings, orders, and judgments applicable to the Settlement Class.
- 16.7. Class Counsel agree that this Settlement Agreement is fair, reasonable, and in the best interests of the Settlement Class Members.

## **17. Objections**

- 17.1. Any Settlement Class Member who wishes to object to the Settlement must submit a written objection to the Court on or before the Objection Deadline, as specified in the Preliminary Approval Order.
- 17.2. The written objection must include:
- (i) The case name and number of the Action;
  - (ii) The name, address, and telephone number of the objecting Settlement Class Member and, if represented by counsel, of his/her counsel;
  - (iii) A statement of whether the objection applies only to the objector, to a specific subset of the class, or to the entire class;
  - (iv) A statement of the number of times in which the objector (and, where applicable, objector's counsel) has objected to a class action settlement within the three years preceding the date that the objector files the objection, along with the caption of each case in which the objector has made such objection;
  - (v) A statement of the specific grounds for the objection; and
  - (vi) A statement of whether the objecting Settlement Class Member intends to appear at the Final Approval Hearing, and if so, whether personally or through counsel.
- 17.3. In addition to the foregoing requirements, if an objecting Settlement Class Member intends to speak at the Final Approval Hearing (whether *pro se* or through an attorney), the written objection must include a detailed description of any evidence the objecting Settlement Class Member may offer at the Final Approval Hearing, as well as copies of any exhibits the objecting Settlement Class Member may introduce at the Final Approval Hearing.
- 17.4. Any Settlement Class Member who fails to object to the Settlement in the manner described in this Agreement, the Preliminary Approval Order, and in the notice provided pursuant to the Notice Plan shall be deemed to have waived any such objection, shall not



be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be precluded from seeking any review of the Settlement or the terms of this Agreement by appeal or any other means.

**18. Service Awards**

- 18.1. The Settlement Class Representatives and Lead Class Counsel shall submit a request to the Court for payment of Service Awards, not to exceed two thousand five hundred United States Dollars (\$2,500.00) per individual, to the Settlement Class Representatives. Any request for Service Awards must be filed with the Court at least thirty-five (35) days before the Objection Deadline. If approved by the Court, such Service Awards shall be paid by the Settlement Administrator from the Settlement Fund within twenty-one (21) Business Days after the Effective Date.
- 18.2. Orrick agrees not to oppose any request to the Court for Service Awards, provided such request does not seek more than two thousand five hundred United States Dollars (\$2,500.00) per individual. For the avoidance of doubt, Service Awards shall be paid from the Settlement Fund.
- 18.3. The Parties agree that the effectiveness of this Agreement is not contingent upon the Court's approval of the payment of any Service Awards. If the Court declines to approve, in whole or in part, a request for Service Awards, all remaining provisions in 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 payment of Service Awards, or the amount thereof, shall be grounds for cancellation or termination of this Agreement.

## **19. Attorneys' Fees and Expenses**

- 19.1. Lead Class Counsel shall submit a request to the Court for payment of Attorneys' Fees, expressed as a percentage of the value conferred by the Settlement on the Settlement Class, and for reimbursement of Expenses incurred in prosecuting and settling the Action. Any request for Attorneys' Fees and Expenses must be filed with the Court at least thirty-five (35) days before the Objection Deadline. If approved by the Court, such Attorneys' Fees and Expenses shall be paid by the Settlement Administrator from the Settlement Fund within twenty-one (21) Business Days after the Effective Date. For the avoidance of doubt, Attorneys' Fees and Expenses shall be paid from the Settlement Fund.
- 19.2. The Parties agree that the effectiveness of this Agreement is not contingent upon the Court's approval of the payment of any Attorneys' Fees or Expenses. If the Court declines to approve, in whole or in part, a request for Attorneys' Fees or Expenses, all remaining provisions in 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 payment of Attorneys' Fees or Expenses, or the amount thereof, shall be grounds for cancellation or termination of this Agreement.

## **20. Confidentiality**

- 20.1. The Parties and the Parties' Counsel agree that the terms of this Settlement shall remain confidential and shall not be disclosed until the Agreement is publicly filed in connection with the Settlement Class Representatives' motion seeking a Preliminary Approval Order. Notwithstanding the foregoing, Orrick may disclose this Agreement for legal, compliance, and regulatory-related purposes.

## **21. Notices**

- 21.1. All notices to Class Counsel or Lead Class Counsel provided for in this Agreement shall be sent by email and First Class mail to the following:

William B. Federman  
FEDERMAN & SHERWOOD  
10205 N. Pennsylvania Ave.  
Oklahoma City, OK 73120  
wbf@federmanlaw.com  
[law@federmanlaw.com](mailto:law@federmanlaw.com)  
jaw@federmanlaw.com

- 21.2. All notices to Orrick or Orrick's Counsel provided for in this Agreement shall be sent by email and First Class mail to the following:

Kristine M. Brown  
Donald M. Houser  
ALSTON & BIRD LLP  
1201 West Peachtree Street NW  
Atlanta, GA 30309  
kristine.brown@alston.com  
donald.houser@alston.com

and to:

Aravind Swaminathan  
Orrick, Herrington & Sutcliffe LLP  
401 Union Street - Suite 3300  
Seattle, WA 98101  
aswaminathan@orrick.com

- 21.3. All notices to the Settlement Administrator provided for in this Agreement shall be sent by either email or First Class mail to the following:

KCC Class Action Services LLC  
P.O. Box 301172  
Los Angeles, CA 90030-1172  
admin@OHSCClassActionSettlement.com

- 21.4. The notice recipients and addresses designated in this Section may be changed by written notice posted to the Settlement website.

## **22. Miscellaneous Provisions**

- 22.1. Further Steps. The Parties agree that they each shall undertake any further required steps to effectuate the purposes and intent of this Agreement.
- 22.2. Cooperation. The Parties: (i) acknowledge that it is their intent to consummate this Settlement Agreement and (ii) agree to cooperate to the extent reasonably necessary to effect and implement all terms and conditions of the Settlement Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of the Settlement Agreement.
- 22.3. Contractual Agreement. The Parties understand and agree that all terms of this Agreement, including the exhibits hereto, are contractual and are not a mere recital, and each signatory warrants that he or she is competent and possesses the full and complete authority to execute and covenant to this Agreement on behalf of the Party that he or she represents.
- 22.4. Headings. Any headings contained herein are for informational purposes only and do not constitute a substantive part of this Agreement. In the event of a dispute concerning the terms and conditions of this Agreement, the headings shall be disregarded.
- 22.5. Integration. This Agreement constitutes the entire agreement among the Parties and no representations, warranties, or inducements have been made to any Party concerning this Agreement other than the representations, warranties, and covenants expressly contained and memorialized herein.
- 22.6. Exhibits. The exhibits to this Agreement are expressly incorporated by reference and made part of the terms and conditions set forth herein.
- 22.7. Drafting. The language of all parts of this Agreement shall in all cases be construed as a whole, according to their fair meaning, and not strictly for or against any Party. No Party

shall be deemed the drafter of this Agreement. The Parties acknowledge that the terms of the Agreement are contractual and are the product of negotiations between the Parties and their counsel. Each Party and their counsel cooperated in the drafting and preparation of the Agreement. In any construction to be made of the Agreement, the Agreement shall not be construed against any Party and any canon of contract interpretation to the contrary shall not be applied.

22.8. Modification or Amendment. This Agreement may not be modified or amended, nor may any of its provisions be waived, except by an express writing signed by the Parties who executed this Agreement, or their successors.

22.9. Waiver. The failure of a Party to insist upon strict performance of any provision of this Agreement shall not be deemed a waiver of such Party's rights or remedies or a waiver by such Party of any default by another Party in the performance or compliance of any of the terms of this Agreement. In addition, the waiver by one Party of any breach of this Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

22.10. Severability. Should any part, term, or provision of this Agreement be declared or determined by any court or tribunal to be illegal or invalid, the Parties agree that the Court may modify such provision to the extent necessary to make it valid, legal, and enforceable. In any event, such provision shall be separable and shall not limit or affect the validity, legality, or enforceability of any other provision hereunder.

22.11. Counterparts. The Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same

instrument. A complete set of executed counterparts shall be filed with the Court. This Agreement may be executed using DocuSign.

22.12. Electronic Mail. Transmission of a signed Agreement by electronic mail shall constitute receipt of an original signed Agreement by mail.

22.13. Successors and Assigns. The Agreement shall be binding upon, and inures to the benefit of, the heirs, executors, successors, and assigns of the Parties hereto.

22.14. Governing Law. All terms and conditions of this Agreement shall be governed by and interpreted according to the laws of California, without reference to its conflict of law provisions, except to the extent the federal law of the United States requires that federal law governs.

22.15. Interpretation. The following rules of interpretation shall apply to this Agreement:

- (i) Definitions apply to the singular and plural forms of each term defined.
- (ii) Definitions apply to the masculine, feminine, and neuter genders of each term defined.
- (iii) Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall not be limiting but rather shall be deemed to be followed by the words “without limitation.”

22.16. Fair and Reasonable. The Parties and the Parties’ Counsel believe this Agreement is a fair and reasonable compromise of the disputed claims and in the best interest of the Parties. The Parties have arrived at this Agreement as a result of extensive arms-length negotiations.

22.17. Retention of Jurisdiction. The administration and consummation of the Settlement as embodied in this Agreement shall be under the authority of the Court, and the Court shall retain jurisdiction over the Settlement and the Parties for the purpose of enforcing the

terms of this Agreement. The Court also shall retain exclusive jurisdiction over any determination of whether any subsequent suit is released by the Settlement Agreement.

- 22.18. Third-Party Beneficiaries. It is the Parties' intent that all third parties who are Released Parties as defined in Paragraph 2.35 shall benefit from this Agreement and shall be entitled to enforce the Agreement, including its releases, fully and directly. By way of example but without limitation, it is the Parties' intent that that such Released Parties shall be entitled to fully and directly enforce the releases in response to any action, lawsuit, or proceeding asserting a Released Claim.
- 22.19. No Government Third-Party Rights or Beneficiaries. No government agency or official can claim any rights under this Agreement or Settlement.
- 22.20. 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 the Judgment is entered.
- 22.21. Public Statements. The Parties agree not to make disparaging statements to the press regarding the Settlement or any Party. The Parties may publicly discuss the Settlement, the terms of the Settlement, any matter addressed in plaintiffs' motion for Preliminary Approval Order, or any other matter as required by law or regulation.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by themselves or by their duly authorized counsel:

**Class Counsel on behalf of the Settlement  
Class Representatives (who have specifically  
assented to the terms of this Settlement  
Agreement) and the Settlement Class:**

**Defendant Orrick, Herrington & Sutcliffe  
LLP**

\_\_\_\_\_  
Name: William Federman  
Date:

\_\_\_\_\_  
Name:  
Title:  
Date: