

**IN THE CIRCUIT COURT OF THE  
17TH JUDICIAL CIRCUIT IN AND  
FOR BROWARD COUNTY, FLORIDA**

DAVID BLACK, DAHLIA ROGERS,  
MISHAEL WYLIE, individually, and  
on behalf of all others similarly situated,

CASE NO. CACE-26-009568

Plaintiffs,

v.

ZENITH AMERICAN SOLUTIONS, INC.,

Defendant.

\_\_\_\_\_ /

**SETTLEMENT AGREEMENT**

This Settlement Agreement<sup>1</sup> is entered into between Plaintiffs, on behalf of themselves and the Settlement Class, and Defendant. The Parties hereby agree to the following terms in full settlement of the Action, subject to a Final Approval Order entered by the Court.

**I. Procedural History**

1. Defendant is a Maryland corporation that provides benefit administration services to health plans, Taft Hartley funds, and other organizations.

2. In the regular course of its business, Defendant collects and maintains individuals' Private Information, including names, dates of birth, Social Security numbers, birth certificates, marriage certificates, and/or financial banking information.

3. On September 6, 2024, Defendant discovered that an unauthorized third party had gained access to a single employee email account and immediately began an investigation into the matter. As a result of the investigation, Defendant determined that certain files within that email

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

account containing the Private Information belonging to approximately 11,029 individuals may have been accessed or acquired by a third-party cybercriminal.

4. On or about January 30, 2025, Defendant sent notification letters to potentially impacted individuals.

5. Thereafter, two class action lawsuits were filed by Plaintiffs Rogers and Black against the Defendant in federal court in the Middle District of Florida, and subsequently Plaintiff Wylie, each seeking to represent all individuals whose Private Information was potentially impacted in the Data Incident.

6. On August 25, 2025, the federal actions were then consolidated and the Court appointed Jeff Ostrow and Mariya Weekes as interim class counsel. On September 15, 2025, a Consolidated Class Action Complaint was filed in the Middle District of Florida.

7. Shortly thereafter, in an effort to conserve resources for the benefit of those potentially impacted in the Data Incident, the Parties began discussing settlement and scheduled mediation with experienced mediator, Bruce Friedman, of JAMS, Inc.

8. In advance of mediation, Plaintiffs consulted with liability and damage experts and Defendant provided Plaintiffs with informal discovery including information related to, among other things, the nature and cause of the Data Incident, the number and geographic location of individuals impacted by the Data Incident, and the specific type of information potentially accessed.

9. The Parties participated in a full-day mediation on February 23, 2026. After arms-length negotiations between experienced counsel, the Parties reached agreement on the materials terms of this classwide Settlement. During the negotiations, the Parties decided that jurisdiction was appropriate in state court and venue in this Court.

10. Consequently, Plaintiffs dismissed the federal action and filed this Action for settlement purposes only. The Complaint alleges claims against Defendant for negligence, negligence per se, breach of implied contract, invasion of privacy, and unjust enrichment.

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

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

## **II. Definitions**

12. “**Action**” means the class action lawsuit entitled: *David Black, et al. v. Zenith American Solutions, Inc.*, Case No. \_\_\_\_\_ currently pending in the 17<sup>th</sup> Judicial Circuit in and for Broward County, Florida.

13. “**Agreement**” or “**Settlement**” or “**Settlement Agreement**” means this agreement, and all exhibits attached hereto, between Plaintiffs and Defendant.

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

15. “**Cash Payment**” means the cash compensation paid to Settlement Class Members who elected to submit a Claim for either Cash Payment A or Cash Payment B under Section IV herein.

16. “**Cash Payment A – Documented Losses**” means the up to \$2,500.00 in cash compensation that Settlement Class Members with documented losses may elect under the Settlement.

17. “**Cash Payment B – Alternate Cash**” means the \$45.00 cash compensation available exclusively to Settlement Class Members whose Social Security number may have been disclosed in the Data Incident, subject to the aggregate cap set forth in Section IV herein.

18. “**Claim**” means the submission of a Claim Form by a Claimant.

19. “**Claimant**” means an individual who submits a Claim Form for Settlement Class Member Benefits to the Settlement Administrator.

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

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

22. **“Claim Process”** means the process by which Claimants submit Claims to the Settlement Administrator and the Settlement Administrator reviews the Claims to determine which are Valid Claims eligible for payment under this Settlement.

23. **“Class Counsel”** means: Jeff Ostrow of Kopelowitz Ostrow P.A and Mariya Weekes of Milberg PLLC.

24. **“Class List”** means the list of Settlement Class Members provided to the Settlement Administrator by Defendant for the purpose of effectuating Notice. Defendant shall prepare and provide the Class List to the Settlement Administrator using information in Defendant’s records. To the extent maintained by the Defendant, the Class List shall include the Settlement Class Members’ name and last known physical address.

25. **“Class Representatives”** means the Plaintiffs the Court approves as representatives of the Settlement Class.

26. **“Complaint”** means the Class Action Complaint filed in this Action.

27. **“Court”** means the 17<sup>th</sup> Judicial Circuit in and for Broward County, Florida, and the Judge(s) assigned to the Action.

28. **“Credit Monitoring”** means the one year of CyEx Financial Shield Complete (1B) for which a code will be provided on the Postcard Notice.

29. **“Data Incident”** means the data-security incident that Defendant discovered on or about September 6, 2024, involving unauthorized access to a single employee email account, as a result of which certain files within that account containing information relating to Plaintiffs and members of the Settlement Class may have been accessed or acquired by an unauthorized third

party.

30. “**Defendant**” means Zenith American Solutions, Inc., the defendant in the Action.

31. “**Defendant’s Counsel**” means Allen Sattler and Rob Yang of Constangy, Brooks, Smith & Prophete, LLP.

32. “**Effective Date**” means the day after the Final Approval Order is entered if there are no objections to the Settlement, or if there are objections, the later of: (a) 30 days after entry of the Final Approval Order if no appeals are taken from the Final Approval Order; or (b) if appeals are taken from the Final Approval Order, then the earlier of 30 days after the last appellate court ruling affirming the Final Approval Order or 30 days after the entry of a dismissal of the appeal.

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

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

35. “**Final Approval Order**” means the final order the Court enters granting Final Approval of the Settlement, substantially in the form attached hereto as ***Exhibit 5***.

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

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

38. “**Motion for Preliminary Approval**” means the motion that Plaintiffs shall file

with the Court seeking Preliminary Approval of the Settlement.

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

40. “**Notice Program**” means the methods provided for in this Agreement for giving Notice to the Settlement Class and include Postcard Notice, Long Form Notice, Settlement Website, and toll-free Settlement phone number.

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

42. “**Objection Deadline**” means 30 days before the initial scheduled Final Approval Hearing.

43. “**Opt-Out Deadline**” means 30 days before the initial scheduled Final Approval Hearing.

44. “**Party**” means either Plaintiffs or Defendant, and “**Parties**” means Plaintiffs and Defendant, collectively.

45. “**Plaintiffs**” means David Black, Dahlia Rogers, and Mishael Wylie, the plaintiffs in this Action.

46. “**Postcard Notice**” means the double-sided mail form of Notice of the Settlement, substantially in the form attached hereto as *Exhibit 1*, that will be distributed to those Settlement Class Members for whom physical addresses are maintained by Defendant.

47. “**Preliminary Approval**” means the preliminary approval of the Settlement, which occurs when the Court enters the Preliminary Approval Order.

48. “**Preliminary Approval Order**” means the order preliminarily approving the Settlement, proposed Notice Program, and Claim Process, substantially in the form attached hereto

as *Exhibit 4*.

49. **“Private Information”** means the categories of information that Defendant determined may have been present in the potentially affected files, including, as applicable to a given Settlement Class Member, name, date of birth, Social Security number, birth certificate, marriage certificate, and/or financial account information.

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

51. **“Released Claims”** means any and all actual, potential, filed or unfiled, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected claims, demands, liabilities, rights, causes of action, contracts or agreements, extra-contractual claims, damages, punitive, exemplary or multiplied damages, expenses, costs, indemnities, attorneys’ fees and/or obligations, whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever, based on any federal, state, local, statutory, regulatory, or common law, or any other law, rule, or regulation, against the Released Parties, or any of them, arising out of or relating to, in whole or in part, the Data Incident, the allegations in the Action, the facts, transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions, or failures to act that were or could have been alleged in the Action, including but not limited to any claims that were asserted or could have been asserted in the Action; provided, however, that Released Claims do not include claims to enforce this Agreement or claims for personal bodily injury unrelated to the Data Incident.

52. **“Released Parties”** means Defendant and each entity that is controlled by, controlling, or under common control with Defendant, and each of their respective past, present, and future direct and indirect parents, subsidiaries, affiliates, divisions, predecessors, successors, assigns, investors, owners, shareholders, members, partners, insurers, reinsurers, excess insurers,



officers, directors, employees, agents, servants, representatives, administrators, fiduciaries, trustees, attorneys, accountants, auditors, consultants, vendors, contractors, and any employee benefit plans administered by or on behalf of Defendant, together with each of their respective heirs, executors, administrators, and legal representatives.

53. “**Releasing Parties**” means Plaintiffs and Settlement Class Members and their respective past, present, and future heirs, devisees, beneficiaries, conservators, executors, estates, administrators, assigns, trustees, and receivers.

54. “**Service Awards**” means the payment the Court may award Plaintiffs for serving as Class Representatives, which is in addition to any Settlement Class Member Benefit due to Plaintiffs as Settlement Class Members. The Service Awards shall be paid by Defendant separate from the Settlement Class Member Benefits.

55. “**Settlement Administrator**” means Analytics Consulting LLC or “Analytics”, the third-party notice and claims administrator jointly selected by the Parties.

56. “**Settlement Administration Costs**” means all costs and fees of the Settlement Administrator regarding Notice and Settlement administration, for which Defendant shall be solely responsible for payment.

57. “**Settlement Class**” means all individuals residing in the United States who were sent a notice from the Defendant that their Private Information may have been accessed in the Data Incident. Excluded from the Settlement Class are (a) all persons who are directors and officers of Defendant; (b) governmental entities; (c) the Judge assigned to the Action, that Judge’s immediate family, and Court staff; and (d) all Settlement Class Members who timely and properly opt-out of the Settlement.

58. “**Settlement Class Member**” means any member of the Settlement Class who has

not opted-out of the Settlement.

59. “**Settlement Class Member Benefits**” means the Cash Payments and Credit Monitoring that Settlement Class Members may elect in the Settlement.

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

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

### **III. Certification of the Settlement Class**

62. In the Motion for Preliminary Approval, Plaintiffs shall propose and request to the

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

#### **IV. Settlement Consideration**

63. Defendant has agreed to pay, or cause to be paid, for the following: (a) all Settlement Administration Costs; (b) Cash Payments to Settlement Class Members who submit Valid Claims, subject to the express limitations and caps set forth in this Agreement; (c) Credit Monitoring for all Settlement Class Members as provided herein; and (d) any Court-awarded attorneys' fees, costs, and Service Awards. Except for the foregoing, Defendant shall have no other payment obligation, liability, or responsibility of any kind under or relating to this Agreement.

64. **Cash Payments** – All Settlement Class Members must submit a Valid Claim to the Settlement Administrator to receive a Cash Payment payable from Defendant. When submitting a Valid Claim, Settlement Class Members must choose *either* Cash Payment A – Documented Losses or Cash Payment B – Alternate Cash. If a Settlement Class Member does not submit a Valid Claim, the Settlement Class Member will release his or her claims without receiving a Cash Payment.

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

All Settlement Class Members are eligible to submit a claim for up to \$2,500.00 per Settlement Class Member upon presentment of reasonable documentation of losses related to fraud

and/or identity theft as a result of the Data Incident. Documented expenses include, by way of example, unreimbursed losses relating to fraud or identity theft: if (i) the loss is an actual, documented, and unreimbursed monetary loss; (ii) the loss was more likely than not caused by the Data Incident; and (iii) the loss was incurred after the date of the Data Incident. To receive payment for documented losses, a Settlement Class Member must complete and submit a Claim Form and include third-party documentation in support of the Claim. Claims must be for actual, out-of-pocket monetary losses documented by receipts, invoices, or similar third-party records. Except as expressly provided herein, personal certifications, declarations, or affidavits from the Settlement Class Member alone do not constitute proper documentation, but may be included to provide clarification, context, or support for other submitted reasonable documentation. Settlement Class Members shall not be reimbursed for expenses if they have been reimbursed for the same expenses by another source, including compensation provided in connection with any credit monitoring and identity theft protection product. If a Settlement Class Member does not submit reasonable documentation supporting a loss, or if their Claim is rejected by the Settlement Administrator for any reason, and the Settlement Class Member fails to cure his or her Claim, the Claim will be rejected and the Settlement Class Member's Claim will be as if he or she elected Cash Payment B, provided the Claim was otherwise timely submitted.

**b. Cash Payment B – Alternate Cash**

As an alternative to Cash Payment A – Documented Losses, Settlement Class Members whose Social Security number may have been disclosed in the Data Incident may elect to receive Cash Payment B - Alternate Cash, which is a cash payment in the amount of \$45.00. There is no documentation required to claim this benefit other than submission of a valid and timely Claim Form attesting to membership in the Settlement Class and eligibility for this benefit. Defendant

will not be liable for more than \$40,000.00 for this Cash Payment B. If the Valid Claims for Cash Payment B – Alternate Cash exhaust \$40,000.00, the amount of each cash payment shall be reduced on a *pro rata* basis. A Settlement Class Member who elects Cash Payment B may not also submit a claim for Cash Payment A.

65. ***Credit Monitoring*** – In addition to a Cash Payment, all Settlement Class Members are entitled to receive one year of CyEx Financial Shield Complete by using the code provided on the Postcard Notice. Settlement Class Members may activate this benefit directly through CyEx using the code provided on their Postcard Notice. No Claim Form submission is required to receive Credit Monitoring.

66. ***Settlement Administration Costs*** - Defendant shall be solely responsible for the payment of all Settlement Administration Costs. The Settlement Administrator and Defendant will enter into a separate agreement related to the payment of the Settlement Administration Costs. Settlement Administration Costs shall be paid by Defendant separate from and in addition to the Settlement Class Member Benefits. For the avoidance of doubt, any funds associated with uncashed checks, failed or undeliverable electronic payments, rejected or invalid Claims, or any amounts otherwise not distributed to Settlement Class Members shall revert to Defendant, and no portion of such amounts shall be subject to cy pres, escheat, or any further distribution absent Defendant's written consent or a non-appealable court order expressly requiring otherwise.

## **V. Settlement Approval**

67. Within five days of signing this Agreement, Class Counsel shall file a Motion for Preliminary Approval, which shall, among other things, request the Court: (1) preliminarily approve the terms of the Settlement as being within the range of fair, adequate, and reasonable; (2) provisionally certify the Settlement Class for settlement purposes only; (3) approve the Notice

Program set forth herein and approve the form and content of the Notices of the Settlement; (4) approve the Claim Form and Claim Process; (5) approve the procedures for Settlement Class Members to opt-out of the Settlement or for Settlement Class Members to object to the Settlement; (6) appoint Jeff Ostrow and Mariya Weekes as Class Counsel; (7) appoint Plaintiffs as the Class Representatives; (8) appoint Analytics as the Settlement Administrator; (9) stay the Action pending Final Approval of the Settlement; and (10) schedule a Final Approval Hearing for a time and date mutually convenient for the Court, the Parties, Class Counsel, and Defendant's Counsel.

**VI. Settlement Administrator**

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

69. The Settlement Administrator shall maintain commercially reasonable administrative, technical, and physical safeguards to protect all personal information received in connection with the Settlement, shall use such information solely for purposes of administering the Settlement, shall not disclose such information except as required to perform its obligations or by law, and shall promptly notify Defendant's Counsel of any actual or reasonably suspected security incident involving Settlement data. The Settlement Administrator shall indemnify, defend, and hold harmless Defendant and the Released Parties from and against any third-party claims, losses, costs, or expenses arising out of the Settlement Administrator's breach of this paragraph, violation of law, or gross negligence or willful misconduct.

70. The Settlement Administrator shall administer various aspects of the Settlement as

described in the next paragraph and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including, but not limited to, effectuating the Notice Program and handling the Claim Process.

71. The Settlement Administrator's duties include:

a. Completing the Court-approved Notice Program by noticing the Settlement Class by Postcard Notice and sending out Long Form Notices and Claim Forms on request from Settlement Class Members, reviewing Claim Forms and supporting documentation, notifying Claimants of deficient Claim Forms using the Notice of Deficiency, and sending out Cash Payments;

b. Establishing and maintaining a post office box to receive opt-out requests from the Settlement Class, objections from Settlement Class Members, and Claim Forms;

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

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

e. Responding to any mailed Settlement Class Member inquiries;

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

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

h. In advance of the Final Approval Hearing, preparing a declaration confirming

the Notice Program and Claim Process were completed in accordance with the terms of this Agreement and the Preliminary Approval Order, describing in detail how the Notice Program was completed, indicating the number of Claim Forms received, the value of the Valid Claims submitted to date, providing the names of each Settlement Class Member who timely and properly requested to opt-out from the Settlement Class, indicating the number of objections received, and other information as may be necessary to allow the Parties to seek and obtain Final Approval;

i. Reviewing Claim Forms submitted by Settlement Class Members to determine whether they are eligible for a Cash Payment in accordance with the standards set forth in this Agreement;

j. Collecting from Defendant and/or its insurer(s) the funds necessary to pay Valid Claims for Cash Payments and Credit Monitoring;

k. Distributing Cash Payments to Settlement Class Members who submit Valid Claims;

l. Ensuring that Credit Monitoring Codes are on the Postcard Notices; and

m. Any other Settlement administration function at the instruction of both Class Counsel and Defendant, including, but not limited to, verifying that the Cash Payments have been properly distributed and that Credit Monitoring activation codes have been sent to Settlement Class Members.

## **VII. Notice to the Settlement Class, Opt-Out Procedures, and Objection Procedures**

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



73. Within 25 days following entry of the Preliminary Approval Order, the Settlement Administrator shall commence the Notice Program. Settlement Class Members shall be sent the Postcard Notice which shall be double-sided with a tear-off Claim Form.

74. The Notice Program shall be completed no later than 45 days before the initial date set for the Final Approval Hearing.

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

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

77. **Opt-Outs.** The Long Form Notice also shall include a procedure for Settlement

Class Members to opt-out of the Settlement Class, and the Postcard Notice shall direct Settlement Class Members to review the Long Form Notice to obtain the opt-out instructions. A Settlement Class Member may opt-out at any time before the Opt-Out Deadline by mailing a request to opt-out to the Settlement Administrator postmarked no later than the Opt-Out Deadline. The opt-out request must be personally signed by the Settlement Class Member and contain the requestor's name, address, telephone number, and email address, and include a statement indicating a request to be excluded from the Settlement Class. Mass or Class opt-outs by an attorney or other representative of a group of Settlement Class Members will not be accepted. Any Settlement Class Member who does not timely and validly request to opt-out shall be bound by the terms of this Agreement even if that Settlement Class Member does not submit a Valid Claim.

78. **Termination Based on Opt-Outs.** Within 10 days after the Opt-Out Deadline, the Settlement Administrator shall provide Defendant's Counsel with a final list of all persons who have timely and validly submitted opt-out requests. If more than 500 (approximately 5%) Settlement Class Members have timely and validly submitted opt-out requests, Defendant may, in its sole discretion, void this Settlement Agreement by providing written notice to Class Counsel and the Court within five business days after receiving the final opt-out list from the Settlement Administrator. If Defendant exercises this termination right, this Agreement shall be null and void, the certification of the Settlement Class shall be vacated, and Defendant shall pay all Settlement Administration Costs incurred up to the date of termination, but shall have no other obligations under this Agreement.

79. **Objections.** The Long Form Notice shall also include a procedure for Settlement Class Members to object to the Settlement and/or Application for Attorneys' Fees, Costs, and Service Awards, and the Postcard Notice shall direct Settlement Class Members to review the Long

Form Notice to obtain the objection instructions. Objections must be filed with the Court, and sent by U.S. Mail to Class Counsel, Defendant's Counsel, and the Settlement Administrator. For an objection to be considered by the Court, the relevant Settlement Class Member must submit the objection before the Objection Deadline, as specified in the Notice, and the relevant Settlement Class Member must not have excluded themselves from the Settlement Class. If submitted by mail, an objection shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (e.g., Federal Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label. For an objection to be considered by the Court, it must strictly and fully comply with each and every requirement outlined in this Agreement, the Long Form Notice, and the Preliminary Approval Order.

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

objection to the Settlement and/or Application for Attorneys' Fees, Costs, and Service Awards, and whether they will appear at the Final Approval Hearing;

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

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

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

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

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

80. Any Settlement Class Member who fails to comply with each and every requirement in the preceding paragraph and any additional requirements set forth in the Preliminary Approval Order or Long Form Notice shall waive and forfeit any and all rights to appear separately and/or to object, and shall be bound by all the terms of this Agreement and by all proceedings, orders, and judgments in the Action. The exclusive means for any challenge to this Agreement shall be through the objection procedures set forth in this Section. Any challenge to this Agreement or the Final Approval Order, including on appeal, must be made in accordance with the terms and procedures set forth in this Agreement.

81. A Settlement Class Member who objects to the Settlement, but also submits an opt-out, will be deemed to have opted-out of the Settlement and the objection will be overruled for lack of standing.

#### **VIII. Claim Form Process and Disbursement of Cash Payments**

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

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

84. The Settlement Administrator shall collect, review, and address each Claim Form received to determine whether the Claim Form meets the requirements set forth in this Settlement and is thus a Valid Claim. The Settlement Administrator shall examine the Claim Form and any supporting documentation before designating the Claim as a Valid Claim to determine that the information on the Claim Form is reasonably complete and that any supporting documentation meets the standards set forth in this Agreement. The Settlement Administrator shall have the sole authority to determine whether a Claim by any Claimant is a Valid Claim.

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

86. The Settlement Administrator shall exercise, in its discretion, all usual and

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

87. Claim Forms that do not meet the terms and conditions of this Settlement shall be promptly rejected by the Settlement Administrator and the Settlement Administrator shall advise the Claimant or Settlement Class Member of the reason(s) why the Claim Form was rejected. However, if the Claim Form is rejected for containing incomplete or inaccurate information, and/or omitting required information, the Settlement Administrator may send a Notice of Deficiency explaining what information is missing or inaccurate and needed to validate the Claim and have it submitted for consideration. The Settlement Administrator shall notify the Claimant using the contact information provided in the Claim Form. The additional information and/or documentation can include, for example, answers to questions regarding the validity of the Claimant's physical or e-signature. A Claimant shall have until the Claim Form Deadline, or 15 days from the date the Notice of Deficiency is sent to the Claimant via mail and postmarked or via email, whichever is later, to reply to the Notice of Deficiency and provide the required information. If the Claimant timely and adequately provides the requested information and/or documentation, the Claim shall be deemed a Valid Claim and processed by the Settlement Administrator. If the Claimant does not

timely and completely provide the requested information and/or documentation, the Settlement Administrator shall reduce or deny the Claim unless Defendant and Class Counsel otherwise agree.

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

- a. Failure to fully complete and/or sign the Claim Form;
- b. Illegible Claim Form;
- c. The Claim Form is fraudulent or contains false information;
- d. The Claim Form is duplicative of another Claim Form;
- e. The Claimant is not a Settlement Class Member;
- f. The Claimant submitted a valid request to opt-out of the Settlement Class.
- g. The person submitting the Claim Form requests that payment be made to a person or entity other than the Claimant for whom the Claim Form is submitted;
- h. Failure to submit a Claim Form by the Claim Form Deadline; and/or
- i. The Claim Form otherwise does not comply with this Settlement.

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

- a. The Settlement Administrator shall have 30 days from the Claim Form Deadline to approve or reject Claims.
- b. A request for additional information by sending a Notice of Deficiency shall not be considered a denial for purposes of this paragraph.
- c. If a Claim is rejected, the Settlement Administrator shall notify the Claimant using the contact information provided in the Claim Form. Class Counsel and Defendant's Counsel shall be provided with copies of all such notifications to Claimants.

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

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

91. The Settlement Administrator must submit an invoice to Defendant for payment of all Valid Claims within 30 days of the Effective Date or as soon as all Claim deficiencies are resolved via the process set forth herein. Defendant shall pay or cause to be paid to the Settlement Administrator the invoiced amount of all Valid Claims within 10 days of the invoice.

92. No later than 60 days of the Effective Date, the Settlement Administrator shall: (a) distribute Cash Payments; and (b) if applicable, ensure Credit Monitoring activation codes are mailed to Settlement Class Members.

93. Cash Payments to Settlement Class Members will be made by electronic payment or by paper check, by sending Settlement Class Members with Valid Claims an email to select from alternative forms of electronic payment or by paper check. Settlement Class Members will have a period of 90 days to select their form of payment following such email from the Settlement Administrator. Paper checks must be negotiated within 120 days of issuance. In the event of any complications arising in connection with the issuance of an electronic payment, the Settlement Administrator shall provide written notice to Class Counsel and Defendant's Counsel. Absent specific instructions from Class Counsel and Defendant's Counsel, the Settlement Administrator



shall proceed to resolve the dispute using its best practices and procedures to ensure that the funds are fairly and properly distributed to the person or persons who are entitled to receive them. In the event the Settlement Administrator is unable to distribute funds to the person or persons entitled to receive them due to incorrect or incomplete information provided to the Settlement Administrator, the funds shall revert to Defendant, and the Settlement Class Member shall forfeit their right to the funds.

94. No person or entity shall have any claim against Defendant, Defendant's Counsel, Plaintiffs, the Settlement Class, Class Counsel, and/or the Settlement Administrator based on any eligibility determinations, distributions, awards, notices, technical issues, delays, non-delivery, identity-verification procedures, or other acts or omissions undertaken in good faith in accordance with this Settlement. Defendant shall not be liable for any act, omission, error, malfeasance, nonfeasance, insolvency, negligence, or misconduct of the Settlement Administrator, any payment processor, mail vendor, credit-monitoring provider, or any other third party retained to implement the Settlement.

#### **IX. Final Approval Order and Final Judgment**

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

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

- a. Determine that the Settlement is fair, adequate and reasonable;
- b. Finally certify the Settlement Class for settlement purposes only;
- c. Determine that the Notice Program satisfies Due Process requirements;
- d. Bar and enjoin all Releasing Parties from asserting or otherwise pursuing any of the Released Claims at any time and in any jurisdiction, including during any appeal from the Final Approval Order; and retain jurisdiction over the enforcement of the Court's injunctions;
- e. Release Defendant and the other Released Parties from the Released Claims; and
- f. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Defendant, Plaintiffs, all Settlement Class Members, and all objectors, to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

**X. Service Awards, Attorneys' Fees, and Costs**

97. ***Service Awards*** - Class Counsel, on behalf of the Class Representatives, may seek Service Awards of up to \$1,500.00 each, subject to Court approval. The Service Awards shall be payable separate from the Settlement Class Member Benefits. Defendant shall pay or cause to be paid the Court-approved Service Awards by check or wire transfer to an account designated by Class Counsel within five days of the Effective Date.

98. ***Attorneys' Fees and Costs*** - Class Counsel shall apply to the Court for an award of

attorneys' fees and costs of \$185,000, to be paid by or on behalf of Defendant separate from Defendant's obligation to pay Settlement Administration Costs and the Settlement Class Member Benefits to Settlement Class Members. Defendant shall pay or cause to be paid the Court-approved attorneys' fees and cost award by check or wire transfer to an account designated by Class Counsel within five days of the Effective Date.

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

#### **XI. Releases**

100. Upon the Effective Date, and in consideration of the settlement relief and other consideration described herein, the Releasing Parties shall be deemed to have, and by operation of the Final Approval Order shall have, fully, finally, and forever released, acquitted, relinquished, and completely discharged the Released Parties from any and all Released Claims, including but not limited to any state law or common law claims arising out of or relating to the Data Incident that the Releasing Parties may have or had, such as claims under the Florida Information Protection Act, Fla. Stat. § 501.171, the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201 et seq., or any other applicable federal, state, or local statute, regulation, or common law. Each Releasing Party expressly waives all rights under California Civil Code section 1542, which provides:

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

**MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

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

101. Settlement Class Members who opt-out of the Settlement prior to the Opt-Out Deadline do not release their individual claims and will not obtain any benefits, including any Settlement Class Member Benefit, under the Settlement.

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

**XII. Termination of Settlement**

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

- a. Court approval of the Settlement consideration and releases set forth herein;
- b. The Court has entered the Preliminary Approval Order;
- c. The Court has entered the Final Approval Order, all objections, if any, are overruled, and the resolution of all appeals taken from the Final Approval Order, if any, in favor of Final Approval; and

d. The occurrence of the Effective Date.

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

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

### **XIII. Effect of Termination**

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

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

Agreement had not been negotiated, made, or filed with the Court.

**XIV. No Admission of Liability**

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

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

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

whatsoever.

111. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by Plaintiffs or Settlement Class Members, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any proceeding in any court, administrative agency, or other tribunal.

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

## **XV. Miscellaneous Provisions**

113. ***Gender and Plurals.*** As used in this Agreement, the masculine, feminine or gender neutral, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

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

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

116. ***Obligation to Meet and Confer.*** Before filing any motion in the Court raising a

dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have met and conferred in an attempt to resolve the dispute.

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

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

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

120. ***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 instrument, even though all Parties do not sign the same counterparts. Original signatures are not required. Any signature submitted by facsimile or through email of a PDF shall be deemed an original.

121. ***Jurisdiction.*** The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Settlement Administrator. As part of the agreement to render services in connection with this Settlement, the



Settlement Administrator shall consent to the jurisdiction of the Court for this purpose. The Court shall retain jurisdiction over the enforcement of the Court's injunction barring and enjoining all Releasing Parties from asserting any of the Released Claims and from pursuing any Released Claims against the Released Parties at any time and in any jurisdiction, including during any appeal from the Final Approval Order.

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

If to Plaintiffs or Class Counsel:

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

Mariya Weekes  
**Milberg PLLC**  
333 SE 2nd Avenue, Suite 2000  
Miami, FL, 33131  
mweekes@milberg.com

If to Defendant or Defendant's Counsel:

Allen Sattler  
**Constangy, Brooks, Smith & Prophete LLP**  
2029 Century Park East, Suite 1100  
Los Angeles, CA 90067  
asattler@constangy.com

Rob Yang  
**Constangy, Brooks, Smith & Prophete LLP**  
601 Montgomery Street, Ste. 350  
San Francisco, CA 94111  
ryang@constangy.com

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of

objections, requests for exclusion, or other filings received as a result of the Notice Program.

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

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

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

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

127. ***Independent Investigation and Decision to Settle.*** The Parties understand and acknowledge they: (a) have performed an independent investigation of the allegations of fact and law made in connection with this Action; and (b) that even if they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Action as reflected in this Agreement, that will not affect or in any respect

limit the binding nature of this Agreement. All Parties recognize and acknowledge they reviewed and analyzed data that they and their experts used to make certain determinations, arguments, and settlement positions. The Parties agree this Settlement is fair, reasonable, and adequate, and will not attempt to renegotiate or otherwise void or invalidate or terminate the Settlement irrespective of what any unexamined data later shows. It is the Parties' intention to resolve their disputes in connection with this Action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

128. ***No Third-Party Beneficiaries.*** Except as expressly provided in this Agreement, nothing in this Agreement is intended to create, or shall be construed as creating, any rights in any person or entity other than the Parties, the Released Parties, and the Settlement Class Members as expressly set forth herein.

129. ***Severability.*** If any provision of this Agreement is held to be invalid, void, or unenforceable, the remaining provisions shall remain in full force and effect to the fullest extent permitted by law; provided, however, that Defendant may elect to terminate this Agreement if any invalidated provision materially increases Defendant's obligations or materially diminishes the benefit of the releases or other protections afforded to Defendant under this Agreement.

130. ***Force Majeure.*** Defendant shall not be deemed in breach of this Agreement, nor liable for any delay or failure in performance, to the extent caused by circumstances beyond its reasonable control, including acts of God, natural disasters, war, terrorism, civil unrest, labor disputes, governmental action, interruption of communications or payment systems, or failures of

third-party vendors or service providers, provided that Defendant uses commercially reasonable efforts to resume performance as soon as practicable.

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

*Signature Page to Follow*

**CLASS COUNSEL** (on behalf of Plaintiffs and the Settlement Class)

*Jeffrey Ostrow*

Jeffrey Ostrow (Jun 8, 2026 16:14:24 EDT)

**JEFF OSTROW**

KOPELOWITZ OSTROW P.A.

*Mariya Weekes*

Mariya Weekes (Jun 8, 2026 16:14:58 EDT)

**MARIYA WEEKES**

MILBERG PLLC

**ZENITH AMERICAN SOLUTIONS, INC.**

\_\_\_\_\_

By: \_\_\_\_\_

Its \_\_\_\_\_

**COUNSEL FOR ZENITH AMERICAN SOLUTIONS, INC.**

\_\_\_\_\_

**ALLEN SATTLER**

**ROB YANG**

CONSTANGY, BROOKS, SMITH

& PROPHETE LLP

third-party vendors or service providers, provided that Defendant uses commercially reasonable efforts to resume performance as soon as practicable.

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

**CLASS COUNSEL** (on behalf of Plaintiffs and the Settlement Class)

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**JEFF OSTROW**  
KOPELOWITZ OSTROW P.A.

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**MARIYA WEEKES**  
MILBERG PLLC

**ZENITH AMERICAN SOLUTIONS, INC.**

  
[Kim Fiori \(Jun 8, 2026 16:50:09 EDT\)](#)

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By: Kim Fiori  
Its CEO

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**COUNSEL FOR ZENITH AMERICAN SOLUTIONS, INC.**

  
**ALLEN SATTLER**  
**ROB YANG**  
CONSTANGY, BROOKS, SMITH  
& PROPHETE LLP

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