

**IN THE CIRCUIT COURT FOR  
ANDERSON COUNTY AT  
CLINTON TENNESSEE**

K.B. (minor) through Joan Blank, next friend; J.M. (minor) through Mary Murray, next friend; T.D. (minor) through Shelbie Dempsey, next friend; Jacob Mason; Whitney Sprouls; Meagan Jones; Miguel Cadenas; M.C. and T.C. (minors) through Lynne Cadenas, next friend; B.P., J.P. and C.P. (minors) through Judi Parris, next friend; C.J.J. (minor) through Craig Juneau, next friend; Michael McCarter; C.G.C. (minor) through Beth Catron, next friend; and K.C.U. (minor) through Robert Ulucan, next friend,

individually and on behalf of all others similarly situated,

Plaintiffs,

v.

EAST TENNESSEE CHILDREN'S  
HOSPITAL ASSOCIATION, INC.,

Defendant.

Case No. C2LA0081

**SETTLEMENT AGREEMENT**

This Settlement Agreement, dated as of this \_\_\_<sup>th</sup> day of March 2023, is made and entered into by and among the following Settling Parties (as defined below): (i) K.B. (minor) through Joan Blank, next friend; J.M. (minor) through Mary Murray, next friend; T.D. (minor) through Shelbie Dempsey, next friend; Jacob Mason; Whitney Sprouls; Meagan Jones; Miguel Cadenas; M.C. and T.C. (minors) through Lynne Cadenas, next friend; B.P., J.P. and C.P. (minors) through Judi Parris, next friend; C.J.J. (minor) through Craig Juneau, next friend; Michael McCarter; C.G.C. (minor)

through Beth Catron, next friend; and K.C.U. (minor) through Robert Ulucan, next friend, by and through their counsel of record; STRANCH JENNINGS & GARVEY, PLLC and other counsel listed below (“Plaintiffs’ Counsel”); and (ii) East Tennessee Children’s Hospital Association, Inc. (“ETCH”), by and through its counsel of record, MULLEN COUGHLIN LLC. The Settlement Agreement is subject to Court approval and is intended by the Settling Parties (as defined below) to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined below), upon and subject to the terms and conditions hereof.

## **I. THE LITIGATION**

ETCH is a Comprehensive Regional Pediatric Center in Tennessee serving primarily minors as patients. On or about March 18, 2022, ETCH discovered that it had suffered a data breach that impacted the personal information of 422,531 former and current patients (“Data Breach”). The Data Breach occurred between March 11, 2022, and March 14, 2022. On or around May 19, 2022, ETCH began to notify breach victims that hackers had gained unauthorized access to former and current patients’ confidential personally identifiable information and/or personal health information (together “PII”). The compromised PII included, at least, patients’ names, contact information, dates of birth, medical records, and Social Security number.

In late May 2022, each Plaintiff, individually or on behalf of their minor child(ren) received a notice letter from ETCH confirming that their or their child(ren)s’ PII was compromised as a result of the Data Breach. Subsequent to receiving notice of the data breach, each Plaintiff filed or participated in filing a lawsuit against ETCH, alleging a variety of claims arising from the Data Breach. After an all-day mediation resulted in settlement, Plaintiffs in all their pending actions other than the above-captioned matter voluntarily dismissed their lawsuits, and Plaintiffs filed an amended complaint naming all plaintiffs in this action styled *K.B. (minor) through Joan Blank et*

*al. v. East Tennessee Children’s Hospital Association, Inc.*, Case No. C2LA0081 (Circuit Court for Anderson County, Tennessee) (“the Action”). Plaintiffs assert the following claims: 1) negligence; 2) negligence per se; 3) breach of implied contract; 4) unjust enrichment; 5) violation of the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101, *et seq.*; and 6) violation of the ITDA under Tenn. Code Ann. § 47-18-2104.

Pursuant to the terms set out below, this Settlement Agreement provides for the resolution of all claims and causes of action asserted, or that could have been asserted, against ETCH relating to the Data Breach, by and on behalf of Plaintiffs and Settlement Class Members (as defined below), and any other such actions by and on behalf of any other individuals originating, or that may originate, in jurisdictions in the United States of America against ETCH relating to the Data Breach.

## **II. CLAIMS OF PLAINTIFFS AND BENEFITS OF SETTLING**

Plaintiffs believe that the claims asserted in the Action, as set forth in the Amended Class Action Complaint, have merit. Plaintiffs and Class Counsel (as defined below) recognize and acknowledge, however, the expense and length of continued proceedings necessary to prosecute the Action against ETCH through motion practice, trial, and potential appeals. They have also considered the uncertain outcome and risk of further litigation, as well as the difficulties and delays inherent in such litigation. Proposed Settlement Class Counsel (as defined below) are highly experienced in class-action litigation and are very knowledgeable regarding the relevant claims, remedies, and defenses at issue in cybersecurity incident litigation in general and in this Action in particular. They have determined that the settlement set forth in this Settlement Agreement is fair, reasonable, and adequate, and in the best interests of the Settlement Class.

## **III. DENIAL OF WRONGDOING AND LIABILITY**

ETCH denies each and all of the claims and contentions alleged against it in the Action. ETCH denies all charges of wrongdoing or liability as alleged, or which could be alleged, in the Action. Nonetheless, ETCH has concluded that further litigation would be protracted and expensive, and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement. ETCH has considered the uncertainty and risks inherent in any litigation. ETCH has, therefore, determined that it is desirable and beneficial that the Action be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

#### **IV. TERMS OF SETTLEMENT**

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiffs, individually and on behalf of the Settlement Class, Class Counsel, and ETCH that, subject to the approval of the Court, the Action and the Released Claims shall be finally and fully compromised, settled, and released, and the Action shall be dismissed with prejudice as to the Settling Parties, the Settlement Class, and the Settlement Class Members, except those Settlement Class Members who lawfully opt out of the Settlement Agreement, upon and subject to the terms and conditions of this Settlement Agreement, as follows:

## 1. Definitions

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

1.1 “Agreement” or “Settlement Agreement” means this agreement.

1.2 “Claims Administration” means the processing and payment of claims received from Settlement Class Members by the Claims Administrator (as defined below).

1.3 “Claims Administrator” means Kroll Settlement Administration LLC, a company experienced in administering class action claims generally and specifically those of the type provided for and made in data-breach litigation.

1.4 “Claims Deadline” means the postmark and/or online submission deadline for Valid Claims (as defined below) pursuant to ¶ 2.1.4.

1.5 “Claim Form” means the form utilized by the Settlement Class Members to submit a Settlement Claim (as defined below) for reimbursement. The Claim Form will be substantially in a form as shown in **Exhibit A** attached hereto, which will be available on both the Settlement Website (as defined below) and in paper format, if specifically requested by a Settlement Class Member.

1.6 “Interim Lead Class Counsel” means Stranch Jennings & Garvey PLLC.

1.7 “Costs of Claims Administration” means all actual costs associated with or arising from Claims Administration.

1.8 “Court” means the Circuit Court for Anderson County, Tennessee.

1.9 “Data Breach” means the targeted cyberattack discovered on or about March 18, 2022 that involved the PII and/or PHI of 422,531 former and current patients of ETCH.

1.10 “Effective Date” means the first date by which all of the events and conditions specified in ¶ 1.11 herein have occurred and been met.

1.11 “Final” means the occurrence of all of the following events: (a) the settlement pursuant to this Settlement Agreement is finally approved by the Court; (b) the Court has entered the Final Judgment and Order (as defined below); and (c) the time to appeal or seek permission to appeal from the Final Judgment and Order has expired or, if appealed, the appeal has been dismissed in its entirety, or the Final Judgment and Order has been affirmed in its entirety by the court of last resort to which such appeal may be taken, and such dismissal or affirmance has become no longer subject to further appeal or review.

1.12 “Final Judgment and Order” means a judgment rendered by the Court, substantially in the form shown in **Exhibit E**.

1.13 “Long Notice” means the long form notice of settlement posted on the Settlement Website, substantially in the form as shown in **Exhibit C** hereto.

1.14 “Minor Subclass” which shall be defined as “all persons below the age of majority at the time of the Data Breach whose Private Information was compromised in the Data Breach and were sent a notice of the Data Breach from Defendant.” The Minor Subclass consists of approximately 255,000 persons.

1.15 “Objection Date” means the date by which Settlement Class Members must mail their objection to the settlement for that objection to be effective. The postmark date shall constitute evidence of the date of mailing for these purposes.

1.16 “Opt-Out Date” means the date by which Settlement Class Members must mail their requests to be excluded from the Settlement Class for that request to be effective. The postmark date shall constitute evidence of the date of mailing for these purposes.

1.17 “Person” means an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity, and their respective spouses, heirs, predecessors, successors, representatives, or assignees.

1.18 “PII” means, but is not limited to, individual’s first and last names, Social Security numbers, drivers’ license information, dates of birth, health insurance information, medical treatment information, and financial account information, health insurance information, medical treatment information, and any other information leading to notification regarding the Data Breach.

1.19 “Plaintiffs” or “Class Representatives” means K.B., a minor child through parent/legal guardian Joan Blank, next friend; J.M., a minor child through parent/legal guardian Mary Murray, next friend, T.D., a minor child through parent/legal guardian Shelbie Dempsey, next friend; Jacob Mason; Whitney Sprouls; Meagan Jones; Miguel Cadenas; M.C. and T.C., minor children through parent/legal guardian Lynne Cadenas, next friend; B.P., J.P., and C.P., minor children through parent/legal guardian Judi Parris, next friend; C.J.J., a minor child through parent/legal guardian Craig Juneau, next friend; Michael McCarter; C.G.C., a minor child through parent/legal guardian Beth Catron, next friend; and K.C.U., a minor child through parent/legal guardian Robert Ulucan, next friend.

1.20 “Preliminary Approval Order” means the order preliminarily approving the Settlement Agreement and ordering that notice be provided to the Settlement Class. The Settling Parties’ proposed form of Preliminary Approval Order is attached hereto as **Exhibit D**.

1.21 “Proposed Class Counsel” and/or “Proposed Settlement Class Counsel” means Stranch Jennings & Garvey PLLC; Milberg Coleman Bryson Phillips Grossman, PLLC; Migliaccio & Rathod, LLP; Morgan & Morgan; Hellmuth & Johnson, PLLC; The Lyon Firm, LLC; Cohen & Malad, LLP; Turke & Strauss LLP; Mason LLP; and Arnold Law Firm.

1.22 “Released Claims” shall collectively mean any and all past, present, and future claims and causes of action, including, but not limited to, any causes of action arising under or premised upon any statute, constitution, law, ordinance, treaty, regulation, or common law of any country, state, province, county, city, or municipality, including 15 U.S.C. §§ 45 *et seq.*, and all similar statutes in effect in any states in the United States; negligence; breach of contract; breach of implied contract; breach of fiduciary duty; unjust enrichment; bailment; wantonness; failure to provide adequate notice pursuant to any breach notification statute or common law duty; and including, but not limited to, any and all claims for damages, injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys’ fees and expenses, pre-judgment interest, credit monitoring services, the creation of a fund for future damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, and/or the appointment of a receiver, whether known or unknown, liquidated or unliquidated, accrued or unaccrued, fixed or contingent, direct or derivative, and any other form of legal or equitable relief that either has been asserted, was asserted, or could have been asserted, by any Settlement Class Member against any of the Released Persons based on, relating to, concerning, arising out of, or activities stemming from the Data Breach. Released Claims shall not include the right of any Settlement Class Member, Class Counsel, or any of the Released Persons to enforce the terms of the settlement contained in this Settlement Agreement and shall not include the claims of Settlement Class Members who have timely excluded themselves from the Settlement Class. Notwithstanding the foregoing, the Parties



expressly agree and acknowledge that the Release negotiated herein shall not apply to any litigation or claim not related to or arising out of the Data Incident, or any such litigation or claims pending against ETCH.

1.23 “Released Persons” mean East Tennessee Children’s Hospital Association, Inc., and its respective past or present parents, subsidiaries, divisions, and related or affiliated entities, and each of its and their respective predecessors, successors, directors, officers, principals, agents, attorneys, insurers, and reinsurers, and includes, without limitation, any Person related to any such entity who is, was or could have been named as a defendant in any of the actions in the Action, other than any Person who is found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Breach or who pleads *nolo contendere* to any such charge.

1.24 “Settlement Claim” means a claim for settlement benefits made under the terms of this Settlement Agreement.

1.25 “Settlement Class” means “all persons whose Private Information was compromised in the Data Breach and were sent a notice of the Data Breach from Defendant.” The following people are excluded from the Class: (a) any judge or magistrate presiding over this action and members of their families; (b) Defendant, Defendant’s subsidiaries, parents, successors, predecessors, affiliated entities, and any entity in which Defendant or its parent has a controlling interest, and their current or former officers and directors; (c) persons who properly execute and file a timely request for exclusion from the Class; (d) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (e) Plaintiffs’ counsel and Defendant’s counsel; and (f) the legal representatives, successors, and assigns of any such excluded persons.

1.26 “Settlement Class Member(s)” or “Member(s)” means a Person(s) who falls within the definition of the Settlement Class.

1.27 “Settlement Fund” shall mean the sum of \$1,550,000.00 which ETCH agrees to pay to resolve the claims of the Settlement Class.

1.28 “Settlement Website” means the website described in ¶ 3.2(c).

1.29 “Settling Parties” means, collectively, ETCH and Plaintiffs, individually and on behalf of the Settlement Class.

1.30 “Short Notice” means the content of the mailed notices to the proposed Settlement Class Members, substantially in the form as shown in **Exhibits B-1 and B-2** attached hereto. The Short Notice will direct recipients to the Settlement Website and inform Settlement Class Members, among other things, of the Claims Deadline, the Opt-Out Date, the Objection Date, the requested attorneys’ fees, and the date of the Final Approval Hearing (as defined below).

1.31 “Unknown Claims” means any of the Released Claims that any Settlement Class Member, including Plaintiffs, does not know or suspect to exist in his/her favor at the time of the release of the Released Persons that, if known by him or her, might have affected his or her settlement with, and release of, the Released Persons, or might have affected his or her decision not to object to and/or to participate in this Settlement Agreement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that upon the Effective Date, Plaintiffs intend to and expressly shall have, and each of the other Settlement Class Members intend to and shall be deemed to have, and by operation of the Final Judgment and Order shall have, waived the provisions, rights, and benefits conferred by California Civil Code § 1542, and also any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States (including, without limitation, California Civil Code §§ 1798.80 *et seq.*, Montana

Code Ann. § 28-1-1602; North Dakota Cent. Code § 9-13-02; and South Dakota Codified Laws § 20-7-11), which is similar, comparable, or equivalent to California Civil 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.

Settlement Class Members, including Plaintiffs, may hereafter discover facts in addition to, or different from, those that they, and any of them, now know or believe to be true with respect to the subject matter of the Released Claims, but Plaintiffs expressly shall have, and each other Settlement Class Member shall be deemed to have, and by operation of the Final Judgment and Order shall have, upon the Effective Date, fully, finally, and forever settled and released any and all Released Claims. The Settling Parties acknowledge, and Settlement Class Members shall be deemed by operation of the Final Judgment and Order to have acknowledged, that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part. Notwithstanding the foregoing, the Parties expressly agree and acknowledge that the Release negotiated herein shall not apply to any litigation or claim not related to or arising out of the Data Incident, or any such litigation or claims pending against ETCH.

1.32 “United States” as used in this Settlement Agreement includes all 50 states, the District of Columbia, and all territories.

1.33 “Valid Claims” means Settlement Claims in an amount approved by the Claims Administrator or found to be valid through the claims processing and/or dispute resolution process described in ¶ 2.6.

**2. Settlement Benefits**

**2.1 Non-reversionary settlement fund.**

2.2 Defendant will fund a non-reversionary fund of \$1,550,000.00 for the payment of claims and all other components of the settlement, including the cost of notice and administration, service awards for Plaintiffs and reasonable attorneys’ fees, costs and litigation expenses. Service awards, attorneys’ fees, costs and litigation expenses are subject to Court approval.

**2.3 Minor Subclass Benefits.**

All members of the Minor Subclass shall be automatically provided with a code to activate ten (10) years of Pango’s Identity Defense Minor Service. Said codes will be live after the Effective Date, and Minor Subclass Members will have a one-year enrollment period in which to enroll in this coverage. This shall be the sole settlement benefit offered to Minor Subclass Members. Funding for the Minor Subclass Benefits shall precede funding of any Settlement Class Benefits offered below.

Members of the Minor Subclass need not file a claim for the Pango Identity Defense Minor Service, but will have the opportunity to sign up for an email reminder of when the activation codes can be used, which is anticipated to be on or shortly after the Effective Date (as defined in Section 1.10).

**2.4 Class Benefits.**

Settlement Class Members who were not minors at the time of the Data Breach shall be permitted to claim the following settlement benefits below:

#### **2.4.1 Reimbursement of Ordinary Out-of-Pocket Losses:**

Settlement Class Members can submit a claim form for reimbursement of documented out-of-pocket losses that are fairly traceable to the Data Breach up to \$500 per individual (“Out-of-Pocket Losses”). Out-of-Pocket Losses will include, without limitation and by way of example, unreimbursed losses relating to fraud or identity theft; professional fees including attorneys’ fees, accountants’ fees, and fees for credit repair services; costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs that were incurred on or after mailing of the notice of data breach, through the date of claim submission; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges.

Settlement Class Members with Out-of-Pocket Losses must submit documentation supporting their claims. This may include receipts or other documentation not “self-prepared” by the claimant that document the costs incurred. “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but may be considered to add clarity or support other submitted documentation.

#### **2.4.2 Reimbursement for Attested Lost Time:**

Members of the Settlement Class may make a claim for either documented time or self-certified time spent remedying issues related to the Data Breach. Members of the Settlement Class may claim up to 5 hours of self-certified time spent mitigating the effects of the Data Breach. Members of the Settlement Class will be compensated for lost time at a rate of \$15/hour. Claims made for time can be combined with reimbursement for ordinary Out-of-Pocket Losses subject to the \$500 aggregate individual cap on out-of-pocket losses.

#### **2.4.3 Reimbursement for Extraordinary Losses:**

Defendant will provide up to \$5,000.00 in compensation to each Claimant for proven monetary loss if:

- a. The loss is an actual, documented, and unreimbursed monetary loss;
- b. The loss was more likely than not caused by the Data Breach;
- c. The loss occurred during a specified time period;
- d. The loss is not already covered by one or more of the out-of-pocket reimbursement examples above; and the settlement class member made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all available credit monitoring insurance and identity theft insurance.

#### **2.4.4 Identity Theft Protection:**

Defendant will pay for additional credit monitoring services as follows: All Settlement Class Members shall be offered on a claim-in basis a 3-year membership of 1B credit monitoring with at least \$1 million in fraud protection.

#### **2.4.5 Alternative Cash Payment:**

In lieu of the benefits outlined in sections 1, 2, 3 and 4 above, Settlement Class Members may make a claim on the common fund for an Alternative Cash Payment of \$50 to be prorated according to the number of claims made by Settlement Class members. Any Settlement Class member who elects to receive the Alternative Cash Payment will not be eligible to receive reimbursement for Ordinary Out of Pocket or Lost Time losses, Extraordinary Losses, or Identity Theft Protection described above. Minor Subclass members are not eligible for this alternative cash payment.

#### **2.5 Claims Deadline.**

Settlement Class Members seeking Settlement Benefits under ¶ 2.4 must complete and submit a Claim Form to the Claims Administrator, postmarked or submitted online on or before the 180th day after the date on which the notice program commences pursuant to ¶ 3.2(d)—the “Claims Deadline.” The notice to the Settlement Class will specify this deadline and other relevant dates described herein. The Claim Form must be verified by the Settlement Class Member with a statement that his or her claim is true and correct, to the best of his or her knowledge and belief. Notarization shall not be required. Failure to provide supporting documentation for Ordinary Losses (other than for reimbursement for lost time) and Extraordinary Losses, referenced above, as requested on the Claim Form, shall result in denial of a claim. For reimbursement of lost time claimed by Settlement Class Members, the Settlement Class Member must provide an attestation that the time claimed was spent dealing with issues related to the Data Breach.

#### **2.5 Business Practice Changes.**

Pursuant to the November 2022 Confidentiality Agreement executed to facilitate resolution of the dispute, Defendant provided information to Plaintiffs’ counsel explaining its security enhancements undertaken to date and planned in the next 2 years. These business practice changes will not be categorized as equitable or injunctive relief, but rather represented Class Counsel’s efforts to ensure that the Class PII and PHI is fully protected going forward. Costs associated with these data security measures will be paid by ETCH separate and apart from other settlement benefits.

#### **2.6 Dispute Resolution for Claims.**

2.6.1 The Claims Administrator, in its sole discretion to be reasonably exercised, will determine whether: (a) the claimant is a Settlement Class Member; (b) the claimant has provided all information needed to complete the Claim Form, including any documentation that may be

necessary to reasonably support the expenses described in ¶ 2.4.1 or ¶ 2.4.3; and (c) the information submitted could lead a reasonable person to conclude that more likely than not the claimant has suffered the claimed losses as a result of the Data Breach. The Claims Administrator may, at any time, request from the claimant, in writing, additional information as the Claims Administrator may reasonably require in order to evaluate the claim, *e.g.*, documentation requested on the Claim Form, required documentation regarding the claimed losses, etc. The Claims Administrator's initial review will be limited to a determination of whether the claim is complete and plausible. For any claims that the Claims Administrator determines to be implausible, the Claims Administrator will submit those claims to the Settling Parties. If the Settling Parties do not agree with the claimant's claim, after meeting and conferring, then the claim shall be referred to a claims referee for resolution.

2.6.2 Upon receipt of an incomplete or unsigned Claim Form or a Claim Form that is not accompanied by sufficient documentation to determine whether the claim is facially valid, the Claims Administrator shall request additional information ("Claim Supplementation") and give the claimant twenty-one (21) days to cure the defect before rejecting the claim. Requests for Claim Supplementation shall be made within thirty (30) days of receipt of such Claim Form or thirty (30) days from the Effective Date, whichever comes later. In the event of unusual circumstances interfering with compliance during the twenty-one (21) day period, the claimant may request and, for good cause shown (illness, military service, out of the country, mail failures, lack of cooperation of third parties in possession of required information, etc.), shall be given a reasonable extension of the twenty-one (21) day deadline in which to comply; however, in no event shall the deadline be extended to later than six (6) months from the Effective Date. If the defect is not



timely cured, then the claim will be deemed invalid and there shall be no obligation to pay the claim.

2.6.3 Following receipt of additional information requested by the Claims Administrator, the Claims Administrator shall have ten (10) days to accept, in whole or lesser amount, or reject each claim. If, after review of the claim and all documentation submitted by the claimant, the Claims Administrator determines that such a claim is facially valid, then the claim shall be paid. If the Claim Administrator determines that such a claim is not facially valid because the claimant has not provided all information needed to complete the Claim Form and enable the Claim Administrator to evaluate the claim, then the Claim Administrator may reject the claim without any further action. If the claim is rejected in whole or in part, for other reasons, then the claim shall be referred to the claims referee.

2.6.4 Subject to Court approval, the Settling Parties agree to use Hon. Daryl Fansler as the claims referee in this matter. If any dispute is submitted to the claims referee, the claims referee may approve the Claims Administrator's determination by making a ruling within fifteen (15) days of the claims referee's receipt of the submitted dispute. The claims referee may make any other final determination of the dispute or request further supplementation of a claim within thirty (30) days of the claims referee's receipt of the submitted dispute. The claims referee's determination shall be based on whether the claims referee is persuaded that the claimed amounts are reasonably supported in fact and were more likely than not caused by the Data Incident. The claims referee shall have the power to approve a claim in full or in part. The claims referee's decision will be final and non-appealable. Any claimant referred to the claims referee shall reasonably cooperate with the claims referee, including by either providing supplemental information as requested or, alternatively, signing an authorization allowing the claims referee to verify the claim through third-

party sources, and failure to cooperate shall be grounds for denial of the claim in full. The claims referee shall make a final decision within thirty (30) days of the latter of the following events: its receipt of the submitted dispute and receipt of all supplemental information requested.

2.7 Settlement Expenses. All costs for notice to the Settlement Class as required under ¶¶ 3.1 and 3.2, Costs of Claims Administration under ¶¶ 8.1, 8.2, and 8.3, and the costs of dispute resolution described in ¶ 2.5, shall be paid from the non-reversionary common fund.

2.8 Order of Payment. Payments from the Settlement Fund will be made in the following order: (a) all Settlement Expenses under ¶ 2.7; (b) the cost of Pango's Identity Defense Minor Service; (c) all attorneys' fees, expenses, and service awards pursuant to ¶¶ 7.2 and 7.4, as ordered by the Court; (d) the cost of the identity theft protection service for Settlement Class Members; (e) attested lost time; (f) documented ordinary expense reimbursements; and; (g) extraordinary loss reimbursements. Ordinary expense reimbursements, attested lost time, and extraordinary loss reimbursements shall be subject to a *pro rata* reduction if there are not sufficient funds in the Settlement Fund to fully fund those benefits.

2.9 **Cy Pres.**

Any unclaimed amount following the distribution per this agreement will not revert to the Defendant, but will rather be paid to a cy pres recipient, to be agreed to by the parties.

2.10 **Settlement Class Certification.** The Settling Parties agree, for purposes of this settlement only, to the certification of the Settlement Class. If the settlement set forth in this Settlement Agreement is not approved by the Court, or if the Settlement Agreement is terminated or cancelled pursuant to the terms of this Settlement Agreement, this Settlement Agreement, and the certification of the Settlement Class provided for herein, will be vacated and the Action shall proceed as though the Settlement Class had never been certified, without prejudice to any Person's

or Settling Party's position on the issue of class certification or any other issue. The Settling Parties' agreement to the certification of the Settlement Class is also without prejudice to any position asserted by the Settling Parties in any other proceeding, case, or action, as to which all of their rights are specifically preserved.

### **3. Order of Preliminary Approval and Publishing of Notice of Approval Hearing**

3.1. As soon as practicable after the execution of the Settlement Agreement, Plaintiffs' Counsel and counsel for ETCH shall jointly submit this Settlement Agreement to the Court, and Plaintiffs' Counsel will file a motion for preliminary approval of the settlement with the Court requesting entry of a Preliminary Approval Order in the form attached hereto as **Exhibit D**, or an order substantially similar to such form in both terms and cost, requesting, *inter alia*:

- a) certification of the Settlement Class for settlement purposes only pursuant to ¶ 2.8;
- b) preliminary approval of the Settlement Agreement as set forth herein;
- c) appointment of Stranch Jennings & Garvey, PLLC as Interim Lead Counsel;
- d) appointment of Stranch Jennings & Garvey PLLC; Milberg Coleman Bryson Phillips Grossman, PLLC; Migliaccio & Rathod, LLP; Morgan & Morgan; Hellmuth & Johnson, PLLC; The Lyon Firm, LLC; Cohen & Malad, LLP; Turke & Strauss LLP; Mason LLP; and Arnold Law Firm as Settlement Class Counsel;
- e) appointment of Plaintiffs as Class Representatives;
- f) approval of a customary form of Short Notice to be mailed by first-class United States Postal Service ("USPS") mail to Settlement Class Members in a form substantially similar to **Exhibit B** attached hereto.
- g) approval of the Long Notice to be posted on the Settlement Website in a form substantially similar to **Exhibit C** attached hereto, which, together with the Short

Notice, shall include a fair summary of the Settling Parties' respective litigation positions, the general terms of the settlement set forth in the Settlement Agreement, instructions for how to object to or opt-out of the settlement, the process and instructions for making claims to the extent contemplated herein, the requested attorneys' fees, costs, and expenses, the requested service award, and the date, time and place of the Final Approval Hearing (as defined below);

- h) approval of the Claim Form to be available on the Settlement Website for submitting claims and available, upon request, in a form substantially similar to **Exhibit A** attached hereto; and
- i) appointment of Kroll Settlement Administration PLC as the Claims Administrator.

3.2 Notice to the Settlement Class and the Costs of Claims Administration in accordance with the Preliminary Approval Order shall be paid from the Settlement Fund. Any attorneys' fees, costs, and expenses of Plaintiffs' Counsel, and service award to the Class Representatives, as approved by the Court, shall also be paid from the Settlement Fund as set forth in ¶ 7 below. Notice shall be provided to Settlement Class Members by the Claims Administrator as follows:

- a) *Class Member Information*: Within fourteen (14) days of entry of the Preliminary Approval Order, ETCH shall provide the Claims Administrator with the name and physical address of each Settlement Class Member (collectively, "Class Member Information") that ETCH and/or the Released Entities possesses. ETCH warrants and represents that it will provide the most current Class Member Information for all Settlement Class Members as such information is contained in its or the Released Entities' records.

- b) The Class Member Information and its contents shall be used by the Claims Administrator solely for the purpose of performing its obligations pursuant to this Settlement Agreement and shall not be used for any other purpose at any time. Except to administer the settlement as provided in this Settlement Agreement, or to provide all data and information in its possession to the Settling Parties upon request, the Claims Administrator shall not reproduce, copy, store, or distribute in any form, electronic or otherwise, the Class Member Information.
- c) *Settlement Website:* Prior to the dissemination of the Short Notice, the Claims Administrator shall establish the Settlement Website, which will inform Settlement Class Members of the terms of this Settlement Agreement, their rights, dates, deadlines, and related information. The Settlement Website shall include, in .pdf format and available for download, the following: (i) the Long Notice; (ii) the Claim Form; (iii) the Preliminary Approval Order; (iv) this Settlement Agreement; (v) the operative Class Action Complaint filed in the Action; and (vi) any other materials agreed upon by the Settling Parties and/or required by the Court. The Settlement Website shall provide Settlement Class Members with the ability to complete and submit the Claim Form, and supporting documentation, electronically.
- d) *Short Notice:* Within forty-five (45) days of entry of the Preliminary Approval Order and to be substantially completed no later than sixty (60) days after entry of the Preliminary Approval Order, subject to the requirements of this Agreement and the Preliminary Approval Order, the Claims Administrator will provide notice to the Settlement Class Members as follows:

- Via email to the email address provided to ETCH and/or Released Entities by the Settlement Class Members, to the extent an email address is available for the Settlement Class Member;
- Via first-class U.S. Postal Service (“USPS”) mail to the postal address provided to ETCH and/or the Released Entities by the Settlement Class Members, to the extent an email address is not available for the Settlement Class Member. Before any mailing under this paragraph occurs, the Claims Administrator shall run the postal addresses of Settlement Class Members through the USPS National Change of Address database to update any change of address on file with the USPS within thirty (30) days of entry of the Preliminary Approval Order;
- In the event that any notice that has been emailed is returned as undeliverable, the Claims Administrator shall attempt two (2) other email executions, and, if not successful, the Claims Administrator shall send notice via USPS, to the extent a current mailing address is available;
- In the event that any notice is returned to the Claims Administrator by the USPS because the address of the recipient is not valid, and the envelope contains a forwarding address, the Claims Administrator shall re-send notice to the forwarding address within seven (7) days of receiving the returned notice;

- In the event that subsequent to the first mailing of notice, and at least fourteen (14) days prior to the Opt-Out Date and the Objection Date, notice is returned to the Claims Administrator by the USPS because the address of the recipient is no longer valid, *i.e.*, the envelope is marked “Return to Sender” and does not contain a new forwarding address, the Claims Administrator shall perform a standard skip trace, in the manner that the Claims Administrator customarily performs skip traces, in an effort to attempt to ascertain the current address of the particular Settlement Class Member in question, and, if such an address is ascertained, the Claims Administrator will re-send notice within seven (7) days of receiving such information. This shall be the final requirement for mailing;
  - The date of the first mailing or emailing of notice shall be deemed the “Notice Commencement Date” for purposes of calculating the Claims Deadline, Opt-Out Date and Objection Date deadlines, and all other deadlines that flow from the Notice Commencement Date.
- e) Publishing, on or before the date of mailing the Short Notice, the Claim Form, and the Long Notice on the Settlement Website, as specified in the Preliminary Approval Order, and maintaining and updating the Settlement Website throughout the claim period;
- f) A toll-free help line shall be made available to provide Settlement Class Members with additional information about the settlement and to respond to Settlement Class Members’ questions. The Claims Administrator also will provide copies of the

Short Notice, Long Notice, and paper Claim Form, as well as this Settlement Agreement, upon request to Settlement Class Members; and

- g) Contemporaneously with seeking final approval of the Settlement, Class Counsel and ETCH shall cause to be filed with the Court an appropriate affidavit or declaration with respect to complying with this provision of notice.

3.3 The Short Notice, Long Notice, and other applicable communications to the Settlement Class may be adjusted by the Claims Administrator, respectively, in consultation and agreement with the Settling Parties, as may be reasonable and not inconsistent with such approval. The notice program shall commence within forty-five (45) days after entry of the Preliminary Approval Order and shall be completed within sixty (60) days after entry of the Preliminary Approval Order, pursuant to ¶ 3.2(d).

3.4 Plaintiffs' Counsel and ETCH's counsel shall request that after notice is completed, the Court hold a hearing (the "Final Approval Hearing") and grant final approval of the settlement set forth herein. At the Final Approval Hearing, the Settling Parties will ask the Court to enter the Final Judgment and Order attached hereto as **Exhibit E**.

#### **4. Opt-Out Procedures**

4.1 Each Person wishing to opt out of the Settlement Class shall individually sign and timely submit written notice of such intent to the designated Post Office box established by the Claims Administrator. The written notice must state the individual's name, address, and telephone number. The written notice must clearly manifest a Person's intent to be excluded from the Settlement Class. To be effective, written notice must be postmarked no later than sixty (60) days after the date on which the notice program commences pursuant to ¶ 3.2(d)—the "Opt-Out Date."



4.2 All Persons who submit valid and timely notices of their intent to be excluded from the Settlement Class, as set forth in ¶ 4.1 above, referred to herein as “Opt-Outs,” shall not receive any benefits of and/or be bound by the terms of this Settlement Agreement. All Persons falling within the definition of the Settlement Class who do not request to be excluded from the Settlement Class in the manner set forth in ¶ 4.1 above shall be bound by the terms of this Settlement Agreement and Final Judgment and Order entered thereon.

## **5. Objection Procedures**

5.1 Each Settlement Class Member desiring to object to the Settlement Agreement shall submit written notice of his or her objection to be postmarked no later than sixty (60) days after the date on which the notice program commences pursuant to ¶ 3.2(d)—the “Objection Date.” Such notice shall state: (a) the objector’s full name, address, telephone number, and e-mail address (if any); (b) information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class (*e.g.*, copy of notice, copy of original notice of the Data Breach); (c) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (d) the identity of any and all counsel representing the objector in connection with the objection; (e) a statement as to whether the objector and/or his or her counsel will appear at the Final Approval Hearing, and; (f) the objector’s signature and the signature of the objector’s duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation). To be timely, written notice of an objection in the appropriate form must be filed with the Clerk of the Court and contain the case name and docket number, by no later than the Objection Date, and served concurrently therewith upon Plaintiffs’ Counsel, J. Gerard Stranch, IV, Stranch Jennings & Garvey, PLLC, 223 Rosa L. Parks Avenue, Ste. 200, Nashville, TN 37203; and counsel for ETCH,

Claudia McCarron and Amanda Harvey, MULLEN COUGHLIN LLC, 426 W. Lancaster Avenue, Suite 200, Devon, PA 19333.

5.2 Any Settlement Class Member who fails to comply with the requirements for objecting in ¶ 5.1 shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement, and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders, and judgments in the Action. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions of ¶ 5.1. Without limiting the foregoing, any challenge to the Settlement Agreement, the final order approving this Settlement Agreement, or the Final Judgment and Order to be entered upon final approval shall be pursuant to appeal under the Tennessee Rules of Appellate Procedure and not through a collateral attack.

## **6. Releases**

6.1 Upon the Effective Date, each Settlement Class Member, including Plaintiffs, shall be deemed to have, and by operation of the Final Judgment and Order shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims, including Unknown Claims, except for enforcement of the Settlement Agreement. Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, including Plaintiffs, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public or in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in any action in this or any other forum (other than participation in the settlement as provided herein) in which any of the Released Claims is asserted.

6.2 Upon the Effective Date, ETCH shall be deemed to have, and by operation of the Final Judgment and Order shall have, fully, finally, and forever released, relinquished, and

discharged, Plaintiffs, each and all of the Settlement Class Members, Class Counsel and Plaintiffs' Counsel, of all claims, including Unknown Claims, based upon or arising out of the institution, prosecution, assertion, settlement, or resolution of the Action or the Released Claims, except for enforcement of the Settlement Agreement. Any other claims or defenses ETCH may have against such Persons including, without limitation, any claims based upon or arising out of any retail, banking, debtor-creditor, contractual, or other business relationship with such Persons that are not based upon or do not arise out of the institution, prosecution, assertion, settlement, or resolution of the Action or the Released Claims are specifically preserved and shall not be affected by the preceding sentence.

6.3. Notwithstanding any term herein, ETCH shall not have or shall not be deemed to have released, relinquished, or discharged any claim or defense against any Person other than Plaintiffs, each and all of the Settlement Class Members, Class Counsel, and Plaintiffs' Counsel.

**7. Plaintiffs' Counsel's Attorneys' Fees, Costs, and Expenses; Service Awards to Plaintiffs**

7.1 The Settling Parties did not discuss the payment of attorneys' fees, costs, expenses and/or service awards to Proposed Settlement Class Counsel and Plaintiffs, as provided for in ¶¶ 7.2 and 7.3, respectively, until after the substantive terms of the settlement had been agreed upon.

7.2 Plaintiffs will seek an award of reasonable attorneys' fees to Plaintiffs' Counsel not to exceed 33% of the gross Settlement Fund, following, and subject to, Plaintiffs' Counsel's application to and approval by the Court. Plaintiffs will also seek an award of reasonable costs and expenses, in addition to any request for attorneys' fees. Plaintiffs will not request more than the amounts stated in this paragraph.

7.3 Subject to Court approval, Plaintiffs will seek an award of \$1000 each in recognition of their service to the Settlement Class. Any service award must be court approved, but such award will not be conditioned upon or tied to the Court approval of a settlement.

7.4 If awarded by the Court, attorneys' fees, costs, expenses, and service awards to Proposed Settlement Class Counsel, as set forth above in ¶¶ 7.1, 7.2, and 7.3, will be paid from the non-reversionary Settlement Fund within seven (7) days after the Effective Date. The Settlement Administrator will pay the service awards directly to the Plaintiffs.

7.5 The amount(s) of any award of attorneys' fees, costs, and expenses, and the service award to Plaintiffs, are intended to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement. No order of the Court, or modification or reversal or appeal of any order of the Court, concerning the amount(s) of any attorneys' fees, costs, expenses, and/or service awards ordered by the Court to Proposed Settlement Class Counsel or Plaintiffs shall affect whether the Final Judgment Order is Final or constitute grounds for cancellation or termination of this Settlement Agreement.

## **8. Settlement Fund**

8.1 Custody of the Settlement Fund. The Settlement Fund shall be deposited into an appropriate trust established by the Settlement Administrator but shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed pursuant to the Settlement Agreement or returned to those who paid the Settlement Fund in the event this Settlement Agreement is voided, terminated, or cancelled.

8.2 Treasury Regulations and Fund Investment. The Parties agree that the Settlement Fund is intended to be maintained as a qualified settlement fund within the meaning of Treasury Regulation § 1.468 B-1, and that the Settlement Administrator, within the meaning of Treasury

Regulation § 1.468 B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of the Settlement Fund and paying from the Settlement Fund any taxes owed with respect to the Settlement Fund. The Parties agree that the Settlement Fund shall be treated as a qualified settlement fund from the earliest date possible and agree to any relation-back election required to treat the Settlement Fund as a qualified settlement fund from the earliest date possible. Any and all funds held in the Settlement Fund shall be held in an interest-bearing account insured by the Federal Deposit Insurance Corporation (“FDIC”) at a financial institution determined by the Settlement Administrator and approved by the Parties. Funds may be placed in a non-interest bearing account as may be reasonably necessary during the check clearing process. The Settlement Administrator shall provide an accounting of any and all funds in the Settlement Fund, including any interest accrued thereon and payments made pursuant to this Agreement, upon request of any of the Parties.

8.3 Taxes. All taxes relating to the Settlement Fund shall be paid out of the Settlement Fund, shall be considered an Administrative Expense, and shall be timely paid by the Settlement Administrator without prior order of the Court. Further, the Settlement Fund shall indemnify and hold harmless the Parties and their counsel for taxes (including, without limitation, taxes payable by reason of any such indemnification payments). The Parties and their respective counsel have made no representation or warranty with respect to any tax treatment by any Class Representative or any Settlement Class Member of any payment or transfer made pursuant to this Agreement or derived from or made pursuant to the Settlement Fund. Each Class Representative and Settlement

Class Member shall be solely responsible for the federal, state, and local tax consequences to him, her, they, or it of the receipt of funds from the Settlement Fund pursuant to this Agreement.

## **9. Administration of Claims**

9.1 The Claims Administrator shall administer and calculate the claims submitted by Settlement Class Members under ¶ 2.1. Class Counsel and ETCH shall be given reports as to both claims and distribution and shall have the right to review and obtain supporting documentation to the extent necessary to resolve claims administration issues. The Claims Administrator's determination of whether a Settlement Claim is a Valid Claim shall be binding, subject to the dispute resolution process set forth in ¶ 2.6. All claims agreed to be paid in full by ETCH shall be deemed a Valid Claim.

9.2 Checks for Valid Claims shall be mailed and postmarked within sixty (60) days of the Effective Date, or within thirty (30) days of the date that the claim is approved, whichever is later.

9.3 All Settlement Class Members who fail to timely submit a claim for any benefits hereunder within the timeframes set forth herein, or such other period as may be ordered by the Court, or otherwise expressly allowed by law or the Settling Parties' written agreement, shall be forever barred from receiving any payments or benefits pursuant to the settlement set forth herein, but will in all other respects be subject to, and bound by, the provisions of the Settlement Agreement, the releases contained herein, and the Final Judgment and Order.

9.4 No Person shall have any claim against the Claims Administrator, ETCH, Released Persons, Settlement Class Counsel, Plaintiffs, Plaintiffs' Counsel, and/or ETCH' counsel based on distributions of benefits to Settlement Class Members.

9.5 Information submitted by Settlement Class Members in connection with submitted claims under this Settlement Agreement shall be deemed confidential and protected as such by the Claims Administrator, Settlement Class Counsel, and counsel for ETCH.

## **10. Payment Schedule**

10.1 ETCH shall pay costs sufficient to fund the settlement as follows:

- a) Within fifteen (15) days of the Court granting preliminary approval of this Settlement Agreement, ETCH shall pay all costs associated with notifying the Settlement Class Members of this Settlement Agreement in an amount estimated by the Claims Administrator (said amount being part of and not in addition to the Settlement Amount);
- b) Within fifteen (15) days of the Effective Date, it shall pay into a Qualified Settlement Fund (QSF) to be established and maintained by the Settlement Administrator the remaining Settlement Amount; and,
- c) Within thirty (30) days of the Effective Date, the Settlement Administrator shall pay to Class Counsel any attorneys' fees, costs, expenses, and service award pursuant to Paragraph 7 above.

## **11. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination**

11.1 The Effective Date of the settlement shall be conditioned on the occurrence of all of the following events:

- a. The Court has entered the Preliminary Approval Order and Publishing of Notice of a Final Approval Hearing, as required by ¶¶ 3.1 and 3.4;
- b. The Court has entered the Final Judgment and Order granting final approval to the settlement as set forth herein; and
- c. The Final Judgment and Order has become Final, as defined in ¶ 1.12.

If all conditions specified in ¶ 11.1 hereof are not satisfied, the Settlement Agreement shall be canceled and terminated, unless Class Counsel and counsel for ETCH mutually agree in writing to proceed with the Settlement Agreement.

11.2 In the event that the Settlement Agreement or the releases set forth in ¶¶ 1.21-1.23, 1.30 and 6.1-6.2 above are not approved by the Court or the settlement set forth in the Settlement Agreement is terminated in accordance with its terms: (a) the Settling Parties shall be restored to their respective positions in the Action and shall jointly request that all scheduled Action deadlines be reasonably extended by the Court so as to avoid prejudice to any Settling Party or Settling Party's counsel; (b) the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Settling Parties and shall not be used in the Action or in any other proceeding for any purpose, and (c) any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*. Notwithstanding any statement in this Settlement Agreement to the contrary, no order of the Court or modification or reversal on appeal of any order reducing the amount of attorneys' fees, costs, expenses, and/or service awards shall constitute grounds for cancellation or termination of the Settlement Agreement. Further, notwithstanding any statement in this Settlement Agreement to the contrary, ETCH shall be obligated to pay amounts already billed or incurred for costs of notice to the Settlement Class, Claims Administration, and dispute resolution, and shall not, at any time, seek recovery of same from any other party to the Action or from counsel to any other party to the Action.

## **12. Miscellaneous Provisions**

12.1 The Settling Parties (a) acknowledge that it is their intent to consummate this Settlement Agreement; (b) agree to cooperate to the extent reasonably necessary to effectuate and



implement all terms and conditions of this Settlement Agreement; and (c) agree to exercise their best efforts to accomplish the terms and conditions of this Settlement Agreement.

12.2 The Settling Parties intend this settlement to be a final and complete resolution of all disputes between them with respect to the Action. The settlement compromises claims that are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling Parties each agree that the settlement was negotiated in good faith by the Settling Parties and reflects a settlement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum that the Action was brought or defended in bad faith or without a reasonable basis. It is agreed that no Party shall have any liability to any other Party as it relates to the Action, except as set forth in the Settlement Agreement.

12.3 Neither the Settlement Agreement, nor the settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the settlement (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing or liability of any of the Released Persons; or (ii) 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 Persons in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Any of the Released Persons may file the Settlement Agreement and/or the Final Judgment and Order in any action related to the Data Breach that may be brought against them or any of them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement,

judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

12.4 The Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

12.5 The Settlement Agreement contains the entire understanding between ETCH and Plaintiffs regarding the payment of the Action and supersedes all previous negotiations, agreements, commitments, understandings, and writings between ETCH and Plaintiffs in connection with the payment of the Action. Except as otherwise provided herein, each party shall bear its own costs. This Settlement Agreement supersedes all previous agreements made between ETCH and Plaintiffs. Any agreements reached between ETCH, Plaintiffs, and any third party, are expressly excluded from this provision.

12.6 Settlement Class Counsel, on behalf of the Settlement Class, are expressly authorized by Plaintiffs to take all appropriate actions required or permitted to be taken by the Settlement Class pursuant to the Settlement Agreement to effectuate its terms, and also are expressly authorized to enter into any modifications or amendments to the Settlement Agreement on behalf of the Settlement Class, which they deem appropriate in order to carry out the spirit of this Settlement Agreement and to ensure fairness to the Settlement Class.

12.7 Each counsel or other Person executing the Settlement Agreement on behalf of any party hereto hereby warrants that such Person has the full authority to do so.

12.8 The Settlement Agreement may be executed in one or more counterparts. All executed counterparts shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court.

12.9 The Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto. No assignment of this Settlement Agreement will be valid without the other party's prior, written permission.

12.10 The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of the Settlement Agreement, and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in the Settlement Agreement.

12.11 As used herein, "he" means "he, she, or it"; "his" means "his, hers, or its"; and "him" means "him, her, or it."

12.12 All dollar amounts are in United States dollars (USD).

12.13 Cashing a settlement check is a condition precedent to any Settlement Class Member's right to receive monetary settlement benefits. All settlement checks shall be void ninety (90) days after issuance and shall bear the language: "This check must be cashed within ninety (90) days, after which time it is void." If a check becomes void, the Settlement Class Member shall have until six (6) months after the Effective Date to request re-issuance by the Claims Administrator.

12.14 If no request for re-issuance is made within this period, the Settlement Class Member will have failed to meet a condition precedent to recovery of settlement benefits, the Settlement Class Member's right to receive monetary relief shall be extinguished, and ETCH shall have no obligation to make payments to the Settlement Class Member for expense reimbursement under ¶ 2.1 or any other type of monetary relief. The same provisions shall apply to any re-issued check. For any checks that are issued or re-issued for any reason more than one hundred eighty

(180) days from the Effective Date, requests for re-issuance need not be honored after such checks become void.

12.15 All agreements made and orders entered during the course of the Action relating to the confidentiality of information shall survive this Settlement Agreement.

IN WITNESS WHEREOF, the parties hereto have caused the Settlement Agreement to be executed by their duly authorized attorneys.

**AGREED TO BY:**

**STRANCH, JENNINGS &  
GARVEY, PLLC**

By:

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**AGREED TO BY:**

**MULLEN COUGHLIN LLC**

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