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SETTLEMENT AGREEMENT

This Settlement Agreement, dated as of April 8, 2019, is made and entered into by and among the following Settling Parties (as defined below): (i) Sarah Armon, Abhi Sheth, Landon Thurman, and Dale Dean (“Plaintiffs”), individually and on behalf of the Settlement Class (as defined below), by and through their counsel of record Michael K. Rhodes of Mix Sanders Thompson PLLC, Kim D. Stephens and James Bulthuis of Tousley Brain Stephens PLLC, Rachel R. Bender of Bender Law, PLLC, Tina Wolfson of Ahdoot and Wolfson, PC, and Steven W. Fogg, John Bender, and Todd T. Williams of Corr Cronin LLP (together “Plaintiffs’ Counsel”); and (ii) Washington State University (“WSU” or “Defendant”), by and through its counsel of record, Paul Karlsgodt, Casie Collignon, Randal Gainer, and James Morrison of Baker & Hostetler LLP (together “Defense Counsel”). The Settlement Agreement is subject to Court approval and is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined below), upon and subject to the terms and conditions hereof.

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I. THE LITIGATION

In April 2017, WSU learned that a hard drive containing a backup of WSU’s Social & Economic Sciences Research Center’s (“SESRC”) server had been stolen from a storage unit at Quality Self Storage in Olympia, Washington (the “Security Incident”). The hard drive contained personal information of over a million individuals. The parties dispute whether the personal information on the hard drive has been disclosed to the public or accessed by unauthorized individuals. This lawsuit was originally filed by Sarah Armon on September 5, 2017, asserting claims against WSU relating to the Security Incident. Armon’s lawsuit was

1 consolidated with a separate lawsuit subsequently filed by Abhi Sheth, Case No. 17-2-25052-0.
2 On December 11, 2017, Plaintiffs filed a consolidated amended complaint, adding Landon
3 Thurman and Dale Dean as additional plaintiffs.

4 The parties mediated this dispute before the Honorable Bruce Hilyer (Ret.), and with his
5 assistance, reached this Settlement.

6 Pursuant to the terms set out below, this Settlement Agreement provides for the
7 resolution of all claims and causes of action asserted, or that could have been asserted, against
8 WSU and the Released Persons (as defined below) relating to the Security Incident, by and on
9 behalf of Plaintiffs and Settlement Class Members (as defined below), and any other such
10 actions by and on behalf of any other individuals and putative classes of individuals originating,
11 or that may originate, in jurisdictions in the United States against WSU relating to the Security
12 Incident (collectively, the "Litigation").

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

14 Plaintiffs believe the claims asserted in the Litigation, as set forth in the Complaint, have
15 merit. Plaintiffs and Class Counsel recognize and acknowledge, however, the expense and
16 length of continued proceedings necessary to prosecute the Litigation against WSU through
17 motion practice, trial, and potential appeals. They have also taken into account the uncertain
18 outcome and risk of further litigation, as well as the difficulties and delays inherent in such
19 litigation. Class Counsel are highly experienced in class action litigation and very
20 knowledgeable regarding the relevant claims, remedies, and defenses at issue generally in such
21 litigation and in this Litigation. They have determined that the Settlement set forth in this
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1 Settlement Agreement is fair, reasonable, and adequate, and in the best interests of the
2 Settlement Class.

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

4 WSU denies each and all of the claims and contentions alleged against it in the
5 Litigation. WSU denies all charges of wrongdoing or liability as alleged, or which could be
6 alleged, in the Litigation. Nonetheless, WSU has concluded that further conduct of the
7 Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully
8 and finally settled in the manner and upon the terms and conditions set forth in this Settlement
9 Agreement. WSU also has taken into account the uncertainty and risks inherent in any litigation.
10 WSU has, therefore, determined that it is desirable and beneficial that the Litigation be settled
11 in the manner and upon the terms and conditions set forth in this Settlement Agreement.

12 **IV. TERMS OF SETTLEMENT**

13 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among
14 Plaintiffs, individually and on behalf of the Settlement Class, Proposed Settlement Class
15 Counsel, and WSU that, subject to the approval of the Court, the Litigation and the Released
16 Claims shall be finally and fully compromised, settled, and released, and the Litigation shall be
17 dismissed with prejudice as to the Settling Parties, the Settlement Class, and the Settlement Class
18 Members, except those Settlement Class Members who lawfully opt-out of the Settlement
19 Agreement, upon and subject to the terms and conditions of this Settlement Agreement, as
20 follows:

21 **1. Definitions**

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

1 1.1 “Agreement” or “Settlement Agreement” or “Settlement” means this Settlement
2 Agreement and the settlement embodied herein, including all attached Exhibits (which are an
3 integral part of this Settlement Agreement and are incorporated in their entirety by reference).

4 1.2 “Approved Claims” means Settlement Claims approved by the Claims
5 Administrator or found to be valid through the Dispute Resolution process.

6 1.3 “Administration Expenses” means any and all reasonable fees, costs, and charges
7 incurred, charged, or invoiced by the Claims Administrator, Claims Referee, and / or the Notice
8 Specialist relating to the administration and notice of the Settlement, including but not limited
9 to: (i) the reasonable costs and expenses that are associated with disseminating the notice to the
10 Settlement Class, including, but not limited to, the Class Notice and the performance of the
11 Notice Plan; and (ii) the reasonable costs and expenses that are associated with the Claims
12 Administration.

13 1.4 “Claim” means a claim for Settlement benefits made under the terms of this
14 Settlement Agreement.

15 1.5 “Claimant” means a Settlement Class Member who submits a Claim Form.

16 1.6 “Claims Administration” means the processing, payment, and administration of
17 claims, including but not limited to the receipt and processing of Claims, any determination as
18 to the validity of the Claim or whether a Claim is an Approved Claim, and any dispute resolution
19 regarding the validity of any Claim.

20 1.7 “Claims Administrator” means the qualified third party administrator and agent
21 agreed to by the Settling Parties and approved and appointed by the Court in the Preliminary
22 Approval Order to administer the Settlement, including providing the Class Notice. The Settling
23 Parties agree to recommend that the Court appoint Epiq Class Action Solutions, Inc. as the

1 Claims Administrator to: (a) engage the Notice Specialist to design, consult on, and assist in the
2 implementation of the Class Notice and related requirements of this Agreement; and (b)
3 implement the Class Notice, the Settlement Website (as described below in ¶ 3.2(c)), the
4 submission and review of Claim Forms, and related requirements of this Agreement, subject to
5 the Court’s approval.

6 1.8 “Claims Deadline” means the final time and date by which a Claim Form must be
7 received by the Claims Administrator in order for a Class Member to be entitled to any of the
8 settlement consideration contemplated in this Agreement. The Claims Deadline shall be one
9 hundred and twenty (120) days after the Notice Date.

10 1.9 “Claim Form” means the form made available to Class Members substantially in
11 the form of **Exhibit B** hereto or the Claim Form made available on the Settlement Website. The
12 Claim Form must be verified by the Settlement Class Member with a statement that his or her
13 claim is true and correct, to the best of his or her knowledge and belief, and is being made under
14 penalty of perjury. Notarization shall not be required. Claim Forms shall be provided to
15 Settlement Class Members with the Summary Notice or shall be available for download and /
16 or on-line submission on the Settlement Website.

17 1.10 “Claims Referee” means a third party designated by agreement of the Settling
18 Parties and approved by the Court to make final decisions about disputed claims for Settlement
19 Benefits. The Settling Parties agree to recommend that the Court appoint Honorable Bruce
20 Hilyer (Ret.) to be the Claims Referee.

21 1.11 “Class Notice” means the notice provided to the Settlement Class of the class
22 action and proposed settlement of the Litigation. The Class Notice shall consist of the mailed
23 Summary Notice and Claim Form, Long Form Notice, and Website Publication Notice.

1 1.12 “Court” means the Superior Court of the State of Washington in and for King
2 County.

3 1.13 “Dispute Resolution” means the process for resolving disputed Settlement Claims
4 as set forth in ¶ 2.12 of this Agreement.

5 1.14 “Effective Date” means the first date by which all of the events and conditions
6 specified in ¶ 9.2 herein have occurred and been met.

7 1.15 “Fee and Expense Award” means such funds as may be approved and awarded by
8 the Court to the Proposed Settlement Class Counsel and/or Plaintiffs’ Counsel to compensate
9 them for conferring the benefits upon the Settlement Class under this Agreement and for their
10 professional time, fees, costs, advances, and expenses incurred in connection with the Litigation
11 and the Settlement.

12 1.16 “Fee Application” means Proposed Settlement Class Counsel’s and/or Plaintiffs’
13 Counsel’s application for the Fee and Expense Award.

14 1.17 “Final” means the occurrence of all of the following events: (i) the Settlement
15 pursuant to this Settlement Agreement is approved by the Court; (ii) the Court has entered a
16 Judgment (as that term is defined herein); and (iii) the time to appeal or seek permission to
17 appeal from the Judgment has expired or, if appealed, the appeal has been dismissed in its
18 entirety, or the Judgment has been affirmed in its entirety by the court of last resort to which
19 such appeal may be taken, and such dismissal or affirmance has become no longer subject to
20 further appeal or review. Notwithstanding the above, any order modifying or reversing any
21 attorneys’ fee award or Service Payment award made in this case shall not affect whether the
22 Judgment is “Final” as defined herein or any other aspect of the Judgment.

1 1.18 “Judgment” means a judgment rendered by the Court in accordance with the terms
2 of this Settlement Agreement.

3 1.19 “Long Form Notice” means the long form notice of settlement posted on the
4 Settlement Website, substantially in the form attached hereto as **Exhibit C**.

5 1.20 “Lost Time” refers to time actually spent by a Settlement Class Member for
6 attempting to identify, understand, address or remedy issues plausibly connected to the Security
7 Incident (including but not limited to time spent on any identity fraud, theft, fraud, bank fees,
8 card cancellations, credit card fees, late fees, declined payment fees, overdraft fees, returned
9 check fees, customer service fees, card cancellation or replacement fees, credit-related costs
10 related to purchasing credit reports, credit monitoring or identity theft protection, placing a
11 freeze or alert on credit reports, and replacing a driver’s license, state identification card,
12 passport, or social security number).

13 1.21 “Notice Date” means the first date upon which the Class Notice is disseminated.

14 1.22 “Notice Plan” means the method and process of disseminating the Class Notice
15 and notice of the Settlement as described in Section 3 herein.

16 1.23 “Notice Specialist” means Cameron Azari, Esq. of Hilsoft Notifications, a
17 business unit of the Claims Administrator, subject to the Court’s approval.

18 1.24 “Opt-Out and Objection Deadline” means the date that is ninety (90) days after
19 the Notice Date, or any other date set by the Court, by which a person in the Settlement Class
20 must opt out of the Settlement or make any objection to the proposed Settlement, and application
21 for an award of attorneys’ fees and expenses, and an application for Service Payments to the
22 Plaintiffs, in accordance with the procedures set forth herein and/or in any order of the Court,
23 as specifically outlined in Sections 4 and 5.

1 1.25 “Out-of-Pocket Costs” means out-of-pocket costs or expenditures supported by
2 Reasonable Documentation that a Settlement Class Member actually incurred out-of-pocket
3 costs or expenditures, including, but not limited to, unreimbursed losses and consequential
4 expenses that were incurred as a result of the Security Incident by the Settlement Class Member
5 between June 9, 2017 and the Claims Deadline. Out-of-Pocket Costs can include (i) late fees,
6 (ii) declined payment fees, (iii) overdraft fees, (iv) returned check fees, (v) customer service
7 fees, (vi) card cancellation or replacement fees, (vii) credit-related costs related to purchasing
8 credit reports, (viii) credit monitoring or identity theft protection, (ix) costs to place a freeze or
9 alert on credit reports, (x) costs to replace a driver’s license, (xi) costs to replace a state
10 identification card or social security number, (xii) long distance telephone charges, (xiii) cell
11 minutes (if charged by minute), Internet usage charges (if charged by the minute or by the
12 amount of data usage and incurred solely as a result of the Security Incident), and text messages
13 (if charged by the message and incurred solely as a result of the Security Incident), (xiv) postage;
14 (xv) costs of credit report(s); (xvi) actual out-of-pocket expenses for credit monitoring and/or
15 identity theft insurance premiums; (xvii) lost wages, provided the Settlement Class Member
16 includes Reasonable Documentation with their Claim Form showing that the lost wages
17 plausibly relate to the Security Incident; and (xviii) Extraordinary Expenses (“Extraordinary
18 Expenses”) not listed in this section where: (a) the loss is an actual, documented, and
19 unreimbursed monetary loss; (b) the loss was plausibly caused by the Security Incident; (c) the
20 loss occurred during the time period between April 9, 2017 and the Claims Deadline; (d) the
21 loss is not already covered by one or more of the categories of expenses listed above in
22 subsections (i) through (xvii); and (e) the Settlement Class Member has not been reimbursed for
23 the loss from a preexisting credit monitoring insurance or identity theft insurance or the AIG

1 insurance product offered in connection with the IdentityGuard credit monitoring product
2 offered in connection with this Settlement.

3 1.26 “Participating Settlement Class Member” means a Settlement Class Member who
4 submits an Approved Claim for their given share of the Settlement Benefits pursuant to the terms
5 and conditions of this Agreement.

6 1.27 “Person” means an individual, corporation, partnership, limited partnership,
7 limited liability company or partnership, association, joint stock company, estate, legal
8 representative, trust, unincorporated association, government or any political subdivision or
9 agency thereof, and any business or legal entity, and their respective spouses, heirs,
10 predecessors, successors, representatives, or assignees.

11 1.28 “Preliminary Approval Order” means the order preliminarily approving the
12 Settlement Agreement and ordering that notice be provided to the Settlement Class. The Settling
13 Parties’ proposed form of Preliminary Approval Order is attached hereto as **Exhibit A**.

14 1.29 “Proposed Settlement Class Counsel” means Michael K. Rhodes of Mix Sanders
15 Thompson PLLC; Kim D. Stephens and James Bulthuis of Tousley Brain Stephens PLLC;
16 Rachel R. Bender of Bender Law, PLLC; and Tina Wolfson of Ahdoot & Wolfson, PC.

17 1.30 “Publication Notice” means the Settlement Website with the domain name
18 WSUSettlement.com, where key case documents will be posted, in addition to the Long Form
19 Notice, Frequently Asked Questions, and links to key documents that have been translated to
20 Spanish.

21 1.31 “Reasonable Documentation” means documentation supporting a claim for Out-
22 of-Pocket Costs, including, but not limited to, credit card statements, bank statements, invoices,
23 telephone records, and receipts. Out-of-Pocket Costs cannot be documented solely by a personal

1 certification, declaration or affidavit from the Claimant; a Settlement Class Member must
2 provide supporting documentation. The Reasonable Documentation must show that the Out-of-
3 Pocket Costs were both actually incurred and plausibly arose from the Security Incident.

4 1.32 “Related Entities” means WSU’s respective predecessors, successors, directors,
5 regents, officers, employees, principals, agents, attorneys, insurers, and reinsurers, and includes,
6 without limitation, any Person related to any such entity who is, was or could have been named
7 as a defendant based on the facts alleged in any of the actions in the Litigation, other than any
8 Person who is found by a court of competent jurisdiction to be guilty under criminal law of
9 initiating, causing, aiding or abetting the criminal activity occurrence of the Security Incident or
10 who pleads nolo contendere to any such charge.

11 1.33 “Released Claims” shall collectively mean any and all claims and causes of action
12 including, without limitation, any causes of action under Washington State’s and similar state
13 consumer protection statutes, including Chapter 19.86, *et seq.*; Chapter 19.25 RCW, *et seq.*;
14 Chapter 42.56 RCW, *et seq.*; Chapter 42.48 RCW, *et seq.*; negligence; negligence per se; breach
15 of contract; breach of implied contract; breach of fiduciary duty; breach of confidence; invasion
16 of privacy; misrepresentation (whether fraudulent, negligent or innocent); unjust enrichment;
17 bailment; wantonness; failure to provide adequate notice pursuant to any breach notification
18 statute or common law duty; and including, but not limited to, any and all claims for damages,
19 injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys’ fees and expenses,
20 pre-judgment interest, credit monitoring services, the creation of a fund for future damages,
21 statutory damages, punitive damages, special damages, exemplary damages, restitution, the
22 appointment of a receiver, and any other form of relief that either has been asserted, or could
23 have been asserted, by any Settlement Class Member against any of the Released Persons based

1 on, relating to, concerning or arising out of the Security Incident and alleged theft of personal
2 information or the allegations, facts, or circumstances described in the Litigation. Released
3 Claims shall not include the right of any Settlement Class Member or any of the Released
4 Persons to enforce the terms of the Settlement, and shall not include the claims of Successful
5 Opt-Outs.

6 1.34 “Released Persons” means WSU, its Related Entities and each of their past or
7 present divisions, and related or affiliated entities, and each of their respective predecessors,
8 successors, directors, regents, officers, employees, principals, agents, attorneys, insurers, and
9 reinsurers.

10 1.35 “Plaintiffs” or “Settlement Class Representatives” mean Sarah Armon, Abhi
11 Sheth, Landon Thurman, and Dale Dean.

12 1.36 “Security Incident” means the April 2017 theft of WSU Social & Economic
13 Sciences Research Center’s hard drive at Quality Self Storage in Olympia, Washington.

14 1.37 “Service Payment(s)” means such funds as may be awarded by the Court to the
15 Plaintiffs in recognition of their time, effort, and service to the Settlement Class, expended in
16 pursuing the Litigation and in fulfilling their obligations and responsibilities as the Settlement
17 Class Representatives.

18 1.38 “Service Payment Application” means Proposed Settlement Class Counsel’s
19 application for service awards to the Settlement Class Representatives.

20 1.39 “Settlement Class” means all individuals whose personal information (including
21 but not limited to social security numbers), financial information, and/or educational records
22 were on the WSU Social & Economic Sciences Research Center’s hard drive stolen in April
23 2017 from Quality Self Storage in Olympia, Washington. The Settlement Class is limited to

1 those individuals who were included on the original list for mailing the written Summary Notice
2 in accordance with ¶ 3.2(d) of this Agreement.

3 1.40 “Settlement Class Member(s)” means a Person(s) who falls within the definition
4 of the Settlement Class and is / are not a Successful Opt-Out.

5 1.41 “Settling Parties” means, collectively, WSU and Plaintiffs, individually and on
6 behalf of the Settlement Class.

7 1.42 “Successful Opt-Out” means any person or persons who timely and validly
8 exercise their right to opt out of the Settlement Class, pursuant to the terms and conditions of
9 this Agreement as outlined in Section 4.

10 1.43 “Summary Notice” means the summary notice of the proposed class action
11 settlement, substantially in the form attached hereto as **Exhibit B**. The Summary Notice will
12 direct recipients to the Settlement Website and inform Settlement Class Members, *inter alia*, of
13 the Claims Deadline, the Opt-Out and Objection Deadline, and the date of the Final Fairness
14 Hearing. The Claim Form for additional credit monitoring settlement benefits shall be provided
15 with the Summary Notice.

16 1.44 “Unknown Claims” means any of the Released Claims that any Settlement Class
17 Member, including any Plaintiff, does not know or suspect to exist in his/her favor at the time
18 of the release of the Released Persons that, if known by him or her, might have affected his or
19 her settlement with, and release of, the Released Persons, or might have affected his or her
20 decision not to object to and/or to participate in this Settlement Agreement. With respect to any
21 and all Released Claims, the Settling Parties stipulate and agree that upon the Effective Date,
22 Plaintiffs expressly shall have, and each of the other Settlement Class Members shall be deemed
23 to have, and by operation of the Judgment shall have, waived the provisions, rights, and benefits

1 conferred by California Civil Code § 1542, and also any and all provisions, rights, and benefits
2 conferred by any law of any state, province, or territory of the United States (including, without
3 limitation, Montana Code Ann. § 28-1-1602; North Dakota Cent. Code § 9-13-02; and South
4 Dakota Codified Laws § 20-7-11), which is similar, comparable, or equivalent to California
5 Civil Code §1542, which provides:

6 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
7 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
8 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
9 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
10 SETTLEMENT WITH THE DEBTOR.

11 Settlement Class Members, including Plaintiffs, and any of them, may hereafter discover
12 facts in addition to, or different from, those that they, and any of them, now know or believe to
13 be true with respect to the subject matter of the Released Claims, but Plaintiffs expressly shall
14 have, and each other Settlement Class Member shall be deemed to have, and by operation of the
15 Judgment shall have, upon the Effective Date, fully, finally and forever settled and released any
16 and all Released Claims. The Settling Parties acknowledge, and Settlement Class Members
17 shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver
18 is a material element of the Settlement Agreement of which this release is a part.

19 1.45 “United States” as used in this Settlement Agreement includes the District of
20 Columbia and all territories.

21 **2. Consideration and Settlement Benefits**

22 In exchange for the releases described herein, WSU agrees to (i) make available, or cause
23 to be made available, to each Participating Settlement Class Member the benefits described in
¶¶ 2.1, 2.2, 2.3, and 2.10; and (ii) fully and completely perform each of the terms and conditions
in this Section:

1 2.1 Credit Monitoring and Insurance Services commencing on the Effective Date, or
2 if the Participating Settlement Class Member specifies in writing, a date within two years of the
3 Effective Date. Each Participating Settlement Class Member will receive two years of the Credit
4 Monitoring and Insurance Services. The Credit Monitoring and Insurance Services will be
5 provided by IdentityGuard. In the event that a Participating Settlement Class Member already
6 maintains a subscription for the Individual Total Plan with IdentityGuard, their service will be
7 extended by two years for no additional charge. The Credit Monitoring and Insurance Services
8 will provide certain services to each Participating Settlement Class Member, including: (i) Up
9 to \$1 Million Dollars reimbursement insurance from AIG covering losses due to identity theft,
10 stolen funds, etc.; (ii) three bureau credit monitoring providing notice of changes to the
11 Participating Settlement Class Member’s credit profile; (iii) real time instant authentication
12 alerts when someone attempts to make a change to the Participating Settlement Class Member’s
13 personal account information within Identity Guard’s network; (iv) LexisNexis Authentication
14 Alerts utilizing LexisNexis’ database of legal, governmental and newsworthy incidents (for
15 example, the system searches payday-loan providers and court records, and also monitors the
16 top ten largest U.S. financial institutions, for attempted or actual fraudulent use of the
17 Participating Settlement Class Member’s information); (v) Dark Web Monitoring providing
18 notification if the Participating Settlement Class Member’s information such as Social Security
19 number, credit card numbers, financial account numbers, and health insurance number are found
20 on the Dark Web; (vi) threat Alerts powered by IBM “Watson” providing proactive alerts about
21 potential threats relevant to the Participating Settlement Class Member found by IBM Watson’s
22 AI, for instance: breaches, phishing scams, and malware vulnerabilities; (vii) customer support
23 and victim assistance provided by Identity Guard; (viii) anti-phishing and safe Apps for iOS &

1 Android Mobile devices; and (ix) safe browsing software for PC & Mac to help protect the
2 Participating Settlement Class Member’s computer against malicious content with an add-on for
3 Safari, Chrome, and Firefox web browsers that delivers proactive malware protection by
4 blocking various malware delivery channels including phishing, malvertisements, and Flash (the
5 extension also blocks content and tracking cookies to help protect personal information).

6 2.2 Out-of-Pocket Costs Payment. In addition to the Credit Monitoring and Insurance
7 Services, each Participating Settlement Class Member may submit a claim for up to \$5,000.00
8 each, for reimbursement of Out-of-Pocket Costs (“Out-of-Pocket Costs Payment”). To receive
9 an Out-of-Pocket Costs Payment, a Settlement Class Member must choose to do so on the Claim
10 Form, located on the Settlement Website, and submit to the Claims Administrator the following:
11 (i) a valid Claim Form electing to receive the Out-of-Pocket Costs Payment benefit; (ii) an
12 attestation regarding any actual and unreimbursed Out-of-Pocket Costs; and (iii) Reasonable
13 Documentation that demonstrates the Out-of-Pocket Costs to be reimbursed.

14 a) In the event the aggregate total of payments pursuant to ¶¶ 2.2 and 2.3 due
15 to all Participating Settlement Class Members exceeds Three Million Two Hundred and Fifty
16 Thousand Dollars and No Cents (\$3,250,000.00), then the value of the individual cash Out-of-
17 Pocket Costs Payment to be provided to each Participating Settlement Class Member shall be
18 reduced on a *pro rata* basis, such that the aggregate value of such cash payments pursuant to ¶¶
19 2.2 and 2.3 does not exceed Three Million Two Hundred and Fifty Thousand Dollars and No
20 Cents (\$3,250,000.00).

21 b) Failure to provide Reasonable Documentation shall result in denial of a
22 claim for Out-of-Pocket Costs.
23

1 2.3 Lost Time Payment. In addition to Credit Monitoring and Insurance Services and
2 Out-of-Pocket Costs Payment, each Participating Settlement Class Member may submit a claim
3 for up to three hours of Lost Time at \$15 per hour (“Lost Time Payment”). To receive a Lost
4 Time Payment, a Participating Settlement Class Member must submit a valid Claim Form,
5 located on the Settlement Website, to the Claims Administrator with an attestation that the Lost
6 Time was incurred as a result of the Security Incident.

7 2.4 Deadline to File Claims. Claim Forms for Credit Monitoring and Insurance
8 Services, Out-of-Pockets Costs, and/or Lost Time Payment must be received by the Claims
9 Administrator by the Claims Deadline.

10 2.5 Claim Form. Settlement Class Members seeking Credit Monitoring only under ¶
11 2.1 must complete and submit a valid Claim Form to the Claims Administrator via mail or on
12 the Settlement Website. Settlement Class Members seeking Out-of-Pocket Costs Payments or
13 Lost Time Payments under ¶¶ 2.2 and 2.3 must complete and submit a valid Claim Form to the
14 Claims Administrator on the Settlement Website or request a Claim Form be mailed to them.
15 Mailed Claim Forms must be postmarked on or before the 120th day after the Notice Date.
16 Claim Forms submitted on the Settlement Website must be received by the Claims
17 Administrator on or before the 120th day after the Notice Date. No documentation is required
18 for claims of Lost Time other than the attestation required in the Claim Form. Disputes as to
19 claims submitted under this paragraph are to be resolved pursuant to the provisions stated in ¶
20 2.12.
21

22 2.6 To the extent that a Settlement Class Member already has AIG’s insurance product
23 offered in connection with the IdentityGuard credit monitoring product, a Settlement Class
Member must make a claim with AIG and exhaust such coverage before WSU is responsible

1 for any expenses claimed pursuant to ¶ 2.2 of this Settlement Agreement. Nothing in this
2 Settlement Agreement shall be construed to provide for a double payment for the same loss or
3 injury that was reimbursed or compensated by any other source.

4 2.7 Administration Expenses. WSU shall pay for any and all Administration
5 Expenses upon invoice by the Claims Administrator and/ or the Notice Specialist.

6 2.8 Service Payments. Subject to the terms and conditions of Section 7 of this
7 Agreement, WSU shall pay for any and all Service Payments awarded by the Court to the
8 Settlement Class Representatives.

9 2.9 Attorneys' Fees and Expenses. Subject to the terms and conditions of Section 7
10 of this Agreement, WSU shall pay any and all attorneys' fees and expenses awarded by the
11 Court to Proposed Settlement Class Counsel and / or Plaintiffs' Counsel.

12 2.10 Injunctive Relief Assurances. WSU covenants, warrants and agrees that it has
13 implemented, and for at least the next three years following the Effective Date of this Agreement
14 will maintain, at least the following or similar practices for the purposes of providing the
15 Settlement Class Members with injunctive relief concerning WSU's information security
16 practices:

- 17
- 18 a) Destruction of PII. WSU and its research departments shall destroy SESRC research
19 data containing PII of Class Members in accordance with the Washington Research Act
20 and/or the contracts through which it obtained the PII. WSU shall conduct a review to
21 ensure such SESRC research data has been destroyed and will provide proof reasonably
22 satisfactory to Plaintiffs' counsel that such review has been conducted.
- 23

1 b) SESRC Enhancements. Following discovery of the stolen SESRC backup hard drive at
2 Quality Self Storage in April 2017, and in response to Litigation relating to the Security
3 Incident, SESRC has made the below security enhancements:

- 4 • Changed procedure for off-site storage of emergency server backup hard drive.
5 SESRC is no longer storing backup hard drive in a safe in a storage unit. Now,
6 backup hard drives are stored in a more secure location, which has been disclosed to
7 class counsel confidentially, with limited access by SESRC personnel.
- 8 • Conducted Data and System Security Assessment Report by Cybersecurity
9 Professionals and implemented measures in response to the findings, specifically:
 - 10 ○ Requiring IT Security Fundamentals training for all staff at SESRC.
 - 11 ○ Improved Network Scan Report.
 - 12 ○ Updated the SESRC Incident Response Plan.
 - 13 ○ Assembled an IT Policy committee to prioritize and address compliance with the
14 Washington OCIO Standard 141.10.
- 15 • Configured Bitlocker Encryption for server and backup hard disks.
- 16 • Terminated use of information technology (“IT”) contractor Northwest Network
17 Services and Solutions (“NWNSS”). IT systems oversight and administrative access
18 now provided by WSU Office of Research Information Technology (“OR IT”)
19 group.
- 20 • Audited server and domain administrative accounts.
- 21 • Audited domain user accounts.
- 22 • Updated domain administrator policy.
- 23 • Updated domain user password policy.
- Exported user email and imported to @wsu.edu provisioned email addresses.
- Configured email server to redirect all user email to @wsu.edu provisioned email
addresses.
- Audited firewall policies.
- Disabled SMB1 on workstations.

- 1 • Configured domain policy to deny domain administrators logon rights to
workstations.
- 2 • Created and deployed new SSL certificate for Remote Web Access services.
- 3 • Configured and enabled multifactor authentication for remote server access and
4 remote client workstation access.
- 5 • Adjusted administrative, service and systems-specific account passwords after
6 termination of NWNSS.
- 7 • Adjusted Small Business Server reports to send to OR IT managed email address.
- 8 • Uninstalled Trend Micro Worry-Free Business Security Suite.
- 9 • Installed FireEye Advanced Endpoint Detection & Prevention Agent reporting to
central WSU ITS Security Incident and Event Management System.
- 10 • Deployed laptops encrypted.
- 11 • Updated data security documentation.

12 c) University-Wide Enhancements. Following discovery of the stolen SESRC backup hard
13 drive at Quality Self Storage in April 2017, and in response to Litigation relating to the
14 Security Incident, WSU made the below security enhancements University-wide:

- 15 • Developed a new University-wide Information Security Policy that is supported by
16 University executive leadership. The policy formally establishes centralized
17 authority and accountability for the establishment and execution of a university-
18 wide Information Security and Privacy Program. This policy also establishes the
19 Chief Information Officer as the accountable University executive officer who is
authorized to establish, publish, and maintain information security and privacy
related policies, procedures, and standards. This will expedite and magnify security
improvement efforts by WSU's Information Security Services group and the Office
of the CIO.
- 20 • Updated WSU Data Security Policy. This policy assigns responsibilities and
21 accountabilities for information owners and data custodians at WSU. This is
22 expected to enable smarter business risk decisions regarding data security within
the existing management hierarchies.
- 23 • In May 2017, completed the implementation of a new, joint Information Security
and Network Operation Center. This facility and the teams that operate the Center
have constant access to an array of monitors with live network and security
dashboards, new collaboration tools and opportunities, and integrated workflows

1 that allow for increased speed and efficacy in the detection and response of security
2 and other incidents. This has significantly reduced the time to discriminate
3 anomalies between security incidents and non-malicious service outages in many
4 instances. This monitoring extends to all campuses.

- 5 • Developed a Cloud Computing Guidelines document made available University-
6 wide to provide best-practice guidance on the adoption of cloud services for
7 individual or enterprise use. This document reviews considerations such as data
8 sensitivity, country of residence concerns for some data types, exit strategies,
9 encryption, contract language or terms of service, and access controls. These
10 guidelines will enable better risk decisions with respect to the acquisition,
11 configuration, and use of cloud services.
- 12 • Deployed uniform network perimeter security technologies at all WSU campus
13 locations and a common configuration standard developed to ensure that the
14 security posture for WSU networks at all campus locations is consistent. These
15 campuses maintain a common audit logging posture for these perimeter security
16 technologies as part of this standard to speed the detection, assessment,
17 containment, and remediation of any attempted or actual network intrusions. The
18 audit logs from the majority of the campus locations are collected centrally and
19 monitored in the new joint Information Security and Network Operation Center,
20 with the remaining campuses expected to come on board in 2019.
- 21 • In the process of updating vendor contract review and risk assessment processes
22 related to the procurement of goods and services. This business procedure will
23 strengthen WSU's vendor risk management practices and will capture specific use
cases previously not covered under the existing vendor contract review processes.
The updated procedure will require a risk assessment whenever there is an
exchange of data between WSU and a third party.
- Added the CISO to WSU's Institutional Review Board (IRB) for research
proposals, to ensure that any security measures that are required or otherwise
appropriate for the research data are determined.
- Creating secure research enclaves to store sensitive research data that it produces.
- Implemented Multifactor Authentication for Administrative Access Accounts and
working toward broader implementation of MFA cross institution.

2.11 Injunctive Relief Compliance Assurance: WSU will provide Plaintiffs' counsel
with a copy of WSU's 2021 security audit, and any 2019 or 2020 audit WSU chooses to
complete, which Plaintiffs' counsel may use to evaluate WSU's compliance with its Injunctive
Relief Assurances. To the extent Plaintiffs believe that WSU is not complying with the above

1 assurances, Plaintiffs' counsel will first meet and confer with WSU prior to seeking relief from
2 the Court.

3 2.12 Claim Form Processing and Dispute Resolution for Claims. The Claims
4 Administrator, in its sole discretion to be reasonably exercised, will determine whether: (1) the
5 person making the Claim is a Settlement Class Member; (2) the Claimant has provided all
6 information needed to complete the Claim Form, including any required Reasonable
7 Documentation; and (3) the information submitted could lead a reasonable person to conclude
8 the alleged loss plausibly arose from the Security Incident (collectively, "Facially Valid"). The
9 Claims Administrator may, at any time, request from the Claimant, in writing, additional
10 information ("Claim Supplementation") as the Claims Administrator may reasonably require in
11 order to evaluate the claim, *e.g.*, documentation requested on the Claim Form, information
12 regarding the claimed losses, available insurance and the status of any Claims made for
13 insurance benefits, and Claims previously made for identity theft and the resolution thereof. For
14 any Claims for Extraordinary Expenses, the Claims Administrator's initial review will be limited
15 to a determination of whether the Claim is complete and plausible. For any such Claims that
16 the Claims Administrator determines to be implausible, the Claims Administrator will submit
17 those Claims to the Settling Parties (one Plaintiffs' lawyer shall be designated to fill this role for
18 all Plaintiffs). If the Settling Parties do not agree with the Claimant's Claim, after meeting and
19 conferring, then the Claim shall be referred to the Claims Referee for resolution.

21 Upon receipt of an incomplete or unsigned Claim Form or a Claim Form that is not
22 accompanied by sufficient documentation to determine whether the Claim is Facially Valid, the
23 Claims Administrator shall request additional information ("Claim Supplementation") and give
the Claimant thirty (30) days to cure the defect before rejecting the Claim. Requests for Claim

1 Supplementation shall be made within thirty (30) days of receipt of such Claim Form or thirty
2 (30) days from the Effective Date, whichever comes later. In the event of unusual circumstances
3 interfering with compliance during the 30-day period, the claimant may request and, for good
4 cause shown (illness, military service, out of the country, mail failures, lack of cooperation of
5 third parties in possession of required information, etc.), shall be given a reasonable extension
6 of the 30-day deadline in which to comply; however, in no event shall the deadline be extended
7 to later than one year from the Effective Date. If the defect is not cured, then the Claim will be
8 deemed invalid and there shall be no obligation to pay the Claim.

9 Following receipt of additional information requested as Claim Supplementation, the
10 Claims Administrator shall have thirty (30) days to accept, in whole or lesser amount, or reject
11 each Claim. If, after review of the Claim and all documentation submitted by the Claimant, the
12 Claims Administrator determines that such a claim is Facially Valid, then the Claim shall be
13 paid. If the Claim is not Facially Valid because the Claimant has not provided all information
14 needed to complete the Claim Form and evaluate the Claim, then the Settlement Administrator
15 may reject the Claim without any further action. If the Claim is rejected for other reasons, then
16 the claim shall be referred to the Claims Referee.

17 Settlement Class Members shall have thirty (30) days from receipt of the offer to accept
18 or reject any offer of partial payment received from the Claims Administrator. If a Settlement
19 Class Member rejects an offer from the Claims Administrator, the Claims Administrator shall
20 have fifteen (15) days to reconsider its initial adjustment amount and make a final determination.
21 If the Claimant approves the final determination, then the approved amount shall be the amount
22 to be paid. If the Claimant does not approve the final determination within thirty (30) days, then
23 the dispute will be submitted to the Claims Referee within an additional ten (10) days.

1 If any dispute is submitted to the Claims Referee, the Claims Referee may approve the
2 Claims Administrator's determination by making a ruling within fifteen (15) days. The Claims
3 Referee may make any other final determination of the dispute or request further
4 supplementation of a Claim within thirty (30) days. The Claims Referee's determination shall
5 be based on whether the Claims Referee is persuaded that the claimed amounts are reasonably
6 supported in fact and were plausibly caused by the Security Incident. The Claims Referee shall
7 have the power to approve a Claim in full or in part. The Claims Referee's decision will be final
8 and non-appealable. Any Claimant referred to the Claims Referee shall reasonably cooperate
9 with the Claims Referee, including by either providing supplemental information as requested
10 or, alternatively, signing an authorization allowing the Claims Referee to verify the claim
11 through third party sources. Failure to cooperate shall be grounds for denial of the claim in full.
12 The Claims Referee shall make a final decision within thirty (30) days of receipt of all
13 supplemental information requested.

14 2.13 Administration Expenses. All costs for Notice to the Settlement Class as required
15 under ¶¶ 3.1 and 3.2, Costs of Claims Administration under ¶¶ 8.1 and 8.2, and the costs of
16 Dispute Resolution described in ¶ 2.12, shall be paid by WSU.

17 2.14 Settlement Class Certification. The Settling Parties agree, for purposes of this
18 settlement only, to the certification of the Settlement Class, to the designation of Plaintiffs as
19 the Settlement Class Representatives, and to the designation of Proposed Settlement Class
20 Counsel as Settlement Class Counsel. If the Settlement is not approved by the Court, or if the
21 Settlement Agreement is terminated or cancelled pursuant to the terms of this Settlement
22 Agreement, this Settlement Agreement, and the certification of the Settlement Class provided
23 for herein, will be vacated and the Litigation shall proceed as though the Settlement Class had

1 never been certified, without prejudice to any Person's or Settling Party's position on the issue
2 of class certification or any other issue. The Settling Parties' agreement to the certification of
3 the Settlement Class is also without prejudice to any position asserted by the Settling Parties in
4 any other proceeding, case or action, as to which all of their rights are specifically preserved.

5 2.15 Confidentiality of Information Submitted by Settlement Class Members.

6 Information submitted by Settlement Class Members on any Claim Form or in support of any
7 Claim shall be deemed confidential and protected as such by the Settling Parties, Defense
8 Counsel, Proposed Settlement Class Counsel, the Claims Administrator, and the Claims
9 Referee.

10 **3. Order of Preliminary Approval and Publishing of Notice of Fairness**
11 **Hearing**

12 3.1. Preliminary Approval. As soon as practicable after the execution of the Settlement
13 Agreement, Proposed Settlement Class Counsel shall submit this Settlement Agreement to the
14 Court and file a motion for preliminary approval of the settlement with the Court requesting
15 entry of a Preliminary Approval Order in the form attached hereto as **Exhibit A**, or an order
16 substantially similar to such form in both terms and cost. The motion for preliminary approval
17 shall request, *inter alia*:

- 18 a) certification of the Settlement Class for settlement purposes only pursuant to ¶
19 2.14;
- 20 b) preliminary approval of the Settlement Agreement as set forth herein;
- 21 c) appointment of Proposed Settlement Class Counsel as Settlement Class Counsel;
- 22 d) appointment of Plaintiffs as Settlement Class Representatives;
- 23 e) approval of (i) the Summary Notice (with Claim Form for credit monitoring
attached) to be mailed to Settlement Class Members in a form substantially similar
to the one attached hereto as **Exhibit B**, and (ii) the Long Form Notice in a form

1 substantially similar to the one attached hereto as **Exhibit C**, which together shall
2 include a fair summary of the parties' respective litigation positions, the general
3 terms of the settlement set forth in the Settlement Agreement, instructions for how
4 to object to or opt-out of the settlement, the process and instructions for making
5 claims to the extent contemplated herein, and the date, time and place of the Final
6 Fairness Hearing;

- 7 f) appointment of a Notice Specialist as jointly agreed to by the Settling Parties;
- 8 g) appointment of a Claims Administrator, or such other provider of claims
9 administrative service, as may be jointly agreed to by the Settling Parties;
- 10 h) appointment of the Honorable Bruce Hilyer (Ret.) to serve as Claims Referee.

11 The Summary Notice, Long Form Notice, Publication Notice, and Claim Form shall be reviewed
12 by the Notice Specialist and Claims Administrator and may be revised as agreed upon by the
13 Settling Parties prior to such submission to the Court for approval.

14 3.2 Class Notice. Dissemination of the Class Notice shall be accomplished by the
15 Claims Administrator and shall comply to the following:

- 16 a) *Class Member Information*: No later than ten (10) days after entry of the
17 Preliminary Approval Order, WSU shall provide the Claims
18 Administrator with the name and physical address of each Settlement
19 Class Member (collectively, "Class Member Information") that WSU
20 possesses. WSU warrants and represents that it will provide the most
21 current Class Member Information for all Class Members as such
22 information is contained in its records.
- 23 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 Agreement and shall not be used for any other purpose at
any time. Except to administer the Settlement as provided in this
Agreement, or 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 Class Notice, the
Claims Administrator shall establish the Settlement Website - an Internet
website, www.WSUSettlement.com - that will inform Settlement Class
Members of the terms of this Agreement, their rights, dates and deadlines
and related information. The Settlement Website shall include, in .pdf

1 format and available for download, the following: (i) the Long Form
2 Notice; (ii) the Claim Form; (iii) the Preliminary Approval Order; (iv)
3 this Agreement (including all of its Exhibits), (v) the operative Class
4 Action Complaint filed in the Litigation; and (vi) any other materials
5 agreed upon by the Parties and/or required by the Court. The Settlement
6 Website shall provide Class Members with the ability to complete and
7 submit the Claim Form electronically.

8
9 d) *Summary Notice:* Within thirty (30) days after the entry of the
10 Preliminary Approval Order and to be substantially completed not later
11 than forty-five (45) days after entry of the Preliminary Approval Order,
12 and subject to the requirements of this Agreement and the Preliminary
13 Approval Order, the Settling Parties will coordinate with the Claims
14 Administrator to provide notice to the Settlement Class as follows:

- 15 (i) mailing (*via* First Class US Mail) the Summary Notice and Claim
16 Form for credit monitoring settlement benefits to all Settlement
17 Class Members identified in the Class Member Information;
- 18 (ii) before any mailing under this Paragraph, the Claims
19 Administrator shall run the postal addresses of Settlement Class
20 Members through the United States Postal Service (“USPS”) National Change of Address database to update any change of
21 address on file with the USPS;
- 22 (iii) in the event that a Summary Notice is returned to the Claims
23 Administrator by the USPS because the address of the recipient is
no longer valid, and the envelope contains a forwarding address,
the Claims Administrator shall re-send the Summary Notice to
the forwarding address within seven (7) days of receiving the
returned Summary Notice;
- (iv) in the event that subsequent to the first mailing of a Summary
Notice, and at least fourteen (14) days prior to the Opt-Out and
Objection Deadline, a Summary 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 the
Class Notice within seven (7) days of receiving such information.
This shall be the final requirement for mailing.

1 e) Publishing, on or before the Notice Date, the Summary Notice, Claim
2 Form, and Long Form Notice on the Settlement Website
(www.WSUSettlement.com), as specified in the Preliminary Approval
3 Order;

4 f) The Claims Administrator also will provide copies of the forms of Short
5 Notice, Long Form Notice, and Claim Form approved by the Court, as
6 well as this Settlement Agreement, upon request; and

7 g) Prior to the Final Fairness Hearing, Proposed Settlement Class Counsel
8 and WSU shall cause to be filed with the Court an appropriate affidavit
9 or declaration with respect to complying with this provision of notice.

10 3.3 The Summary Notice, Long Form Notice, and Claim Form approved by the
11 Court may be adjusted by the Notice Specialist and/or Claims Administrator, respectively, in
12 consultation and agreement with the Settling Parties, as may be reasonable and not inconsistent
13 with such approval.

14 3.4 Proposed Settlement Class Counsel and WSU's counsel shall request that after the
15 Notice Plan is completed, the Court hold a hearing (the "Final Fairness Hearing") and grant final
16 approval of the Settlement set forth herein.

17 **4. Opt-Out Procedures**

18 4.1 Each Person wishing to opt-out of the Settlement Class shall individually sign and
19 timely submit written notice of such intent to the designated Post Office box established by the
20 Claims Administrator. The written notice must clearly manifest a Person's intent to be excluded
21 from the Settlement Class. To be effective, written notice must be postmarked no later than the
22 Opt-Out and Objection Deadline.

23 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

1 Settlement Class in the manner set forth in ¶ 4.1 above shall be bound by the terms of this
2 Settlement Agreement and Judgment entered thereon.

3 4.3 In the event that, within fifteen (15) days after the Opt-Out and Objection
4 Deadline, there have been more than 500 Opt-Outs (exclusions), WSU may, by notifying
5 Proposed Settlement Class Counsel in writing, void this Settlement Agreement. Such
6 notification shall be provided no later than thirty days (30) days after the Opt-Out and Objection
7 Deadline, and if not provided within this time frame, WSU shall no longer have any option to
8 terminate or void this Agreement pursuant to this ¶ 4.3. If WSU voids the Settlement Agreement
9 pursuant to this paragraph, WSU shall be obligated to pay any and all settlement expenses
10 already incurred, including any and all Administration Expenses. In such an event, neither
11 Plaintiffs nor Proposed Settlement Class Counsel shall have any liability or responsibility for
12 any settlement expenses, including the Administration Expenses.

13 **5. Objection Procedures**

14 5.1 Each Settlement Class Member desiring to object to the Settlement Agreement
15 shall submit a timely written notice of his or her objection by the Objection Date. Such notice
16 shall state: (i) the objector's full name, address, telephone number, and e-mail address (if any);
17 (ii) information identifying the objector as a Settlement Class Member, including proof that the
18 objector is a member of the Settlement Class (e.g., copy of notice, copy of original notice of the
19 Security Incident); (iii) a written statement of all grounds for the objection, accompanied by any
20 legal support for the objection the objector believes applicable; (iv) the identity of all counsel
21 representing the objector; (v) a statement whether the objector and/or his or her counsel will
22 appear at the Final Fairness Hearing; (vi) the objector's signature and the signature of the
23 objector's duly authorized attorney or other duly authorized representative (along with

1 documentation setting forth such representation); and (vii) a list, by case name, court, and docket
2 number, of all other cases in which the objector and/or the objector's counsel has filed an
3 objection to any proposed class action settlement within the last three (3) years. To be timely,
4 written notice of an objection in the appropriate form must be filed with the Clerk of the Court
5 no later than the Opt-Out and Objection Deadline, and served concurrently therewith upon
6 Proposed Settlement Class Counsel, Rachel Bender, Bender Law PLLC, 1001 Fourth Avenue,
7 Ste. 3200, and counsel for WSU, Casie Collignon, Baker & Hostetler, 1801 California Street,
8 Suite 4400, Denver, Colorado 80202-2662.

9 5.2 Any Settlement Class Member who fails to comply with the requirements for
10 objecting in ¶ 5.1 shall waive and forfeit any and all rights he or she may have to appear
11 separately and/or to object to the Settlement Agreement, and shall be bound by all the terms of
12 the Settlement Agreement and by all proceedings, orders and judgments in the Litigation. The
13 exclusive means for any challenge to the Settlement Agreement shall be through the provisions
14 of ¶ 5.1. Without limiting the foregoing, any challenge to the Settlement Agreement, the final
15 order approving this Settlement Agreement, or the Judgment to be entered upon final approval
16 shall be pursuant to appeal under the Rules of Appellate Procedure and not through a collateral
17 attack.

18 **6. Releases**

19 6.1 Upon the Effective Date, each Settlement Class Member, including Plaintiffs,
20 shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever
21 released, relinquished, and discharged all Released Claims. Further, upon the Effective Date,
22 and to the fullest extent permitted by law, each Settlement Class Member, including Plaintiffs,
23 shall, either directly, indirectly, representatively, as a member of or on behalf of the general

1 public or in any capacity, be permanently barred and enjoined from commencing, prosecuting,
2 or participating in any recovery in any action in this or any other forum (other than participation
3 in the settlement as provided herein) in which any of the Released Claims is asserted.

4 6.2 Upon the Effective Date, WSU shall be deemed to have, and by operation of the
5 Judgment shall have, fully, finally, and forever released, relinquished, and discharged, Plaintiffs,
6 each and all of the Settlement Class Members, Proposed Settlement Class Counsel and
7 Plaintiffs' Counsel, of all claims, including Unknown Claims, based upon or arising out of the
8 institution, prosecution, assertion, settlement, or resolution of the Litigation or the Released
9 Claims, except for enforcement of the Settlement Agreement. Any other claims or defenses
10 WSU may have against such Persons including, without limitation, any claims based upon or
11 arising out of any retail, banking, debtor-creditor, contractual, or other business relationship
12 with such Persons that are not based upon or do not arise out of the institution, prosecution,
13 assertion, settlement, or resolution of the Litigation or the Released Claims are specifically
14 preserved and shall not be affected by the preceding sentence.

15 6.3 Notwithstanding any term herein, neither WSU, nor its Related Parties, shall have
16 or shall be deemed to have released, relinquished or discharged any claim or defense against
17 any Person other than Plaintiffs, each and all of the Settlement Class Members, Proposed
18 Settlement Class Counsel and Plaintiffs' Counsel.

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

21 7.1 The Settling Parties did not agree on the payment of attorneys' fees, costs,
22 expenses and/or Service Payment to Plaintiffs, as provided for in ¶¶ 7.2 and 7.3, until after the
23 substantive terms of the settlement had been agreed upon. WSU and Proposed Settlement Class
Counsel then negotiated and agreed as follows in this section.

1 7.2 WSU has agreed to pay, subject to Court approval, the amount of \$806,194.00 to
2 Proposed Settlement Class Counsel for attorneys’ fees, inclusive of reasonable costs and
3 expenses of all cases against WSU that they have pursued over the Security Incident. Proposed
4 Settlement Class Counsel, in their sole discretion, shall allocate and distribute the amount of
5 attorneys’ fees, costs, and expenses awarded by the Court among Proposed Settlement Class
6 Counsel. Proposed Settlement Class Counsel shall not file a Fee Application that seeks an
7 amount greater than \$806,194.00 inclusive of reasonable costs and expenses.

8 7.3 Subject to Court approval, WSU has agreed to pay Service Payments in the
9 amount of \$2,500 to each of the Plaintiffs.

10 7.4 Within ten (10) business days after the Effective Date, WSU shall pay the Court-
11 approved attorneys’ fees, costs, expenses, and Service Payments to Plaintiffs, as set forth above
12 in ¶¶ 7.2 and 7.3, to a single bank account designated by Proposed Settlement Class Counsel.
13 Proposed Settlement Class Counsel shall thereafter distribute the award of attorneys’ fees, costs,
14 and expenses among Plaintiffs’ Counsel and Service Payments to Plaintiffs consistent with ¶¶
15 7.2 and 7.3.

16 7.6 The amount(s) of any award of attorneys’ fees, costs, and expenses, and the
17 Service Payment to Plaintiffs, are intended to be considered by the Court separately from the
18 Court’s consideration of the fairness, reasonableness, and adequacy of the settlement. No order
19 of the Court, or modification or reversal or appeal of any order of the Court, concerning the
20 amount(s) of any attorneys’ fees, costs, expenses, and/or Service Payment ordered by the Court
21 to Proposed Settlement Class Counsel or Plaintiffs shall affect whether the Judgment is Final or
22 constitute grounds for cancellation or termination of this Settlement Agreement.
23

1 **8. Administration of Claims**

2 8.1 The Claims Administrator shall administer and calculate the claims submitted by
3 Settlement Class Members under ¶¶ 2.1 through 2.3. Proposed Settlement Class Counsel and
4 Defense Counsel shall be given reports as to both claims and distribution, and have the right to
5 review and obtain supporting documentation and challenge such reports if they believe them to
6 be inaccurate or inadequate. The Claims Administrator's and Claims Referee's, as applicable,
7 determination of the validity or invalidity of any such claims shall be binding, subject to the
8 dispute resolution process set forth in ¶ 2.12. All claims agreed to be paid in full by WSU shall
9 be deemed valid.

10 8.2 Checks for Approved Claims and/or credit monitoring codes shall be mailed and
11 postmarked within sixty (60) days of the Effective Date, or within thirty (30) days of the date
12 that the claim is approved, whichever is later.

13 8.3 All Settlement Class Members who fail to timely submit a claim for any benefits
14 hereunder within the time frames set forth herein, or such other period as may be ordered by the
15 Court, or otherwise allowed, shall be forever barred from receiving any payments or benefits
16 pursuant to the settlement set forth herein, but will in all other respects be subject to, and bound
17 by, the provisions of the Settlement Agreement, the releases contained herein and the Judgment.

18 8.4 No Person shall have any claim against the Claims Administrator, Claims
19 Referee, WSU, Proposed Settlement Class Counsel, Plaintiffs, Class Counsel, and/or Defense
20 Counsel based on distributions of benefits to Settlement Class Members.

21 **9. Modification, Conditions of Settlement, Effect of Disapproval, Cancellation,**
22 **or Termination**

23 9.1 The terms and provisions of this Agreement may be amended, modified, or
expanded by written agreement of the Settling Parties and approval of the Court; provided,

1 however, that, after entry of the Preliminary Approval Order, the Settling Parties may, by written
2 agreement, effect such amendments, modifications, or expansions of this Agreement and its
3 implementing documents (including all Exhibits hereto) without further notice to the Settlement
4 Class or approval by the Court if such changes are consistent with the Court's Preliminary
5 Approval Order and do not materially alter, reduce, or limit the rights of Settlement Class
6 Members under this Agreement.

7 9.2 The Effective Date of the Settlement shall be conditioned on the occurrence of all
8 of the following events:

- 9 a) the Court has entered the Preliminary Approval Order and Publishing of Notice of
10 a Final Fairness Hearing, as required by ¶ 3.1;
- 11 b) WSU has not exercised its option to terminate the Settlement Agreement pursuant
12 to ¶ 4.3;
- 13 c) the Court has entered the Judgment granting final approval to the Settlement as set
14 forth herein; and
- 15 d) the Judgment has become Final, as defined in ¶ 1.17.

16 9.3 If all of the conditions specified in ¶ 9.2 hereof are not satisfied, the Settlement
17 Agreement shall be cancelled and terminated subject to ¶ 9.5 unless Proposed Settlement Class
18 Counsel and Defense Counsel mutually agree in writing to proceed with the Settlement
19 Agreement.

20 9.4 Within three (3) days after the Opt-Out Date, the Claims Administrator shall
21 furnish to Proposed Settlement Class Counsel and to WSU's counsel a complete list of all timely
22 and valid requests for exclusion (the "Opt-Out List").

23 9.5 In the event that the Settlement Agreement is not approved by the Court or the
Settlement set forth in the Settlement Agreement is terminated in accordance with its terms, (i)
the Settling Parties shall be restored to their respective positions in the Litigation and shall

1 jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as
2 to avoid prejudice to any Settling Party or Settling Party's counsel, and (b) the terms and
3 provisions of the Settlement Agreement shall have no further force and effect with respect to
4 the Settling Parties and shall not be used in the Litigation or in any other proceeding for any
5 purpose, and any judgment or order entered by the Court in accordance with the terms of the
6 Settlement Agreement shall be treated as vacated, *nunc pro tunc*. Notwithstanding any
7 statement in this Settlement Agreement to the contrary, no order of the Court or modification or
8 reversal on appeal of any order reducing the amount of attorneys' fees, costs, expenses, and/or
9 Service Payments shall constitute grounds for cancellation or termination of the Settlement
10 Agreement. Further, notwithstanding any statement in this Settlement Agreement to the
11 contrary, WSU shall be obligated to pay the Administration Expenses, amounts already billed
12 or incurred for costs of notice to the Settlement Class, Claims Administration, and Dispute
13 Resolution pursuant to ¶ 2.12 above and shall not, at any time, seek recovery of same from any
14 other party to the Litigation or from counsel to any other party to the Litigation.

15 9.6 Notwithstanding any provision of this Agreement, in the event this Agreement is
16 not approved by any Court, or terminated for any reason, or the Settlement set forth in this
17 Agreement is declared null and void, or in the event that the Effective Date does not occur,
18 Settlement Class Members, Plaintiffs, and Plaintiffs' Counsel shall not in any way be
19 responsible or liable for any of the Administrative Expenses, or any expenses, including costs
20 of notice and administration or dispute resolution associated with this Settlement or this
21 Agreement, except that each Party shall bear its own attorneys' fees and costs.

1 **10. Miscellaneous Provisions**

2 10.1 The Settling Parties (i) acknowledge that it is their intent to consummate this
3 Agreement; and (ii) agree to cooperate to the extent reasonably necessary to effectuate and
4 implement all terms and conditions of this Settlement Agreement, and to exercise their best
5 efforts to accomplish the terms and conditions of this Settlement Agreement.

6 10.2 The Settling Parties intend this Settlement to be a final and complete resolution of
7 all disputes between them with respect to the Litigation. The Settlement compromises claims
8 that are contested and shall not be deemed an admission by any Settling Party as to the merits
9 of any claim or defense. The Settling Parties each agree that the Settlement was negotiated in
10 good faith by the Settling Parties, and reflects a Settlement that was reached voluntarily after
11 consultation with competent legal counsel. The Settling Parties reserve their right to rebut, in a
12 manner that such party determines to be appropriate, any contention made in any public forum
13 that the Litigation was brought or defended in bad faith or without a reasonable basis. It is agreed
14 that neither Party shall have any liability to one another as it relates to the Litigation, except as
15 set forth herein.

16 10.3 Neither the Settlement Agreement, nor the Settlement contained herein, nor any
17 act performed or document executed pursuant to or in furtherance of the Settlement Agreement
18 or the settlement (i) is or may be deemed to be or may be used as an admission of, or evidence
19 of, the validity or lack thereof of any Released Claim, or of any wrongdoing or liability of any
20 of the Released Persons; or (ii) is or may be deemed to be or may be used as an admission of,
21 or evidence of, any fault or omission of any of the Released Persons in any civil, criminal or
22 administrative proceeding in any court, administrative agency or other tribunal. Any of the
23 Released Persons may file the Settlement Agreement and/or the Judgment in any action that

1 may be brought against them or any of them in order to support a defense or counterclaim based
2 on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar, or
3 reduction or any other theory of claim preclusion or issue preclusion or similar defense or
4 counterclaim.

5 10.4 The Settlement Agreement may be amended or modified only by a written
6 instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

7 10.5 The Settlement Agreement, together with the Exhibits attached hereto,
8 constitutes the entire agreement among the parties hereto, and no representations, warranties or
9 inducements have been made to any party concerning the Settlement Agreement other than the
10 representations, warranties and covenants contained and memorialized in such document.
11 Except as otherwise provided herein, each party shall bear its own costs. This Agreement
12 supersedes all previous agreements made by the Settling Parties.

13 10.6 Proposed Settlement Class Counsel, on behalf of the Settlement Class, is
14 expressly authorized by Plaintiffs to take all appropriate actions required or permitted to be taken
15 by the Settlement Class pursuant to the Settlement Agreement to effectuate its terms, and also
16 are expressly authorized to enter into any modifications or amendments to the Settlement
17 Agreement on behalf of the Settlement Class which they deem appropriate in order to carry out
18 the spirit of this Settlement Agreement and to ensure fairness to the Settlement Class.

19 10.7 Each counsel or other Person executing the Settlement Agreement on behalf of
20 any party hereto hereby warrants that such Person has the full authority to do so.

21 10.8 If any of the dates or deadlines specified herein falls on a weekend or legal
22 holiday, the applicable date or deadline shall fall on the next business day. All reference to
23 “days” in this Agreement shall refer to calendar days, unless otherwise specified. The Settling

1 Parties reserve the right, subject to the Court’s approval, to agree to any reasonable extensions
2 of time that might be necessary to carry out any of the provisions of this Agreement.

3 10.9 The Settlement Agreement may be executed in one or more counterparts. All
4 executed counterparts and each of them shall be deemed to be one and the same instrument. A
5 complete set of original executed counterparts shall be filed with the Court.

6 10.10 The Settlement Agreement shall be binding upon, and inure to the benefit of, the
7 successors and assigns of the parties hereto.

8 10.11 The Court shall retain jurisdiction with respect to implementation and
9 enforcement of the terms of the Settlement Agreement, and all parties hereto submit to the
10 jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied
11 in the Settlement Agreement.

12 10.12 The Settlement Agreement shall be considered to have been negotiated,
13 executed, and delivered, and to be wholly performed, in the State of Washington, and the rights
14 and obligations of the parties to the Settlement Agreement shall be construed and enforced in
15 accordance with, and governed by, the internal, substantive laws of the State of Washington.

16 10.13 As used herein, “he” means “he, she, or it;” “his” means “his, hers, or its,” and
17 “him” means “him, her, or it.”

18 10.14 All dollar amounts are in United States dollars (USD).

19 10.15 Cashing a settlement check is a condition precedent to any Settlement Class
20 Member’s right to receive monetary settlement benefits. All settlement checks shall be void
21 sixty (60) days after issuance and shall bear the language: “This check must be cashed within
22 60 days, after which time it is void.” If a check becomes void, the Settlement Class Member
23 shall have until six months after the Effective Date to request re-issuance. If no request for re-

1 issuance is made within this period, the Settlement Class Member will have failed to meet a
2 condition precedent to recovery of settlement benefits, the Settlement Class Member's right to
3 receive monetary relief shall be extinguished, and WSU shall have no obligation to make
4 payments to the Settlement Class Member for expense or lost time reimbursement under ¶ 2.2
5 or ¶ 2.3 or any other type of monetary relief. The same provisions shall apply to any re-issued
6 check. For any checks that are issued or re-issued for any reason more than one hundred eighty
7 (180) days from the Effective Date, requests for re-issuance need not be honored after such
8 checks become void.

9 10.16 All agreements made and orders entered during the course of the Litigation
10 relating to the confidentiality of information shall survive this Settlement Agreement.

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

13 **Class Counsel**

14 *s/ James Bulthuis 44089 w/ authority to sign for:*

15 Michael Kazuo Rhodes, WSBA #41911
16 Mix Sanders Thompson PLLC
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19 Tel: (206) 971-9601
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22 *s/ James Bulthuis*

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