

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement” or “Agreement”) is entered into by and between SHIRA KOHN and ANDRES VIVAS, individually and on behalf of Settlement Class Members (as defined in Paragraph 37) (together “Plaintiffs”), and LOREN D. STARK COMPANY, INC. (“Defendant” or “LDSCO”) (collectively the “Parties”), in the action *Kohn et al. v. Loren D. Stark Company, Inc.*, Case No. 4:23-cv-03035, pending in the U.S. District Court for the Southern District of Texas, Houston Division (the “Action”).

RECITALS

WHEREAS, Plaintiffs have filed a Complaint(s) against LDSCO in the United States District Court for the United States District Court for the Southern District of Texas, Houston Division relating to a data security incident affecting LDSCO which occurred in or around October 2022, which Complaint(s) have been consolidated and are presently pending in the Action;

WHEREAS, LDSCO denies the allegations and all liability with respect to any and all facts and claims alleged in the Action, that the class representatives and the class(es) which they purport to represent have suffered any damage(s), and/or that the Action satisfies the requirements to be tried as a class action under Federal Rule of Civil Procedure 23; and

WHEREAS, following extensive arm’s length settlement negotiations, a mediation session, and the exchange and acceptance of a mediator’s proposal, the Parties reached an agreement of the essential terms of settlement.

NOW, THEREFORE, in exchange for the mutual promises and valuable consideration provided for in this Agreement, the Parties agree to a full, complete, and final settlement and resolution of the Action, subject to Court approval, on the following terms and conditions:

I. DEFINITIONS

In addition to terms defined at various points within this Agreement, the following defined terms shall have the meanings set forth below:

1. “Action” means the class action lawsuit captioned *Kohn et al. v. Loren D. Stark Company, Inc.*, Case No. 4:23-cv-03035, pending in the U.S. District Court for the Southern District of Texas, Houston Division before the Honorable Lee H. Rosenthal.

2. “Approved Claim” means the timely submission of a Claim Form by a Settlement Class Member that has been approved by the Settlement Administrator.

3. “Claim Form” means the form that will be available for Settlement Class Members to submit a Settlement Claim (defined below) to the Settlement Administrator (defined below) and that is substantially in the form of Exhibit 3. Settlement Class Members must submit a Claim Form, subject to the provisions of this Settlement Agreement, to obtain benefits under this Settlement Agreement.

4. “Claims Deadline” means the last day for a Settlement Class Member to submit a timely Claim Form, which will occur sixty (60) days after the Notice Deadline.

5. “Claims Period” means the period of time during which Settlement Class Members may submit Claim Forms to receive settlement benefits, which will end sixty (60) days after the Notice Deadline.

6. “Class Counsel” means Justin C. Walker of Markovits, Stock & DeMarco, LLC and John J. Nelson of Milberg Coleman Bryson Phillips Grossman PLLC.

7. “Class Representatives” means Shira Kohn and Andres Vivas.

8. “Court” means the United States District Court for the Southern District of Texas, Houston Division.

9. “Data Incident” means the data security incident affecting LDSCO which occurred in or around October 2022.

10. “Effective Date” means one business day following the latest of: (i) the date upon which the time expires for filing or noticing any appeal of the Judgment or one (1) business day following entry of an order granting final approval of the settlement if no parties have standing to appeal; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to attorneys’ fees and reimbursement of expenses, the date of completion, in a manner that finally affirms and leaves in place the Judgment without any material modification, of all proceedings arising out of the appeal(s) (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or certiorari, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal(s) following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on certiorari with respect to the Judgment.

11. “Fee Award and Costs” means the amount of attorneys’ fees and reimbursement of Litigation Costs and Expenses awarded by the Court to Class Counsel.

12. “Final Approval Order and Judgment” means an order and judgment that the Court enters after the Final Approval Hearing, which finally approves the Settlement Agreement, certifies the Settlement Class, dismisses the Action with prejudice, and otherwise satisfies the settlement-related provisions of Federal Rule of Civil Procedure 23, and is consistent with all material provisions of this Agreement, substantially in the form annexed hereto as Exhibit 5.

13. “Final Approval Hearing” means the hearing to be conducted by the Court to determine the fairness, adequacy, and reasonableness of the Settlement pursuant to Federal Rule of Civil Procedure 23 and whether to issue the Final Approval Order and Judgment.

14. “LDSCO’s Counsel” or “Defendant’s Counsel” means Laura De Santos, Joseph Salvo and John T. Mills of Gordon Rees Scully Mansukhani, LLP.

15. “Litigation Costs and Expenses” means costs and expenses incurred by counsel for Plaintiffs in connection with commencing, prosecuting, and settling the Action.

16. “Net Settlement Fund” means the amount of funds that remain in the Settlement Fund after funds are paid from or allocated for payment from the Settlement Fund for the following: (i) Notice and Administrative Expenses, (ii) Taxes and Tax-Related Expenses, (iii) Service Awards Payments approved by the Court, and (iv) Fee Award and Costs approved by the Court.

17. “Non-Profit Residual Recipient” means a non-profit organization(s) approved by the Court.

18. “Notice” means notice of the proposed class action Settlement to be provided to Settlement Class Members, substantially in the form attached hereto as Exhibit 1 (“Short Form Notice”) and Exhibit 2 (“Long Form Notice”).

19. “Notice Deadline” means the last day by which Notice must issue to the Settlement Class Members, and will occur thirty (30) days after entry of the Preliminary Approval Order.

20. “Notice and Administrative Expenses” means all of the expenses incurred in the administration of this Settlement, including, without limitation, all expenses or costs associated with providing Notice to the Settlement Class, locating Settlement Class Members, performing National Change of Address search(es) and/or skip tracing, processing claims, determining the eligibility of any person to be a Settlement Class Member, and administering, calculating and distributing the Settlement Fund to Settlement Class Members. Administrative Expenses also include all reasonable third-party fees and expenses incurred by the Settlement Administrator in administering the terms of this Agreement.

21. “Objection Deadline” is the last day on which a Settlement Class Member may file an objection to the Settlement, which will be sixty (60) days after the Notice Deadline.

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

23. “Out-of-Pocket Losses” means documented out-of-pocket costs or expenditures that a Settlement Class Member actually incurred that are fairly traceable to the Data Incident, and that have not already been reimbursed by a third party, as set forth in Paragraph 50.

24. “Personal Information” means information that identifies an individual or that in combination with other information can be used to identify, locate, or contact an individual. The term “Personal Information” is not intended here, nor should it be viewed as, having any bearing on the meaning of this term or similar term in any statute or other source of law beyond this Agreement, or how the Parties may use the term in other circumstances.

25. “Preliminary Approval Order” means an order directing issuance of Notice to Settlement Class Members, determining that the Court will likely be able to approve the Settlement under Federal Rule of Civil Procedure 23(e)(2), and determining that the Court will likely be able to certify the Settlement Class for purposes of judgment. Such order will include the forms and procedure for providing notice to the Settlement Class, including notice of the procedure for Settlement Class Members to object to or opt-out of the Settlement, and set a date for the Final Approval Hearing, substantially in the form annexed hereto as Exhibit 4.

26. “Pro Rata Cash Payment” or “Cash Payment” means a pro rata cash payment up to a maximum of Seventy Dollars and Zero Cents (\$70.00), which a Settlement Class Member may claim under this Settlement Agreement, as set forth in Paragraph 49.

27. “Released Claims” means any and all claims, liabilities, rights, demands, suits, actions, causes of action, obligations, damages, penalties, costs, attorneys’ fees, losses, and remedies of every kind or description—whether known or unknown (including Unknown Claims), existing or potential, suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, legal, statutory, or equitable—that the Releasing Parties had or have that have been or could have been asserted in the Action or that otherwise relate to or arise from the Data Incident, the operative facts alleged in the Action, including the complaint and any amendment thereto, the alleged access, disclosure and/or acquisition of Settlement Class Members’ Personal Information in the Data Incident, LDSCO’s provision of notice to Settlement Class Members following the Data Incident, LDSCO’s information security policies and practices as they relate to or arise from the Data Incident, or LDSCO’s maintenance or storage of Personal Information as they relate to or arise from the Data Incident, regardless of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law.

28. “Released Parties” means LDSCO and each and every of their respective predecessors, successors, assigns, parents, subsidiaries, divisions, affiliates, departments, and any and all of their past, present, and future officers, directors, employees, stockholders, partners, servants, agents, successors, attorneys, representatives, insurers, reinsurers, subrogees and assigns of any of the foregoing, as well as clients of LDSCO and each and every of their respective predecessors, successors, assigns, parents, subsidiaries, divisions, affiliates, departments, and any and all of their past, present, and future officers, directors, employees, stockholders, partners, servants, agents, successors, attorneys, representatives, insurers, reinsurers, subrogees and assigns of any of the foregoing. Each of the Released Parties may be referred to individually as a “Released Party.”

29. “Releasing Parties” means the Class Representatives and Settlement Class Members, and each of their respective heirs, executors, administrators, representatives, agents, partners, successors, attorneys and assigns.

30. “Request for Exclusion” is the written communication by or on behalf of a Settlement Class Member in which he or she requests to be excluded from the Settlement Class in the form and manner provided for in the Notice.

31. “Residual Settlement Fund” means any funds that remain in the Settlement Fund after Settlement Payments have been distributed and the time for cashing and/or redeeming Settlement Payments has expired. The Residual Funds will be sent to one or more Non-Profit Residual Recipient(s).

32. “Service Award Payment” means compensation awarded by the Court and paid to any Class Representative in recognition of his or her role in this litigation.

33. “Settlement” means the settlement of the Action by and between the Parties, and the terms thereof as stated in this Settlement Agreement.

34. “Settlement Administrator” means the notice and settlement administrator with recognized expertise in class action notice and claims generally and data security litigation specifically, as jointly agreed upon by the Settling Parties and approved by the Court.

35. “Settlement Class” means the persons who are identified on the Settlement Class List, including all individuals residing in the United States who were sent notification by LDSCO that their Personal Information was potentially compromised in the Data Incident. Excluded from the Settlement Class are: (1) the judges presiding over this Action, and members of their direct families; (2) LDSCO, its subsidiaries, parent companies, successors, predecessors, and any entity in which LDSCO or its parents have a controlling interest and their current or former officers, directors, and employees; and (3) Settlement Class Members who submit a valid a Request for Exclusion prior to the Opt-Out Deadline.

36. “Settlement Class List” means the list generated by LDSCO containing the full names and current or last known addresses for Settlement Class Members, which LDSCO shall provide to the Settlement Administrator within ten (10) days of the Preliminary Approval Order.

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

38. “Settlement Fund” means the sum of Seven Hundred Fifty Thousand Dollars and Zero Cents (\$750,000.00) to be paid by or on behalf of LDSCO as specified in Paragraph 42, including any interest accrued thereon after payment. This payment is the limit and extent of the monetary obligations of LDSCO, its respective predecessors, successors, assigns, parents, subsidiaries, divisions, affiliates, departments, and any and all of their past, present, and future officers, directors, employees, stockholders, partners, servants, agents, successors, attorneys, representatives, insurers, reinsurers, subrogees and assigns of any of the foregoing, with respect to this Agreement and the settlement of this matter.

39. “Settlement Payment” or “Settlement Check” means the payment to be made via mailed check or electronic payment to a Settlement Class Member pursuant to Paragraph 53.

40. “Settlement Website” means the website that the Settlement Administrator will establish as soon as practicable following entry of the Preliminary Approval Order, but prior to the mailing of the Notice, as a means for Settlement Class Members to obtain notice of and information

about the Settlement and relevant case documents and deadlines. The Settlement Website shall contain relevant documents, including, but not limited to, the Notice, this Agreement, Plaintiffs' motion for preliminary approval of the Settlement, the Preliminary Approval Order, Plaintiffs' motion for an award of attorneys' fees, costs and expenses, and/or service awards, and the operative complaint in the Action. The Settlement Website shall also include a toll-free telephone number, e-mail address, and mailing address through which Settlement Class Members may contact the Settlement Administrator directly. The Settlement Website shall not include any advertising and shall remain operational until at least sixty (60) days after all Settlement Payments have been distributed.

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

II. SETTLEMENT FUND

42. **Establishment of Settlement Fund.** Within ten (10) days of the Preliminary Approval Order, LDSCO shall deposit or cause to be deposited the total sum of Seven Hundred Fifty Thousand Dollars and Zero Cents (\$750,000.00) into an interest bearing account established and administered by the Settlement Administrator at a financial institution agreed upon by the Settlement Administrator and LDSCO.

43. **Non-Reversionary.** The Settlement Fund is non-reversionary. As of the Effective Date, all rights of LDSCO in or to the Settlement Fund shall be extinguished, except in the event this Settlement Agreement is terminated, as described in Paragraph 78.

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

45. **Custody of Settlement Fund.** The Settlement Fund shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed pursuant to this Settlement Agreement or the balance

returned to those who paid the Settlement Fund in the event this Settlement Agreement is terminated in accordance with Paragraph 78.

46. **Use of the Settlement Fund.** As further described in this Agreement, the Settlement Fund shall be used by the Settlement Administrator to pay, in the following order: (i) all costs of Settlement Administration including Taxes and Tax-Related Expenses; (ii) Fee Award and Costs; (iii) Service Awards; (iv) approved Out-of-Pocket Loss Claims; and (v) approved Pro Rata Cash Payments. Any amount remaining in the Residual Settlement Fund shall be paid to the Non-Profit Residual Recipient in accordance with Paragraph 61. No amounts may be withdrawn from the Settlement Fund unless expressly authorized by this Agreement or approved by the Court.

47. **Taxes and Representations.** Taxes and Tax-Related Expenses relating to the Settlement Fund shall be considered Notice and Administrative Expenses and shall be timely paid by the Settlement Administrator out of the Settlement Fund without prior order of the Court. Further, the Settlement Fund shall indemnify and hold harmless the Parties, their counsel, and their insurers and reinsurers for Taxes and Tax-Related Expenses (including, without limitation, taxes payable by reason of any such indemnification payments). The Parties and their respective counsel have made no representation or warranty with respect to the 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 or it of the receipt of funds from the Settlement Fund pursuant to this Agreement.

III. SETTLEMENT BENEFITS

a. Pro Rata Cash Payment

48. **Pro Rata Cash Payment.** All Settlement Class Members may submit a claim for a Pro Rata Cash Payment up to a maximum of Seventy Dollars and Zero Cents (\$70.00) by submitting a Claim Form to the Settlement Administrator no later than the Claims Deadline. The Pro Rata Cash Payment will be calculated in accordance with Paragraph 60 below and may be decreased based on the number of valid claims submitted for this settlement benefit, but under no circumstances will exceed Seventy Dollars and Zero Cents (\$70.00).

49. **Assessing Claims for Pro Rata Cash Payments.** The Settlement Administrator shall verify that each person who submits a Claim Form is a Settlement Class Member. A Settlement Class Member shall not be required to submit any documentation or additional information in support of their claim for a Pro Rata Cash Payment. The Settlement Administrator shall have the sole discretion and authority to determine whether the prerequisites have been met to award payments for Pro Rata Cash Payments.

b. Reimbursement For Out-Of-Pocket Losses

50. **Reimbursement for Out-of-Pocket Losses.** In addition to the Pro Rata Cash Payment, all Settlement Class Members may submit a claim for Out-of-Pocket Losses. All

Settlement Class Members may submit a claim for up to Five Thousand Dollars and Zero Cents (\$5,000.00) for reimbursement of Out-of-Pocket Losses. “Out-of-Pocket Losses” are unreimbursed costs or expenditures incurred by a Settlement Class Member that are fairly traceable to the Data Incident including, without limitation, the following: (i) unreimbursed costs, expenses, losses or charges incurred a result of identity theft or identity fraud, falsified tax returns, or other possible misuse of class member’s personal information; (ii) costs incurred on or after October 18, 2022, associated with purchasing or extending additional credit monitoring or identity theft protection services and/or accessing or freezing/unfreezing credit reports with any credit reporting agency; and (iii) other miscellaneous expenses incurred related to any Out-of-Pocket Loss such as notary, fax, postage, copying, mileage, and long-distance telephone charges. Settlement Class Members who elect to submit a claim for Reimbursement of Out-of-Pocket Losses must provide to the Settlement Administrator the information required to evaluate the claim, including: (1) the Settlement Class Member’s name and current address; (2) documentation supporting their claim; (3) a brief description of the documentation describing the nature of the loss, if the nature of the loss is not apparent from the documentation alone; and (4) whether the Settlement Class Member has been reimbursed for the loss by another source. Documentation supporting Out-of-Pocket Losses can include receipts or other documentation not “self-prepared” by the Settlement Class Member that documents the costs incurred. “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity to or support other submitted documentation. Settlement Class Members shall not be reimbursed for Out-of-Pocket Losses if they have already been reimbursed for the same Out-of-Pocket Losses by another source. A claim for reimbursement for Out-of-Pocket Losses may be combined with a claim for a Pro Rata Cash Payment but in no circumstance will a Settlement Class Member be eligible to receive more than the Five Thousand Dollars and Zero Cents (\$5,000.00) cap.

51. **Assessing Claims for Out-of-Pocket Losses.** The Settlement Administrator shall verify that each person who submits a Claim Form is a Settlement Class Member. The Settlement Administrator shall have the sole discretion and authority to determine whether and to what extent documentation for Out-of-Pocket Losses reflects valid Out-of-Pocket Losses actually incurred that are fairly traceable to the Data Incident, but may consult with Class Counsel and LDSCO’s Counsel in making individual determinations. In assessing what qualifies as “fairly traceable,” the Parties agree to instruct the Settlement Administrator to consider (i) whether the timing of the loss occurred on or after October 18, 2022; and/or (ii) whether the Personal Information used to commit identity theft or fraud consisted of the same type of Personal Information that was potentially impacted as a result of the Data Incident. The Settlement Administrator is authorized to contact any Settlement Class Member (by e-mail, telephone, or U.S. mail) to seek clarification regarding a submitted claim prior to making a determination as to its validity.

52. **Disputes.** To the extent the Settlement Administrator determines a claim for Out-of-Pocket Losses is deficient in whole or part, within a reasonable time of making such a determination, the Settlement Administrator shall notify the Settlement Class Member of the deficiencies and give the Settlement Class Member twenty-one (21) days to cure the deficiencies. Such notifications shall be sent via e-mail, unless the claimant did not provide an e-mail address, in which case such notifications shall be sent via U.S. mail. If the Settlement Class Member attempts to cure the deficiencies but, at the sole discretion and authority of the Settlement

Administrator, fails to do so, the Settlement Administrator shall notify the Settlement Class Member of that determination within ten (10) days of the determination. The Settlement Administrator may consult with Class Counsel and LDSCO's Counsel in making such determinations.

IV. PAYMENTS TO SETTLEMENT CLASS MEMBERS

53. **Payment Timing.** Payments for Approved Claims for reimbursement for Out-of-Pocket Losses and Pro Rata Cash Payments shall be issued in the form of an electronic payment or check mailed as soon as practicable after the allocation and distribution of funds are determined by the Settlement Administrator following the Effective Date. The Settlement Administrator shall utilize electronic payment methods wherever possible.

54. **Timing.** To the extent payments are made by check, settlement checks shall bear the legend that they expire if not negotiated within sixty (60) days of their date of issue.

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

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

57. **Deceased Class Members.** If the Settlement Administrator is notified that a Settlement Class Member is deceased, the Settlement Administrator is authorized to reissue the electronic payment(s) or settlement check(s) to the Settlement Class Member's estate upon receiving proof the Settlement Class Member is deceased and after consultation with Class Counsel and LDSCO's Counsel.

V. CLAIMS; DISTRIBUTION OF SETTLEMENT FUNDS; RESIDUAL SETTLEMENT FUND

58. **Submission of Electronic and Hard Copy Claims.** Settlement Class Members may submit Claim Forms to the Settlement Administrator electronically via the Settlement Website or physically by mail to the Settlement Administrator. Claim Forms must be submitted electronically or postmarked during the Claims Period and on or before the Claims Deadline.

59. **Order of Distribution of Funds.** The Settlement Administrator must first use the funds available in the Settlement Fund (after payment of Notice and Administrative Expenses and Taxes and Tax-Related Expenses) to make payments for Fee Award and Costs, followed by Service Awards, followed by Approved Claims for Out-of-Pocket Losses, followed by Approved Claims for Pro Rata Cash Payments.

60. **Pro-Rata Contingencies.**

a. In the event that the funds remaining in the Net Settlement Fund are not sufficient to make payment for those Approved Claims for Out-of-Pocket Losses, then the value of the payments for Approved Claims for Out-of-Pocket Losses shall be reduced on a pro rata basis, such that the aggregate value of all payments for Approved Claims for Out-of-Pocket Losses does not exceed the Net Settlement Fund. In such an event, no Net Settlement Funds will be distributed for Approved Claims for Pro Rata Cash Payments.

b. In the event that funds remaining in the Net Settlement Fund after the payment for Approved Claims for Out-of-Pocket Losses are not sufficient to make payment for the full amount of the Approved Claims for Pro Rata Cash Payments (*i.e.*, Seventy Dollars and Zero Cents [\$70.00] per Approved Claim), then the value of the Approved Claims for Pro Rata Cash Payments shall be reduced on a pro rata basis, such that the aggregate value of all payments for Approved Claims for Out-of-Pocket Losses does not exceed the Net Settlement Fund.

c. All pro rata determinations required by this Paragraph shall be performed by the Settlement Administrator upon notice to Class Counsel and LDSCO's Counsel.

61. **Unclaimed Property.** No portion of the Settlement Fund shall revert or be repaid to LDSCO after the Effective Date. To the extent any monies remain in the Residual Settlement Fund more than 150 days after the distribution of Settlement payments to the Settlement Class Members, or 30 days after all reissued Settlement Checks are no longer negotiable, whichever occurs later or as otherwise agreed to by the Parties, any remaining monies shall be distributed as required by state law or to the Non-Profit Residual Recipient.

VI. CONFIRMATORY DISCOVERY

62. **Confirmatory Discovery.** Within thirty (30) days of the Preliminary Approval Order, LDSCO will provide reasonable access to confidential confirmatory discovery and/or a confidential declaration to Class Counsel which will include documents regarding the facts and circumstances of the Data Incident, LDSCO's response thereto, and the changes and improvements

that have been made or will be made to protect Settlement Class members' information from further unlawful intrusions. The information provided pursuant to this Paragraph shall identify the approximate annual cost of those security-related measures, which shall be paid by LDSCO separate and apart from the Settlement Fund.

63. **Confidentiality.** The information provided by LDSCO pursuant to this Section VI shall be treated as confidential and cannot be used for any purpose other than enforcement of this Settlement Agreement.

64. **No Other Rights or Remedies.** Nothing about this Section VI shall create any rights to any present or future contractual or equitable remedy requiring LDSCO to make or maintain any particular security processes or procedures in the future.

VII. SETTLEMENT CLASS NOTICE

65. **Timing of Notice.** Within ten (10) days after the date of the Preliminary Approval Order, LDSCO shall provide the Settlement Class List to the Settlement Administrator. Within thirty (30) days after the date of the Preliminary Approval Order, the Settlement Administrator shall disseminate the Short Form Notice to the members of the Settlement Class. The Settlement Administrator shall make the Long Form Notice and Claim Form available to Settlement Class Members on the Settlement Website.

66. **Form of Notice.** Notice shall be disseminated via U.S. mail to Settlement Class Members.

VIII. OPT-OUTS AND OBJECTIONS

67. **Opt-Outs.** The Notice shall explain the procedure for Settlement Class Members to exclude themselves or "opt-out" of the Settlement by submitting a Request for Exclusion to the Settlement Administrator postmarked no later than sixty (60) days after the Notice Deadline. The Request for Exclusion must include the name of the proceeding, the individual's full name, current address, personal signature, and the words "Request for Exclusion" or a comparable statement that the individual does not wish to participate in the Settlement at the top of the communication. The Notice must state that any Settlement Class Member who does not file a timely Request for Exclusion in accordance with this Paragraph will lose the opportunity to exclude himself or herself from the Settlement and will be bound by the Settlement.

68. **Objections.** The Notice shall explain the procedure for Settlement Class Members to object to the Settlement by submitting written objections to the Settlement Administrator postmarked no later than sixty (60) days after the Notice Deadline. The written objection must include (i) the name of the proceedings; (ii) the Settlement Class Member's full name, current mailing address, and telephone number; (iii) a statement that states with specificity the grounds for the objection, as well as any documents supporting the objection; (iv) a statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (v) the identity of any attorneys representing the objector; (vi) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; (vii) a list of all other matters in which the objecting Settlement Class Member and/or his/her

attorney has lodged an objection to a class action settlement; and (viii) the signature of the Settlement Class Member or the Settlement Class Member's attorney. The Notice must set forth the time and place of the Final Approval Hearing (subject to change) and state that any Settlement Class Member who does not file a timely and adequate objection in accordance with this Paragraph waives the right to object or to be heard at the Final Approval Hearing and shall be forever barred from making any objection to the Settlement.

69. Within seven (7) days after the deadline for opt-out as set forth in this Paragraph and as approved by the Court, the Settlement Administrator shall furnish to counsel for the Parties a complete list of all timely and valid request for exclusions. In the event that within seven (7) days after receipt of the list from the Settlement Administrator, there have been more than one hundred (100) Opt-Outs (exclusions), LDSCO may, by notifying Class Counsel in writing, void this Agreement. If LDSCO voids the Agreement pursuant to this Paragraph, LDSCO shall be obligated to pay all settlement expenses already incurred, excluding any attorneys' fees, costs, and expenses of Class Counsel and service awards.

IX. DUTIES OF THE SETTLEMENT ADMINISTRATOR

70. **Duties of Settlement Administrator.** The Settlement Administrator shall perform the functions and duties necessary to effectuate the Settlement and as specified in this Agreement, including, but not limited to, the following:

- a. Creating, administering, and overseeing the Settlement Fund;
- b. Obtaining the Settlement Class List for the purpose of disseminating Notice to Settlement Class Members;
- c. Performing National Change of Address searches and/or skip tracing on the Settlement Class List;
- d. Providing Notice to Settlement Class Members via U.S. mail;
- e. Establishing and maintaining the Settlement Website;
- f. Establishing and maintaining a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answering the questions of Settlement Class Members who call with or otherwise communicate such inquiries within one (1) business day;
- g. Responding to any mailed or emailed Settlement Class Member inquiries within one (1) business day;
- h. Reviewing, determining the validity of, and processing all claims submitted by Settlement Class Members;

- i. Receiving Requests for Exclusion and objections from Settlement Class Members and providing Class Counsel and LDSCO's Counsel a copy thereof no later than three (3) days following the deadline for submission of the same. If the Settlement Administrator receives any Requests for Exclusion, objections, or other requests from Settlement Class Members after the Opt-Out and Objection Deadlines, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and LDSCO's Counsel;
- j. After the Effective Date, processing and transmitting settlement payments to Settlement Class Members;
- k. Providing weekly or other periodic reports to Class Counsel and LDSCO's Counsel that include information regarding the number of settlement electronic payments and/or checks mailed and delivered, electronic payments and/or settlement checks cashed, undeliverable information, and any other requested information relating to settlement payments. The Settlement Administrator shall also, as requested by Class Counsel or LDSCO's Counsel and from time to time, provide the amounts remaining in the Net Settlement Fund;
- l. In advance of the Final Approval Hearing, preparing an affidavit to submit to the Court that: (i) attests to implementation of Notice in accordance with the Preliminary Approval Order; and (ii) identifies each Settlement Class Member who timely and properly submitted a Request for Exclusion; and
- m. Performing any function related to settlement administration as provided for in this Agreement or at the agreed-upon instruction of Class Counsel or LDSCO's Counsel, including, but not limited to, verifying that settlement payments have been distributed.

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

72. **Indemnification.** The Settlement Administrator shall indemnify and hold harmless the Parties, Class Counsel, LDSCO's Counsel, and LDSCO's insurers and reinsurers for (i) any act or omission or determination of the Settlement Administrator, or any of Settlement Administrator's designees or agents, in connection with the Notice Plan and the administration of the Settlement; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any

losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes and Tax-Related Expenses.

X. PRELIMINARY APPROVAL, FINAL APPROVAL, AND JURISDICTION

73. **Certification of the Settlement Class.** For purposes of this Settlement only, the Parties stipulate to the certification of the Settlement Class, which is contingent upon the Court entering the Final Approval Order and Judgment of this Settlement and the occurrence of the Effective Date. Should: (1) the Settlement not receive final approval from the Court, or (2) the Effective Date not occur, the certification of the Settlement Class shall be void. LDSCO reserves the right to contest class certification for all other purposes. The Parties further stipulate to designating the Class Representatives as the representatives for the Settlement Class.

74. **Preliminary Approval.** Following execution of this Agreement, Class Counsel shall file a motion for preliminary approval of this Settlement with the Court. Class Counsel shall provide LDSCO's counsel with a draft of the motion for preliminary approval within a reasonable time frame prior to filing same to ensure that there are no requested revisions from LDSCO.

75. **Final Approval.** Class Counsel shall move the Court for a Final Approval Order and Judgment of this Settlement, to be issued following the Final Approval Hearing; within a reasonable time after the Notice Deadline, Objection Deadline, and Opt-Out Deadline; and at least 90 days after Class Counsel notifies the appropriate government officials of this Settlement Agreement pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715. In connection with the motion for preliminary approval, counsel for the parties shall request that the Court set a date for the Final Approval Hearing that is no earlier than 120 days after entry of the Preliminary Approval Order. Class Counsel shall provide LDSCO's counsel with a draft of the motion for final approval within a reasonable time frame prior to filing same to ensure that there are no requested revisions from LDSCO.

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

XI. MODIFICATION AND TERMINATION

77. **Modification.** The terms and provisions of this Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however, that, after entry of the Preliminary Approval Order, the Parties may, by written agreement, effect such amendments, modifications, or expansions of this Agreement and its

implementing documents (including all exhibits hereto) without further notice to the Settlement Class or approval by the Court if such changes are consistent with the Court's Preliminary Approval Order and do not materially alter, reduce, or limit the rights of Settlement Class Members under this Agreement.

78. **Termination.** Class Counsel (on behalf of the Settlement Class Members) and Defendant shall have the right to terminate this Agreement by providing written notice of their or its election to do so ("Termination Notice"): (1) within seven (7) days of either of the following: (a) the Court's refusal to grant preliminary approval of the Settlement in any material respect; or (b) LDSCO's receipt of the opt-out list from the Settlement Administrator that includes more than one hundred (100) Opt-Outs which right may be exercised solely by LDSCO as set forth above in Paragraph 69; or (2) within fourteen (14) days of either of the following: (a) the Court's refusal to enter the Judgment in any material respect, or (b) the date upon which the Judgment is modified or reversed in any material respect by any appellate or other court.

79. **Effect of Termination.** In the event of a termination as provided in Paragraph 78, this Agreement shall be considered null and void; all of the Parties' obligations under the Agreement shall cease to be of any force and effect and the Parties shall return to the status quo ante in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement claims and defenses will be preserved.

XII. RELEASES

80. **The Release.** Upon the Effective Date, and in consideration of the Settlement benefits described herein, each Releasing Party shall be deemed to have released, acquitted, and forever discharged Defendant and each of the Released Parties from any and all Released Claims.

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

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

Upon the Effective Date, each of the Releasing Parties shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state, the

District of Columbia or territory of the United States, by federal law, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to Section 1542 of the California Civil Code. Class Representatives, the Settlement Class, and the Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Release, but that it is their intention to finally and forever settle and release the Released Claims, including but not limited to any Unknown Claims they may have, as that term is defined in this Paragraph.

82. **Bar to Future Suits.** Upon entry of the Final Approval Order and Judgment, the Class Representatives and other Settlement Class Members shall be enjoined from prosecuting any claim they have released in the preceding paragraphs in any proceeding against any of the Released Parties or based on any actions taken by any of the Released Parties that are authorized or required by this Agreement or by the Final Approval Order. It is further agreed that the Settlement may be pleaded as a complete defense to any proceeding subject to this section.

XIII. SERVICE AWARDS

83. **Service Awards.** At least thirty (30) days before the Opt-Out and Objection Deadlines, Class Counsel will file a motion seeking a service award payment not to exceed Three Thousand Five Hundred Dollars and Zero Cents (\$3,500.00) for each of the Class Representatives, for a total of Seven Thousand Dollars and Zero Cents (\$7,000.00), in recognition of their contributions to this Action, subject to Court approval. The Settlement Administrator shall make the Service Award Payment to the Class Representative from the Settlement Fund. Such Service Award Payment shall be paid by the Settlement Administrator, in the amount approved by the Court, no later than thirty (30) days after the Effective Date.

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

XIV. ATTORNEYS' FEES, COSTS, EXPENSES

85. **Attorneys' Fees and Costs and Expenses.** At least thirty (30) days before the Opt-Out and Objection Deadlines, Class Counsel will file a motion for an award of attorneys' fees and litigation costs and expenses not to exceed one-third of the Settlement Fund, or Two Hundred Fifty Thousand Dollars and Zero Cents (\$250,000.00), to be paid from the Settlement Fund, and subject to Court approval. The Fee Award and Costs shall be paid by the Settlement Administrator from the Settlement Fund, in the amount approved by the Court, no later than thirty (30) days after the Effective Date.

86. **Allocation.** To the extent applicable, and unless otherwise ordered by the Court, Class Counsel shall have the sole and absolute discretion to allocate any approved Fee Award and Costs amongst Plaintiffs' counsel and any other attorneys for Plaintiffs. LDSCO and its insurers

and reinsurers shall have no liability or other responsibility for allocation of any such attorneys' fees and costs.

87. **No Effect on Agreement.** In the event the Court declines to approve, in whole or in part, the payment of attorneys' fees and costs and expenses in the amount requested, the remaining provisions of this Agreement shall remain in full force and effect. No decision by the Court, or modification or reversal or appeal of any decision by the Court, concerning the amount of the service awards shall constitute grounds for termination of this Agreement.

XV. NO ADMISSION OF LIABILITY

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

89. **No Use of Agreement.** Neither the Settlement Agreement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (i) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by Plaintiffs; or (ii) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission by LDSCO in the Action or in any proceeding in any court, administrative agency or other tribunal.

XVI. MISCELLANEOUS

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

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

92. **Deadlines.** If any of the dates or deadlines specified herein falls on a weekend or legal holiday, the applicable date or deadline shall fall on the next business day. All reference to "days" in this agreement shall refer to calendar days unless otherwise specified.

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

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

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

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

97. **Obligation to Meet and Confer.** Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have consulted in good faith.

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

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

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

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

Justin C. Walker
MARKOVITS, STOCK & DEMARCO, LLC
119 E. Court Street, Suite 530
Cincinnati, Ohio 45202
jwalker@msdlegal.com

John J. Nelson
**MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN, PLLC**
280 S. Beverly Drive
Beverly Hills, California 90212
jnelson@milberg.com

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

Joseph Salvo
John T. Mills
GORDON REES SCULLY MANSUKHANI, LLP
One Battery Park Plaza
New York, New York 10004
jsalvo@grsm.com
jtmills@grsm.com

Laura De Santos
GORDON REES SCULLY MANSUKHANI, LLP
TransWestern Tower, 1900 West Loop South
Suite 1000
Houston, Texas 77027
ldesantos@grsm.com

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

102. **Authority.** Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

SIGNATURES

SHIRA KOHN

By: _____ Date: _____

ANDRES VIVAS

By: Andres Vivas _____ Date: 7/1/2024 _____
Andres Vivas (Jul 1, 2024 13:58 EDT)

MARKOVITS, STOCK & DEMARCO, LLC
Counsel for Plaintiffs and the Class

By: Justin C. Walker _____ Date: 07/1/2024 _____
Justin Walker

MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC
Counsel for Plaintiffs and the Class

By: John Nelson _____ Date: 7/1/2024 _____
John Nelson

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

Joseph Salvo
John T. Mills
GORDON REES SCULLY MANSUKHANI, LLP
One Battery Park Plaza
New York, New York 10004
jsalvo@grsm.com
jtmills@grsm.com

Laura De Santos
GORDON REES SCULLY MANSUKHANI, LLP
TransWestern Tower, 1900 West Loop South
Suite 1000
Houston, Texas 77027
ldesantos@grsm.com

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

102. **Authority.** Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

SIGNATURES

SHIRA KOHN

By: Shira Kohn

Date: 06/30/2024

ANDRES VIVAS

By: _____

Date: _____

MARKOVITS, STOCK & DEMARCO, LLC
Counsel for Plaintiffs and the Class

By: _____
Justin Walker

Date: _____

MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC
Counsel for Plaintiffs and the Class

By: _____
John Nelson

Date: _____

LOREN D. STARK COMPANY, INC.

By: DocuSigned by:
Dayton Stark
01D86BE337984B8...

Date: July 1, 2024 | 5:17 AM PDT

Name: Dayton Stark

Title: President

GORDON REES SCULLY MANSUKHANI, LLP

Counsel for Defendants (as to form only)

By: DocuSigned by:
Joseph Salvo
D2EBE4CA87284C0...
Joseph Salvo

Date: June 28, 2024 | 1:01 PM PDT