

**SETTLEMENT AGREEMENT**

This Settlement Agreement, dated as of April XX, 2025, is made and entered into by and among the following Settling Parties (as defined below): (i) Christopher Hardy (“Hardy”), and Janet Mayerle (“Mayerle”) (collectively “Representative Plaintiffs”), individually and on behalf of the Settlement Class (as defined below), by and through their counsel at Milberg Coleman Bryson Phillips Grossman, LLC; Almeida Law Group; and Cafferty Clobes Meriwether & Sprengel LLP (“Proposed Class Counsel” or “Class Counsel”); and (ii) Pacific Guardian Life Insurance Company, Ltd. (“PGL” or “Defendant”) by and through its counsel of record, Kobayashi Sugita & Goda, LLP, and O’Hagan Meyer PLLC. 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.

**I. THE ACTION**

The Defendant, PGL, is an insurance provider located in Honolulu, Hawai’i. On September 5, 2023, PGL identified suspicious activity within its e-mail environment. PGL promptly initiated an investigation with the assistance of outside cybersecurity specialists. Through its response efforts, PGL learned that an unauthorized actor may have accessed or acquired data from the PGL environment on August 25, 2023 (the “Cybersecurity Incident,” or “Incident”). PGL conducted a detailed review of the data involved to determine the type of information present and to whom it related. On March 5, 2024, PGL confirmed that sensitive information including but not limited to, the names, Social Security numbers, financial account information, payment card information, dates of birth, and medical information (“Private Information”) of approximately 167,103 individuals was present in the potentially impacted data. After identifying the universe of

individuals whose information may have been affected, PGL notified all impacted individuals of the Incident.

Each Representative Plaintiff received notifications from Defendant indicating cybercriminals may have accessed and/or acquired their Private Information.

On March 7, 2025, the Parties engaged in settlement negotiations and a full-day mediation session with mediator, Jill Sperber. At the conclusion of the mediation, the Parties agreed upon a settlement in principle, the terms of which are memorialized in this Settlement Agreement. Pursuant to the terms set forth below, this Settlement Agreement provides for the resolution of all claims and causes of action asserted, or that could have been asserted, against Defendant and the Released Persons (as defined below) relating to the Incident, by and on behalf of Representative Plaintiffs and Settlement Class Members, and any other such actions by and on behalf of any other persons and putative classes against Defendant and the Released Persons relating to the Incident.

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

The Representative Plaintiffs believe—and the Defendant denies—that the claims asserted in the Action (as defined below), as set forth in Plaintiffs' Complaint, have merit. However, all Parties, including counsel for Defendant and Proposed Class Counsel, recognize and acknowledge the significant time and expense associated with continued litigation of the Action through motion practice, trial, and potential appeals. They have also considered the uncertain outcome and risk of further litigation, as well as the difficulties and delays inherent in such litigation. Proposed Class Counsel are highly experienced in class action litigation and very knowledgeable regarding the relevant claims, remedies, and defenses at issue generally in such litigation and in this Action. They have determined that the terms set forth in this Settlement Agreement are fair, reasonable,

and adequate, and in the best interests of the Representative Plaintiffs and the Settlement Class Members.

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

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

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

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

#### **1. Definitions**

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

1.1 “Action” means the action entitled Christopher Hardy, et al., v. Pacific Guardian Life Insurance Company, Ltd., Case No. 1CCV-25-0000467, filed in the Circuit Court of the First Circuit, State of Hawaii.

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

1.3 “Approved Claims” means Settlement Claims in an amount approved by the Claims Administrator or found to be valid through the Dispute Resolution process.

1.4 “Claims Administration” means the processing and payment of claims received from Settlement Class Members by the Claims Administrator.

1.5 “Claims Administrator” means, subject to Court approval, Epiq Class Action and Claims Solutions, Inc., a company experienced in administering class action claims generally and specifically those of the type provided for and made in data breach litigation.

1.6 “Claims Deadline” means the date by which valid claims must be postmarked or submitted electronically.

1.7 “Claim Form” means the form that the Settlement Class Members must complete and submit on or before the Claim Deadline in order to be eligible for the benefits described herein. The Claim Form shall be reformatted by the Claims Administrator in order to permit the option of filing of claims electronically. The Claim Form shall require a sworn signature or electronic verification under penalty of perjury, but shall not require a notarization. The Claim Form template is attached as **Exhibit A** to this Settlement Agreement.

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

1.9 “Court” means the Circuit Court of the First Circuit, State of Hawai’i.

1.10 “Cybersecurity Incident” or “Incident” means the cyberattack suffered by Defendant wherein cybercriminals potentially accessed PGL’s systems containing individuals’ Private Information on or about August 25, 2023.

1.11 “Dispute Resolution” means the process for resolving disputed Settlement Claims as set forth in this Agreement.

1.12 “Effective Date” means the first date by which all of the events and conditions specified in ¶ 9.1 herein have occurred and been met.

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

1.14 “Judgment” means a judgment rendered by the Court.

1.15 “Notice” means the written notice to be sent to the Settlement Class Members pursuant to the Preliminary Approval Order.

1.16 The “Notice Commencement Date” means thirty (30) days after the entry of the Preliminary Approval Order.

1.17 “Objection Date” means the date by which Settlement Class Members must file with the Court and mail to Class Counsel and counsel for Defendant their objection to the

Settlement for that objection to be effective. The postmark date shall constitute evidence of the date of mailing for these purposes. The Objection Date shall be sixty (60) days after the Notice Commencement Date.

1.18 “Opt-Out Date” means the date by which requests for exclusion from the Settlement Class must be postmarked in order to be effective and timely. The postmark date shall constitute evidence of the date of mailing for these purposes. The Opt-Out Date shall be sixty (60) days after the Notice Commencement Date.

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

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

1.21 “Plaintiffs’ Counsel” “Class Counsel” and/or “Proposed Class Counsel” means Milberg Coleman Bryson Phillips Grossman, LLC; Almeida Law Group; and Cafferty Clobes Meriwether & Sprengel LLP.

1.22 “Related Entities” means Defendant’s past or present parents, subsidiaries, divisions, and related or affiliated entities, and each of their respective predecessors, successors, shareholders, directors, officers, members, managers, employees, principals, agents, attorneys, insurers, and reinsurers, and includes, without limitation, any Person related to any such entity

who is, was or could have been named as a defendant in the Action, other than any Person who is found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Cybersecurity Incident or who pleads *nolo contendere* to any such charge.

1.23 “Released Claims” shall collectively mean any and all past, present, and future liabilities, rights, claims, counterclaims, actions, causes of action, demands, damages, penalties, costs, attorneys’ fees, losses, and remedies, whether known or unknown, existing or potential, suspected or unsuspected, liquidated or unliquidated, legal, statutory, or equitable, that result from, arise out of, are based upon, including, but not limited to negligence, negligence *per se*, breach of implied contract, breach of the implied covenant of good faith and fair dealing, breach of third-party beneficiary contract, unjust enrichment, breach of fiduciary duty, any state or federal consumer protection statute, misrepresentation (whether fraudulent, negligent, or innocent), bailment, wantonness, failure to provide adequate notice pursuant to any breach notification statute, regulation, or common law duty, and all relevant statutes in effect in any states in the United States as defined herein, and including, but not limited to, any and all claims for damages, injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys’ fees, costs and expenses, set-offs, losses, pre-judgment interest, credit monitoring services, the creation of a fund for future damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, the appointment of a receiver, and any other form of relief that either has been asserted, or could have been asserted, or relate to the exposure of private information in the Data Breach, including conduct that was alleged or could have been alleged in the Action, without limitation, any claims, actions, causes of action, demands, damages, penalties, losses, or remedies relating to, based upon, resulting from, or arising out of the disclosure of Private Information, which the Class Representatives or

any member of the Settlement Class ever had, now has, or hereinafter may have, prior to entry of the final order and judgment in this Action. Released Claims shall not include the right of Named Plaintiffs, Settlement Class Members, or any Released Person to enforce the terms of the Settlement Agreement and claims not arising from the facts alleged in the Action, provided that nothing in this Release is intended to, does or shall be deemed to release any claims not arising out of, based upon, resulting from, or related to the Cybersecurity Incident. Released Claims shall include Unknown Claims as defined in ¶ 1.30. Released Claims shall not include the right of any Settlement Class Member or any of the Released Persons to enforce the terms of the settlement contained in this Settlement Agreement, and shall not include the claims of Settlement Class Members who have timely excluded themselves from the Settlement Class.

1.24 “Released Persons” means Defendant, its Related Entities, and each of its past or present parents, subsidiaries, divisions, and related or affiliated entities, and each of their respective predecessors, successors, shareholders, directors, officers, employees, members, managers, principals, agents, attorneys, insurers, and reinsurers.

1.25 “Representative Plaintiffs” means Christopher Hardy and Janet Mayerle.

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

1.27 “Settlement Class” means all individuals who were notified that their Private Information was potentially compromised in the August 2023 Cybersecurity Incident. The Settlement Class specifically excludes: (i) Defendant and Defendant’s parents, subsidiaries, affiliates, officers and directors, and any entity in which Defendant has a controlling interest; (ii) all individuals who make a timely election to be excluded from this settlement using the correct protocol for opting out; (iii) any and all federal, state, or local governments, including but not

limited to their departments, agencies, divisions, bureaus, boards, sections, groups, counsels and/or subdivisions; (iv) the attorneys representing the Parties in the Action; (v) all judges assigned to hear any aspect of the Action, as well as their court staff and immediate family members; and (vi) any person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the Data Breach, or who pleads *nolo contendere* to any such charge.

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

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

1.30 “Unknown Claims” means any of the Released Claims that any Settlement Class Member, including the Representative Plaintiffs, does not know or suspect to exist in his/her favor at the time of the release of the Released Persons that, if known by him or her, might have affected his or her settlement with, and release of, the Released Persons, or might have affected his or her decision not to object to and/or to participate in this Settlement Agreement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that upon the Effective Date, Representative Plaintiffs expressly shall have, and each of the other Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have, waived the provisions, rights, and benefits conferred by California Civil Code § 1542, and also any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

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

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

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

1.32 “Valid Claims” means Settlement Claims in an amount approved by the Claims Administrator or found to be valid through the claims processing and/or Dispute Resolution process.

## **2. Settlement Benefits**

2.1 Expense Reimbursement. All Settlement Class Members who submit a Valid Claim using the Claim Form (**Exhibit A** to this Settlement Agreement) are eligible to receive reimbursement for the following documented out-of-pocket losses, if not already reimbursed through any other source and caused by the Incident, not to exceed \$2,000.00 per Settlement Class Member: (i) unreimbursed costs to obtain credit reports; (ii) unreimbursed fees relating to a credit freeze; (iii) unreimbursed card replacement fees; (iv) unreimbursed late fees; (v) unreimbursed over-limit fees; (vi) unreimbursed interest and fees on payday loans; (vii) unreimbursed bank or credit card fees; (viii) unreimbursed postage, mileage, and other incidental expenses; and (ix) unreimbursed costs associated with up to one year of credit monitoring or identity theft insurance.

The above-listed out-of-pocket losses must have been incurred after August 25, 2023, and prior to the Effective Date, and must be accompanied by certification that the loss resulted from the Incident. The amount of the expense reimbursement may be decreased on a *pro rata* basis, depending upon the number of valid claims filed and the amount of funds available for these payments.

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

2.2 Credit Monitoring. All Settlement Class Members are eligible to enroll in two (2) years of Credit Monitoring Services through one bureau, upon submission of a Valid Claim using the Claim Form (**Exhibit A** to this Settlement Agreement). The Settlement Administrator shall send an activation code to each valid Credit Monitoring Services claimant within forty-five (45) days of the Effective Date that can be used to activate Credit Monitoring Services. Such enrollment codes shall be sent via e-mail, unless the claimant did not provide an e-mail address, in which case such codes shall be sent via U.S. mail. Codes will be active for 180 days after the date of mailing, and may be used to activate the full term if used at any time during that 180 day period. The provider shall provide Credit Monitoring Services to all valid claimants who timely activate those services for a period of two (2) years from the date of activation.

2.3 Alternative Cash Payment. Settlement Class Members can elect to make a claim for an alternative cash payment of up to \$50 in lieu of the settlement benefits outlined in ¶ 2.1. To receive this benefit, Settlement Class Members must submit a Valid Claim using the Claim Form

(**Exhibit A** to this Settlement Agreement), but no documentation is required to make a claim. Individuals residing in California at the time of making a claim, to whom the Confidentiality of Medical Information Act (CMIA) applies, may elect to receive an additional Alternative Cash Payment of up to \$20. The amount of the alternative cash payments may be decreased on a *pro rata* basis, depending upon the number of valid claims filed and the amount of funds available for these payments.

2.4 Aggregate Cap and Claims Process. All Claims under ¶¶ 2.1, 2.2, and 2.3, and all Settlement Expenses, Costs of Notice and Claims Administration, Attorneys' Fees and Costs, and Expenses, and Service Awards to Representative Plaintiffs under ¶¶ 2.8, 7.2, 7.3, and 7.4 of the Settlement Agreement are subject to an aggregate cap of \$2,000,000. If the total payments, expenses, and costs, listed above exceeds this aggregate cap, the amounts paid to Settlement Class Members will be prorated downwards so that the total amount to be paid under this Settlement Agreement shall not exceed \$2,000,000.

2.5 The Claim Form must be verified by the claimant with a statement that his or her claim is true and correct, to the best of his or her knowledge and belief, and is being made under penalty of perjury. Notarization shall not be required. If the Settlement Class Member seeks the reimbursement option, the Settlement Class Member must plausibly attest that the out-of-pocket expenses and charges claimed were actually incurred after August 25, 2023 and before the Effective Date, and arose from the Incident. Failure to provide supporting attestation and documentation as requested on the Claim Form, and after a reasonable opportunity to cure after notice from the Claims Administrator (as described below), shall result in denial of a claim. Disputes as to claims submitted under this paragraph are to be resolved pursuant to the provisions stated in ¶ 2.7.

2.6 To be valid, claims must be complete and submitted to the Claims Administrator on or before the 90th day after the deadline for the completion of Notice to Settlement Class Members (the “Claims Deadline”). The Notice will specify this deadline, and other relevant dates described herein.

2.7 Dispute Resolution for Claims.

2.7.1 The Claims Administrator, in its sole discretion to be reasonably exercised, will determine whether: (1) the claimant is a Settlement Class Member; (2) the claimant has provided all information needed to complete the Claim Form, including any documentation that may be necessary to reasonably support the claimant’s class membership and the expenses claimed; and (3) the information submitted could lead a reasonable person to conclude that it is more likely than not the claimant has suffered the claimed losses as a result of the Data Breach (collectively, “Facially Valid”). The Claims Administrator may, at any time, request from the claimant, in writing, additional information (“Claim Supplementation”) as the Claims Administrator may reasonably require in order to evaluate the claim, *e.g.*, documentation requested on the Claim Form, information regarding the claimed losses, available insurance and the status of any claims made for insurance benefits, and claims previously made for identity theft and the resolution thereof.

2.7.2 Upon receipt of an incomplete or unsigned Claim Form or a Claim Form that is not accompanied by sufficient documentation to determine whether the claim is Facially Valid, the Claims Administrator shall request Claim Supplementation and give the claimant thirty

(30) days to cure the defect before rejecting the claim. If the defect is not cured, then the claim will be deemed invalid and there shall be no obligation to pay the claim.

2.7.3 Following receipt of additional information requested as Claim Supplementation, the Claims Administrator shall have thirty (30) days to accept, in whole or lesser amount, or reject each claim. If, after review of the claim and all documentation submitted by the claimant, the Claims Administrator determines that such a claim is Facially Valid, then the claim shall be paid. If the claim is not Facially Valid because the claimant has not provided all information needed to complete the Claim Form and evaluate the claim, then the Claims Administrator may reject the claim without any further action.

2.7.4 Settlement Class Members shall have thirty (30) days from receipt of the offer to accept or reject any offer of partial payment received from the Claims Administrator. If a Settlement Class Member rejects an offer from the Claims Administrator, the Claims Administrator shall have fifteen (15) days to reconsider its initial adjustment amount and make a final, non-appealable determination.

2.8 Settlement Expenses. Defendant shall be responsible for all costs for notice to the Settlement Class as required under this Settlement Agreement, and all Costs of Claims Administration.

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

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

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

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

- a) certification of the Settlement Class for settlement purposes only;
- b) preliminary approval of the Settlement Agreement as set forth herein;
- c) the scheduling of a Final Fairness Hearing and briefing schedule for Motion For Final Hearing and Application for a Class Representative Service Awards and Attorneys' Fees and Costs;
- d) appointment of Proposed Class Counsel as Class Counsel;
- e) appointment of Representative Plaintiffs as Class Representatives;
- f) approval of a customary form of short notices to be mailed to Settlement Class Members ("Short-Form Notice") substantially similar to **Exhibit B** (postcard by mail), and a customary long form notice to be posted on the settlement website ("Long-Form Notice") in a form substantially similar to the one attached hereto as **Exhibit C**, which together shall include a fair summary of the parties' respective litigation positions, the general terms of the settlement set forth in the Settlement

Agreement, instructions for how to object to or opt-out of the settlement, the process and instructions for making claims to the extent contemplated herein, and the date, time and place of the Final Fairness Hearing;

- g) appointment of a Claims Administrator, or such other provider of claims administrative service, as may be jointly agreed to by the Settling Parties; and
- h) approval of a claim form substantially similar to that attached hereto as **Exhibit A**.

The Notice and Claim Form shall be reviewed by the Claims Administrator and may be revised as agreed upon by the Settling Parties prior to such submission to the Court for approval.

3.2 Defendant shall pay for all of the costs associated with the Claims Administrator, and for providing Notice to the Settlement Class in accordance with the Preliminary Approval Order, as well as the costs of such notice. Attorneys' fees, costs, and expenses of Proposed Class Counsel, and a service award to the Class Representative, shall be paid by Defendant as set forth herein, subject to Court approval. Notice shall be provided to Class Members in accordance with this Agreement. The Notice plan shall be subject to approval by the Court as meeting constitutional due process requirements. The Claims Administrator shall establish a dedicated settlement website and shall maintain and update the website throughout the claim period, with the Notice and Claim Form approved by the Court, as well as this Settlement Agreement. A toll-free help line staffed with a reasonable number of live operators shall be made available to address Settlement Class Members' inquiries. The Claims Administrator also will provide copies of the forms of the Notice and Claim Form approved by the Court, as well as this Settlement Agreement, upon request. Prior to the Final Fairness Hearing, Proposed Class Counsel and Defendant shall cause to be filed with the Court an appropriate affidavit or declaration with respect to complying with this provision of Notice. The Notice and Claim Form approved by the Court may be adjusted by the Claims

Administrator, respectively, in consultation and agreement with the Settling Parties, as may be reasonable and not inconsistent with such approval. Within thirty (30) days after the entry of the Preliminary Approval Order and to be substantially completed not later than forty-five (45) days after entry of the Preliminary Approval Order, and subject to the requirements of this Agreement and the Preliminary Approval Order, the Claims Administrator will provide notice to the Settlement Class via the Notice Program.

3.3 Proposed Class Counsel and Defendant's counsel shall request that after notice is completed, the Court hold a hearing (the "Final Fairness Hearing") and grant final approval of the settlement set forth herein.

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

4.1 Each Person wishing to opt-out of the Settlement Class shall individually sign and timely submit written notice of such intent to the designated Post Office box established by the Claims Administrator. Settlement Class Members will only be able to submit an opt-out request on their own behalf; mass or class opt-outs will not be permitted. The written notice must clearly manifest a Person's intent to be excluded from the Settlement Class. To be effective, written notice must be postmarked no later than the Opt-Out Date.

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

4.3 In the event that within ten (10) days after the Opt-Out Date as approved by the Court, there have been more than 100 timely and valid Opt-Outs submitted, Defendant may, by notifying Proposed Class Counsel in writing, void this Settlement Agreement. If Defendant voids the Settlement Agreement pursuant to this paragraph, Defendant shall be obligated to pay all settlement expenses already incurred, excluding any attorneys' fees, costs, and expenses of Proposed Class Counsel and incentive awards.

## **5. Objection Procedures**

5.1 Each Settlement Class Member desiring to object to the Settlement Agreement shall submit a timely written notice of his or her objection by the Objection Date. Such notice shall state: (i) the objector's full name, address, telephone number, and email address (if any); (ii) the case name and case number; (iii) information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class (*e.g.*, copy of original notice of the Data Breach); (iv) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (v) the identity of all counsel representing the objector in connection with the objection; (vi) a statement whether the objector and/or his or her counsel will personally appear at the Final Fairness Hearing; and (vii) the objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative. To be timely, written notice of an objection in the appropriate form must be mailed, with a postmark date no later than the Objection Date, to Proposed Class Counsel and to Defendant's counsel as set forth below. For all objections mailed to Proposed Class Counsel and counsel for Defendant, Proposed Class Counsel will file them with the Court with the Motion for Final Approval of the Settlement.

*Upon respective Proposed Class Counsel via mail and e-mail at:*

Gary M. Klinger  
**MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC**  
221 West Monroe Street, Suite 2100  
Chicago, IL 60606  
Tel.: (847) 208-4585  
*gklinger@milberg.com*

*Upon Defendant's counsel via mail and e-mail at:*

**O'HAGAN MEYER, PLLC**  
James Davidson  
One East Wacker Drive  
Suite 3400  
Chicago, IL 60601  
*jdavidson@ohaganmeyer.com*

5.2 Any Settlement Class Member who fails to comply with the requirements for objecting shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement, and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders and judgments in the Action. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions set forth herein.

## **6. Releases**

6.1 Upon the Effective Date, each Settlement Class Member, including the Representative Plaintiffs, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims. Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, including the Representative Plaintiffs, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public or in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in any action in this or

any other forum (other than participation in the settlement as provided herein) in which any Released Claim is asserted.

6.2 Upon the Effective Date, Defendant shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged, the Representative Plaintiffs, each and all of the Settlement Class Members, and Proposed Class Counsel, of all claims, including Unknown Claims, based upon or arising out of the institution, prosecution, assertion, settlement, or resolution of the Action or the Released Claims, except for enforcement of the Settlement Agreement. Any claims based upon or arising out of any retail, banking, debtor-creditor, contractual, or other business relationship with such Persons that are not based upon or do not arise out of the institution, prosecution, assertion, settlement, or resolution of the Action or the Released Claims are specifically preserved and shall not be affected by the preceding sentence.

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

7.1 The Settling Parties did not discuss the payment of attorneys' fees, costs, expenses and/or service award to the Representative Plaintiffs until after the substantive terms of the settlement had been agreed upon, other than that Defendant would pay reasonable attorneys' fees, costs, expenses, and service awards to the Representative Plaintiffs as may be agreed to by Defendant and the Proposed Class Counsel and/or as ordered by the Court. Defendant and Proposed Class Counsel then negotiated and agreed to the procedure described herein.

7.2 Proposed Class Counsel has agreed to request, and Defendant has agreed to pay, subject to Court approval, the amount not to exceed Five Hundred and Fifty Thousand Dollars and No Cents (\$550,000) to Proposed Class Counsel for attorneys' fees and costs and expenses.

7.3 Subject to Court approval, Defendant has agreed to pay service awards in the amount of Two Thousand, Five Hundred Dollars and No Cents (\$2,500) to each of the Representative Plaintiffs.

7.4 Defendant shall pay the Court-approved amount of attorneys' fees, costs, expenses, and service awards to the Representative Plaintiffs to an account established by Proposed Class Counsel within thirty (30) days after the Effective Date.

7.5 If this Settlement Agreement is terminated or otherwise does not become Final (e.g., disapproval by the Court or any appellate court), Defendant shall have no obligation to pay attorneys' fees, costs, expenses, or service awards and shall only be required to pay costs and expenses related to notice and administration that were already incurred. Under no circumstances will Proposed Class Counsel or any Settlement Class Member be liable for any costs or expenses related to notice or administration.

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

## **8. Administration of Claims**

8.1 The Claims Administrator shall administer and calculate the claims submitted by Settlement Class Members under ¶ 2. Proposed Class Counsel and Defendant shall be given reports as to both claims and distribution. The Claims Administrator's determination of the validity or

invalidity of any such claims shall be binding, subject to the dispute resolution process set herein. All claims agreed to be paid in full by Defendant shall be deemed valid.

8.2 Payment of Valid Claims, whether via mailed check or electronic distribution, shall be made within forty-five (45) days of the Effective Date, or within thirty (30) days of the date that the claim is approved, whichever is later. If this Settlement Agreement is terminated or otherwise does not become Final (*e.g.*, disapproval by the Court or any appellate court) prior to the payment of Valid Claims, Defendant shall have no obligation to pay such claims and shall only be required to pay costs and expenses related to notice and administration that were already incurred.

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

8.4 No Person shall have any claim against the Claims Administrator, Defendant, Proposed Class Counsel, Representative Plaintiffs, and/or Defendant's counsel based on distributions of benefits to Settlement Class Members.

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

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

- a) the Court has entered the Order of Preliminary Approval and Publishing of Notice of a Final Fairness Hearing;
- b) Defendant has not exercised its option to terminate the Settlement Agreement;

- c) the Court has entered the Judgment granting final approval to the settlement as set forth herein; and
- d) the Judgment has become Final.

9.2 Within seven (7) days after the Opt-Out Date, the Claims Administrator shall furnish to Proposed Class Counsel and to Defendant's counsel a complete list of all timely and valid requests for exclusion (the "Opt-Out List").

9.3 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 Action and shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Party or Party's counsel, and (b) the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Settling Parties and shall not be used in the Action or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*. Notwithstanding any statement in this Settlement Agreement to the contrary, no order of the Court or modification or reversal on appeal of any order reducing the amount of attorneys' fees, costs, expenses, and/or service awards shall constitute grounds for cancellation or termination of the Settlement Agreement. Further, notwithstanding any statement in this Settlement Agreement to the contrary, Defendant shall be obligated to pay amounts already billed or incurred for costs of notice to the Settlement Class, Claims Administration, and Dispute Resolution above and shall not, at any time, seek recovery of same from any other party to the Action or from counsel to any other party to the Action.

## **10. Miscellaneous Provisions**

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

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

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

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

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

10.5 The exhibits to this Settlement Agreement and any exhibits thereto are a material part of the Settlement and are incorporated and made a part of the Agreement.

10.6 The Settlement Agreement, together with the exhibits attached hereto, constitutes the entire agreement among the Settling Parties regarding the settlement of the Action and supersedes all previous negotiations, agreements, commitments, understandings, and writings between Defendant and Representative Plaintiffs in connection with the payment of the Action settlement. Except as otherwise provided herein, each party shall bear its own costs. This Settlement Agreement supersedes all previous agreements made between Defendant and Representative Plaintiffs.

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

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

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

10.10 The Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties.

10.11 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Settlement Agreement, and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in the Settlement Agreement. The Court 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 Settling 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 Claims Administrator. As part of its agreement to render services in connection with this Settlement, the Claims Administrator shall consent to the jurisdiction of the Court for this purpose.

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

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

“her” means “her, him, or it.” “It” means “it, he, or she, him, or her;” and “its” means “its, his, or hers.”

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

10.15 Cashing a settlement check is a condition precedent to any Settlement Class Member’s right to receive settlement benefits. All settlement checks shall be void ninety (90) days after issuance and shall bear the language: “This check must be cashed within 90 days, after which time it is void.” If a check becomes void, the Settlement Class Member shall have until one hundred eighty (180) days after the Effective Date to request re-issuance. If no request for re-issuance is made within this period, the Settlement Class Member will have failed to meet a condition precedent to recovery of settlement benefits, the Settlement Class Member’s right to receive monetary relief shall be extinguished, and Defendant shall have no obligation to make payments to the Settlement Class Member or expense reimbursement under ¶ 2.1, or any other type of monetary relief. The same provisions shall apply to any re-issued check. For any checks that are issued or re-issued for any reason more than one hundred eighty (180) days from the Effective Date, requests for re-issuance need not be honored after such checks become void.

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

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

**AGREED TO BY:**

  
\_\_\_\_\_  
CHRISTOPHER HARDY

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JANET MAYERLE

  
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***Counsel for Representative Plaintiffs and  
Class Counsel***

AND

**AGREED TO BY:**

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CHRISTOPHER HARDY

*Janet Mayerle*

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JANET MAYERLE

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AND

**PACIFIC GUARDIAN LIFE INSURANCE CO., LTD.**

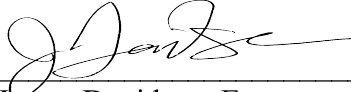


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By: Nobutaka Yagi

Its: President, CEO



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