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**IN THE CIRCUIT COURT OF THE FIRST CIRCUIT**  
**STATE OF HAWAII**

JOSEPH SMITH and TONY LEE,  
individually, and on behalf of all others  
similarly situated,

Plaintiffs,

v.

HAWAIIUSA FEDERAL CREDIT UNION,  
Defendant.

Case No. 1CCV-24-0000154

**CLASS ACTION SETTLEMENT  
AGREEMENT**

1 This Settlement Agreement, dated as of March \_\_\_\_\_, 2024, is made and entered into  
2 by and among the following Settling Parties (as defined below): Joseph Smith and Tony Lee  
3 (collectively, “Plaintiffs”), individually and on behalf of the Settlement Class (as defined below),  
4 by and through their counsel of record (“Proposed Settlement Class Counsel,” as defined below),  
5 and HawaiiUSA Federal Credit Union (“HawaiiUSA” or “Defendant,” and, together with  
6 Plaintiffs, the “Parties”), by and through its counsel of record, Matthew D. Pearson of Baker &  
7 Hostetler LLP. The Settlement Agreement (as defined below) is subject to Court approval and is  
8 intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the  
9 Released Claims (as defined below), upon and subject to the terms and conditions hereof.

10 **I. THE LITIGATION**

11 Plaintiffs allege that on or around December 12, 2022, HawaiiUSA’s current and former  
12 employees’ and consumers’ sensitive personal and/or financial data was potentially compromised  
13 when unauthorized actors were able to breach an employee’s email account on HawaiiUSA’s  
14 network and access files containing personally identifying information (“PII”) and financial  
15 account information (with PII, “Private Information”) for approximately 21,441 individuals (“Data  
16 Incident” or “Data Security Incident”). Plaintiffs further claim that the Private Information  
17 impacted in the Data Incident included, but was not limited to, names, Social Security numbers,  
18 financial account numbers, credit and debit card numbers, and consumer financial account  
19 information including security codes, access codes, passwords, or PINs.

20 After discovering the Data Incident, HawaiiUSA notified approximately 21,441 individuals  
21 of the Data Incident.

22 On April 28, 2023, Plaintiff Tony Lee (“Lee”) filed a putative class action complaint against  
23 HawaiiUSA in the Circuit Court of the First Circuit, State of Hawaii, asserting claims allegedly  
24 arising out of the Data Incident. On May 2, 2023, Plaintiff Joseph Smith (“Smith”) filed a putative  
25 class action complaint against HawaiiUSA in the United States District Court for the District of  
26 Hawaii, asserting claims allegedly arising out of the Data Incident. On June 2, 2023, HawaiiUSA  
27 timely removed the *Lee* Action to the United States District Court for the District of Hawaii. On  
28

1 June 26, 2023, the Parties filed a Joint Motion to Consolidate the *Lee* and *Smith* Actions into a  
2 single, consolidated action. The Court granted that Joint Motion on June 28, 2023.

3 On July 26, 2023, Plaintiffs Smith and Lee filed their amended consolidated class action  
4 complaint in the United States District Court for the District of Hawaii. Following meet-and-confer  
5 discussions between counsel for HawaiiUSA and counsel for Plaintiffs, including discussions about  
6 Article III standing, the parties agreed, as a condition of settlement, *see infra* Paragraph 3.1, that  
7 Plaintiffs would dismiss their action filed United States District Court for the District of Hawaii,  
8 and would refile their complaint in the Circuit Court of the First Circuit, State of Hawaii. On  
9 January 30, 2024, Plaintiffs Smith and Lee refiled their complaint in the Circuit Court of the First  
10 Circuit, State of Hawaii. That case is titled *Smith, et al. v. HawaiiUSA Federal Credit Union*, Case  
11 No. 1CCV-24-0000154 (Haw. Cir. Ct., 1st Cir.) (the “Litigation”).

12 From the onset of the Litigation, and over the course of several months, the Parties engaged  
13 in settlement negotiations. On December 1, 2023, the Parties participated in a full-day mediation  
14 before Jill Sperber of Judicate West. Although the Parties were not able to reach a resolution at the  
15 mediation, the Parties continued to negotiate following the mediation. Eventually, Ms. Sperber  
16 made a mediator’s proposal, which each side accepted, resulting in a settlement that is  
17 memorialized in this settlement agreement (“Settlement Agreement”).

18 Pursuant to the terms set out below, this Settlement Agreement provides for the resolution  
19 of all claims and causes of action asserted, or that could have been asserted, against HawaiiUSA  
20 and the Released Persons (as defined below) relating to the Data Incident, by and on behalf of  
21 Representative Plaintiffs and the Settlement Class (as defined below).

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

23 Plaintiffs believe the claims asserted in the Litigation, as set forth in their complaint, have  
24 merit. Plaintiffs and Proposed Settlement Class Counsel recognize and acknowledge, however, the  
25 expense and length of continued proceedings necessary to prosecute the Litigation against  
26 HawaiiUSA through motions practice, trial, and potential appeals. They have also considered the  
27 uncertain outcome and risk of further litigation, as well as the difficulties and delays inherent in  
28 such litigation, especially in complex class actions. Proposed Settlement Class Counsel are highly

1 experienced in class action litigation and very knowledgeable regarding the relevant claims,  
2 remedies, and defenses at issue generally in such litigation and in this Litigation. They have  
3 determined that the settlement set forth in this Settlement Agreement is fair, reasonable, and  
4 adequate, and in the best interests of the Settlement Class.

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

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

14 **IV. TERMS OF SETTLEMENT**

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

22 **1. Definitions**

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

25 1.1 “Agreement” or “Settlement Agreement” means this agreement.

26 1.2 “Claims Administration” means the processing and payment of claims received  
27 from members of the Settlement Class by the Claims Administrator.  
28

1           1.3     “Claims Administrator” means Postlethwaite & Netterville, APAC (“P&N”), a  
2 company experienced in administering class action claims generally and specifically those of the  
3 type provided for and made in data breach litigation.

4           1.4     “Claims Deadline” means the postmark and/or online submission deadline for Valid  
5 Claims submitted pursuant to ¶¶ 2.1 and 2.2, which shall occur ninety (90) days after the Notice  
6 Commencement Date (as defined below).

7           1.5     “Claim Form” means the claim form to be used by members of the Settlement Class  
8 to submit a Settlement Claim, either through the mail or online through the Settlement Website,  
9 substantially in the form as shown in **Exhibit A** to this Settlement Agreement.

10          1.6     “Costs of Claims Administration” means all actual costs associated with or arising  
11 from Claims Administration.

12          1.7     “Court” means the Circuit Court of the First Circuit, State of Hawaii.

13          1.8     “Data Incident” means the criminal cyberattack that was perpetrated on HawaiiUSA  
14 in or around December 2022.

15          1.9     “Dispute Resolution” means the process for resolving disputed Settlement Claims  
16 as set forth in this Agreement.

17          1.10    “Effective Date” means the first date by which all of the events and conditions  
18 specified in ¶ 1.11 herein have occurred and been met.

19          1.11    “Final” means the occurrence of all of the following events: (i) the settlement  
20 pursuant to this Settlement Agreement is approved by the Court; (ii) the Court has entered a  
21 Judgment (as that term is defined herein); and (iii) the time to appeal or seek permission to appeal  
22 from the Judgment has expired or, if appealed, the appeal has been dismissed in its entirety, or the  
23 Judgment has been affirmed in its entirety by the court of last resort to which such appeal may be  
24 taken, and such dismissal or affirmance has become no longer subject to further appeal or review.  
25 Notwithstanding the above, any order modifying or reversing any attorneys’ fee award or service  
26 award made in this case shall not affect whether the Judgment is “Final” as defined herein or any  
27 other aspect of the Judgment.

28          1.12    “Judgment” means a judgment rendered by the Court.

1           1.13 “Long Notice” means the long form notice of settlement posted on the Settlement  
2 Website, substantially in the form as shown in **Exhibit C** to this Settlement Agreement.

3           1.14 “Notice Commencement Date” means thirty days following entry of the Preliminary  
4 Approval Order. The Notice Commencement Date shall be used for purposes of calculating the  
5 Claims Deadline, Opt-Out Date and Objection Date deadlines, and all other deadlines that flow  
6 from the Notice Commencement Date.

7           1.15 “Objection Date” means the date by which members of the Settlement Class must  
8 mail to Proposed Settlement Class Counsel and counsel for HawaiiUSA or, in the alternative, file  
9 with the Court, their objection to the Settlement Agreement for that objection to be effective. The  
10 postmark date shall constitute evidence of the date of mailing for these purposes.

11           1.16 “Opt-Out Date” means the date by which members of the Settlement Class must  
12 mail their requests to be excluded from the Settlement Class for that request to be effective. The  
13 postmark date shall constitute evidence of the date of mailing for these purposes.

14           1.17 “Person” means an individual, corporation, partnership, limited partnership, limited  
15 liability company or partnership, association, joint stock company, estate, legal representative,  
16 trust, unincorporated association, government or any political subdivision or agency thereof, and  
17 any business or legal entity, and their respective spouses, heirs, predecessors, successors,  
18 representatives, or assignees.

19           1.18 “Preliminary Approval Order” means the order preliminarily approving the  
20 Settlement Agreement and ordering that notice be provided to the Settlement Class. The Settling  
21 Parties’ proposed form of Preliminary Approval Order will be attached as an Exhibit to Plaintiffs’  
22 Unopposed Motion for Preliminary Approval of the Class Action Settlement.

23           1.19 “Proposed Settlement Class Counsel” means Milberg Coleman Bryson Phillips  
24 Grossman PLLC; Cafferty Clobes Meriwether & Sprengel LLP; and Bronster Fujichaku Robbins.

25           1.20 “Related Entities” means HawaiiUSA’s past or present parents, subsidiaries,  
26 divisions, and related or affiliated entities, and each of their respective predecessors, successors,  
27 directors, officers, employees, principals, agents, attorneys, insurers, and reinsurers, and includes,  
28 without limitation, any Person related to any such entity who is, was, or could have been named as

1 a defendant in any of the actions in the Litigation, other than any Person who is found by a court  
2 of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting  
3 the Data Incident or who pleads *nolo contendere* to any such charge.

4 1.21 “Released Claims” shall collectively mean any and all past, present, and future  
5 claims and causes of action including, but not limited to, any causes of action arising under or  
6 premised upon any statute, constitution, law, ordinance, treaty, regulation, or common law of any  
7 country, state, province, county, city, or municipality, including 15 U.S.C. §§ 45 *et seq.*, and all  
8 similar statutes in effect in any states in the United States as defined below; violations of Hawaii’s  
9 Unfair Deceptive Acts or Practices Statute, Haw. Rev. Stat. §§ 480-2(a), 480-13(b), 481A-2, 481A-  
10 3(a), 481A03(a)(4), 481A-3(a)(7), 481A-3(a)(12), *et seq.* and all similar state consumer-protection  
11 statutes; violations of the California Consumer Protection Act of 2018, Cal. Civ. Code § 1798, *et*  
12 *seq.* and all similar state privacy-protection statutes; violations of Hawaii’s Security Breach of  
13 Personal Information Statute, Haw. Rev. Stat. § 487N-2(b), *et seq.* and all similar notification  
14 statutes in effect in any states in the United States; negligence; negligence *per se*; breach of contract;  
15 breach of implied contract; breach of fiduciary duty; breach of confidence; invasion of privacy;  
16 fraud; misrepresentation (whether fraudulent, negligent or innocent); unjust enrichment; bailment;  
17 wantonness; failure to provide adequate notice pursuant to any breach notification statute or  
18 common law duty; and including, but not limited to, any and all claims for damages, injunctive  
19 relief, disgorgement, declaratory relief, equitable relief, attorneys’ fees and expenses, pre-judgment  
20 interest, credit monitoring services, the creation of a fund for future damages, statutory damages,  
21 punitive damages, special damages, exemplary damages, restitution, and/or the appointment of a  
22 receiver, whether known or unknown, liquidated or unliquidated, accrued or unaccrued, fixed or  
23 contingent, direct or derivative, and any other form of legal or equitable relief that either has been  
24 asserted, was asserted, or could have been asserted, by any member of the Settlement Class against  
25 any of the Released Persons based on, relating to, concerning or arising out of the Data Incident and  
26 alleged theft of other personal information or the allegations, transactions, occurrences, facts, or  
27 circumstances alleged in or otherwise described in the Litigation. Released Claims shall not include  
28 the right of any Settlement Class Member or any of the Released Persons to enforce the terms of the

1 settlement contained in this Settlement Agreement, and shall not include the claims of members of  
2 the Settlement Class Members who have timely excluded themselves from the Settlement Class.

3 1.22 “Released Persons” means HawaiiUSA and its Related Entities and each of their  
4 past or present parents, subsidiaries, divisions, and related or affiliated entities, and each of their  
5 respective predecessors, successors, directors, officers, employees, principals, agents, attorneys,  
6 insurers, and reinsurers.

7 1.23 “Plaintiffs” and “Representative Plaintiffs” mean Joseph Smith and Tony Lee.

8 1.24 “Settlement Claim” means a claim for settlement benefits made under the terms of  
9 this Settlement Agreement.

10 1.25 “Settlement Class” means all persons in the United States to whom HawaiiUSA  
11 mailed a notification that their information may have been impacted in the Data Incident. The  
12 Settlement Class specifically excludes: (i) HawaiiUSA and its respective officers and directors; (ii)  
13 all members of the Settlement Class who timely and validly request exclusion from the Settlement  
14 Class; (iii) the Judge and Magistrate Judge assigned to evaluate the fairness of this settlement; and  
15 (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of  
16 initiating, causing, aiding, or abetting the Data Incident or who pleads *nolo contendere* to any such  
17 charge.

18 1.26 “Settlement Class Member(s)” means all persons meeting the definition of the  
19 Settlement Class.

20 1.27 “Settlement Website” means a website, the URL for which shall be mutually  
21 selected by the Settling Parties, that will inform Settlement Class Members of the terms of this  
22 Settlement Agreement, their rights, dates and deadlines and related information, as well as provide  
23 the Settlement Class Members with the ability to submit a Settlement Claim online.

24 1.28 “Settling Parties” means, collectively, HawaiiUSA and Plaintiffs, individually and  
25 on behalf of the Settlement Class.

26 1.29 “Short Notice” means the short form notice of the proposed class action settlement,  
27 substantially in the form as shown in **Exhibit B** to this Settlement Agreement. The Short Notice  
28 will direct recipients to the Settlement Website and inform members of the Settlement Class of,



1 among other things, the Claims Deadline, the Opt-Out and Objection Deadlines, and the date of the  
2 Final Fairness Hearing (if set prior to the Notice Commencement Date (as defined above)).

3 1.30 “Unknown Claims” means any of the Released Claims that either Plaintiff does not  
4 know or suspect to exist in his favor at the time of the release of the Released Persons that, if known  
5 by him, might have affected his settlement with, and release of, the Released Persons, or might  
6 have affected his decision not to object to and/or to participate in this Settlement Agreement. With  
7 respect to any and all Released Claims, the Settling Parties stipulate and agree that upon the  
8 Effective Date, Plaintiffs intend to and expressly shall have waived the provisions, rights, and  
9 benefits conferred by California Civil Code § 1542, and also any and all provisions, rights, and  
10 benefits conferred by any law of any state, province, or territory of the United States (including,  
11 without limitation, California Civil Code §§ 1798.80 *et seq.*, Montana Code § 28-1-1602; North  
12 Dakota Cent. Code § 9-13-02; and South Dakota Codified Laws § 20-7-11), which is similar,  
13 comparable, or equivalent to California Civil Code § 1542, which provides:

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

21 Plaintiffs may hereafter discover facts in addition to, or different from, those that they, and  
22 any of them, now know or believe to be true with respect to the subject matter of the Released  
23 Claims, but Plaintiffs expressly shall have, upon the Effective Date, fully, finally and forever settled  
24 and released any and all Released Claims. The Settling Parties acknowledge that the foregoing  
25 waiver is a material element of the Settlement Agreement of which this release is a part.

26 1.31 “United States” as used in this Settlement Agreement includes the District of  
27 Columbia and all territories.

28 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.

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**2. Settlement Benefits**

2.1 Available to the Entire Settlement Class.

a) **Identity-Theft Protection.** All members of the Settlement Class who submit a Valid Claim using the Claim Form are eligible for 24 months of free identity-theft protection, called “Identity Defense Total 3-Bureau Service” (“ID Total”) by CyEx by Pango Group. For members of the Settlement Class who opted to receive the credit monitoring initially offered by HawaiiUSA, “ID Total” shall be in addition to that year. “ID Total” includes, at least, the following, or similar, services:

- Up to \$1 Million Dollars reimbursement insurance through AIG covering losses due to identity theft and stolen funds;
- 3 Bureau real-time credit monitoring, providing immediate notifications (via alerts, both text and email) to any Settlement Class Member whose credit profile has changed due to a recent inquiry or event;
- Monthly credit reports to measure the credit health and worthiness of Settlement Class Members;
- Continuous monitoring for high-risk transactions, including payday loans, wire transfers, and account openings, that involve the Settlement Class Member’s personal information;
- Notification of attempts to use the Settlement Class Member’s Social Security Number as part of an identity verification event, such as requesting a replacement credit or debit card; filing an insurance claim; updating personal information on an existing account; and/or opening a new account;
- Dark web monitoring for Settlement Class Members’ personal information found on the dark web;

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- Fictitious identity monitoring, which notifies the Settlement Class Member when his or her Social Security Number is being used in association with someone else’s name and/or address;
- Online tax fraud monitoring and alerts, which monitors online income tax filings through TurboTax and alerts the Settlement Class Member if a tax return is filed using his or her Social Security Number;
- Customer support and victim assistance, providing Settlement Class Members with access to experienced customer care representatives to help fix an identity event or to answer any questions the Settlement Class Members may have;
- Credit security freeze assistance, which provides the Settlement Class Member a central location to link to nine different consumer reporting agencies to freeze and unfreeze his or her credit files;
- Lost wallet protection, which provides a customer support line where the Settlement Class Member can receive help in canceling and replacing lost credit cards; and
- Insight and tips newsfeed, which provides Settlement Class Members with interesting stories and new threats in a centralized location.

**b) Extraordinary Expense Reimbursement.** All members of the Settlement Class who have suffered a proven monetary loss and who submit a Valid Claim using the Claim Form are eligible to claim up to \$4,000 if: (1) the loss is an actual, documented and unreimbursed monetary loss; (2) the loss was more likely than not caused by the Data Incident; (3) the loss occurred between December 12, 2022 and the Claims Deadline; (4) the loss is not already covered by one or more of the reimbursement categories listed in ¶ 2.2; and (5) the member of the Settlement Class made reasonable efforts to avoid, or seek reimbursement for, the loss, including, but not limited to, exhaustion of all available credit monitoring insurance and identity theft insurance.

1 Members of the Settlement Class seeking reimbursement under ¶ 2.1(b) (Extraordinary  
2 Expense Reimbursement) must complete and submit a Claim Form to the Claims Administrator,  
3 postmarked or submitted online on or before the 90th day after the Notice Commencement Date.  
4 The notice to the class will specify this deadline and other relevant dates described herein. The  
5 Claim Form must be verified by the member of the Settlement Class with a statement that his or  
6 her claim is true and correct, to the best of his or her knowledge and belief, and is being made under  
7 penalty of perjury. Notarization shall not be required. The member of the Settlement Class must  
8 submit reasonable documentation that the out-of-pocket expenses and charges claimed were both  
9 actually incurred and plausibly arose from the Data Incident. Failure to provide supporting  
10 documentation of the out-of-pocket expenses referenced above, as requested on the Claim Form,  
11 shall result in denial of a claim. Disputes as to claims submitted under this paragraph are to be  
12 resolved pursuant to the provisions stated in ¶ 2.3.

13 2.2 Alternative Claims. In addition to the claims listed in ¶ 2.1 above (Extraordinary  
14 Expense Reimbursement and Credit Monitoring), all members of the Settlement Class will have  
15 the option to submit a Valid Claim using the Claim Form for either: (1) ordinary expense  
16 reimbursement, including lost time (as described below) or (2) a cash payment (as described  
17 below). Settlement Class Members cannot make a claim for both.

18 a) **Ordinary Expense Reimbursement**. All members of the Settlement Class  
19 who submit a Valid Claim using the Claim Form are eligible to make a claim for reimbursement of  
20 the following documented out-of-pocket expenses, not to exceed \$400 per member of the  
21 Settlement Class, that were incurred as a result of the Data Incident: (i) unreimbursed bank fees;  
22 (ii) unreimbursed card reissuance fees; (iii) unreimbursed overdraft fees; (iv) unreimbursed charges  
23 related to unavailability of funds; (v) unreimbursed late fees; (vi) unreimbursed over-limit fees;  
24 (vii) long distance telephone charges; (viii) cell minutes (if charged by minute), Internet usage  
25 charges (if charged by the minute or by the amount of data usage and incurred solely as a result of  
26 the Data Incident), and text messages (if charged by the message and incurred solely as a result of  
27 the Data Incident); (ix) unreimbursed charges from banks or credit card companies; (x) interest on  
28 payday loans due to card cancellation or due to over-limit situation incurred solely as a result of the

1 Data Incident; (xi) costs of credit report(s), credit monitoring, and/or other identity theft insurance  
2 products purchased by members of the Settlement Class between December 12, 2022 and the date  
3 of the Claims Deadline; and (xii) other losses incurred by Settlement Class Members determined  
4 by the Settlement Administrator to be fairly traceable to the Data Incident, including, but not limited  
5 to, the cost of postage and gas for local travel. To receive reimbursement for any of the above-  
6 referenced out-of-pocket expenses, Settlement Class Members must submit (i) their name and  
7 current address; (ii) supporting documentation of such out-of-pocket expenses; and (iii) a  
8 description of the loss, if not readily apparent from the documentation.

9 Members of the Settlement Class who submit a Valid Claim using the Claim Form for  
10 Ordinary Expense Reimbursement are also eligible to receive up to four hours of lost time spent  
11 dealing with issues arising out of the Data Incident (calculated at the rate of \$20 per hour).  
12 Members of the Settlement Class must attest on the Claim Form to the time spent. No  
13 documentation other than a description of their actions shall be required for members of the  
14 Settlement Class to receive compensation for attested time. Claims made for lost time can be  
15 combined with claims made for out-of-pocket expenses and, together with the out-of-pocket  
16 expenses, are subject to the \$400 cap for each member of the Settlement Class.

17 b) **Alternative Cash Payment.** In lieu of making a claim under ¶ 2.2(a)  
18 (Ordinary Expense Reimbursement), members of the Settlement Class may submit a Valid Claim  
19 using the Claim Form to receive a \$50 cash payment. Total Valid Claims for Alternative Cash  
20 Payments shall not exceed \$150,000. To the extent that the total Valid Claims for Alternative Cash  
21 Payments do exceed \$150,000, each Valid Claim for Alternative Cash Payment shall be reduced,  
22 on a *pro rata* basis, until the total Valid Claims for Alternative Cash Payments equals or is less than  
23 \$150,000.

24 2.3 Dispute Resolution for Claims.

25 2.3.1 The Claims Administrator, in its sole discretion to be reasonably  
26 exercised, will determine whether: (1) the claimant is a Settlement Class Member; (2) the claimant  
27 has provided all information needed to complete the Claim Form, including any documentation that  
28 may be necessary to reasonably support the out-of-pocket expenses described in ¶¶ 2.1(b) and

1 2.2(a); and (3) the information submitted could lead a reasonable person to conclude that more  
2 likely than not the claimant has suffered the claimed losses as a result of the Data Incident. The  
3 Claims Administrator may, at any time, request from the claimant, in writing, additional  
4 information as the Claims Administrator may reasonably require in order to evaluate the claim,  
5 e.g., documentation requested on the Claim Form, information regarding the claimed losses,  
6 available insurance and the status of any claims made for insurance benefits, and claims previously  
7 made for identity theft and the resolution thereof. For any such Claims that the Claims  
8 Administrator determines to be implausible, the Claims Administrator will submit those Claims to  
9 the Settling Parties. If the Settling Parties do not agree with the Claimant's Claim, after meeting  
10 and conferring, then the Claim shall be referred for resolution to the claim referee, to be selected  
11 by the Parties if needed. Any costs associated with work performed by the claims referee shall be  
12 paid by HawaiiUSA.

13                   2.3.2           Upon receipt of an incomplete or unsigned Claim Form or a Claim  
14 Form that is not accompanied by sufficient documentation to determine whether the claim is  
15 facially valid, the Claims Administrator shall request additional information and give the claimant  
16 thirty (30) days to cure the defect before rejecting the claim. If the defect is not cured, then the  
17 claim will be deemed invalid and there shall be no obligation to pay the claim.

18                   2.3.3           Following receipt of additional information requested by the Claims  
19 Administrator, the Claims Administrator shall have thirty (30) days to accept, in whole or lesser  
20 amount, or reject each claim. If, after review of the claim and all documentation submitted by the  
21 claimant, the Claims Administrator determines that such a claim is facially valid, then the claim  
22 shall be paid. If the claim is not facially valid because the claimant has not provided all information  
23 needed to complete the Claim Form and evaluate the claim, then the Settlement Administrator may  
24 reject the claim without any further action. If the claim is rejected in whole or in part, for other  
25 reasons, then the claim shall be referred to the claims referee.

26                   2.3.4           Settlement Class Members shall have thirty (30) days from receipt of  
27 the offer to accept or reject any offer of partial payment received from the Claims Administrator.  
28 If a Settlement Class Member rejects an offer from the Claims Administrator, the Claims

1 Administrator shall have fifteen (15) days to reconsider its initial adjustment amount and make a  
2 final determination. If the claimant approves the final determination, then the approved amount  
3 shall be the amount to be paid. If the claimant does not approve the final determination within  
4 thirty (30) days, then the dispute will be submitted to the claims referee within an additional ten  
5 (10) days.

6                   2.3.5           If any dispute is submitted to the claims referee, the claims referee  
7 may approve the Claims Administrator’s determination by making a ruling within fifteen (15) days.  
8 The claims referee may make any other final determination of the dispute or request further  
9 supplementation of a claim within thirty (30) days. The claims referee’s determination shall be  
10 based on whether the claims referee is persuaded that the claimed amounts are reasonably supported  
11 in fact and were more likely than not caused by the Data Incident. The claims referee shall have  
12 the power to approve a claim in full or in part. The claims referee’s decision will be final and non-  
13 appealable. Any claimant referred to the claims referee shall reasonably cooperate with the claims  
14 referee, including by either providing supplemental information as requested or, alternatively,  
15 signing an authorization allowing the claims referee to verify the claim through third-party sources,  
16 and failure to cooperate shall be grounds for denial of the claim in full. The claims referee shall  
17 make a final decision within thirty (30) days of receipt of all supplemental information requested.

18           2.4       Business Practices Changes. Plaintiffs have received assurances that HawaiiUSA  
19 has implemented or will implement certain reasonable steps to adequately secure its systems and  
20 environments presently and in the future.

21           2.5       Confirmatory Discovery. HawaiiUSA has provided or will provide reasonable  
22 access to confidential confirmatory discovery regarding the number of Settlement Class Members  
23 and state of residence, the facts and circumstances of the Data Incident and HawaiiUSA’s response  
24 thereto, and the changes and improvements that have been made or are being made to further protect  
25 Settlement Class Members’ Private Information.

26           2.6       Settlement Expenses. All costs for notice to the Settlement Class as required under  
27 ¶¶ 3.2 and 3.3, Costs of Claims Administration under ¶¶ 8.1, 8.2, and 8.3, and the costs of Dispute  
28 Resolution described in ¶ 2.3, shall be paid by HawaiiUSA.

1           2.7     Settlement Class Certification. The Settling Parties agree, for purposes of this  
2 settlement only, to the certification of the Settlement Class. If the settlement set forth in this  
3 Settlement Agreement is not approved by the Court, or if the Settlement Agreement is terminated  
4 or cancelled pursuant to the terms of this Settlement Agreement, this Settlement Agreement, and  
5 the certification of the Settlement Class provided for herein, will be vacated and the Litigation shall  
6 proceed as though the Settlement Class had never been certified, without prejudice to any Person’s  
7 or Settling Party’s position on the issue of class certification or any other issue. The Settling  
8 Parties’ agreement to the certification of the Settlement Class is also without prejudice to any  
9 position asserted by the Settling Parties in any other proceeding, case or action, as to which all of  
10 their rights are specifically preserved.

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

12           3.1.     Preliminary and final approval of the Settlement Agreement shall be sought in the  
13 Circuit Court of the First Circuit, State of Hawaii. Plaintiffs agreed to and have voluntarily  
14 dismissed without prejudice the action pending before the United States District Court for the  
15 District of Hawaii and refiled the Litigation in the Circuit Court of the First Circuit, State of Hawaii.

16           3.2.     As soon as practicable after the execution of the Settlement Agreement, Proposed  
17 Settlement Class Counsel and counsel for HawaiiUSA shall jointly submit this Settlement  
18 Agreement to the Court, and Proposed Settlement Class Counsel will file a motion for preliminary  
19 approval of the settlement with the Court requesting entry of a Preliminary Approval Order in the  
20 form to be agreed upon by the Parties, or an order substantially similar to such form in both terms  
21 and cost, requesting, among other things:

- 22                   a)     certification of the Settlement Class for settlement purposes only pursuant  
23                             to ¶ 2.7;
- 24                   b)     preliminary approval of the Settlement Agreement as set forth herein;
- 25                   c)     appointment of Proposed Settlement Class Counsel as Settlement Class  
26                             Counsel;
- 27                   d)     appointment of Plaintiffs as Class Representatives;
- 28



- 1 e) approval of a customary form of Short Notice to mailed to Settlement Class
- 2 Members in a form substantially similar to the one attached as Exhibit B to
- 3 this Settlement Agreement;
- 4 f) approval of the Long Notice to be posted on the Settlement Website in a
- 5 form substantially similar to the one attached as Exhibit C to this Settlement
- 6 Agreement, which, together with the Short Notice, shall include a fair
- 7 summary of the Parties’ respective litigation positions, the general terms of
- 8 the settlement set forth in the Settlement Agreement, instructions for how
- 9 to object to or opt-out of the settlement, the process and instructions for
- 10 making claims to the extent contemplated herein, and the date, time and
- 11 place of the Final Fairness Hearing; and
- 12 g) appointment of P&N as the Claims Administrator.

13 The Short Notice and Long Notice have been reviewed and approved by the Claims  
14 Administrator but may be revised as agreed upon by the Settling Parties prior to submission to the  
15 Court for approval.

16 3.3. HawaiiUSA shall pay for providing notice to the Settlement Class in accordance  
17 with the Preliminary Approval Order, and the costs of such notice, together with the Costs of Claims  
18 Administration. Attorneys’ fees, costs, and expenses of Settlement Class Counsel, and service  
19 awards to Class Representatives, as approved by the Court, shall be paid by HawaiiUSA as set forth  
20 in ¶ 7 below. Notice shall be provided to Settlement Class Members by the Claims Administrator  
21 as follows:

- 22 a) *Class Member Information*: No later than fourteen (14) days after entry of
- 23 the Preliminary Approval Order, HawaiiUSA shall provide the Claims
- 24 Administrator with the name, email address (where available), and last
- 25 known physical address of each Settlement Class Member (collectively,
- 26 “Class Member Information”) that HawaiiUSA possesses.
  - 27 • The Class Member Information and its contents shall be
  - 28 used by the Claims Administrator solely for the purpose

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of performing its obligations pursuant to this Settlement Agreement and shall not be used for any other purpose at any time. Except to administer the settlement as provided in this Settlement Agreement, or provide all data and information in its possession to the Settling Parties upon request, the Claims Administrator shall not reproduce, copy, store, or distribute in any form, electronic or otherwise, the Class Member Information.

b) *Settlement Website:* Prior to the dissemination of the Class Notice, the Claims Administrator shall establish the Settlement Website that will inform Settlement Class Members of the terms of this Settlement Agreement, their rights, dates and deadlines and related information. The Settlement Website shall include, in .pdf format and available for download, the following: (i) the Long Notice; (ii) the Claim Form; (iii) the Preliminary Approval Order; (iv) this Settlement Agreement; (v) the operative complaint filed in the Litigation; and (vi) any other materials agreed upon by the Parties and/or required by the Court. The Settlement Website shall provide Class Members with the ability to complete and submit the Claim Form electronically.

c) *Short Notice:* 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 as follows:

- To all Settlement Class Members for whom HawaiiUSA is in possession of an email address, via email to the email

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address provided to the Claims Administrator by HawaiiUSA;

- To all class members for whom HawaiiUSA does not have in its possession a valid email address (including email addresses that were returned as undeliverable), via mail to the postal address provided to the Claims Administrator by HawaiiUSA. Before any mailing under this Paragraph occurs, the Claims Administrator shall run the postal addresses of Settlement Class Members through the United States Postal Service (“USPS”) National Change of Address database to update any change of address on file with the USPS;
- in the event that a mailed Short Notice is returned to the Claims Administrator by the USPS because the address of the recipient is no longer valid, and the envelope contains a forwarding address, the Claims Administrator shall re-send the Short Notice to the forwarding address within seven (7) days of receiving the returned Short Notice;
- in the event that subsequent to the first mailing of a Short Notice, and at least fourteen (14) days prior to the Opt-Out and Objection Deadline, a Short Notice is returned to the Claims Administrator by the USPS because the address of the recipient is no longer valid, *i.e.*, the envelope is marked “Return to Sender” and does not contain a new forwarding address, the Claims Administrator shall perform a standard skip trace, in the manner that the Claims Administrator customarily performs skip traces, in an effort to attempt to ascertain the current address of the

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particular Settlement Class Member in question and, if such an address is ascertained, the Claims Administrator will re-send the Short Notice within seven (7) days of receiving such information. This shall be the final requirement for mailing.

- d) Publishing, on or before the Notice Commencement Date, the Short Notice, Claim Form, and Long Notice on the Settlement Website, as specified in the Preliminary Approval Order, and maintaining and updating the website throughout the claim period;
- e) A toll-free help line shall be made available to provide Settlement Class Members with additional information about the settlement. The Claims Administrator also will provide copies of the forms of Short Notice, Long Notice, and paper Claim Form, as well as this Settlement Agreement, upon request; and
- f) Contemporaneously with seeking final approval of the Settlement, Proposed Settlement Class Counsel and HawaiiUSA shall cause to be filed with the Court an appropriate affidavit or declaration with respect to complying with this provision of notice.

3.4. The Short Notice, Long Notice, and other applicable communications to the Settlement Class may be adjusted by the Claims Administrator, in consultation and agreement with the Settling Parties, as may be reasonable and not inconsistent with such approval. The notice program shall commence within thirty (30) days after entry of the Preliminary Approval Order and shall be completed within forty-five (45) days after entry of the Preliminary Approval Order.

3.5. Proposed Settlement Class Counsel and HawaiiUSA’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.

1           **4. Opt-Out Procedures**

2           4.1 Each Person wishing to opt-out of the Settlement Class shall individually sign and  
3 timely submit written notice of such intent to the designated Post Office box established by the  
4 Claims Administrator. The written notice must clearly manifest a Person’s intent to opt-out of the  
5 Settlement Class. To be effective, written notice must be postmarked no later than sixty (60) days  
6 after the Notice Commencement Date.

7           4.2 All Persons who submit valid and timely notices of their intent to opt-out of the  
8 Settlement Class, as set forth in ¶ 4.1 above, referred to herein as “Opt-Outs,” shall not receive any  
9 benefits of and/or be bound by the terms of this Settlement Agreement. All Persons falling within  
10 the definition of the Settlement Class who do not opt-out of the Settlement Class in the manner set  
11 forth in ¶ 4.1 above shall be bound by the terms of this Settlement Agreement and Judgment entered  
12 thereon.

13           4.3 In the event that within ten (10) days after the Opt-Out Date as approved by the  
14 Court, there have been more than 100 timely and valid Opt-Outs submitted, HawaiiUSA may, by  
15 notifying Proposed Settlement Class Counsel and the Court in writing, void this Settlement  
16 Agreement. If HawaiiUSA voids the Settlement Agreement pursuant to this paragraph,  
17 HawaiiUSA shall be obligated to pay all settlement expenses already incurred, excluding any  
18 attorneys’ fees, costs, and expenses of Proposed Settlement Class Counsel and service awards.

19           **5. Objection Procedures**

20           5.1 Each Settlement Class Member desiring to object to the Settlement Agreement shall  
21 submit a timely written notice of his or her objection by the Objection Date. Such notice shall state:  
22 (i) the objector’s full name and address; (ii) the case name and docket number – *Smith, et al. v.*  
23 *HawaiiUSA Federal Credit Union*, Case No. 1CCV-24-0000154 (Haw. Cir. Ct., 1st Cir.); (iii) a  
24 written statement of all grounds for the objection, accompanied by any legal support for the  
25 objection the objector believes applicable; (iv) the identity of any and all counsel representing the  
26 objector in connection with the objection; (v) a statement whether the objector and/or his or her  
27 counsel will appear at the Final Fairness Hearing; and (vi) the objector’s signature or the signature  
28 of the objector’s duly authorized attorney or other duly authorized representative (if any)

1 representing him or her in connection with the objection. To be timely, written notice of an  
2 objection in the appropriate form must be mailed, with a postmark date no later than sixty days  
3 from the Notice Commencement Date, to the Claims Administrator, as well as to Proposed  
4 Settlement Class Counsel, Gary M. Klinger, Milberg Coleman Bryson Phillips Grossman PLLC,  
5 227 W. Monroe Street, Suite 2100, Chicago, IL 60606; and counsel for HawaiiUSA, Matthew D.  
6 Pearson, Baker & Hostetler, LLP, 600 Anton Boulevard, Suite 900, Costa Mesa, CA 92626-7221.  
7 The objector or his or her counsel may also file Objections with the Court, with service on Proposed  
8 Settlement Class Counsel and HawaiiUSA's counsel. For all objections mailed to Proposed  
9 Settlement Class Counsel and counsel for HawaiiUSA that are not otherwise filed with the Court,  
10 Proposed Settlement Class Counsel will file them with the Court as an exhibit to the Motion for  
11 final approval of the Settlement.

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

20           **6. Releases**

21           6.1 Upon the Effective Date, each Settlement Class Member, including Plaintiffs, shall  
22 be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released,  
23 relinquished, and discharged all Released Claims. Further, upon the Effective Date, and to the  
24 fullest extent permitted by law, each Settlement Class Member, including Plaintiffs, shall, either  
25 directly, indirectly, representatively, as a member of or on behalf of the general public, or in any  
26 capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in  
27 any recovery in any action in this or any other forum (other than participation in the settlement as  
28 provided herein) in which any of the Released Claims is asserted.

1           6.2     Upon the Effective Date, HawaiiUSA shall be deemed to have, and by operation of  
2 the Judgment shall have, fully, finally, and forever released, relinquished, and discharged,  
3 Representative Plaintiffs, each and all of the Settlement Class Members, Proposed Settlement Class  
4 Counsel, of all claims, including Unknown Claims, based upon or arising out of the institution,  
5 prosecution, assertion, settlement, or resolution of the Litigation, except for enforcement of the  
6 Settlement Agreement. Any other claims or defenses HawaiiUSA may have against such Persons  
7 including, without limitation, any claims based upon or arising out of any retail, banking, debtor-  
8 creditor, contractual, employment, or other business relationship with such Persons that are not  
9 based upon or do not arise out of the institution, prosecution, assertion, settlement, or resolution of  
10 the Litigation are specifically preserved and shall not be affected by the preceding sentence.

11           6.3     Notwithstanding any term herein, neither HawaiiUSA nor its Related Entities shall  
12 have or shall be deemed to have released, relinquished or discharged any claim or defense against  
13 any Person other than Representative Plaintiffs, each and all of the Settlement Class Members, and  
14 Proposed Settlement Class Counsel.

15           **7.     Plaintiffs’ Counsel’s Attorneys’ Fees, Costs, and Expenses; Service Award to**  
16           **Representative Plaintiffs**

17           7.1     The Settling Parties did not discuss the payment of attorneys’ fees, costs, expenses  
18 and/or service award to Plaintiffs, as provided for in ¶¶ 7.2 and 7.3, until after the substantive terms  
19 of the settlement had been agreed upon, other than that HawaiiUSA would pay reasonable  
20 attorneys’ fees, costs, expenses, and a service award to Plaintiffs as may be agreed to by  
21 HawaiiUSA and Proposed Settlement Class Counsel and/or as ordered by the Court, or in the event  
22 of no agreement, then as ordered by the Court. HawaiiUSA and Proposed Settlement Class Counsel  
23 then negotiated and agreed to the payment described in ¶ 7.2.

24           7.2     Proposed Settlement Class Counsel will seek, and HawaiiUSA has agreed not to  
25 oppose, an order from the Court awarding \$250,000.00 to Proposed Settlement Class Counsel for  
26 attorneys’ fees, inclusive of any costs and expenses of the Litigation. Proposed Settlement Class  
27 Counsel, in their sole discretion, shall allocate and distribute the amount of attorneys’ fees, costs,  
28 and expenses awarded by the Court.

1           7.3       Proposed Settlement Class Counsel will seek, and HawaiiUSA has agreed not to  
2 oppose, an order from the Court awarding \$1,500 in service awards to each of the Class  
3 Representatives.

4           7.4       If awarded by the Court, HawaiiUSA shall pay the attorneys' fees, costs, expenses,  
5 and service awards to Plaintiffs, as set forth above in ¶¶ 7.2 and 7.3, within 30 days after the  
6 Effective Date. Service awards to Class Representatives and attorneys' fees, costs, and expenses  
7 will be wired to Gary M. Klinger, Milberg Coleman Bryson Phillips Grossman PLLC, 227 W.  
8 Monroe Street, Suite 2100, Chicago, IL 60606. Proposed Settlement Class Counsel shall thereafter  
9 distribute the award of attorneys' fees, costs, and expenses among Plaintiffs' Counsel and service  
10 awards to Plaintiffs consistent with ¶¶ 7.2 and 7.3.

11           7.5       The amount(s) of any award of attorneys' fees, costs, and expenses, and the service  
12 award to Plaintiffs, are intended to be considered by the Court separately from the Court's  
13 consideration of the fairness, reasonableness, and adequacy of the settlement. These payments will  
14 not in any way reduce the consideration being made available to the Settlement Class as described  
15 herein. No order of the Court, or modification or reversal or appeal of any order of the Court,  
16 concerning the amount(s) of any attorneys' fees, costs, expenses, and/or service award ordered by  
17 the Court to Proposed Settlement Class Counsel or Plaintiffs shall affect whether the Judgment is  
18 Final or constitute grounds for cancellation or termination of this Settlement Agreement.

19           **8.       Administration of Claims**

20           8.1       The Claims Administrator shall administer and calculate the claims submitted by  
21 Settlement Class Members under ¶¶ 2.1 – 2.3. Proposed Settlement Class Counsel and counsel for  
22 HawaiiUSA shall be given reports as to both claims and distribution, and have the right to review  
23 and obtain supporting documentation and challenge such reports if they believe them to be  
24 inaccurate or inadequate. The Claims Administrator's and claims referee's, as applicable,  
25 determination of whether a Settlement Claim is a Valid Claim shall be binding, subject to the  
26 Dispute Resolution process set forth in ¶ 2.3. All claims agreed to be paid in full by HawaiiUSA  
27 shall be deemed valid.  
28



1           8.2       Checks for Valid Claims shall be mailed and postmarked within sixty (60) days of  
2 the Effective Date, or within thirty (30) days of the date that the claim is approved, whichever is  
3 later.

4           8.3       All Settlement Class Members who fail to timely submit a claim for any benefits  
5 hereunder within the time frames set forth herein, or such other period as may be ordered by the  
6 Court, or otherwise allowed, shall be forever barred from receiving any payments or benefits  
7 pursuant to the settlement set forth herein, but will in all other respects be subject to, and bound by,  
8 the provisions of the Settlement Agreement, the releases contained herein and the Judgment.

9           8.4       No Person shall have any claim against the Claims Administrator, claims referee,  
10 HawaiiUSA, Proposed Settlement Class Counsel, Plaintiffs, and/or HawaiiUSA’s counsel based on  
11 distributions of benefits to Settlement Class Members.

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

13           9.1       The Effective Date of the settlement shall be conditioned on the occurrence of all of  
14 the following events:

- 15           a)       the Court has entered the Preliminary Approval Order and Publishing of Notice of  
16 a Final Fairness Hearing, as required by ¶ 3.2;
- 17           b)       HawaiiUSA has not exercised its option to terminate the Settlement Agreement  
18 pursuant to ¶ 4.3;
- 19           c)       the Court has entered the Judgment granting final approval to the settlement as set  
20 forth herein; and
- 21           d)       the Judgment has become Final, as defined in ¶ 1.11.

22           9.2       If all conditions specified in ¶ 9.1 hereof are not satisfied, the Settlement Agreement  
23 shall be canceled and terminated subject to ¶ 9.4 unless Proposed Settlement Class Counsel and  
24 HawaiiUSA’s counsel mutually agree in writing to proceed with the Settlement Agreement.

25           9.3       Within seven (7) days after the Opt-Out Date, the Claims Administrator shall  
26 furnish to Proposed Settlement Class Counsel and to HawaiiUSA’s counsel a complete list of all  
27 timely and valid requests for exclusion (the “Opt-Out List”).  
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1           9.4     In the event that the Settlement Agreement or the releases set forth in paragraphs  
2 6.1, 6.2, and 6.3 above are not approved by the Court or the settlement set forth in the Settlement  
3 Agreement is terminated in accordance with its terms, (a) the Settling Parties shall be restored to  
4 their respective positions in the Litigation and shall jointly request that all scheduled Litigation  
5 deadlines be reasonably extended by the Court so as to avoid prejudice to any Settling Party or  
6 Settling Party’s counsel, and (b) the terms and provisions of the Settlement Agreement shall have  
7 no further force and effect with respect to the Settling Parties and shall not be used in the Litigation  
8 or in any other proceeding for any purpose, and any judgment or order entered by the Court in  
9 accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*.  
10 Notwithstanding any statement in this Settlement Agreement to the contrary, no order of the Court  
11 or modification or reversal on appeal of any order reducing the amount of attorneys’ fees, costs,  
12 expenses, and/or service awards shall constitute grounds for cancellation or termination of the  
13 Settlement Agreement. Further, notwithstanding any statement in this Settlement Agreement to  
14 the contrary, HawaiiUSA shall be obligated to pay amounts already billed or incurred for costs of  
15 notice to the Settlement Class, Claims Administration, and Dispute Resolution pursuant to ¶ 2.3  
16 above and shall not, at any time, seek recovery of same from any other party to the Litigation or  
17 from counsel to any other party to the Litigation.

18           **10.     Miscellaneous Provisions**

19           10.1    The Settling Parties (i) acknowledge that it is their intent to consummate this  
20 Settlement Agreement; and (ii) agree to cooperate to the extent reasonably necessary to effectuate  
21 and implement all terms and conditions of this Settlement Agreement, and to exercise their best  
22 efforts to accomplish the terms and conditions of this Settlement Agreement.

23           10.2    The Settling Parties intend this settlement to be a final and complete resolution of  
24 all disputes between them with respect to the Litigation. The settlement compromises claims that  
25 are contested and shall not be deemed an admission by any Settling Party as to the merits of any  
26 claim or defense. The Settling Parties each agree that the settlement was negotiated in good faith  
27 by the Settling Parties, and reflects a settlement that was reached voluntarily after consultation with  
28 competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such

1 Party determines to be appropriate, any contention made in any public forum that the Litigation  
2 was brought or defended in bad faith or without a reasonable basis. It is agreed that no Party shall  
3 have any liability to any other Party as it relates to the Litigation, except as set forth herein.

4 10.3 Neither the Settlement Agreement, nor the settlement contained herein, nor any act  
5 performed or document executed pursuant to or in furtherance of the Settlement Agreement or the  
6 settlement (i) is or may be deemed to be or may be used as an admission of, or evidence of, the  
7 validity or lack thereof of any Released Claim, or of any wrongdoing or liability of any of the  
8 Released Persons; or (ii) is or may be deemed to be or may be used as an admission of, or evidence  
9 of, any fault or omission of any of the Released Persons in any civil, criminal or administrative  
10 proceeding in any court, administrative agency or other tribunal. Any of the Released Persons may  
11 file the Settlement Agreement and/or the Judgment in any action that may be brought against them  
12 or any of them in order to support a defense or counterclaim based on principles of *res judicata*,  
13 collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of  
14 claim preclusion or issue preclusion or similar defense or counterclaim.

15 10.4 The Settlement Agreement may be amended or modified only by a written  
16 instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

17 10.5 This Agreement contains the entire understanding between HawaiiUSA and  
18 Plaintiffs regarding the payment of the settlement and supersedes all previous negotiations,  
19 agreements, commitments, understandings, and writings between HawaiiUSA and Plaintiffs in  
20 connection with the payment of the settlement. Except as otherwise provided herein, each Party  
21 shall bear its own costs.

22 10.6 Proposed Settlement Class Counsel, on behalf of the Settlement Class, is expressly  
23 authorized by Plaintiffs to take all appropriate actions required or permitted to be taken by the  
24 Settlement Class pursuant to the Settlement Agreement to effectuate its terms, and also are  
25 expressly authorized to enter into any modifications or amendments to the Settlement Agreement  
26 on behalf of the Settlement Class which they deem appropriate in order to carry out the spirit of this  
27 Settlement Agreement and to ensure fairness to the Settlement Class.  
28

1           10.7     Each counsel or other Person executing the Settlement Agreement on behalf of any  
2 Party hereto hereby warrants that such Person has the full authority to do so.

3           10.8     The Settlement Agreement may be executed in one or more counterparts. All  
4 executed counterparts and each of them shall be deemed to be one and the same instrument. A  
5 complete set of original executed counterparts shall be filed with the Court.

6           10.9     The Settlement Agreement shall be binding upon, and inure to the benefit of, the  
7 successors and assigns of the Parties hereto.

8           10.10    The Court shall retain jurisdiction with respect to implementation and enforcement  
9 of the terms of the Settlement Agreement, and all Parties hereto submit to the jurisdiction of the  
10 Court for purposes of implementing and enforcing the settlement embodied in the Settlement  
11 Agreement.

12          10.11    As used herein, “he” means “he, she, or it;” “his” means “his, hers, or its,” and  
13 “him” means “him, her, or it.”

14          10.12    All dollar amounts are in United States dollars (USD).

15          10.13    Cashing a settlement check is a condition precedent to any Settlement Class  
16 Member’s right to receive settlement benefits. All settlement checks shall be void ninety (90) days  
17 after issuance and shall bear the language: “This check must be cashed within ninety (90) days,  
18 after which time it is void.” If a check becomes void, the Settlement Class Member shall have until  
19 six months after the Effective Date to request re-issuance. If no request for re-issuance is made  
20 within this period, the Settlement Class Member will have failed to meet a condition precedent to  
21 recovery of settlement benefits, the Settlement Class Member’s right to receive monetary relief  
22 shall be extinguished, and HawaiiUSA shall have no obligation to make payments to the Settlement  
23 Class Member for expense reimbursement under ¶¶ 2.1 or 2.2 or any other type of monetary relief.  
24 The same provisions shall apply to any re-issued check. For any checks that are issued or re-issued  
25 for any reason more than one hundred eighty (180) days from the Effective Date, requests for re-  
26 issuance need not be honored after such checks become void.


27          10.14    All agreements made and orders entered during the course of the Litigation relating  
28 to the confidentiality of information shall survive this Settlement Agreement.

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

**BAKER & HOSTETLER LLP**

Dated: March 8, 2024

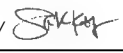
/s/   
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HAWAIIUSA FEDERAL CREDIT UNION

**HAWAIIUSA FEDERAL CREDIT UNION**

Dated: March 8, 2024

/s/   
Name: Greg Young  
Position: President & CEO

*On behalf of Defendant*  
HAWAIIUSA FEDERAL CREDIT UNION

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Dated: March 8, 2024

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