

# EXHIBIT 1

**CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

This Class Action Settlement Agreement and Release is entered into between and among Plaintiff KEVIN VANDERMARK (“Plaintiff”), individually and on behalf of all others similarly situated, and MASON TENDERS’ DISTRICT COUNCIL WELFARE FUND, MASON TENDERS’ DISTRICT COUNCIL PENSION FUND and MASON TENDERS’ DISTRICT COUNCIL ANNUITY FUND (“Defendants” or “MTDC”) (collectively, the “Settling Parties”), subject to preliminary and final approval by the Supreme Court of the State of New York, County of New York (the “Court”) as required by Article 9 of the Civil Practice Law and Rules.

WHEREAS, on or about August 11, 2022, Plaintiff commenced an action in the United States District Court for the Southern District of New York against Defendants and Mason Tenders District Council of Greater New York alleging, *inter alia*, that Defendants failed to adequately secure personal identifiable information of Plaintiff and the members of the putative class that may have been compromised in a data security incident which occurred on or about December 2, 2021 through on or about April 18, 2022;

WHEREAS, on or about January 31, 2023, Plaintiff voluntarily discontinued the action in the United States District Court for the Southern District of New York pursuant to Fed. R. Civ. P. 41(a) without prejudice and, on or about April 13, 2023 refiled the action, presently pending in the Court and captioned as *Kevin Vandermark et al. v. Mason Tenders District Council Welfare Fund et al.*, Index No. 153365/2023 (the “Action”);

WHEREAS, Plaintiff and Class Counsel believe that the factual and legal claims asserted in the Action are meritorious. Class Counsel has investigated the facts relating to the claims and defenses alleged and the underlying events in the Action, have made a thorough study of the legal principles applicable to the claims and defenses asserted in the Action, and have conducted a thorough assessment of the strengths and weaknesses of the claims in the Action;

WHEREAS, Defendants assert numerous legal and factual defenses to the claims made in the Action, and specifically deny each and all of the claims and contentions alleged against them in the Action, and deny all charges of wrongdoing or liability as alleged, or which could be alleged, in the Action;

WHEREAS, the Settling Parties, through their counsel, have engaged in extensive discussions regarding potential resolution of this matter, before ultimately reaching a settlement in principle as to all claims;

WHEREAS, the Plaintiff and Class Counsel have concluded, after investigation of the facts and after carefully considering the circumstances of the Action, including the claims asserted in the Action, the status of the Action and the possible legal, factual and procedural defenses thereto, that it would be in the best interests of the Settlement Class to enter into this Agreement, which interests include the substantial value to be derived by this Settlement and the interest in avoiding the uncertainties of litigation and assuring that the benefits reflected herein are obtained for the Settlement Class; that the Plaintiff considers the Settlement set forth herein to be fair, reasonable and adequate and in the best interests of the Settlement Class; and Plaintiff and Class Counsel believe that the Settlement confers substantial benefits upon the Settlement Class;

WHEREAS, Defendants, after vigorous, arms-length negotiations, have agreed to provide certain monetary and non-monetary measures in settlement for the benefit of the Settlement Class, as provided in this Agreement;

WHEREAS, Defendants, despite their belief that they have valid and complete defenses to the claims asserted against them in the Action, have nevertheless agreed to enter into this Agreement to reduce and avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, and thereby to resolve this controversy, without any admission of wrongdoing or liability whatsoever;

NOW, THEREFORE it is agreed by and between the undersigned on behalf of Defendants and Plaintiff, on behalf of the Settlement Class, that any and all claims asserted, or that could have been asserted, against Defendants and the Released Persons relating to the Data Incident, by and on behalf of Plaintiff and Settlement Class Members, and any other such actions by and on behalf of any other consumers and putative classes of consumers originating, or that may originate, in jurisdictions in the United States against Defendants and the Released Persons relating to the Data Incident, subject to the approval of the Court, on the following terms and conditions.

## **I. DEFINITIONS**

In addition to the terms defined at various points within the Agreement, the following definitions of terms apply throughout the Agreement.

1. **“Action”** means the action captioned *Kevin Vandermark et al. v. Mason Tenders District Council Welfare Fund et al.*, Index No. 153365/2023 in the Supreme Court of the State of New York, County of New York.
2. **“Agreement”** or **“Settlement Agreement”** means this agreement.
3. **“Approved Claims”** means any Claim Forms approved by the Settlement Administrator or found to be valid through the appeal process described in Paragraph 44 of this Agreement.
4. **“Claim Form”** or **“Claim Forms”** means the form substantially in the form of Exhibit A attached hereto that Settlement Class Members must complete and submit on or before the Claim Deadline to receive the benefits contemplated by this Agreement.
5. **“Claim Deadline”** means the last day to submit a timely Claim Form, which will be ninety (90) days after the Date Notice is scheduled to be mailed by the Settlement Administrator.
6. **“Class”** or **“Class Members”** means all persons who were sent written notification by MTDC that their personal information was potentially compromised as the result of the Data Incident. The Class specifically excludes: (i) all Class Members who timely and validly request exclusion from the Settlement Class; (ii) the Judge assigned to evaluate the fairness of this settlement; and (iii) any other person found by a court of competent jurisdiction to be guilty under

criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge. The Class consists of approximately 40,349 members.

7. **“Class Counsel”** means Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman, PLLC.

8. **“Complaint”** means, collectively, the operative Class Action Complaint filed by Plaintiff on April 13, 2023 in the Action, as well as the Class Action Complaint filed by Plaintiff on August 11, 2022 in the United States District Court for the Southern District of New York.

9. **“Data Incident”** means the cyber incident that took place against MTDC on or about December 2, 2021 through on or about April 18, 2022.

10. **“Defendants”** or **“MTDC”** means, collectively, Mason Tenders’ District Council Welfare Fund, Mason Tenders’ District Council Pension Fund and Mason Tenders’ District Council Annuity Fund.

11. **“Defendants’ Counsel”** or **“MTDC’s Counsel”** means Joseph Salvo and John Mills of Gordon Rees Scully Mansukhani, LLP.

12. **“Effective Date”** has the meaning ascribed in Paragraph 48 of this Agreement.

13. **“Final Approval Hearing”** means the hearing to determine whether the Settlement of the Action should be given final approval and whether the applications of Class Counsel for attorneys’ fees, costs and expenses and class representative service award should be approved.

14. **“Motion for Final Approval”** means the motion to be filed by Plaintiff pursuant to Paragraph 47 of this Agreement.

15. **“Motion for Preliminary Approval”** means the motion to be filed by Plaintiff pursuant to Paragraph 39 of this Agreement. This Agreement shall be an exhibit to the Motion for Preliminary Approval.

16. **“Notice(s)”** means the written notices to be sent to the Class pursuant to the Preliminary Approval Order, as set forth in Paragraph 40 of this Agreement.

17. **“Notice Deadline”** means the last day by which Notice must begin issuing to the Class, and will initially occur thirty (30) days after entry of the Preliminary Approval Order.

18. **“Objection Deadline”** means the deadline for objections to the Settlement to be specified in the Notices, which date shall be sixty (60) days from the date Notice is scheduled to be mailed by the Settlement Administrator.

19. **“Opt-Out Deadline”** means the deadline for requests to opt-out of the Settlement to be specified in the Notices, which date shall be sixty (60) days from the date Notice is scheduled to be mailed by the Settlement Administrator.

20. **“Order and Final Judgment”** means an order of the Court granting Final Approval of the Settlement and the corresponding final judgment. A proposed form of the Order and Final Judgment is attached hereto as Exhibit E.

21. **“Party” or “Parties”** mean the Plaintiff, acting on behalf of the Settlement Class, and Defendants.

22. **“Plaintiff” or “Settlement Class Representative”** means Kevin Vandermark.

23. **“Preliminary Approval Order”** means an order issued by the Court preliminarily approving the Settlement provided for in this Agreement. A proposed form of the Preliminary Approval Order is attached hereto as Exhibit D.

24. **“Released Claims”** means any and all claims and causes of action including, without limitation, any causes of action under or relying on the New York General Business Law; negligence; breach of contract; breach of implied contract; breach of fiduciary duty; breach of confidence; invasion of privacy/intrusion upon seclusion; misrepresentation (whether fraudulent, negligent or innocent); unjust enrichment; bailment; wantonness; failure to provide adequate notice pursuant to any breach notification statute or common law duty; and including, but not limited to, any and all claims for damages, injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys’ fees and expenses, pre-judgment interest, credit monitoring services, the creation of a fund for future damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, the appointment of a receiver, and any other form of relief that either has been asserted, or could have been asserted, by any Settlement Class Member against any of the Released Persons based on, relating to, concerning or arising out of the Data Incident and alleged theft of personally identifiable information, protected health information, or other personal information or the allegations, facts, or circumstances described in the Litigation. 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.

25. **“Released Persons”** means Mason Tenders’ District Council Welfare Fund, Mason Tenders’ District Council Pension Fund and Mason Tenders’ District Council Annuity Fund and their respective present and former predecessors, successors, assigns, parents, subsidiaries, divisions, affiliates, departments, and related entities, and any and all of their past, present, and future predecessors, officers, directors, trustees, employees, principals, stockholders, partners, servants, agents, successors, attorneys, advisors, consultants, representatives, insurers, reinsurers, and subrogees.

26. **“Settlement”** means the settlement reflected by this Agreement.

27. **“Settlement Court” or “Court”** means the Supreme Court of the State of New York, County of New York.

28. **“Settlement Administrator”** means Postlethwaite & Netterville or another settlement administrator selected by Defendants with the consent of the Plaintiff.

29. “**Settlement Class**” or “**Settlement Class Member**” means all Class Members other than any Settlement Class Opt-Outs.

30. “**Settlement Class Opt-Out**” means any person or entity falling within the definition of the Class who timely and validly submits a request for exclusion from the Settlement Class in accordance with the procedures set forth in Paragraph 46 below and the Settlement Long-Form Notice.

31. “**Settlement Long-Form Notice**” refers to the notice to be made available to the Class on the Settlement website maintained by the Settlement Administrator, without material alteration from Exhibit B hereto (except where necessary to render it electronically accessible), in accordance with Paragraph 40(c) below.

32. “**Settlement Short-Form Notice**” refers to the notice to be provided to the Class by mail, in substantially the same form as Exhibit C hereto, in accordance with Paragraph 40(b) below.

33. “**Unknown Claims**” means any of the Released Claims that any Settlement Class Member, including Plaintiff, 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 participate in this Settlement Agreement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, Plaintiff expressly shall have, and each of the other Settlement Class Members shall be deemed to have, and by operation of the Order and Final Judgment shall have, waived the provisions, rights and remedies conferred by California Civil Code § 1542, and also any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States (including, without limitation, California Civil Code §§ 1798.980, *et seq.*, Montana Code Ann. § 28-1-1602; North Dakota Cent. Code § 9-13-02; and South Dakota Codified Laws § 20-7-11), which is similar, comparable, or equivalent to, California Civil Code § 1542, which provides:

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

Settlement Class Members, including Plaintiff, and any of them, may hereafter discover facts or law 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 Plaintiff expressly shall have, and each other Settlement Class Member shall be deemed to have, and by operation of the Order and Final 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 Order and Final Judgment to have acknowledged, that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

**II. SETTLEMENT TERMS**

34. Class Benefit. Subject to the terms of this Agreement, Defendants shall make available the following benefits (none of which are mutually exclusive) to Settlement Class Members who have submitted valid Claim Forms:

(a) Credit Monitoring and Identity Theft Protection Services. Settlement Class Members can elect to enroll in TransUnion *myTrueIdentity* credit monitoring and identity protection services, or other comparable service, for a period of one (1) year by submitting the Claim Form by the Claim Deadline. This service shall include credit monitoring from all three bureaus, access to credit reports, and \$1 million in identity theft insurance.

(b) Reimbursement for Ordinary Out-of-Pocket Losses. Settlement Class Members may submit a claim for Reimbursement of Ordinary Out-of-Pocket Losses up to Four Hundred Fifty Dollars and Zero Cents (\$450.00) per Settlement Class Member that have not already been reimbursed through another source, including but not limited to the TransUnion *myTrueIdentity* identity theft insurance or any other credit card, credit monitoring/identity protection or financial service, by submitting the Claim Form by the Claim Deadline, subject to the terms and conditions below.

(i) “Ordinary Out-of-Pocket Losses” are unreimbursed costs or expenditures incurred by a Settlement Class Member that are fairly traceable to the Data Incident including, without limitation, the following: (i) unreimbursed costs, expenses, losses or charges incurred as a result of identity theft or identity fraud, falsified tax returns, or other possible misuse of class member’s personal information; (ii) costs incurred on or after December 2, 2021, associated with purchasing or extending additional credit monitoring or identity theft protection services and/or accessing or freezing/unfreezing credit reports with any credit reporting agency; and (iii) other miscellaneous expenses incurred related to any Ordinary Out-of-Pocket Loss such as notary, fax, postage, copying, mileage, and long-distance telephone charges.

(ii) Settlement Class Members who elect to submit a claim for Reimbursement of Ordinary Out-of-Pocket Losses must provide to the Settlement Administrator the information required to evaluate the claim, including: (1) the Settlement Class Member’s name and current address; (2) documentation supporting their claim; (3) a brief description of the documentation describing the nature of the loss, if the nature of the loss is not apparent from the documentation alone; and (4) whether the Settlement Class Member has been reimbursed for the loss by another source. Documentation supporting Ordinary Out-of-Pocket Losses can include receipts or other documentation not “self-prepared” by the Settlement Class Member that documents the costs incurred. “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity to or support other submitted documentation.

(iii) The Settlement Administrator shall have the sole discretion and authority to determine whether and to what extent documentation for Ordinary Out-of-Pocket Losses reflects losses incurred, are valid claims and are fairly traceable to the Data Incident based upon, including but not limited to, the timing of the loss and the type of information used to commit identity theft or fraud and whether that information is fairly traceable to the Data Incident. The Settlement

Administrator may contact Class Members to seek clarification regarding submitted claims prior to determining their validity.

(iv) Class Members shall not be reimbursed for Ordinary Out-of-Pocket Losses if they have already been reimbursed for the same Ordinary Out-of-Pocket Losses by another source, including but not limited to the TransUnion *myTrueIdentity* identity theft insurance or any other credit card, credit monitoring/identity protection or financial service.

(v) Claims for Reimbursement for Ordinary Out-of-Pocket Losses can be combined with claims for Reimbursement for Attested Time; however, those claims are subject to a combined \$450.00 aggregate cap. In no event shall an Approved Claim for Reimbursement of Ordinary Out-of-Pocket Losses and Reimbursement for Attested Time exceed, in the aggregate, Four Hundred Fifty Dollars and Zero Cents (\$450.00).

(c) Reimbursement for Extraordinary Out-of-Pocket Losses. Class Members may submit a claim for Reimbursement of Extraordinary Out-of-Pocket Losses up to Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) per Class Member that have not already been reimbursed through another source, including but not limited to the TransUnion *myTrueIdentity* identity theft insurance or any other credit card, credit monitoring/identity protection or financial service, despite the Settlement Class Member's best efforts to seek such reimbursement, by submitting the Claim Form by the Claim Deadline, subject to the terms and conditions below.

(i) "Extraordinary Out-of-Pocket Losses" are unreimbursed costs or expenditures incurred by a Settlement Class Member that are fairly traceable to the Data Breach including, without limitation, the following: (i) unreimbursed costs, expenses, losses or charges incurred a result of identity theft or identity fraud, falsified tax returns, or other possible misuse of class member's personal information; (ii) costs incurred on or after December 2, 2021 associated with purchasing or extending additional credit monitoring or identity theft protection services and/or accessing or freezing/unfreezing credit reports with any credit reporting agency; and (iii) other miscellaneous expenses incurred related to any Extraordinary Out-of-Pocket Loss such as notary, fax, postage, copying, mileage, and long-distance telephone charges.

(ii) Settlement Class Members who elect to submit a claim for Reimbursement of Extraordinary Out-of-Pocket Losses must provide to the Settlement Administrator the information required to evaluate the claim, including: (1) the Class Member's name and current address; (2) documentation supporting their claim; (3) a brief description of the documentation describing the nature of the loss, if the nature of the loss is not apparent from the documentation alone; and (4) whether the Class Member has been reimbursed for the loss by another source. Documentation supporting Extraordinary Out-of-Pocket Losses can include receipts or other documentation not "self-prepared" by the Class Member that documents the costs incurred. "Self-prepared" documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity to or support other submitted documentation.

(iii) The Settlement Administrator shall have the sole discretion and authority to determine whether the claim for Reimbursement of Extraordinary Out-of-Pocket Losses, including whether and to what extent documentation for Extraordinary Out-of-Pocket Losses reflects losses incurred, are valid claims and are fairly traceable to the Data Incident based upon, including but



not limited to, the timing of the loss and the type of information used to commit identity theft or fraud and whether that information is fairly traceable to the Data Breach. Additionally, in determining whether a claim for Reimbursement of Extraordinary Out-of-Pocket Losses is valid, the Settlement Administrator must determine that: (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 on or after December 2, 2021; (4) the loss is not already covered by one or more of the normal reimbursement categories provided under this Settlement Agreement; and (5) the Settlement Class Member has made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of the benefits made available to the Settlement Class Member under the TransUnion *myTrueIdentity* identity theft insurance or any other credit card, credit monitoring/identity protection or financial service. The Settlement Administrator may contact Class Members to seek clarification regarding submitted claims prior to determining their validity.

(iv) Class Members shall not be reimbursed for Extraordinary Out-of-Pocket Losses if they have already been reimbursed for the same Extraordinary Out-of-Pocket Losses by another source, source, including but not limited to the TransUnion *myTrueIdentity* identity theft or any other credit card, credit monitoring/identity protection or financial service. Additionally, as set forth above, in order for a claim for Reimbursement of Extraordinary Out-of-Pocket Losses to be a valid claim, Settlement Class Members must demonstrate that they have made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of the benefits made available to the Settlement Class Member under the TransUnion *myTrueIdentity* identity theft insurance or any other credit card, credit monitoring/identity protection or financial service.

(d) Reimbursement for Attested Time. Settlement Class Members may submit a claim for up to three (3) hours of time spent remedying issues related to identity theft directly caused by the Data Incident (“Attested Time”) at Twenty Dollars and Zero Cents (\$20.00) per hour by submitting the Claim Form by the Claim Deadline.

(i) Settlement Class Members who elect to submit a claim for Reimbursement for Attested Time must provide to the Settlement Administrator the information required to evaluate the claim, including a brief description of the time incurred including the activities undertaken by the Settlement Class Member.

(ii) The Settlement Administrator shall have the sole discretion and authority to determine whether the prerequisites have been met in order to award payments for Attested Time. The Settlement Administrator may contact Settlement Class Members to seek clarification regarding any submitted claim prior to determining their validity.

(iii) Claims for Reimbursement for Attested Time can be combined with claims for Reimbursement for Ordinary Out-of-Pocket Losses; however, those claims are subject to a combined \$450.00 aggregate cap. In no event shall an Approved Claim for Reimbursement of Ordinary Out-of-Pocket Losses and Reimbursement for Attested Time exceed, in the aggregate, Four Hundred Fifty Dollars and Zero Cents (\$450.00).

(e) Confirmatory Discovery. Defendants represent that they have adopted and implemented additional security measures following the Data Incident to further strengthen the security of their systems. Within 30 days of the Preliminary Approval Order, Defendants will provide confidential confirmatory discovery including: (1) documentation regarding updated policies and information security enhancements taken by Defendants since the Data Incident; and (2) production of the current cybersecurity policies and procedures. The information provided by Defendant pursuant to this Paragraph 34(e) shall be treated as confidential and cannot be used for any purpose other than enforcement of this Settlement Agreement. Nothing about this Paragraph 34(e) shall create any contractual rights to any present or future equitable remedy requiring Defendants to make or maintain any particular security processes or procedures in the future.

35. Class Counsel's Attorneys' Fees and Expenses. Plaintiff will move the Court for an order awarding Class Counsel's application of attorneys' fees and costs and expenses not to exceed One Hundred Seventy-Five Thousand Dollars and Zero Cents (\$175,000.00). This term was negotiated only after the Parties reached an agreement as to the Class' benefits provided for in Paragraph 34. Any attorneys' fees and expenses approved by the Court in accordance with this Paragraph shall be paid by check within thirty (30) days after the Effective Date or Defendants' Counsel's receipt of a completed IRS Form W-9 for Class Counsel, whichever is later.

(a) Unless otherwise ordered by the Court, Class Counsel shall have the sole and absolute discretion to allocate any approved Fee Award and Costs amongst Plaintiff's counsel and any other attorneys for Plaintiff. Defendants and their insurers and reinsurers shall have no liability or other responsibility for allocation of any such attorneys' fees and costs.

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

36. Class Representative Service Award. Plaintiff will move the Court for an order awarding the application of a service award not to exceed One Thousand Five Hundred Dollars and Zero Cents (\$1,500.00). Any service award approved by the Court in accordance with this Paragraph shall be paid by check within thirty (30) days after the Effective Date or Defendants' Counsel's receipt of a completed IRS Form W-9 for Plaintiff, whichever is later.

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

### **III. IMPLEMENTATION OF SETTLEMENT**

37. Reasonable Best Efforts to Effectuate This Settlement. Consistent with the terms of this Agreement and notwithstanding the rights of the Parties to terminate this Agreement as set forth herein, the Parties and their counsel agree to cooperate and to use their reasonable best efforts,

including all steps and efforts contemplated by this Agreement and any other reasonable steps and efforts that may be necessary or appropriate, by order of the Settlement Court or otherwise, to carry out the terms of this Agreement.

38. Class Certification for Settlement Purposes Only. The Parties acknowledge and agree and hereby stipulate that: (i) the Class will be certified for settlement purposes only pursuant to this Agreement, (ii) Defendants reserve the right to object to class certification de novo in the event this Agreement is terminated for any reason, (iii) this Agreement shall have no precedential effect with regard to any motion for certification of a litigation class that may be filed if this matter is not fully and completely resolved through this settlement effort; and (iv) this Agreement shall have no precedential effect with regard to any other lawsuit against Defendants that may be pending now or in the future, other than in a proceeding seeking to enforce this Agreement.

39. Motion for Preliminary Approval. Following the execution of this Agreement, the Plaintiff shall promptly file a Motion for Preliminary Approval seeking entry of the Preliminary Approval Order in the form annexed hereto as Exhibit D.

40. Notice to the Class.

(a) List of the Class Members. Within seven (7) days of entry of the Preliminary Approval Order, Defendants shall provide to the Settlement Administrator a list of the names, last known addresses of the Settlement Class Members.

(b) Notice. Within thirty (30) days of the entry of the Preliminary Approval Order, the Settlement Administrator shall send Settlement Short-Form Notice to the Settlement Class Members by U.S. Mail.

(c) Settlement Long Form Notice. A detailed Settlement Long Form Notice, attached as Exhibit B hereto, will be made available to the Settlement Class Members on the Settlement website to be maintained by the Settlement Administrator in accordance with Paragraph 40(d) below.

(d) Website. The Settlement Administrator shall maintain a website, beginning on or before the Settlement Notice is sent and ending no later than one month after the Effective Date. The website includes copies of the Complaint, Settlement Agreement, Motion for Preliminary Approval, Preliminary Approval Order, Settlement Long-Form Notice, Claim Form, motions for Class Counsel's attorneys' fees, expenses, Motions for Final Approval, and Order and Final Judgment. The website shall also provide applicable Settlement deadlines and answers to frequently asked questions.

(e) Settlement Administrator Phone Line. The Settlement Administrator will provide a recorded phone line for any frequently asked questions, which will be agreed to by both Parties. In addition, the Settlement Administrator will provide an option to speak with a live customer service representative for the limited purpose of requesting a copy of any of the Settlement Long-Form Notice or Claim Form.

(f) Proof of Notice. Plaintiff shall file with the Motion for Final Approval, or at such other time required by the Court, a declaration from the Settlement Administrator confirming that notice has been provided to the Class in accordance with Paragraph 40.

41. Payment of Expenses Related to Notice and Administration. Defendants will pay all costs incurred and fees charged by the Settlement Administrator in providing notice to the Settlement Class in accordance with Paragraph 40 and otherwise administering the Settlement.

42. Claim Forms. Settlement Class Members may submit Claim Forms electronically via the website referenced in Paragraph 40(d) or physically by mail to the Settlement Administrator. Claims Forms must be submitted electronically or postmarked by the applicable Claim Deadline. Claim Forms must be submitted individually by a Settlement Class Member, not as or on behalf of a group, class, or subclass, except that the Claim Forms may be submitted by a legal representative of a deceased Settlement Class Member or a Settlement Class Member who has been adjudicated to be mentally incompetent. If Claim Forms are submitted by a legal representative of a deceased or mentally incompetent Settlement Class Member, the Claim Forms must be submitted together with a copy of a court order or other documentation from which the Settlement Administrator can reasonably verify the authority of the legal representative to act on behalf of the Settlement Class Member.

43. Claim Form Disputes. The Settlement Administrator, in its sole discretion to be reasonably exercised, will determine whether: (i) the claimant is a Settlement Class Member; (ii) the Settlement Class Member has provided the information needed to complete a Claim Form, including any documentation that may be necessary to reasonably support the claim for Reimbursement of Ordinary Out-of-Pocket Losses, Extraordinary Out-of-Pocket Losses or Attested Time and/or entitlement to Credit Monitoring and Identity Theft Protection Services; and (iii) the information submitted could lead a reasonable person to conclude that more likely than not the Settlement Class Member has suffered the claimed losses as a result of the Data Incident. In the event a Claim Form was timely submitted by a Settlement Class Member and is deficient, the Settlement Administrator may, at any time, request from the Settlement Class Member in writing, additional information as the Settlement Administrator may require in order to evaluate the Claim Forms, e.g., documentation requested on the Claim Forms, 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. To the extent the Settlement Administrator determines a Claim Form is deficient in whole or part, the Settlement Administrator is authorized to informally resolve the deficiency within a reasonable time prior to sending a formal deficiency notice to a Settlement Class Member. If the deficiency remains unresolved, the Settlement Administrator shall formally notify the Settlement Class Member, counsel for the Plaintiffs and the Settlement Class, and counsel for Defendant of the deficiency(ies) and provide the Settlement Class Member ten (10) days to cure the deficiencies. If a Settlement Class Member attempts to cure but, in the sole discretion of the Settlement Administrator, fails to do so, the Settlement Administrator shall notify the Settlement Class Member of that determination within seven (7) days of the Settlement Class Member's supplemental submission. The Settlement Administrator may consult with counsel for the Parties prior to making any such determinations.

44. Appeal Process. If the Settlement Administrator determines that a Claim Form is deficient, and the Settlement Class Member fails to cure the deficiency, the Settlement

Administrator shall inform the Settlement Class Member of his or her right to dispute the determination in writing and request an appeal within fourteen (14) days. If an individual disputes a determination in writing and requests an appeal, the Settlement Administrator shall provide a copy of the Settlement Class Member's dispute and claims form along with all documentation and other information submitted by the Settlement Class Member to counsel for the Parties. Counsel for the Parties will confer regarding the claim submission within five (5) business days of receipt of such documentation/information from Settlement Administrator. Counsel for the Parties' approval or denial of the Settlement Class Member's claim, in whole or in part, will be final. If counsel for the Parties cannot agree on approval or denial of the Settlement Class Member's claim, in whole or in part, the dispute will be submitted to a mutually agreeable claims referee to be identified at Defendants' cost. The claims referee will make a decision within five (5) business days of the submissions by counsel for the Parties. The claims referee's decision will be final and not subject to appeal or further review.

45. Objections. Any Settlement Class Member who wishes to object to the Settlement must send a signed, written objection to the Settlement Administrator by the Objection Deadline (or other date required by the Court). Written objections must set forth the following:

- (a) the name of the proceedings ("*Vandermark v. Mason Tenders District Council*");
- (b) the Settlement Class Member's full name, current mailing address, and telephone number;
- (c) a statement of the specific grounds for the objection, as well as any documents supporting the objection;
- (d) the identity of any attorneys representing the objector; and
- (e) the signature of the Settlement Class Member or the Settlement Class Member's attorney.

Written objections must be served concurrently upon Plaintiff's Counsel and Defendants' Counsel at the addresses set forth herein. Settlement Class Members who fail to make objections in the manner specified in Paragraph 45 of this Agreement will be deemed to have waived any objections and will be foreclosed from making any objections, whether by a subsequent objection, intervention, appeal, or any other process. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions set forth in this Paragraph. Without limiting the foregoing, any challenges to the Settlement Agreement and/or the Order and Final Judgment shall be pursuant to appeal under applicable Court rules and not through a collateral attack.

46. Opt-Outs. A Settlement Class Member may opt out of the Settlement by submitting an opt-out request to the Settlement Administrator by U.S. mail, as set forth in the Notice. Any such opt-out request, in order to be timely, must be postmarked by the Opt-Out Deadline (or other date required by the Court). The Request for Exclusion must set forth the following:

- (a) The name of this Action ("*Vandermark v. Mason Tenders District Council*");

- (b) the full name, address, and telephone number of the person requesting to be excluded;
- (c) the words “*Request for Exclusion*” at the top of the document; and
- (d) a declaration stating “I request that I be excluded from the Settlement Class in *Vandermark v. Mason Tenders District Council*, and do not wish to participate in the settlement. I understand that by requesting to be excluded from the Settlement Class, I will not receive any benefits under the Settlement.”

Requests to opt-out must be exercised individually by a Settlement Class Member, not as or on behalf of a group, class, or subclass. Within three (3) days after the Opt-Out Deadline, the Settlement Administrator shall furnish to counsel for the Settling Parties a complete list of all timely and valid requests for exclusion, which shall be submitted to the Court in advance of the Final Approval Hearing. All Settlement Class Members who do not timely and properly exclude themselves from the Settlement Class shall be bound by this Agreement, and their claims shall be released as provided for herein.

A Settlement Class Member cannot submit an opt-out request and a Claim Form. If a Settlement Class Member submits an opt-out request and a Claim Form, the Settlement Administrator will determine based on the communication with the latest date (provided it is timely) whether the Settlement Class Member intends to opt out or submit a Claim Form.

47. Motion for Final Approval. The parties shall request a Final Approval Hearing date of at least 110 days after the Court enters the Preliminary Approval Order. Plaintiff shall file a Motion for Final Approval seeking final approval of the Settlement and entry of final judgment. Plaintiff shall provide Defendant a draft of such papers before filing and thus provide the opportunity to review and comment. Defendant shall cooperate with Plaintiff to obtain final approval of the Settlement consistent with the terms herein. The Final Approval Order and Judgment shall be substantially similar to the proposed order attached as Exhibit E.

48. Effective Date of Settlement. The Settlement detailed in this Agreement shall be effective five (5) days after all of the following events have occurred: (1) approval by the Court of this Agreement, following notice to the Class and a Final Approval hearing; (2) entry by the Court of an Order and Final Judgment; (3) if any member of the Class timely files a valid objection to the Settlement, the expiration of any time for appeal or review of an Order and Final Judgment, or, if any appeal is filed, after an Order and Final Judgment is upheld on appeal in all material respects and is no longer subject to review upon appeal or review by writ of certiorari; (4) the expiration of time to appeal or seek permission to appeal from the Order and Final Judgment or, if any appeal is filed, after the Order and Final Judgment is upheld on appeal in all material respects and is no longer subject to review upon appeal or review by writ of certiorari; and (5) this Agreement is no longer subject to termination by any Party as provided for in Section IV.

49. Provision of Credit Monitoring Services. The Settlement Administrator shall send an activation code to each Settlement Class Member who submitted a valid Claim Form within thirty (30) days of the validation of the Claim Form according to the process set forth in Paragraph 42 or thirty (30) days after the Effective Date, whichever is later, which can be used to activate

Credit Monitoring Services via an enrollment website maintained by the provider of the service. Such enrollment codes shall be sent via U.S. mail. Credit Monitoring Services claimants may activate Credit Monitoring Services for a period of at least one-hundred and twenty (120) days from the date the Settlement Administrator sends the activation code.

50. Payment of Other Benefits. Payments for Reimbursement of Ordinary Out-of-Pocket Losses, Reimbursement of Extraordinary Out-of-Pocket Losses and Reimbursement for Attested Time will be made by the Settlement Administrator within thirty (30) days of validation of the Claim Form according to the process set forth in Paragraph 42 or thirty (30) days after the Effective Date, whichever is later. Fourteen (14) days after the Effective Date, the Settlement Administrator shall invoice Defendants for claims to be paid from the prior month. Within ten (10) days, Defendants will provide the Settlement Administrator with the funds to pay the claims made during the previous month. To the extent claims are finally approved after the deadline for payment as set forth in this Paragraph, the Settlement Administrator shall invoice Defendants for claims to be paid within thirty (30) days, and Defendants will provide the Settlement Administrator with the funds to pay the claims made during the previous month within thirty (30) days.

51. Aggregate Cap. The total financial responsibility of Defendants and the Released Persons under the terms of this Settlement Agreement, including but not limited to the payment of valid and timely claims of the Settlement Class Members under Paragraph 34, the cost of credit monitoring services for Settlement Class Members who submit valid and timely claims under Paragraph 34, costs of notice and administration under Paragraph 41, payment of the service award to Plaintiff as approved by the Court under Paragraph 36, payment of attorneys' fees, costs and litigation expenses to Class Counsel as approved by the Court under Paragraph 35, and any taxes and tax related expenses in connection with any of the foregoing or this Settlement Agreement, shall not exceed Six Hundred Thousand Dollars and Zero Cents (\$600,000.00) in the aggregate ("Aggregate Cap"). In the event the total financial responsibility of Defendants and/or the Released Persons exceeds this aggregate cap, the costs shall be reduced *pro rata* as set forth in Paragraph 52 of this Settlement Agreement.

52. Pro Rata Contingencies.

a. If, after payment of the costs of notice and administration under Paragraph 41, payment of the service award to Plaintiff as approved by the Court under Paragraph 36, payment of attorneys' fees, costs and litigation expenses to Class Counsel as approved by the Court under Paragraph 35, and any taxes and tax related expenses in connection with any of the foregoing or this Settlement Agreement, the funds required to make payment for Approved Claims for Ordinary Out-of-Pocket Losses exceeds the Aggregate Cap, then the value of the payments for Approved Claims for Ordinary Out-of-Pocket Losses shall be reduced on a pro rata basis, such that the aggregate value of all payments as set forth in this Paragraph 52(a) do not exceed the Aggregate Cap. In such an event, there will be no payments made for Approved Claims for Extraordinary Out-of-Pocket Losses, Approved Claims for Attested Time, or Credit Monitoring Services.

b. If, after payment of the costs of notice and administration under Paragraph 41, payment of the service award to Plaintiff as approved by the Court under Paragraph 36, payment of attorneys' fees, costs and litigation expenses to Class Counsel as approved by the Court

under Paragraph 35, any taxes and tax related expenses in connection with any of the foregoing or this Settlement Agreement, and the payment of Approved Claims for Ordinary Out-of-Pocket Losses, the funds required to make payment for Approved Claims for Extraordinary Out-of-Pocket Losses exceeds the Aggregate Cap, then the value of the payments for Approved Claims for Extraordinary Out-of-Pocket Losses shall be reduced on a pro rata basis, such that the aggregate value of all payments as set forth in this Paragraph 52(b) do not exceed the Aggregate Cap. In such an event, there will be no payments made for Approved Claims for Attested Time, or Credit Monitoring Services.

c. If, after payment of the costs of notice and administration under Paragraph 41, payment of the service award to Plaintiff as approved by the Court under Paragraph 36, payment of attorneys' fees, costs and litigation expenses to Class Counsel as approved by the Court under Paragraph 35, any taxes and tax related expenses in connection with any of the foregoing or this Settlement Agreement, the payment of Approved Claims for Ordinary Out-of-Pocket Losses, and the payment of Approved Claims for Extraordinary Out-of-Pocket Losses, the funds required to make payment for Approved Claims for Attested Time exceeds the Aggregate Cap, then the value of the payments for Approved Claims for Attested Time shall be reduced on a pro rata basis, such that the aggregate value of all payments as set forth in this Paragraph 52(c) do not exceed the Aggregate Cap. In such an event, there will be no payments made for Approved Claims for Credit Monitoring Services.

d. If, after payment of the costs of notice and administration under Paragraph 41, payment of the service award to Plaintiff as approved by the Court under Paragraph 36, payment of attorneys' fees, costs and litigation expenses to Class Counsel as approved by the Court under Paragraph 35, any taxes and tax related expenses in connection with any of the foregoing or this Settlement Agreement, the payment of Approved Claims for Ordinary Out-of-Pocket Losses, the payment of Approved Claims for Extraordinary Out-of-Pocket Losses, and the payment of Approved Claims for Attested Time, the funds required to make payment for Approved Claims for Credit Monitoring exceeds the Aggregate Cap, then the duration of the Credit Monitoring Services provided to each Settlement Class Member who claims that benefit shall be reduced to ensure that the aggregate value of all payments as set forth in this Paragraph 52(d) do not exceed the Aggregate Cap.

53. Returned Checks. For any check or draft issued to a Settlement Class Member returned to the Settlement Administrator as undeliverable (including, but not limited to, when the intended recipient is no longer located at the address), the Settlement Administrator shall make reasonable efforts to locate a valid address and resend the Settlement Payment within thirty (30) days after the check is returned to the Settlement Administrator as undeliverable. In attempting to locate a valid address, the Settlement Administrator is authorized to send an e-mail and/or place a telephone call to that Participating Settlement Class Member to obtain updated address information. Any replacement Settlement Checks issued to Participating Settlement Class Members shall remain valid and negotiable for ninety (90) days from the date of their issuance and may thereafter automatically be canceled if not cashed by the Participating Settlement Class Members within that time.

54. Uncashed Checks. To the extent that a Settlement Check is not cashed within ninety (90) days after the date of issue, the Settlement Administrator shall undertake the following



actions: (1) attempt to contact the Participating Settlement Class Member by e-mail and/or telephone to discuss how to obtain a reissued check; (2) if those efforts are unsuccessful, make reasonable efforts to locate an updated address for the Participating Settlement Class Member using advanced address searches or other reasonable methods; and (3) reissuing a check or mailing the Participating Settlement Class Member a postcard (either to an updated address if located or the original address if not) providing information regarding how to obtain a reissued check. Any reissued Settlement Checks issued to Participating Settlement Class Members shall remain valid and negotiable for ninety (90) days from the date of their issuance and may thereafter automatically be canceled if not cashed by the Participating Settlement Class Members within that time.

55. Deceased Class Members. If the Settlement Administrator is notified that a Participating Settlement Class Member is deceased, the Settlement Administrator is authorized to reissue the Settlement Check to the Participating Settlement Class Member's estate upon receiving proof the Participating Settlement Class Member is deceased and after consultation with Class Counsel and Defendants' Counsel.

56. All Claims Satisfied. Each Settlement Class Member shall look solely to the relief described in Paragraph 34 for settlement and satisfaction, as provided herein, of all Released Claims. No Settlement Class Member, or their respective heirs, executors, trustees, administrators, representatives, agents, partners, successors, attorneys, and assigns, shall have any claim against the Defendants, Defendants' Counsel, Plaintiff, or Class Counsel based on the distribution of benefits to Settlement Class Members.

### **III. RELEASES AND JURISDICTION OF SETTLEMENT COURT**

57. Release of Released Entities. Upon the Effective Date, and in consideration of the Settlement benefits described herein, each of the Settlement Class Members, including Plaintiff, and each of their respective heirs, executors, trustees, administrators, representatives, agents, partners, successors, attorneys, and assigns (the "Releasing Parties") shall be deemed to have, and by operation of the Order and Final Judgment shall have, fully, finally and forever released, relinquished, acquitted, and discharged any and all Released Claims against Released Persons. Further, upon the Effective Date, each Settlement Class Member, including Plaintiff, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in any action in this or any other form (other than participation in the settlement as provided for herein) in which any of the Released Claims is asserted.

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

59. Limitation of Liability. The Parties, Class Counsel, Defendants' Counsel, and Defendants' insurers and reinsurers, shall not have any liability whatsoever with respect to (i) any act, omission or determination of the Settlement Administrator, or any of its respective designees

or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment or distribution of claims made or benefits available pursuant to this Agreement; (iii) the formulation, design or terms of the disbursement of the claims made or benefits available pursuant to this Agreement; and (iv) the determination, administration, calculation or payment of any claims made pursuant to this Agreement.

60. Indemnification. The Settlement Administrator shall defend, indemnify and hold harmless the Parties, Class Counsel, Defendants' Counsel, and Defendants' insurers and reinsurers for (i) any act, omission or determination of the Settlement Administrator, or any of its respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment or distribution of claims made or benefits available pursuant to this Agreement; (iii) the formulation, design or terms of the disbursement of the claims made or benefits available pursuant to this Agreement; and (iv) the determination, administration, calculation or payment of any claims made pursuant to this Agreement.

61. Consent to Jurisdiction. The Parties and the Settlement Administrator hereby irrevocably submit to the exclusive jurisdiction of the Settlement Court for purposes of any suit, action, proceeding or dispute arising out of, or relating to, this Agreement or the applicability of this Agreement.

62. Resolution of Disputes; Retention of Jurisdiction. Any disputes between or among the Parties concerning matters contained in this Agreement shall, if they cannot be resolved by negotiation and agreement, be submitted to the Settlement Court for resolution. The Settlement Court shall retain jurisdiction over the implementation and enforcement of this Agreement.

#### **IV. TERMINATION OF THE AGREEMENT**

63. Rejection or Material Alteration of Settlement Terms. Defendants and Plaintiff shall each have the right to terminate this Agreement by providing written notice of their election to do so to each other within seven (7) days of: (1) the Settlement Court declining to enter the Preliminary Approval Order in a form materially consistent with this Settlement Agreement and indicating that it would not enter a Preliminary Approval Order if the Parties make revisions that were materially consistent with this Settlement Agreement; (2) the Settlement Court declining to enter an Order and Final Judgment in a form materially consistent with this Agreement (other than determining, in the Settlement Court's sole discretion, the amount of the attorneys' fees and expenses award and service award in accordance with Paragraphs 35 and 36) and indicating that it would not enter an Order and Final Judgment if the Parties make revisions that were materially consistent with this Settlement Agreement; (3) the date upon which the Order and Final Judgment is modified or reversed in any material respect by any appellate court, which indicates that the Settlement cannot be approved if the Parties make revisions that are materially consistent with this Settlement Agreement (except with respect to the amount of the attorneys' fees and expenses or service award); (4) Defendants' receipt of more than twenty-five (25) Opt-Outs (exclusions) after the Opt-Out Deadline from the Settlement Administrator as set forth in Paragraph 46; or (5) the mutual agreement of Plaintiff and Defendants to terminate the Agreement. If an option to terminate this Agreement arises under this paragraph, no Party is required for any reason or under any circumstance to exercise that option. In the event that Defendants opt to terminate this Agreement pursuant to this Paragraph 61(4), Defendants shall be obligated to pay all settlement expenses

already incurred, excluding any attorneys' fees, costs, and expenses of Plaintiff's Counsel and service award(s). 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.

64. Return to Pre-Agreement Status. In the event any of the Parties exercise the right of termination enumerated in Paragraph 63, this Agreement shall be null and void and shall have no force and effect, the Parties shall jointly request that any orders entered by the Settlement Court in accordance with this Agreement be vacated, and the rights and obligations of the Parties shall be identical to those prior to the execution of this Agreement. In the event either Party exercises any right of termination, the Parties agree to jointly request that the Settlement Court provide a reasonable opportunity to engage in such other further proceedings as were contemplated before the Parties entered into this Agreement.

65. No Admission of Liability / Compromise of Disputed Claims. The Parties hereto agree that this Agreement, whether or not the Effective Date occurs, and any and all negotiations, documents and discussions associated with it shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, of any liability or wrongdoing by Defendants or of the truth of any of the claims or allegations contained in the Complaint; and evidence thereof shall not be discoverable or used directly or indirectly by the Plaintiff or any third party, in any way for any purpose, except that the provisions of this Agreement may be used by the Parties to enforce its terms, whether in the Action or in any other action or proceeding. This Agreement and all of the terms herein constitute compromises and offers to compromise under applicable federal rules of court and statutes. In the event that this Agreement is terminated pursuant to Paragraph 63, nothing in this Agreement or its negotiation may be used in the Action or in any proceeding for any purpose. The Parties expressly waive the potential applicability of any doctrine, case law, statute, or regulation, which, in the absence of this paragraph of this Agreement, could or would otherwise permit the admissibility into evidence of the matters referred to in this paragraph. The Parties expressly reserve all their rights and defenses if the Settlement set forth in this Agreement does not become final and effective substantially in accordance with the terms of this Agreement. The Parties also agree that this Agreement, any orders, pleadings or other documents entered in furtherance of this Agreement, and any acts in the performance of this Agreement are not intended to be, nor shall they in fact be, admissible, discoverable or relevant in any other case or other proceeding against Defendant to establish grounds for certification of any class, to prove either the acceptance by any Party hereto of any particular theory of coverage, or as evidence of any obligation that any Party hereto has or may have to anyone. This provision shall survive any termination of this Agreement.

## V. REPRESENTATIONS AND WARRANTIES

66. Authorization to Enter this Agreement. The undersigned representative of Defendants represents and warrants that he or she is fully authorized to enter into and to execute this Agreement on behalf of Defendants. Class Counsel represents and warrants that they are fully authorized to conduct settlement negotiations with Defendants' Counsel on behalf of Plaintiff and to enter into, and to execute, this Agreement on behalf of Plaintiff and the Settlement Class, subject to Settlement Court approval.

67. Assignment. Plaintiff represents and warrants that he has not assigned or transferred any interest in the Action which is the subject of this Agreement, in whole or in part.

68. Representation. Plaintiff acknowledges that he has been represented by counsel of his own choosing in the Action and the negotiation and execution of this Agreement, fully understands this Agreement, and that he has had a reasonable and sufficient opportunity to consult with counsel before executing this Agreement.

## VI. ADDITIONAL PROVISIONS

69. Intent. The Settling Parties acknowledge that it is their intent to consummate this Agreement, and that they intend this Agreement to be a final and complete resolution of all disputes between them with respect to the Action.

70. Use of this Agreement. The provisions of this Agreement, and any orders, pleadings or other documents entered in furtherance of this Agreement, may be offered or received in evidence solely (i) to enforce the terms and provisions hereof or thereof, (ii) as may be specifically authorized by a court of competent jurisdiction after hearing upon application of a Party hereto, (iii) in order to establish payment or a defense in a subsequent case, including res judicata, or (iv) to obtain Court approval of this Agreement.

71. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto.

72. Headings. The headings to this Settlement Agreement have been inserted for convenience only and are not to be considered when construing the provisions of this Agreement.

73. Construction. This Agreement shall be construed and interpreted to effectuate the intent of the Parties. Plaintiff intends for the Settlement to provide fair compensation to Plaintiff and the Class. Defendants intend for the agreement to provide for a complete resolution by the Releasers of the Released Claims with respect to the Released Entities. This Settlement Agreement shall not be construed more strictly against one Party than another merely because of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that because of the arm's-length negotiations resulting in this Settlement Agreement, all Parties hereto have contributed substantially and materially to the preparation of the Settlement Agreement. All terms, conditions and exhibits are material and necessary to this Settlement Agreement and have been relied upon by the Parties in entering into this Settlement Agreement.

74. Choice of Law. All terms of this Agreement shall be governed by and interpreted according to the substantive laws of the State of New York without regard to its choice of law or conflict of laws principles.

75. Amendment or Waiver. This Agreement shall not be modified in any respect except by a writing executed by all the Parties hereto, and the waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving Party or their counsel, who may only sign with the permission of their clients. The waiver by any Party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous.

76. Modification. Prior to entry of the Final Order and Judgment, this Agreement may, with approval of the Court, be modified by written agreement of the Parties or their counsel, who may only sign with the permission of their clients, without giving any additional notice to the Settlement Class, provided that such modifications are not materially adverse to the Settlement Class. To the extent that Class Members desire to be notified regarding any additional changes as described in this paragraph, or otherwise after the initial notice of the Settlement, the preliminary approval hearing and the Final Approval Hearing, they must file with the Settlement Court in this Action a request for notice, or send such a request in writing to the Settlement Administrator or Class Counsel, who shall maintain a list of all such requests that are received. Class Members who have and who provide an e-mail address agree to electronic notification. The provisions of this section advising Class Members of this requirement shall be included in the Settlement Long Form Notice.

77. Execution in Counterparts. This Agreement may be executed in counterparts. Facsimile signatures, electronic signatures obtained through a service ensuring an authentication process, or signatures in PDF format shall be considered as valid signatures as of the date thereof, and may be filed with the Settlement Court.

78. Integrated Agreement. This Agreement, including the exhibits hereto, contains an entire, complete, and integrated statement of each and every term and provision agreed to by and between the Parties hereto, and supersedes any prior oral or written agreements and contemporaneous oral agreements among the Parties. Exhibits to this Agreement are integral to the Agreement and are hereby incorporated and made part of this Agreement.

79. Notices. All notices and other communications required or permitted under this Agreement, other than requests to opt-out of the proposed Settlement, shall be in writing and delivered in person, by overnight delivery service or by facsimile as follows:

If to the Plaintiff:

Gary M. Klinger  
Milberg Coleman Bryson Phillips Grossman, PLLC  
277 Monroe Street, Suite 2100  
Chicago, Illinois 60606  
gklinger@milberg.com

If to Defendant:

Joseph Salvo  
John T. Mills  
Gordon Rees Scully Mansukhani, LLP  
One Battery Park Plaza, 28th Floor  
New York, New York 10004  
jsalvo@grsm.com  
jtmills@grsm.com

80. Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision if the Parties mutually elect to proceed as if such invalid, illegal or unenforceable provision had never been included in the Agreement.

81. Confidential Information. The Settlement Administrator shall keep confidential any personal identifying information of the Class Members, and any financial information of Defendants, that has or may come into their possession.

82. Deadlines. In the event any date or deadline set forth in this Settlement Agreement falls on a weekend or federal or state legal holiday, such date or deadline shall be on the first business day thereafter.

83. Retention of Records. The Settlement Administrator shall retain copies or images of all mailed notices or records thereof, returned mailed notices, correspondence related to the Settlement and Settlement checks for a period of one-hundred and eighty (180) days after the Effective Date. After this time, the Settlement Administrator will provide these records to Defendants' Counsel, and the Settlement Administrator shall destroy any such documentary records they have in their possession.

84. Contact with Class Members. Defendants may communicate with the Class Members in the ordinary course of their business. Defendants will refer inquiries regarding this Agreement and the administration of the Settlement to the Settlement Administrator.

IN WITNESS WHEREOF, the Parties hereto have caused the Settlement Agreement to be executed.

**SIGNATURES OF THE PARTIES**

KEVIN VANDERMARK

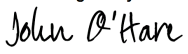
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kevin vandermark  
kevin vandermark (May 19, 2023 11:32 EDT)

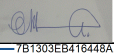
MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC  
*Class Counsel*

Dated: May 9, 2023

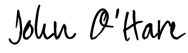
Gary M. Klinger  
By: Gary M. Klinger  
Title: Partner  
Address: 277 Monroe Street, Suite 2100  
Chicago, Illinois 60606  
Email: gklinger@milberg.com

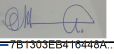
MASON TENDERS' DISTRICT COUNCIL WELFARE FUND

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 9AEC8B7538C4EE...  
 Name: John O'Hare  
 Title: Co-Chairman  
 Dated: May 9, 2023 | 9:02 AM PDT

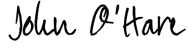
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 7B1303EB416448A...  
 Name: Michael Hellstrom  
 Title: Co-Chairman  
 Dated: May 15, 2023 | 2:55 AM PDT

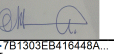
MASON TENDERS' DISTRICT COUNCIL PENSION FUND

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 Title: Co-Chairman  
 Dated: May 9, 2023 | 9:02 AM PDT

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 Title: Co-Chairman  
 Dated: May 15, 2023 | 2:55 AM PDT

MASON TENDERS' DISTRICT COUNCIL ANNUITY FUND

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 Title: Co-Chairman  
 Dated: May 9, 2023 | 9:02 AM PDT

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 Name: Michael Hellstrom  
 Title: Co-Chairman  
 Dated: May 15, 2023 | 2:55 AM PDT

GORDON REES SCULLY MANSUKHANI, LLP  
*Counsel for Defendant (as to form only)*

Dated: May 12, 2023 | 9:13 AM PDT

DocuSigned by:  
Joseph Salvo

D2EBE4CA97284C0...  
By: Joseph Salvo  
Title: Partner  
Address: One Battery Park Plaza, 28<sup>th</sup> Floor  
New York, New York 10004  
Email: jsalvo@grsm.com



**EXHIBIT A**

**CLAIM FORM**

This claim form should be filled out online or submitted by mail if you received a notification from MASON TENDERS' DISTRICT COUNCIL WELFARE FUND, MASON TENDERS' DISTRICT COUNCIL PENSION FUND and MASON TENDERS' DISTRICT COUNCIL ANNUITY FUND ("Mason Tenders") that your personal information was or may have been compromised in the data security incident on or about December 2, 2021 through on or about April 18, 2022 (the "Data Incident"), and you had out-of-pocket expenses or lost time spent dealing with the Data Incident, or you wish to claim credit monitoring and identity protection services to be paid for by Mason Tenders. You may get a check if you fill out this claim form, if the settlement is approved, and if you are found to be eligible for a payment.

The settlement notice describes your legal rights and options. Please visit the official settlement administration website, **[WEBSITE]**, or call **[PHONE NUMBER]** for more information.

If you wish to submit a claim for a settlement payment, you need to provide the information requested below. Please print clearly in blue or black ink. This claim form must be mailed and postmarked by **[CLAIMS DEADLINE]**.

*Si necesita ayuda en español, comuníquese con el administrador al **[insertar número]**.*

1. CLASS MEMBER INFORMATION (ALL INFORMATION IS REQUIRED):

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

2. PAYMENT ELIGIBILITY INFORMATION.

Please review the notice and Section II of the Settlement Agreement (available at **[WEBSITE]**) for more information on who is eligible for a payment and the nature of the expenses or losses that can be claimed.

Please provide as much information as you can to help us figure out if you are entitled to a settlement payment.

PLEASE PROVIDE THE INFORMATION LISTED BELOW:

Check the box for each category of benefits you would like to claim. Categories include out-of-pocket expenses that you had to pay as a result of the Data Incident, time you had to spend dealing with the effects of the Data Incident, and up to one year of credit monitoring and identity protection services. Alternatively, you may claim an alternative cash payment in lieu of any other benefits that may be available under this settlement.

Please be sure to fill in the total amount you are claiming for each category and to attach documentation of the charges as described in bold type (if you are asked to provide account statements as part of proof required for any part of your claim, you may mark out any unrelated transactions if you wish).

a. Ordinary Out-of-Pocket Expenses Resulting from the Data Incident:

\_\_\_\_\_ I incurred unreimbursed charges as a result of the Data Incident.

Examples - unreimbursed costs, expenses, losses or charges incurred as a result of identity theft or identity fraud, falsified tax returns, or other possible misuse of your information; costs incurred on or after December 2, 2021 through **[CLAIMS DEADLINE]** associated with purchasing or extending additional credit monitoring or identity theft protection services and/or accessing or freezing/unfreezing credit reports with any credit reporting agency; other miscellaneous expenses incurred such as notary, fax, postage, copying, mileage and long-distance telephone charges that were incurred on or after December 2, 2021 through **[CLAIMS DEADLINE]**.

Total amount for this category \$ \_\_\_\_\_

***If you are seeking reimbursement for fees, expenses, or charges, please attach a copy of a statement from the company that charged you, or a receipt for the amount you incurred.***

***If you are seeking reimbursement for credit reports, credit monitoring, or other identity theft insurance product purchased between December 2, 2021 through [CLAIMS DEADLINE], please attach a copy of a receipt or other proof of purchase for each credit report or product purchased. (Note: By claiming reimbursement in this category, you certify that you purchased the credit monitoring or identity theft insurance product primarily because of the Data Incident and not for any other purpose).***

Supporting documentation must be provided. You may mark out any transactions that are not relevant to your claim before sending in the documentation.

**b. Extraordinary Out-of-Pocket Expenses Resulting from the Data Incident:**

\_\_\_\_\_ I incurred unreimbursed charges as a result of the Data Incident.

Examples - unreimbursed costs, expenses, losses or charges incurred as a result of identity theft or identity fraud, falsified tax returns, or other possible misuse of your information; costs incurred on or after December 2, 2021 through [CLAIMS DEADLINE] associated with purchasing or extending additional credit monitoring or identity theft protection services and/or accessing or freezing/unfreezing credit reports with any credit reporting agency; other miscellaneous expenses incurred such as notary, fax, postage, copying, mileage and long-distance telephone charges that were incurred on or after December 2, 2021 through [CLAIMS DEADLINE].

Total amount for this category \$ \_\_\_\_\_

***If you are seeking reimbursement for fees, expenses, or charges, please attach a copy of a statement from the company that charged you, or a receipt for the amount you incurred.***

***If you are seeking reimbursement for credit reports, credit monitoring, or other identity theft insurance product purchased between December 2, 2021 through [CLAIMS DEADLINE], please attach a copy of a receipt or other proof of purchase for each credit report or product purchased. (Note: By claiming reimbursement in this category, you certify that you purchased the credit monitoring or identity theft insurance product primarily because of the Data Incident and not for any other purpose).***

***Additionally, you must provide documentation demonstrating that you made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of the benefits made available any credit card, credit monitoring/identity protection or financial service(s).***

Supporting documentation must be provided. You may mark out any transactions that are not relevant to your claim before sending in the documentation.

**c. Between one and three hours of documented time spent dealing with the Data Incident:**

\_\_\_\_\_ I certify that I spent time dealing with the effects of the Data Incident.

Examples – You spent valuable time calling customer service lines, writing letters or emails, or on the Internet in order to get fraudulent charges reversed or in updating automatic payment programs because your card number changed. You spent valuable time signing up for credit monitoring or identity theft protection services or freezing/unfreezing credit reports with any credit reporting agency.

I certify that the following amount of time in response to the Data incident:

\_\_\_ 1 hour                      \_\_\_ 2 hours                      \_\_\_ 3 hours

Please describe the time spent dealing with the effects of the Data Incident:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

d. Claim up to 1-year of credit monitoring and identity protection services:

\_\_\_\_\_ I would like to claim 1-year of credit monitoring and identity protection services.

The Settlement requires Mason Tenders to provide up to one-year of credit monitoring and identity protection services to any class member who timely claims it.

3. SIGN AND DATE YOUR CLAIM FORM.

I declare under penalty of perjury under the laws of the United States and the laws of my State of residence that the information supplied in this claim form by the undersigned is true and correct to the best of my recollection, and that this form was executed on the date set forth below.

I understand that I may be asked to provide supplemental information by the Settlement Administrator or Claims Referee before my claim will be considered complete and valid.

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Signature                                      Print Name                                      Date

4. MAIL YOUR CLAIM FORM, OR SUBMIT YOUR CLAIM FORM ONLINE.

This claim form must be:

Postmarked by **[CLAIMS DEADLINE]** and mailed to: **[ADDRESS]**; OR

Emailed by midnight on **[CLAIMS DEADLINE]** to **[EMAIL ADDRESS]**; OR

Submitted through the Settlement Website by midnight on **[CLAIMS DEADLINE]** at: **[WEBSITE]**.

**EXHIBIT B**

SUPREME COURT FOR THE STATE OF NEW YORK, COUNTY OF NEW YORK

Vandermark, et al. v. Mason Tenders' District Council Welfare Fund, et al., Index No. 153365/2023

If Mason Tenders' District Council Welfare Fund, Mason Tenders' District Council Pension Fund and Mason Tenders' District Council Annuity Fund notified you of a Data Incident in or around July 2022, you may be eligible for benefits from a class action settlement.

A court authorized this Notice. This is not a solicitation from a lawyer.

Si necesita ayuda en español, comuníquese con el administrador al [insertar número].

- A Settlement has been reached in a class action lawsuit against Mason Tenders' District Council Welfare Fund, Mason Tenders' District Council Pension Fund, and Mason Tenders' District Council Annuity Fund (collectively "Mason Tenders" or "Defendants") concerning a data security incident that occurred in or around December 2021 through April 2022 (the "Data Incident").
The lawsuit is called Vandermark, et al. v. Mason Tenders' District Council Welfare Fund, et al., Index No. 153365/2023 (the "Action"). The lawsuit alleges that the Data Incident potentially exposed certain personal identifying information ("PII") and protected health information ("PHI") of Plaintiff and the members of the putative class.
The Settlement Class includes all individuals who were sent notification by Mason Tenders that their personal information was or may have been compromised in the Data Incident. It excludes: (i) all Class Members who timely and validly request exclusion from the Settlement Class; (ii) the Judge assigned to evaluate the fairness of this settlement; and (iii) any other person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads nolo contendere to any such charge.
Your legal rights are affected regardless of whether you act. Please read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

Table with 2 columns: Option Name and Description. Options include: SUBMIT A CLAIM FORM, EXCLUDE YOURSELF FROM THE SETTLEMENT, and OBJECT TO THE SETTLEMENT.

**ATTEND THE FINAL APPROVAL HEARING**

You or your attorney may attend and speak about your objection at the Final Approval Hearing. The Final Approval Hearing will be held on [REDACTED], 202\_.

**DO NOTHING**

You will not get any benefits from the Settlement and you will give up certain legal rights. You will remain in the Settlement Class and be subject to the Release.

- These rights and options, and the deadlines to exercise them, are explained in this Notice. For complete details, please see the Settlement Agreement, whose terms control, available at [WEBSITE].
- The Court in charge of this case still has to decide whether to approve the Settlement. No Settlement benefits or payments will be provided unless the Court approves the Settlement and it becomes final.

**BASIC INFORMATION**

**1. What is this Notice and why should I read it?**

The Court authorized this Notice to inform you about a proposed Settlement with Mason Tenders. You have legal rights and options that you may act on before the Court decides whether to approve the proposed Settlement. This Notice explains the lawsuit, the Settlement, and your legal rights.

The case is called *Vandermark, et al. v. Mason Tenders' District Council Welfare Fund, et al.*, Supreme Court of the State of New York, County of New York, Index No. 153365/2023.

**2. What is a class action lawsuit?**

A class action is a lawsuit in which one or more plaintiffs—in this case, Plaintiff and Settlement Class Representative Kevin Vandermark—sue on behalf of a group of people who have similar claims. Together, this group is called a “Class” and consists of “Class Members.” In a class action, the court resolves the issues for all class members, except those who exclude themselves from the class.

**THE CLAIMS IN THE LAWSUIT AND THE SETTLEMENT**

**3. What is this lawsuit about?**

Plaintiff claims that Defendants failed to implement and maintain reasonable security measures to adequately protect the PII in its possession and to prevent the Data Incident from occurring.

Defendants deny that they are liable for the claims made in the lawsuit and deny any allegations of wrongdoing. More information about the complaint in the lawsuit can be found on the Settlement Website at [WEBSITE].

#### 4. Why is there a Settlement?

The Court has not decided whether the Plaintiff or Defendants should win this case. Instead, both sides agreed to this Settlement. That way, they can avoid the uncertainty, risks, and expense of ongoing litigation, and Settlement Class Members will be eligible to get compensation now rather than years later—if ever. The Settlement Class Representative and attorneys for the Settlement Class Members, called Class Counsel, agree the Settlement is in the best interests of the Settlement Class Members. The Settlement is not an admission of wrongdoing by the Defendants.

#### WHO'S INCLUDED IN THE SETTLEMENT?

#### 5. How do I know if I am in the Settlement Class?

You are part of the Settlement as a Settlement Class Member if you received a notification letter from Mason Tenders stating that your PII and/or PHI was or may have been compromised in the Data Incident.

Settlement Class Members will have been mailed notice of their eligibility. If you are still not sure whether you are included, you can contact the Settlement Administrator by calling [PHONE NUMBER], by emailing [EMAIL], or by visiting [WEBSITE].

This Settlement Class does not include: (i) all Class Members who timely and validly request exclusion from the Settlement Class; (ii) the Judge assigned to evaluate the fairness of this settlement; and (iii) any other person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

#### THE SETTLEMENT BENEFITS

#### 6. What does the Settlement provide?

The Settlement will provide payments and credit monitoring services to people who submit valid claims.

**Reimbursement for Lost Time and Ordinary Out-of-Pocket Expenses:** If you spent time responding to the Data Incident, you may file a claim to receive compensation for Lost Time. If you incurred financial losses that are fairly traceable to the Data Incident, you may file a claim to receive reimbursement for Ordinary Out-of-Pocket Expenses.

- A. **Lost Time:** A claim for reimbursement may also include a claim for up to 3 hours of time spent in response to the Data Incident. Lost Time will be compensated at \$20.00/hour and requires a brief description of the action taken in response to the Data Incident and the time associated with those actions.
- B. **Ordinary Out-of-Pocket Expenses or Losses:** A claim for reimbursement may include, but are not limited to the following provided the expenses were incurred primarily as a result of the Data Incident: (1) unreimbursed costs, expenses, losses or charges incurred as a result of identity theft or identity fraud, falsified tax returns, or



other possible misuse of your personal information; (2) costs incurred on or after December 2, 2021 associated with purchasing or extending additional credit monitoring or identity theft protection services and/or accessing or freezing/unfreezing credit reports with any credit reporting agency; and (3) other miscellaneous expenses incurred relating to any Ordinary Out-of-Pocket Loss such as notary, fax, postage, copying, mileage and long-distance telephone charges. Claims for ordinary out-of-pocket expenses or losses are subject to a \$450.00 cap, which is aggregated with a claim for lost time.

**Reimbursement of Extraordinary Out-of-Pocket Expenses:** In addition to a claim for ordinary out-of-pocket expenses, you may file a claim for reimbursement of extraordinary out-of-pocket expenses. Expenses qualify for reimbursement under this category 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 on or after December 2, 2021; (4) the loss is not already covered by one or more of the normal reimbursement categories provided under this Settlement Agreement; and (5) the Settlement Class Member has made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of the benefits made available to the Settlement Class Member under any applicable credit card, credit monitoring/identity protection or financial service(s). Claims for extraordinary out-of-pocket expense are subject to a \$2,500.00 cap.

**Credit Monitoring:** All Settlement Class Members are eligible to file a claim to receive one (1) year of identity theft protection and credit monitoring, which includes identity theft monitoring, alerts, three bureau credit monitoring, fraud resolution, and up to \$1 million identity theft insurance coverage for certain costs, identity restoration, and unauthorized electronic fund transfers.

**Confirmatory Discovery:** Defendants have also agreed to provide documents and information to Class Counsel showing that they have taken data security measures to remedy the issues that led to the Data Security Incident and has implemented other business practices to help ensure information security.

For complete details, please see the Settlement Agreement, whose terms control, available at [\[WEBSITE\]](#).

**HOW TO GET BENEFITS**

**7. How do I make a Claim?**

To qualify for a Settlement benefit, you must complete and submit a Claim Form. Settlement Class Members who want to submit a Claim must fill out and submit a Claim Form online at [\[WEBSITE\]](#) or by mail to the Settlement Administrator. Claim Forms are available through the Settlement website at [\[WEBSITE\]](#) or by calling [\[PHONE NUMBER\]](#). **All Claim Forms must be submitted no later than [\[CLAIM DEADLINE\]](#).**

## 8. When will I get my payment?

The hearing to consider the fairness of the Settlement is scheduled for [REDACTED], 202\_. If the Court approves the Settlement, eligible Settlement Class Members whose claims were approved by the Settlement Administrator will be sent payment after all appeals and other reviews, if any, are completed. Please be patient.

## THE LAWYERS REPRESENTING YOU

## 9. Do I have a lawyer in this case?

Yes, the Court has appointed Milberg Coleman Bryson Phillips Grossman, PLLC as “Class Counsel” to represent you and all class members. You will not be charged for these lawyers. You can ask your own lawyer to appear in Court for you at your own expense if you want someone other than Class Counsel to represent you.

## 10. How will the lawyers be paid?

To date, Class Counsel has not received any payment for their services in conducting this litigation on behalf of the Class and have not been paid for their out-of-pocket expenses. Class Counsel will ask the Court for an award of attorneys’ fees and costs and expenses which were incurred in connection with the Action, not to exceed \$175,000.00. Class Counsel will also request a service award of \$1,500.00 for Plaintiff.

The Court will determine the proper amount of any attorneys’ fees, costs, and expenses to award Class Counsel and the proper amount of any service awards to Plaintiffs.

Class Counsel will file their request for attorneys’ fees, costs, and expenses and Service Awards for Plaintiffs with the Court, which will also be posted on the Settlement Website, at [WEBSITE].

Any attorneys’ fees, costs and expenses and service award approved by the Court will be paid separately from the benefits available to Settlement Class Members whose claims were approved.

## YOUR RIGHTS AND OPTIONS

## 11. What claims do I give up by participating in this Settlement?

If you do not exclude yourself from the Settlement, you will not be able to sue Mason Tenders about the Data Incident, and you will be bound by all decisions made by the Court in this case, the Settlement, and its included Release. This is true regardless of whether you submit a Claim Form. However, you may exclude yourself from the Settlement (*see* Question 14). If you exclude yourself from the Settlement, you will not be bound by any of the Released Claims, which are described in the Settlement Agreement at [WEBSITE].

## 12. What happens if I do nothing at all?

If you do nothing, you will receive no benefits under the Settlement. You will be in the Settlement Class, and if the Court approves the Settlement, you will also be bound by all orders and judgments of the Court, the Settlement, and its included Release. You will be deemed to have participated in

the Settlement and will be subject to the provisions of Section 11 above. Unless you exclude yourself, you won't be able to file a lawsuit or be part of any other lawsuit against Mason Tenders for the claims or legal issues released in this Settlement.

### **13. What happens if I ask to be excluded?**

If you exclude yourself from the Settlement, you will receive no benefits under the Settlement. However, you will not be in the Settlement Class and will not be legally bound by the Court's judgments related to the Settlement Class and Mason Tenders in this class action.

### **14. How do I ask to be excluded?**

You can ask to be excluded from the Settlement. To do so, you must send a letter to the Settlement Administrator stating that you want to be excluded from the Settlement in *Vandermark, et al. v. Mason Tenders' District Council Welfare Fund, et al.*, Index No. 153365/2023. Your letter must include: (1) the name of the proceeding; (2) your full name and current address; (3) a statement that you wish to be excluded from the Settlement Class; and (4) your signature. You must mail your exclusion request, postmarked no later than [OPT OUT DEADLINE], to the following address:

Mason Tenders' District Council Data Incident Settlement Administrator  
[InsertAddress]

You cannot exclude yourself by phone or email. Any individual who wants to be excluded from the Settlement must submit his or her own exclusion request. No group opt-outs shall be permitted.

### **15. If I don't exclude myself, can I sue Mason Tenders for the same thing later?**

No. Unless you exclude yourself, you give up any right to sue Mason Tenders for the claims or legal issues released in this Settlement, even if you do nothing.

### **16. If I exclude myself, can I get anything from this Settlement?**

No. If you exclude yourself, do not submit a Claim Form to ask for any benefits.

### **17. How do I object to the Settlement?**

If you do not exclude yourself from the Settlement Class, you can object to the Settlement if you do not agree with any part of it. You can give reasons why you think the Court should deny approval by filing an objection. To object, you must mail a written objection to the Settlement Administrator stating that you object to the Settlement in *Vandermark, et al. v. Mason Tenders' District Council Welfare Fund, et al.*, Index No. 153365/2023. Your objection must be filed no later than [OBJECTION DEADLINE].

The objection must be in writing and be personally signed by you. The objection must include: (i) the name of the proceedings; (ii) your full name, current mailing address, and telephone number; (iii) a statement that states with specificity the grounds for the objection, as well as any documents supporting the objection; (iv) a statement as to whether the objection applies only to the objector,

to a specific subset of the class, or to the entire class; (v) the identity of any attorneys representing the objector; (vi) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear and/or wishes to be heard at the Final Approval Hearing; (vii) a list of all other matters in which the objecting Settlement Class Member and/or his/her attorney has lodged an objection to a class action settlement; and (viii) the signature of the Settlement Class Member or the Settlement Class Member's attorney.

You must mail the objection to the Settlement Administrator at the address listed below, postmarked no later than **[OBJECTION DEADLINE]**:

**Mason Tenders' District Council Data Incident Settlement Administrator**  
**[InsertAddress]**

## **18. What's the difference between objecting and excluding myself from the Settlement?**

Objecting simply means telling the Court that you don't like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself from the Settlement Class is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

### **THE COURT'S FAIRNESS HEARING**

## **19. When and where will the Court hold a hearing on the fairness of the Settlement?**

The Court will hold the Final Approval Hearing on **[InsertHearingDate]** at the Courthouse located at **[Insert Address or Videoconference Information]**. The purpose of the hearing is for the Court to determine whether the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class. At the hearing, the Court will hear any objections and arguments concerning the fairness of the proposed Settlement, including those related to the amount requested by Class Counsel for attorneys' fees, costs, and expenses and the service awards to Plaintiffs.

The location, date and time of the Final Approval Hearing are subject to change by Court order. Any changes will be posted at the Settlement Website, **[WEBSITE]**, or through the Court's publicly available docket. You should check the Settlement Website to confirm the date and time have not been changed.

## **20. Do I have to come to the hearing?**

No. Class Counsel will answer any questions the Court may have. But you are welcome to attend the hearing at your own expense. If you send an objection, you don't have to come to Court to talk about it. If your written objection was filed or mailed on time and meets the other criteria described in the Settlement, the Court will consider it. However, you may appear on your behalf or pay a lawyer to attend on your behalf to assert your objection if you would like.

**21. May I speak at the hearing?**

Yes. If you do not exclude yourself from the Settlement Class, you (or your attorney) may appear and speak at the Final Approval Hearing concerning any part of the proposed Settlement.

**GETTING MORE INFORMATION**

**22. Where can I get additional information?**

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement, which is available at [WEBSITE] or by writing to [InsertAddress].

**23. How do I get more information?**

Go to [WEBSITE], call [InsertToll-FreeNumber], email [InsertEmail] or write to [INSERTADDRESS]

**PLEASE DO NOT CALL THE COURT, THE CLERK OF THE COURT, THE JUDGE, OR THE DEFENDANT WITH QUESTIONS ABOUT THE SETTLEMENT OR CLAIMS PROCESS.**

**EXHIBIT C**

**IF YOU WERE NOTIFIED BY MASON TENDERS' DISTRICT COUNCIL WELFARE, PENSION AND ANNUITY FUNDS REGARDING A DATA SECURITY INCIDENT IN OR AROUND JULY 2022, YOU MAY BE ELIGIBLE FOR PAYMENT AND CREDIT MONITORING SERVICES FROM A CLASS ACTION SETTLEMENT.**

*Si desea recibir esta notificación en español, llámenos o visite nuestra página web.*

A settlement has been reached in a class action lawsuit against Mason Tenders' District Council Welfare Fund, Mason Tenders' District Council Pension Fund and Mason Tenders' District Council Annuity Fund (collectively "Mason Tenders" or "Defendants") relating to cyberattack against Mason Tenders' computer systems that occurred in or around December 2021 through April 2022 (the "Data Incident"). The computer systems possibly affected by the Data Incident potentially contained personal information and/or protected health information of certain individuals. The Plaintiff claims that Mason Tenders was responsible for the Data Incident. Mason Tenders denies all of the claims.

**WHO IS INCLUDED?** Defendant's records show you received a notification from Mason Tenders regarding the Data Incident, and, therefore, you are included in this Settlement as a "Settlement Class Member" unless you opt out of the Settlement.

**SETTLEMENT BENEFITS.** The Settlement provides payments to people who submit valid claims for out-of-pocket expenses and lost time relating to the Data Incident, and for credit monitoring and identity protection services. Defendants also represents that they have adopted and implemented additional security measures following the Data Incident to further strengthen the security of its systems. **The only way to receive a benefit is to file a claim. To get a Claim Form, visit the website or call 1-XXX-XXX-XXXX. The claim deadline is [CLAIM DEADLINE].**

**OTHER OPTIONS.** If you do nothing, you will remain in the class, you will not be eligible for benefits, and you will be bound by the decisions of the Court and give up your rights to sue Defendants for the claims resolved by this Settlement. If you would like to opt out/exclude yourself from the Settlement Class, you must mail your exclusion request, postmarked no later than [OPT OUT DEADLINE] to the Settlement Administrator. If you do not agree with any part of the Settlement, you must mail your objection, postmarked no later than [OBJECTION DEADLINE] to the Settlement Administrator.

**FOR MORE INFORMATION.** Please visit the website or call 1-XXX-XXX-XXXX for a copy of the more detailed notice. On **Month Day, 2023**, the Court will hold a Fairness Hearing to determine whether to approve the Settlement, Class Counsel's request for attorneys' fees and litigation expenses of up to \$175,000, and an incentive awards of \$1,500 for the Representative Plaintiff. The Motion for attorneys' fees and expenses and service awards will be posted on the website after it is filed. You or your own lawyer, if you have one, may ask to appear and speak at the hearing at your own cost, but you do not have to. This is only a summary. For more information, call or visit the website below.

[WEBSITE]

1-XXX-XXX-XXXX

**EXHIBIT D**



**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

KEVIN VANDERMARK, individually and on behalf of all others similarly situated,

Plaintiff,

v.

MASON TENDERS’ DISTRICT COUNCIL WELFARE FUND, MASON TENDERS’ DISTRICT COUNCIL PENSION FUND, MASON TENDERS’ DISTRICT COUNCIL ANNUITY FUND, and MASON TENDERS’ DISTRICT COUNCIL OF GREATER NEW YORK,

Defendant.

Index No. 153365/2023

**[PROPOSED] PRELIMINARY  
APPROVAL ORDER**

**WHEREAS**, a putative class action is pending in this Court entitled *Kevin Vandermark, et al. v. Mason Tenders’ District Council Welfare Fund, et al.*, Index No. 153365/2023 (the “Action”);

**WHEREAS**, Plaintiff KEVIN VANDERMARK, individually and on behalf of all others similarly situated (“Plaintiff”) and Defendants MASON TENDERS’ DISTRICT COUNCIL WELFARE FUND, MASON TENDERS’ DISTRICT COUNCIL PENSION FUND, and MASON TENDERS’ DISTRICT COUNCIL ANNUITY FUND (collectively “Defendants”) have entered into a Settlement Agreement (the “Settlement Agreement”) that settles the above-captioned litigation and provides for a complete dismissal with prejudice of the claims asserted against Defendants in the Action on the terms and conditions set forth in the Settlement Agreement, subject to the approval of the Court;

**WHEREAS**, Plaintiff has made an application, pursuant to Article 9 of the Civil Practice Law and Rules, for an order preliminarily approving the Settlement in accordance with the

Settlement Agreement, certifying the Settlement Class for purposes of the Settlement only, appointing Plaintiff as Settlement Class Representative, appointing Class Counsel as counsel for the Settlement Class, appointing Postlethwaite & Netterville as Settlement Administrator, and allowing notice to Settlement Class Members as more fully described herein;

**WHEREAS**, the Court has read and considered: (a) Plaintiff’s motion for preliminary approval of the Settlement, and the papers filed and arguments made in connection therewith; and (b) the Settlement Agreement and exhibits attached thereto; and

**WHEREAS**, unless otherwise defined herein, the capitalized terms herein shall have the same meaning as they have in the Settlement Agreement.

**NOW, THEREFORE, IT IS HEREBY ORDERED:**

1. **Class Certification for Settlement Purposes Only**. For settlement purposes only and pursuant to CPLR §§ 901(a), 903, and 907, the Court certifies, solely for purposes of effectuating the proposed Settlement, a Settlement Class in this matter defined as follows:

All persons who were sent notification by MTDC that their personal information was or may have been compromised in the Data Incident.

The Settlement Class includes approximately 40,349 people. The Settlement Class specifically excludes: (i) all Class Members who timely and validly request exclusion from the Settlement Class; (ii) the Judge assigned to evaluate the fairness of this settlement; and (iii) any other person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

2. **Class Findings**: The Court provisionally finds, for settlement purposes only, that the requirements of CPLR § 901(a) have been met, including: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members would be impracticable; (b) there are issues

of law and fact common to the Settlement Class; (c) the claims of the Settlement Class Representatives are typical of and arise from the same operative facts and seek similar relief as the claims of the Settlement Class Members; (d) the Settlement Class Representatives and Settlement Class Counsel will fairly and adequately protect the interests of the Settlement Class as the Settlement Class Representatives has no interest antagonistic to or in conflict with the Settlement Class and has retained experienced and competent counsel to prosecute this matter on behalf of the Settlement Class; (e) questions of law or fact common to Settlement Class Members predominate over any questions affecting only individual members; and (f) a class action and class settlement is superior to other methods available for a fair and efficient resolution of this controversy.

3. **Settlement Class Representative and Settlement Class Counsel:** KEVIN VANDERMARK is hereby provisionally designated and appointed as the Settlement Class Representative. The Court provisionally finds that the Settlement Class Representative is similarly situated to absent Class Members and therefore typical of the Class and that he will be an adequate Settlement Class Representative

The Court finds that Victoria Jennings Maniatis and Gary M. Klinger a of Milberg Coleman Bryson Phillips Grossman, PLLC are experienced and adequate counsel and are hereby provisionally designated as Settlement Class Counsel.

4. **Preliminary Settlement Approval.** The Court hereby preliminarily approves the Settlement, as embodied in the Settlement Agreement, as being fair, reasonable and adequate to the Settlement Class, subject to further consideration at the Final Approval Hearing to be conducted as described below.

5. **Final Approval Hearing.** A Final Approval Hearing shall be held on \_\_\_\_\_ at \_\_\_\_\_: \_\_.m. on \_\_\_\_\_, 2023, in the Supreme Court of the State of New York, County of New York, at the Courthouse located at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ [by videoconference] for the following purposes: (a) to determine whether the proposed Settlement on the terms and conditions provided for in the Settlement Agreement is fair, reasonable and adequate to the Settlement Class; (b) to determine whether a proposed Judgment substantially in the form annexed to the Settlement Agreement as Exhibit 5 should be entered dismissing the Action with prejudice against Defendants; (c) to determine whether the motion of Settlement Class Counsel for a Fee Award and Costs should be approved; (d) to determine whether the motion of the Settlement Class Representatives for Service Award Payment(s) should be approved; and (e) to consider any other matters that may be properly brought before the Court in connection with the Settlement. Notice of the Settlement and the Final Approval Hearing shall be given to the Settlement Class Members as set forth in Paragraph 7 of this Order.

6. The Court may adjourn the Final Approval Hearing without further notice to the Settlement Class Members, and may approve the proposed Settlement with such modifications as the Parties may agree to, if appropriate, without further notice to the Settlement Class Members.

7. **Retention of Claims Administrator and Manner of Giving Notice.** Class Counsel is hereby authorized to retain Postlethwaite & Netterville (the “Settlement Administrator”) to supervise and administer the notice procedure in connection with the proposed Settlement as well as the processing of Claims as set forth more fully in the Settlement Agreement.

8. **Approval of Form and Content of Notice.** The Court (a) approves, as to form and content, the Notice, the Claim Form, and the Summary Notice, attached to the Settlement Agreement as Exhibits A, B and C, and (b) finds that the mailing and distribution of the Notice as

set forth in the Settlement Agreement (i) is the best notice practicable under the circumstances; (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, of the effect of the proposed Settlement (including the releases to be provided thereunder), of Class Counsel's request for Fee Award and Costs, of Settlement Class Representatives' request(s) for Service Award Payment(s), of their right to object to the Settlement, Class Counsel's request for Fee Award and Costs, and/or Settlement Class Representatives' request(s) for Service Award Payment(s), of their right to exclude themselves from the Settlement Class, and of their right to appear at the Final Approval Hearing; (iii) constitutes due, adequate and sufficient notice to all persons entitled to receive notice of the proposed Settlement; and (iv) satisfies the requirements of CPLR §§ 904 and 908, the United States Constitution (including the Due Process Clause), and all other applicable law and rules. The date and time of the Final Approval Hearing shall be included in the Notice before they are mailed and distributed.

9. **Participation in the Settlement.** Settlement Class Members who qualify for and wish to submit a Claim Form shall do so in accordance with the requirements and procedures specified in the Notice and the Claim Form, and must do so within sixty (60) days after Notice is sent to the Settlement Class Members. If Final Order and Judgment is entered, all Settlement Class Members who qualify for any benefit under the Settlement but fail to submit a claim in accordance with the requirements and procedures specified in the Notice and the Claim Form shall be forever barred from receiving any such benefit, but will in all other respects be subject to and bound by the provisions in the Settlement Agreement, the Release included in that Settlement Agreement, and the Final Order and Judgment.

10. **Claims Process and Distribution and Allocation Plan.** Settlement Class Representative and Defendants have created a process for assessing and determining the validity and value of claims and a payment methodology to Settlement Class Members who submit a timely, valid Claim Form. The Court preliminarily approves the claims process described in the Settlement Agreement and directs that the Settlement Administrator effectuate the distribution of Settlement consideration according to the terms of the Settlement Agreement, should the Settlement be finally approved.

11. **Exclusion from Class.** Any Settlement Class Member who wishes to be excluded from the Settlement Class must mail a written notification of the intent to exclude himself or herself from the Settlement Class to the Settlement Administrator at the address provided in the Notice, postmarked no later than **60 Days from the date of Notice** (the “Opt-Out Period”). The written notification must include the name of the proceeding, the individual’s full name, current address, personal signature, and the words “Request for Exclusion” or a comparable statement that the individual does not wish to participate in the Settlement at the top of the communication.

Any Settlement Class Member who does not timely and validly exclude herself or himself from the Settlement shall be bound by the terms of the Settlement Agreement. If Final Order and Judgment is entered, any Settlement Class Member who has not submitted a timely, valid written notice of exclusion from the Settlement Class shall be bound by all proceedings, orders, and judgments in this matter, including but not limited to the Release set forth in the Final Order and Judgment, including Settlement Class Members who have previously initiated or who subsequently initiate any litigation against any or all of the Released Persons relating to the claims and transactions released in the Settlement Agreement. All Settlement Class Members who submit

valid and timely notices of exclusion from the Settlement Class shall not be entitled to receive any benefits of the Settlement.

12. **Objections and Appearances.** No Settlement Class Member shall be heard, and no papers, briefs, pleadings, or other documents submitted by any Settlement Class Member shall be received and considered by the Court, unless the objection is mailed first-class postage prepaid to the Settlement Administrator at the addresses listed in the Notice, and postmarked by no later than the Objection Date, as specified in the Notice. For an objection to be considered by the Court, the objection must also include all of the information set forth in Paragraph 45 of the Settlement Agreement, which is as follows: (i) the name of the proceedings; (ii) the Settlement Class Member's full name, current mailing address, and telephone number; (iii) a statement that states with specificity the grounds for the objection, as well as any documents supporting the objection; (iv) a statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (v) the identity of any attorneys representing the objector; (vi) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear and wishes to be heard at the Final Approval Hearing; (vii) a list of all other matters in which the objecting Settlement Class Member and/or his/her attorney has lodged an objection to a class action settlement; and (viii) the signature of the Settlement Class Member or the Settlement Class Member's attorney.

13. Any Settlement Class Member who fails to comply with the provisions in Paragraph 12 may waive and forfeit any and all rights he or she may have to object, and shall be bound by all the terms of the Settlement Agreement, this Order, and by all proceedings, orders, and judgments in this matter, including, but not limited to, the release in the Settlement Agreement if Final Order and Judgment is entered. If Final Order and Judgment is entered, any Settlement

Class Member who fails to object in the manner prescribed herein shall be deemed to have waived his or her objections and shall be forever barred from making any such objections in this action or in any other proceeding or from challenging or opposing, or seeking to reverse, vacate, or modify any approval of the Settlement Agreement, the Service Award Request, or the Fee Request.

14. **Termination of Settlement**. This Order shall become null and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing as of the date of the execution of the Settlement Agreement if the Settlement is not finally approved by the Court or is terminated in accordance with the Settlement Agreement. In such event, the Settlement and Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to for any purpose whatsoever.

15. **Use of Order**. This Order shall be of no force or effect if Final Order and Judgment is not entered or there is no Effective Date and shall not be construed or used as an admission, concession, or declaration by or against Defendants of any fault, wrongdoing, breach, liability, or the certifiability of any class. Nor shall this Order be construed or used as an admission, concession, or declaration by or against the Settlement Class Representative or any other Settlement Class Member that his or her claim lacks merit or that the relief requested is inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claim he, she, or it may have in this litigation or in any other lawsuit.

16. **Stay of Proceedings and Temporary Injunction**. Until otherwise ordered by the Court, the Court stays all proceedings in the Action other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement Agreement. Pending final determination of whether the Settlement should be approved, the Court bars and enjoins Plaintiff, and all other



members of the Settlement Class, from commencing or prosecuting any and all of the Released Claims against the Released Entities.

17. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

18. **Summary of Deadlines.** The preliminarily approved Settlement shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the Settlement Agreement and this Order include but are not limited to:

- Notice Completion Deadline:** 30 Days after Preliminary Approval
- Motion for Final Approval:** 30 Days before Final Approval Hearing
- Motion for Service Awards, Attorneys' Fees and Costs:** 14-Days prior to the Objection Deadline and Opt-Out Deadline
- Opt-Out Deadline:** 60 Days after Notice is sent to the Settlement Class
- Objection Deadline:** 60 Days after Notice is sent to the Settlement Class
- Replies in Support of Final Approval, Service Awards and Fee Requests:** 14 Days before Final Approval Hearing
- Claim Deadline:** 90 Days after Notice is sent to the Settlement Class
- Final Approval Hearing:** at least 110 Days after Preliminary Approval

IT IS SO ORDERED this \_\_\_ day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
Hon. \_\_\_\_\_, J.S.C.

**EXHIBIT E**

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

KEVIN VANDERMARK, individually and on behalf of all others similarly situated,

Plaintiff,

v.

MASON TENDERS’ DISTRICT COUNCIL WELFARE FUND, MASON TENDERS’ DISTRICT COUNCIL PENSION FUND, MASON TENDERS’ DISTRICT COUNCIL ANNUITY FUND, and MASON TENDERS’ DISTRICT COUNCIL OF GREATER NEW YORK,

Defendant.

Index No. 153365/2023

**[PROPOSED] FINAL APPROVAL  
ORDER AND JUDGMENT**

**WHEREAS**, a putative class action is pending in this Court entitled *Kevin Vandermark, et al. v. Mason Tenders’ District Council Welfare Fund, et al.*, Index No. 153365/2023 (the “Action”);

**WHEREAS**, Plaintiff KEVIN VANDERMARK, individually and on behalf of all others similarly situated (“Plaintiff”) and Defendants MASON TENDERS’ DISTRICT COUNCIL WELFARE FUND, MASON TENDERS’ DISTRICT COUNCIL PENSION FUND, and MASON TENDERS’ DISTRICT COUNCIL ANNUITY FUND (collectively “Defendants”) have entered into a Settlement Agreement (the “Settlement Agreement”) that settles the Action and provides for a complete dismissal with prejudice of the claims asserted against Defendants in the Action on the terms and conditions set forth in the Settlement Agreement, subject to the approval of the Court;

**WHEREAS**, unless otherwise defined in this Judgment, the capitalized terms herein shall have the same meaning as they have in the Settlement Agreement;

WHEREAS, by Order dated \_\_\_\_\_, 2023 (“Preliminary Approval Order”), this Court: (a) preliminarily approved the Settlement; (b) certified the Settlement Class solely for purposes of effectuating the Settlement; (c) ordered that notice of the proposed settlement be provided to potential Settlement Class Members; (d) provided Settlement Class Members with the opportunity either to exclude themselves from the Settlement Class or to object to the proposed Settlement; and (e) scheduled a hearing regarding final approval of the Settlement;

WHEREAS, due and adequate notice has been given to the Settlement Class;

WHEREAS, [XX] Class Members submitted objections or Opt-Out Statements;

WHEREAS, the Court conducted a hearing on \_\_\_\_\_, 2023 (the “Final Approval Hearing”) to consider, among other things, (a) the Objection(s) to the Settlement; (b) whether the terms and conditions of the Settlement were fair, reasonable and adequate to the Settlement Class, and should therefore be approved; (c) whether Class Counsel’s motion for Fee Award and Costs should be granted; (d) whether Settlement Class Representative’s motion for Service Award Payment should be granted; and (e) whether a judgment should be entered dismissing the Action with prejudice as against Defendants; and

WHEREFORE, the Court having reviewed and considered the Settlement Agreement, all papers filed and proceedings had herein connection with the Settlement, all oral and written comments received regarding the Settlement, and the record in the Action, and good cause appearing therefor;

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

- 1. **Jurisdiction:** This Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over all of the Parties and each of the Settlement Class Members.

2. **Incorporation of Settlement Documents:** This Judgment incorporates and makes a part hereof: (a) the Settlement Agreement filed with the Court on \_\_\_\_\_, 2023; (b) the Notice documents filed with the Court on \_\_\_\_\_, 2023; and (c) the Preliminary Approval Order, dated \_\_\_\_\_, 2023.

3. **Class Certification for Settlement Purposes:** The Court hereby affirms its determinations in the Preliminary Approval Order certifying, for the purposes of the Settlement only, the Action as a class action pursuant to CPLR §§ 901(a), 903, 905 and 907 on behalf of the Settlement Class consisting of all individuals who were sent notification by Defendants that their personal information was or may have been compromised in the Data Incident. Excluded from the Settlement Class are: (i) all Class Members who timely and validly request exclusion from the Settlement Class; (ii) the Judge assigned to evaluate the fairness of this settlement; and (iii) any other person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

4. The requirements of CPLR § 901(a) have been met for settlement purposes, in that: (a) the Settlement Class is so numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to the Settlement Class which predominate over any questions affecting only individual members; (c) the claims of the Settlement Class Representative are typical of the claims of the Settlement Class; (d) the Settlement Class Representative and Class Counsel will fairly and adequately protect the interests of the Settlement Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

5. **Notice:** The Court finds that the dissemination of the Notice: (a) was implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of (i) the pendency of the Action, (ii) the effect of the proposed Settlement (including the releases to be provided thereunder), (iii) Class Counsel's motion for a Fee Award and Costs, (iv) Settlement Class Representative's motion for a Service Award Payment, (v) their right to object to any aspect of the Settlement, Class Counsel's motion for a Fee Award and Costs, and/or Settlement Class Representative's motion for a Service Award Payment, (vi) their right to exclude themselves from the Settlement Class, and (vii) their right to appear at the Final Approval Hearing; (d) constituted due, adequate and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (e) satisfied the requirements of CPLR §§ 904 and 908, the United States Constitution (including the Due Process Clause), and all other applicable law and rules.

6. **Objection:** [TO BE DETERMINED]

7. **Final Settlement Approval and Dismissal of Claims:** Pursuant to, and in accordance with, Article 9 of the Civil Practice Law and Rules, this Court hereby fully and finally approves the Settlement set forth in the Settlement Agreement in all respects (including, without limitation: the amount of the Settlement Fund; the Releases provided for in the Settlement Agreement; and the dismissal with prejudice of the claims asserted against Defendants in the Action), and finds that the Settlement is, in all respects, fair, reasonable and adequate to the Settlement Class. The Parties are directed to implement, perform and consummate the Settlement in accordance with the terms and provisions contained in the Settlement Agreement.

8. Upon the Effective Date, the Action shall be, and hereby is dismissed with prejudice in its entirety as to the Defendants, with each party to bear their own costs and attorneys' fees, except as provided in the Settlement Agreement, and all of the claims of the Settlement Class Members shall be, and hereby are, dismissed and released pursuant to the Settlement Agreement.

9. **Binding Effect**: The terms of the Settlement Agreement and this Judgment shall be forever binding on Defendants, Plaintiffs and all other Settlement Class Members (regardless of whether or not any individual Settlement Class Member submitted a Claim Form or seeks or obtains a distribution or benefits under the terms of the Settlement), as well as their respective successors and assigns.

10. **Releases**: The releases set forth in the Settlement Agreement are expressly incorporated herein in all respects. The releases are effective as of the Effective Date. Accordingly, this Court orders that, upon the Effective Date, and in consideration of the Settlement benefits described in the Settlement Agreement, each Releasing Party shall be deemed to have released, acquitted, and forever discharged Defendants and each of the Released Parties from any and all Released Claims.

11. Notwithstanding Paragraph 10 above, nothing in this Judgment shall bar any action by any of the Parties to enforce or effectuate the terms of the Settlement Agreement or this Judgment.

12. **No Admissions**: This Judgment and Order, and the Settlement Agreement, and all papers related thereto, are not, and shall not be construed to be, an admission by the Defendants of any liability, claim or wrongdoing in this Action or in any other proceeding.

13. Upon entry of this Order, Settlement Class members are hereby permanently barred and enjoined from instituting, commencing, or prosecuting, either directly or indirectly, any action

or proceeding asserting any of the Released Claims against any of the Released Persons in this or any other forum.

14. **Retention of Jurisdiction:** Without affecting the finality of this Judgment in any way, this Court finds continuing and exclusive jurisdiction over: (a) the Parties for purposes of the administration, interpretation, implementation and enforcement of the Settlement; and (b) the Settlement Class Members for all matters relating to the Action.

15. Class Counsel's motion for a Fee Award and Costs is hereby GRANTED and Class Counsel is hereby awarded a Fee Award and Cost in the amount of One Hundred Seventy-Five Thousand Dollars and Zero Cents (\$175,000.00) for their services in this action, which award the Court finds to be fair and reasonable pursuant to CPLR § 909, to be paid as set forth in the Settlement Agreement.

16. Settlement Class Representative's motion for a Service Award Payment is hereby GRANTED and Settlement Class Representative is awarded a Service Award Payment in the amount of One Thousand Five Hundred Dollars and Zero Cents (\$1,500.00), to be paid as set forth in the Settlement Agreement.

17. **Modification of the Agreement of Settlement:** Without further approval from the Court, Plaintiff and Defendants are hereby authorized to agree to and adopt such amendments or modifications of the Settlement Agreement or any exhibits attached thereto to effectuate the Settlement that: (a) are not materially inconsistent with this Judgment; and (b) do not materially limit the rights of Settlement Class Members in connection with the Settlement. Without further order of the Court, Plaintiffs and Defendants may agree to reasonable extensions of time to carry out any provisions of the Settlement.



18. **Termination of Settlement:** If the Settlement is terminated as provided in the Settlement Agreement or the Effective Date of the Settlement otherwise fails to occur, this Judgment shall be vacated, rendered null and void and be of no further force and effect, except as otherwise provided by the Settlement Agreement, and this Judgment shall be without prejudice to the rights of Plaintiff, the other Settlement Class Members and Defendants, and the Parties shall revert to their respective positions in the Action as of \_\_\_\_\_, 2023, as provided in the Settlement Agreement.

19. **Entry of Judgment:** There is no just reason for delay of entry of this Judgment as a final judgment in this Action. Accordingly, the Clerk of the Court is expressly directed to immediately enter this final Judgment in the Action.

**IT IS SO ORDERED** this \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
Hon. \_\_\_\_\_, J.S.C.