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16 TIMIOS, INC.

17 **UNITED STATES DISTRICT COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA**

19 MYRON SCHELLHORN, RODNEY  
20 ALLEN, TEDDA ALLEN, LAUREN  
21 WATERS, JEFF HARRINGTON, and  
22 DAVID THOMPSON, individually and  
23 on behalf of all others similarly situated,

24 Plaintiffs,

25 v.

26 TIMIOS, INC.,

27 Defendant.

Case No.: 2:21-cv-08661-VAP-JC

**CLASS ACTION SETTLEMENT  
AGREEMENT**

Complaint Filed: November 3, 2021

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1 This Settlement Agreement, dated as of March 31, 2022, is made and entered into by and  
2 among the following Settling Parties (as defined below): Myron Schellhorn, Rodney Allen, Tedda  
3 Allen, Lauren Waters, Jeff Harrington, and David Thompson (collectively, “Plaintiffs”),  
4 individually and on behalf of the Settlement Class (as defined below), by and through their counsel  
5 of record, and Timios, Inc. (“Timios” and, together with Plaintiffs, the “Parties”), by and through  
6 its counsel of record, Casie Collignon and Matthew D. Pearson of Baker & Hostetler LLP. The  
7 Settlement Agreement (as defined below) is subject to Court approval and is intended by the  
8 Settling Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (as  
9 defined below), upon and subject to the terms and conditions hereof.

10 **I. THE LITIGATION**

11 Plaintiffs allege that between July 19, 2021 and July 25, 2021, Timios was the target of a  
12 criminal cyberattack in which third-party criminals gained unauthorized access to Timios’ network  
13 and encrypted some of its systems (“Data Incident”). Plaintiffs further allege that, as a result of the  
14 Data Incident, the criminals gained access to Plaintiffs’ and “other consumers[’]” personal  
15 information, including without limitation, “unredacted names, Social Security numbers, driver’s  
16 license or state-issued identification numbers, passport numbers, tax identification numbers,  
17 military identification numbers, financial account numbers, payment card numbers, and/or date of  
18 birth” (collectively, “PII”).

19 After discovering the Data Incident, Timios notified approximately 74,755 individuals of  
20 the Data Incident. Timios offered these individuals one year of free credit monitoring.

21 Individuals, including Plaintiffs, received their notices in or around October 2021. On  
22 November 3, 2021, Plaintiffs Myron Schellhorn, Rodney Allen, and Tedda Allen filed a lawsuit  
23 asserting claims against Timios relating to the Data Incident. One day later, on November 4, 2021,  
24 Plaintiffs Lauren Waters, Jeff Harrington, and David Thompson filed a separate lawsuit asserting  
25 claims against Timios relating to the Data Incident. On March 1, 2022, Plaintiffs filed the operative  
26 amended class-action complaint in the United States District Court for the Central District of  
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1 California. The case is titled *Schellhorn, et al. v. Timios, Inc.*, Case No. 2:21-cv-08661-VAP-JC  
2 (C.D. Cal.) (the “Litigation”).

3 From the onset of the Litigation, and over the course of several months, the Parties engaged  
4 in settlement negotiations. As a result of these negotiation, the Parties reached a settlement, which  
5 is memorialized in this settlement agreement (“Settlement Agreement”).

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

10 **II. CLAIMS OF REPRESENTATIVE PLAINTIFFS AND BENEFITS OF SETTling**

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

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

22 Timios denies each and all of the claims and contentions alleged against it in the Litigation.  
23 Timios denies all charges of wrongdoing or liability as alleged, or which could be alleged, in the  
24 Litigation. Nonetheless, Timios has concluded that further conduct of the Litigation would be  
25 protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in  
26 the manner and upon the terms and conditions set forth in this Settlement Agreement. Timios has  
27 considered the uncertainty and risks inherent in any litigation. Timios has, therefore, determined  
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1 that it is desirable and beneficial that the Litigation be settled in the manner and upon the terms and  
2 conditions set forth in this Settlement Agreement.

3  
4 **IV. TERMS OF SETTLEMENT**

5 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among  
6 Plaintiffs, individually and on behalf of the Settlement Class, Proposed Settlement Class Counsel,  
7 and Timios that, subject to the approval of the Court, the Litigation and the Released Claims shall  
8 be finally and fully compromised, settled, and released, and the Litigation shall be dismissed with  
9 prejudice as to the Settling Parties, the Settlement Class, and the Settlement Class, except those  
10 members of the Settlement Class who lawfully opt-out of the Settlement Agreement, upon and  
11 subject to the terms and conditions of this Settlement Agreement, as follows:

12 **1. Definitions**

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

15 1.1 “Agreement” or “Settlement Agreement” means this agreement.

16 1.2 “California Settlement Subclass” means all persons residing in California between  
17 July 19, 2021 and July 25, 2021 to whom Timios mailed notice that between July 19, 2021 and July  
18 25, 2021, Timios was the target of a cyberattack in which third-party criminals gained unauthorized  
19 access to Timios’ network, encrypted some of Timios’ systems, and may have gained unauthorized  
20 access to the personal information of consumers.

21 1.3 “California Settlement Subclass Member(s)” means all persons meeting the  
22 definition of the California Settlement Subclass.

23 1.4 “Claims Administration” means the processing and payment of claims received  
24 from members of the Settlement Class by the Claims Administrator.

25 1.5 “Claims Administrator” means Kroll Settlement Administration, a company  
26 experienced in administering class action claims generally and specifically those of the type  
27 provided for and made in data breach litigation.  
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1 1.6 “Claims Deadline” means the postmark and/or online submission deadline for valid  
2 claims submitted pursuant to ¶¶ 2.1 and 2.2.

3 1.7 “Claim Form” means the claim form to be used by members of the Settlement Class  
4 to submit a Settlement Claim, either through the mail or online through the Settlement Website,  
5 substantially in the form as shown in Exhibit 2 to Plaintiffs’ Unopposed Motion for Preliminary  
6 Approval of the Class Action Settlement.

7 1.8 “Costs of Claims Administration” means all actual costs associated with or arising  
8 from Claims Administration.

9 1.9 “Court” means the United States District Court for the Central District of California.

10 1.10 “Dispute Resolution” means the process for resolving disputed Settlement Claims  
11 as set forth in this Agreement.

12 1.11 “Effective Date” means the first date by which all of the events and conditions  
13 specified in ¶ 1.12 herein have occurred and been met.

14 1.12 “Final” means the occurrence of all of the following events: (i) the settlement  
15 pursuant to this Settlement Agreement is approved by the Court; (ii) the Court has entered a  
16 Judgment (as that term is defined herein); and (iii) the time to appeal or seek permission to appeal  
17 from the Judgment has expired or, if appealed, the appeal has been dismissed in its entirety, or the  
18 Judgment has been affirmed in its entirety by the court of last resort to which such appeal may be  
19 taken, and such dismissal or affirmance has become no longer subject to further appeal or review.  
20 Notwithstanding the above, any order modifying or reversing any attorneys’ fee award or service  
21 award made in this case shall not affect whether the Judgment is “Final” as defined herein or any  
22 other aspect of the Judgment.

23 1.13 “Judgment” means a judgment rendered by the Court.

24 1.14 “Long Notice” means the long form notice of settlement posted on the Settlement  
25 Website, substantially in the form as shown in Exhibit 3 to Plaintiffs’ Unopposed Motion for  
26 Preliminary Approval of the Class Action Settlement.

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1 1.15 “Notice Commencement Date” means thirty days following entry of the Preliminary  
2 Approval Order.

3 1.16 “Objection Date” means the date by which members of the Settlement Class must  
4 mail to Proposed Settlement Class Counsel and counsel for Timios or, in the alternative, file with  
5 the Court through the Court’s electronic case filing (“ECF”) system their objection to the Settlement  
6 Agreement for that objection to be effective. The postmark date shall constitute evidence of the  
7 date of mailing for these purposes.

8 1.17 “Opt-Out Date” means the date by which members of the Settlement Class must  
9 mail their requests to be excluded from the Settlement Class for that request to be effective. The  
10 postmark date shall constitute evidence of the date of mailing for these purposes.

11 1.18 “Person” means an individual, corporation, partnership, limited partnership, limited  
12 liability company or partnership, association, joint stock company, estate, legal representative,  
13 trust, unincorporated association, government or any political subdivision or agency thereof, and  
14 any business or legal entity, and their respective spouses, heirs, predecessors, successors,  
15 representatives, or assignees.

16 1.19 “Preliminary Approval Order” means the order preliminarily approving the  
17 Settlement Agreement and ordering that notice be provided to the Settlement Class. The Settling  
18 Parties’ proposed form of Preliminary Approval Order will be attached as an Exhibit 4 to Plaintiffs’  
19 Unopposed Motion for Preliminary Approval of the Class Action Settlement.

20 1.20 “Proposed Settlement Class Counsel” means M. Anderson Berry of Clayeo C.  
21 Arnold, A Professional Law Corp.

22 1.21 “Related Entities” means Timios’ respective past or present parents, subsidiaries,  
23 divisions, and related or affiliated entities, and each of their respective predecessors, successors,  
24 directors, officers, employees, principals, agents, attorneys, insurers, and reinsurers, and includes,  
25 without limitation, any Person related to any such entity who is, was, or could have been named as  
26 a defendant in any of the actions in the Litigation, other than any Person who is found by a court  
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1 of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting  
2 the Data Incident or who pleads *nolo contendere* to any such charge.

3 1.22 “Released Claims” shall collectively mean any and all past, present, and future  
4 claims and causes of action including, but not limited to, any causes of action arising under or  
5 premised upon any statute, constitution, law, ordinance, treaty, regulation, or common law of any  
6 country, state, province, county, city, or municipality, including 15 U.S.C. §§ 45 *et seq.*, and all  
7 similar statutes in effect in any states in the United States as defined below; violations of the Illinois  
8 Consumer Fraud Act, 815 Ill. Comp. Stat. §§ 505/1, *et seq.* and all similar state consumer-protection  
9 statutes; violations of the Illinois Personal Information Protection Act, 815 ILCS 530, *et seq.* and  
10 all similar state privacy-protection statutes, including, but not limited to, the California Consumer  
11 Protection Act of 2018, Cal. Civ. Code § 1798, *et seq.*; violations of the Illinois Security Breach  
12 Notification Laws, 815 ILCS 530/10 and all similar statutes in effect in any states in the United  
13 States; negligence; negligence *per se*; breach of contract; breach of implied contract; breach of  
14 fiduciary duty; breach of confidence; invasion of privacy; fraud; misrepresentation (whether  
15 fraudulent, negligent or innocent); unjust enrichment; bailment; wantonness; failure to provide  
16 adequate notice pursuant to any breach notification statute or common law duty; and including, but  
17 not limited to, any and all claims for damages, injunctive relief, disgorgement, declaratory relief,  
18 equitable relief, attorneys’ fees and expenses, pre-judgment interest, credit monitoring services, the  
19 creation of a fund for future damages, statutory damages, punitive damages, special damages,  
20 exemplary damages, restitution, and/or the appointment of a receiver, whether known or unknown,  
21 liquidated or unliquidated, accrued or unaccrued, fixed or contingent, direct or derivative, and any  
22 other form of legal or equitable relief that either has been asserted, was asserted, or could have been  
23 asserted, by any member of the Settlement Class against any of the Released Persons based on,  
24 relating to, concerning or arising out of the Data Incident and alleged theft of payment card data or  
25 other personal information or the allegations, transactions, occurrences, facts, or circumstances  
26 alleged in or otherwise described in the Litigation. Released Claims shall not include the right of  
27 any Settlement Class Member or any of the Released Persons to enforce the terms of the settlement  
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1 contained in this Settlement Agreement, and shall not include the claims of members of the  
2 Settlement Class Members who have timely excluded themselves from the Settlement Class.

3 1.23 “Released Persons” means Timios and its Related Entities and each of their past or  
4 present parents, subsidiaries, divisions, and related or affiliated entities, and each of their respective  
5 predecessors, successors, directors, officers, employees, principals, agents, attorneys, insurers, and  
6 reinsurers.

7 1.24 “Plaintiffs” and “Representative Plaintiffs” mean Myron Schellhorn, Rodney Allen,  
8 Tedda Allen, Lauren Waters, Jeff Harrington, and David Thompson

9 1.25 “Data Incident” means the cyberattack perpetrated on Timios between July 19,  
10 2021 and July 25, 2021, in which third-party criminals gained unauthorized access to Timios’  
11 network, encrypted some of Timios’ systems, and may have gained unauthorized access to the  
12 personal information of Plaintiffs and other consumers.

13 1.26 “Settlement Claim” means a claim for settlement benefits made under the terms of  
14 this Settlement Agreement.

15 1.27 “Settlement Class” means all persons to whom Timios mailed notice that between  
16 July 19, 2021 and July 25, 2021, Timios was the target of a cyberattack in which third-party  
17 criminals gained unauthorized access to Timios’ network, encrypted some of Timios’ systems, and  
18 may have gained unauthorized access to the personal information of consumers. The Settlement  
19 Class specifically excludes: (i) Timios and its respective officers and directors; (ii) all members of  
20 the Settlement Class who timely and validly request exclusion from the Settlement Class; (iii) the  
21 Judge and Magistrate Judge assigned to evaluate the fairness of this settlement; and (iv) any other  
22 Person found by a court of competent jurisdiction to be guilty under criminal law of initiating,  
23 causing, aiding, or abetting the Data Incident or who pleads *nolo contendere* to any such charge.

24 1.28 “Settlement Class Member(s)” means all persons meeting the definition of the  
25 Settlement Class.

26 1.29 “Settlement Website” means a website, the URL for which to be mutually selected  
27 by the Settling Parties, that will inform Settlement Class Members of the terms of this Settlement  
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1 Agreement, their rights, dates and deadlines and related information, as well as provide the  
2 Settlement Class Members with the ability to submit a Settlement Claim online.

3 1.30 “Settling Parties” means, collectively, Timios and Plaintiffs, individually and on  
4 behalf of the Settlement Class.

5 1.31 “Short Notice” means the short form notice of the proposed class action settlement,  
6 substantially in the form as shown in Exhibit 5 to Plaintiffs’ Unopposed Motion for Preliminary  
7 Approval of the Class Action Settlement. The Short Notice will direct recipients to the Settlement  
8 Website and inform members of the Settlement Class of, among other things, the Claims Deadline,  
9 the Opt-Out and Objection Deadlines, and the date of the Final Fairness Hearing (if set prior to the  
10 Commencement Date (as defined below)).

11 1.32 “Unknown Claims” means any of the Released Claims that any member of the  
12 Settlement Class, including any Plaintiffs, does not know or suspect to exist in his/her favor at the  
13 time of the release of the Released Persons that, if known by him or her, might have affected his or  
14 her settlement with, and release of, the Released Persons, or might have affected his or her decision  
15 not to object to and/or to participate in this Settlement Agreement. With respect to any and all  
16 Released Claims, the Settling Parties stipulate and agree that upon the Effective Date, Plaintiffs  
17 intend to and expressly shall have, and each of the other members of the Settlement Class intend to  
18 and shall be deemed to have, and by operation of the Judgment shall have, waived the provisions,  
19 rights, and benefits conferred by California Civil Code § 1542, and also any and all provisions,  
20 rights, and benefits conferred by any law of any state, province, or territory of the United States  
21 (including, without limitation, California Civil Code §§ 1798.80 *et seq.*, Montana Code Ann. § 28-  
22 1-1602; North Dakota Cent. Code § 9-13-02; and South Dakota Codified Laws § 20-7-11), which  
23 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.

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

9 1.33 “United States” as used in this Settlement Agreement includes the District of  
10 Columbia and all territories.

11 1.34 “Valid Claims” means Settlement Claims in an amount approved by the Claims  
12 Administrator or found to be valid through the claims processing and/or Dispute Resolution  
13 process.

14 **2. Settlement Benefits**

15 2.1 Expense Reimbursement. All members of the Settlement Class who submit a Valid  
16 Claim using the Claim Form are eligible for the following documented out-of-pocket expenses, not  
17 to exceed \$500 per member of the Settlement Class, that were incurred as a result of the Data  
18 Incident: (i) unreimbursed bank fees; (ii) unreimbursed card reissuance fees; (iii) unreimbursed  
19 overdraft fees; (iv) unreimbursed charges related to unavailability of funds; (v) unreimbursed late  
20 fees; (vi) unreimbursed over-limit fees; (vii) long distance telephone charges; (viii) cell minutes (if  
21 charged by minute), Internet usage charges (if charged by the minute or by the amount of data usage  
22 and incurred solely as a result of the Data Incident), and text messages (if charged by the message  
23 and incurred solely as a result of the Data Incident); (ix) unreimbursed charges from banks or credit  
24 card companies; (x) interest on payday loans due to card cancellation or due to over-limit situation  
25 incurred solely as a result of the Data Incident; (xi) costs of credit report(s), credit monitoring,  
26 and/or other identity theft insurance products purchased by members of the Settlement Class  
27 between October 11, 2021 and the date of the Claims Deadline; and (xii) other losses incurred by  
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1 Settlement Class Members determined by the Settlement Administrator to be fairly traceable to the  
2 Data Incident, including, but not limited to, the cost of postage and gas for local travel. To receive  
3 reimbursement for any of the above-referenced out-of-pocket expenses, Settlement Class Members  
4 must submit (i) their name and current address; (ii) supporting documentation of such out-of-pocket  
5 expenses; and (iii) a description of the loss, if not readily apparent from the documentation.

6 Members of the Settlement Class are also eligible to receive up to three hours of lost time  
7 spent dealing with issues arising out of the Data Incident (calculated at the rate of \$20 per hour).  
8 Members of the Settlement Class must attest on the Claim Form to the time spent. No  
9 documentation other than a description of their actions shall be required for members of the  
10 Settlement Class to receive compensation for attested time. Claims made for lost time can be  
11 combined with claims made for out-of-pocket expenses and, together with the out-of-pocket  
12 expenses, are subject to the \$500 cap for each member of the Settlement Class.

13 2.2 Extraordinary Expense Reimbursement: All members of the Settlement Class who  
14 have suffered a proven monetary loss and who submit a Valid Claim using the Claim Form are  
15 eligible for up to \$3,000 if: (1) the loss is an actual, documented and unreimbursed monetary loss;  
16 (2) the loss was more likely than not caused by the Data Incident; (3) the loss occurred between  
17 July 19, 2021 and the Claims Deadline; and (4) the loss is not already covered by one or more of  
18 the reimbursement categories listed in ¶ 2.1; and the member of the Settlement Class made  
19 reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to  
20 exhaustion of all available credit monitoring insurance and identity theft insurance.

21 Members of the Settlement Class seeking reimbursement under ¶¶ 2.1 and/or 2.2 must  
22 complete and submit a Claim Form to the Claims Administrator, postmarked or submitted online  
23 on or before the 90th day after the Notice Commencement Date. The notice to the class will specify  
24 this deadline and other relevant dates described herein. The Claim Form must be verified by the  
25 member of the Settlement Class with a statement that his or her claim is true and correct, to the best  
26 of his or her knowledge and belief, and is being made under penalty of perjury. Notarization shall  
27 not be required. The member of the Settlement Class must submit reasonable documentation that  
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1 the out-of-pocket expenses and charges claimed were both actually incurred and plausibly arose  
2 from the Data Incident. Failure to provide supporting documentation of the out-of-pocket expenses  
3 referenced above, as requested on the Claim Form, shall result in denial of a claim. No  
4 documentation is needed for lost-time expenses. Disputes as to claims submitted under this  
5 paragraph are to be resolved pursuant to the provisions stated in ¶ 2.5.

6 2.3 Cash Payment for California Settlement Subclass Members. All California  
7 Settlement Subclass Members who submit a Valid Claim using the Claim Form are eligible to  
8 receive a payment of \$50 provided that the California Settlement Subclass Member attests, under  
9 oath, that he or she was a resident of the State of California at some point between July 19, 2021  
10 and July 25, 2021.

11 This additional amount can be combined with a claim for reimbursement for lost time and  
12 for out-of-pocket losses under ¶ 2.1, and can be combined (if applicable) with reimbursement for  
13 losses under ¶ 2.2. All claims made under this ¶ 2.3 shall be subject to the \$500 per-Settlement-  
14 Class-Member cap on compensation for ordinary loss and lost time.

15 2.4 Identity-Theft Protection. All members of the Settlement Class who submit a Valid  
16 Claim using the Claim Form are eligible for 18 months of free identity-theft protection, called  
17 “Financial Shield” by Aura. For members of the Settlement Class who opted to receive the one  
18 year of credit monitoring initially offered by Timios, “Financial Shield” shall be in addition to that  
19 year. “Financial Shield” includes, at least, the following, or similar, services:

- 20 a) Up to \$1 Million Dollars reimbursement insurance through AIG covering  
21 losses due to identity theft and stolen funds;
- 22 b) Financial transaction monitoring, including monitoring of all financial  
23 accounts registered by the Settlement Class Member, such as credit card  
24 accounts, bank accounts (checking and savings) and investment accounts,  
25 for transactions exceeding selected thresholds;

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- c) Continuous monitoring for high-risk transactions, including payday loans, wire transfers, and account openings, that involve the Settlement Class Member’s personal information;
- d) Notification of attempts to use the Settlement Class Member’s Social Security Number as part of an identity verification event, such as requesting a replacement credit or debit card; filing an insurance claim; updating personal information on an existing account; and/or opening a new account;
- e) Fictitious identity monitoring, which notifies the Settlement Class Member when his or her Social Security Number is being used in association with someone else’s name and/or address;
- f) Online tax fraud monitoring and alerts, which monitors online income tax filings through TurboTax and alerts the Settlement Class Member if a tax return is filed using his or her Social Security Number;
- g) Home title monitoring, including monitoring properties identified by a Settlement Class Member and notifying the Settlement Class Member when an existing property title is changed, removed, or new titles are added to his or her name;
- h) Dark web monitoring, which continuously monitors the dark web for the Settlement Class Member’s personal information;
- i) Public record monitoring, which monitors public records for address changes, automotive tickets, and arrests associated with the Settlement Class Member’s name and Social Security number;
- j) Credit security freeze assistance, which provides the Settlement Class Member a central location to link to one of ten different consumer reporting agencies to freeze and unfreeze his or her credit files; and

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1 k) Lost wallet protection, which provides a customer support line where the  
2 Settlement Class Member can receive help in canceling and replacing lost  
3 credit cards.

4 2.5 Dispute Resolution for Claims.

5 2.5.1 The Claims Administrator, in its sole discretion to be reasonably  
6 exercised, will determine whether: (1) the claimant is a Settlement Class Member; (2) the claimant  
7 has provided all information needed to complete the Claim Form, including any documentation that  
8 may be necessary to reasonably support the out-of-expenses described in ¶¶ 2.1 and 2.2; and (3)  
9 the information submitted could lead a reasonable person to conclude that more likely than not the  
10 claimant has suffered the claimed losses as a result of the Data Incident. The Claims Administrator  
11 may, at any time, request from the claimant, in writing, additional information as the Claims  
12 Administrator may reasonably require in order to evaluate the claim, e.g., documentation requested  
13 on the Claim Form, information regarding the claimed losses, available insurance and the status of  
14 any claims made for insurance benefits, and claims previously made for identity theft and the  
15 resolution thereof. For any such Claims that the Claims Administrator determines to be  
16 implausible, the Claims Administrator will submit those Claims to the Settling Parties (one  
17 Plaintiffs’ lawyer shall be designated to fill this role for all Plaintiffs). If the Settling Parties do not  
18 agree with the Claimant’s Claim, after meeting and conferring, then the Claim shall be referred for  
19 resolution to the claim referee, to be selected by the Parties if needed. Any costs associated with  
20 work performed by the claims referee shall be paid by Timios.

21 2.5.2 Upon receipt of an incomplete or unsigned Claim Form or a Claim  
22 Form that is not accompanied by sufficient documentation to determine whether the claim is  
23 facially valid, the Claims Administrator shall request additional information and give the claimant  
24 thirty (30) days to cure the defect before rejecting the claim. If the defect is not cured, then the  
25 claim will be deemed invalid and there shall be no obligation to pay the claim.

26 2.5.3 Following receipt of additional information requested by the Claims  
27 Administrator, the Claims Administrator shall have thirty (30) days to accept, in whole or lesser  
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1 amount, or reject each claim. If, after review of the claim and all documentation submitted by the  
2 claimant, the Claims Administrator determines that such a claim is facially valid, then the claim  
3 shall be paid. If the claim is not facially valid because the claimant has not provided all information  
4 needed to complete the Claim Form and evaluate the claim, then the Settlement Administrator may  
5 reject the claim without any further action. If the claim is rejected in whole or in part, for other  
6 reasons, then the claim shall be referred to the claims referee.

7                   2.5.4           Settlement Class Members shall have thirty (30) days from receipt of  
8 the offer to accept or reject any offer of partial payment received from the Claims Administrator.  
9 If a Settlement Class Member rejects an offer from the Claims Administrator, the Claims  
10 Administrator shall have fifteen (15) days to reconsider its initial adjustment amount and make a  
11 final determination. If the claimant approves the final determination, then the approved amount  
12 shall be the amount to be paid. If the claimant does not approve the final determination within  
13 thirty (30) days, then the dispute will be submitted to the claims referee within an additional ten  
14 (10) days.

15                   2.5.5           If any dispute is submitted to the claims referee, the claims referee  
16 may approve the Claims Administrator’s determination by making a ruling within fifteen (15) days.  
17 The claims referee may make any other final determination of the dispute or request further  
18 supplementation of a claim within thirty (30) days. The claims referee’s determination shall be  
19 based on whether the claims referee is persuaded that the claimed amounts are reasonably supported  
20 in fact and were more likely than not caused by the Data Incident. The claims referee shall have  
21 the power to approve a claim in full or in part. The claims referee’s decision will be final and non-  
22 appealable. Any claimant referred to the claims referee shall reasonably cooperate with the claims  
23 referee, including by either providing supplemental information as requested or, alternatively,  
24 signing an authorization allowing the claims referee to verify the claim through third-party sources,  
25 and failure to cooperate shall be grounds for denial of the claim in full. The claims referee shall  
26 make a final decision within thirty (30) days of receipt of all supplemental information requested.

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1           2.6     Business Practices Changes. Plaintiffs have received assurances that Timios has  
2 implemented or will implement certain reasonable steps to adequately secure its systems and  
3 environments, including taking the steps listed in Exhibit 1 to Plaintiffs’ Unopposed Motion for  
4 Preliminary Approval of Class Action Settlement. Exhibit 1 will be filed under seal.

5           2.7     Confirmatory Discovery. Timios has provided or will provide reasonable access  
6 to confidential confirmatory discovery regarding the number of Settlement Class Members and  
7 state of residence, the facts and circumstances of the Data Incident and Timios’ response thereto,  
8 and the changes and improvements that have been made or are being made to further protect  
9 Settlement Class Members’ PII.

10          2.8     Settlement Expenses. All costs for notice to the Settlement Class as required under  
11 ¶¶ 3.1 and 3.2, Costs of Claims Administration under ¶¶ 8.1, 8.2, and 8.3, and the costs of Dispute  
12 Resolution described in ¶ 2.5, shall be paid by Timios.

13          2.9     Settlement Class Certification. The Settling Parties agree, for purposes of this  
14 settlement only, to the certification of the Settlement Class. If the settlement set forth in this  
15 Settlement Agreement is not approved by the Court, or if the Settlement Agreement is terminated  
16 or cancelled pursuant to the terms of this Settlement Agreement, this Settlement Agreement, and  
17 the certification of the Settlement Class provided for herein, will be vacated and the Litigation shall  
18 proceed as though the Settlement Class had never been certified, without prejudice to any Person’s  
19 or Settling Party’s position on the issue of class certification or any other issue. The Settling  
20 Parties’ agreement to the certification of the Settlement Class is also without prejudice to any  
21 position asserted by the Settling Parties in any other proceeding, case or action, as to which all of  
22 their rights are specifically preserved.

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

24           3.1.     As soon as practicable after the execution of the Settlement Agreement, Proposed  
25 Settlement Class Counsel and counsel for Timios shall jointly submit this Settlement Agreement to  
26 the Court, and Proposed Settlement Class Counsel will file a motion for preliminary approval of  
27 the settlement with the Court requesting entry of a Preliminary Approval Order in the form to be  
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1 agreed upon by the parties, or an order substantially similar to such form in both terms and cost,  
2 requesting, among other things:

- 3 a) certification of the Settlement Class for settlement purposes only pursuant  
4 to ¶ 2.9;
- 5 b) preliminary approval of the Settlement Agreement as set forth herein;
- 6 c) appointment of Proposed Settlement Class Counsel as Settlement Class  
7 Counsel;
- 8 d) appointment of Plaintiffs as Class Representatives;
- 9 e) approval of a customary form of Short Notice to be emailed or, where a  
10 working email address is not available, mailed to Settlement Class  
11 Members in a form substantially similar to the one attached as Exhibit 5 to  
12 Plaintiffs' Unopposed Motion for Preliminary Approval of the Class Action  
13 Settlement;
- 14 f) approval of the Long Notice to be posted on the Settlement Website in a  
15 form substantially similar to the one attached as Exhibit 3 to Plaintiffs'  
16 Unopposed Motion for Preliminary Approval of the Class Action  
17 Settlement, which, together with the Short Notice, shall include a fair  
18 summary of the parties' respective litigation positions, the general terms of  
19 the settlement set forth in the Settlement Agreement, instructions for how  
20 to object to or opt-out of the settlement, the process and instructions for  
21 making claims to the extent contemplated herein, and the date, time and  
22 place of the Final Fairness Hearing; and
- 23 g) appointment of Kroll Settlement Administration as the Claims  
24 Administrator.

25 The Short Notice and Long Notice have been reviewed and approved by the Claims  
26 Administrator but may be revised as agreed upon by the Settling Parties prior to submission to the  
27 Court for approval.  
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1           3.2       Timios shall pay for providing notice to the Settlement Class in accordance with  
2 the Preliminary Approval Order, and the costs of such notice, together with the Costs of Claims  
3 Administration. Attorneys’ fees, costs, and expenses of Settlement Class Counsel, and service  
4 awards to Class Representatives, as approved by the Court, shall be paid by Timios as set forth in  
5 ¶ 7 below. Notice shall be provided to Settlement Class Members by the Claims Administrator as  
6 follows:

7           a)       *Class Member Information:* No later than fourteen (14) days after entry of the  
8 Preliminary Approval Order, Timios shall provide the Claims Administrator with  
9 the name, email address (where available), and last known physical address of each  
10 Settlement Class Member (collectively, “Class Member Information”) that Timios  
11 possesses.

- 12           •       The Class Member Information and its contents shall be used by the Claims  
13 Administrator solely for the purpose of performing its obligations pursuant  
14 to this Settlement Agreement and shall not be used for any other purpose at  
15 any time. Except to administer the settlement as provided in this Settlement  
16 Agreement, or provide all data and information in its possession to the  
17 Settling Parties upon request, the Claims Administrator shall not reproduce,  
18 copy, store, or distribute in any form, electronic or otherwise, the Class  
19 Member Information.

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

c) *Short Notice:* Within thirty (30) days after the entry of the Preliminary Approval Order and to be substantially completed not later than forty-five (45) days after entry of the Preliminary Approval Order, and subject to the requirements of this Agreement and the Preliminary Approval Order, the Claims Administrator will provide notice to the Settlement Class as follows:

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

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“Return to Sender” and does not contain a new forwarding address, the Claims Administrator shall perform a standard skip trace, in the manner that the Claims Administrator customarily performs skip traces, in an effort to attempt to ascertain the current address of the particular Settlement Class Member in question and, if such an address is ascertained, the Claims Administrator will re-send the Short Notice within seven (7) days of receiving such information. This shall be the final requirement for mailing.

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

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

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1           3.4 Proposed Settlement Class Counsel and Timios’ counsel shall request that after  
2 notice is completed, the Court hold a hearing (the “Final Fairness Hearing”) and grant final approval  
3 of the settlement set forth herein.

4           3.5 Timios will also cause the Claims Administrator to provide (at Timios’ expense)  
5 notice to the relevant state and federal governmental officials as required by the Class Action  
6 Fairness Act.

7           **4. Opt-Out Procedures**

8           4.1 Each Person wishing to opt-out of the Settlement Class shall individually sign and  
9 timely submit written notice of such intent to the designated Post Office box established by the  
10 Claims Administrator. The written notice must clearly manifest a Person’s intent to opt-out of the  
11 Settlement Class. To be effective, written notice must be postmarked no later than sixty (60) days  
12 after the Notice Commencement Date.

13           4.2 All Persons who submit valid and timely notices of their intent to opt-out of the  
14 Settlement Class, as set forth in ¶ 4.1 above, referred to herein as “Opt-Outs,” shall not receive any  
15 benefits of and/or be bound by the terms of this Settlement Agreement. All Persons falling within  
16 the definition of the Settlement Class who do not opt-out of the Settlement Class in the manner set  
17 forth in ¶ 4.1 above shall be bound by the terms of this Settlement Agreement and Judgment entered  
18 thereon.

19           4.3 In the event that within ten (10) days after the Opt-Out Date as approved by the  
20 Court, there have been more than 250 timely and valid Opt-Outs submitted, Timios may, by  
21 notifying Proposed Settlement Class Counsel and the Court in writing, void this Settlement  
22 Agreement. If Timios voids the Settlement Agreement pursuant to this paragraph, Timios shall be  
23 obligated to pay all settlement expenses already incurred, excluding any attorneys’ fees, costs, and  
24 expenses of Proposed Settlement Class Counsel and service awards.

25           **5. Objection Procedures**

26           5.1 Each Settlement Class Member desiring to object to the Settlement Agreement shall  
27 submit a timely written notice of his or her objection by the Objection Date. Such notice shall state:  
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1 (i) the objector’s full name and address; (ii) the case name and docket number - *Schellhorn, et al.*  
2 *v. Timios, Inc.*, Case No. 2:21-cv-08661-VAP-JC (C.D. Cal.); (iii) information identifying the  
3 objector as a Settlement Class Member, including proof that the objector is a member of the  
4 Settlement Class (e.g., copy of the objector’s settlement notice, copy of original notice of the Data  
5 Incident, or a statement explaining why the objector believes he or she is a Settlement Class  
6 Member); (iv) a written statement of all grounds for the objection, accompanied by any legal  
7 support for the objection the objector believes applicable; (v) the identity of any and all counsel  
8 representing the objector in connection with the objection; (vi) a statement whether the objector  
9 and/or his or her counsel will appear at the Final Fairness Hearing; and (vii) the objector’s signature  
10 or the signature of the objector’s duly authorized attorney or other duly authorized representative  
11 (if any) representing him or her in connection with the objection. To be timely, written notice of  
12 an objection in the appropriate form must be mailed, with a postmark date no later than sixty (60)  
13 days from the Notice Commencement Date, to Proposed Settlement Class Counsel, M. Anderson  
14 Berry, Clayeo C. Arnold, A Professional Law Corp., 865 Howe Avenue, Sacramento, CA 95825;  
15 and counsel for Timios, Casie D. Collignon, Baker & Hostetler, LLP, 1801 California Street, Suite  
16 4400, Denver, Colorado 80202-2662. The objector or his or her counsel may also file Objections  
17 with the Court through the Court’s ECF system, with service on Proposed Settlement Class Counsel  
18 and Timios’ counsel made through the ECF system. For all objections mailed to Proposed  
19 Settlement Class Counsel and counsel for Timios, Proposed Settlement Class Counsel will file them  
20 with the Court as an exhibit to the Motion for Final Approval of the Settlement.

21 5.2 Any Settlement Class Member who fails to comply with the requirements for  
22 objecting in ¶ 5.1 shall waive and forfeit any and all rights he or she may have to appear separately  
23 and/or to object to the Settlement Agreement, and shall be bound by all the terms of the Settlement  
24 Agreement and by all proceedings, orders and judgments in the Litigation. The exclusive means  
25 for any challenge to the Settlement Agreement shall be through the provisions of ¶ 5.1. Without  
26 limiting the foregoing, any challenge to the Settlement Agreement, the final order approving this  
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1 Settlement Agreement, or the Judgment to be entered upon final approval shall be pursuant to  
2 appeal under the Federal Rules of Appellate Procedure and not through a collateral attack.

3 **6. Releases**

4 6.1 Upon the Effective Date, each Settlement Class Member, including Plaintiffs, shall  
5 be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released,  
6 relinquished, and discharged all Released Claims. Further, upon the Effective Date, and to the  
7 fullest extent permitted by law, each Settlement Class Member, including Plaintiffs, shall, either  
8 directly, indirectly, representatively, as a member of or on behalf of the general public or in any  
9 capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in  
10 any recovery in any action in this or any other forum (other than participation in the settlement as  
11 provided herein) in which any of the Released Claims is asserted.

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

23 6.3 Notwithstanding any term herein, neither Timios nor its Related Parties shall have  
24 or shall be deemed to have released, relinquished or discharged any claim or defense against any  
25 Person other than Representative Plaintiffs, each and all of the Settlement Class Members, and  
26 Proposed Settlement Class Counsel.  
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1           **7. Plaintiffs’ Counsel’s Attorneys’ Fees, Costs, and Expenses; Service Award to**  
2           **Representative Plaintiffs**

3           7.1 The Settling Parties did not discuss the payment of attorneys’ fees, costs, expenses  
4 and/or service award to Plaintiffs, as provided for in ¶¶ 7.2 and 7.3, until after the substantive terms  
5 of the settlement had been agreed upon, other than that Timios would pay reasonable attorneys’  
6 fees, costs, expenses, and a service award to Plaintiffs as may be agreed to by Timios and Proposed  
7 Settlement Class Counsel and/or as ordered by the Court, or in the event of no agreement, then as  
8 ordered by the Court. Timios and Proposed Settlement Class Counsel then negotiated and agreed  
9 to the payment described in ¶ 7.2.

10          7.2 Proposed Settlement Class Counsel will seek, and Timios has agreed not to oppose,  
11 an order from the Court awarding \$215,000.00 to Proposed Settlement Class Counsel for attorneys’  
12 fees, inclusive of any costs and expenses of the Litigation. Proposed Settlement Class Counsel, in  
13 their sole discretion, shall allocate and distribute the amount of attorneys’ fees, costs, and expenses  
14 awarded by the Court among Plaintiffs’ Counsel.

15          7.3 Proposed Settlement Class Counsel will seek, and Timios has agreed not to oppose,  
16 an order from the Court awarding \$2,500 in service awards to each of the Class Representatives.

17 If awarded by the Court, Timios shall pay the attorneys’ fees, costs, expenses, and service awards  
18 to Plaintiffs, as set forth above in ¶¶ 7.2, 7.3, and 7.4, within 30 days after the Effective Date.  
19 Service awards to Class Representatives and attorneys’ fees, costs, and expenses will be mailed  
20 to M. Anderson Berry, Clayeo C. Arnold, A Professional Law Corp., 865 Howe Avenue,  
21 Sacramento, CA 95825. Proposed Settlement Class Counsel shall thereafter distribute the award  
22 of attorneys’ fees, costs, and expenses among Plaintiffs’ Counsel and service awards to Plaintiffs  
23 consistent with ¶¶ 7.2 and 7.3.

24          7.5 The amount(s) of any award of attorneys’ fees, costs, and expenses, and the service  
25 award to Plaintiffs, are intended to be considered by the Court separately from the Court’s  
26 consideration of the fairness, reasonableness, and adequacy of the settlement. These payments will  
27 not in any way reduce the consideration being made available to the Settlement Class as described  
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1 herein. No order of the Court, or modification or reversal or appeal of any order of the Court,  
2 concerning the amount(s) of any attorneys’ fees, costs, expenses, and/or service award ordered by  
3 the Court to Proposed Settlement Class Counsel or Plaintiffs shall affect whether the Judgment is  
4 Final or constitute grounds for cancellation or termination of this Settlement Agreement.

5 **8. Administration of Claims**

6 8.1 The Claims Administrator shall administer and calculate the claims submitted by  
7 Settlement Class Members under ¶¶ 2.1 and 2.2. Proposed Settlement Class Counsel and counsel  
8 for Timios shall be given reports as to both claims and distribution, and have the right to review  
9 and obtain supporting documentation and challenge such reports if they believe them to be  
10 inaccurate or inadequate. The Claims Administrator’s and claims referee’s, as applicable,  
11 determination of whether a Settlement Claim is a Valid Claim shall be binding, subject to the  
12 dispute resolution process set forth in ¶ 2.5. All claims agreed to be paid in full by Timios shall be  
13 deemed valid.

14 8.2 Checks for Valid Claims shall be mailed and postmarked within sixty (60) days of  
15 the Effective Date, or within thirty (30) days of the date that the claim is approved, whichever is  
16 later.

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

22 8.4 No Person shall have any claim against the Claims Administrator, claims referee,  
23 Timios, Proposed Settlement Class Counsel, Plaintiffs, and/or Timios’ counsel based on  
24 distributions of benefits to Settlement Class Members.

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

26 9.1 The Effective Date of the settlement shall be conditioned on the occurrence of all of  
27 the following events:  
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- 1 a) the Court has entered the Order of Preliminary Approval and Publishing of Notice
- 2 of a Final Fairness Hearing, as required by ¶ 3.1;
- 3 b) Timios has not exercised its option to terminate the Settlement Agreement pursuant
- 4 to ¶ 4.3;
- 5 c) the Court has entered the Judgment granting final approval to the settlement as set
- 6 forth herein; and
- 7 d) the Judgment has become Final, as defined in ¶ 1.12.

8 9.2 If all conditions specified in ¶ 9.1 hereof are not satisfied, the Settlement Agreement  
 9 shall be canceled and terminated subject to ¶ 9.4 unless Proposed Settlement Class Counsel and  
 10 Timios’ counsel mutually agree in writing to proceed with the Settlement Agreement.

11 9.3 Within seven (7) days after the Opt-Out Date, the Claims Administrator shall  
 12 furnish to Proposed Settlement Class Counsel and to Timios’ counsel a complete list of all timely  
 13 and valid requests for exclusion (the “Opt-Out List”).

14 9.4 In the event that the Settlement Agreement or the releases set forth in paragraphs  
 15 6.1, 6.2, and 6.3 above are not approved by the Court or the settlement set forth in the Settlement  
 16 Agreement is terminated in accordance with its terms, (i) the Settling Parties shall be restored to  
 17 their respective positions in the Litigation and shall jointly request that all scheduled litigation  
 18 deadlines be reasonably extended by the Court so as to avoid prejudice to any Settling Party or  
 19 Settling Party’s counsel, and (b) the terms and provisions of the Settlement Agreement shall have  
 20 no further force and effect with respect to the Settling Parties and shall not be used in the Litigation  
 21 or in any other proceeding for any purpose, and any judgment or order entered by the Court in  
 22 accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*.  
 23 Notwithstanding any statement in this Settlement Agreement to the contrary, no order of the Court  
 24 or modification or reversal on appeal of any order reducing the amount of attorneys’ fees, costs,  
 25 expenses, and/or service awards shall constitute grounds for cancellation or termination of the  
 26 Settlement Agreement. Further, notwithstanding any statement in this Settlement Agreement to the  
 27 contrary, Timios shall be obligated to pay amounts already billed or incurred for costs of notice to  
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1 the Settlement Class, Claims Administration, and Dispute Resolution pursuant to ¶ 2.5 above and  
2 shall not, at any time, seek recovery of same from any other party to the Litigation or from counsel  
3 to any other party to the Litigation.

4 **10. Miscellaneous Provisions**

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

9 10.2 The Settling Parties intend this settlement to be a final and complete resolution of  
10 all disputes between them with respect to the Litigation. The settlement compromises claims that  
11 are contested and shall not be deemed an admission by any Settling Party as to the merits of any  
12 claim or defense. The Settling Parties each agree that the settlement was negotiated in good faith  
13 by the Settling Parties, and reflects a settlement that was reached voluntarily after consultation with  
14 competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such  
15 party determines to be appropriate, any contention made in any public forum that the Litigation  
16 was brought or defended in bad faith or without a reasonable basis. It is agreed that no Party shall  
17 have any liability to any other Party as it relates to the Litigation, except as set forth herein.

18 10.3 Neither the Settlement Agreement, nor the settlement contained herein, nor any act  
19 performed or document executed pursuant to or in furtherance of the Settlement Agreement or the  
20 settlement (i) is or may be deemed to be or may be used as an admission of, or evidence of, the  
21 validity or lack thereof of any Released Claim, or of any wrongdoing or liability of any of the  
22 Released Persons; or (ii) is or may be deemed to be or may be used as an admission of, or evidence  
23 of, any fault or omission of any of the Released Persons in any civil, criminal or administrative  
24 proceeding in any court, administrative agency or other tribunal. Any of the Released Persons may  
25 file the Settlement Agreement and/or the Judgment in any action that may be brought against them  
26 or any of them in order to support a defense or counterclaim based on principles of *res judicata*,  
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1 collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of  
2 claim preclusion or issue preclusion or similar defense or counterclaim.

3 10.4 The Settlement Agreement may be amended or modified only by a written  
4 instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

5 10.5 This Agreement contains the entire understanding between Timios and Plaintiffs  
6 regarding the payment of the Litigation settlement and supersedes all previous negotiations,  
7 agreements, commitments, understandings, and writings between Timios and Plaintiffs in  
8 connection with the payment of the Litigation settlement. Except as otherwise provided herein,  
9 each party shall bear its own costs.

10 10.6 Proposed Settlement Class Counsel, on behalf of the Settlement Class, is expressly  
11 authorized by Plaintiffs to take all appropriate actions required or permitted to be taken by the  
12 Settlement Class pursuant to the Settlement Agreement to effectuate its terms, and also are  
13 expressly authorized to enter into any modifications or amendments to the Settlement Agreement  
14 on behalf of the Settlement Class which they deem appropriate in order to carry out the spirit of this  
15 Settlement Agreement and to ensure fairness to the Settlement Class.

16 10.7 Each counsel or other Person executing the Settlement Agreement on behalf of any  
17 party hereto hereby warrants that such Person has the full authority to do so.

18 10.8 The Settlement Agreement may be executed in one or more counterparts. All  
19 executed counterparts and each of them shall be deemed to be one and the same instrument. A  
20 complete set of original executed counterparts shall be filed with the Court.

21 10.9 The Settlement Agreement shall be binding upon, and inure to the benefit of, the  
22 successors and assigns of the parties hereto.

23 10.10 The Court shall retain jurisdiction with respect to implementation and enforcement  
24 of the terms of the Settlement Agreement, and all parties hereto submit to the jurisdiction of the  
25 Court for purposes of implementing and enforcing the settlement embodied in the Settlement  
26 Agreement.

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1           10.11 As used herein, “he” means “he, she, or it;” “his” means “his, hers, or its,” and  
2 “him” means “him, her, or it.”

3           10.12 All dollar amounts are in United States dollars (USD).

4           10.13 Cashing a settlement check is a condition precedent to any Settlement Class  
5 Member’s right to receive settlement benefits. All settlement checks shall be void ninety (90) days  
6 after issuance and shall bear the language: “This check must be cashed within ninety (90) days,  
7 after which time it is void.” If a check becomes void, the Settlement Class Member shall have until  
8 six months after the Effective Date to request re-issuance. If no request for re-issuance is made  
9 within this period, the Settlement Class Member will have failed to meet a condition precedent to  
10 recovery of settlement benefits, the Settlement Class Member’s right to receive monetary relief  
11 shall be extinguished, and Timios shall have no obligation to make payments to the Settlement  
12 Class Member for expense reimbursement under ¶¶ 2.1 and 2.2 or any other type of monetary relief.  
13 The same provisions shall apply to any re-issued check. For any checks that are issued or re-issued  
14 for any reason more than one hundred eighty (180) days from the Effective Date, requests for re-  
15 issuance need not be honored after such checks become void.

16           10.14 All agreements made and orders entered during the course of the Litigation relating  
17 to the confidentiality of information shall survive this Settlement Agreement.

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

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