

1                                   **IN THE UNITED STATES DISTRICT COURT**  
2                                   **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
3                                   **SOUTHERN DIVISION**

Case No.: 8:24-cv-01772-FWS-ADS

4 KYLE MCDANIEL, RIKKI MCDANIEL,  
5 JON WILLIAMS, MOJDEH WILLIAMS,  
6 and TOM SIMMONS, on behalf of  
7 themselves and all similarly situated  
8 individuals,  
9 Plaintiffs,

**CLASS ACTION SETTLEMENT  
AGREEMENT**

v.

10 TOSHIBA      GLOBAL      COMMERCE  
11 SOLUTIONS, INC.,  
12 Defendant.

13            This Class Action Settlement Agreement (“**Settlement Agreement**”), dated as of April 11,  
14 2025, is made and entered into by and among the following Settling Parties (as defined below): Kyle  
15 McDaniel, Rikki McDaniel, Jon Williams, Mojdeh Williams, and Tom Simmons (collectively,  
16 “**Plaintiffs**”), individually and on behalf of the Settlement Class (as defined below), by and through  
17 their counsel of record, and Toshiba Global Commerce Solutions, Inc. (“**TGCS**” or “**Defendant**”), by  
18 and through its counsel of record. Plaintiffs and TGCS shall be referred to collectively as the  
19 “**Parties**” and each individually as a “**Party.**” The Settlement Agreement is subject to Court approval  
20 and is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the  
21 Released Claims (as defined below), upon and subject to the terms and conditions hereof. The above-  
22 captioned lawsuit being resolved is referred to herein as the “**Litigation.**”

23                                   **THE LITIGATION**

24            Plaintiffs allege that on or around December 4, 2023, cybercriminals bypassed TGCS’s  
25 security systems undetected and accessed personally identifiable information stored on TGCS’s  
26 computer systems (“**Data Incident**”). Plaintiffs further allege that, as a result of the Data Incident, the  
27 criminals gained access to Plaintiffs’ and other TGCS current and former employees’ personally  
28 identifiable information, including but not limited to name and Social Security Numbers (collectively,  
“**PII**”).

After discovering the Data Incident, TGCS notified approximately 6,258 individuals of the Data Incident. Individuals, including Plaintiffs, were mailed notices of the Data Incident in or around July and November 2024. On August 13, 2024, Plaintiff Kyle McDaniel filed a lawsuit asserting claims against Toshiba America Business Solutions, Inc. (“**TABS**”) relating to the Data Incident. On December 10, 2024, Plaintiff Kyle McDaniel filed a First Amended Class Action Complaint adding Plaintiffs Rikki McDaniel, Jon Williams, and Mojdeh Williams and Defendant TGCS. Plaintiffs subsequently filed a Second Amended Class Action Complaint (i) adding Plaintiff Tom Simmons; (ii) voluntarily dismissing TABS in light of the settlement reached in *Gregerson v. Toshiba America Business Solutions, Inc.*, 8:24-cv-01201-FWS-ADS (C.D. Cal.); and (iii) changing the name of TGCS to its correct corporate name.

From the onset of the Litigation, and over the course of several months, the Parties engaged in arms’-length settlement negotiations that included informal exchange of information necessary to evaluate the Parties’ respective strengths and weaknesses. As a result of these negotiations, the Parties reached the settlement memorialized in this Settlement Agreement.

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

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

Plaintiffs believe the claims asserted in the Litigation, as set forth in the Second Amended Class Action Complaint, have merit. Plaintiffs and Proposed Settlement Class Counsel (as defined below) recognize and acknowledge, however, the expense and length of continued proceedings necessary to prosecute the Litigation against TGCS through motion practice, trial, and potential appeals. They have also considered the uncertain outcome and risk of further litigation, as well as the difficulties and delays inherent in such litigation, especially in complex class actions. Proposed Settlement Class Counsel are highly experienced in class action litigation and very knowledgeable regarding the relevant claims, remedies, and defenses at issue generally in such litigation and in this

Litigation. They have determined that the settlement set forth in this Settlement Agreement is fair, reasonable, and adequate, and in the best interests of the Settlement Class.

### **DENIAL OF WRONGDOING AND LIABILITY**

TGCS denies each and every claim and contention alleged against it in the Litigation. TGCS denies all charges of wrongdoing or liability as alleged, or which could be alleged, in the Litigation. Nonetheless, TGCS has concluded that further conduct of the Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement. TGCS has considered the uncertainty and risks inherent in any litigation. TGCS has, therefore, determined that it is desirable and beneficial that the Litigation be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

### **TERMS OF THE SETTLEMENT**

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiffs, individually and on behalf of the Settlement Class, and TGCS that, subject to the approval of the Court, the Litigation and the Released Claims shall be finally and fully compromised, settled, and released, and the Litigation shall be dismissed with prejudice as to the Settling Parties and the Settlement Class, except those members of the Settlement Class who lawfully opt out of the Settlement Agreement, upon and subject to the terms and conditions of this Settlement Agreement, as follows.

#### **1. Definitions**

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

1.1 “**Agreement**” or “**Settlement Agreement**” means this Settlement Agreement.

1.2 “**California Settlement Subclass**” means those Settlement Class Members residing in California who were mailed notification of the Data Incident from TGCS at a California address.

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

1.4 “**Claims Administration**” means the processing and payment of Settlement Claims

received from Settlement Class Members by the Claims Administrator.

1.5 “**Claims Administrator**” means RG/2 Claims Administration, a company experienced in administering class action claims generally and specifically those of the type provided for and made in data breach litigation.

1.6 “**Claims Deadline**” means the postmark and/or online submission deadline for Settlement Claims.

1.7 “**Claim Form**” means the claim form to be used by Settlement Class Members to submit a Settlement Claim, either through the mail or online through the Settlement Website, substantially in the form as shown in **Exhibit C** to this Agreement.

1.8 “**Cost(s) of Claims Administration**” means all actual costs associated with or arising from Claims Administration, as well as all (i) fees and costs for providing notice to the Settlement Class in accordance with the Preliminary Approval Order, (ii) Taxes and Tax-Related Expenses, and (iii) any other fees, costs, or expenses that this Settlement Agreement provides shall be considered Costs of Claims Administration.

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

1.10 “**Counsel**” means both Proposed Settlement Class Counsel and Defendant’s Counsel, collectively.

1.11 “**Data Incident**” means the cyberattack perpetrated on TGCS on or about December 4, 2023, in which third-party criminals gained unauthorized access to TGCS’s network and gained unauthorized access to the personal information of Plaintiffs and the Settlement Class, which is the subject matter of this Litigation.

1.12 “**Defendant’s Counsel**” means Mark A. Hiller and Edward F. Hennessey IV of Robinson, Bradshaw & Hinson, P.A.

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

1.14 “**Effective Date**” means the first date by which all of the events and conditions specified in this Settlement Agreement have occurred and been met.

1           1.15    “**Final**” means the occurrence of all of the following events: (i) the settlement pursuant  
2 to this Settlement Agreement is approved by the Court; (ii) the Court has entered a Judgment (as that  
3 term is defined herein); and (iii) the time to appeal or seek permission to appeal from the Judgment has  
4 expired or, if appealed, the appeal has been dismissed in its entirety, or the Judgment has been  
5 affirmed in its entirety by the court of last resort to which such appeal may be taken, and such  
6 dismissal or affirmance has become no longer subject to further appeal or review. Notwithstanding the  
7 above, any order modifying or reversing any attorneys’ fee award or service award made in this case  
8 shall not affect whether the Judgment is “Final” as defined herein or any other aspect of the Judgment.

9           1.16    “**Final Approval Order**” means the order finally approving the Settlement Agreement  
10 and entering Judgment. The Settling Parties’ proposed form of Final Approval Order is attached hereto  
11 as **Exhibit E**.

12           1.17    “**Judgment**” means a judgment rendered by the Court granting final approval to the  
13 settlement as set forth herein.

14           1.18    “**Long Notice**” means the long form notice of settlement posted on the Settlement  
15 Website, substantially in the form as shown in **Exhibit B** to this Agreement.

16           1.19    “**Net Settlement Fund**” means the amount of funds that remain in the Settlement Fund  
17 after funds are paid from or allocated for payment from the Settlement Fund for all (i) Costs of Claims  
18 Administration, (ii) any service award payments approved by the Court to the Representative  
19 Plaintiffs, and (iii) attorneys’ fees and costs as approved by the Court.

20           1.20    “**Non-Profit Cy Pres Recipient**” means National Cybersecurity Alliance.

21           1.21    “**Notice Commencement Date**” means thirty (30) days following entry of the  
22 Preliminary Approval Order.

23           1.22    “**Objection Date**” means the date by which Settlement Class Members must mail to the  
24 Court or, in the alternative, file with the Court through the Court’s electronic case filing (“**ECF**”)  
25 system their objection to the Settlement Agreement for that objection to be effective. The postmark  
26 date shall constitute evidence of the date of mailing for these purposes.

27           1.23    “**Opt-Out Date**” means the date by which Settlement Class Members must mail their  
28

requests to be excluded from the Settlement Class for that request to be effective. The postmark date shall constitute evidence of the date of mailing for these purposes.

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

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

1.26 **“Proposed Settlement Class Counsel”** means Raina Borrelli and Andrew Gunem of Strauss Borrelli PLLC and Kennedy M. Brian and William B. Federman of Federman & Sherwood.

1.27 “**Related Entities**” means TGCS’s respective past, present, or future owners, parents, subsidiaries, divisions, and related or affiliated entities, and each of their respective predecessors, successors, directors, officers, employees, principals, agents, attorneys, insurers, and reinsurers, other than any Person who is found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting the Data Incident or who pleads *nolo contendere* to any such charge.

1.28     **“Released Claims”** shall collectively mean any and all past, present, and future claims and causes of action including, but not limited to, any causes of action arising under or premised upon any statute, constitution, law, ordinance, treaty, regulation, or common law of any country, state, province, county, city, or municipality, including 15 U.S.C. §§ 45 *et seq.*, and all similar statutes in effect in any states in the United States as defined below; violations of the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.*, and all similar state consumer-protection statutes; violations of the California Consumer Protection Act of 2018, Cal. Civ. Code § 1798, *et seq.*, and all similar state privacy-protection statutes; negligence; negligence *per se*; breach of contract; breach of implied contract; breach of fiduciary duty; breach of confidence; invasion of privacy; fraud;

1 misrepresentation (whether fraudulent, negligent, or innocent); unjust enrichment; bailment;  
2 wantonness; failure to provide adequate notice pursuant to any breach notification statute or common  
3 law duty; and including, but not limited to, any and all claims for damages, injunctive relief,  
4 disgorgement, declaratory relief, equitable relief, attorneys' fees and expenses, pre-judgment interest,  
5 credit monitoring services, the creation of a fund for future damages, statutory damages, punitive  
6 damages, special damages, exemplary damages, restitution, and/or the appointment of a receiver,  
7 whether known or unknown, liquidated or unliquidated, accrued or unaccrued, fixed or contingent,  
8 direct or derivative, and any other form of legal or equitable relief that either has been asserted, was  
9 asserted, or could have been asserted, by any Settlement Class Member against any of the Released  
10 Persons based on, relating to, concerning, or arising out of the Data Incident and alleged theft of  
11 personal information or the allegations, transactions, occurrences, facts, or circumstances alleged in or  
12 otherwise described in the Litigation as they relate to the Data Incident. Released Claims shall not  
13 include the right of any Settlement Class Member or any of the Released Persons to enforce the terms  
14 of the settlement contained in this Settlement Agreement, and shall not include the claims of  
15 Settlement Class Members who have excluded themselves from the Settlement Class by the Opt-Out  
16 Date. In addition, any Settlement Class Member who received a notice of the Data Incident from  
17 TGCS and also received from TABS a notice of a cyberattack perpetrated on TABS on or about  
18 December 4, 2023 shall not release claims against TABS.

19 1.29 **"Released Persons"** means TGCS, TABS, and the Related Entities and each of their  
20 past or present parents, subsidiaries, divisions, and related or affiliated entities, and each of their  
21 respective predecessors, successors, directors, officers, employees, principals, agents, attorneys,  
22 insurers, and reinsurers.

23 1.30 **"Representative Plaintiffs"** and **"Plaintiffs"** means Kyle McDaniel, Rikki McDaniel,  
24 Jon Williams, Mojdeh Williams, and Tom Simmons.

25 1.31 **"Settlement Claim(s)"** or **"Claim(s)"** means a claim for settlement benefits made  
26 under the terms of this Settlement Agreement.

27 1.32 **"Settlement Class"** means all United States residents who were mailed notice by  
28



1 TGCS that their personal information was impacted in a data incident beginning on approximately  
2 December 4, 2023. However, the Settlement Class specifically excludes: (i) TGCS, its subsidiaries,  
3 parent companies, successors, predecessors, and any entity in which TGCS or its parents have a  
4 controlling interest, and their officers and directors; (ii) all Settlement Class Members who validly  
5 request exclusion from the Settlement Class by the Opt-Out Date; (iii) any judges assigned to this case  
6 and members of their direct families; and (iv) any other Person found by a court of competent  
7 jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting the criminal  
8 activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge.

9 1.33 “**Settlement Class Member(s)**” means all United States residents meeting the  
10 definition of the Settlement Class.

11 1.34 “**Settlement Fund**” means the non-reversionary common fund amount of four hundred  
12 thirty-five thousand dollars (\$435,000.00) to be paid by, or on behalf of, TGCS, including any interest  
13 accrued thereon after payment, and from which all monetary compensation to the Settlement Class and  
14 certain other expenses shall be paid as set forth in this Settlement Agreement. It is understood and  
15 agreed by the Settling Parties that the \$435,000.00 in settlement funds paid by or on behalf of TGCS  
16 shall be the full and complete amount, limit, and extent of TGCS’s financial contribution and that  
17 under no circumstances will TGCS be required to pay any additional amounts related to settlement of  
18 the Litigation.

19 1.35 “**Settlement Remainder**” means the funds that remain in the Settlement Fund after  
20 paying (i) all Valid Claims for Out-Of-Pocket Reimbursement (as described in ¶ 3.2) and California  
21 Settlement Subclass Payment (as described in ¶ 3.4); (ii) all Costs of Claims Administration; (iii) any  
22 service award payments approved by the Court to the Representative Plaintiffs; and (iv) attorneys’ fees  
23 and costs as approved by the Court.

24 1.36 “**Settlement Website**” means a website, the URL for which to be mutually selected by  
25 the Settling Parties, that will inform Settlement Class Members of the terms of this Settlement  
26 Agreement, their rights, dates and deadlines, and related information, as well as provide the Settlement  
27 Class Members with the ability to submit a Settlement Claim online.



1 1.37 “**Settling Parties**” means, collectively, TGCS and Plaintiffs, individually and on behalf  
2 of the Settlement Class.

3 1.38 “**Short Notice**” means the short form notice of the proposed class action settlement,  
4 substantially in the form as shown in **Exhibit A** to this Agreement. The Short Notice will direct  
5 recipients to the Settlement Website and inform Settlement Class Members of, among other things, the  
6 Opt-Out Date, Objection Date, and the date of the Final Fairness Hearing (as defined below) (if set  
7 prior to the Notice Commencement Date).

8 1.39 “**Unknown Claims**” means any of the Released Claims that any Settlement Class  
9 Member, including Plaintiffs, does not know or suspect to exist in his/her favor at the time of the  
10 release of the Released Persons that, if known by him or her, might have affected his or her settlement  
11 with, and release of, the Released Persons, or might have affected his or her decision not to object to  
12 and/or to participate in this Settlement Agreement. With respect to any and all Released Claims, the  
13 Settling Parties stipulate and agree that upon the Effective Date, Plaintiffs intend to and expressly shall  
14 have, and each of the other Settlement Class Members intend to and shall be deemed to have, and by  
15 operation of the Judgment shall have, waived the provisions, rights, and benefits conferred by  
16 California Civil Code § 1542, and also any and all provisions, rights, and benefits conferred by any  
17 law of any state, province, or territory of the United States (including, without limitation, California  
18 Civil Code §§ 1798.80 *et seq.*; Montana Code Ann. § 28-1-1602; North Dakota Cent. Code § 9-13-02;  
19 and South Dakota Codified Laws § 20-7-11), which is similar, comparable, or equivalent to California  
20 Civil Code § 1542, which provides:

21  
22 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
23 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
24 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,  
25 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY  
26 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED  
27 PARTY.

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

7 1.40 “**Taxes and Tax-Related Expenses**” means any and all applicable taxes, duties, and  
8 similar charges imposed by a government authority (including any estimated taxes, interest, or  
9 penalties) arising in any jurisdiction, if any, with respect to the income or gains earned by or in respect  
10 of the Settlement Fund, including, without limitation, any taxes that may be imposed upon TGCS with  
11 respect to any income or gains earned by or in respect of the Settlement Fund for any period while it is  
12 held in the Settlement Fund.

13 1.41 “**United States**” as used in this Settlement Agreement includes the District of  
14 Columbia and all territories.

15 1.42 “**Valid Claims**” means Settlement Claims in an amount approved by the Claims  
16 Administrator or found to be valid through the claims processing and/or Dispute Resolution process.

## 17 2. Settlement Fund

18 2.1 In consideration of the releases provided in this Settlement Agreement, within thirty  
19 (30) days of the entry of the Preliminary Approval Order, TGCS shall cause to be deposited the sum of  
20 four hundred thirty-five thousand dollars (\$435,000.00) into an account established and administered  
21 by the Claims Administrator at a financial institution agreed upon by the Claims Administrator,  
22 TGCS, and Proposed Settlement Class Counsel. The Claims Administrator shall provide wiring  
23 instructions and a properly completed and duly executed IRS Form W-9 to TGCS within five (5) days  
24 of the entry of the Preliminary Approval Order. Following TGCS’s payment of the Settlement Fund  
25 monies as described in this paragraph, TGCS shall have no responsibility, financial obligation, or  
26 liability whatsoever with respect to the selection of the Settlement Fund account, investment of  
27 Settlement Fund account funds, payment of federal, state, and local income, employment,  
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1 unemployment, excise, and any other Taxes or Tax-Related Expenses imposed on the Settlement Fund  
2 account or its distributions, or payment of the administrative, legal, accounting, or other costs  
3 occasioned by the use or administration of the Settlement Fund.

4       2.2     The Parties agree that the Settlement Fund is intended to be maintained as a qualified  
5 settlement fund within the meaning of Treasury Regulation § 1.468B-1, and that the Claims  
6 Administrator, within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be responsible for  
7 filing tax returns and any other tax reporting for or in respect of the Settlement Fund and paying from  
8 the Settlement Fund any Taxes and Tax-Related Expenses owed with respect to the Settlement Fund.  
9 The Parties agree that the Settlement Fund shall be treated as a qualified settlement fund from the  
10 earliest date possible and agree to any relation-back election required to treat the Settlement Fund as a  
11 qualified settlement fund from the earliest date possible. Any and all funds held in the Settlement Fund  
12 shall be held in an interest-bearing account insured by the Federal Deposit Insurance Corporation.  
13 Funds may be placed in a non-interest bearing account as may be reasonably necessary during the  
14 check clearing process. The Claims Administrator shall provide an accounting of any and all funds in  
15 the Settlement Fund, including any interest accrued thereon and payments made pursuant to this  
16 Agreement, upon request of any of the Parties.

17       2.3     The Settlement Fund shall be deemed to be in the custody of the Court and shall remain  
18 subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is  
19 distributed pursuant to this Settlement Agreement or the balance returned to those who paid the  
20 Settlement Fund in the event this Settlement Agreement is terminated, canceled, or voided in  
21 accordance with its terms.

22       2.4     As further described in this Agreement, the Settlement Fund shall be used by the  
23 Claims Administrator to pay for the following: (i) all Valid Claims; (ii) all Costs of Claims  
24 Administration; (iii) any service award payments approved by the Court to the Representative  
25 Plaintiffs; (iv) attorneys' fees and costs as approved by the Court; and (v) any other payments  
26 authorized by this Agreement. No amounts may be withdrawn from the Settlement Fund unless  
27 expressly authorized by this Agreement or approved by the Court. Responsibility for effectuating  
28

1 payments described in this paragraph shall rest solely with the Claims Administrator, and neither  
2 TGCS nor its agents shall have any responsibility whatsoever with respect to effectuating such  
3 payments.

4       2.5 Taxes and Tax-Related Expenses relating to the Settlement Fund, if any, shall be  
5 considered Costs of Claims Administration and shall be timely paid by the Claims Administrator out  
6 of the Settlement Fund without prior order of the Court. Further, the Settlement Fund shall indemnify  
7 and hold harmless the Parties and their Counsel for Taxes and Tax-Related Expenses (including,  
8 without limitation, taxes payable by reason of any such indemnification payments). The Parties and  
9 their respective Counsel have made no representation or warranty, and have no responsibility, with  
10 respect to the tax treatment by any Plaintiff or any Settlement Class Member of any payment or  
11 transfer made pursuant to this Agreement or derived from or made pursuant to the Settlement Fund.  
12 Each Plaintiff and Settlement Class Member shall be solely responsible for the federal, state, and local  
13 tax consequences to him or her of the receipt of funds from the Settlement Fund pursuant to this  
14 Agreement.

15       **3. Settlement Benefits**

16       3.1 The Claims Administrator will agree to make the following compensation from the Net  
17 Settlement Fund available to Settlement Class Members who submit Valid Claims, as set forth in this  
18 Agreement.

19       3.2 Out-of-Pocket Expense Reimbursement: All Settlement Class Members who have  
20 suffered a proven monetary loss and who submit a Valid Claim using the Claim Form are eligible for  
21 reimbursement of up to seven thousand five hundred dollars (\$7,500.00) if: (i) the loss is an actual,  
22 documented, and unreimbursed monetary loss; (ii) the loss was more likely than not caused by the  
23 Data Incident; (iii) the loss occurred between December 4, 2023 and the Claims Deadline; (iv) the  
24 Settlement Class Member made reasonable efforts to avoid, or seek reimbursement for, the loss,  
25 including but not limited to exhaustion of all available credit monitoring insurance and identity theft  
26 insurance; and (v) the Settlement Class Member has not submitted a valid and approved claim in the  
27 settlement of *Gregerson v. Toshiba America Business Solutions, Inc.*, 8:24-cv-01201-FWS-ADS (C.D.  
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1 Cal.).

2 3.3 Settlement Class Members seeking reimbursement under ¶ 3.2 must complete and  
3 submit a Claim Form to the Claims Administrator, postmarked or submitted online on or before ninety  
4 (90) days after the Notice Commencement Date. The notice to the Settlement Class will specify this  
5 deadline and other relevant dates described herein. The Claim Form must be verified by the Settlement  
6 Class Member with a statement that his or her claim is true and correct, to the best of his or her  
7 knowledge and belief. Notarization shall not be required. The Settlement Class Member must submit  
8 reasonable documentation that the out-of-pocket expenses and charges claimed were both actually  
9 incurred and plausibly arose from the Data Incident. Failure to provide supporting documentation of  
10 the out-of-pocket expenses and charges referenced above, as requested on the Claim Form, shall result  
11 in denial of a claim. Disputes as to claims submitted under this paragraph are to be resolved pursuant  
12 to the provisions stated herein.

13 3.4 California Settlement Subclass Payment: All California Settlement Subclass Members  
14 may make a claim for a \$150.00 cash payment, provided that such member has not submitted a valid  
15 and approved claim in the settlement of *Gregerson v. Toshiba America Business Solutions, Inc.*, 8:24-  
16 cv-01201-FWS-ADS (C.D. Cal.). California Settlement Subclass Members seeking payment under  
17 this paragraph must complete and submit a Claim Form (or short Claim Form, to be included with the  
18 Short Notice) to the Claims Administrator, postmarked or submitted online on or before ninety (90)  
19 days after the Notice Commencement Date.

20 3.5 Pro Rata Cash Payment: All Settlement Class Members may make a claim for a *pro*  
21 *rata* distribution of the cash that remains in the Settlement Remainder, if any, after payment of all  
22 Costs of Claims Administration, any service award payments approved by the Court to the  
23 Representative Plaintiffs, attorneys' fees and costs as approved by the Court, and Valid Claims for  
24 Out-of-Pocket Expense Reimbursement and California Settlement Subclass Payment, provided that  
25 such member has not submitted a valid and approved claim in the settlement of *Gregerson v. Toshiba*  
26 *America Business Solutions, Inc.*, 8:24-cv-01201-FWS-ADS (C.D. Cal.). Settlement Class Members  
27 seeking payment under this paragraph must complete and submit a Claim Form (or short Claim Form,  
28

1 to be included with the Short Notice) to the Claims Administrator, postmarked or submitted online on  
2 or before ninety (90) days after the Notice Commencement Date.

3 3.6 In the event that the aggregate amount of all Valid Claims for Out-of-Pocket Expense  
4 Reimbursement and California Settlement Subclass Payment exceeds the total amount of the Net  
5 Settlement Fund, then all Valid Claims for Out-of-Pocket Expense Reimbursement shall be paid in full  
6 to the extent the Net Settlement Fund is sufficient to fully pay all such claims, and then each Valid  
7 Claim for California Settlement Subclass Payment shall be proportionately reduced on a *pro rata*  
8 basis. If the Net Settlement Fund is not sufficient to pay all Valid Claims for Out-of-Pocket Expense  
9 Reimbursement, then the Valid Claims for Out-of-Pocket Expense Reimbursement shall be  
10 proportionately reduced on a *pro rata* basis. In no event shall the Settlement Fund be increased for any  
11 reason.

12 3.7 Dispute Resolution for Claims.

13 3.7.1 The Claims Administrator, in its sole discretion and authority to be reasonably  
14 exercised, will determine whether: (i) the claimant is a Settlement Class Member; (ii) the claimant has  
15 provided all information needed to complete the Claim Form, including any documentation that may  
16 be necessary to reasonably support the Out-of-Pocket Expenses described in ¶ 3.2; (iii) the claimant  
17 has not submitted a valid and approved claim in the settlement of *Gregerson v. Toshiba America*  
18 *Business Solutions, Inc.*, 8:24-cv-01201-FWS-ADS (C.D. Cal.); and (iv) the information submitted  
19 could lead a reasonable person to conclude that more likely than not the claimant has suffered the  
20 claimed losses as a result of the Data Incident. If, after review of the Claim and all documentation  
21 submitted by the claimant, the Claims Administrator determines that such a Claim is facially valid,  
22 then the Claim shall be paid as provided for in this Agreement.

23 3.7.2 If the Claims Administrator determines that a Claim is deficient in whole or in  
24 part, within a reasonable time of making such a determination, the Claims Administrator shall notify  
25 the Settlement Class Member of the deficiencies and give the Settlement Class Member thirty (30)  
26 days to cure the deficiencies. Such notifications shall be sent via e-mail, unless the claimant did not  
27 provide an e-mail address, in which case such notifications shall be sent via U.S. mail. If the  
28



1 Settlement Class Member attempts to cure the deficiencies but, at the sole discretion and authority of  
2 the Claims Administrator to be reasonably exercised, fails to do so, the Claims Administrator shall  
3 notify the Settlement Class Member within ten (10) days of the Claims Administrator's determination  
4 that the Claim has been rejected in whole or in part. Such determination by the Claims Administrator  
5 shall be final and non-appealable. The Claims Administrator may consult with Proposed Settlement  
6 Class Counsel and Defendant's Counsel in making such determinations.

7 3.8 The Parties and Counsel shall not have any liability whatsoever with respect to (i) any  
8 act, omission, or determination of the Claims Administrator, or any of its respective designees or  
9 agents, in connection with the administration of the settlement of this Litigation or otherwise; (ii) the  
10 management, investment, or distribution of the Settlement Fund; (iii) the formulation, design, or terms  
11 of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation, or  
12 payment of any Claims asserted against the Settlement Fund; (v) any losses suffered by or fluctuations  
13 in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes and Tax-Related  
14 Expenses.

15 3.9 Business Practices Changes. In connection with these settlement negotiations, TGCS  
16 has acknowledged (without any admission of liability) that TGCS has made certain systems or  
17 business practice changes to mitigate the risk of similar data incidents in the future. Nothing in this  
18 Settlement Agreement shall create any contractual rights to any present or future equitable remedy  
19 requiring TGCS to establish or maintain any particular security processes or procedures in the future  
20 or otherwise take any action in response to the Litigation. In addition, notwithstanding actions to  
21 enforce this Settlement Agreement, nothing in this Settlement Agreement may be used to create a  
22 cause of action against TGCS or may be used in connection with any other matter against TGCS.

23 3.10 Confirmatory Discovery. TGCS has provided reasonable access to confidential  
24 confirmatory discovery regarding the number of Settlement Class Members and state of residence, the  
25 facts and circumstances of the Data Incident and TGCS's response thereto, and the changes and  
26 improvements that have been made or are being made to further protect Settlement Class Members'  
27 PII.  
28

1           3.11 Settlement Class Certification. The Settling Parties agree, for purposes of this  
2 settlement only, to the certification of the Settlement Class. If the settlement set forth in this  
3 Settlement Agreement is not approved by the Court, or if the Settlement Agreement is terminated,  
4 cancelled, or voided pursuant to the terms of this Settlement Agreement, this Settlement Agreement,  
5 and the certification of the Settlement Class provided for herein, will be vacated and the Litigation  
6 shall proceed as though the Settlement Class had never been certified, without prejudice to any  
7 Person's or Settling Party's position on the issue of class certification or any other issue. The Settling  
8 Parties' agreement to the certification of the Settlement Class is also without prejudice to any position  
9 asserted by the Settling Parties in any other proceeding, case, or action, as to which all of their rights  
10 are specifically preserved.

11           3.12 Exclusion from Recovery. Any Settlement Class Member who has submitted a valid  
12 and approved claim in the settlement of *Gregerson v. Toshiba America Business Solutions, Inc.*, 8:24-  
13 cv-01201-FWS-ADS (C.D. Cal.), shall be excluded from any recovery under this Settlement  
14 Agreement.

15           **4. Order of Preliminary Approval and Publishing of Notice of Fairness Hearing**

16           4.1 As soon as practicable after the execution of the Settlement Agreement, Proposed  
17 Settlement Class Counsel and Defendant's Counsel shall jointly submit this Settlement Agreement to  
18 the Court, and Proposed Settlement Class Counsel will file a motion for preliminary approval of the  
19 settlement with the Court requesting entry of a Preliminary Approval Order in a form substantially  
20 similar to the one attached as **Exhibit D** to this Agreement, requesting, among other things:

- 21           a) certification of the Settlement Class for settlement purposes only;  
22           b) preliminary approval of the Settlement Agreement as set forth herein;  
23           c) appointment of Proposed Settlement Class Counsel as Settlement Class  
24           Counsel;  
25           d) appointment of Plaintiffs as Class Representatives;  
26           e) approval of a customary form of Short Notice to be mailed to Settlement Class  
27           Members in a form substantially similar to the one attached as **Exhibit A** to  
28

1 this Agreement;

2 f) approval of the Long Notice to be posted on the Settlement Website in a form  
3 substantially similar to the one attached as **Exhibit B** to this Agreement,  
4 which, together with the Short Notice, shall include a fair summary of the  
5 Parties' respective litigation positions, the general terms of the settlement set  
6 forth in the Settlement Agreement, instructions for how to object to or opt-out  
7 of the settlement, the process and instructions for making Claims to the extent  
8 contemplated herein, and the date, time, and place of the Final Fairness  
9 Hearing; and

10 g) appointment of RG/2 Claims Administration as the Claims Administrator.

11 4.2 All fees and costs for providing notice to the Settlement Class in accordance with the  
12 Preliminary Approval Order shall be considered Costs of Claims Administration and, together with all  
13 other Costs of Claims Administration, shall be paid from the Settlement Fund. Notice shall be  
14 provided to Settlement Class Members by the Claims Administrator as follows:

15 a) *Class Member Information*: No later than fourteen (14) days after entry of the  
16 Preliminary Approval Order, TGCS shall provide the Claims Administrator  
17 with the name and last known physical address of each Settlement Class  
18 Member (collectively, "**Class Member Information**") that TGCS possesses.

- 19 • The Class Member Information and its contents shall be used by  
20 the Claims Administrator solely for the purpose of performing  
21 its obligations pursuant to this Settlement Agreement and  
22 shall not be used for any other purpose at any time. Except to  
23 administer the settlement as provided in this Settlement  
24 Agreement, or to provide all data and information in its  
25 possession to the Settling Parties upon request, the Claims  
26 Administrator shall not reproduce, copy, store, or distribute in  
27 any form, electronic or otherwise, the Class Member  
28

Information.

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

c) *Short Notice:* On or before the Notice Commencement Date and to be substantially completed not later than fifteen (15) days after the Notice Commencement Date, and subject to the requirements of this Agreement and the Preliminary Approval Order, the Claims Administrator will provide the Short Notice to the Settlement Class as follows:

- To all Settlement Class Members for whom TGCS is in possession of a postal address. 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

1 recipient is no longer valid, and the envelope contains a  
2 forwarding address, the Claims Administrator shall re-send  
3 the Short Notice to the forwarding address within seven (7)  
4 days of receiving the returned Short Notice;

- 5 • in the event that subsequent to the first mailing of a Short Notice,  
6 and at least fourteen (14) days prior to the Opt-Out and  
7 Objection Deadline, a Short Notice is returned to the Claims  
8 Administrator by the USPS because the address of the  
9 recipient is no longer valid, i.e., the envelope is marked  
10 “Return to Sender” and does not contain a new forwarding  
11 address, the Claims Administrator shall perform a standard  
12 skip trace, in the manner that the Claims Administrator  
13 customarily performs skip traces, in an effort to attempt to  
14 ascertain the current address of the particular Settlement Class  
15 Member in question and, if such an address is ascertained, the  
16 Claims Administrator will re-send the Short Notice within  
17 seven (7) days of receiving such information. This shall be the  
18 final requirement for mailing.

19 d) A toll-free help line shall be made available to provide Settlement Class  
20 Members with additional information about the settlement. The Claims  
21 Administrator also will provide copies of the forms of Short Notice, Long  
22 Notice, and paper Claim Form, as well as this Settlement Agreement, upon  
23 request.

24 e) Contemporaneously with seeking final approval of the settlement set forth  
25 herein, Proposed Settlement Class Counsel and TGCS shall cause to be filed  
26 with the Court an appropriate affidavit or declaration with respect to  
27 complying with this provision of notice.  
28

1           4.3     The Short Notice, Long Notice, and other applicable communications to the Settlement  
2 Class, respectively, may be adjusted by the Claims Administrator in consultation and agreement with  
3 the Settling Parties, as may be reasonable and not inconsistent with such approval.

4           4.4     Proposed Settlement Class Counsel and Defendant's Counsel shall request that after  
5 notice is completed, the Court hold a hearing (the "**Final Fairness Hearing**") and grant final approval  
6 of the settlement set forth herein.

7           4.5     TGCS will cause the Claims Administrator to provide notice of this Settlement  
8 Agreement to the relevant state and federal governmental officials as required by the Class Action  
9 Fairness Act. The cost of providing such notice shall be considered Costs of Claims Administration  
10 and shall be paid from the Settlement Fund.

11           **5.     Opt-Out Procedures**

12           5.1     Each Person wishing to opt-out of the Settlement Class shall individually sign and  
13 timely submit written notice of such intent to the designated Post Office box established by the Claims  
14 Administrator. The written notice must clearly manifest a Person's intent to opt-out of the Settlement  
15 Class. To be effective, written notice must be postmarked no later than sixty (60) days after the Notice  
16 Commencement Date.

17           5.2     All Persons who submit valid notices of their intent to opt-out of the Settlement Class  
18 by the Opt-Out Date, as set forth above, referred to herein as "**Opt-Outs**," shall not receive any  
19 benefits of and/or be bound by the terms of this Settlement Agreement. All Persons falling within the  
20 definition of the Settlement Class who do not opt-out of the Settlement Class in the manner set forth  
21 above shall be bound by the terms of this Settlement Agreement and Judgment entered thereon.

22           5.3     In the event that there have been more than ten (10) timely and valid Opt-Outs  
23 submitted, TGCS may, in its sole discretion, void this Settlement Agreement. If TGCS elects to void  
24 the Settlement Agreement pursuant to this paragraph, TGCS shall notify Proposed Settlement Class  
25 Counsel and the Court in writing within ten (10) days after the Opt-Out Date as approved by the  
26 Court. As provided for in ¶ 10.4, if TGCS voids the Settlement Agreement pursuant to this ¶ 5.3,  
27 TGCS shall be obligated to pay all settlement expenses already incurred, excluding any attorneys'  
28





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

7.3 With respect to the release in ¶ 7.2, notwithstanding any term herein, neither TGCS nor its Related Entities shall have or shall be deemed to have released, relinquished, or discharged any claim or defense against any Person other than Representative Plaintiffs, each and all of the Settlement Class Members, and Proposed Settlement Class Counsel.

**8. Plaintiffs' Counsel's Attorneys' Fees, Costs, and Expenses; Service Award to Representative Plaintiffs**

8.1 The Settling Parties did not discuss the payment of attorneys' fees, costs, expenses, and/or service award to Plaintiffs, as provided for in ¶¶ 8.2 and 8.3, until after the substantive terms of the settlement had been agreed upon, other than that the settlement would include reasonable attorneys' fees, costs, expenses, and a service award to Plaintiffs from the Settlement Fund as ordered by the Court.

8.2 No later than forty-five (45) days after the Notice Commencement Date, Proposed Settlement Class Counsel will seek, and TGCS has agreed not to oppose, an order from the Court awarding up to one-third (1/3) of the Settlement Fund to Proposed Settlement Class Counsel for attorneys' fees, as well as any costs and expenses of the Litigation. Proposed Settlement Class Counsel, in their sole discretion, shall allocate and distribute the amount of attorneys' fees, costs, and expenses awarded by the Court among Plaintiffs' counsel.

8.3 No later than forty-five (45) days after the Notice Commencement Date, Proposed



1 forever barred from receiving any payments or benefits pursuant to the settlement set forth herein, but  
2 will in all other respects be subject to, and bound by, the provisions of the Settlement Agreement, the  
3 releases contained herein, and the Judgment.

4 9.4 No Person shall have any claim against the Claims Administrator, TGCS, Plaintiffs,  
5 and/or Counsel based on distributions of benefits to Settlement Class Members.

6 9.5 Cashing a settlement check is a condition precedent to any Settlement Class Member's  
7 right to receive settlement benefits. All settlement checks shall be void ninety (90) days after issuance  
8 and shall bear the following or substantially similar language: "This check must be cashed within  
9 ninety (90) days, after which time it is void."

10 9.6 For any settlement check returned to the Claims Administrator as undeliverable  
11 (including, but not limited to, when the intended recipient is no longer located at the address), the  
12 Claims Administrator shall make reasonable efforts to locate a valid address and re-send the settlement  
13 check within thirty (30) days after the check is returned to the Claims Administrator as undeliverable.  
14 In attempting to locate a valid address, the Claims Administrator is authorized to send an e-mail and/or  
15 place a telephone call to that Settlement Class Member to obtain updated address information. Any  
16 replacement settlement checks issued to Settlement Class Members shall remain valid and negotiable  
17 for sixty (60) days from the date of their issuance and may thereafter automatically be canceled if not  
18 cashed by the Settlement Class Members within that time.

19 9.7 To the extent that a settlement check is not cashed within ninety (90) days after the date  
20 of issue, the Claims Administrator shall undertake the following actions: (i) attempt to contact the  
21 Settlement Class Member by e-mail and/or telephone to discuss how to obtain a reissued check; (ii) if  
22 those efforts are unsuccessful, make reasonable efforts to locate an updated address for the Settlement  
23 Class Member using advanced address searches or other reasonable methods; and (iii) reissue a check  
24 or mail the Settlement Class Member a postcard (either to an updated address if located or the original  
25 address if not) providing information regarding how to obtain a reissued check. Any reissued  
26 settlement checks issued to Settlement Class Members shall remain valid and negotiable for sixty (60)  
27 days from the date of their issuance and shall thereafter automatically be canceled by the Claims  
28

1 Administrator if not cashed by the Settlement Class Members within that time.

2           9.8     Once the time to cash all initially issued settlement checks and reissued settlement  
3 checks has passed, the Claims Administrator shall determine the aggregate amount of any canceled  
4 payments. The Claims Administrator shall then calculate the per-person amount of the cancelled  
5 payments by dividing the aggregate amount of any cancelled payments by the number of Settlement  
6 Class Members who (a) validly elected to receive a *Pro Rata* Cash Payment and (b) cashed a  
7 settlement check. If the per-person amount of the canceled payments is less than ten dollars (\$10.00),  
8 the Claims Administrator shall distribute the aggregate amount of any canceled payments to the Non-  
9 Profit Cy Pres Recipient. If the per-person amount of the cancelled payments is equal to or greater  
10 than ten dollars (\$10.00), the Claims Administrator shall issue supplemental checks to the Settlement  
11 Class Members who (a) validly elected to receive a *Pro Rata* Cash Payment and (b) cashed a  
12 settlement check. If any supplemental check is returned to the Claims Administrator as undeliverable,  
13 the Claims Administrator shall follow the steps identified in ¶ 9.6. To the extent that a settlement  
14 check is not cashed within ninety (90) days after the date of issue, the Claims Administrator shall  
15 follow the steps identified in ¶ 9.7. Once the time to cash all initially issued supplemental settlement  
16 checks and reissued supplemental settlement checks has passed, the Claims Administrator shall  
17 distribute the aggregate amount of any additional cancelled payments to the Non-Profit Cy Pres  
18 Recipient.

19           **10.     Conditions of Settlement; Effect of Disapproval, Cancellation, or Termination**

20           10.1    The Effective Date of the settlement shall be conditioned on the occurrence of all of the  
21 following events:

- 22                   a)     the Court has entered the Preliminary Approval Order and provided notice of a  
23                             Final Fairness Hearing, as required by provisions herein;
- 24                   b)     TGCS has not exercised its option to terminate the Settlement Agreement;
- 25                   c)     the Court has entered the Judgment granting final approval to the settlement as  
26                             set forth herein; and
- 27                   d)     the Judgment has become Final, as defined herein.
- 28

1           10.2 If all conditions specified in ¶ 10.1 hereof are not satisfied, the Settlement Agreement  
2 shall be canceled and terminated subject to ¶ 10.4 unless Proposed Settlement Class Counsel and  
3 Defendant's Counsel mutually agree in writing to proceed with the Settlement Agreement.

4           10.3 Within seven (7) days after the Opt-Out Date, the Claims Administrator shall furnish to  
5 Proposed Settlement Class Counsel and to Defendant's Counsel a complete list of all Opt-Outs.

6           10.4 In the event that the Settlement Agreement or the releases set forth above are not  
7 approved by the Court or the settlement set forth in the Settlement Agreement is terminated in  
8 accordance with its terms (including being voided pursuant to ¶ 5.3), (i) the Settling Parties shall be  
9 restored to their respective positions in the Litigation and shall jointly request that all scheduled  
10 litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Settling Party  
11 or Counsel, and (ii) the terms and provisions of the Settlement Agreement shall have no further force  
12 and effect with respect to the Settling Parties and shall not be used in the Litigation or in any other  
13 proceeding for any purpose, and any judgment or order entered by the Court in accordance with the  
14 terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*. Notwithstanding any  
15 statement in this Settlement Agreement to the contrary, no order of the Court or modification or  
16 reversal on appeal of any order reducing the amount of attorneys' fees, costs, expenses, and/or service  
17 awards shall constitute grounds for cancellation or termination of the Settlement Agreement. Further,  
18 notwithstanding any statement in this Settlement Agreement to the contrary, in the event of the  
19 cancellation or termination of the Settlement Agreement, TGCS shall be obligated to pay amounts  
20 already billed or incurred for costs of notice to the Settlement Class, Claims Administration, and  
21 Dispute Resolution pursuant to the above and shall not, at any time, seek recovery of same from any  
22 other party to the Litigation or from counsel to any other party to the Litigation.

## 23           **11. Miscellaneous Provisions**

24           11.1 The Settling Parties (i) acknowledge that it is their intent to consummate this  
25 Settlement Agreement; and (ii) agree to cooperate to the extent reasonably necessary to effectuate and  
26 implement all terms and conditions of this Settlement Agreement, and to exercise their best efforts to  
27 accomplish the terms and conditions of this Settlement Agreement.



1           11.2 The Settling Parties intend this settlement to be a final and complete resolution of all  
2 disputes between them with respect to the Litigation. The settlement compromises claims that are  
3 contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or  
4 defense. The Settling Parties each agree that the settlement was negotiated in good faith by the Settling  
5 Parties and reflects a settlement that was reached voluntarily after consultation with competent legal  
6 counsel. The Settling Parties reserve their right to rebut, in a manner that such Party determines to be  
7 appropriate, any contention made in any public forum that the Litigation was brought or defended in  
8 bad faith or without a reasonable basis. It is agreed that no Party shall have any liability to any other  
9 Party as it relates to the Litigation, except as set forth herein.

10           11.3 Neither the Settlement Agreement, nor the settlement contained herein, nor any act  
11 performed or document executed pursuant to or in furtherance of the Settlement Agreement or the  
12 settlement (i) is or may be deemed to be or may be used as an admission of, or evidence of, the  
13 validity or lack thereof of any Released Claim, or of any wrongdoing or liability of any of the  
14 Released Persons; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of,  
15 any fault or omission of any of the Released Persons in any civil, criminal, or administrative  
16 proceeding in any court, administrative agency, or other tribunal. Any of the Released Persons may  
17 file the Settlement Agreement and/or the Judgment in any action that may be brought against them or  
18 any of them in order to support a defense or counterclaim based on principles of *res judicata*,  
19 collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of  
20 claim preclusion or issue preclusion or similar defense or counterclaim.

21           11.4 The Settlement Agreement may be amended or modified only by a written instrument  
22 signed by or on behalf of all Settling Parties or their respective successors-in-interest.

23           11.5 This Agreement contains the entire understanding between TGCS and Plaintiffs  
24 regarding the settlement of the Litigation and supersedes all previous negotiations, agreements,  
25 commitments, understandings, and writings between TGCS and Plaintiffs in connection with the  
26 settlement of the Litigation. Except as otherwise provided herein, each Party shall bear its own costs.

27           11.6 Proposed Settlement Class Counsel, on behalf of the Settlement Class, is expressly  
28

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

6 11.7 Each counsel or other Person executing the Settlement Agreement on behalf of any  
7 Party hereto hereby warrants that such Person has the full authority to do so.

8 11.8 The Settlement Agreement may be executed in one or more counterparts. All executed  
9 counterparts and each of them shall be deemed to be one and the same instrument. A complete set of  
10 original executed counterparts shall be filed with the Court. Any signature submitted electronically  
11 through e-mail of an Adobe PDF shall be deemed an original.

12 11.9 The Settlement Agreement shall be binding upon, and inure to the benefit of, the  
13 successors and assigns of the Parties hereto.

14 11.10 The Court shall retain jurisdiction with respect to implementation and enforcement of  
15 the terms of the Settlement Agreement, and all Parties hereto submit to the jurisdiction of the Court for  
16 purposes of implementing and enforcing the settlement embodied in the Settlement Agreement.

17 11.11 As used herein, “he” means “he, she, or it”; “his” means “his, hers, or its”; and “him”  
18 means “him, her, or it.”

19 11.12 All dollar amounts are in United States dollars (USD).

20 11.13 All agreements made and orders entered during the course of the Litigation relating to  
21 the confidentiality of information shall survive this Settlement Agreement.

22 11.14 For the purpose of construing or interpreting this Agreement, the Parties agree that this  
23 Agreement is to be deemed to have been drafted equally by all Parties hereto and shall not be  
24 construed strictly for or against any Party.

25 11.15 If any of the dates or deadlines specified herein falls on a weekend or legal holiday, the  
26 applicable date or deadline shall fall on the next day that is not a weekend day or legal holiday. All  
27 reference to “days” in this Agreement shall refer to calendar days unless otherwise specified.

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

3  
4  AGREED TO BY:

5 \_\_\_\_\_  
6 Kyle McDaniel, Plaintiff

7  
8 \_\_\_\_\_  
9 Rikki McDaniel, Plaintiff

10  
11 \_\_\_\_\_  
12 Jon Williams, Plaintiff

13  
14 \_\_\_\_\_  
15 Mojdeh Williams, Plaintiff

16  
17 \_\_\_\_\_  
18 Tom Simmons, Plaintiff

19  
20 \_\_\_\_\_  
21 Toshiba Global Commerce Solutions, Inc., Defendant

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

23 Title : \_\_\_\_\_  
24  
25  
26  
27  
28

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

3  
4 **AGREED TO BY:**

5  
6 Kyle McDaniel, Plaintiff

7 Signed by:

8 *Rikki McDaniel*

CDDC935F46C548C...

9 Rikki McDaniel, Plaintiff

10  
11  
12 Jon Williams, Plaintiff

13  
14  
15 Mojdeh Williams, Plaintiff

16  
17  
18 Tom Simmons, Plaintiff

19  
20  
21 Toshiba Global Commerce Solutions, Inc., Defendant

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

23 Title : \_\_\_\_\_

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

3  
4 **AGREED TO BY:**

5 \_\_\_\_\_  
6 Kyle McDaniel, Plaintiff  
7

8 \_\_\_\_\_  
9 Rikki McDaniel, Plaintiff

10 DocuSigned by:  
*Jon Williams*  
11 C0AD70A0E34F40B...

12 Jon Williams, Plaintiff  
13

14 \_\_\_\_\_  
15 Mojdeh Williams, Plaintiff  
16

17 \_\_\_\_\_  
18 Tom Simmons, Plaintiff  
19

20 \_\_\_\_\_  
21 Toshiba Global Commerce Solutions, Inc., Defendant

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

23 Title : \_\_\_\_\_  
24  
25  
26  
27  
28

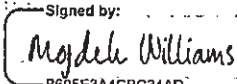
1 IN WITNESS WHEREOF, the Parties hereto have caused the Settlement Agreement to be  
2 executed by their duly authorized attorneys.

3  
4 **AGREED TO BY:**

5 \_\_\_\_\_  
6 Kyle McDaniel, Plaintiff

7  
8 \_\_\_\_\_  
9 Rikki McDaniel, Plaintiff

10  
11 \_\_\_\_\_  
12 Jon Williams, Plaintiff

13 Signed by:  
14   
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15 Mojdeh Williams, Plaintiff

16  
17 \_\_\_\_\_  
18 Tom Simmons, Plaintiff

19  
20 \_\_\_\_\_  
21 Toshiba Global Commerce Solutions, Inc., Defendant

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

23 Title : \_\_\_\_\_



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

3  
4 **AGREED TO BY:**

5 \_\_\_\_\_  
6 Kyle McDaniel, Plaintiff

7  
8 \_\_\_\_\_  
9 Rikki McDaniel, Plaintiff

10  
11 \_\_\_\_\_  
12 Jon Williams, Plaintiff

13  
14 \_\_\_\_\_  
15 Mojdeh Williams, Plaintiff

16  
17   
18 Tom Simmons, Plaintiff

19  
20 \_\_\_\_\_  
21 Toshiba Global Commerce Solutions, Inc., Defendant

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

23 Title : \_\_\_\_\_  
24  
25  
26  
27  
28

reference to "days" in this Agreement shall refer to calendar days unless otherwise specified.

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

**AGREED TO BY:**

Kyle McDaniel, Plaintiff

Rikki McDaniel, Plaintiff

Jon Williams, Plaintiff

Mojdeh Williams, Plaintiff

Tom Simmons, Plaintiff

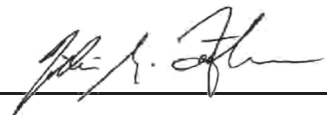
  
Toshiba Global Commerce Solutions, Inc., Defendant

Name: Todd Regalsberger

Title: CEO

1 By: Raina Borrelli

2 **STRAUSS BORRELLI PLLC**  
3 Andrew Gunem  
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5 Raina Borrelli (*pro hac vice*)  
6 *raina@straussborrelli.com*  
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8 Chicago, Illinois 60611  
9 Tel: (872) 263-1100

10 By: 

11 William B. Federman (*pro hac vice*)  
12 Kennedy M. Brian (*pro hac vice*)  
13 **FEDERMAN & SHERWOOD**  
14 10205 N. Pennsylvania Ave.  
Oklahoma City, Oklahoma 73120  
T: (405) 235-1560  
F: (405) 239-2112  
E: *wbf@federmanlaw.com*  
E: *kpb@federmanlaw.com*

15 ***Attorneys for Plaintiffs and***  
16 ***the Settlement Class***

By: \_\_\_\_\_

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