

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PHILLIP TORETTO, DANIEL C. KING, and
SHERI BRAUN, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

DONNELLEY FINANCIAL SOLUTIONS, INC.
and MEDIANT COMMUNICATIONS, INC.,

Defendants.

Case No. 1:20-cv-02667-GHW

SETTLEMENT AGREEMENT

This Settlement Agreement, dated June 15, 2022, is made and entered into by and among: (1) Plaintiffs Phillip Toretto, Daniel C. King, and Sheri Braun (“Plaintiffs” or “Class Representatives”), on behalf of themselves and the proposed Settlement Class; and (2) Defendant Mediant Communications Inc. (“Mediant”) (collectively, the “Parties”).

I. BACKGROUND

1. This litigation arises from a data security incident where Plaintiffs alleged that cybercriminals obtained access to the personal information of Mediant’s customers’ investors, which is described as the “Data Breach” in Plaintiffs’ Second Amended Class Action Complaint, (ECF No. 57.)

2. Plaintiffs allege that on April 1, 2019, “hackers obtained unauthorized access to Mediant’s business email accounts and exfiltrated the Personal Information of [its] customers’ investors.” (hereafter referred to as the “Data Security Incident”) (*Id.*) Plaintiffs also allege that Mediant “began notifying state attorneys general and sending notices” to the potentially impacted customers’ investors in May 2019. (*Id.*) Plaintiffs allege that the personal information of more than 200,000 individuals was impacted in the Data Security Incident. (*Id.*)

3. On August 21, 2019, Plaintiffs Phillip Toretto and Daniel C. King filed a putative class action arising out of the Data Security Incident against Mediant in the United States District Court for the Northern District of California. *Toretto et al., v. Mediant Commc’ns, Inc.*, No. 3:19-cv-05208-EMC, Northern District of California.

4. On March 18, 2020, the United States District Court for the Northern District Court of California granted Mediant’s motion to dismiss Plaintiffs’ complaint for lack of personal jurisdiction. *Toretto et al. v. Mediant Commc’ncs, Inc.*, No. 19-cv-52980, 2020 WL 1288478 (N.D. Cal. Mar. 18, 2020).

5. On October 15, 2019, Plaintiff Braun filed a putative class action arising out of the Data Security Incident against Mediant in the United States District Court for the Southern District of Florida. *Braun v. Mediant Commc 'ns, Inc.*, No. 19-62563-CIV, Southern District of Florida.

6. On April 14, 2020, the United States District Court for the Southern District of Florida granted Mediant's motion to dismiss Plaintiff Braun's complaint for lack of personal jurisdiction. *Braun v. Mediant Commc 'ns, Inc.*, No. 19-62563-CIV, 2020 WL 5038780 (S.D. Fla. Apr. 14, 2020).

7. On March 30, 2020, Plaintiffs filed the instant putative class action against Mediant and Donnelley Financial Solutions ("Donnelley") in the United States District Court for the Southern District of New York (the "Court") (the "Action"). (ECF No. 1.)

8. On May 7, 2020, the Parties, both directly and indirectly, through Rodney Max of Upchurch Watson White & Max, engaged in good faith, arm's-length settlement negotiations, but the Parties did not reach settlement.

9. On May 19, 2020, Plaintiffs filed their First Amended Class Action Complaint ("Amended Complaint"). (ECF No. 23.)

10. On July 17, 2020, Mediant filed a motion for partial dismissal of Plaintiffs' Amended Complaint, and Donnelley filed a motion to dismiss Plaintiff's Amended Complaint. (ECF Nos. 46 & 47.)

11. On August 5, 2020, Plaintiffs filed a Second Amended Class Action Complaint ("Second Amended Complaint"). (ECF No. 57.)

12. In their Second Amended Complaint, Plaintiffs asserted the following causes of action: (1) negligence; (2) negligence *per se*; (3) breach of contracts of which Plaintiffs are third party beneficiaries; (4) unjust enrichment; (5) declaratory judgment; (6) violation of California

Customer Records Act, Cal. Civ. Code §§ 1798.80, *et seq.*; (7) violation of California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*; and (8) violation of Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201, *et seq.*

13. In their Second Amended Complaint, Plaintiffs allege that Mediant is hired by “public companies and mutual funds . . . as their proxy agent to distribute materials to shareholders, coordinate shareholder votes, and tabulate voting results.” (*Id.*)

14. Plaintiffs also allege that Donnelley and Mediant work together to provide proxy services, and that Mediant received the personal information, in part, through its working relationship with Donnelley. (*Id.*)

15. On August 26, 2021, Mediant and Donnelley filed motions to dismiss the Second Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(1) for lack of standing. (ECF Nos. 64–68.)

16. On March 5, 2021, the Court denied Mediant’s and Donnelley’s 12(b)(1) motions to dismiss. (ECF No. 76.)

17. On May 3, 2021, Mediant and Donnelley both filed motions to dismiss Plaintiffs’ Second Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief could be granted. (ECF Nos. 94–102.)

18. After Mediant’s and Donnelley’s motions to dismiss were fully briefed, the Parties re-engaged in good faith, arm’s-length settlement discussions.

19. On February 4, 2022, the Court granted in full Donnelley’s motion to dismiss and granted in part and denied in part Mediant’s motion to dismiss. (ECF No. 127.)

20. In order to continue their efforts toward mediation, the Parties filed a joint request to stay the Action pending the Parties’ settlement negotiations. On February 25, 2022, the Court granted the Parties’ request to stay the Action pending the Parties’ settlement negotiations.

21. On March 28, 2022, the Parties participated in a mediation with Rodney Max of Upchurch Watson White & Max.

22. On March 30, 2022, the Parties finalized and executed a Term Sheet, which represents an agreement in principle on the terms of the Settlement.

23. After coming to an agreement in principle, the Parties finalized the terms of this Settlement Agreement and the exhibits attached hereto.

24. The Class Representatives and Class Counsel believe that the Settlement confers substantial benefits on the Settlement Class and is in the best interest of the Settlement Class. Class Representatives and Class Counsel recognize and acknowledge, however, the expense and length of continued proceedings necessary to prosecute the Action against Mediant through motions practice, trial, and potential appeals. They have also considered the uncertain outcome and risks of further litigation, as well as the difficulties and delays inherent in such litigation. Class Counsel are highly experienced in class-action litigation and knowledgeable regarding the relevant claims, remedies, and defenses at issue generally in such litigation and specifically in this Action. Class Counsel has determined that the Settlement set forth in this Settlement Agreement is fair, reasonable, and adequate, and in the best interest of the Settlement Class.

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

that it is desirable and beneficial that the Action be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, it is hereby agreed by and among the Class Representatives, individually and on behalf of the Settlement Class, and Mediant that, subject to the approval of the Court, the Action be forever resolved, settled, compromised, and dismissed with prejudice on the following terms and conditions:

II. DEFINITIONS

26. The terms used in this Settlement Agreement, and listed in this section, shall have the following meanings:

- a. “Action” means *Toretto et al. v. Donnelley Financial Solutions, Inc. et. al.*, Case No. 1:20-cv-02667-GHW (S.D.N.Y.).
- b. “Agreement,” “Settlement Agreement,” or “Settlement” means this Settlement Agreement, Exhibits, and the settlement embodied herein.
- c. “Mediant’s Counsel” means Baker & Hostetler LLP.
- d. “Claim” means a claim for settlement benefits made under the terms of this Settlement Agreement.
- e. “Claimant” means a Settlement Class Member (as defined below) who makes a Claim for benefits under this Settlement Agreement.
- f. “Claims Deadline” means the final time and date by which a Settlement Class Member’s Claim must be postmarked or submitted to the Settlement Website (as defined below) in order for a Settlement Class Member to be entitled to any of the

settlement benefits contemplated by this Agreement other than Credit Monitoring Services. The Claims Deadline shall be ninety (90) days after the Notice Date.

- g. “Claim Form” means the form utilized by the Settlement Class Members to submit a Claim for settlement benefits. The Claim Form will be substantially in a form as shown in Exhibit C attached hereto, which will be available on both the Settlement Website (as defined below) and in paper format, if specifically requested by a Settlement Class Member.
- h. “Class Counsel” means J. Austin Moore of Stueve Siegel Hanson LLP, Elaine A. Ryan of Auer Ryan, PC, and John A. Yanchunis of Morgan & Morgan.
- i. “Class Representatives” means the Plaintiffs.
- j. “Complaint” means the Second Amended Class Action Complaint filed on August 5, 2020 in the United States District Court for the Southern District of New York. (ECF No. 57.)
- k. “Court” means the United States District Court for Southern District of New York.
- l. “Credit Monitoring Services” means the twenty-four (24) months of 3-bureau related credit monitoring services, agreed upon by the Parties, to be made available for all Settlement Class Members.
- m. “Data Security Incident” means the data security incident experienced by Mediant on or around April 1, 2019 as described in the Second Amended Class Action Complaint. (ECF No. 57.)
- n. “Effective Date of Settlement” or “Effective Date” means the date upon which the Settlement in the Action shall become effective and final, and occurs when each and all of the following conditions have occurred:

- i. This Settlement Agreement has been fully executed by all Parties and their counsel;
- ii. Orders have been entered by the Court certifying the Settlement Class, granting preliminary approval of this Settlement, and approving the forms of Notice described in Section VI, below;
- iii. The notice program has been executed in accordance with the Preliminary Approval Order;
- iv. The Court has entered a Final Order and Judgment finally approving the Settlement; and
- v. The Final Judgment, as defined in Paragraph 27(p), below, has been entered and all times to appeal therefrom have expired with (1) no appeal or other review proceeding having been commenced; (2) one (1) business day following entry of the Final Order and Judgment, if no parties have standing to appeal; or (3) an appeal or other review proceeding having been commenced, and such appeal or other review having been concluded such that it is no longer subject to review by any court, whether by appeal, petitions for rehearing or reargument, petitions for rehearing *en banc*, petitions for writ of certiorari, or otherwise, and such appeal or other review has been resolved in a manner that affirms the Final Judgment in all material respects.

- o. “Final Fairness Hearing” means the hearing to be conducted by the Court after the Notice Program is complete, at which time Class Counsel and Mediant’s Counsel will request that the Court grant final approval of the Settlement set forth herein.
- p. “Final Judgment” means a judgment entered by the Court, as discussed in Section XIII, below.
- q. “Litigation” means all claims and causes of action asserted, including those asserted in the Action, or that could have been asserted, against Mediant, Donnelley, and the Released Parties, including any and all appellate rights, as well as any other such actions by and on behalf of any other individuals or putative classes of individuals originating, or that may originate, in the jurisdictions of the United States against Mediant, Donnelley, or the Released Parties relating to the Data Security Incident.
- r. “Long Form Notice” means the long form notice of settlement posted on the Settlement Website (as defined below) substantially in the form as shown in Exhibit B hereto.
- s. “Notice” means the mailed notice, substantially in the form as shown in Exhibit D hereto, to the Settlement Class notifying them of the Settlement and relevant terms and providing them the URL to the Settlement Website (described below) and a telephone number they can call to obtain additional information about the Settlement.
- t. “Notice Date” means the first date upon which the Notice is mailed to the Settlement Class.

- u. “Opt-Out Date” means the date by which Persons within the Settlement Class must submit their request to be excluded from the Settlement Class (as defined below) in order for that request to be effective.
- v. “Parties” means (i) Class Representatives, on behalf of themselves and the Settlement Class; and (ii) Mediant.
- w. “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 thereof, and any business or legal entity, and their respective spouses, heirs, predecessors, successors, representatives, agents and/or assignees.
- x. “Plaintiffs” means Phillip Toretto, Daniel C. King, and Sheri Braun.
- y. “Preliminary Approval Order” means the proposed order preliminarily approving the Settlement and directing mailed notice to the Settlement Class of the pendency of the Action and of the Settlement, to be entered by the Court.
- z. “Released Claims” means any and all past, present, and future claims and causes of action of every nature and description (including Unknown Claims), whether arising under federal, state, statutory, regulatory, common, foreign, or other law, that arise in any way from or relate to the Litigation against Mediant, Donnelley, or any Released Party or the Data Security Incident (other than claims to enforce the Settlement), including, but not limited to, 15 U.S.C. §§ 45 *et seq.*, and all similar statutes in effect in any states in the United States; violations of the New York and similar state consumer protection statutes; negligence; negligence *per se*; breach of contract; breach of implied contract; breach of fiduciary duty; breach of

confidence; invasion of privacy; fraud; misrepresentation (whether fraudulent, negligent or innocent); unjust enrichment; bailment; wantonness; failure to provide adequate notice pursuant to any breach notification statute or common law duty; and including, but not limited to, any and all claims for fees, costs, penalties, fines, debts, damages, injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys' fees and expenses, pre-judgment interest, credit monitoring services, the creation of a fund for future damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, and/or the appointment of a receiver, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, accrued or unaccrued, fixed or contingent, direct or derivative, class or individual and any other form of legal or equitable relief that either has been asserted, was asserted, or could have been asserted, by any Settlement Class Member against any of the Released Persons based on, relating to, concerning or arising out of the Data Security Incident or the allegations, transactions, occurrences, facts, or circumstances alleged in or otherwise described in the Litigation. Released Claims shall not include the right of any Settlement Class Member or any of the Released Parties to enforce the terms of the Settlement contained in this Settlement Agreement and shall not include the claims of Persons who have timely excluded themselves from the Settlement Class.

- aa. "Released Parties" or "Released Party" means Mediant, Donnelley Financial Solutions, Inc., Donnelley Financial LLC, Blackstone Real Estate Income Trust, Inc., Griffin-American Healthcare REIT III, Inc., Griffin-American Healthcare REIT IV, Inc., Griffin Institutional Access Real Estate Fund, Destra Dividend

Total Return Fund, Ivy Natural Resources Fund’s 2018 proxy, Ivy National Resources Fund’s 2019 proxy, Moody National REIT II, Inc., Strategic Storage Growth Trust, Inc., Strategic Student & Senior Housing Trust, Inc., Strategic Storage Trust II, Inc., Strategic Storage Trust IV, Inc., CION Investment Corporation, Jackson National Life Insurance Company, Delaware Life Insurance Company, and their respective past, present, and future parent companies, partnerships, joint ventures, subsidiaries, affiliates, divisions, predecessors, successors, transferees, and assigns, employees, servants, members, providers, partners, principals, officers, directors, shareholders, owners, attorneys, heirs, executors, administrators, insurers, coinsurers, reinsurers, joint ventures, personal representatives, and trustees of such entities, and, any Person related to any such entities or individuals who is, was, or could have been named as a defendant in the Litigation.

- bb. “Settlement Administration” means the approval of the form of notice program and all related forms; initial mailing of the Notice; creation and maintenance of Settlement Website; administration and coordination of the distribution of Settlement benefits; day-to-day administration of the Settlement, including responding to Settlement Class Member inquiries; delivery to the Parties of any requests for opt-outs or objections; communication to the Parties about any issues that may arise; and the preparation of an Affidavit of Fairness of the Notice Program to be submitted to the Court with the Motion for Final Approval.
- cc. “Settlement Administrator” means Epiq Class Action & Claims Solutions, Inc. (“Epiq”).

- dd. “Settlement Class” means the approximately 224,650 individuals who were mailed a notification that their personal information may have been impacted in the Data Security Incident experienced by Mediant on or around April 1, 2019. The Settlement Class specifically excludes Judge Gregory H. Woods and his staff and family.
- ee. “Settlement Class Member(s)” or “Member(s)” means a Person(s) who falls within the definition of the Settlement Class. Settlement Class Members specifically excludes (i) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; and (ii) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal occurrence of the Data Security Incident, or who pleads *nolo contendere* to any such charge.
- ff. “Settlement Website” means the website described in Paragraph 39(c).
- gg. “Unknown Claims” means any of the Released Claims that any Settlement Class Member, including any of the Class Representatives, does not know or suspect to exist in his/her favor at the time of the release of the Released Parties that, if known by him or her, might have affected his or her decision to settle with, and release, the Released Parties, or might have affected his or her decision not to object to and/or to participate in this Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, the Class Representatives expressly shall have, and each of the other Settlement Class Members shall be deemed to have, and by operation of the Final Judgment shall have, expressly waived the provisions, rights, and benefits conferred by California

Civil Code § 1542, and also any and all provisions, rights, and benefits conferred by the law of any state, province, or territory of the United States, which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

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

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

hh. “Valid Claims” means the Claims in an amount approved by the Settlement Administrator or found to be valid through the claims processing and/or dispute resolution process described in Paragraphs 53–56.

III. SETTLEMENT BENEFITS

27. **Out-of-Pocket Losses:** All Settlement Class Members who submit a valid and timely Claim are eligible for the following documented out-of-pocket losses, not to exceed \$10,000.00 per Settlement Class Member, that were incurred as a result of, and fairly traceable to, the Data Security Incident (“Out-of-Pocket Losses”): including: (i) unreimbursed costs, expenses, losses, or other charges incurred as a result of identity theft or identity fraud, falsified tax returns, or other possible misuse of a Settlement Class Member’s personal information; (ii) costs incurred on or after April 1, 2019 associated with accessing or freezing/unfreezing credit reports with any credit reporting agency; (iii) other miscellaneous expenses incurred related to any Out-of-Pocket Losses such as notary, fax, postage, copying, mileage, and long-distance telephone charges; (iv) credit monitoring or other mitigative costs that were incurred on or after April 1, 2019, through the date of the Settlement Class Member’s Claim submission; and (v) documented time taken off of work to address issues fairly traceable to the Data Security Incident to be compensated at the Settlement Class Member’s regular and documented hourly rate up to \$250.00 per hour.

28. **Lost Time:** Settlement Class Members may submit a claim for up to three (3) hours of time spent in connection with the Data Security Incident at \$20 per hour if the Settlement Class Member (1) attests that any claimed lost time was spent related to the Data Security Incident and (2) provides a brief written description of how the claimed lost time was spent (“Attested Time”). Settlement Class Members may claim up to an additional five (5) hours of lost time at \$20 per hour if the Claimant submits reasonable supporting documentation of the time spent (“Documented Time”) (Attested Time and Documented Time collectively referred to herein as “Lost Time”).

- a. Settlement Class Members who elect to submit a claim for reimbursement of Documented Time must provide to the Settlement Administrator the information

required to evaluate the claim, including: (1) the Settlement Class Member's name and current address; (2) documentation supporting their claim; and (3) a brief description of the documentation describing the nature of the loss, if the nature of the loss is not apparent from the documentation alone. Documentation supporting claims for Documented Time reimbursement can include receipts or other documentation not "self-prepared" by the Settlement Class Member that documents the costs incurred. "Self-prepared" documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity to or support other submitted documentation.

29. Settlement Class Members seeking reimbursement under Paragraphs 27–28 must complete and submit either a written or online Claim Form to the Settlement Administrator, postmarked or electronically submitted on or before the Claims Deadline. The Claim Form must be verified by the Settlement Class Member with an attestation that he or she believes that the losses or expenses claimed were incurred as a result of the Data Security Incident.

30. **Credit Monitoring Services:** Mediant agrees to offer twenty-four (24) months of 3-bureau related credit monitoring products for all Settlement Class Members ("Credit Monitoring Services") without the need to submit a claim. This benefit will be provided on the Notice, which shall state that Settlement Class Members are automatically entitled to Credit Monitoring Services, which they can access by emailing their name and unique ID code to the Settlement Administrator who will then send (or cause to be sent) activation instructions following the Effective Date.

31. **Business Practice Commitments:** Mediant has verified that the security-system and practices enhancements described in Exhibit A, filed under seal, relating to Mediant's information security are presently in place and/or will be put in place.

IV. STIPULATED CLASS ACTION SETTLEMENT CERTIFICATION

32. Mediant does not consent to certification of any class for any purpose other than effectuating this Settlement and disputes that any class should or could be certified for any other purpose. Solely for the purposes of effectuating the Settlement, Class Representatives, Class Counsel, and Mediant agree and stipulate to certification of the Settlement Class as defined in this Agreement. Class Representatives, Class Counsel, and Mediant further agree and stipulate that, subject to Court approval, Class Counsel shall act as counsel for the Settlement Class. If the Court does not approve this Settlement, either preliminarily or finally, or the Settlement Agreement terminates as provided in Section XIV below, and the Parties do not otherwise reach an amended agreement (i) this Agreement shall be automatically of no force or effect; (ii) any Preliminary Approval Order and all of its provisions shall be vacated; (iii) no term or draft of this Agreement, or any aspect of the Parties' settlement discussions, negotiations, or documentation (including without limitation any declarations and briefs filed in support of the motions for preliminary and/or final approval) shall have any effect or be admissible into evidence for any purposes in this Litigation or any other proceeding.

33. Class Representatives, Class Counsel, and Mediant agree and stipulate that the Settlement should be approved by the Court, and that the Court should make a determination that the Settlement is fair, reasonable, adequate and made in good faith.

V. RELEASES

34. The Settlement Class Members release any and all claims and causes of action pleaded, that could have been pleaded, or otherwise arising out of or related to the activities stemming from the Data Security Incident or the Litigation against Mediant, Donnelley, and the Released Parties, as more specifically set forth below.

35. The obligations incurred under this Settlement shall be in full and final disposition of the Action and of any and all Released Claims as against all Released Parties.

36. Upon the Effective Date, and without any further action, the Settlement Class Members, including the Class Representatives, for good and valuable consideration the adequacy of which is hereby acknowledged, (i) shall fully, finally, and forever waive, release, relinquish, and discharge (1) any and all Released Claims against each and every one of the Released Parties and (2) any rights to the protections afforded under California Civil Code § 1542 and/or any other similar, comparable, or equivalent laws, and (ii) shall forever be barred and enjoined, without the necessity of any of the Released Parties posting a bond, from commencing, instituting, prosecuting, or maintaining any of the Released Claims. Upon the Effective Date, and without any further action, Class Representatives further agree not to knowingly and voluntarily assist in any way any third party in commencing or maintaining any suit against the Released Parties relating to any Released Claim.

37. Upon the Effective Date, and without any further action, Released Parties shall be deemed to have released, acquitted, and forever discharged the Settlement Class Members and Class Counsel from all past, present, and future claims and causes of action of every nature and description (including Unknown Claims), whether arising under federal, state, statutory, regulatory, common, foreign, or other law that arise in any way from or relate to the prosecution of the Action, the Settlement Agreement, or the Settlement claims process (provided, however, that this release and discharge shall not include claims relating to the enforcement of the terms of this Settlement Agreement).

VI. ADMINISTRATION OF THE SETTLEMENT AND CLASS NOTICE

38. The Settlement Administrator shall provide Notice to the Settlement Class and administer the Settlement under the Parties' supervision and subject to the exclusive jurisdiction of the Court.

39. Dissemination of the Notice shall be accomplished by the Settlement Administrator and shall comply with the following:

- a. *Class Member Information*: No later than fourteen (14) days after entry of the Preliminary Approval Order, Mediant shall provide the Settlement Administrator with the full names and last known addresses of all Persons within the Settlement Class currently in Mediant's possession (collectively, "Class Member Information").
- b. The Class Member Information and its contents shall be used by the Settlement Administrator solely for the purpose of performing its obligations pursuant to this Agreement and shall not be used for any other purpose at any time. Except to administer the Settlement as provided for in this Agreement, or to provide relevant data and information in its possession to the Parties upon request, the Settlement Administrator shall not reproduce, copy, store, or distribute in any form, electronic or otherwise, the Class Member Information.
- c. *Settlement Website*: Prior to the dissemination of the Notice, the Parties agree to direct the Settlement Administrator to create a website dedicated to providing information related to the Action and this Settlement, including the Long Form Notice contained within Exhibit B. The Settlement Website will include the information in the Notice, access to relevant publicly available court documents relating to the Action, provide information on how the Settlement Class may submit

Claims for Settlement benefits, and allow Settlement Class Members to submit documents to supplement or cure deficient Claims. The Settlement Website shall be effective until the date of the stale check deadline, as described in Paragraph 43.

- d. *Settlement Toll-Free Number*: The Settlement Administrator shall establish and maintain a toll-free telephone number with information relevant to this Settlement. The Settlement Administrator's obligation to maintain the Settlement Toll-Free Number shall end at the date of the stale check deadlines, as described in Paragraph 43.
- e. Notice is subject to review and approval by (i) the Parties, (ii) Cameron Azari, Senior Vice President at Epiq, a notice expert specializing in providing notice to class members, (iii) and the Court.
- f. Within sixty (60) days after Preliminary Approval, the Settlement Administrator shall commence disseminating notice to the Settlement Class. Within fifteen (15) days thereafter, dissemination of the Notice shall be completed.
- g. Notice shall be given by U.S. mail to the Settlement Class. Notice shall consist of a postcard that (1) notifies the Settlement Class of the Settlement and relevant terms, including the process for objecting and opting out of the Settlement; (2) provides them with the URL to the Settlement Website and a telephone number they can call to obtain additional information about the Settlement; (3) instructs them on how to make a Claim; and (4) notifies them of the Final Fairness Hearing.
- h. All Settlement Class Members shall have ninety (90) days after the Notice Date to make Claims for Settlement benefits.

40. The notice program shall be designed to provide for maximum clarity and ease of Claim submission.

41. The Settlement Administrator shall inform Class Counsel and Mediant's Counsel regarding all material aspects of the claims process including Claims made, Claims accepted, Claims rejected, and all substantive communications with the Settlement Class. Class Counsel may assist Settlement Class Members with the claims process.

42. Checks (or other electronic means of payment) for approved claims shall be mailed/provided within thirty (30) days of the Effective Date or thirty (30) days after the date that the Claim is approved, whichever is latest.

43. Cashing a settlement check is a condition precedent to any Settlement Class Member's right to receive Settlement benefits delivered by a settlement check under Paragraphs 27 and 28. All settlement checks shall be void one hundred and twenty (120) days after issuance and shall bear the language: "This check must be cashed within 120 days, after which time it is void." If a check becomes void, the Settlement Class Member shall have until one hundred and eighty (180) days after the Effective Date to request re-issuance. If no request for re-issuance is made within this period, the Settlement Class Member will have failed to meet a condition precedent to recovery of Settlement benefits under Paragraphs 27 and 28, the Settlement Class Member's right to receive monetary relief shall be extinguished, and Mediant shall have no obligation to make payments to the Settlement Class Member for expenses reimbursement under Paragraphs 27 and 28 or any other type of monetary relief. The same provisions shall apply to any re-issued check. For any checks that are issued or re-issued for any reason more than one hundred and eighty (180) days from the Effective Date, requests for re-issuance need not be honored after such checks become void.

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

45. No Person shall have any claims against Class Representatives, Class Counsel, Mediant, and/or Mediant's Counsel based on distribution of benefits to Settlement Class Members.

VII. OPT-OUT PROCEDURES

46. Under the procedure set forth in the Notice, the Persons falling within the Settlement Class have the right and ability to exclude themselves from the Settlement Class as set forth in the proposed preliminary approval order. In order to validly be excluded from the Settlement, the Persons falling within the Settlement Class must send a letter to the Settlement Administrator no later than forty (40) days after the Notice Date, stating he or she wants to be excluded from the Settlement in *Toretto et al. v. Donnelley Financial Solutions, Inc. et. al.*, Case No. 1:20-cv-02667-GHW in the United States District Court for the Southern District of New York, and include his or her name, current address, and signature. If the opt-out is untimely or otherwise fails to comply with any of the provisions for a valid opt-out, it shall not be considered a valid opt-out.

47. All Persons who submit valid and timely notices of their intent to be excluded from the Settlement Class shall not receive any benefits of and/or be bound by the terms of this Settlement Agreement. All Persons falling within the definition of the Settlement Class who do

not request to be excluded from the Settlement Class in the manner set forth in Paragraph 46 above, shall be bound by the terms of this Settlement Agreement and Final Judgment entered thereon.

48. The Settlement Administrator shall cause copies of requests for exclusion from the Settlement Class to be provided to Class Counsel and Mediant's Counsel as they are received. No later than ten (10) days after the Opt-Out Date, the Settlement Administrator shall provide Class Counsel and Mediant's Counsel a complete and final list of all known Persons within the Settlement Class who have timely excluded themselves from the Settlement. Class Counsel shall provide this information to the Court before the Final Fairness Hearing.

49. In the event that within ten (10) days after the Opt-Out Date, there have been requests for exclusion totaling more than two hundred and fifty (250) individuals, Mediant may terminate this Settlement Agreement by notifying Class Counsel in writing in accordance with Paragraph 65. If Mediant voids this Settlement Agreement under this paragraph then, (a) the Parties shall be restored to their respective positions in the Action and shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Party or Party's counsel; and (b) the terms and provisions of the Settlement Agreement and statements made in connection with seeking approval of the Agreement shall have no further force and effect with respect to Parties and shall not be used in the Action or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*.

VIII. OBJECTION PROCEDURES

50. The Notice will inform Settlement Class Members that they may submit a written objection in this case, *Toretto et al. v. Donnelley Financial Solutions, Inc. et. al.*, Case No. 1:20-cv-02667-GHW in the United States District Court for the Southern District of New York. To be

valid, an objection must state: (a) the objector's full name, address, telephone number, and e-mail address (if any); (b) information identifying the objector as a Settlement Class Member; (c) a written statement of all grounds for the objection, accompanied by any legal support the objector cares to submit; (d) a statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (e) the identity of all lawyers (if any) representing the objector; (f) the identity of all of the objector's lawyers (if any) who will appear at the Final Fairness Hearing; (g) a statement confirming whether the objector intends to personally appear and/or testify at the Final Fairness Hearing; and (h) the objector's signature or the signature of the objector's duly authorized lawyer or other duly authorized representative. The Notice will further inform the Settlement Class that to be considered timely, any valid objection in the appropriate form must be mailed to the Settlement Administrator and postmarked no later than forty (40) days after the Notice Date.

51. The Parties agree that Plaintiffs will take the lead in drafting responses to any objections to the Settlement, including any appeals filed by the objectors. However, both Parties retain their rights to make any argument(s) in response to any objector.

52. Any Settlement Class Member who fails to comply with the requirements for objecting in this Section VIII shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement, and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders, and judgments in the Action. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions of Section VIII. Without limiting the foregoing, any challenge to the Settlement Agreement, the final order approving this Settlement Agreement, or the Final Judgment to be entered upon final approval shall be pursuant to appeal and not through a collateral attack.

IX. DISPUTE RESOLUTION FOR CLAIMS

53. The Settlement Administrator, in its sole discretion to be reasonably exercised, will determine whether: (1) the Claimant is a Settlement Class Member; (2) the Claimant has provided all information needed to complete the Claim Form, including any documentation that may be necessary to reasonably support the Out-of-Pocket Losses, Lost Time described in Paragraphs 27 and 28, above; and (3) the information submitted could lead a reasonable person to conclude that more likely than not the Claimant has suffered the claimed losses as a result of the Data Security Incident (collectively, “Facially Valid”). The Settlement Administrator shall have the sole discretion and authority to determine whether and to what extent documentation for Out-of-Pocket Losses reflect valid Out-of-Pocket Losses actually incurred that are fairly traceable to the Data Security Incident, but may consult with Class Counsel and Mediant’s Counsel in making individual determinations. Out-of-Pocket Losses will be presumed “fairly traceable” if: (1) the timing of the losses occurred on or after April 1, 2019 (or the earliest verifiable date of intrusion); and (2) the personal information used to commit identity theft or fraud consisted of the same type of personal information that was provided to Mediant prior to the Data Security Incident. The Settlement Administrator is authorized to contact any Settlement Class Member to seek clarification regarding a submitted claim prior to making a determination as to its validity. Out-of-Pocket Losses are not eligible for reimbursement to the extent a Settlement Class Member has already been reimbursed for the same expense by any other source, including any compensation provided in connection with the credit monitoring product previously offered by Mediant.

54. To the extent the Settlement Administrator determines a claim for Out-of-Pocket Losses, or Lost Time is deficient in whole or in part, within a reasonable time of making such a determination, but no later than fourteen (14) days after the Claims Deadline, the Claims

Administrator is authorized to contact the Settlement Class Member via telephone or e-mail in an attempt to informally resolve the deficiency prior to sending a formal deficiency notice. If the deficiency is not resolved in this manner, the Settlement Administrator shall formally notify the Settlement Class Member of the deficiencies and give the Settlement Class Member twenty-one (21) days to cure the deficiencies. Such notifications shall be sent via e-mail, unless the Claimant did not provide an e-mail address, in which case such notifications shall be sent via U.S. mail.

55. If the Settlement Class Member attempts to cure the deficiencies but, at the sole discretion and authority of the Settlement Administrator, fails to do so, the Settlement Administrator shall notify the Settlement Class Member of that determination within ten (10) days of the determination that the deficiencies have not been cured. The Settlement Administrator may consult with counsel for both Parties prior to making such determinations. The notice shall inform the Settlement Class Member of his or her right to dispute in writing the deficiency determination and of his or her right to request an appeal of this determination within thirty (30) days of the deficiency determination.

56. If a Settlement Class Member disputes in writing a determination and requests an appeal, the Settlement Administrator shall provide Class Counsel and Mediant's Counsel a copy of the Settlement Class Member's dispute and his or her claim form along with all documentation or other information submitted by the Settlement Class Member. Class Counsel and Mediant's Counsel shall confer regarding the claim submission, and their agreement on approval or denial of the Settlement Class Member's claim, in whole or in part, will be final.

X. NOTICE AND ADMINISTRATION EXPENSES

57. All costs of notice and administration, including, without limitation, the fees and expenses of the Settlement Administrator, shall be paid separately by Mediant directly to the Settlement Administrator.

XI. ATTORNEYS' FEES AND EXPENSES AND SERVICE AWARDS

58. The Parties did not discuss the payment of attorneys' fees, costs, expenses, and/or service awards to Plaintiffs until after the substantive terms of the settlement had been agreed upon, other than discussing that Mediant would separately pay reasonable attorneys' fees, costs, expenses, and service awards to Plaintiffs as may be ordered by the Court. Mediant and Class Counsel then negotiated and agreed to the provision described in Paragraphs 59–60.

59. Mediant has agreed not to object to a request by Class Counsel for attorneys' fees, inclusive of any costs and expenses of the Litigation, subject to Court approval, in an amount not to exceed \$700,000.00. Class Counsel, in their sole discretion, shall allocate and distribute any amount of attorneys' fees, costs, and expenses awarded by the Court among Class Counsel. Class Counsel will file their motion for attorneys' fees, expenses, and service awards no later than twenty-one (21) days prior to the Opt-Out and Objections Dates.

60. Subject to Court approval, Mediant has agreed not to object to a request for a service award in the amount of \$2,500.00 to each named Class Representative (for a total payment of \$7,500.00).

61. If awarded by the Court, Mediant shall pay attorneys' fees, costs, expenses, and service awards to Class Representatives, as set forth above in Paragraphs 59–60, within thirty (30) days after the Effective Date. Class Counsel shall thereafter distribute the award of attorneys' fees,

costs, and expenses among Class Counsel and service awards to Plaintiffs consistent with Paragraphs 59–60.

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

XII. PRELIMINARY APPROVAL OF SETTLEMENT

63. As soon as practicable after the execution of the Settlement Agreement, but no later than June 17, 2022 or other date ordered by the Court, Class Counsel shall submit this Settlement Agreement to the Court and file a Motion for Preliminary Approval of the Settlement with the Court requesting entry of the Preliminary Approval Order attached to Plaintiffs’ Motion for Preliminary Approval, or an order substantially similar to such form, requesting, *inter alia*:

- a. Preliminary approval of the Settlement Agreement as set forth herein;
- b. Approval of a form of notice, which includes a notice to be individually mailed to the Settlement Class, as well as a detailed Long Form Notice that will be posted on the Settlement Website, addressed in Paragraph 39(c); and
- c. Appointment of Epiq as Settlement Administrator, or such other provider of claims administrative services, as may be jointly agreed by the Parties.

XIII. FINAL JUDGMENT

64. If the Preliminary Approval Order is entered by the Court, Class Counsel will move the Court, within the time frames contemplated by the Preliminary Approval Order, for entry of a Final Judgment.

XIV. TERMINATION

65. If the Effective Date of Settlement does not occur, or if the Settlement is terminated or fails to become effective for any reason, then (a) the Parties shall be restored to their respective positions in the Action and shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Party or Party's counsel; and (b) the terms and provisions of the Settlement Agreement and statements made in connection with seeking approval of the Agreement shall have no further force and effect with respect to Parties and shall not be used in the Action or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*.

XV. NO ADMISSION OF WRONGDOING OR LACK OF MERIT

66. The terms of this Settlement (whether the Settlement becomes final or not), the negotiations leading up to this Settlement, the fact of the Settlement, and the proceedings taken pursuant to the Settlement, shall not: (a) be construed as an admission of liability or an admission of any claim or defense on the part of any Party, in any respect; (b) be construed as an admission by Mediant regarding the appropriateness of certification of any class other than the Settlement Class under Fed. R. Civ. P. 23, solely for settlement purposes; (c) form the basis for any claim of estoppel by any third-party against any of the Released Parties; or (d) be admissible in any action, suit, proceeding, or investigation as evidence, or as an admission of any wrongdoing or liability

whatsoever by any Party, or as evidence of the truth of any of the claims or allegations contained in the Complaint.

XVI. MISCELLANEOUS PROVISIONS

67. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein.

68. The Parties to the Settlement intend and agree that the Settlement is a final and complete resolution of all disputes related to the Litigation by the Class Representatives and the Settlement Class Members.

69. The Parties agree that the benefits provided herein and the other terms of the Settlement were negotiated at arm's length in good faith by the Parties to the Settlement with the assistance of an experienced and independent mediator, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

70. This Settlement may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all Parties or their successors-in-interest.

71. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

72. The Parties hereby irrevocably submit to the continuing and exclusive jurisdiction of the Court for any suit, action, proceeding, or dispute arising out of or relating to this Settlement as embodied in the Settlement or its applicability, and agree that they will not oppose the designation of such suit, action, proceeding, or dispute as a related case to the Action.

73. The Settlement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument, provided that

counsel for the Parties to the Settlement shall exchange among themselves original signed counterparts. Electronically transmitted signatures are valid signatures as of the date thereof.

74. The construction, interpretation, operation, effect, and validity of the Settlement, and all documents necessary to effectuate it, shall be governed by the laws of the State of New York, without regard to conflicts of laws, except to the extent that federal law requires that federal law govern. The Parties understand and agree that any disputes arising out of the Settlement shall be governed and construed by and in accordance with the laws of the State of New York, regarding reference or regard to choice-of-law principles.

75. The Settlement shall not be construed more strictly against one Party to the Settlement than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that the Settlement is the result of arm's-length negotiation between the Parties to the Settlement, and all Parties to the Settlement have contributed substantially and materially to the preparation of the Settlement.

76. Any and all counsel and Parties to the Settlement who execute the Settlement and any of the exhibits hereto, or any related Settlement documents, represent that they have reviewed and understand those documents and have the full authority to execute the Settlement, and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Settlement to effectuate its terms.

77. Class Counsel and Mediant's Counsel agree to recommend approval of the Settlement by the Court and to undertake their best efforts and cooperate fully with one another in seeking Court approval of the Preliminary Approval Order and the Settlement and to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement and the entry of the Final Judgment.

78. Mediant agrees to comply with the CAFA notice provisions set out in 28 U.S.C. § 1715.

IN WITNESS WHEREOF, the Parties have, through their respective counsel, executed this Settlement as of the date first above written.

Approved as to form and content by counsel for Plaintiffs and the Settlement Class:

By: 

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Approved as to form and content by counsel for Mediant:

By: 

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