

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

In re Overby-Seawell Company  
Customer Data Security Breach  
Litigation

Case No. 1:23-md-03056-SDG

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Agreement”) is entered into by and between (a) Plaintiffs Mariann Archer, Mark Samsel, Tim Marlowe, Melissa Urciuoli, James Urciuoli, Patrick Reddy, Jacint “Jay” Pittman, Joseph John Turowski, Jr., Teresa Turowski, Melissa D. Kauffman, Lebertus Vanderwerff, Adrienne Khanolkar, Dhamendra “DK” Khanolkar, and Joynequa West (“Plaintiffs”), on behalf of themselves and the Settlement Class (as defined below); (b) Overby-Seawell Company (“OSC”); and (c) KeyBank National Association (“KeyBank”) (OSC and KeyBank are referred to as “Defendants”) (each of the foregoing a “Party” and, collectively, the “Parties”). This Agreement fully and finally compromises and settles any and all claims that are, were, or could have been asserted against Defendants and all other Released Parties in the above-captioned Action, and all related litigation, as set forth herein.

## I. RECITALS

1. Plaintiffs filed various civil actions against Defendants in connection with the Data Security Incident, which impacted certain Personal Information of customers of KeyBank, Fulton Bank, N.A. (“Fulton Bank”), and other lenders, as well as certain other individuals.

2. Those various civil actions were ultimately consolidated into the Action. On June 12, 2023, Plaintiffs filed the Consolidated Complaint in the Action.

3. Defendants deny: (a) the allegations and all liability with respect to any and all facts and/or claims alleged in the Action; (b) that the class representatives in the Action and the classes they purport to represent have suffered any injury and/or damages; and (c) that the Action satisfies the requirements to be tried as a class action, whether under Federal Rule of Civil Procedure 23 or otherwise.

4. The Parties recognize the expense and length of proceedings necessary to continue the litigation of the Action through further motion practice, discovery, trial, and any possible appeals. The Parties have taken into account the uncertainty and risk of the outcome of further litigation, and the expense, difficulties, and delays inherent in such litigation. The Parties are also aware of the burdens of proof necessary to establish liability and damages for the claims alleged in the Action and the defenses thereto. The Parties determined the settlement set forth in this Agreement is in their respective best interests and the Agreement is fair, reasonable,

and adequate. The Parties have therefore agreed to settle the claims asserted in the Action pursuant to the terms and provisions of this Agreement, subject to Court approval.

5. It is the intention of the Parties to fully and finally resolve any and all claims that are, were, or could have been asserted against the Released Parties on the terms set forth herein.

**NOW, THEREFORE**, in consideration of the promises, covenants, and agreements herein described and for other good and valuable consideration acknowledged by each of the Parties to be satisfactory and adequate, and intending to be legally bound, the Parties do hereby mutually agree as follows:

## **II. DEFINITIONS**

As used in all parts of this Agreement, including the recitals above, and the exhibits hereto, the following terms have the meaning specified below:

6. **“Action”** shall mean the action captioned *In re Overby-Seawell Company Customer Data Security Breach Litigation*, Case No. 1:23–md–03056 SDG. For the purpose of this agreement, the Action shall also be deemed to include all other litigation consolidated in that proceeding or otherwise arising out of the Data Security Incident.

7. **“Administration and Notice Costs”** means all reasonable costs and expenses incurred by the Settlement Administrator in carrying out its duties under

this Agreement, including all costs and expenses incurred in connection with implementing and executing the Notice Plan.

8. **“Agreement”** means this Settlement Agreement and Release and all exhibits hereto.

9. **“Approved Claims”** shall mean complete and timely Claim Forms submitted by Settlement Class Members that have been approved by the Settlement Administrator.

10. **“CAFA Notice”** means a notice of the proposed Settlement in compliance with the requirements of the Class Action Fairness Act, 28 U.S.C. § 1711, *et seq.* (“CAFA”), to be served upon the appropriate state official in each state where a Settlement Class Member resides and the appropriate federal official. Costs for preparation and issuance of the CAFA Notice will be paid from the Settlement Fund.

11. **“Claims Deadline”** shall mean the date by which all Claim Forms must be postmarked (if mailed) or submitted (if filed electronically) to be considered timely and shall be set as **90 days after the Notice Deadline**. The Claims Deadline shall be clearly set forth in the Notice and Claim Form.

12. **“Claim Form”** shall mean the form that Settlement Class Members may submit to obtain compensation under this Agreement, which is attached as **Exhibit A**.

13. “**Class Counsel**” shall mean MaryBeth V. Gibson, Gibson Consumer Law Group, LLC and M. Anderson Berry, Clayco C. Arnold, A Professional Corporation.

14. “**Class List**” shall mean a list compiled by the Settlement Administrator that shall include a) all persons identified by OSC to be Settlement Class Members, and whose names and contact information is provided to the Settlement Administrator by OSC; b) the list generated by KeyBank containing the names and addresses of individuals qualifying as Settlement Class Members who were mailed notification by KeyBank of the Data Security Incident; and c) all persons previously identified as members of the Fulton Bank Settlement (the “Fulton Bank Subclass Members”), the list of which is in the possession of KCC Class Action Services, LLC (“KCC”), the designated Settlement Administrator for the Fulton Bank Settlement and for this Settlement.

15. “**Consolidated Complaint**” shall mean the complaint filed by Plaintiffs against Defendants in the Action on June 12, 2023, asserting claims arising out of the Data Security Incident.

16. “**Court**” shall mean the Honorable Steven. D. Grimberg, United States District Court of the Northern District of Georgia.

17. **“Data Security Incident”** means the cyberattack and data breach arising out of or related to the allegations or events described in the Consolidated Complaint filed in the Action.

18. **“Day(s)”** means calendar days, but does not include the day of the act, event, or default from which the designated period of time begins to run. Further and notwithstanding the above, when computing any period of time prescribed or allowed by this Agreement, “Days” includes the last day of the period unless it is a Saturday, a Sunday, or a federal or Georgia state legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or federal or Georgia state legal holiday.

19. **“Defendants’ Counsel”** shall mean Wilson Elser Moskowitz Edelman & Dicker LLP for OSC and Debevoise & Plimpton LLP for KeyBank.

20. **“Effective Date”** shall mean the date when this Agreement becomes final, which is the latest of (i) the date upon which the time expires for seeking appellate review of the Final Approval Order and Judgment, or, (ii) if any appeal is filed, the date of receipt of an order by the highest appealable court affirming the Final Approval Order and Judgment without material change or dismissing or otherwise disposing of the appeal with prejudice.

21. **“Escrow Agent”** means Western Alliance Bank.

22. **“Fee Award and Expenses”** shall mean the amount of attorneys’ fees and reimbursement of litigation expenses awarded by the Court to Class Counsel.

23. **“Final Approval”** means entry of a Final Approval Order and Judgment.

24. **“Final Approval Hearing”** shall mean the hearing before the Court where the Plaintiffs will request a judgment to be entered by the Court approving this Agreement and approving the Fee Award and Expenses.

25. **“Final Approval Order and Judgment”** shall mean an order entered by the Court that:

- a. Certifies the Settlement Class pursuant to Federal Rule of Civil Procedure 23;
- b. Finds that the Settlement is fair, reasonable, and adequate, was entered into in good faith and without collusion, and approves and directs consummation of this Agreement consistent with all material provisions of the Agreement;
- c. Dismisses Plaintiffs’ claims pending before it with prejudice and without costs, except as explicitly provided for in this Agreement;
- d. Approves the Release provided in Section XV and orders that, as of the Effective Date, the Released Claims will be released as to the Released Parties;

- e. Reserves jurisdiction over the Settlement and this Agreement; and
- f. Finds that there is no just reason for delay of entry of the Final Approval Order and Judgment with respect to the foregoing.

26. **“Fulton Bank Settlement”** shall mean the settlement that was finally approved on September 8, 2023 (ECF 106) wherein Plaintiff Kathy Keefer served as class representative.

27. **“Long Form Notice”** shall mean the detailed, long form notice that will be posted on the Settlement Website that will include robust details about the Settlement, the content of which will be substantially in the form attached as **Exhibit B**.

28. **“Notice”** shall mean the direct notice of this proposed Settlement in accordance with Rule 23 of the Federal Rules of Civil Procedure, which is to be provided to Settlement Class Members substantially in the manner set forth in this Agreement and is consistent with the requirements of Due Process. Nothing in this Agreement shall be understood or construed to create any obligation on the part of Defendants to provide notice regarding the Data Security Incident to any person, except as set forth herein.

29. **“Notice Deadline”** shall mean **45 days after the Court’s entry of the Preliminary Approval Order**, which is the day by which Notice to the Settlement Class Members must be commenced.



30. **“Notice Plan”** means the notice program described in this Agreement.

31. **“Objection Deadline”** shall mean the date by which a written objection to this Agreement must be postmarked and/or filed with the Court and sent to the Settlement Administrator, which shall be designated as **60 days after the Notice Deadline**, or such other date as ordered by the Court.

32. **“Opt-Out Deadline”** shall mean the last day on which a Settlement Class Member may postmark a request to be excluded from the Settlement Class to the Settlement Administrator, which shall be designated as **60 days after the Notice Deadline**, or such other date as ordered by the Court. Settlement Class Members’ opt-out requests may also be referred to herein as a Request for Exclusion.

33. **“PII”** and **“Personal Information”** are interchangeable and together encompass any kind of non-public “personally identifiable information” and/or “personal information,” with those terms defined broadly and to include any information the disclosure of which may give rise to a claim. For the purposes of this Agreement, this shall include, but is not limited to: names; full or partial social security numbers; mortgage property addresses; mortgage account numbers; mortgage account information; phone numbers; property information; home insurance policy numbers; and home insurance information; to the extent any of the foregoing, separately or in combination with other information, would meet the foregoing definition of PII and Personal Information.

34. **“Preliminary Approval Order”** shall mean the Court’s Order preliminarily approving this Agreement, certifying the Settlement Class for settlement purposes, and directing notice of the Settlement to the Settlement Class substantially in the form of the Notice as set forth in this Agreement, which is attached as **Exhibit D**.

35. **“Released Claims”** shall mean any and all claims or causes of action of every kind and description, including but not limited to any claims or causes of action in law, contract, tort or equity, complaints, suits, or petitions, any allegations of wrongdoing, alleged violations of law, demands for legal, equitable or administrative relief (including, but not limited to, any claims for injunction, rescission, reformation, restitution, disgorgement, unjust enrichment, constructive trust, declaratory relief, damages, compensatory damages, consequential damages, penalties, exemplary damages, statutory damages, punitive damages, contract damages, attorneys’ fees, costs, interest or expenses) that the Releasing Parties had, have, or may claim now or in the future to have (including, but not limited to, assigned claims and any and all “Unknown Claims” as defined in this Agreement) that were or could have been asserted or alleged arising out of the Data Security Incident or the same nucleus of operative facts as any of the claims alleged or asserted in the Action (including but not limited to the facts, transactions, occurrences, events, acts, omissions, or failures to act that were alleged, argued,

raised, or asserted in any pleading or court filing in the Action), or any related litigation, whether or not those claims, demands, actions, or causes of action have been pleaded or otherwise asserted, including any and all damages, losses, or consequences thereof. In addition, Released Claims includes but is not limited to any claim, cause of action, suit or demand for relief concerning: (1) the disclosure of the Settlement Class Members' Personal Information in the Data Security Incident; (2) Released Parties' maintenance of the Settlement Class Members' Personal Information as it relates to the Data Security Incident; (3) Released Parties' security policies and practices; (4) Released Parties' handling of the Data Security Incident, and/or (5) Released Parties' provision of notice to the Settlement Class Members following the Data Security Incident, whether or not those claims, demands, actions, or causes of action have been pleaded or otherwise asserted, including any and all damages, losses, or consequences thereof. The foregoing includes, but is not limited to, any claim, suit, or proceeding that could be brought under any general business law, deceptive trade practice act, unfair competition law, privacy law, or similar law or regulation, which includes but is not limited to: Georgia's Uniform Deceptive Trade Practices Act (Ga. Code Ann. §§ 10-1-370, et seq.); California's Unfair Competition Law (Cal. Bus. & Prof. Code § 17200, et seq.) and Consumer Privacy Act (Cal. Civ. Code § 1798.150); New York's General Business Law (N.Y. Gen. Bus. Law § 349); Oregon's Unfair Trade Practices Act (Or.

Rev. Stat. § 646.608(1)(e), (g) and (u), et seq.); Pennsylvania’s Unfair Trade Practices Act (73 P.S. § 201-1 et seq.); Washington’s Consumer Protection Act (RCW 19.86.010 et seq.).

36. **“Released Parties”** means OSC, Breckenridge IS, Inc., Breckenridge Insurance Group, Inc., Breckenridge Insurance Services, LLC, Steamboat Opportunity Partners, LLC, Steamboat IS, Inc., KeyBank, Fulton Bank, any other entity which provided Class Members’ PII to OSC, and all of their respective past, present, and future (whether direct or indirect) parents, parent organizations, subsidiaries, divisions, departments, affiliates, employees, managers, officers, directors, owners, shareholders, members, partners, servants, agents, attorneys, advisors, consultants, representatives, insurers, reinsurers, subrogees and the heirs, executors, predecessors, successors, and assigns of any of the foregoing.

37. **“Releasing Parties”** means each of the Settlement Class Representatives and Settlement Class Members, and each of their respective heirs, executors, administrators, representatives, agents, partners, successors, attorneys, and assigns.

38. **“Remainder Funds”** means the funds, if any, that remain in the Settlement Fund after payment of costs of Financial Account Monitoring, CAFA Notice, Administration and Notice Costs, Fee Award and Expenses, claims for Reimbursement of Monetary Losses and Lost Time, California Statutory Payments,

and Alternative *Pro Rata* Cash Payments. The funds remaining in the Settlement Fund after the above payments have been made and the time for Settlement Class Members to cash and/or deposit checks has expired will be Remainder Funds. The Remainder Funds will be sent to one or more court-approved charitable organizations as a *cy pres* distribution. The Parties will jointly recommend the entity or entities to the Court that will be the recipients of the *cy pres* distribution.

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

40. “**Settlement Administrator**” means the class action settlement administrator, KCC Class Action Services, LLC, which has been retained to carry out the Notice Plan and administer the claims and settlement fund distribution process.

41. “**Settlement Class**” means all individuals whose Personal Information was impacted by the Data Security Incident. There will be a Fulton Bank Settlement subclass that shall be defined as “All Settlement Class Members who provided their Personal Information to Fulton Bank and were notified that their Personal Information may have been impacted as a result of a Data Security Incident discovered on or about July 5, 2022 by Overby-Seawell Company” (“**Fulton Bank Subclass Members**”). Excluded from the Settlement Class are the judges presiding over this Action and members of their direct families, and Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.

42. **“Settlement Class Member”** shall mean an individual who falls within the definition of the Settlement Class.

43. **“Settlement Class Representatives”** shall mean Plaintiffs Mariann Archer, Mark Samsel, Tim Marlowe, Melissa Urciuoli, James Urciuoli, Patrick Reddy, Jacint “Jay” Pittman, Joseph John Turowski, Jr., Teresa Turowski, Mlissa D. Kauffman, Lebertus Vanderwerff, Adrienne Khanolkar, Dhamendra “DK” Khanolkar, and Joynequa West.

44. **“Settlement Fund”** means the non-reversionary sum of six million dollars and zero cents (\$6,000,000.00) to be paid by OSC’s insurers as specified in this Agreement, including any interest accrued thereon after payment. The Settlement Fund will be established by the Settlement Administrator or Class Counsel at Western Alliance Bank pursuant to 26 C.F.R. § 1.468B-1.

45. **“Settlement Website”** means the website the Settlement Administrator will establish as soon as practicable following entry of the Preliminary Approval Order as a means for Settlement Class Members to obtain notice of and information about the Settlement and relevant case documents and deadlines. The Settlement Website shall contain relevant documents, including, but not limited to, a downloadable version of a customary form of Short Form Notice, a customary form of Long Form Notice, a customary version of the Claim Form, which together shall include a fair summary of the Settling Parties’ respective litigation positions, the general terms of the settlement,

instructions for how to object or opt-out of the settlement, the process and instructions for making claims, and the date, time and place of the Final Approval Hearing; this Agreement; Plaintiffs' motion for preliminary approval of the Settlement; the Preliminary Approval Order; and Class Counsel's motion for attorneys' fees and expenses. The Settlement Website shall also include a toll-free telephone number, email address, and mailing address through which Settlement Class Members may contact the Settlement Administrator directly. The Settlement Website shall not include any advertising and shall remain operational until at least 60 days after all Settlement Payments have been distributed.

46. **“Short Form Notice”** is the postcard notice that will be mailed to Settlement Class Members, the content of which will be substantially in the form attached as **Exhibit C**.

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

48. **“Unknown Claims”** means claims that could have been raised in the Action and that any of the Settlement Class Representatives or Settlement Class

Members, and each of their respective heirs, executors, administrators, representatives, agents, partners, successors, attorneys, and assigns, does not know or suspect to exist, which, if known by him, her, or it, might affect his, her, or its agreement to release the **Released Parties** or might affect his, her, or its decision to agree, object, or not to object to the Settlement.

### **III. CERTIFICATION OF THE SETTLEMENT CLASS**

49. For settlement purposes only, Plaintiffs request the Court certify the Settlement Class.

50. Solely for the purpose of implementing this Agreement and effectuating the Settlement, Defendants agree to stipulate to the certification of the Settlement Class and will not oppose Plaintiffs' request for certification.

51. If this Agreement is terminated or disapproved, or if the Effective Date should not occur for any reason, then Defendants' stipulation will be withdrawn and deemed to be of no effect in this or any other proceeding.

### **IV. THE SETTLEMENT FUND**

52. OSC's insurers will make available the Settlement Fund, from which payment of Settlement Class Member claims, Administration and Notice Costs, CAFA notice, and the Fee Award and Expenses will be made. The Settlement Fund is the maximum amount Defendants shall be obligated to pay under this Settlement. The failure of OSC to make the funds available as called for in this Agreement will



be considered a material breach of the Agreement by OSC. The Settlement Fund will be used to fund the settlement provisions listed herein.

53. Within **14 days** after the Preliminary Approval Order is entered, OSC's insurers will cause up to \$100,000 to be released into the Settlement Fund. No payment for Administration and Notice Costs shall be made until 14 days after the Court enters the Preliminary Approval Order. OSC's insurers will cause the transfer of the remaining balance of the \$6,000,000 into the Settlement Fund within 14 calendar days after the Effective Date. Notwithstanding the foregoing, in no event will the balance of the \$6,000,000 be transferred into the Settlement Fund prior to 150 days after the Court's Preliminary Approval Order.

## V. **BENEFITS TO SETTLEMENT CLASS MEMBERS**

54. **Financial Account Monitoring:** All Settlement Class Members can submit a claim for identity theft protection and credit monitoring services as follows: three (3) years of three-bureau coverage with at least \$1,000,000 of fraud/identity theft insurance. Settlement Class Members may use their code to enroll for a period of 12 months (meaning that a Class Member could enroll up to the end of the first year and have coverage for the full three (3) years). Such coverage and flexibility in enrollment will provide protection for Class Members against future identity theft. The three-year period will commence when Settlement Class Members use their codes to activate the Financial Account Monitoring.

55. **Reimbursement of Monetary Losses:** The Parties will create a claims process through which Settlement Class Members can submit a claim form for reimbursement of documented monetary losses fairly traceable to the Data Security Incident up to \$6,000 per individual (“Monetary Losses”). Monetary Losses may include, without limitation, unreimbursed losses relating to fraud or identity theft; professional fees including attorneys’ fees, accountants’ fees, and fees for credit repair services; costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs that were incurred on or after the Data Security Incident through the date of claim submission; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges. Settlement Class Members with Monetary Losses must submit documentation supporting their claims. This can include receipts or other documentation not “self-prepared” by the claimant 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 or support other submitted documentation. Claims for Monetary Losses are subject to pro rata decrease based on the amount remaining in the Settlement Fund following payment of the Fee Award and Expenses, Administration and Notice Costs, CAFA Notice, and costs of Financial Account Monitoring.

56. **Reimbursement for Lost Time:** Settlement Class Members with time spent remedying issues related to the Data Security Incident (“Lost Time”) can submit a claim for reimbursement of \$25 per hour with an attestation. Claims made for Lost Time are subject to a five (5) hour cap and are combined with reimbursement for Monetary Losses subject to the \$6,000 aggregate individual cap and subject to a pro rata decrease based on the amount remaining in the Settlement Fund following payment of the Fee Award and Expenses, Administration and Notice Costs, CAFA Notice, costs of Financial Account Monitoring, and claims for Reimbursement of Monetary Losses.

57. **California Statutory Payments:** Settlement Class Members who were residents of California from May 26, 2022 to the end of the claims period (“California Settlement Class Members”) can submit a claim for payment of \$100 for their statutory claims under the California Consumer Privacy Act (“California Statutory Payment”). The California Statutory Payment is an additional settlement benefit made available to California Settlement Class Members that is in addition to either reimbursement of claims for Monetary Losses and/or Lost Time or the Alternative *Pro Rata* Cash Payment, and is subject to a *pro rata* decrease based on the amount remaining in the Settlement Fund following payment of the Fee Award and Expenses, Administration and Notice Costs, CAFA Notice, costs of Financial

Account Monitoring, and claims for Reimbursement of Monetary Losses and Lost Time.

58. **Alternative Pro Rata Cash Payment:** Settlement Class Members can submit a claim for an *Alternative Pro Rata Cash Payment* as an alternative to seeking reimbursement for Monetary Losses and/or Lost Time. The amount of this benefit shall be determined *pro rata* based on the amount remaining in the Settlement Fund following payment of the Fee Award and Expenses, Administration and Notice Costs, CAFA Notice, costs of Financial Account Monitoring, claims for Reimbursement of Monetary Losses and Lost Time, and California Statutory Payments.

59. **Debit for Fulton Bank Subclass Members:** All Fulton Bank Subclass Members who participated in the Fulton Bank Settlement will be eligible to submit a claim in this Settlement. Any monetary amounts received by the Fulton Bank Subclass Members from the Fulton Bank Settlement shall reduce the benefits due to Fulton Bank Class Members in this Settlement. Also, Fulton Bank Subclass Members who claimed and were approved to receive Reimbursement of Monetary Losses and/or Lost Time in the Fulton Bank Settlement are not eligible for an *Alternative Pro Rata Cash Payment* in this Settlement, as the *Alternative Pro Rata Cash Payment* may only be selected in lieu of reimbursement for Monetary Losses and/or Lost Time.

60. **Remainder Funds** shall be distributed to a charitable organization jointly recommended by the Parties and approved by the Court.

61. **Business Practices Commitments:** Plaintiffs acknowledge receipt of and have verified the information contained therein of a declaration from OSC's Chief of Compliance attesting to enhanced data security procedures put in place subsequent to the Data Security Incident. None of the past or future costs associated with the development and implementation of these enhanced security procedures has been or will be paid by Plaintiffs and no portion of the Settlement Fund is to be used for this purpose.

## **VI. SETTLEMENT ADMINISTRATION**

62. Administration and Notice Costs will be paid from the Settlement Fund, including the costs of direct mail notice and reminder notice(s). The Settlement Administrator will file any necessary tax returns and pay all taxes required on behalf of the Settlement Fund and any such Taxes and Tax-Related Expenses will be included in the Administration and Notice Costs.

63. The Parties agree KCC will be the Settlement Administrator, who is charged with delivering sufficient notice (including direct notice) and administering the claims process. Within seven (7) days of an order directing Class Notice, OSC and Key Bank will provide the Class List to the Settlement Administrator, as called for in paragraph 14 herein. Should KCC be unable, unwilling or unavailable to serve

and/or continue serving as the Settlement Administrator, the Parties will jointly select a different qualified entity to serve as the Settlement Administrator.

64. The Parties agree that the period for filing claims will be set at a date certain at no more than 90 days from the date that Notice is commenced to the Settlement Class. Class Notice will be commenced within 30 days following Defendants' delivery of information about individuals identified as Settlement Class Members to the Settlement Administrator.

65. Within 10 days following the Court's entry of the Preliminary Approval Order and pursuant thereto, the Settlement Administrator, on behalf of Defendants, shall cause a CAFA Notice to be served upon the appropriate State and Federal officials. All expenses incurred in connection with the preparation and service of the CAFA Notice by the Settlement Administrator shall be payable from the Settlement Fund.

66. Defendants shall not have any responsibility for or liability whatsoever with respect to (i) any act, omission or determination of the Settlement Administrator, or any of its designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design, or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any

losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns. Defendants also shall have no obligation to communicate with Class Members and others regarding amounts paid under the Settlement.

## **VII. NOTICE TO SETTLEMENT CLASS MEMBERS**

67. The Parties agree that the following Notice Plan provides reasonable notice to the Settlement Class.

68. Direct Notice shall be provided to Settlement Class Members by First Class U.S. Mail for Settlement Class Members for whom the Settlement Administrator has a valid address.

69. OSC and KeyBank shall provide the Settlement Administrator with the names and last known addresses for the Settlement Class Members as specified in this Agreement. The Settlement Administrator will then, using the National Change of Address database maintained by the United States Postal Service, obtain updates, as needed, to the mailing addresses.

70. The Settlement Administrator shall agree to maintain the confidentiality of the Class Lists and related information provided by Defendants, to implement appropriate safeguards to prevent unauthorized access to that data, and to use that data strictly for the business purpose of administering the Settlement. The Settlement

Administrator shall not provide the Class Lists or related information provided by Defendants to Class Counsel.

71. Within **37 days** following entry of the Preliminary Approval Order, the Settlement Administrator shall mail the Postcard Notice and Claim Form to all Settlement Class Members.

72. No later than **34 days** following entry of the Preliminary Approval Order, the Settlement Administrator shall create a dedicated Settlement Website that will inform Class Members of the terms of this Agreement, their rights, relevant dates and deadlines, and related information. The Settlement Website shall include, in .pdf format and available for download, the following: (i) the Long Form Notice; (ii) the Short Form Notice; (iii) the Claim Form; (iv) the Preliminary Approval Order; (v) this Agreement; (vi) the Consolidated Complaint; and (vi) any other materials agreed upon by the Parties and/or required by the Court. The Settlement Website shall provide Class Members with the ability to complete and submit the Claim Form electronically.

73. The Settlement Administrator shall establish a toll-free help line to provide Settlement Class Members with information about the settlement. The Settlement Administrator will provide copies of the Short Form Notice, Long Form Notice, and paper Claim Form, as well as this Agreement, upon request.



74. Prior to the Final Approval Hearing, the Settlement Administrator shall provide to Class Counsel to file with the Court, an affidavit or declaration certifying compliance with the Court-approved Notice Plan.

### **VIII. OPT-OUT PROCEDURE**

Each Settlement Class Member shall have the right to request exclusion from the Settlement, as provided for in the Preliminary Approval Order.

75. The Short Form Notice shall inform each Settlement Class Member of his or her right to request exclusion from the Settlement Class and not be bound by this Agreement if, before the Opt-Out Deadline, the Settlement Class Member completes and mails a request for exclusion to the Settlement Administrator at the address set forth in the Short Form Notice.

76. Valid Settlement Class Member Opt-Out Requests must (i) state a full name, address, and telephone number; (ii) contain the Settlement Class Member's original signature; and (iii) state the Settlement Class Member's intent to be excluded from the Settlement Class and Settlement.

77. The Settlement Administrator shall promptly inform Class Counsel and Defendants' Counsel of all valid and timely submitted Opt-Out Requests.

78. Opt-Out Members are ineligible to receive benefits or compensation under this Agreement and have no rights to object to the proposed Settlement or address the Court at the Final Approval Hearing.

79. An Opt-Out request that does not comply with these terms is hereby invalid.

#### **IX. OBJECTIONS TO THE SETTLEMENT**

80. Any Settlement Class Member who wishes to object to the proposed Settlement must file with the Court a written objection(s) to the Settlement.

81. Each Objection must (i) set forth the Settlement Class Member's full name, current address, telephone number; (ii) contain the Settlement Class Member's original signature; (iii) state that the Settlement Class Member objects to the Settlement in whole or in part; (iv) set forth a statement of the legal and factual basis for the Objection; and (v) provide copies of any documents that the Settlement Class Member wishes to submit in support of his/her position.

82. Objections must be filed with the Court and served on Class Counsel and Defendants' Counsel no later than **sixty (60) days** after the Notice Date (the "Objection Deadline"). The Objection Deadline shall be included in the Short Form and Long Form Notices.

83. Counsel for Plaintiffs and Defendants may respond to the Objections, if any, by means of a memorandum of law, filed and served prior to the Final Approval Hearing.

84. An objecting Settlement Class Member has the right, but is not required to, attend the Final Approval Hearing. If an objecting Settlement Class Member

intends to appear at the Final Approval Hearing, either with or without counsel, he or she must also file a notice of appearance with the Court, as well as serve notice on Class Counsel and Defendants' Counsel by the Objection Deadline.

85. Any Settlement Class Member who fails to submit a timely Objection per the terms of this Agreement, the Long Form Notice, and as otherwise ordered by the Court, shall not be treated as having filed a valid Objection to the Settlement and shall forever be barred from raising any objection to the Settlement.

#### **X. ATTORNEYS' FEES, COSTS, AND EXPENSES**

86. The Fee Award and Expenses will be paid from the Settlement Fund.

87. Plaintiffs may request a fee award of up to 1/3 of the gross Settlement Fund (\$2,000,000.00) plus reimbursement of litigation expenses not to exceed \$150,000.00 (together, the aforementioned "Fee Award and Expenses"). Class Counsel shall submit a motion for Fee Award and Expenses no later than 14 days before the Objection and Opt-Out Deadline.

88. The Fee Award and Expenses awarded by the Court shall be paid by the Settlement Administrator from the Settlement Fund no later than **twenty-one (21) days** after the Effective Date. Payment will be made to accounts designated by Class Counsel who shall have sole discretion in allocating attorneys' fees and expenses.

## XI. NOTICES

89. All notices (other than the Notice to class members) required by this Agreement shall be made in writing and communicated by First Class U.S. mail and email to the following individuals at the following addresses:

All notices to Class Counsel shall be sent to:

M. Anderson Berry  
**Clayo C. Arnold, APC**  
865 Howe Ave.  
Sacramento, CA 95825  
aberry@justice4you.com

All notices to OSC shall be sent to:

Eric J. Sauter  
Richard Boone  
**Wilson Elser Moskowitz Edelman & Dicker LLP**  
150 East 42<sup>nd</sup> Street  
New York, NY 10017  
eric.sauter@wilsonelser.com  
richard.boone@wilsonelser.com

All notices to KeyBank shall be sent to:

Jim Pastore  
**Debevoise & Plimpton LLP**  
66 Hudson Blvd.  
New York, NY 10001  
jjpastore@debevoise.com

90. Other than attorney-client communications or those otherwise protected from disclosure pursuant to law or rule, the Parties shall promptly provide to each other copies of comments, Objections, Opt-Out Requests, or other

documents or filings received from a Settlement Class Member as a result of the Notice Plan.

## **XII. SETTLEMENT APPROVAL PROCESS**

91. As soon as practicable after the execution of this Agreement, the Settlement Class Representatives and Class Counsel shall submit this Agreement to the Court and file a motion for preliminary approval of the Settlement, requesting entry of a Preliminary Approval Order substantially in the form attached hereto as **Exhibit D**, requesting, among other things:

- a. Certification of the Settlement Class for settlement purposes only;
- b. Preliminary approval of this Agreement;
- c. Appointment of MaryBeth V. Gibson, Gibson Consumer Law Group, LLC and M. Anderson Berry, Clayco C. Arnold, A Professional Corporation, as Class Counsel.
- d. Appointment of Mariann Archer, Mark Samsel, Tim Marlowe, Melissa Urciuoli, James Urciuoli, Patrick Reddy, Jacint “Jay” Pittman, Joseph John Turowski, Jr., Teresa Turowski, Melissa D. Kauffman, Lebertus Vanderwerff, Adrienne Khanolkar, Dhamendra “DK” Khanolkar, and Joynequa West as the Settlement Class Representatives;
- e. Approval of the Notice Plan;

- f. Approval of a Short Form Notice substantially similar to the one attached hereto as **Exhibit C**;
- g. Approval of a Long Form Notice substantially similar to the one attached hereto as **Exhibit B**;
- h. Approval of a claim form substantially similar to the one attached hereto as **Exhibit A**; and
- i. Appointment of the Settlement Administrator.
- j. The Long Form Notice, Short Form Notice, and Claim Form shall be reviewed by the Settlement Administrator and may be revised as agreed by the Parties after submission to the Court with the motion for preliminary approval of the Settlement.
- k. After entry by the Court of a Preliminary Approval Order, and no later than fourteen (14) days before the Final Approval Hearing, the Settlement Class Representatives shall file a motion seeking final approval of the Settlement and entry of a Final Approval Order and Judgment, including a request that the preliminary certification of the Settlement Class for settlement purposes be made final.

### **XIII. FINAL APPROVAL HEARING**

92. The Parties will recommend the Final Approval Hearing be scheduled no earlier than **150** days after the entry of the Preliminary Approval Order.

93. Any Settlement Class Member who wishes to appear at the Final Approval hearing must mail to the Court or file a notice of appearance in the Action by the Objection Deadline, as well as take actions required in the Long Form Notice or as otherwise required by the Court.

94. The Parties shall ask the Court to enter a Final Approval Order and Judgment including the following provisions:

- a. A finding that the Notice Plan fully and accurately informs all Settlement Class Members entitled to notice of the material elements of the Settlement, constitutes the best notice practicable under the circumstances, constitutes valid, due, and sufficient notice, and complies fully with Fed. R. Civ. P. 23, the United States Constitution and any other applicable law;
- b. A finding that after proper notice to the Settlement Class Members, and after sufficient opportunity to object, no timely objections to this Settlement have been made, or a finding that all timely objections have been considered and denied;
- c. Approval of the Settlement, as set forth in this Agreement, as fair, reasonable, adequate, and in the best interests of the class, in all respects, finding that the Settlement is in good faith and ordering the

parties to perform the Settlement in accordance with the terms of this Agreement;

- d. A finding that neither the Final Judgment, the Settlement, or the Agreement constitutes an admission of liability by the Parties;
- e. A finding that the Releasing Parties shall have been deemed to fully and finally release, relinquish, and discharge the Released Parties from the Released Claims;
- f. A finding that all Settlement Class Members who have not properly opted out of the Settlement Class are, following entry of Final Judgment, deemed to have fully and finally released, relinquished, or discharged the Released Parties from the Released Claims; and
- g. If and when the Final Approval Order and Judgment is entered, the claims against Defendants in the Action shall be dismissed with prejudice.

#### **XIV. TERMINATION OF THIS AGREEMENT**

95. Each Party shall have the right, but not the obligation, to void or rescind this Agreement if the Agreement is modified in any material respect by the District Court or by any other Court. This Agreement is expressly contingent on: (i) the execution of this Agreement; (ii) preliminary approval of the Settlement by the District Court; (iii) final approval of the Settlement by the District Court, which is



no longer subject to appeal; and (iv) the final, non-appealable dismissal of the litigation with prejudice.

## **XV. RELEASE**

96. Upon the Effective Date, and in consideration of the Settlement benefits described herein, the Releasing Parties shall be deemed to have fully, finally, and forever released, acquitted, and discharged the Released Parties from any and all Released Claims. This release expressly includes a Release by the Settlement Class Representatives and Settlement Class Members of OSC's insurers with respect to all obligations under any part of any insurance policy applicable to the Released Claims, and from any and all claims arising out of the investigation, handling, adjusting, defense, or settlement of the claim.

97. The Released Claims include the release of Unknown Claims.

98. Upon the Effective Date, each of the Releasing Parties shall be deemed to have, and shall have, waived any and all provisions, rights, and benefits conferred by any law of any state, the District of Columbia or territory of the United States, by federal law, or principle of common law, or the law of any jurisdiction outside of the United States as regards the Released Claims.

99. Specifically, the Parties stipulate and agree that upon the Effective Date, the Settlement Class Representatives and Settlement Class Members expressly and by operation of the Final Approval Order and Judgment shall have released any and

all Released Claims, including Unknown Claims, and waived the provisions, rights, and benefits conferred by California Civil Code § 1542, and also any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States 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.

The Releasing Parties acknowledge that they may 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 release, but that it is their intention to finally and forever settle and release the Released Claims, including but not limited to any Unknown Claims they may have, as that term is defined in this Agreement.

#### **XVI. NO ADMISSION OF LIABILITY**

100. **No Admission of Liability.** The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties and their representatives previously and no action taken by the Parties and their representatives in connection with the proceedings or negotiations connected with this Action or this Settlement Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or

defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever.

101. **No Use of Agreement.** Neither the Agreement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (i) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by Plaintiffs; or (ii) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission by Defendants in the Action or in any proceeding in any court, administrative agency, or other tribunal.

## **XVII. MISCELLANEOUS PROVISIONS**

102. Further Steps. The Parties agree that they each shall undertake any further required steps to effectuate the purposes and intent of this Agreement.

103. Cooperation. The Parties: (i) acknowledge that it is their intent to consummate this Agreement and (ii) agree to cooperate to the extent reasonably necessary to effect and implement all terms and conditions of this Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of this Agreement.

104. Contractual Agreement. The Parties understand and agree that all terms of this Agreement, including the exhibits hereto, are contractual and are not a mere recital, and each signatory warrants that he or she is competent and possesses the

full and complete authority to execute this Agreement on behalf of the Party that he or she represents.

105. Headings. Any headings contained herein are for informational purposes only and do not constitute a substantive part of this Agreement. In the event of a dispute concerning the terms and conditions of this Agreement, the headings shall be disregarded.

106. Integration. This Agreement constitutes the entire agreement among the Parties and no representations, warranties, or inducements have been made to any Party concerning this Agreement other than the representations, warranties, and covenants expressly contained and memorialized herein.

107. Exhibits. The exhibits to this Agreement are expressly incorporated by reference and made part of the terms and conditions set forth herein.

108. Drafting. The language of all parts of this Agreement shall in all cases be construed as a whole, according to their fair meaning, and not strictly for or against any Party. No Party shall be deemed the drafter of this Agreement. The Parties acknowledge that the terms of the Agreement are contractual and are the product of negotiations between the Parties and their counsel. Each Party and their counsel cooperated in the drafting and preparation of the Agreement. In any construction to be made of the Agreement, the Agreement shall not be construed

against any Party and any canon of contract interpretation to the contrary shall not be applied.

109. Modification or Amendment. Before Final Approval of this Agreement is ordered by the Court, this Agreement may not be modified or amended, nor may any of its provisions waived, except by an express writing signed by the Parties who executed this Agreement, or their successors. Following Final Approval of this Agreement, after all appeals have been exhausted in favor of the Final Approval and the time period to file such appeals has expired, this Agreement may not be modified or amended, nor may any of its provisions be waived, absent a Court Order. Notwithstanding the above, any Party unilaterally may change the notice designation that applies to that Party at any time.

110. Waiver. The failure of a Party to insist upon strict performance of any provision of this Agreement shall not be deemed a waiver of such Party's rights or remedies or a waiver by such Party of any default by another Party in the performance or compliance of any of the terms of this Agreement. In addition, the waiver by one Party of any breach of this Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

111. Severability. Should any part, term, or provision of this Agreement be declared or determined by any court or tribunal to be illegal or invalid, the Parties agree that the Court may modify such provision to the extent necessary to make it

valid, legal, and enforceable. In any event, such provision shall be separable and shall not limit or affect the validity, legality, or enforceability of any other provision hereunder.

112. Counterparts. The Settlement Agreement 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. A complete set of executed counterparts shall be filed with the Court. This Agreement may be executed using electronic signature technology (e.g., via DocuSign, Adobe Sign, or other electronic signature technology), and such signed electronic record shall be valid and as effective to bind the party so signing as a paper copy bearing such party's handwritten signature.

113. Electronic Mail. Transmission of a signed Agreement by electronic mail shall constitute receipt of an original signed Agreement by mail.

114. Successors and Assigns. The Agreement shall be binding upon, and inures to the benefit of, the heirs, executors, successors, and assigns of the Parties hereto.

115. Governing Law. All terms and conditions of this Agreement shall be governed by and interpreted according to the laws of Georgia, without reference to its conflict of law provisions, except to the extent the federal law of the United States requires that federal law governs.

116. Interpretation. The following rules of interpretation shall apply to this Agreement:

- a. Definitions apply to the singular and plural forms of each term defined.
- b. Definitions apply to the masculine, feminine, and neuter genders of each term defined.
- c. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall not be limiting but rather shall be deemed to be followed by the words “without limitation.”

117. Fair and Reasonable. The Parties and their counsel believe this Agreement is a fair and reasonable compromise of the disputed claims and in the best interest of the Parties. The Parties have arrived at this Agreement as a result of extensive arms-length negotiations.

118. Jurisdiction. The Court shall retain exclusive jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain exclusive jurisdiction over all Parties and the Settlement Class for the purpose of consummating, implementing, administering, and enforcing all terms of the Agreement. The Court shall also retain exclusive jurisdiction over all questions and/or disputes related to the Notice and the

Settlement Administrator. As part of its agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

119. Failure to Opt Out. From and after the entry of the Preliminary Approval Order, all Class Members who have not opted out are barred and enjoined from filing, commencing, continuing, prosecuting, intervening in, or participating as class members in any other suit, action, proceeding, case, controversy, or dispute in any jurisdiction against any or all of the Released Parties based on or relating to the Agreement or the matters, claims, or causes of action, or the facts and circumstances relating thereto in this Action, that are to be released upon entry of the Final Approval Order and Judgment pursuant to the Agreement, except as required by law or as required to effectuate this Agreement. Furthermore, all persons are enjoined from filing, commencing, prosecuting, litigating, or continuing a lawsuit in any jurisdiction on behalf of Settlement Class Members who have not timely excluded themselves, that is based on or relating to the claims and causes of action, or the facts and circumstances relating thereto, in this Action and in this Settlement Agreement.

120. No Government Third-Party Rights or Beneficiaries. No government agency or official (in their official capacity) can claim any rights under this Agreement.



121. No Collateral Attack. The Settlement Agreement shall not be subject to collateral attack, including by any Settlement Class Member or any recipient of notices of the Settlement after the Final Approval Order and Judgment is entered.

122. Public Statements. The Parties agree not to make disparaging statements to the press regarding the Data Security Incident, Action, Settlement or any Party or Released Parties. The Parties, with respect to this Action, while in Court and/or addressing the Court, may discuss the Settlement, the terms of the Settlement, any matter addressed in Plaintiffs' motion for preliminary approval or any other aspect of the Action as needed in order to further or enforce the Settlement.

123. Communications Regarding Settlement: Any press release or website announcement issued by a party in connection with the Settlement, other than notices to Settlement Class Members required by law or by the Agreement, shall exclude reference to KeyBank, Fulton Bank, and/or any other individual or entity not named in the suit; and shall only include information contained in the Court's Final Approval Order.

**IN WITNESS WHEREOF**, the Parties have herby accepted and agreed to this Agreement.

**Class Counsel:**

/s/ M. Anderson Berry Date: April 10, 2024  
M. Anderson Berry

/s/ MaryBeth V. Gibson Date: April 10, 2024  
MaryBeth V. Gibson

**KeyBank National Association's Counsel:**

/s/ James Pastore Date: April 10, 2024  
James Pastore

**Overby-Seawell's Counsel:**



\_\_\_\_\_ Date: April 10, 2024  
Eric J. Sauter

## SETTLEMENT TIMELINE

<b><u>From Order Granting Preliminary Approval</u></b>	
OSC will deposit \$100,000 into the Qualified Settlement Fund	+14 days
Notice Date	+37 days
<b><u>From Notice Date</u></b>	
Counsel's Motion for Attorneys' Fees and Reimbursement of Litigation Expenses	+46 days
Objection Date	+60 days
Opt-Out Date	+60 days
Claims Deadline	+90 days
<b><u>Final Approval Hearing</u></b>	
	, 2024 (no less than +150 days)
Motion for Final Approval	-14 days