

SETTLEMENT AGREEMENT AND RELEASE AGREEMENT

This Settlement Agreement and Release (“Settlement Agreement”) is entered into by and between (i) Toyotetsu America, Inc. (“Toyotetsu”) and (ii) Jonathan Phelps (“Plaintiff”), both individually and on behalf of the Settlement Class, in the case of *Jonathan Phelps v. Toyotetsu North America*; Case No. 6:22-cv-00106; United States District Court, Eastern District of Kentucky. Toyotetsu and Plaintiff are each referred to as a “Party” and are collectively referred to herein as the “Parties.”

I. BACKGROUND AND RECITALS¹

1. On April 14, 2022, Plaintiff filed a class action lawsuit in the 28th Judicial Circuit, Pulaski Circuit Court against Toyotetsu based on a data security incident Toyotetsu experienced in October 2021 (the “Incident”), alleging claims of negligence, breach of implied contract, unjust enrichment, and negligence per se (“Complaint”).
2. On May 13, 2022, Toyotetsu removed the state court case to the United States District Court, Eastern District of Kentucky – London Division.
3. On August 26, 2022, Toyotetsu filed a motion to dismiss Plaintiff’s complaint. In response, Plaintiff filed a First Amended Class Action Complaint.
4. Before the motion to dismiss was filed, the Parties began engaging in arm’s length settlement negotiations. The Parties extensively negotiated a term sheet including the potential settlement benefits. These settlement negotiations started in May 2022 and resulted in a settlement in principle in October 2022. The settlement in principle was articulated in a term sheet the Parties finalized in November 2022. The term sheet was used as the foundation for drafting and finalizing this Settlement Agreement.
5. The Parties negotiated a settlement by which the Parties agree and hereby wish to resolve all matters pertaining to, arising from, or associated with the Litigation, including all claims Plaintiff and Class Members have or may have had against Toyotetsu and related persons and entities, as set forth herein.
6. The Parties have agreed to settle the Litigation on the terms and conditions set forth herein in recognition that the outcome of the Litigation is uncertain and that achieving a final result through litigation would require substantial additional risk, uncertainty, discovery, time, and expense for both of the Parties.
7. Toyotetsu denies all charges of wrongdoing or liability that Plaintiff, Class Members, or anyone else have asserted in this Litigation or may assert in the future. Despite Toyotetsu’s belief that it is not liable for, and has good defenses to, the claims alleged in the Litigation, Toyotetsu desires to settle the Litigation, and thus avoid the

¹ Some defined terms are used prior to being defined. Terms used prior to definition are to be interpreted as defined.

expense, risk, exposure, inconvenience, uncertainty, and distraction of continued litigation of any action relating to the matters being fully settled and finally put to rest in this Settlement Agreement. Neither this Settlement Agreement, nor any negotiation or act performed or document created in relation to the Settlement Agreement or negotiation or discussion thereof is, or may be deemed to be, or may be used as, an admission or evidence of, any wrongdoing or liability.

8. Following arm's length negotiations, the Parties now enter into this Settlement Agreement. Plaintiff and Class Counsel have conducted an investigation into the facts and the law regarding the Litigation and have concluded that a settlement according to the terms set forth below is fair, reasonable, and adequate, and beneficial to and in the best interests of Plaintiff and the Settlement Class, recognizing: (1) the existence of complex and contested issues of law and fact; (2) the risks inherent in litigation; (3) the likelihood that future proceedings will be unduly protracted and expensive if the proceeding is not settled by voluntary agreement; (4) the magnitude of the benefits derived from the contemplated settlement in light of both the maximum potential and likely range of recovery to be obtained through further litigation and the expense thereof, as well as the potential of no recovery whatsoever; and (5) Plaintiff's determination that the settlement is fair, reasonable, adequate, and will substantially benefit the Class Members.
9. Considering the risks and uncertainties of continued litigation and all factors bearing on the merits of settlement, the Parties are satisfied that the terms and conditions of this Settlement Agreement are fair, reasonable, adequate, and in their respective best interests.
10. In consideration of the covenants, agreements, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and among the undersigned that the Litigation be settled and compromised, and that the Releasors release the Released Parties of the Released Claims, without costs as to Released Parties, Plaintiff, Class Counsel, or the Settlement Class, except as explicitly provided for in this Settlement Agreement, subject to the approval of the Court, on the following terms and conditions.

II. DEFINITIONS

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

11. "**Administrative Expenses**" shall mean expenses associated with the Settlement Administrator, including but not limited to costs in providing notice, communicating with Class Members, and disbursing payments to the proposed Settlement Class Members. Administrative Expenses, other than the cost for the CAFA Notice, shall be paid through and using the Settlement Fund.
12. "**Approved Claims**" shall mean complete and timely Claim Forms submitted by Settlement Class Members that have been approved by the Settlement Administrator.

13. “**CAFA Notice**” means a notice of the proposed Settlement in compliance with the requirements of the Class Action Fairness Act, 28 U.S.C. Sec. 1711, et seq. (“CAFA”), to be served upon the appropriate State official in each State where a Class Member resides and the appropriate federal official. Costs for preparation and issuance of the CAFA Notice will be paid by Toyotetsu.
14. “**Claim Form**” shall mean the form that Class Members may submit to obtain compensation under this Settlement Agreement.
15. “**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 a date fourteen days after the Final Approval Hearing. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order, as well as in the Notice and the Claim Form.
16. “**Class Member**” or “**Class Members**” means all individuals residing in the United States to whom Defendant or its authorized representative sent or attempted to send a notice concerning the Data Breach. “Class Members” excludes Toyotetsu; any entity in which Toyotetsu has a controlling interest; the affiliates, attorneys, successors, heirs, and assigns of Toyotetsu; and any members of the judiciary to whom this case is assigned, their families and members of their staff.
17. “**Settlement Class**,” or “**Settlement Class Member**” shall mean each Class Member who does not timely elect to be excluded from the Settlement. Plaintiff is a Settlement Class Member.
18. “**Class Counsel**” shall mean Terence R. Coates, Dylan J. Gould, and Jonathan T. Deters of Markovits, Stock & DeMarco, LLC.
19. “**Counsel**” or “**Counsel for the Parties**” means both Class Counsel and Defendant’s Counsel, collectively.
20. “**Court**” shall mean Judge Claria Boom of the United States District Court, Eastern District of Kentucky, or any other judge who shall have jurisdiction over the Litigation.
21. “**Defendant**” or “**Toyotetsu**” shall mean Toyotetsu America Inc. (identified in the Complaint as Toyotetsu North America).
22. “**Defendant’s Counsel**” shall mean Christopher Wood, Morgan Salisbury, and Judd Uhl from Lewis, Brisbois, Brisgaard & Smith LLP.

23. “**Effective Date**” shall mean the date when the Settlement Agreement becomes Final, which is 35 days after the Court’s grant of the Final Approval Order assuming no appeals have been filed. If an appeal is filed, the Effective Date will be 35 days from when the appeal is decided and a final judgment is entered in this case.
24. “**Fee and Expense Application**” shall mean the motion to be filed by Class Counsel, in which they seek approval of an award of attorneys’ fees, as well as a Service Award for the Class Representative.
25. “**Fee Award**” means the amount of attorneys’ fees awarded by the Court to Class Counsel. The Fee Award shall be paid using and through the Settlement Fund.
26. “**Final Approval Hearing**” means the hearing before the Court where the Plaintiff will request a judgment to be entered by the Court approving the Settlement Agreement, approving the Fee Award, and approving a Service Award to the Class Representative.
27. “**Final Approval Order**” shall mean an order entered by the Court that:
- i. Certifies the Settlement Class pursuant to Federal Rule of Civil Procedure 23;
 - ii. Finds that the Settlement Agreement is fair, reasonable, and adequate, was entered into in good faith and without collusion, and approves and directs consummation of this Settlement Agreement;
 - iii. Dismisses Plaintiff’s claims pending before it with prejudice and without costs, except as explicitly provided for in this Settlement Agreement;
 - iv. Approves the Release provided in Section VII and orders that, as of the Effective Date, the Released Claims will be released as to Released Parties;
 - v. Reserves jurisdiction over the Settlement and this Settlement Agreement; and
 - vi. Finds that there is no just reason for delay of entry of final judgment with respect to the foregoing and constitutes a final judgment for appeal purposes.
28. “**Frequently Asked Questions**” or “**FAQs**” are questions and answers to those questions that are frequently posed by Class Members about class action settlement and specially about this Settlement.

29. “**Litigation**” shall mean the action captioned *Jonathan Phelps, on behalf of himself and all others similarly situated, v. Toyotetsu North America*, Case 6:22-cv-00106 currently pending in the United States District Court, Eastern District of Kentucky.
30. “**Long Form Notice**” is the content long form notice that will be posted on the Settlement Website that will include robust details about the Settlement.
31. “**Notice**” means the direct notice of this proposed Settlement, which is to be provided substantially in the manner set forth in this Settlement Agreement, and is consistent with the requirements of Due Process.
32. “**Objection/Exclusion Deadline**” means the date by which a written objection to this Settlement Agreement or a request for exclusion from this Settlement submitted by a Class Member must be postmarked and/or filed with the Court, which shall be designated as a date approximately ninety days after entry of the Preliminary Approval Order, or such other date as ordered by the Court.
33. “**Plaintiff**” or “**Class Representative**” shall mean the named class representative, Jonathan Phelps.
34. “**Preliminary Approval Order**” shall mean the Court’s Order preliminarily approving the Settlement Agreement, certifying a class for purposes of settlement only, and directing notice of the Settlement to the Class Members substantially in the form of the Notice set forth in this Settlement Agreement.
35. “**Released Claims**” shall have the meaning ascribed to it as set forth in Section VII of this Settlement Agreement.
36. “**Released Parties**” shall have the meaning ascribed to it as set forth in Section VII of this Settlement Agreement.
37. “**Releasor**” or “**Releasors**” shall refer, jointly and severally, and individually and collectively, to Plaintiff and to Settlement Class Members (conversely, Class Members who do not timely exclude himself/herself from the Settlement by the Objection/Exclusion Deadline), and to each of their predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing, and anyone claiming by, through, or on behalf of them.
38. “**Remainder Funds**” means any funds that remain in the Settlement Fund after settlement payments for Approved Claims. The funds remaining in the Settlement Fund after settlement payments have been distributed and the time for cashing and/or depositing 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. “**Service Award**” shall have the meaning ascribed to it as set forth in Section XV of this Settlement Agreement. The Service Award requested in this matter will be \$5,000.00, subject to court approval and will be in addition to any other Settlement benefits Class Representative Phelps may receive. The Service Award shall be paid using and through the Settlement Fund.
40. “**Settlement Administrator**” means, subject to Court approval, the entity jointly selected and supervised by Class Counsel and Toyotetsu to administer the settlement. The Settlement Administrator shall be paid using and through the Settlement Fund.
41. “**Settlement Fund**” means a settlement fund in the amount of Four Hundred Thousand Dollars (\$400,000), which includes the Fee Award, Administrative Expenses, Class Counsel’s Litigation Expenses, and Service Award. In no event shall Toyotetsu be required to pay more than the Settlement Fund as part of this Settlement, excepting amounts to be paid for the CAFA Notice. Beyond the Settlement Fund, Defendant shall have no obligation or liability to make further payments or other monetary contributions as part of this Settlement, whether to the Settlement Class, to Plaintiff, Releasers, or Class Counsel.
42. “**Settlement Website**” means a website established and administered by the Settlement Administrator, which shall contain information about the Settlement, including electronic copies the Notices (or any forms of these notices that are approved by the Court), this Settlement Agreement, and all Court documents related to the Settlement. The Settlement Website, www.ToyotetsuDataSettlement.com, will be publicly viewable and contain broad information about the Settlement, including but not limited to, copies of the material pleadings filed in this matter, a copy of the Long Form Notice, Short Form Notice, FAQs, Claim Form that may be submitted online through the Settlement Website or mailed to the Settlement Administrator, and the deadlines for filing a Claim, Objection, Exclusion requests, and the date of the Fairness Hearing. The Settlement Website is viewed as an important piece of the notice plan to Class Members. The Settlement Website will remain active until 120 days after the Effective Date. Class Members shall be able to submit Claim Forms via the Settlement Website. The Settlement Website shall remain active through the Claims Deadline.
43. “**Short Form Notice**” is the postcard notice that will be mailed to each available Class Member and/or emailed to the Class Members. Short Form Notice will include a copy of the Claim Form.

III. SETTLEMENT CLASS CERTIFICATION

44. For the purposes of the Settlement only, the Parties stipulate and agree that: (1) the Class to be certified for this settlement and for settlement purposes only shall be certified in accordance with the definition contained in Paragraph 45, below; (2)

Plaintiff shall represent the Class for settlement purposes and shall be the Class Representative; and (3) Plaintiff's Counsel shall be appointed as Class Counsel.

45. Toyotetsu does not consent to certification of the Class for any purpose other than to effectuate the Settlement. If the Court does not enter preliminary or final approval of the Settlement, or if for any other reason final approval of the Settlement does not occur, final approval is successfully objected to, or final approval is successfully challenged on appeal, any certification of any Class will be vacated, unless the Parties agree otherwise in writing, and the Parties will be returned to their positions with respect to the Action as if the Settlement Agreement had not been entered into. In the event that Final Approval of the Settlement is not achieved: (1) any Court orders preliminarily or finally approving the certification of any class contemplated by this Settlement Agreement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity; (2) the Settlement Agreement, including any exhibits, shall not be used or cited thereafter by any person or entity; and (3) the fact of the settlement reflected in this Settlement Agreement, that Toyotetsu did not oppose the certification of a Class under this Settlement Agreement, or that the Court preliminarily approved the certification of a Settlement Class, shall not be used or cited thereafter by any person or entity, including in any manner whatsoever, including without limitation any contested proceeding relating to the certification of any class.
46. **Settlement Structure:** The settlement shall be administered upon the distribution of a non-reversionary Settlement Fund in the amount of \$400,000 (Four Hundred Thousand Dollars) on a claims-made basis. To receive any relief, Class Members, must submit a valid and timely claim to the Settlement Administrator to receive benefits from the Settlement Fund.
47. Subject to Court approval, the following class ("Class") shall be certified for settlement purposes only:
- All persons who were sent notice of the Data Breach.²
48. Excluded from the Class is Toyotetsu; any entity in which Toyotetsu has a controlling interest; and the affiliates, attorneys, successors, heirs, and assigns of Toyotetsu. Excluded also from the Class are members of the judiciary to whom this case is assigned, their families and members of their staff.
49. It is estimated that the Class is comprised of approximately 12,453 individuals.
50. If for any reason the Settlement is not granted preliminary and/or final approval, Toyotetsu's agreement to certification of the Settlement Class shall not be used for any purpose, including in any request for class certification in the Litigation or any other proceeding.

² "Data Breach" shall mean the cybersecurity incident against Toyotetsu giving rise to the action.

IV. SETTLEMENT OF LITIGATION AND RELEASES OF ALL CLAIMS AGAINST RELEASED PARTIES

51. Final approval of this Settlement Agreement will settle and resolve with finality, on behalf of the Plaintiff and the Settlement Class, the Litigation and the Released Parties will be released, on the Effective Date, from the Released Claims, as described in Section VII.

V. SETTLEMENT FUND ALLOCATION

52. **Settlement Benefits**³

- a. The Settlement Fund will make the following compensation available to Class Members who submit valid and timely claim forms, including documentation as specified. Claims will be subject to review for completeness and plausibility by a Settlement Administrator, and Claimants will have the opportunity to seek review by the Parties' Counsel, if they dispute the Settlement Administrator's initial determination.
- b. **Cash Compensation**: The Settlement Fund will provide \$250.00 to each Settlement Class Member upon submission of a claim. To the extent there are any amounts remaining in the Settlement Fund after the distribution of attorneys' fees, Class Counsel's Litigation Expenses, Administrative Fees, Service Award, and Compensation for monetary losses, the settlement payments to Settlement Class Members will be increased or decreased pro rata under this paragraph until the Settlement Fund is exhausted.
- c. **Compensation for Losses**: The Settlement Fund will provide compensation for unreimbursed losses, up to a total of \$5,000 per person, upon submission of a claim and supporting documentation, such as the following categories of claimed losses:
 - i. 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 Data Security Incident through the date of claim submission; and miscellaneous expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges.
 - ii. Settlement Class Members with monetary losses must submit documentation supporting their claims. This can include receipts or

³ Settlement benefits will be increased or decreased pro-rata should claims exceed the Maximum Payout under the Settlement in Paragraph 52, with attorneys' fees, Class Counsel's Litigation Expenses, Settlement Administration Fees, and Service Award deducted first.

other documentation not “self-prepared” by the claimant that document 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.

53. **Settlement Subject to Confirmatory Discovery:** Toyotetsu, for a period of 30 days running from the execution of the Settlement Agreement, agrees to provide reasonably tailored confidential confirmatory discovery regarding the Settlement including, but not limited to, the provision of a list that identifies each Class Member and, as available class member addresses. Within 21 days of the Effective Date, and receipt of payee instructions and a Form W-9 for the payee, Toyotetsu or its insurer shall pay to the Settlement Administrator the Settlement Fund. The funds provided by Toyotetsu to the Settlement Administrator will be maintained by an escrow agent as a Court-approved Qualified Settlement Fund pursuant to Section 1.468B-1, et seq., of the Treasury Regulations promulgated under Section 468B of the Internal Revenue Code of 1986, as amended, and shall be deposited in an interest-bearing account.

54. **Procedure for Approving Settlement**

- a. **Unopposed Motion for Preliminary Approval of the Settlement by the Court.** Plaintiff will file an unopposed motion for an order conditionally certifying the Settlement Class, giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice and Claim Form (the “Unopposed Motion for Preliminary Approval”).
- i. At the hearing on the Unopposed Motion for Preliminary Approval, the Parties will jointly appear, support the granting of the Unopposed Motion for Preliminary Approval, and submit a proposed order granting conditional certification of the Class and preliminary approval of the Settlement; appointing the Class Representative and Class Counsel; approving the Claim Form and the forms of notice to the Settlement Class; and setting the Final Approval Hearing.
- ii. For the purposes of the Settlement and the proceedings contemplated herein only, the Parties stipulate and agree that the Class shall be conditionally certified in accordance with the definition contained above, that Plaintiff shall be conditionally appointed class representative for the Class, and that Class Counsel shall be conditionally appointed as counsel for the Class. Should the Court decline to preliminarily approve any material aspect of the Settlement, the Settlement will be null and void, the Parties will have no further obligations under it, and the Parties will revert to their prior positions in the Action as if the Settlement had not occurred.
- iii. Defendant does not oppose but does not take a position on any request for a Fee Award or Service Award.

55. **Submission and Evaluation of Claims**

- a. **Claims Period**: The Parties agree that the period for filing claims shall be set at a date certain at no more than 90 days from the date that notice is mailed to the Settlement Class.
- b. **Claim Form**: All claims must be submitted on a Claim Form. The Claim Form will require the Settlement Class Member to provide his or her full name, home mailing address, email address, and telephone number; an affirmation that he/she is a member of the Settlement Class; and a signature.
- c. The Claim Form shall provide Class Members with the ability to receive \$250 in cash payment (subject to pro rata increase or reduction) and up to \$5,000 for reimbursement of out-of-pocket expenses mitigating the asserted effects of the Data Breach upon provision of appropriate documentation, as discussed above.
- d. The Claim Form must be submitted (either electronically submitted or postmarked) on or before the Claims Deadline.
- e. Completed Claim Forms shall be submitted directly to the Settlement Administrator either electronically via the Settlement Website, via electronic mail, or via U.S. Mail for processing, assessment, and payment (when properly submitted).
- f. Any Claim Form that lacks the requisite information will be deemed to be incomplete and ineligible for payment.
- g. A Class Member is not entitled to any compensation if he or she submits a Claim Form after the Claims Deadline, and/or if the Claim Form is incomplete after an opportunity to cure any error(s) and/or omission(s) or contains false information.
- h. Within twenty-one days after the Claims Deadline, the Settlement Administrator shall process all Claim Forms submitted by Settlement Class Members and shall determine which claims are valid and initially approved and which claims are initially rejected. The Settlement Administrator, for purposes of initial approval only, may accept or reject any Claim Form submitted upon its sole discretion, and may request additional information prior to initially accepting or rejecting any Claim Form submitted. The Settlement Administrator shall employ reasonable procedures to screen Claim Forms for abuse and/or fraud and shall deny Claim Forms which are materially incomplete and/or where there is evidence of abuse and/or fraud, or where the Claim Form does not meet the requirements set forth in this Agreement, including Paragraph 52.

- i. Within forty-five days of the Claims Deadline, the Settlement Administrator will submit to Counsel for the Parties a report listing all initially approved claims (“Initially Approved Claims List”) and shall include an electronic PDF copy of all such initially approved Claim Forms. Within forty-five days after the Claims Deadline, the Settlement Administrator will also submit to the Parties a report listing all initially rejected Claims (“Initially Rejected Claims List”) and shall include an electronic PDF copy of all such initially rejected Claim Forms.
- j. Counsel for the Parties shall have thirty days after the date they receive the Initially Approved Claims List and related Claim Forms to audit and challenge any initially approved claims. Within those thirty days, Counsel for the Parties shall serve opposing counsel via email with a Notice of Claim Challenges identifying by claim number any initially approved claim they wish to challenge and the reasons for the challenge.
- k. Similarly, Counsel for the Parties may challenge any claim initially rejected by the Settlement Administrator. Counsel for the Parties shall have thirty days after the date they receive the Initially Rejected Claims List and related Claim Forms to audit and challenge any initially rejected claims. Within those thirty days, Counsel for the Parties shall serve opposing counsel via email with a Notice of Claim Challenges identifying by claim number any initially rejected claim they wish to challenge and the reasons for the challenge.
- l. Counsel for the Parties shall meet and confer in an effort to resolve any disputes over any challenged claims. If the challenges are not withdrawn or resolved, the decision of the Settlement Administrator will be upheld. The date all claims are finalized without any further dispute shall be referred to as the “**Claims Finalization Date.**” If neither Class Counsel nor Toyotetsu’s Counsel have any challenges to the initial claim determinations reached by the Settlement Administrator, then the Claims Finalization Date shall be the date both Class Counsel and Toyotetsu’s Counsel inform each other by email that the Parties do not have any objection to the claims determination made by the Settlement Administrator or the time for informing each other of such challenges has lapsed.
- m. Within twenty-one days of the Claims Finalization Date, the Settlement Administrator shall provide Counsel for the Parties a spreadsheet setting forth the claim number, claimant name, and claimant address, and totaling the amount to be paid for each claimant under Paragraph 52 above (the “Final Claims List”). Within thirty days of the Claims Finalization Date, the Settlement Administrator shall send a check by First Class U.S. Mail or via electronic means to each Settlement Class Member on the Final Claims List.
- n. The Settlement Administrator shall notify the Parties that all Approved Claims have been paid within five business days of the last such payment.

- o. In the event that checks sent to Settlement Class Members are not cashed within ninety days after their date of issuance, those checks will become null and void, and will revert to the Settlement Fund.
- p. The Settlement Administrator will treat Settlement Class Member information as personally identifiable information and afford it corresponding confidential treatment, including when communicating with counsel for the Parties.

VI. PROSPECTIVE RELIEF

- 56. **Remedial Measures/Security Enhancements:** Toyotetsu agrees, consistent with the intent of this Settlement, to implement and/or to keep in place the data security enhancements to be identified through a filing made under seal with the Court for a period of 2 years from the date of the settlement agreement.
- 57. Costs associated with these business practice commitments should be paid by Toyotetsu separate and apart from the Settlement Fund. Toyotetsu's use of these security enhancements is not construed by the Parties as indicative of whether Toyotetsu's data security systems prior to the Data Breach were reasonable and adequate.

VII. RELEASE

- 58. On the Effective Date, all Releasors, including but not limited to Settlement Class Members and Plaintiff, shall be deemed to have and do fully and finally release, acquit, and forever discharge Toyotetsu and any of its past or present parents, subsidiaries, related or affiliated entities, assigns, directors, officers, employees, shareholders, members, partners, principals, owners, divisions, partnerships, attorneys, insurers, and reinsurers, and each of those individuals' or entities' respective predecessors, successors, directors, officers, employees, principals, assigns, and transferees (collectively "Released Parties") from any past, present or future claims, demands, lawsuits, set-offs, costs, expenses, attorneys' fees, losses, rights, charges, complaints, suits, petitions, penalties, damages, or liabilities of any nature, whether known or unknown, liquidated or unliquidated, matured or unmatured, in law, equity, or any other form whereby legal or equitable relief could be sought, that has been asserted or pled, could have been asserted or pled, or was asserted or pled by any Settlement Class Member, including Plaintiff, arising out of or in any way related to the Data Breach and/or Released Parties' recordkeeping or data security policies and practices ("Released Claims").
- 59. Each Releasor waives, to the fullest extent permitted by law, any and all defenses, rights, and benefits that may be derived from the provisions of applicable law in any jurisdiction that, absent such waiver, may limit the extent or effect of the release contained in this Settlement Agreement, including as to the Released Claims. Settlement Class Members expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the

California Civil Code (or any like or similar statute or common law doctrine). Section 1542 reads as follows:

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 acknowledge that they 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 this release, including the Released Claims, but that it is their intention to finally and forever settle and release the Released Claims and that, notwithstanding the discovery or existence of any such additional or different facts, as to which the Releasing Parties expressly assume the risk, they freely and voluntarily release the Released Claims.

VIII. PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER

60. This Settlement Agreement shall be subject to approval of the Court. As set forth in Section V, Toyotetsu shall have the right to withdraw from the Settlement Agreement if the Court does not approve any material aspects of the Settlement Agreement.
61. Plaintiff, through Class Counsel, shall submit this Settlement Agreement to the Court and shall move the Court for Preliminary Approval of the settlement set forth in this Settlement Agreement, certification of the Settlement Class, appointment of Class Counsel and the Class Representative, and entry of the Preliminary Approval Order which order shall seek a Final Approval Hearing date and approve the Notices and Claim Form for dissemination in accordance with the Notice Plan.
62. At the time of the submission of this Settlement Agreement to the Court as described above, the Parties shall request that, after Notice is given, the Court hold a Final Approval Hearing approximately 180 days after entry of the Preliminary Approval Order and approve the settlement of the Litigation as set forth herein.
63. At least twenty-one days before the Final Approval Hearing, or by some other date if so directed by the Court, Plaintiff will move for (1) final approval of the Settlement; (2) final appointment of the Class Representatives and Class Counsel; and (3) final certification of the Settlement Class, including for the entry of a Final Approval Order, and file a memorandum in support of the motion for final approval.

IX. NOTICE TO CLASS MEMBERS

64. Settlement Administrator

- a. Costs of Settlement Administration shall be provided from the Settlement Fund.

65. Class List

- a. Toyotetsu, with the assistance of the Settlement Administrator as appropriate, shall provide the Settlement Administrator a “Class List” based on the original list used to send notice to Class Members about the Data Breach.
- b. The Class List shall include the names and last known email and/or mailing addresses of potential Settlement Class Members, to the extent such information was contained in the original list used to send to Class Members notice about the Data Breach. Defendant will cooperate with Plaintiff concerning reasonable requests for information specific to the identification of Class Members and to the extent such information is readily available from a cost, resource, and access perspective.
- c. Toyotetsu shall provide the Class List to the Settlement Administrator and Class Counsel within seven days after entry of the Preliminary Approval Order.

66. Type of Notice Required

- a. Within 10 business days following the Court’s entry of the Preliminary Approval Order and pursuant thereto, the Settlement Administrator on behalf of the Defendant 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 shall be borne by Defendant and under no circumstances will be borne by Plaintiff, or Class Counsel, and will not be payable from the Settlement Fund.
- b. The Notice shall be used to inform proposed Settlement Class Members, prior to the Final Approval Hearing, that there is a pending settlement and to further inform Settlement Class Members how they may: (1) obtain a copy of the Claim Form; (2) protect their rights regarding the settlement; (3) request exclusion from the Settlement Class and the proposed settlement, if desired; (4) object to any aspect of the proposed settlement, if desired; and (5) participate in the Final Approval Hearing, if desired. The Notice shall provide that Settlement Class Members may submit Claims Forms and be eligible for (1) a \$250.00 payment or (subject to pro rata increase or reduction based on the amount of valid claims submitted); and (2) the ability to claim up to \$5,000.00 for reimbursement of out-of-pocket expenses or lost time mitigating the effects of the Data Breach, upon provision of appropriate documentation. Additionally, the Notice shall make clear

the binding effect of the Settlement on all persons who do not timely request exclusion from the Settlement Class.

- c. Dissemination of the Notice shall be the responsibility of the Settlement Administrator. The text of the Notice shall be agreed upon by the Parties.
- d. Notice of the settlement) shall be posted on the Settlement Website within fourteen (14) days of the entry of the Preliminary Approval Order.

67. Notice Deadline

- a. Within thirty days of entry of the Preliminary Approval Order, the Settlement Administrator shall disseminate by U.S. Mail the Notice to Settlement Class Members identified on the Class List.

X. EXCLUSIONS

68. Exclusion Period

- a. Settlement Class Members will have up to and including 90 days following entry of the Preliminary Approval Order (60 days after the Notice Date) to exclude themselves from the Settlement in accordance with this Section.
- b. If the Settlement is finally approved by the Court, all Settlement Class Members will be bound by the Settlement and will be deemed a Releasor of the Released Parties as defined herein, and the relief provided by the Settlement will be their sole and exclusive remedy for the claims alleged by the Settlement Class.

69. Exclusion Process

- a. A Class Member may request to opt-out and be excluded from the Settlement Class in writing. The writing is to be sent to the Settlement Administrator through a request postmarked on or before the Objection/Exclusion Deadline and to a mailing address established by the Settlement Administrator and identified in the Claim Form.
- b. In order to exercise the right to be excluded, a Class Member must timely send a written request for exclusion to the Settlement Administrator providing his/her name, address, and telephone number; the name and number of this case; a statement that he/she wishes to be excluded from the Settlement Class; and a signature. A request to be excluded that is sent to an address other than that designated in the Class Notice, or that is not postmarked within the time specified, shall be invalid and the person serving such a request shall be considered a member of the Settlement Class and shall be bound by the Settlement Agreement.

- c. Any Class Member who elects to be excluded shall not: (1) be bound by any order entered after valid exclusion, including the Final Approval Order; (2) be entitled to relief under this Settlement Agreement; (3) gain any rights by virtue of this Settlement Agreement; or (4) be entitled to object to any aspect of this Settlement Agreement.
- d. The request for exclusion must be personally signed by the person requesting exclusion. So-called “mass” or “class” exclusion requests shall not be allowed.
- e. Within ten business days after the Exclusion Deadline, the Settlement Administrator shall provide Class Counsel and Defendant’s Counsel a written list reflecting all timely and valid exclusions from the Settlement Class.
- f. A list reflecting all individuals who timely and validly excluded themselves from the Settlement Class shall also be filed with the Court at the time of the motion for final approval of the Settlement.
- g. In the event that within 10 days after the Objection/Exclusion Deadline as approved by the Court, more than two percent (2%) of Class Members have timely and validly submitted exclusion requests, Defendant may, by notifying Settlement Class Counsel and the Court in writing, within 21 days after the Objection/Exclusion Deadline, void this Settlement Agreement. If Defendant voids the Settlement Agreement, Defendant shall be obligated to pay all settlement expenses already incurred, excluding any attorneys’ fees, costs, and expenses of Class Counsel or service awards. Plaintiffs’ Counsel shall not, at any time, seek recovery of same from any other party to the Litigation or from counsel to any other party to the Litigation.

XI. OBJECTIONS

70. Objection Period

- a. Settlement Class Members will have up to and including 90 days following entry of the Preliminary Approval Order (60 days after the Notice Date) to object to the Settlement in accordance with this Section.

71. Objection Process

- a. The Notice shall advise Class Members of their rights, including the right to be excluded from or object to the Settlement Agreement and its terms. The Notices shall specify that any objection to this Settlement Agreement, and any papers submitted in support of said objection, shall be received by the Court at the Final Approval Hearing only if, on or before the Objection/Exclusion Deadline approved by the Court, the person making an objection shall file notice of his/her intention to do so and at the same time: (1) file copies of such papers he/she proposes to submit at the Final Approval Hearing with the Clerk of the Court;

and (2) send copies of such papers via U.S. Mail or overnight delivery to both Class Counsel and Defendant's Counsel. A copy of the objection must also be mailed to the Settlement Administrator at a mailing address established by the Settlement Administrator and identified in the Claim Form.

- b. Any Settlement Class Member who intends to object to this Settlement must include in any such objection: (1) his/her full name, address, and current telephone number; (2) the name and number of this case; (3) all grounds for the objection, with factual and legal support for the stated objection, including any supporting materials; (4) the identification of any other objections he/she has filed, or has had filed on his/her behalf, in any other class action cases in the last four years; and (5) the objector's signature. If represented by counsel, the objecting Settlement Class Member must also provide the name and telephone number of his/her counsel. If the objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, he/she must state as such in the written objection, and must also identify any witnesses he/she may call to testify at the Final Approval Hearing and all exhibits he/she intends to introduce into evidence at the Final Approval Hearing, which must also be attached to, or included with, the written objection.
- c. Within 10 business days after the Objection Deadline, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel a written list reflecting all timely and valid exclusions from the Settlement Class.
- d. Any Settlement Class Member who fails to timely file and serve a written objection and notice of intent to appear at the Final Approval Hearing pursuant to this Settlement Agreement, shall not be permitted to object to the approval of the Settlement at the Final Approval Hearing and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means.

XII. FINAL APPROVAL HEARING

- 72. The Parties will jointly request that the Court hold a Final Approval Hearing approximately one hundred and eighty (180) days after entry of the Preliminary Approval Order. At the Final Approval Hearing, the Parties will request that the Court consider whether the Settlement Class should be certified as a class pursuant to Federal Rule of Civil Procedure 23 for settlement and, if so, (1) consider any properly filed objections, (2) determine whether the Settlement is fair, reasonable and adequate, was entered into in good faith and without collusion, and should be approved, and shall provide findings in connections therewith, and (3) enter the Final Approval Order, including final approval of the Settlement Class and the Settlement Agreement, and a Fee Award.

XIII. FINAL APPROVAL ORDER

73. The Parties shall jointly seek entry of a Final Approval Order, the text of which the Parties shall agree upon. The dismissal orders, motions, or stipulation to implement this Section shall, among other things, seek or provide for a dismissal with prejudice and waive any rights of appeal.
74. The Parties, through Class Counsel, shall jointly submit to the Court a proposed Final Approval Order that, without limitation:
 - a. Approves finally this Settlement Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class Members and directing its consummation according to its terms;
 - b. Dismisses Defendant with prejudice and releases Defendant from the Released Claims, without costs and fees except as explicitly provided for in this Settlement Agreement; and
 - c. Reserves continuing and exclusive jurisdiction over the Settlement and this Settlement Agreement, including but not limited to the Litigation, the Settlement Class Members, Toyotetsu, and the Settlement for the purposes of administering, consummating, supervising, construing, and enforcing the Settlement Agreement and the Settlement Fund.
75. Class Counsel shall use their best efforts to assist Toyotetsu in obtaining dismissal with prejudice of the Litigation and take all reasonable steps necessary and appropriate to otherwise effectuate all aspects of this Settlement Agreement.

XIV. TERMINATION OF THE SETTLEMENT

76. The Settlement is conditioned upon preliminary and final approval of the Parties' written Settlement Agreement, and all terms and conditions thereof without material change, material amendments, or material modifications by the Court (except to the extent such changes, amendments or modifications are agreed to in writing between the Parties).
77. Either Party may elect to terminate and cancel this Settlement Agreement as set forth in Paragraph 69(g) or within ten days of any of the following events:
 - a. The Court refuses, in any material respect, to grant preliminary approval of this Settlement Agreement consistent with the terms of the Settlement Agreement;
 - b. The Court refuses, in any material respect, to grant final approval of this Settlement Agreement consistent with the terms of the Settlement Agreement; or

- c. The Court refuses, in any material respect, to enter a final judgment in this Litigation consistent with the Settlement Agreement.

78. In the event the Settlement Agreement is not approved or does not become final, or is terminated consistent with this Settlement Agreement, the Parties, pleadings, and proceedings will return to the *status quo ante* as if no settlement had been negotiated or entered into, and the Parties will negotiate in good faith to establish a new schedule for the Litigation. No Settlement materials, including the Settlement Agreement, shall be used in the Litigation.

XV. ATTORNEYS' FEES, COSTS AND EXPENSES, AND SERVICE AWARD

- 79. **Attorneys' Fees:** At least fourteen days prior to the Objection/Exclusion Deadline, Class Counsel will move the Court for an award of attorneys' fees and costs in an amount not to exceed 1/3 of the Settlement Fund. The attorneys' fee award will be provided from the Settlement Fund. Toyotetsu agrees not to oppose an application for attorneys' fees by Class Counsel in such an amount. Class Counsel, in turn, agree not to seek or accept attorneys' fees in excess of such amount from the Court. Attorneys' fees and expenses awarded by the Court shall be provided outside of and separate from the settlement. This amount was negotiated after the primary terms of the settlement were negotiated.
- 80. **Class Counsel's Litigation Expenses:** Furthermore, from the Settlement Fund, Class Counsel shall be reimbursed their reasonable litigation expenses not to exceed \$15,000.00 (Fifteen Thousand Dollars). Class Counsel shall submit their expenses to the Court for reimbursement approval if requested by the Court.
- 81. Notwithstanding any contrary provision of this Settlement Agreement, the Court's consideration of the Fee Award is to be conducted separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement Agreement, and any award made by the Court with respect to Class Counsel's attorneys' fees or expenses, or any proceedings incident thereto, including any appeal thereof, shall not operate to terminate or cancel this Settlement Agreement or be deemed material thereto.
- 82. **Service Award to Plaintiff:** Before or at the same time as Plaintiff seeks final approval of the Settlement Agreement, Class Counsel shall move the Court for a Service Award for the Named Plaintiff in an amount not to exceed \$5,000.00. Toyotetsu agrees not to oppose such a request. Service Awards approved by the Court will be provided from the Settlement Fund. This amount was negotiated after the primary terms of the settlement were negotiated.
- 83. In no event will Toyotetsu's liability hereunder for the Fee Award, Administration Expenses, Class Counsel's Litigation Expenses, and/or a Service Award or any other fees, costs or expenses exceed its funding obligations set out in this Settlement Agreement. Toyotetsu shall have no financial responsibility for this Settlement Agreement except as explicitly set out in this Settlement Agreement. Toyotetsu

shall have no further obligation for attorneys' fees or expenses to any counsel representing or working on behalf of one or more individual Settlement Class Members. Toyotetsu will have no responsibility, obligation, or liability for allocation of fees and expenses among Class Counsel.

84. **Maximum Payout Under Settlement:** The maximum payout obligation for Toyotetsu under this Settlement will be \$400,000 and the cost of any required notice under the Class Action Fairness Act ("CAFA").

XVI. MISCELLANEOUS REPRESENTATIONS

85. The Parties agree that the Settlement Agreement provides fair, equitable, and just compensation, and a fair, equitable, and just process for determining eligibility for compensation for any given Class Member related to the Released Claims.
86. The Parties (1) acknowledge that it is their intent to consummate this Settlement Agreement, and (2) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement Agreement and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Settlement Agreement. Class Counsel and Toyotetsu's Counsel agree to cooperate with each other in seeking Court approval of the Preliminary Approval Order, the Settlement Agreement, and the Final Approval Order, and with reasonable haste to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Settlement.
87. The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims. The Parties agree not to assert in any forum that the Litigation was brought by Plaintiff or defended by Toyotetsu in bad faith or without a reasonable basis.
88. The Parties agree not to identify, describe, disclose, testify, convey, or discuss with any individual, person, organization, corporation, or other entity the subject matter, amount, facts, terms, and conditions of this Settlement Agreement, including but not limited to any negotiations leading up to the actual resolution of this matter except where disclosure is compelled by law. In such case, reasonable notice will be provided to the other Party before disclosure is made. The Parties further agree that they will not issue, nor cause to be issued, any statements to the public or media regarding the claims and allegations leading up to this Settlement Agreement or regarding the Settlement Agreement or any of its terms, including statement on any website or via social media, unless prior written consent of the other Party is given.
89. Nothing express or implied in this Settlement Agreement is intended or shall be construed to confer upon or give any person or entity other than the Parties, Released Parties, and Settlement Class Members any right or remedy under or by reason of this Settlement Agreement. Each of the Released Parties is an intended third-party beneficiary of this Settlement Agreement with respect to the Released

Claims and shall have the right and power to enforce the release of the Released Claims in his, her, or its favor against all Releasers.

90. The Parties have relied upon the advice and representation of counsel, selected by or provided to them, concerning their respective rights in and legal liability for the Released Claims. The Parties have read and understand fully this Settlement Agreement and have been fully advised as to the legal effect thereof by their counsel and intend to be and are legally bound by the same.
91. Any headings used herein are used for the purpose of convenience only and are not meant to have legal effect.
92. The waiver by one Party of any breach of this Settlement Agreement by any other Party shall not be deemed as a waiver of any prior or subsequent breach of this Settlement Agreement.
93. This Settlement Agreement constitutes the entire agreement and understanding of the Parties with respect to the Settlement, and supersedes all prior negotiations, agreements, arrangements, and undertakings with respect to the Settlement. No representations, warranties, or inducements have been made to any Party concerning this Settlement Agreement other than the representations, warranties, and covenants contained and memorialized in this Settlement Agreement.
94. This Settlement Agreement may not be amended, modified, altered, or otherwise changed except by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.
95. The Parties may agree, subject to the approval of the Court where required, to reasonable extensions of time to carry out the provisions of the Settlement Agreement.
96. Except as otherwise provided herein, each Party shall bear its own costs.
97. Plaintiff represents and warrants that Plaintiff has not assigned any claim or right or interest therein as against the Released Parties to any other person or party.
98. The Parties represent that they have obtained the requisite authority to enter this Settlement Agreement in a manner that binds all Parties to its terms.
99. The Parties specifically acknowledge, agree and admit that this Settlement Agreement, along with all related drafts, motions, pleadings, conversations, negotiations, correspondence, orders, or other documents shall be considered a compromise within the meaning of Federal Rule of Evidence 408, and any other equivalent or similar rule of evidence, and shall not (1) constitute, be construed, be offered, or received into evidence as an admission of the validity of any claim or defense, or the truth of any fact alleged or other allegation in the Litigation or in

any other pending or subsequently filed action, or of any wrongdoing, fault, violation of law, or liability of any kind on the part of any Party, or (2) be used to establish a waiver of any defense or right, or to establish or contest jurisdiction or venue.

100. The Parties also agree that this Settlement Agreement, along with all related drafts, motions, pleadings, conversations, negotiations, correspondence, orders, or other documents entered in furtherance of this Settlement Agreement, and any acts in the performance of this Settlement Agreement, are not intended to establish grounds for certification of any class involving any Settlement Class Member other than for certification of the Settlement Class for this Settlement.
101. This Settlement Agreement, whether approved or not approved, revoked, or made ineffective for any reason, and any proceedings related to this Settlement Agreement and any discussions relating thereto, shall be inadmissible as evidence of any liability or wrongdoing whatsoever and shall not be offered as evidence of any liability or wrongdoing in any court or other tribunal in any state, territory, or jurisdiction, or in any manner whatsoever. Further, neither this Settlement Agreement, the Settlement contemplated by it, nor any proceedings taken under it, will be construed, offered, or received into evidence as an admission, concession, or presumption that class certification is appropriate, except to the extent necessary to consummate this Settlement Agreement and the binding effect of the Final Approval Order.
102. The provisions of this Settlement Agreement, and any orders, pleadings or other documents entered in furtherance of this Settlement Agreement, may be offered or received in evidence solely (1) to enforce its terms and provisions, (2) as may be specifically authorized by a court of competent jurisdiction after an adversary hearing upon application of a Party hereto, (3) to establish payment, or an affirmative defense of preclusion or bar in a subsequent case, (4) in connection with any motion to enjoin, stay, or dismiss any other action, and/or (5) to obtain Court approval of the Settlement Agreement.
103. This Settlement Agreement may be executed in one or more counterparts exchanged by hand, messenger, facsimile, or PDF as an electronic mail attachment. All executed counterparts and each of them shall be deemed to be one and the same instrument, provided that counsel for the Parties to this Settlement Agreement all exchange signed counterparts.
104. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto and the Released Parties.
105. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement Agreement, and the Parties hereby submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Settlement Agreement.

106. This Settlement Agreement shall be governed by and construed in accordance with the laws of the state of Kentucky.
107. This Settlement Agreement is deemed to have been prepared by counsel for all Parties as a result of arms-length negotiations among the Parties. Whereas all Parties have contributed substantially and materially to the preparation of this Settlement Agreement, it shall not be construed more strictly against one Party than another.
108. Unless otherwise agreed to by the Parties in writing, any notice required or provided for under this Settlement Agreement shall be in writing and shall be sent by electronic mail or hand delivery, as follows:

If to Class Counsel:

Dylan J. Gould
Terence R. Coates
Jonathan T. Deters
MARKOVITS STOCK &
DEMARCO, LLC
119 E. Court Street
Suite 530
Cincinnati, OH 45002
Tel: 513.651.3700
dgould@msdlegal.com
tcoates@msdlegal.com
jdeters@msdlegal.com

Joseph B. Venters
VENTERS LAW OFFICE
P.O. Box 1749
Somerset, KY 42502
Tel: 606.451-0332
joey@venterslaw.com

If to Toyotetsu's Counsel:


Christopher Wood
Morgan Salisbury
Judd Uhl
LEWIS, BRISBOIS, BISGARRD & SMTIH
250 E. Fifth Street, Suite 2000
Cincinnati, OH 45202
judd.uhl@lewisbrisbois.com
morgan.salisbury@lewisbrisbois.com
christopher.wood@lewisbrisbois.com

109. This Settlement Agreement shall be deemed executed as of the date that the last party signatory signs the Agreement.

[The remainder of this page is intentionally left blank.]

IN WITNESS HEREOF, the undersigned have caused this Settlement Agreement to be executed as of the dates set forth below.

JONATHAN PHELPS, individually and as Class Representative

Signature: 
Jonathan Phelps (Jan 19, 2023 05:05 EST)

Date: Jan 19, 2023

TOYOTETSU

By: _____

Print Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM BY:

LEWIS, BRISBOIS, BISGAARD & SMITH, as Toyotetsu's Counsel

By: _____

Print Name: _____

Date: _____

MARKOVITS, STOCK & DEMARCO, LLC, as Class Counsel

By: 
Dylan J. Gould (Jan 19, 2023 11:48 EST)

Print Name: Dylan J. Gould

Date: 01/19/2023

IN WITNESS HEREOF, the undersigned have caused this Settlement Agreement to be executed as of the dates set forth below.

JONATHAN PHELPS, individually and as Class Representative

Signature: _____

Date: _____

TOYOTETSU

By: Don Slagle

Print Name: Don Slagle

Title: Vice President

Date: 1/19/23

APPROVED AS TO FORM BY:

LEWIS, BRISBOIS, BISGAARD & SMITH, as Toyotetsu's Counsel

By: [Signature]

Print Name: Christopher Wood

Date: 01/19/23

MARKOVITS, STOCK & DEMARCO, LLC, as Class Counsel

By: _____

Print Name: _____

Date: _____

SETTLEMENT TIMELINE

<u>From Order Granting Preliminary Approval</u>	
Toyotetsu provides list of Class Members to the Settlement Administrator	+7 days
Long Form and Short Form Notices Posted on the Settlement Website	+14 days
Notice Deadline	+30 days
Counsel's Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Class Representative Service Award	+76 days
Objection Deadline	+90 days
Exclusion Deadline	+90 days
Settlement Administrator Provide List of Objections/Exclusions to the Parties' counsel	+100 days
Claims Deadline	+120 days
Initially Approved Claims List	+165 days
<u>Final Approval Hearing</u>	+180 (at minimum)
Motion for Final Approval	-14 days
<u>From Order Granting Final Approval</u>	
Settlement Administrator provides W-9 to Toyotetsu	+30 days
Effective Date	+35 days
Payment of Attorneys' Fees and Expenses Class Representative Service Award	+42 days
Settlement Website Deactivation	+120 days

EXHIBIT 3

Phelps v. Toyotetsu North America
c/o Settlement Administrator
PO Box XXXX
Mendota Heights, MN 55120

FIRST-CLASS MAIL
U.S. POSTAGE PAID
CITY, ST
PERMIT NO. XXXX

NOTICE OF CLASS ACTION
SETTLEMENT

**If you received a notice of data
breach from Toyotetsu America,
Inc., you are entitled to submit a
claim for monetary compensation
under a class action settlement.**

www.toyotetsudatasettlement.com

<<Barcode>>

Class Member ID: <<Refnum>>

<<FirstName>> <<LastName>>

<<BusinessName>>

<<Address>>

<<Address2>>

<<City>>, <<ST>> <<Zip>>-<<zip4>>

WHO IS A CLASS MEMBER?

6:22-cv-00166-CYB-JAB Document 37-3 Filed 01/20/23 Page 3 of 5 Page ID# 1
In the lawsuit *Phelps v. Toyotetsu*, No. 6:22-cv-00166 (E.D. Ky.), you are a class member if your personal information was potentially compromised as a result of the Cyber-Attack that Toyotetsu discovered in October 2021 (the "Settlement Class").

WHAT ARE THE SETTLEMENT BENEFITS AND TERMS?

Under the Settlement, Toyotetsu has agreed to pay \$400,000 into a Settlement Fund which will be distributed to Class Members who submit valid claims, after deducting the named Plaintiff's Service Awards, class counsel's attorneys' fees and expenses, and settlement administration notice and administration costs, if such award is approved by the Court. All Class Members may submit claims to receive cash payments of approximately \$250. In addition to these cash payments, Class Members who believe they suffered out-of-pocket expenses as a result of the Data Breach may claim up to \$5,000 (subject to pro rata adjustment) for the reimbursement of sufficiently documented expenses. Claims for the \$250 cash payment option will be pro rata adjusted up or down based on the remaining balance of the Settlement Fund after payments for valid out-of-pocket expense claims, settlement administration costs and expenses, attorneys' fees and expenses, and any class representative service award. Toyotetsu has also agreed to implement or continue a series of cybersecurity enhancements to limit the likelihood of a future cyberattack. You must timely submit a valid Claim Form to receive compensation from the \$400,000 Settlement Fund. More information about the types of Claims and how to file them is available at the Settlement Website.

WHAT ARE YOUR RIGHTS AND OPTIONS?

Submit a Claim Form. To qualify for a cash payment, you must timely mail a Claim Form that is attached to this notice or timely complete and submit a Claim Form online at www.toyotetsudatasettlement.com ("Settlement Website"). Your Claim Form must be postmarked or submitted online no later than [REDACTED], 2023. Atticus Administration, LLC is the Settlement Administrator.

Opt Out. You may exclude yourself from the settlement and retain your ability to sue Toyotetsu on your own by mailing a written request for exclusion to the Settlement Administrator that is post marked no later than [REDACTED], 2023. If you do not exclude yourself, you will be bound by the settlement and give up your right to sue regarding the released claims.

Object. If you do not exclude yourself, you have the right to object to the settlement. Written objections must be signed, postmarked no later than [REDACTED], 2023, and provide the reasons for the objection. Please visit Settlement Website for more details.

Do Nothing. If you do nothing, you will not receive a Settlement payment and will lose the right of sue regarding the released claims. You will be bound by the Court's decision because this is a conditionally certified class action.

Attend the Final Approval Hearing. The Court will hold a **Final Approval Hearing on [REDACTED], 2023 at [time]**. All persons who timely object to the settlement by [REDACTED], 2023 may appear at the Final Approval Hearing.

Who is the Class Representative? Jonathan Phelps is the Plaintiff and Class Representative in this lawsuit. He has remained engaged in representing the Class's interests during this litigation and reviewed and approved the terms of the proposed settlement. He will seek a Service Award of \$5,000.00. There are approximately 12,453 Class Members whose personal information may have been impacted in Toyotetsu's October 2021 data breach.

Who are the attorneys for the Plaintiffs and the proposed Class? Class Counsel are Terence R. Coates, Dylan J. Gould, and Jonathan T. Deters, Markovits, Stock & De Marco, LLC, and Joseph B. Venters of Venters Law Office. These attorneys have decades of experience handling class action lawsuits and are respected by courts and counsel throughout the United States for handling data breach class actions, such as this one.

Do I have any obligation to pay attorneys' fees or expenses? No. The attorneys' fees and expenses will be paid exclusively from the Settlement Fund as awarded and approved by the Court. The attorneys' fees will be in an amount not to exceed 1/3 of the \$400,000 Settlement Fund (*i.e.* no more than \$133,333.33) and the expenses will not exceed \$15,000.00. The motion for attorneys' fees and expenses will be posted on the Settlement Website after it is filed with the Court.

When is the Final Approval Hearing? The final approval hearing, where the Court will determine if the settlement is fair, reasonable, and adequate, will be conducted on [REDACTED], 2023 at [time].

Who is the Judge overseeing this settlement? Judge Claria Horn Boom, United States District Judge, Eastern District of Kentucky.

Where may I locate a copy of the settlement agreement, learn more about the case, or learn more about submitting a Claim? www.toyotetsudatasettlement.com.

*** Please note that if you wish to submit a claim for compensation for out-of-pocket losses on the attached Claim Form, you will likely need to submit your claim online so you may attach all information necessary to support your request for payment for such out-of-pocket expenses. If you wish to receive just the cash payment, the attached tear off claim form should suffice. A longer version of the Claim Form may be accessed on the Settlement Website.

This Notice is a summary of the proposed settlement.

Postage
Required

Phelps v. Toyotetsu North America
c/o Settlement Administrator
PO Box XXXX
Mendota Heights, MN 55120

CLAIM FORM

Claims must be postmarked no later than [REDACTED], 2023. You may also submit a Claim Form online no later than [REDACTED], 2023.

NAME: _____

ADDRESS: _____

Monetary Compensation

1. **Cash Payment:** Would you like to receive a cash payment under the Settlement? (circle one) Yes No

If you are a Settlement Class Member, you may receive a \$250 cash payment, which will may be increased or decreased *pro rata* from funds remaining in the Settlement Fund after all claims are submitted.

2. **Verified Ordinary and/or Extraordinary Expenses:** I am submitting a claim for either ordinary or extraordinary monetary losses in the amount of \$_____ (not more than \$5,000.00) on account of out-of-pocket expenses and/losses I incurred as a result of the Data Incident. I understand that I am required to provide supporting third-party documentation and to support my claim for out-of-pocket losses, such as providing copies of any receipts, bank statements, reports, or other documentation supporting my claim. I understand this can include receipts or other documentation not “self-prepared.” I understand that “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. I understand the settlement administrator may contact me for additional information before processing my claim. I understand that if I lack information supporting my claim for out-of-pocket expenses, I will likely not receive compensation for this settlement benefit. I understand any monetary compensation I may receive under the settlement is capped at \$5,000.00.

By signing my name below, I swear and affirm that the information included on this Claim Form is true and accurate, and that I am completing this claim form to the best of my personal knowledge.

_____ (signature)

EXHIBIT 4

CLAIM FORM

***Phelps v. Toyotetsu North America*, Case No. 6:22-cv-00106
United States District Court, Eastern District of Kentucky
SUBMIT BY _____, 2023
ONLINE AT WWW.TOYOTETSUDATASETTLEMENT.COM
OR MAIL TO:
Atticus Administration
1250 Northland Drive NE Suite 240
Mendota Heights, MN 55120**

GENERAL CLAIM FORM INFORMATION

This Claim Form should be filled out online or submitted by mail if your personal information was potentially compromised through Toyotetsu America's October 2021 Data Breach and your personal information potentially was maintained on Defendant Toyotetsu's system ("Settlement Class").

If you wish to submit a Claim by mail, please provide the information requested below. Please print clearly in blue or black ink. This Claim Form must be mailed and postmarked by **no later than DD, MM, 2023**.

Monetary Compensation

Cash Payment: Would you like to receive a cash payment under the Settlement? (**circle one**)

Yes

No

** The Parties estimate that payments under this option will be \$250. However, the value of payments under this option will be increased or decreased pro rata based on the balance of the Settlement Fund after the payment of other benefits, fees, expenses.

Out-of-Pocket Expenses (if any): I am submitting a claim for either ordinary or extraordinary monetary losses in the amount of \$_____ on account of out-of-pocket expenses and/or extraordinary losses I incurred as a result of the Data Incident. I understand that I am required to provide supporting third-party documentation and to support my claim for out-of-pocket losses, such as providing copies of any receipts, bank statements, reports, or other documentation supporting my claim. This can include receipts or other documentation that I have not "self-prepared." I understand that "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. I understand the settlement administrator may contact me for additional information before processing my claim. If I do not have information supporting my claim for ordinary or extraordinary expenses, I likely will not receive compensation for this settlement benefit. **I understand that any monetary compensation I may receive under the settlement is capped at \$5,000.00 for out-of-pocket expenses.**

Please provide copies of any receipts, bank statements, reports, or other documentation supporting your claim. This can include receipts or other documentation not “self-prepared” by you. “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. You may mark out (also known as redact) any information that is not relevant to supporting your claim before sending in the documentation. The settlement administrator may contact you for additional information before processing your claim.

Description of the unreimbursed, out-of-pocket loss or expenses incurred, and the documents attached to support this claim:

Please sign below indicating that you are submitting this Claim for Out-of-Pocket Expenses and your representations of these losses are true and correct to the best of your knowledge and belief, and are being made under penalty of perjury.

Signature_____

Date_____

Claimant Information

Full Name of Class Member

Unique Identifier

(Can be found on the postcard or Email Notice you received informing you about this Settlement. If you need additional help locating this ID, please contact the Settlement Administrator.)

Street/P.O. Box

City

State

Zip Code

Phone Number

Email Address

Signature

EXHIBIT 5

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF KENTUCKY
Phelps v. Toyotetsu North America, Case No. 6:22-cv-00106

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

If You Were Subject to the Toyotetsu America, Inc. Data Breach and Previously Received a Notice Letter Notifying You of the Data Breach, You Could be Eligible for a Payment from a Class Action Settlement

- You may be eligible to receive a payment from a proposed \$400,000 class action settlement.
- The class action lawsuit concerns the October 2021 data breach of Toyotetsu America, Inc. (“Toyotetsu” or “Defendant”) in which it was determined that an unauthorized third party gained access to certain Toyotetsu files containing current and former employees’ sensitive personal information including names, mailing addresses, and Social Security numbers. Toyotetsu denies that it did anything wrong and disputes that it has any liability but has agreed to settle the lawsuit on a class wide basis.
- To be eligible to make a claim, you must have received a notice letter of the Toyotetsu data breach that occurred in October 2021.
- Eligible claimants under the Settlement Agreement will receive \$250 (subject to a pro rata increase or reduction based on the amount of claims received). Claimants can receive further compensation for the actual amount of unreimbursed out-of-pocket losses up to \$5,000, with supporting documentation to prove the monetary losses.
- For more information or to submit a claim visit www.ToyotetsuDataSettlement.com or call [settlement admin telephone number] Monday through Saturday, between 8:30 a.m. and 5:00 p.m. Central Standard Time.
- **Please read this notice carefully. Your legal rights will be affected, and you have a choice to make at this time.**

	Summary of Legal Rights	Deadline(s)
SUBMIT A CLAIM FORM	The only way to receive payment.	Submitted or Postmarked on or Before [Month/Date], 2023
EXCLUDE YOURSELF BY OPTING OUT OF THE CLASS	Receive no payment. This is the only option that allows you to keep your right to bring any other lawsuit against Defendant for the same claims.	Submitted or Postmarked on or Before [Month/Date], 2023

Questions! Go to www.ToyotetsuDataSettlement.com or call 1-800-XXX-XXXX.

OBJECT TO THE SETTLEMENT AND/OR ATTEND THE HEARING	You can write the Court about why you agree or disagree with the Settlement. You can also ask to speak to the Court at the Final Approval Hearing on [Month/Date], 2023 about the fairness of the Settlement, with or without your own attorney.	Received on or Before [Month/Date], 2023
DO NOTHING	Receive no payment. Give up rights if you are a Class Member.	

- Your rights and options as a Class Member – and the deadlines to exercise your rights – are explained in this notice.
- The Court still will have to decide whether to approve the Settlement. Payments to class members will be made if the Court approves the Settlement and after any possible appeals are resolved.

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CLASS NOTICE INFORMATION

1. Why did I get this notice?

Defendant's records indicate that you may have been part of a data breach of Toyotetsu's systems in October 2021 that may have exposed certain personal information of yours. If you qualify, you could be eligible to receive a payment as part of the Settlement.

For more information, go to: www.ToyotetsuDataSettlement.com

The person who has sued Toyotetsu is called the Plaintiff. Toyotetsu is the Defendant that has been sued in the lawsuit.

2. What is this lawsuit about?

In October 2021, Toyotetsu determined a data breach occurred whereby cybercriminals may have accessed certain Toyotetsu files containing the personal information of Settlement Class Members. Upon receiving notice that his information was part of the data breach, Plaintiff brought this lawsuit on behalf of himself and all potential Class Members alleging Toyotetsu was negligent for failing to implement adequate data security safeguards, which allowed cybercriminals to access to his private personal information. Defendant denies that it acted negligently in protecting Plaintiff's private personal information.

3. What is a class action?

In a class action lawsuit, one or more people called "Class Representatives" have sued on behalf of themselves and other people who have similar claims. These people and entities together are called a "Class" or "Class Members." The company Plaintiff sued on behalf of himself and all others similarly situated —Toyotetsu — is called the Defendant. In a class action, one court resolves the issues for all Class Members, except for those who choose to exclude themselves.

4. Why is there a settlement?

The Court did not decide in favor of Plaintiff or Defendant. Instead, both parties agreed to a Settlement to resolve the claims. A class wide settlement avoids the costs and risk of a trial, and Class Members can receive the available settlement compensation benefits. The Class Representative and Class Counsel believe the Settlement is in the best interest of the Class.

WHO IS INCLUDED IN THE SETTLEMENT

5. Who is in the Settlement?

You have been identified through Toyotetsu's records as a Class Member, and are included in the Settlement, if you received a data breach notice letter from Defendant indicating you may be part of the Toyotetsu data breach that occurred in October 2021. The Class is defined for settlement purposes as:

All persons who were sent notice of the Data Breach.¹

Excluded from the Class is Toyotetsu; any entity in which Toyotetsu has a controlling interest; the affiliates, attorneys, successors, heirs, and assigns of Toyotetsu. Also excluded from the Class are members of the judiciary to whom this case is assigned, their families and members of their staff.

6. What should I do if I am not sure whether I am included?

If you are not sure whether you are included in the Class, you can request free assistance by calling the Settlement Administrator or calling **1-800-XXX-XXXX** for more information.

THE SETTLEMENT BENEFITS

7. What does the Settlement provide?

The Defendant will pay \$400,000 into a Settlement Fund, which will be distributed to Class Members who submit valid claims, after deducting the named Plaintiff's Service Award, class counsel's attorneys' fees and expenses, and Administrative Expenses, if such award is approved by the Court.

The Settlement Fund will provide:

- **\$250** to each Class Member upon submission of a valid claim (subject to a pro rata increase or reduction based on the amount of claims submitted);
- **Up to \$5,000** in compensation to each valid claim for proven monetary loss;
 - If the loss is an actual, documented, and unreimbursed monetary loss;
 - The loss was more likely than not caused by the Toyotetsu data breach;
 - The loss occurred between October 2021 and the present;
 - The loss is not already covered by unreimbursed ordinary losses category;
 - The Settlement class member made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all available credit monitoring insurance and identity theft.

¹ "Data Breach" shall mean the cybersecurity incident against Toyotetsu giving rise to the action.

8. Who can get money from the Settlement, and how much?

To receive money from the Settlement, you must be a class member – meaning that you received a notice of the October 2021 Data Breach from Toyotetsu. The determination of settlement funds available to each valid claimant is described in Question #7 above.

9. What am I giving up if I stay in the Class?

If you are a Class Member (*see* Question #5 above), unless you exclude yourself with an opt-out request (*see* Questions #17-19 below), you cannot sue, continue to sue, or be part of any other lawsuit against Defendant concerning the same issues as in this lawsuit. The “Release” section in the Settlement Agreement (VII) describes the legal claims that you are giving up if you remain in the settlement class. The Settlement Agreement can be viewed at www.ToyotetsuDataSettlement.com.

HOW TO GET A PAYMENT – MAKING A CLAIM

10. How can I get a payment?

By submitting a valid claim form by on or before the claim deadline of [Month/Date], 2023. If you received a notification letter from Toyotetsu regarding the October 2021 data breach, you can make a claim by filling out and submitting the claim form available at www.ToyotetsuDataSettlement.com.

You can also contact the Settlement Administrator to request a paper claim form by telephone (1-800-XXX-XXXX), email (info@ToyotetsuDataSettlement.com), or U.S. mail (Settlement Administrator, Toyotetsu Data Breach Settlement, (address, city) , MN (Zip)).

11. What is the deadline for submitting a claim form?

To be eligible for payment from the Settlement, your valid claim form **must be received or postmarked no later than** [Month/Date], 2023.

12. When will I get my payment?

The Court will hold a hearing on [Month/Date], 2023 at ##:00 a.m., to decide whether to approve the Settlement. Payments will be made after the Settlement is approved and becomes final, meaning there is no appeal from the Court’s order approving the Settlement, or any appeal filed was resolved in a manner that allows the settlement to proceed as approved by the Court.

Updates regarding the Settlement will be posted on the Settlement website, www.ToyotetsuDataSettlement.com.

THE ATTORNEYS REPRESENTING YOU

13. Do I have an attorney in the case?

Yes. The Court appointed the following attorneys to represent you and other Settlement Class Members as “Class Counsel.”

Terence R. Coates Dylan J. Gould Jonathan T. Deters MARKOVITS, STOCK & DEMARCO, LLC 119 E. Court Street, Suite 530 Cincinnati, OH 45202 (513) 651-3700	Joseph B. Venters THE VENTERS LAW OFFICE P.O. Box 1749 Somerset, KY 42502 (606) 451-0332
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You will not be charged by these attorneys for their work on the case. If you want to be represented by your own attorney

14. Should I get my own attorney?

You do not need to hire your own attorney. If you want your own attorney, you may hire one, but you will be responsible for any payment for that attorney’s services. For example, you can ask your own attorney to appear in court for you if you want someone other than Class Counsel to speak on your behalf. You may also appear for yourself without an attorney.

15. How will the attorneys be paid?

Class Counsel have undertaken this case on a contingency-fee basis, meaning they have paid for all of the expenses in the case and have not been paid any money in relation to their work on this case. Accordingly, Class Counsel will ask the Court to award them attorneys’ fees of up to 1/3 (\$133,333.33) of the Settlement Fund and reimbursement for costs and expenses not to exceed \$15,000 to be paid from the Settlement Fund. The Court will decide the amount of fees and costs and expenses to be paid. You will not have to separately pay any portion of these fees yourself. Class Counsel’s request for attorneys’ fees and costs will be filed by [Month/Date], 2023 and will be available to view on the settlement website at www.ToyotetsuDataSettlement.com.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you are a Class Member and you do not want to receive the benefits from the Settlement, and you want to keep your right, if any, to sue Defendant on your own about the legal issues at issue in this lawsuit, then you must take affirmative steps to get out of the Settlement. This is called excluding yourself from – or “Opting Out” of the Class.

16. How do I Opt-Out of the Settlement?

A Class Member may request to be excluded from the Settlement in writing by a request postmarked on or before the Objection/Exclusion deadline (60 days after Notice Date) of [Month/Date], 2023. The timely exclusion Opt-Out must include:

- Your name;
- Address; and
- Telephone number;
- Name and number of this case;
- A statement that he/she wishes to be excluded from the Settlement; and
- Signature.

A request to be excluded that is sent to an address other than that designated as the settlement administrator address (Question #26 below), or postmarked within the time specified, shall be invalid and the person serving such a request shall be considered a member of the Settlement class and shall be bound by the terms of the Settlement.

17. If I am a class member and don't Opt-Out, can I sue the Defendant for the same thing later?

No. If you are a Class Member (*see* Question #5 above), unless you opt-out, you give up the right to sue Toyotetsu for the claims resolved by the Settlement. So if you are a class member and you want to try to pursue your own lawsuit, you must opt out.

18. What happens if I Opt-Out?

If you opt-out of the Settlement, you will not have any rights as a member of the Class under the Settlement terms; you will not receive any payment as part of the Settlement; you will not be bound by any further orders or judgments in this case; and you will keep the right, if any, to sue on the claims alleged in this lawsuit at your own expense.

OBJECTING TO OR COMMENTING ON THE SETTLEMENT

19. How do I tell the Court if I don't agree with the Settlement terms?

If you are a class member and you do not Opt-Out of the Settlement, you can ask the Court to deny approval of the Settlement by filing an objection. You can't ask the Court to order a different settlement; the Court can only approve or deny this Settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue.

You will have up to and including 90 days following entry of the Preliminary Approval Order (60 days after the Notice Date) to object to the Settlement. You may also appear at the Fairness Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney. To object, you must file a document with the Court indicating that you object to the proposed Settlement in *Phelps v. Toyotetsu North America*, Case No. 6:22-cv-00106, United States District Court, Eastern District of Kentucky. You must include copies of such papers in your Objection that you propose to submit at the Final Approval Hearing with the Clerk of the Court; and send copies of such papers via U.S. Mail or overnight delivery to both Class Counsel and Defendant's Counsel.

A copy of the objection must also be mailed to the Settlement Administrator at the address that the Settlement Administrator has established to receive requests for exclusion or objections, Claim Forms, and any other communication relating to the Settlement.

Any class member who intends to object to this Settlement must include in any such objection:

- Your full name, address, and current telephone number;
- Name and number of this case - *Phelps v. Toyotetsu North America*, Case No. No. 6:22-cv-00106, United States District Court, Eastern District of Kentucky;
- All grounds for the objection, with factual and legal support for the stated objection, and supporting material;
- Identification of any other objections you have filed, or have had filed on your behalf in any other class action case in the last four years; and
- Signature.

You must also include whether you intend to appear at the Final Approval Hearing, with or without counsel, and identify any witnesses you may call to testify at the Final Approval Hearing along with all exhibits you intend to introduce into evidence at the Final Approval Hearing.

20. What's the difference between objecting and opting out?

Objecting is telling the Court that you don't like something about the Settlement. You can object to the Settlement only if you are a Class Member and do not opt-out of the Settlement. Opting-out of the Settlement indicates to the Court that you do not want to be part of the Settlement. If you

opt-out of the Settlement, you cannot object to it because it does not affect you. You cannot both opt-out of the Settlement and also object to the Settlement.

THE COURT'S FAIRNESS HEARING

21. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing at **##:## a.m.** on **[Month/Date]**, 2023, at United States District Court, Eastern District of Kentucky, 310 South Main Street, London, KY 40741. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them and listen to any arguments presented. The Court may also decide how much Class Counsel should receive in fees and expense reimbursements. After the hearing, the Court will decide whether to approve the Settlement.

The Court may reschedule the Fairness Hearing or change any of the deadlines described in this notice. The date of the Fairness Hearing may change without further notice to the Class Members. Be sure to check the website, www.ToyotetsuDataSettlement.com, for news of any such changes.

22. Do I have to come to the Final Approval Hearing?

No. Class Counsel will answer any questions the Court may have. You may attend at your own expense if you wish. If you send an objection, you do not have to come to the hearing to talk about it. As long as you mailed or filed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

23. May I speak at the Final Approval Hearing?

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must include a statement in your written objection (discussed above at Question #19) that you intend to appear at the hearing. Be sure to include your name, address, and signature as well.

You cannot speak at the hearing if you exclude yourself from the Class

IF I DO NOTHING

24. What happens if I do nothing?

If you do nothing and you are a class member, you will get no money from this Settlement, and you will not be able to sue Toyotetsu for the conduct alleged in this lawsuit or released by the settlement. For further information on the releases, see Section VII of the Settlement Agreement. If you do nothing and you are not a class member, the Settlement will not affect or release any individual claim you may have.

GETTING MORE INFORMATION

25. Are more details about the Settlement available?

Yes. This notice summarizes the proposed Settlement—more details are in the Settlement Agreement and other case documents. You can get a copy of these documents at www.ToyotetsuDataSettlement.com.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

26. How do I get more information?

The settlement website www.ToyotetsuDataSettlement.com has the claim form, answers to questions about the Settlement and other information, including important documents, to help you determine whether you are eligible for a payment. You can also write or call the Settlement Administrator at:

Toyotetsu Data Breach Settlement
Settlement Administrator
(address)
(City), MN 55317-2009
(Phone Number)
[info@ ToyotetsuDataSettlement.com](mailto:info@ToyotetsuDataSettlement.com)