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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

EVANGELIA REMOUNDOS, JOHN
BIEGGER, and ANNE BIEGGER, on behalf
of themselves and on behalf of all others
similarly situated,

Plaintiffs,

v.

LENDUS, LLC,

Defendant.

Case No. 3:22-cv-00749-EMC

[The Honorable Edward M. Chen]

**CLASS ACTION SETTLEMENT
AGREEMENT**

Complaint Filed: February 4, 2022

BAKER & HOSTETLER LLP
ATTORNEYS AT LAW
COSTA MESA

1 This Settlement Agreement,¹ dated as of June 20, 2022, is made and entered into by and
 2 among the following Settling Parties (as defined below): Evangelia Remoundos, John Biegger, and
 3 Anne Biegger (collectively, “Plaintiffs”), individually and on behalf of the Settlement Class, by
 4 and through their counsel of record, and LendUS, LLC (“LendUS” and, together with Plaintiffs,
 5 the “Parties”), by and through its counsel of record, Casie Collignon and Matthew D. Pearson of
 6 Baker & Hostetler LLP. The Settlement Agreement is subject to Court approval and is intended by
 7 the Settling Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims,
 8 upon and subject to the terms and conditions hereof.

9 **I. THE LITIGATION**

10 Plaintiffs allege that “at various times between February 2, 2021 and March 22, 2021,”
 11 LendUS was the target of a criminal cyberattack in which third-party criminals gained
 12 “unauthorized access to some LendUS employee email accounts” (“Data Incident”). Plaintiffs
 13 further allege that, as a result of the Data Incident, the criminals gained access to Plaintiffs’ and
 14 other LendUS “clients[’] or mortgage brokers[’]” personal information, “including without
 15 limitation, first and last names, mailing addresses, dates of birth, Social Security numbers, and tax
 16 information” (collectively, “PII”).

17 LendUS sent, on or around January 19, 2022, notification of the Data Incident to
 18 approximately 11,570 individuals. Plaintiffs allege to be among the group of individuals to whom
 19 LendUS sent a notification. On February 4, 2022, Plaintiffs Evangelia Remoundos, John Biegger,
 20 and Anne Biegger filed a lawsuit asserting claims against LendUS allegedly arising out of the Data
 21 Incident. The case is titled *Remoundos, et al. v. LendUS, LLC*, Case No. 3:22-cv-00749-EMC
 22 (N.D. Cal.) (the “Litigation”).

23 This Settlement Agreement provides for the resolution of all claims and causes of action
 24 asserted, or that could have been asserted, against LendUS and the Released Persons relating to the
 25 Data Incident, by and on behalf of Representative Plaintiffs and the Settlement Class.

26 **II. CLAIMS OF REPRESENTATIVE PLAINTIFFS AND BENEFITS OF SETTLING**

27
 28 _____
¹ All Capitalized terms are defined below.

1 Plaintiffs believe the claims asserted in the Litigation, as set forth in the Class Action
 2 Complaint, [Dkt. No. 1], have merit. Plaintiffs and Proposed Settlement Class Counsel recognize
 3 and acknowledge, however, the expense and length of continued proceedings necessary to
 4 prosecute the Litigation against LendUS through motion practice, trial, and potential appeals. They
 5 have also considered the uncertain outcome and risk of further litigation, as well as the difficulties
 6 and delays inherent in such litigation, especially in complex class actions. Proposed Settlement
 7 Class Counsel are highly experienced in class action litigation and very knowledgeable regarding
 8 the relevant claims, remedies, and defenses at issue generally in such litigation and in this
 9 Litigation. They have determined that the settlement set forth in this Settlement Agreement is fair,
 10 reasonable, and adequate, and in the best interests of the Settlement Class.

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

12 LendUS denies each and all of the claims and contentions alleged against it in the Litigation.
 13 LendUS denies all charges of wrongdoing or liability as alleged, or which could be alleged, in the
 14 Litigation. Nonetheless, LendUS has concluded that further conduct of the Litigation would be
 15 protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in
 16 the manner and upon the terms and conditions set forth in this Settlement Agreement. LendUS has
 17 considered the uncertainty and risks inherent in any litigation. LendUS has, therefore, determined
 18 that it is desirable and beneficial that the Litigation be settled in the manner and upon the terms and
 19 conditions set forth in this Settlement Agreement.

20 **IV. TERMS OF SETTLEMENT**

21 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among
 22 Plaintiffs, individually and on behalf of the Settlement Class, Proposed Settlement Class Counsel,
 23 and LendUS that, subject to the approval of the Court, the Litigation and the Released Claims shall
 24 be finally and fully compromised, settled, and released, and the Litigation shall be dismissed with
 25 prejudice as to the Settling Parties and the Settlement Class, except those members of the Settlement
 26 Class who lawfully opt-out of the Settlement Agreement, upon and subject to the terms and
 27 conditions of this Settlement Agreement, as follows:

28 **1. Definitions**

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

3 1.1 “Agreement” or “Settlement Agreement” means this agreement.

4 1.2 “California Subclass” means all persons residing in California between February 2,
5 2021 and March 22, 2021 to whom LendUS mailed notice that between February 2, 2021 and
6 March 22, 2021, LendUS was the target of a criminal cyberattack in which third-party criminals
7 gained “unauthorized access to some LendUS employee email accounts” and may have gained
8 unauthorized access to the notified individual’s PII. The California Subclass specifically excludes:
9 (i) LendUS and its respective officers and directors; (ii) all members of the Settlement Class who
10 timely and validly request exclusion from the Settlement Class; (iii) the Judge and Magistrate Judge
11 assigned to evaluate the fairness of this settlement; and (iv) any other Person found by a court of
12 competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting the
13 Data Incident or who pleads *nolo contendere* to any such charge.

14 1.3 “California Subclass Member(s)” means all persons meeting the definition of the
15 California Subclass.

16 1.4 “Claims Administration” means the processing and payment of claims received
17 from members of the Settlement Class by the Claims Administrator.

18 1.5 “Claims Administrator” means Kroll Settlement Administration, a company
19 experienced in administering class action claims generally and specifically those of the type
20 provided for and made in data breach litigation.

21 1.6 “Claims Deadline” means the postmark and/or online submission deadline for valid
22 claims submitted pursuant to ¶¶ 2.1, 2.2, and 2.3, which shall be 90 days from the date Notice
23 Commencement Date.

24 1.7 “Claim Form” means the claim form to be used by members of the Settlement Class
25 to submit a Settlement Claim, either through the mail or online through the Settlement Website,
26 substantially in the form as shown in Exhibit 7 to Plaintiffs’ Unopposed Motion for Preliminary
27 Approval of the Class Action Settlement and Memorandum in Support (“Motion for Preliminary
28 Approval”).

1 1.8 “Costs of Claims Administration” means all actual costs associated with or arising
2 from Claims Administration.

3 1.9 “Court” means the United States District Court for the Northern District of
4 California.

5 1.10 “Data Incident” means the cyberattack perpetrated on LendUS between February 2,
6 2021 and March 22, 2021, in which third-party criminals gained unauthorized access to some
7 LendUS employee email accounts and may have, in turn, gained unauthorized access to the PII of
8 Settlement Class Members.

9 1.11 “Dispute Resolution” means the process for resolving disputed Settlement Claims
10 as set forth in this Agreement.

11 1.12 “Effective Date” means the first date by which all of the events and conditions
12 specified in ¶ 1.13 herein have occurred and been met.

13 1.13 “Final” means the occurrence of all of the following events: (i) the settlement
14 pursuant to this Settlement Agreement is approved by the Court; (ii) the Court has entered a
15 Judgment (; and (iii) the time to appeal or seek permission to appeal from the Judgment has expired
16 or, if appealed, the appeal has been dismissed in its entirety, or the Judgment has been affirmed in
17 its entirety by the court of last resort to which such appeal may be taken, and such dismissal or
18 affirmance has become no longer subject to further appeal or review. Notwithstanding the above,
19 any order modifying or reversing any attorneys’ fee award or service award made in this case shall
20 not affect whether the Judgment is “Final” or any other aspect of the Judgment.

21 1.14 “Final Fairness Hearing” is the final hearing before the Court where it will determine
22 whether this Settlement is fair, reasonable, and adequate.

23 1.15 “Judgment” means a judgment rendered by the Court.

24 1.16 “Long Notice” means the long-form notice of settlement posted on the Settlement
25 Website, substantially in the form as shown in Exhibit 6 to Plaintiffs’ Motion for Preliminary
26 Approval.

27 1.17 “Notice Commencement Date” means thirty days following entry of the Preliminary
28 Approval Order.

1 1.18 “Objection Date” means the date by which members of the Settlement Class must
2 mail to Proposed Settlement Class Counsel and counsel for LendUS or, in the alternative, file with
3 the Court through the Court’s electronic case filing (“ECF”) system their objection to the Settlement
4 Agreement for that objection to be effective. The postmark date shall constitute evidence of the
5 date of mailing for these purposes. The Objection Date shall be sixty (60) days from the Notice
6 Commencement Date.

7 1.19 “Opt-Out Date” means the date by which members of the Settlement Class must
8 mail to the Claims Administrator their requests to be excluded from the Settlement Class for that
9 request to be effective. The postmark date shall constitute evidence of the date of mailing for these
10 purposes. The Opt-Out Date shall be sixty (60) days from the Notice Commencement Date.

11 1.20 “Person” means an individual, corporation, partnership, limited partnership, limited
12 liability company or partnership, association, joint stock company, estate, legal representative,
13 trust, unincorporated association, government or any political subdivision or agency thereof, and
14 any business or legal entity, and their respective spouses, heirs, predecessors, successors,
15 representatives, or assignees.

16 1.21 “Plaintiffs” and/or “Representative Plaintiffs” mean Evangelia Remoundos, John
17 Biegger, and Anne Biegger.

18 1.22 “Preliminary Approval Order” means the order preliminarily approving the
19 Settlement Agreement and ordering that notice be provided to the Settlement Class. The Settling
20 Parties’ proposed form of Preliminary Approval Order will be attached as Exhibit 1 to Plaintiffs’
21 Unopposed Motion for Preliminary Approval of the Class Action Settlement.

22 1.23 “Proposed Settlement Class Counsel” means M. Anderson Berry of Clayco C.
23 Arnold, A Professional Law Corp., Terence R. Coates
24 of Markovits, Stock & DeMarco, LLC, and Joseph M. Lyon of The Lyon Firm.

25 1.24 “Related Entities” means LendUS’s respective past or present parents, subsidiaries,
26 divisions, and related or affiliated entities, and each of their respective predecessors, successors,
27 directors, officers, employees, principals, agents, attorneys, insurers, and reinsurers, and includes,
28 without limitation, any Person related to any such entity who is, was, or could have been named as

1 a defendant in any of the actions in the Litigation, other than any Person who is found by a court
2 of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting
3 the Data Incident or who pleads *nolo contendere* to any such charge.

4 1.25 “Released Claims” shall collectively mean any and all past, present, and future
5 claims and causes of action including, but not limited to, any causes of action arising under or
6 premised upon any statute, constitution, law, ordinance, treaty, regulation, or common law of any
7 country, state, province, county, city, or municipality, including 15 U.S.C. §§ 45 *et seq.*, and all
8 similar statutes in effect in any states in the United States; violations of the California Unfair
9 Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.* and all similar state consumer-protection
10 statutes; violations of the California Consumer Protection Act of 2018, Cal. Civ. Code § 1798, *et*
11 *seq.* and all similar state privacy-protection statutes; violations of the California Consumer Records
12 Act, Cal. Civ. Code § 1798.80, *et seq.* and all similar statutes in effect in any states in the United
13 States; negligence; negligence *per se*; breach of contract; breach of implied contract; breach of
14 fiduciary duty; breach of confidence; invasion of privacy; fraud; misrepresentation (whether
15 fraudulent, negligent or innocent); unjust enrichment; bailment; wantonness; failure to provide
16 adequate notice pursuant to any breach notification statute or common law duty; and including, but
17 not limited to, any and all claims for damages, injunctive relief, disgorgement, declaratory relief,
18 equitable relief, attorneys’ fees and expenses, pre-judgment interest, credit monitoring services, the
19 creation of a fund for future damages, statutory damages, punitive damages, special damages,
20 exemplary damages, restitution, and/or the appointment of a receiver, whether known or unknown,
21 liquidated or unliquidated, accrued or unaccrued, fixed or contingent, direct or derivative, and any
22 other form of legal or equitable relief that either has been asserted, was asserted, or could have been
23 asserted, by any member of the Settlement Class against any of the Released Persons based on,
24 relating to, concerning or arising out of the Data Incident and alleged theft of payment card data or
25 other personal information or the allegations, transactions, occurrences, facts, or circumstances
26 alleged in or otherwise described in the Litigation. Released Claims shall not include the right of
27 any Settlement Class Member or any of the Released Persons to enforce the terms of the settlement
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1 contained in this Settlement Agreement and shall not include the claims of members of the
2 Settlement Class Members who have timely excluded themselves from the Settlement Class.

3 1.26 “Released Persons” means LendUS and its Related Entities and each of their past or
4 present parents, subsidiaries, divisions, and related or affiliated entities, and each of their respective
5 predecessors, successors, directors, officers, employees, principals, agents, attorneys, insurers, and
6 reinsurers.

7 1.27 “Service Award” means the payment of \$2,000.00 to each of the Representative
8 Plaintiffs for their time and effort pursuing this matter on behalf of their fellow Settlement Class
9 Members.

10 1.28 “Settlement Claim” means a claim for settlement benefits made under the terms of
11 this Settlement Agreement.

12 1.29 “Settlement Class” means all persons to whom LendUS mailed notice that between
13 February 2, 2021 and March 22, 2021, LendUS was the target of a criminal cyberattack in which
14 third-party criminals gained “unauthorized access to some LendUS employee email accounts” and
15 may have gained unauthorized access the notified individual’s PII. The Settlement Class
16 specifically excludes: (i) LendUS and its respective officers and directors; (ii) all members of the
17 Settlement Class who timely and validly request exclusion from the Settlement Class; (iii) the Judge
18 and Magistrate Judge assigned to evaluate the fairness of this settlement; and (iv) any other Person
19 found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing,
20 aiding, or abetting the Data Incident or who pleads *nolo contendere* to any such charge.

21 1.30 “Settlement Class Member(s)” means all persons meeting the definition of the
22 Settlement Class.

23 1.31 “Settlement Website” means a website, the URL for which to be mutually selected
24 by the Settling Parties, that will inform Settlement Class Members of the terms of this Settlement
25 Agreement, their rights, dates and deadlines and related information, as well as provide the
26 Settlement Class Members with the ability to submit a Settlement Claim online.

27 1.32 “Settling Parties” means, collectively, LendUS and Plaintiffs, individually and on
28 behalf of the Settlement Class.

1 1.33 “Short Notice” means the short-form notices of the proposed class action settlement,
 2 substantially in the forms as shown in Exhibits 4 and 5 to the Motion for Preliminary Approval.
 3 The Short Notice will direct recipients to the Settlement Website and inform members of the
 4 Settlement Class of, among other things, the Claims Deadline, the Opt-Out and Objection
 5 Deadlines, and the date of the Final Fairness Hearing (if set prior to the Notice Commencement
 6 Date).

7 1.34 “Unknown Claims” means any of the Released Claims that any member of the
 8 Settlement Class, including any Plaintiffs, does not know or suspect to exist in his/her favor at the
 9 time of the release of the Released Persons that, if known by him or her, might have affected his or
 10 her settlement with, and release of, the Released Persons, or might have affected his or her decision
 11 not to object to and/or to participate in this Settlement Agreement. With respect to any and all
 12 Released Claims, the Settling Parties stipulate and agree that upon the Effective Date, Plaintiffs
 13 intend to and expressly shall have, and each of the other members of the Settlement Class intend to
 14 and shall be deemed to have, and by operation of the Judgment shall have, waived the provisions,
 15 rights, and benefits conferred by California Civil Code § 1542, and also any and all provisions,
 16 rights, and benefits conferred by any law of any state, province, or territory of the United States
 17 (including, without limitation, California Civil Code §§ 1798.80 *et seq.*, Montana Code Ann. § 28-
 18 1-1602; North Dakota Cent. Code § 9-13-02; and South Dakota Codified Laws § 20-7-11), which
 19 is similar, comparable, or equivalent to California Civil Code §1542, which provides:

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

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

6 1.35 “United States” as used in this Settlement Agreement includes the District of
7 Columbia and all territories.

8 1.36 “Valid Claims” means Settlement Claims in an amount approved by the Claims
9 Administrator or found to be valid through the claims processing and/or Dispute Resolution
10 process.

11 **2. Settlement Benefits**

12 2.1 Expense Reimbursement. All members of the Settlement Class who submit a Valid
13 Claim using the Claim Form are eligible for the following documented out-of-pocket expenses, not
14 to exceed \$500 per member of the Settlement Class, that were incurred as a result of the Data
15 Incident: (i) unreimbursed bank fees; (ii) unreimbursed card reissuance fees; (iii) unreimbursed
16 overdraft fees; (iv) unreimbursed charges related to unavailability of funds; (v) unreimbursed late
17 fees; (vi) unreimbursed over-limit fees; (vii) long distance telephone charges; (viii) cell minutes (if
18 charged by minute), Internet usage charges (if charged by the minute or by the amount of data usage
19 and incurred solely as a result of the Data Incident), and text messages (if charged by the message
20 and incurred solely as a result of the Data Incident); (ix) unreimbursed charges from banks or credit
21 card companies; (x) interest on payday loans due to card cancellation or due to over-limit situation
22 incurred solely as a result of the Data Incident; (xi) costs of credit report(s), credit monitoring,
23 and/or other identity theft insurance products purchased by members of the Settlement Class
24 between February 2, 2021 and the Claims Deadline; and (xii) other losses incurred by Settlement
25 Class Members determined by the Settlement Administrator to be fairly traceable to the Data
26 Incident, including, but not limited to, the cost of postage and gas for local travel. To receive
27 reimbursement for any of the above-referenced out-of-pocket expenses, Settlement Class Members
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1 must submit (i) their name and current address; (ii) supporting documentation of such out-of-pocket
2 expenses; and (iii) a description of the loss, if not readily apparent from the documentation.

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

10 Additionally, LendUS agrees to pay in Lost-Time Claims a minimum of \$7,420, which
11 represents the amount that would be owed by LendUS in Lost-Time Class if two percent (2%) of
12 the Settlement Class submitted valid and timely Lost-Time Claims. If less than two percent (2%)
13 of the Settlement Class submits valid and timely Lost-Time Claims, each valid and timely Lost-
14 Time Claim will be increased, on a *pro rata* basis, until the total amount paid for Lost-Time Claims
15 equals \$7,420. If more than two percent (2%) of the Settlement Class submits valid and timely
16 Lost-Time Claims, LendUS will pay the total amount of valid and timely Lost-Time Claims
17 submitted, at a rate of \$20 per hour. For purposes of the *pro rata* increase discussed immediately
18 above, the \$500 cap for each Settlement Class Member shall not apply.

19 2.2 Extraordinary Expense Reimbursement: All members of the Settlement Class who
20 have suffered a proven monetary loss and who submit a Valid Claim using the Claim Form are
21 eligible for up to \$2,500 if: (1) the loss is an actual, documented and unreimbursed monetary loss;
22 (2) the loss was more likely than not caused by the Data Incident; (3) the loss occurred between
23 February 2, 2021 and the Claims Deadline; (4) the loss is not already covered by one or more of
24 the reimbursement categories listed in ¶ 2.1; and (5) the member of the Settlement Class made
25 reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to
26 exhaustion of all available credit monitoring insurance and identity theft insurance.

27 Members of the Settlement Class seeking reimbursement under ¶¶ 2.1 and/or 2.2 must
28 complete and submit a Claim Form to the Claims Administrator, postmarked or submitted online

1 on or before the Claims Deadline. The notice to the class will specify this deadline and other
2 relevant dates described herein. The Claim Form must be verified by the member of the Settlement
3 Class with a statement that his or her claim is true and correct, to the best of his or her knowledge
4 and belief, and is being made under penalty of perjury. Notarization shall not be required. The
5 Settlement Class Member must submit reasonable documentation that the out-of-pocket expenses
6 and charges claimed were both actually incurred and plausibly arose from the Data Incident. Failure
7 to provide supporting documentation of the out-of-pocket expenses referenced above, as requested
8 on the Claim Form, shall result in denial of a claim. No documentation is needed for lost-time
9 expenses. Disputes as to claims submitted under this paragraph are to be resolved pursuant to the
10 provisions stated in ¶ 2.6.

11 2.3 Cash Payment for California Subclass Members. All California Subclass Members
12 who submit a Valid Claim using the Claim Form are eligible to receive a payment of \$100 provided
13 that the California Settlement Subclass Member attests, under oath, that he or she was a resident of
14 the State of California at some point between February 2, 2021 and March 22, 2021 (“California
15 Cash Payment Claims”). .

16 California Cash Payment Claims can be combined with Lost-Time Claims and claims for
17 out-of-pocket losses under ¶ 2.1, and can be combined (if applicable) with reimbursement for losses
18 under ¶ 2.2. All claims made under this ¶ 2.3 shall be subject to the \$500 per-Settlement-Class-
19 Member cap on compensation for ordinary loss and lost time.

20 Additionally, LendUS agrees to pay in California Cash Payment Claims a minimum of
21 \$10,774, which represents the amount that would be owed by LendUS in California Cash Payment
22 Claims if two percent (2%) of the California Subclass submitted valid and timely California Cash
23 Payment Claims. If less than two percent (2%) of the Settlement Class submits valid and timely
24 California Cash Payment Claims, each valid and timely California Cash Payment Claims will be
25 increased, on a *pro rata* basis, until the total amount paid for California Cash Payment Claims
26 equals \$10,774. If more than two percent (2%) of the Settlement Class submits valid and timely
27 California Cash Payment Claims, LendUS will pay the total amount of valid and timely California
28 Cash Payment Claims submitted, at a rate of \$100 per California Cash Payment Claim. For

1 purposes of the *pro rata* increase discussed immediately above, the \$500 cap for each Settlement
2 Class Member shall not apply.

3 2.4 Identity-Theft Protection. All members of the Settlement Class are eligible for and
4 will be provided, in connection with distribution of the Short Notice, with credentials to redeem 36
5 months of free identity-theft protection, called “Financial Shield” by Pango. The 36 months of free
6 identity-theft protection provided under this Settlement Agreement shall be in addition to any other
7 identity-theft protection and/or credit monitoring received by Settlement Class Members.
8 “Financial Shield” includes, at least, the following, or similar, services:

- 9 a) Up to \$1 Million Dollars reimbursement insurance through AIG covering
10 losses due to identity theft and stolen funds;
- 11 b) Financial transaction monitoring, including monitoring of all financial
12 accounts registered by the Settlement Class Member, such as credit card
13 accounts, bank accounts (checking and savings) and investment accounts,
14 for transactions exceeding selected thresholds;
- 15 c) Continuous monitoring for high-risk transactions, including payday loans,
16 wire transfers, and account openings, that involve the Settlement Class
17 Member’s personal information;
- 18 d) Notification of attempts to use the Settlement Class Member’s Social
19 Security Number as part of an identity verification event, such as requesting
20 a replacement credit or debit card; filing an insurance claim; updating
21 personal information on an existing account; and/or opening a new account;
- 22 e) Fictitious identity monitoring, which notifies the Settlement Class Member
23 when his or her Social Security Number is being used in association with
24 someone else’s name and/or address;
- 25 f) Online tax fraud monitoring and alerts, which monitors online income tax
26 filings through TurboTax and alerts the Settlement Class Member if a tax
27 return is filed using his or her Social Security Number;
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- g) Home title monitoring, including monitoring properties identified by a Settlement Class Member and notifying the Settlement Class Member when an existing property title is changed, removed, or new titles are added to his or her name;
- h) Dark web monitoring, which continuously monitors the dark web for the Settlement Class Member’s personal information;
- i) Public record monitoring, which monitors public records for address changes, automotive tickets, and arrests associated with the Settlement Class Member’s name and Social Security number;
- j) Credit security freeze assistance, which provides the Settlement Class Member a central location to link to one of ten different consumer reporting agencies to freeze and unfreeze his or her credit files; and
- k) Lost wallet protection, which provides a customer support line where the Settlement Class Member can receive help in canceling and replacing lost credit cards.

2.5 Cybersecurity Enhancements.

2.5.1 LendUS has agreed to implement and maintain certain cybersecurity and business practice enhancements after the Data Incident and due to this Settlement. The enhancements are detailed in Exhibit 3 to the Motion for Preliminary Approval.

2.6 Dispute Resolution for Claims.

2.6.1 The Claims Administrator, in its sole discretion to be reasonably exercised, will determine whether: (1) the claimant is a Settlement Class Member; (2) the claimant has provided all information needed to complete the Claim Form, including any documentation that may be necessary to reasonably support the out-of-expenses described in ¶¶ 2.1 and 2.2 and/or any information required under ¶ 2.3; and (3) the information submitted could lead a reasonable person to conclude that more likely than not the claimant has suffered the claimed losses as a result of the Data Incident. The Claims Administrator may, at any time, request from the claimant, in writing, additional information as the

1 Claims Administrator may reasonably require in order to evaluate the claim, e.g., documentation
2 requested on the Claim Form, information regarding the claimed losses, available insurance and
3 the status of any claims made for insurance benefits, and claims previously made for identity theft
4 and the resolution thereof. For any such Claims that the Claims Administrator determines to be
5 implausible, the Claims Administrator will submit those Claims to the Settling Parties (one
6 Plaintiffs' lawyer shall be designated to fill this role for all Plaintiffs). If the Settling Parties do not
7 agree with the Claimant's Claim, after meeting and conferring, then the Claim shall be referred for
8 resolution to the claim referee, to be selected by the Parties if needed. Any costs associated with
9 work performed by the claims referee shall be paid by LendUS.

10 2.6.2 Upon receipt of an incomplete or unsigned Claim Form or a Claim
11 Form that is not accompanied by sufficient documentation to determine whether the claim is
12 facially valid, the Claims Administrator shall request additional information and give the claimant
13 thirty (30) days to cure the defect before rejecting the claim. If the defect is not cured, then the
14 claim will be deemed invalid and there shall be no obligation to pay the claim.

15 2.6.3 Following receipt of additional information requested by the Claims
16 Administrator, the Claims Administrator shall have thirty (30) days to accept, in whole or lesser
17 amount, or reject each claim. If, after review of the claim and all documentation submitted by the
18 claimant, the Claims Administrator determines that such a claim is facially valid, then the claim
19 shall be paid. If the claim is not facially valid because the claimant has not provided all information
20 needed to complete the Claim Form and evaluate the claim, then the Settlement Administrator may
21 reject the claim without any further action. If the claim is rejected in whole or in part, for other
22 reasons, then the claim shall be referred to the claims referee.

23 2.6.4 Settlement Class Members shall have thirty (30) days from receipt of
24 the offer to accept or reject any offer of partial payment received from the Claims Administrator.
25 If a Settlement Class Member rejects an offer from the Claims Administrator, the Claims
26 Administrator shall have fifteen (15) days to reconsider its initial adjustment amount and make a
27 final determination. If the claimant approves the final determination, then the approved amount
28 shall be the amount to be paid. If the claimant does not approve the final determination within thirty

1 (30) days, then the dispute will be submitted to the claims referee within an additional ten (10)
2 days.

3 2.6.5 If any dispute is submitted to the claims referee, the claims referee
4 may approve the Claims Administrator’s determination by making a ruling within fifteen (15) days.
5 The claims referee may make any other final determination of the dispute or request further
6 supplementation of a claim within thirty (30) days. The claims referee’s determination shall be
7 based on whether the claims referee is persuaded that the claimed amounts are reasonably supported
8 in fact and were more likely than not caused by the Data Incident. The claims referee shall have the
9 power to approve a claim in full or in part. The claims referee’s decision will be final and non-
10 appealable. Any claimant referred to the claims referee shall reasonably cooperate with the claims
11 referee, including by either providing supplemental information as requested or, alternatively,
12 signing an authorization allowing the claims referee to verify the claim through third-party sources,
13 and failure to cooperate shall be grounds for denial of the claim in full. The claims referee shall
14 make a final decision within thirty (30) days of receipt of all supplemental information requested.

15 2.7 Confirmatory Discovery. LendUS has provided or will provide reasonable access
16 to confidential confirmatory discovery regarding the number of Settlement Class Members and
17 state of residence, as well as the facts and circumstances of the Data Incident and LendUS’s
18 response thereto.

19 2.8 Settlement Expenses. All costs for notice to the Settlement Class as required under
20 ¶¶ 3.1 and 3.2, Costs of Claims Administration under ¶¶ 8.1, 8.2, and 8.3, and the costs of Dispute
21 Resolution described in ¶ 2.6, shall be paid by LendUS.

22 2.9 Settlement Class Certification. The Settling Parties agree, for purposes of this
23 settlement only, to the certification of the Settlement Class. If the settlement set forth in this
24 Settlement Agreement is not approved by the Court, or if the Settlement Agreement is terminated
25 or cancelled pursuant to the terms of this Settlement Agreement, this Settlement Agreement, and
26 the certification of the Settlement Class provided for herein, will be vacated and the Litigation shall
27 proceed as though the Settlement Class had never been certified, without prejudice to any Person’s
28 or Settling Party’s position on the issue of class certification or any other issue. The Settling Parties’

1 agreement to the certification of the Settlement Class is also without prejudice to any position
2 asserted by the Settling Parties in any other proceeding, case or action, as to which all of their rights
3 are specifically preserved.

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

5 3.1. As soon as practicable after the execution of the Settlement Agreement, Proposed
6 Settlement Class Counsel and counsel for LendUS shall jointly submit this Settlement Agreement
7 to the Court, and Proposed Settlement Class Counsel will file a motion for preliminary approval of
8 the settlement with the Court requesting entry of a Preliminary Approval Order in the form to be
9 agreed upon by the parties, or an order substantially similar to such form in both terms and cost,
10 requesting, among other things:

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

- g) appointment of Kroll Settlement Administration as the Claims Administrator.

The Short Notice and Long Notice have been reviewed and approved by the Claims Administrator but may be revised as agreed upon by the Settling Parties prior to submission to the Court for approval.

3.2 LendUS shall pay for providing notice to the Settlement Class in accordance with the Preliminary Approval Order, and the costs of such notice, together with the Costs of Claims Administration. Attorneys' fees, costs, and expenses of Settlement Class Counsel, and Service Awards to Representative Plaintiffs, as approved by the Court, shall be paid by LendUS as set forth in ¶ 7 below. Notice shall be provided to Settlement Class Members by the Claims Administrator as follows:

- a) *Class Member Information*: No later than fourteen (14) days after entry of the Preliminary Approval Order, LendUS shall provide the Claims Administrator with the name, email address (where available), and last known physical address of each Settlement Class Member (collectively, "Class Member Information") that LendUS possesses.
 - The Class Member Information and its contents shall be used by the Claims Administrator solely for the purpose of performing its obligations pursuant to this Settlement Agreement and shall not be used for any other purpose at any time. Except to administer the settlement as provided in this Settlement Agreement, or provide all data and information in its possession to the Settling Parties upon request, the Claims Administrator shall not reproduce, copy, store, or distribute in any form, electronic or otherwise, the Class Member Information.

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b) *Settlement Website:* Prior to the dissemination of the Class Notice, the Claims Administrator shall establish the Settlement Website that will inform Settlement Class Members of the terms of this Settlement Agreement, their rights, dates and deadlines and related information. The Settlement Website shall include, in .pdf format and available for download, the following: (i) the Long Notice; (ii) the Claim Form; (iii) the Preliminary Approval Order; (iv) this Settlement Agreement; (v) the operative Class Action Complaint, [Dkt. No. 1], filed in the Litigation; and (vi) any other materials agreed upon by the Parties and/or required by the Court. The Settlement Website shall provide Class Members with the ability to complete and submit the Claim Form electronically.

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

- To all class members for whom LendUS is in possession of an email address, via email to the email address provided to LendUS either by or for the Settlement Class Members;
- To all class members for whom LendUS does not have in its possession a valid email address (including email addresses that were returned as undeliverable), via mail to the postal address provided to LendUS either by or for the Settlement Class. Before any mailing under this Paragraph occurs, the Claims Administrator shall run the postal addresses of Settlement Class Members through the United States Postal Service (“USPS”) National Change of Address database to update any change of address on file with the USPS;

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- in the event that a mailed Short Notice is returned to the Claims Administrator by the USPS because the address of the recipient is no longer valid, and the envelope contains a forwarding address, the Claims Administrator shall re-send the Short Notice to the forwarding address within seven (7) days of receiving the returned Short Notice;
 - in the event that subsequent to the first mailing of a Short Notice, and at least fourteen (14) days prior to the Opt-Out and Objection Deadline, a Short Notice is returned to the Claims Administrator by the USPS because the address of the recipient is no longer valid, *i.e.*, the envelope is marked “Return to Sender” and does not contain a new forwarding address, the Claims Administrator shall perform a standard skip trace, in the manner that the Claims Administrator customarily performs skip traces, in an effort to attempt to ascertain the current address of the particular Settlement Class Member in question and, if such an address is ascertained, the Claims Administrator will re-send the Short Notice within seven (7) days of receiving such information. This shall be the final requirement for mailing.
- d) Publishing, on or before the Notice Commencement Date, the Short Notice, Claim Form, and Long Notice on the Settlement Website, as specified in the Preliminary Approval Order, and maintaining and updating the website throughout the claim period;
- e) A toll-free help line shall be made available to provide Settlement Class Members with additional information about the settlement. The Claims Administrator also will provide copies of the forms of Short Notice, Long Notice, and paper Claim Form, as well as this Settlement Agreement, upon request; and

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1 f) *Reminder Emails*: At least fourteen (14) days prior to the Claims Deadline,
2 the Claims Administrator shall send to all Settlement Class Members (1)
3 who have not yet filed a claim and (2) for whom the Claims Administrator
4 has a valid email address a reminder email, reminding said Settlement Class
5 Members to make a claim prior to the Claims Deadline.

6 g) Contemporaneously with seeking Final Approval of the Settlement,
7 Proposed Settlement Class Counsel and LendUS shall cause to be filed with
8 the Court an appropriate affidavit or declaration with respect to complying
9 with this provision of notice.

10 3.3 The Short Notice, Long Notice, and other applicable communications to the
11 Settlement Class may be adjusted by the Claims Administrator, respectively, in consultation and
12 agreement with the Settling Parties, as may be reasonable and not inconsistent with such approval.
13 The Notice Program shall commence within thirty (30) days after entry of the Preliminary Approval
14 Order and shall be substantially completed within forty-five (45) days after entry of the Preliminary
15 Approval Order.

16 3.4 Proposed Settlement Class Counsel and LendUS’s counsel shall request that after
17 notice is completed, the Court hold a hearing (the “Final Fairness Hearing”) and grant final approval
18 of the settlement set forth herein.

19 3.5 LendUS will also cause the Claims Administrator to provide (at LendUS’s expense)
20 notice to the relevant state and federal governmental officials as required by the Class Action
21 Fairness Act.

22 **4. Opt-Out Procedures**

23 4.1 Each Person wishing to opt-out of the Settlement Class shall individually sign and
24 timely submit written notice of such intent to the designated Post Office box established by the
25 Claims Administrator. The written notice must clearly manifest a Person’s intent to opt-out of the
26 Settlement Class. To be effective, written notice must be postmarked no later than the Opt-Out
27 Date.
28

1 4.2 All Persons who submit valid and timely notices of their intent to opt-out of the
2 Settlement Class, as set forth in ¶ 4.1 above, referred to herein as “Opt-Outs,” shall not receive any
3 benefits of and/or be bound by the terms of this Settlement Agreement. All Persons falling within
4 the definition of the Settlement Class who do not opt-out of the Settlement Class in the manner set
5 forth in ¶ 4.1 above shall be bound by the terms of this Settlement Agreement and Judgment entered
6 thereon.

7 4.3 In the event that within ten (10) days after the Opt-Out Date, as approved by the
8 Court, there have been more than 250 timely and valid Opt-Outs submitted, LendUS may, by
9 notifying Proposed Settlement Class Counsel and the Court in writing, void this Settlement
10 Agreement. If LendUS voids the Settlement Agreement pursuant to this paragraph, LendUS shall
11 be obligated to pay all settlement expenses already incurred, excluding any attorneys’ fees, costs,
12 and expenses of Proposed Settlement Class Counsel and Service Awards.

13 **5. Objection Procedures**

14 5.1 Each Settlement Class Member desiring to object to the Settlement Agreement shall
15 submit a timely written notice of his or her objection by the Objection Date. Such notice shall state:
16 (i) the objector’s full name and address; (ii) the case name and docket number - *Remoundos, et al.*
17 *v. LendUS, LLC.*, Case No. 4:22-cv-00749-EMC (N.D. Cal.); (iii) information identifying the
18 objector as a Settlement Class Member, including proof that the objector is a member of the
19 Settlement Class (e.g., copy of the objector’s settlement notice, copy of original notice of the Data
20 Incident, or a statement explaining why the objector believes he or she is a Settlement Class
21 Member); (iv) a written statement of all grounds for the objection, accompanied by any legal
22 support for the objection the objector believes applicable; (v) the identity of any and all counsel
23 representing the objector in connection with the objection; (vi) a statement whether the objector
24 and/or his or her counsel will appear at the Final Fairness Hearing; and (vii) the objector’s signature
25 or the signature of the objector’s duly authorized attorney or other duly authorized representative
26 (if any) representing him or her in connection with the objection. To be timely, written notice of an
27 objection in the appropriate form must be mailed to the Court only with the Court’s address being
28 identified in the notice documents.

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

9 **6. Releases**

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

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

1 6.3 Notwithstanding any term herein, neither LendUS nor its Related Parties shall have
2 or shall be deemed to have released, relinquished or discharged any claim or defense against any
3 Person other than Representative Plaintiffs, each and all of the Settlement Class Members, and
4 Proposed Settlement Class Counsel.

5 **7. Plaintiffs’ Counsel’s Attorneys’ Fees, Costs, and Expenses; Service Awards to**
6 **Representative Plaintiffs**

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

14 7.2 LendUS has agreed that Proposed Settlement Class Counsel may make an
15 application for an award of attorneys’ fees and litigation costs not to exceed \$175,000.00. Proposed
16 Settlement Class Counsel, in their sole discretion, shall allocate and distribute the amount of
17 attorneys’ fees, costs, and expenses awarded by the Court among Plaintiffs’ Counsel.

18 7.3 LendUS has agreed that Proposed Settlement Class Counsel may make an
19 application for an order from the Court awarding \$2,000 in Service Awards to each of the Class
20 Representatives.

21 7.4 If awarded by the Court, LendUS shall pay the attorneys’ fees, costs, expenses, and
22 Service Awards to Plaintiffs, as set forth above in ¶¶ 7.2 and 7.3, within 14 days after the Effective
23 Date. Service Awards to Class Representatives and attorneys’ fees, costs, and expenses will be
24 mailed to M. Anderson Berry, Clayeo C. Arnold, A Professional Law Corp., 865 Howe Avenue,
25 Sacramento, CA 95825. Proposed Settlement Class Counsel shall thereafter distribute the award of
26 attorneys’ fees, costs, and expenses among Plaintiffs’ Counsel and Service Awards to
27 Representative Plaintiffs consistent with ¶¶ 7.2 and 7.3.
28

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

9 7.6 Should the Court decide, for any reason, to reduce the amount of attorneys’ fees,
10 costs, and expenses (collectively, “Attorneys’ Fees”) sought by Plaintiffs or to reduce the amount
11 of Service Awards sought by Plaintiffs, the amount the Attorneys’ Fees and/or Service Awards are
12 reduced will not revert to LendUS. Instead, the amount the Attorneys’ Fees and/or Service Awards
13 are reduced will be used to increase, on a *pro rata* basis, all Valid Claims submitted.

14 **8. Administration of Claims**

15 8.1 The Claims Administrator shall administer and calculate the claims submitted by
16 Settlement Class Members under ¶¶ 2.1, 2.2, and 2.3. Proposed Settlement Class Counsel and
17 counsel for LendUS shall be given reports as to both claims and distribution, and have the right to
18 review and obtain supporting documentation and challenge such reports if they believe them to be
19 inaccurate or inadequate. The Claims Administrator’s and claims referee’s, as applicable,
20 determination of whether a Settlement Claim is a Valid Claim shall be binding, subject to the
21 dispute resolution process set forth in ¶ 2.6. All claims agreed to be paid in full by LendUS shall
22 be deemed valid.

23 8.2 Checks for Valid Claims shall be mailed and postmarked within sixty (60) days of
24 the Effective Date, or within thirty (30) days of the date that the claim is approved, whichever is
25 later.

26 8.3 All Settlement Class Members who fail to timely submit a claim for any benefits
27 hereunder within the time frames set forth herein, or such other period as may be ordered by the
28 Court, or otherwise allowed, shall be forever barred from receiving any payments or benefits

1 pursuant to the settlement set forth herein, but will in all other respects be subject to, and bound by,
2 the provisions of the Settlement Agreement, the releases contained herein and the Judgment.

3 8.4 No Person shall have any claim against the Claims Administrator, claims referee,
4 LendUS, Proposed Settlement Class Counsel, Plaintiffs, and/or LendUS's counsel based on
5 distributions of benefits to Settlement Class Members.

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

7 9.1 The Effective Date of the settlement shall be conditioned on the occurrence of all of
8 the following events:

- 9 a) the Court has entered the Order of Preliminary Approval and Publishing of
10 Notice of a Final Fairness Hearing, as required by ¶ 3.1;
- 11 b) LendUS has not exercised its option to terminate the Settlement Agreement
12 pursuant to ¶ 4.3;
- 13 c) the Court has entered the Judgment granting final approval to the settlement
14 as set forth herein; and
- 15 d) the Judgment has become Final, as defined in ¶ 1.13.

16 9.2 If all conditions specified in ¶ 9.1 hereof are not satisfied, the Settlement Agreement
17 shall be canceled and terminated subject to ¶ 9.4 unless Proposed Settlement Class Counsel and
18 LendUS's counsel mutually agree in writing to proceed with the Settlement Agreement.

19 9.3 Within seven (7) days after the Opt-Out Date, the Claims Administrator shall
20 furnish to Proposed Settlement Class Counsel and to LendUS's counsel a complete list of all timely
21 and valid requests for exclusion (the "Opt-Out List").

22 9.4 In the event that the Settlement Agreement or the releases set forth in paragraphs
23 6.1, 6.2, and 6.3 above are not approved by the Court or the settlement set forth in the Settlement
24 Agreement is terminated in accordance with its terms, (i) the Settling Parties shall be restored to
25 their respective positions in the Litigation and shall jointly request that all scheduled litigation
26 deadlines be reasonably extended by the Court so as to avoid prejudice to any Settling Party or
27 Settling Party's counsel, and (b) the terms and provisions of the Settlement Agreement shall have
28 no further force and effect with respect to the Settling Parties and shall not be used in the Litigation

1 or in any other proceeding for any purpose, and any judgment or order entered by the Court in
2 accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*.
3 Notwithstanding any statement in this Settlement Agreement to the contrary, no order of the Court
4 or modification or reversal on appeal of any order reducing the amount of attorneys' fees, costs,
5 expenses, and/or service awards shall constitute grounds for cancellation or termination of the
6 Settlement Agreement. Further, notwithstanding any statement in this Settlement Agreement to the
7 contrary, LendUS shall be obligated to pay amounts already billed or incurred for costs of notice
8 to the Settlement Class, Claims Administration, and Dispute Resolution pursuant to ¶ 2.6 above
9 and shall not, at any time, seek recovery of same from any other party to the Litigation or from
10 counsel to any other party to the Litigation.

11 **10. Miscellaneous Provisions**

12 10.1 The Settling Parties (i) acknowledge that it is their intent to consummate this
13 agreement; and (ii) agree to cooperate to the extent reasonably necessary to effectuate and
14 implement all terms and conditions of this Settlement Agreement, and to exercise their best efforts
15 to accomplish the terms and conditions of this Settlement Agreement.

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

25 10.3 Neither the Settlement Agreement, nor the settlement contained herein, nor any act
26 performed or document executed pursuant to or in furtherance of the Settlement Agreement or the
27 settlement (i) is or may be deemed to be or may be used as an admission of, or evidence of, the
28 validity or lack thereof of any Released Claim, or of any wrongdoing or liability of any of the

1 Released Persons; or (ii) is or may be deemed to be or may be used as an admission of, or evidence
2 of, any fault or omission of any of the Released Persons in any civil, criminal or administrative
3 proceeding in any court, administrative agency or other tribunal. Any of the Released Persons may
4 file the Settlement Agreement and/or the Judgment in any action that may be brought against them
5 or any of them in order to support a defense or counterclaim based on principles of *res judicata*,
6 collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of
7 claim preclusion or issue preclusion or similar defense or counterclaim.

8 10.4 The Settlement Agreement may be amended or modified only by a written
9 instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

10 10.5 This Agreement contains the entire understanding between LendUS and Plaintiffs
11 regarding the payment of the Litigation settlement and supersedes all previous negotiations,
12 agreements, commitments, understandings, and writings between LendUS and Plaintiffs in
13 connection with the payment of the Litigation settlement. Except as otherwise provided herein,
14 each party shall bear its own costs.

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

21 10.7 Each counsel or other Person executing the Settlement Agreement on behalf of any
22 party hereto hereby warrants that such Person has the full authority to do so.

23 10.8 The Settlement Agreement may be executed in one or more counterparts. All
24 executed counterparts and each of them shall be deemed to be one and the same instrument. A
25 complete set of original executed counterparts shall be filed with the Court.

26 10.9 The Settlement Agreement shall be binding upon, and inure to the benefit of, the
27 successors and assigns of the parties hereto.
28

1 10.10 The Court shall retain jurisdiction with respect to implementation and enforcement
2 of the terms of the Settlement Agreement, and all parties hereto submit to the jurisdiction of the
3 Court for purposes of implementing and enforcing the settlement embodied in the Settlement
4 Agreement.

5 10.11 As used herein, “he” means “he, she, or it;” “his” means “his, hers, or its,” and
6 “him” means “him, her, or it.”

7 10.12 All dollar amounts are in United States dollars (USD).

8 10.13 Cashing a settlement check is a condition precedent to any Settlement Class
9 Member’s right to receive monetary settlement benefits. All settlement checks shall be void ninety
10 (90) days after issuance and shall bear the language: “This check must be cashed within ninety (90)
11 days, after which time it is void.” If a check becomes void, the Settlement Class Member shall
12 have until six months after the Effective Date to request re-issuance. If no request for re-issuance
13 is made within this period, the Settlement Class Member will have failed to meet a condition
14 precedent to recovery of monetary settlement benefits, the Settlement Class Member’s right to
15 receive monetary relief shall be extinguished, and LendUS shall have no obligation to make
16 payments to the Settlement Class Member for expense reimbursement under ¶¶ 2.1 or 2.2 or any
17 other type of monetary relief, such as that permitted under ¶ 2.3. The same provisions shall apply
18 to any re-issued check. For any checks that are issued or re-issued for any reason more than one
19 hundred eighty (180) days from the Effective Date, requests for re-issuance need not be honored
20 after such checks become void.

21 10.14 All agreements made and orders entered during the course of the Litigation relating
22 to the confidentiality of information shall survive this Settlement Agreement.

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

BAKER & HOSTETLER LLP
ATTORNEYS AT LAW
COSTA MESA

**CLAYEO C. ARNOLD, A
PROFESSIONAL LAW CORP.**

/s/M. Anderson Berry
M. Anderson Berry (SBN 262879)
Clayeo C. Arnold, P.C.
865 Howe Avenue
Sacramento, CA 95825
Telephone: (916) 239-4778
Fax: (916) 924-1829
aberry@justice4you.com

Terence R. Coates (admitted *Pro Hac Vice*)
MARKOVITS, STOCK & DEMARCO,
LLC
119 E Court St., Suite 530
Cincinnati, OH 45202
Telephone: (513) 651-3700
Fax: (513) 665-0219
tcoates@msdlegal.com

Joseph M. Lyon (admitted *Pro Hac Vice*)
THE LYON FIRM, LLC
2754 Erie Avenue
Cincinnati, OH 45208
Phone: (513) 381-2333
Fax: (513) 766-9011
jlyon@thelyonfirm.com

Attorneys for Plaintiffs

BAKER & HOSTETLER LLP

/s/ 
Matthew D. Pearson
600 Anton Boulevard, Suite 900
Costa Mesa, CA 92626
Telephone: (714) 966-8892
Fax: (714) 754-661
California Bar No.: 294302
mpearson@bakerlaw.com

Casie D. Collignon (*Pro Hac Vice*
Forthcoming)
1801 California Street, Suite 4400
Denver, CO 80202
Telephone: (303) 764-4037
Fax: (303) 861-7805
ccollignon@bakerlaw.com

Attorneys for Defendant
LENDUS, LLC

BAKER & HOSTETLER LLP
ATTORNEYS AT LAW
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