

# **EXHIBIT 1**

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**IN THE DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

KEVIN GREGERSON, on behalf of  
himself and all others similarly situated,  
Plaintiff,

v.

TOSHIBA AMERICA BUSINESS  
SOLUTIONS, INC.,  
Defendant.

Case No. 8:24-cv-01201-FWS-ADS

**CLASS ACTION SETTLEMENT  
AGREEMENT**

This Class Action Settlement Agreement, dated as of March 3, 2025, is made and entered into by and among the following Settling Parties (as defined below): Kevin Gregerson (“Plaintiff”), individually and on behalf of the Settlement Class (as defined below), by and through his counsel of record, and Toshiba America Business Solutions, Inc. (“TABS” or “Defendant” and, together with Plaintiff, the “Parties”), by and through its counsel of record, Marcus McCutcheon of Baker & Hostetler LLP. The Settlement Agreement (as defined below) is subject to Court approval and is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined below), upon and subject to the terms and conditions hereof:

**THE LITIGATION**

Plaintiff alleges that on or around December 4, 2023, cybercriminals bypassed TABS’ security systems undetected and accessed personally identifiable information stored on Defendant’s computer systems (“Data Incident”). Plaintiff further alleges that, as a result of the Data Incident, the criminals gained access to Plaintiff’s and other TABS current and former employees’ personally identifiable information, including but not limited to name and Social Security Number” (collectively, “PII”).

After discovering the Data Incident, TABS notified approximately 6,883 individuals of the Data Incident. Individuals, including Plaintiff, were mailed notices of the Data Incident in or around May 2024. On June 4, 2024, former plaintiff Sandra Sonnier filed a lawsuit asserting claims against TABS relating to the Data Incident. On July 22, 2024, Ms. Sonnier dismissed her claims and Mr.





submit a Settlement Claim, either through the mail or online through the Settlement Website, substantially in the form as shown in **Exhibit C** to this Agreement.

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

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

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

1.11 “Effective Date” means the first date by which all of the events and conditions specified herein have occurred and been met.

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

1.13 “Final Approval Order” means the order finally approving the Settlement and entering judgment. The Settling Parties’ proposed form of Final Approval Order is attached hereto as **Exhibit E**.

1.14 “Judgment” means a judgment rendered by the Court.

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

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

1.17 “Objection Date” means the date by which members of the Settlement Class must mail to the Court or, in the alternative, file with the Court through the Court’s electronic case filing



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

22 1.24 "Released Persons" means TABS, TGCS, and their Related Entities and each of their  
23 past or present parents, subsidiaries, divisions, and related or affiliated entities, and each of their  
24 respective predecessors, successors, directors, officers, employees, principals, agents, attorneys,  
25 insurers, and reinsurers.

26 1.25 "Plaintiff" and "Representative Plaintiff" means Kevin Gregerson.

27 1.26 "Data Incident" means the cyberattack perpetrated on TABS on or about December 4,  
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Agreement, their rights, dates and deadlines and related information, as well as provide the Settlement Class Members with the ability to submit a Settlement Claim online.

1.33 “Settling Parties” means, collectively, TABS and Plaintiff, individually and on behalf of the Settlement Class.

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

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

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

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

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

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

## 2. Settlement Benefits

2.1 In consideration for the releases provided in this Settlement Agreement, TABS shall fund the creation of the Settlement Fund to provide compensation to Settlement Class Members as set forth in this Section.

2.2 Out-of-Pocket Expense Reimbursement: All members of the Settlement Class who have suffered a proven monetary loss and who submit a Valid Claim using the Claim Form are eligible for reimbursement of up to \$7,500.00 if: (1) the loss is an actual, documented and unreimbursed monetary loss; (2) the loss was more likely than not caused by the Data Incident; (3) the loss occurred between December 4, 2023, and the Claims Deadline; and (4) the member of the Settlement Class 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 insurance.

2.3 Members of the Settlement Class seeking reimbursement under ¶ 2.2 must complete and submit a Claim Form to the Claims Administrator, postmarked or submitted online on or before the 90th day after the Notice Commencement Date. The notice to the class will specify this deadline and other relevant dates described herein. The Claim Form must be verified by the member of the

1 Settlement Class with a statement that his or her claim is true and correct, to the best of his or her  
2 knowledge and belief. Notarization shall not be required. The member of the Settlement Class must  
3 submit reasonable documentation that the out-of-pocket expenses and charges claimed were both  
4 actually incurred and plausibly arose from the Data Incident. Failure to provide supporting  
5 documentation of the out-of-pocket expenses referenced above, as requested on the Claim Form, shall  
6 result in denial of a claim. Disputes as to claims submitted under this paragraph are to be resolved  
7 pursuant to the provisions stated herein.

8       2.4     California Settlement Subclass Payment: All California Settlement Subclass members  
9 can make a claim for a \$150.00 cash payment.

10       2.5     Pro Rata Cash Payment: All Settlement Class members may make a claim for a *pro*  
11 *rata* share of all cash remaining in the Net Settlement Fund. The amount of the payment will be based  
12 upon the amount in the Net Settlement Fund, if any, after the payment of valid claims for Out-of-  
13 Pocket Expense Reimbursement and California Settlement Subclass Payments.

14       2.6     Dispute Resolution for Claims.

15             2.6.1 The Claims Administrator, in its sole discretion to be reasonably exercised, will  
16 determine whether: (1) the claimant is a Settlement Class Member; (2) the claimant has provided all  
17 information needed to complete the Claim Form, including any documentation that may be necessary  
18 to reasonably support the Out-of-Pocket Expenses described in ¶ 2.2; and (3) the information  
19 submitted could lead a reasonable person to conclude that more likely than not the claimant has  
20 suffered the claimed losses as a result of the Data Incident. The Claims Administrator may, at any  
21 time, request from the claimant, in writing, additional information as the Claims Administrator may  
22 reasonably require in order to evaluate the claim, e.g., documentation requested on the Claim Form,  
23 information regarding the claimed losses, available insurance and the status of any claims made for  
24 insurance benefits, and claims previously made for identity theft and the resolution thereof. For any  
25 such Claims that the Claims Administrator determines to be implausible, the Claims Administrator  
26 will submit those Claims to the Settling Parties (one Plaintiffs' lawyer shall be designated to fill this  
27 role for all Plaintiffs). If the Settling Parties do not agree with the Settlement Administrator's  
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determination, after meeting and conferring, then the Claim shall be referred for resolution to the claim\_referee, to be selected by the Parties if needed. Any costs associated with work performed by the claims referee shall be paid out of the Settlement Fund as a Cost of Claims Administration.

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

2.6.3 Following receipt of additional information requested by the Claims Administrator, the Claims Administrator shall have thirty (30) days to accept, in whole or lesser amount, or reject each claim. If, after review of the claim and all documentation submitted by the claimant, the Claims Administrator determines that such a claim is facially valid, then the claim shall be paid. If the claim is not facially valid because the claimant has not provided all information needed to complete the Claim Form and evaluate the claim, then the Settlement Administrator may reject the claim without any further action.

2.6.4 Settlement Class Members shall have thirty (30) days from receipt of the offer to accept or reject any offer of partial payment received from the Claims Administrator. If a Settlement Class Member rejects an offer from the Claims Administrator, the Claims Administrator shall have fifteen (15) days to reconsider its initial adjustment amount and make a final determination. If the claimant approves the final determination, then the approved amount shall be the amount to be paid. If the claimant does not approve the final determination within thirty (30) days, then the dispute shall be submitted to the Settling Parties. If the Settling Parties do not agree with the Settlement Administrator's determination or are unable to reach a mutually satisfactory resolution after meeting and conferring, then the Claim shall be referred for resolution to the claims referee, to be selected by the Parties if needed.

2.6.5 If any dispute is submitted to the claims referee, the claims referee may approve the Claims Administrator's determination by making a ruling within fifteen (15) days. The claims

1 referee may make any other final determination of the dispute or request further supplementation of a  
2 claim within thirty (30) days. The claims referee's determination shall be based on whether the claims  
3 referee is persuaded that the claimed amounts are reasonably supported in fact and were more likely  
4 than not caused by the Data Incident. The claims referee shall have the power to approve a claim in  
5 full or in part. The claims referee's decision will be final and non-appealable. Any claimant referred to  
6 the claims referee shall reasonably cooperate with the claims referee, including by either providing  
7 supplemental information as requested or, alternatively, signing an authorization allowing the claims  
8 referee to verify the claim through third-party sources, and failure to cooperate shall be grounds for  
9 denial of the claim in full. The claims referee shall make a final decision within thirty (30) days of  
10 receipt of all supplemental information requested. The Parties shall jointly select an acceptable claims  
11 referee if the need for one arises under the terms of this section.

12       2.7 Business Practices Changes. Plaintiff has received assurances in the form of a  
13 confidential declaration (suitable for filing under seal if the need to do so arises) that TABS has  
14 implemented or will implement certain reasonable steps to adequately secure its systems and  
15 environments.

16       2.8 Confirmatory Discovery. TABS has provided reasonable access to confidential  
17 confirmatory discovery regarding the number of Settlement Class Members and state of residence, the  
18 facts and circumstances of the Data Incident and TABS' response thereto, and the changes and  
19 improvements that have been made or are being made to further protect Settlement Class Members'  
20 PII.

21       2.9 Settlement Class Certification. The Settling Parties agree, for purposes of this  
22 settlement only, to the certification of the Settlement Class. If the settlement set forth in this  
23 Settlement Agreement is not approved by the Court, or if the Settlement Agreement is terminated or  
24 cancelled pursuant to the terms of this Settlement Agreement, this Settlement Agreement, and the  
25 certification of the Settlement Class provided for herein, will be vacated and the Litigation shall  
26 proceed as though the Settlement Class had never been certified, without prejudice to any Person's or  
27 Settling Party's position on the issue of class certification or any other issue. The Settling Parties'  
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agreement to the certification of the Settlement Class is also without prejudice to any position asserted by the Settling Parties in any other proceeding, case or action, as to which all of their rights are specifically preserved.

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

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

- a) certification of the Settlement Class for settlement purposes only;
- b) preliminary approval of the Settlement Agreement as set forth herein;
- c) appointment of Proposed Settlement Class Counsel as Settlement Class Counsel;
- d) appointment of Plaintiffs as Class Representatives;
- e) approval of a customary form of Short Notice to be mailed to Settlement Class Members in a form substantially similar to the one attached as **Exhibit A** to this Agreement;
- f) approval of the Long Notice to be posted on the Settlement Website in a form substantially similar to the one attached as **Exhibit B** to this Agreement, which, together with the Short Notice, shall include a fair summary of the parties' respective litigation positions, the general terms of the settlement set forth in the Settlement Agreement, instructions for how to object to or opt-out of the settlement, the process and instructions for making claims to the extent contemplated herein, and the date, time and place of the Final Fairness Hearing; and
- g) appointment of RG2 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 All fees and costs 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 shall be paid from the Settlement Fund. Attorneys' fees, costs, and expenses of Settlement Class Counsel, and service awards to Class Representatives, as approved by the Court, shall also be paid from the Settlement Fund. 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, TABS shall provide the Claims Administrator with the name and last known physical address of each Settlement Class Member (collectively, “Class Member Information”) that TABS 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.

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



1 shall include, in .pdf format and available for download, the following: (i) the  
2 Long Notice; (ii) the Claim Form; (iii) the Preliminary Approval Order; (iv)  
3 this Settlement Agreement; (v) the operative Amended Class Action  
4 Complaint filed in the Litigation; and (vi) any other materials agreed upon by  
5 the Parties and/or required by the Court. The Settlement Website shall provide  
6 Class Members with the ability to complete and submit the Claim Form  
7 electronically.

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

- 13 • To all class members for whom TABS is in possession of a  
14 postal address. Before any mailing under this Paragraph  
15 occurs, the Claims Administrator shall run the postal  
16 addresses of Settlement Class Members through the United  
17 States Postal Service (“USPS”) National Change of Address  
18 database to update any change of address on file with the  
19 USPS;
- 20 • in the event that a mailed Short Notice is returned to the Claims  
21 Administrator by the USPS because the address of the  
22 recipient is no longer valid, and the envelope contains a  
23 forwarding address, the Claims Administrator shall re-send  
24 the Short Notice to the forwarding address within seven (7)  
25 days of receiving the returned Short Notice;
- 26 • in the event that subsequent to the first mailing of a Short Notice,  
27 and at least fourteen (14) days prior to the Opt-Out and  
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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 until the Claims Deadline;
- 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
- f) Contemporaneously with seeking Final Approval of the Settlement, Proposed Settlement Class Counsel and TABS shall cause to be filed with the Court an appropriate affidavit or declaration with respect to complying with this provision of notice.

3.3 The Short Notice, Long Notice, and other applicable communications to the Settlement Class may be adjusted by the Claims Administrator, respectively, in consultation and agreement with

1 the Settling Parties, as may be reasonable and not inconsistent with such approval. The Notice  
2 Program shall commence within thirty (30) days after entry of the Preliminary Approval Order and  
3 shall be completed within forty-five (45) days after entry of the Preliminary Approval Order.

4 3.4 Proposed Settlement Class Counsel and TABS' counsel shall request that after notice is  
5 completed, the Court hold a hearing (the "Final Fairness Hearing") and grant final approval of the  
6 settlement set forth herein.

7 3.5 TABS will also cause the Claims Administrator to provide notice to the relevant state  
8 and federal governmental officials as required by the Class Action Fairness Act. The cost of providing  
9 such notice shall be paid from the Settlement Fund.

#### 10 **4. Opt-Out Procedures**

11 4.1 Each Person wishing to opt-out of the Settlement Class shall individually sign and  
12 timely submit written notice of such intent to the designated Post Office box established by the Claims  
13 Administrator. The written notice must clearly manifest a Person's intent to opt-out of the Settlement  
14 Class. To be effective, written notice must be postmarked no later than sixty (60) days after the Notice  
15 Commencement Date.

16 4.2 All Persons who submit valid and timely notices of their intent to opt-out of the  
17 Settlement Class, as set forth above, referred to herein as "Opt-Outs," shall not receive any benefits of  
18 and/or be bound by the terms of this Settlement Agreement. All Persons falling within the definition of  
19 the Settlement Class who do not opt-out of the Settlement Class in the manner set forth above shall be  
20 bound by the terms of this Settlement Agreement and Judgment entered thereon.

21 4.3 In the event that within ten (10) days after the Opt-Out Date as approved by the Court,  
22 there have been more than 10 timely and valid Opt-Outs submitted, TABS may, by notifying Proposed  
23 Settlement Class Counsel and the Court in writing, void this Settlement Agreement. If TABS voids the  
24 Settlement Agreement pursuant to this paragraph, TABS shall be obligated to pay all settlement  
25 expenses already incurred, excluding any attorneys' fees, costs, and expenses of Proposed Settlement  
26 Class Counsel and service awards.

#### 27 **5. Objection Procedures**

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1 Plaintiffs, each and all of the Settlement Class Members, Proposed Settlement Class Counsel, of all  
2 claims, including Unknown Claims, based upon or arising out of the institution, prosecution, assertion,  
3 settlement, or resolution of the Litigation or the Released Claims, except for enforcement of the  
4 Settlement Agreement. Any other claims or defenses TABS may have against such Persons including,  
5 without limitation, any claims based upon or arising out of any retail, banking, debtor-creditor,  
6 contractual, or other business relationship with such Persons that are not based upon or do not arise out  
7 of the institution, prosecution, assertion, settlement, or resolution of the Litigation or the Released  
8 Claims are specifically preserved and shall not be affected by the preceding sentence.

9 6.3 Notwithstanding any term herein, neither TABS nor its Related Parties shall have or  
10 shall be deemed to have released, relinquished or discharged any claim or defense against any Person  
11 other than Representative Plaintiff, each and all of the Settlement Class Members, and Proposed  
12 Settlement Class Counsel.

13 **7. Plaintiff's Counsel's Attorneys' Fees, Costs, and Expenses; Service Award to**  
14 **Representative Plaintiffs**

15 7.1 The Settling Parties did not discuss the payment of attorneys' fees, costs, expenses  
16 and/or service award to Plaintiffs, as provided for in ¶¶ 7.2 and 7.3, until after the substantive terms of  
17 the settlement had been agreed upon, other than that the settlement would include reasonable  
18 attorneys' fees, costs, expenses, and a service award to Plaintiff from the Settlement Fund as ordered  
19 by the Court.

20 7.2 No later than 45 days after the Notice Deadline, Proposed Settlement Class Counsel  
21 will seek, and TABS has agreed not to oppose, an order from the Court awarding up to one-third of the  
22 Settlement Fund to Proposed Settlement Class Counsel for attorneys' fees, as well as any costs and  
23 expenses of the Litigation. Proposed Settlement Class Counsel, in their sole discretion, shall allocate  
24 and distribute the amount of attorneys' fees, costs, and expenses awarded by the Court among  
25 Plaintiff's Counsel.

26 7.3 Proposed Settlement Class Counsel will seek, and TABS has agreed not to oppose, an  
27 order from the Court awarding a \$5,000 service award to the Class Representative in this case.

28 7.4 If awarded by the Court, the Settlement Administrator shall pay the attorneys' fees,

1 costs, expenses, and service awards to Plaintiff out of the Settlement Fund, as set forth above in ¶¶ 7.2,  
2 7.3, and 7.4, within 30 days after the Effective Date. Proposed Settlement Class Counsel shall  
3 thereafter distribute the award of attorneys' fees, costs, and expenses among Plaintiff's Counsel and  
4 service award to Plaintiff consistent with ¶¶ 7.2 and 7.3.

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

### 13 **8. Administration of Claims**

14 8.1 The Claims Administrator shall administer and calculate the claims submitted by  
15 Settlement Class Members. Proposed Settlement Class Counsel and counsel for TABS shall be given  
16 reports as to both claims and distribution, and have the right to review and obtain supporting  
17 documentation and challenge such reports if they believe them to be inaccurate or inadequate. The  
18 Claims Administrator's and claims referee's, as applicable, determination of whether a Settlement  
19 Claim is a Valid Claim shall be binding, subject to the dispute resolution process set forth herein. All  
20 claims agreed to be paid in full shall be deemed valid.

21 8.2 Checks for Valid Claims and/or compensation from the Settlement Remainder shall be  
22 mailed and postmarked within sixty (60) days of the Effective Date, or within thirty (30) days of the  
23 date that the claim is approved, whichever is later.

24 8.3 Upon the mailing of checks as set forth in ¶ 8.2, all Settlement Class Members shall be  
25 forever barred from receiving any payments or benefits pursuant to the settlement set forth herein, but  
26 will in all other respects be subject to, and bound by, the provisions of the Settlement Agreement, the  
27 releases contained herein and the Judgment.  
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1 Agreement to the contrary, no order of the Court or modification or reversal on appeal of any order  
2 reducing the amount of attorneys' fees, costs, expenses, and/or service awards shall constitute grounds  
3 for cancellation or termination of the Settlement Agreement. Further, notwithstanding any statement in  
4 this Settlement Agreement to the contrary, TABS shall be obligated to pay amounts already billed or  
5 incurred for costs of notice to the Settlement Class, Claims Administration, and Dispute Resolution  
6 pursuant to the above and shall not, at any time, seek recovery of same from any other party to the  
7 Litigation or from counsel to any other party to the Litigation.

8 **10. Miscellaneous Provisions**

9 10.1 The Settling Parties (i) acknowledge that it is their intent to consummate this  
10 agreement; and (ii) agree to cooperate to the extent reasonably necessary to effectuate and implement  
11 all terms and conditions of this Settlement Agreement, and to exercise their best efforts to accomplish  
12 the terms and conditions of this Settlement Agreement.

13 10.2 The Settling Parties intend this settlement to be a final and complete resolution of all  
14 disputes between them with respect to the Litigation. The settlement compromises claims that are  
15 contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or  
16 defense. The Settling Parties each agree that the settlement was negotiated in good faith by the Settling  
17 Parties, and reflects a settlement that was reached voluntarily after consultation with competent legal  
18 counsel. The Settling Parties reserve their right to rebut, in a manner that such party determines to be  
19 appropriate, any contention made in any public forum that the Litigation was brought or defended in  
20 bad faith or without a reasonable basis. It is agreed that no Party shall have any liability to any other  
21 Party as it relates to the Litigation, except as set forth herein.

22 10.3 Neither the Settlement Agreement, nor the settlement contained herein, nor any act  
23 performed or document executed pursuant to or in furtherance of the Settlement Agreement or the  
24 settlement (i) is or may be deemed to be or may be used as an admission of, or evidence of, the  
25 validity or lack thereof of any Released Claim, or of any wrongdoing or liability of any of the  
26 Released Persons; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of,  
27 any fault or omission of any of the Released Persons in any civil, criminal or administrative  
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1 proceeding in any court, administrative agency or other tribunal. Any of the Released Persons may file  
2 the Settlement Agreement and/or the Judgment in any action that may be brought against them or any  
3 of them in order to support a defense or counterclaim based on principles of *res judicata*, collateral  
4 estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of claim  
5 preclusion or issue preclusion or similar defense or counterclaim.

6 10.4 The Settlement Agreement may be amended or modified only by a written instrument  
7 signed by or on behalf of all Settling Parties or their respective successors-in-interest.

8 10.5 This Agreement contains the entire understanding between TABS and Plaintiff  
9 regarding the payment of the Litigation settlement and supersedes all previous negotiations,  
10 agreements, commitments, understandings, and writings between TABS and Plaintiff in connection  
11 with the payment of the Litigation settlement. Except as otherwise provided herein, each party shall  
12 bear its own costs.

13 10.6 Proposed Settlement Class Counsel, on behalf of the Settlement Class, is expressly  
14 authorized by Plaintiffs to take all appropriate actions required or permitted to be taken by the  
15 Settlement Class pursuant to the Settlement Agreement to effectuate its terms, and also are expressly  
16 authorized to enter into any modifications or amendments to the Settlement Agreement on behalf of  
17 the Settlement Class which they deem appropriate in order to carry out the spirit of this Settlement  
18 Agreement and to ensure fairness to the Settlement Class.

19 10.7 Each counsel or other Person executing the Settlement Agreement on behalf of any  
20 party hereto hereby warrants that such Person has the full authority to do so.

21 10.8 The Settlement Agreement may be executed in one or more counterparts. All executed  
22 counterparts and each of them shall be deemed to be one and the same instrument. A complete set of  
23 original executed counterparts shall be filed with the Court.

24 10.9 The Settlement Agreement shall be binding upon, and inure to the benefit of, the  
25 successors and assigns of the parties hereto.

26 10.10 The Court shall retain jurisdiction with respect to implementation and enforcement of  
27 the terms of the Settlement Agreement, and all parties hereto submit to the jurisdiction of the Court for  
28



purposes of implementing and enforcing the settlement embodied in the Settlement Agreement.

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

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

10.13 Cashing a settlement check is a condition precedent to any Settlement Class Member's right to receive settlement benefits. All settlement checks shall be void ninety (90) days after issuance and shall bear the language: "This check must be cashed within ninety (90) days, after which time it is void." If a check becomes void, the Settlement Class Member shall have until six months after the Effective Date to request re-issuance. If no request for re-issuance is made within this period, the Settlement Class Member will have failed to meet a condition precedent to recovery of settlement benefits, the Settlement Class Member's right to receive monetary relief shall be extinguished, and TABS shall have no obligation to make payments to the Settlement Class Member for expense reimbursement or any other type of monetary relief. The same provisions shall apply to any re-issued check. For any checks that are issued or re-issued for any reason more than one hundred eighty (180) days from the Effective Date, requests for re-issuance need not be honored after such checks become void.

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

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

**AGREED TO BY:**

Kevin Dyer

Kevin Gregerson

Toshiba America Business Solutions, Inc.

By: Raina Borrelli

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

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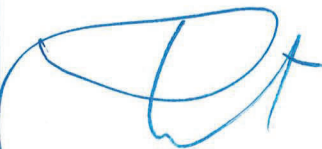
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**AGREED TO BY:**

Kevin Gregerson



Toshiba America Business Solutions, Inc.

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

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



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— EXHIBIT A —