

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

JOHN HUCK, TOM JONES, RAYMOND REISIG,
REUBEN REISIG, LESTER OLSON, FORREST
HICKMAN, JOHN WATSON, THOMAS SLUSHER,
EUGENE GALLEGOS and JOHN MORRIS,
individually and on behalf of all others similarly
situated,

Plaintiffs,

vs.

UNION PACIFIC CORPORATION and UNION
PACIFIC RAILROAD COMPANY,

Defendants.

Case No. 06 CV 464

DAVID BLACKMORE, JERRY EUBANK,
JEFFREY KLAPPRODT, JACOB MOORE, CHRIS
NELSON, GEORGE OWEN, WILLIAM J. PLATT,
WILLIAM PRICE, and CHRIS TUCKER,

Plaintiffs,

vs.

UNION PACIFIC RAILROAD,

Defendant.

Consolidated under
Case No. CV 464

(originally No. 06 CV 548)

DAVID BOILES, RONALD HART, J.T. CULWELL,
JR., JAMES BOSE, DON BRENT JOHNSON,
TYLER GENE JONES, JACK D. LUGE, and
WILLIAM BOSLEY, individually and on behalf of all
similarly situated Union Pacific Employees, Former
Employees and Contractors,

Plaintiffs,

vs.

UNION PACIFIC CORPORATION a/k/a UNION
PACIFIC,

Defendant.

Consolidated under
Case No. CV 464

(originally No. 06 CV 689)

CLASS ACTION SETTLEMENT AGREEMENT

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CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Agreement” or “Settlement Agreement”) is entered into as of July 24, 2007, and is between and among Defendants, Union Pacific Corporation and Union Pacific Railroad Company (collectively “Union Pacific”) (as defined in Paragraph 1.5), on the one hand, and Plaintiffs, John Huck, Tom Jones, Raymond Reisig, Reuben Reisig, Lester Olson, Forrest Hickman, John Watson, Thomas Slusher, Eugene Gallegos, John Morris, David Blackmore, Jerry Eubank, Jeffrey Klapprodt, Jacob Moore, Chris Nelson, George Owen, William Platt, William Price, Chris Tucker, David Boiles, Ronald Hart, J.T. Culwell, Jr., James Bose, Don Johnson, Tyler Jones, Jack D. Luge, and William Bosley (“Class Plaintiffs”) (as defined in Paragraph 1.2), on behalf of themselves and the Settlement Class (as defined in Paragraphs 1.9 and 4), on the other hand. This Settlement Agreement memorializes the settlement between the parties (the “Settlement”).

RECITALS

A. Three separate lawsuits have been filed against Union Pacific in connection with the theft or loss of Union Pacific employees’ computers or mass storage devices. (These incidents are collectively referred to as the “Data Breach Incidents” as defined in Paragraph 1.4). More specifically, in each of the Data Breach Incidents, computers or mass storage devices of Union Pacific and/or its employees or contractors were lost or stolen, and those computers or mass storage

devices are believed (based on Union Pacific's investigation) to contain the personal information, including the names and Social Security Numbers of approximately 43,507 current and former Union Pacific employees from across the United States. In response to each of these Data Breach Incidents, Union Pacific sent a letter to every current and former Union Pacific employee whose personal information Union Pacific determined may have been contained in one of the computers or mass storage devices that was lost or stolen in a Data Breach Incident, and in that letter Union Pacific further offered to provide identity theft protection by offering twelve months of a credit monitoring product through Equifax, as well as identity theft insurance protection with no deductible, all at no charge to the affected employees. Each of these three lawsuits, which have now been consolidated, and each of the Data Breach Incidents, are the subject of this Settlement Agreement.

B. The *Blackmore* Case. On June 28, 2006, a group of Plaintiffs (the "*Blackmore* Plaintiffs") filed a lawsuit against Union Pacific Railroad in Iowa state court, captioned *Blackmore v. Union Pacific Railroad*, Fourth Judicial District Court, Pottawattamie County, Iowa, Case No. 04781 LACV 92504. On July 19, 2006, Union Pacific removed that lawsuit to the United States District Court for the Southern District of Iowa, where it was assigned case number 06-CV-0023. On August 10, 2006, the Court granted Union Pacific's motion to

transfer venue to the United States District Court for the District of Nebraska pursuant to 28 U.S.C. §1404(a), where it was assigned case number 06-CV-548. The Complaint in that case alleges negligence, breach of implied contract, emotional distress, conversion, breach of fiduciary duty, and breach of the right to privacy. It is brought on behalf of a class of all individuals who were allegedly harmed by Union Pacific's failure to safeguard confidential employee information.

C. The Huck Case. On July 5, 2006, a group of Plaintiffs (the "*Huck* Plaintiffs") filed a lawsuit against Union Pacific in the United States District Court for the District of Nebraska, in Omaha, captioned *Huck, et al. v. Union Pacific Corp. et al.*, Case No. 8:06-CV-464. The complaint alleges negligence, unfair and deceptive acts and practices, and breach of the right to privacy, and is brought on behalf of a class defined as all Union Pacific current and former employees as of the date of commencement of the action and whose personal information was in the computer stolen from Union Pacific on or about April 29, 2006.

D. The Boiles Case. On July 14, 2006, a group of Plaintiffs (the "*Boiles* Plaintiffs") filed a lawsuit in the United States District Court for the Western District of Oklahoma, captioned *Boiles v. Union Pacific Corporation*, Case No. 5:06-759-JH. That lawsuit also alleges that Union Pacific acted negligently in failing to protect employees' confidential information. The case is brought on behalf of a class defined as "all current and former employees and contractors of

Union Pacific whose confidential, proprietary and personal information, including without limitations names, social security numbers (“SSN”) and/or dates of birth (“DOB”), was lost or stolen along with a Union Pacific employee’s personal computer on or about April 29, 2006.” On October 30, 2006, the *Boiles* court entered an order transferring that case to the District of Nebraska pursuant to 28 U.S.C. § 1404(a), where it was assigned case number 06 CV 689. The complaint in *Boiles* was amended twice to add additional named Plaintiffs.

E. After the filing of *Blackmore*, *Huck*, and *Boiles*, certain of the plaintiffs in those cases received letters from Union Pacific notifying them that they were the subject of additional Data Breach Incidents (as defined below).

F. On October 18, 2006, the *Huck* Plaintiffs and Union Pacific filed motions to consolidate the three lawsuits in the District of Nebraska. On December 7, 2006, the Court granted those motions and consolidated the three lawsuits. The consolidated lawsuits are sometimes referred to herein collectively as the “Action.” All named Plaintiffs and Defendants in the suits are sometimes collectively referred to herein as the “Parties.”

G. At a hearing on December 7, 2006, the parties apprised the Court that they intended to submit the dispute to non-binding mediation. As a result, the Court stayed the balance of the case pending the mediation. That mediation took place in Omaha, Nebraska, on February 2, 2007.

H. Union Pacific believes that the Class Plaintiffs' factual and legal allegations are incorrect and specifically denies all liability to Class Plaintiffs and the Settlement Class. In communications with Class Plaintiffs' counsel, Union Pacific has raised a number of defenses to the claims asserted and will vigorously defend this litigation in the event the Settlement is not approved by the Court. Among other things, Union Pacific has argued that there is no evidence that the Data Breach Incidents resulted in any instances of actual identity theft or other cognizable harm to the Class Plaintiffs or the Settlement Class, and that consequently all of the claims of the Class Plaintiffs and the Settlement Class are deficient because no Class Plaintiffs or Settlement Class member will be able to establish damages proximately caused by a Data Breach Incident.

I. Class Plaintiffs believe that their factual and legal allegations are correct and specifically deny that any of their claims lack merit. They intend to vigorously pursue this litigation in the event the Settlement is not approved by the Court.

J. Settlement negotiations, including a full-day mediation before an independent mediator, have taken place between Settlement Class Counsel (as defined in Paragraph 1.10) and Union Pacific's counsel with the participation of the parties. During the mediation, the parties reached agreement on all the principal terms of relief for the Settlement Class before discussing any payment of

fees or expenses to Class Counsel or the Class Plaintiffs. This Settlement Agreement, subject to the approval of the Court, contains all the terms of the Settlement agreed to between Union Pacific and the Class Plaintiffs individually and on behalf of the Settlement Class. Class Plaintiffs have agreed to and support the terms of this Settlement.

K. After extensive fact investigation and discussions among counsel, including the full-day mediation, Union Pacific and the Class Plaintiffs, on their own behalf and on behalf of the Settlement Class as defined herein, have agreed to settle the Actions to avoid the risk and uncertainty inherent in any litigation. To that end, the parties have agreed on a provisional Settlement Class. Accordingly, as soon as practicable after the execution of this Agreement, Class Plaintiffs will move the Court to certify a Settlement Class consisting of all persons throughout the United States whom Union Pacific notified by letter that his/her name and Social Security Number was believed to have been contained on a Union Pacific computer or Union Pacific mass storage device that was lost or stolen between April 1, 2006 and January 31, 2007 in one of the Data Breach Incidents (as defined below in Paragraph 1.4).

L. Plaintiffs will also seek to have Class Plaintiffs, John Huck, Tom Jones, Raymond Reisig, Reuben Reisig, Lester Olson, Forrest Hickman, John Watson, Thomas Slusher, Eugene Gallegos, John Morris, David Blackmore, Jerry

Eubank, Jeffrey Klapprodt, Jacob Moore, Chris Nelson, George Owen, William Platt, William Price, Chris Tucker, David Boiles, Ronald Hart, J.T. Culwell, Jr., James Boese, Don Johnson, Tyler Jones, Jack Luge, and William Bosley, appointed as the representatives of the Settlement Class, and Robert O'Connor, Ryan Sewell, Robert Pahlke, Clifford Cantor, Michael Perri, and Douglas Todd appointed as class counsel ("Class Counsel").

M. Class Counsel have conducted and continue to conduct a thorough investigation and evaluation of the facts and law relating to the matters set forth in the Action. Class Counsel believe that, based on their investigation and analysis, they are in a position to fashion appropriate class relief by settlement with Union Pacific.

N. The parties wish to memorialize the complete and full terms of the Settlement. The parties propose to settle the claims in accordance with the terms, provisions and conditions of this Settlement Agreement as set forth below, which Class Counsel believes are fair, reasonable and adequate, and beneficial to and in the best interests of Class Plaintiffs and the Settlement Class.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the Parties hereby agree as follows:

DEFINITIONS

1. **Key Definitions.** The following definitions apply to this Agreement:

1.1 The “**Actions**” means the civil actions captioned: (i) *Blackmore v. Union Pacific Railroad*, Case No. 8:06-cv-00548-LES-TDT, which was filed on July 28, 2006, and which is now pending in the United States District Court for the District of Nebraska; (ii) *Huck v. Union Pacific Corporation*, No. 8:06-cv-464-LES-TDT, which was filed on July 5, 2006, in the United States District Court for the District of Nebraska; and (iii) *Boiles v. Union Pacific Corporation*, Case No. 8:06-cv-00689-LES-TDT, which was filed on July 14, 2006, and which is now pending in the United States District Court for the District of Nebraska.

1.2 “**Class Plaintiffs**” means the named plaintiffs in the Actions, which are now pending in the United States District Court for the District of Nebraska.

1.3 “**Court**” means the United States District Court for the District of Nebraska.

1.4 “**Data Breach Incident**” refers to one of the following incidents in which a Union Pacific computer (or a computer used by a Union Pacific employee) or a Union Pacific mass storage device (or a mass storage device used by a Union Pacific employee) was lost or stolen, and such computer or mass storage device is believed (based on Union Pacific’s investigation) to have contained the names and Social Security Numbers of current and/or former employees of Union Pacific:

- April 29, 2006 – A Union Pacific employee’s laptop computer was stolen in Omaha Nebraska, and was never recovered. Union Pacific believes the laptop contained the names and Social Security Numbers of 32,121 current and former Union Pacific employees.
- July 2006 – A Union Pacific employee’s laptop computer was stolen in San Antonio, Texas, and never recovered. Union Pacific believes the laptop contained the names and Social Security Numbers of 227 current and former Union Pacific employees.
- September 2006 – A Federal Railroad Administration contractor’s computer was stolen in Atlanta, Georgia, and was never recovered. Union Pacific believes the computer contained the names and Social Security Numbers of 676 current and former Union Pacific employees.
- October 2006 – A Union Pacific employee lost a laptop computer in central Texas. Union Pacific believes the laptop contained the names and Social Security Numbers of 1,776 current and former Union Pacific employees.
- October 2006 – A Union Pacific employee’s laptop computer was stolen in San Antonio, Texas, and never recovered. Union Pacific believes the laptop contained the names and Social Security Numbers of 2,303 current and former Union Pacific employees.
- December 2006 – A Union Pacific employee’s laptop computer was stolen in Salt Lake City, Utah, and never recovered. Union Pacific believes the laptop contained the names and Social Security Numbers of 1,929 current and former Union Pacific employees.
- January 2007 – A Union Pacific employee’s laptop computer was stolen in Forest Hill, Texas, and never recovered. Union Pacific believes the laptop contained the names and Social Security Numbers of eight current and former Union Pacific employees.

- January 2007 – A Union Pacific employee misplaced USB memory drive (or “memory stick”), in St. Charles, Illinois. The USB memory drive was recovered a short period later. Union Pacific believes the USB memory drive contained the names and Social Security Numbers of 4,467 current and former Union Pacific employees.

In response to each of these Data Breach Incidents, Union Pacific contends it has previously provided written notice to the individuals whose personal information (such as a Social Security Number) Union Pacific determined may have been contained on the computer or mass storage device. “**Data Breach Incidents**” refers collectively to each Data Breach Incident described above.

1.5 “**Defendants**” means Union Pacific Corporation and Union Pacific Railroad Company, their predecessors and successors in interest, any of their present or former parents, subsidiaries, divisions, affiliates, officers, directors, employees, trustees, principals, attorneys, agents, representatives, sales associates, distributors, vendors, shareholders, insurers and partners, excluding any member of the Settlement Class (as defined below in Paragraphs 1.9 and 4).

1.6 The “**Effective Date**” means the date on which a Final Order (as defined below) is entered by the Court approving this Settlement without modification unless expressly agreed to by Union Pacific and Class Plaintiffs and the time for the filing of any appeals has expired or, if there are appeals, approval of the settlement and judgment has been affirmed in all respects by the appellate

court of last resort to which such appeals have been taken and such affirmances are no longer subject to further appeal or review.

1.7 “**Final Order**” means an order and final judgment of dismissal with prejudice entered with respect to the Settling Parties (as defined below), by which the Court approves this Settlement Agreement in all respects (except as may be modified as described in Paragraph 1.6).

1.8 “**Released Claims**” means those claims released in Paragraph 13 of this Agreement by the Settlement Class.

1.9 “**Settlement Class**” means the class defined in Paragraph 4 of this Agreement. “**Settlement Class Member**” means a member of the Settlement Class who does not opt out of the Settlement Class in accordance with the procedures set forth herein.

1.10 “**Settlement Class Counsel**” or “**Class Counsel**” means Robert E. O’Connor, Jr., Ryan M. Sewell, Robert G. Pahlke, Clifford A. Cantor, Michael R. Perri, and Douglas M. Todd.

1.11 “**Settling Parties**” means the Class Plaintiffs, all Settlement Class Members who do not exclude themselves from the Settlement, and Union Pacific.

TERMS AND CONDITIONS OF SETTLEMENT

2. **Benefit to Plaintiffs.** Class Plaintiffs and Settlement Class Counsel have concluded, under the circumstances and considering the pertinent facts and applicable law, that it is in Class Plaintiffs' best interests and in the best interests of the Settlement Class to enter into this Settlement Agreement to avoid the uncertainties of litigation and to ensure benefits to Class Plaintiffs and all members of the Settlement Class. Class Plaintiffs and Settlement Class Counsel consider this Settlement Agreement to be fair, reasonable, and adequate and in the best interests of the members of the Settlement Class.

3. **No Admission of Liability.** By entering into this Agreement, the Parties agree that Union Pacific is not admitting any liability to the Class Plaintiffs, the Settlement Class, or any other person or entity, and Union Pacific expressly denies all such liability. The Parties' sole motivation for entering into this Settlement Agreement is to dispose expeditiously of the claims that have been asserted in the Action by settlement and compromise rather than incur the expense and uncertainty of protracted litigation. No portion of this Agreement may be admitted into evidence in any action, except as required to enforce this Agreement and/or to cease or enjoin other litigation.

4. **Settlement Class Definition.** Plaintiffs shall propose, and Defendants shall join or not oppose, for settlement purposes only, that the District

Court certify a settlement class under Rule 23(b)(3) of the Federal Rules of Civil Procedure, defined as:

All current and former employees of Union Pacific throughout the United States whom Union Pacific previously notified by letter that his/her name and Social Security Number may have been contained on a Union Pacific computer or Union Pacific mass storage device that was lost or stolen in a Data Breach Incident between April 1, 2006, and January 31, 2007.

Excluded from the class are: (i) all judicial officers in this Court and their families through the third degree of relationship; and (ii) all elected officers of Defendants and Members of the Boards of Directors of Defendants.

5. **Summary of Defendants' Obligations.** Union Pacific shall provide to the Settlement Class benefits summarized as follows:

5.1 **Programmatic Relief.** As described in Paragraph 6.2 below, each Settlement Class Member will benefit from Union Pacific's agreement that Union Pacific take certain affirmative measures (the "Affirmative Relief") to further safeguard confidential information of current and former employees so as to reduce the risk of future data breaches and the consequences of such incidents or similar incidents.

5.2 **Streamlined Arbitration Process for Resolving Identity Theft Claims.** As described in Paragraph 6.1 below, each Settlement Class Member will have the opportunity to participate in a streamlined and expedited arbitration process ("Arbitration") for resolving claim(s) that the Settlement Class

Member sustained recoverable losses (compensatory damages) as a direct result of a Data Breach Incident and potentially receive a monetary award through such process.

5.3 Costs of Administration. In addition to the costs of the Identity Theft Claim Fund (as defined in Paragraph 6.1(m)) and the Affirmative Relief, Union Pacific shall pay the expenses associated with administering this Settlement, including any notice relating to the Settlement, processing of claims, disbursement of consideration, future Arbitration charges, and other administrative expenses. In the event this Agreement receives preliminary but not final approval, and expenses are incurred by Union Pacific, payment of those expenses shall remain the sole obligation of Union Pacific.

5.4 Attorneys' Fees. Union Pacific will pay Class Counsel's attorneys' fees and expenses, as set forth in Paragraph 10.

6. Details of Relief to the Settlement Class. Union Pacific shall provide the relief to the Settlement Class in the following manner:

6.1 Simplified Arbitration Process for Resolving Identity Theft Claims. Any Settlement Class Members who contends that he or she has incurred actual out-of-pocket damages (compensatory damages) as a result of identity theft attributable to a Data Breach Incident may elect to seek payment (a "Monetary Payment") for a portion of that Class Member's demonstrable compensatory

damages through an expedited Arbitration process as described herein. Arbitration will be the exclusive remedy for Settlement Class Members to seek compensation for any of the Released Claims.

6.1(a) In order to elect Arbitration, a Settlement Class Member must submit a valid Identity Theft Claim Form, a copy of which will be made available to Settlement Class Members until the Claim Termination Date (as defined in Paragraph 6.1(j)) in the manner described herein. (A Settlement Class Member who submits an Identity Theft Claim Form may be referred to herein as a “Claimant.”) The Identity Theft Claim Form must be completed in full according to the instructions provided on the form and signed under penalty of perjury by the Claimant. In order to be valid, a properly completed Identity Theft Form must be

- submitted on or before the Fund Termination Date (as defined in Paragraph 6.1(j)),
- copies of the Identity Theft Claim Form must be submitted to the individuals listed below in this paragraph, and
- the Identity Theft Claim Form must, in accordance with the instructions on that Form, be accompanied by: (i) a letter (the “Claim Explanation Letter”) of no more than ten (10) pages in length, signed under penalty of perjury, setting forth fully the basis for the claim that the Claimant has been the victim of identity theft; how and when the

Claimant became aware of the claimed identity theft; the results of any investigation by police or law enforcement into the alleged identity theft, if any; a description of each item of compensatory damages claimed by the Claimant on account of the alleged identity theft; in the case of credit being opened in the Claimant's name without the Claimant's permission, a description of all attempts by the Claimant to dispute the Claimant's responsibility; and an explanation that the Claimant actually incurred the damages claimed and, briefly, the time frame in which the Claimant believes the identity theft occurred; and (ii) any documents the Claimant wishes to have considered by the Arbitrator. The Identity Theft Claim Form, Claim Explanation Letter, and any accompanying documents must be mailed to both of the following on or before the Claim Termination Date (as defined in Paragraph 6.1(j)):

Recipients

Werner Institute for Negotiation and Dispute Resolution
Creighton University School of Law
2500 California Plaza
Omaha, Nebraska 68178

-and-

Union Pacific Data Breach
Settlement Claims Administration¹

¹ The address will be provided on the Identify Theft Claim Form.

Upon receipt of the aforementioned documents, the Arbitrator will provide notice to the Claimant and Union Pacific of the Arbitrator's receipt of the claim.

6.1(b). If a Claimant submits a valid Identity Theft Claim Form and Claim Explanation Letter, a presumption (rebuttable only by clear and convincing evidence) will be created that any identity theft experienced by the Claimant within the relevant time period was the result of a Data Breach Incident and that any compensatory damages attributable to identity theft were proximately caused by a Data Breach Incident.

6.1(c). If the Identity Theft Claim Form is not complete or does not comply with the instructions on that Form or the requirements of this Agreement, then it shall be deemed invalid and the Arbitrator shall return it to the Claimant with an explanation of why the Form is deficient. Any such deficient Identity Theft Claim Form can be resubmitted at any time prior to the Fund Termination Date, and the letter from the Arbitrator shall so advise the Claimant.

6.1(d). The expedited Arbitration will be presided over by an arbitrator to be agreed to by the Parties, subject to approval of the Court (the "Arbitrator"). The decision of the Arbitrator will be final, binding, and non-appealable.

6.1(e). Defendants may submit to the Arbitrator, within thirty (30) days of receipt of an Identity Theft Claim Form, a Claim Explanation

Letter, and the aforementioned documents: (i) a letter (the “Response Letter”) of no more than ten (10) pages in length setting forth Defendants’ defenses to the claims set forth by the Claimant, which defenses may include that the identity theft was not the result of a Data Breach Incident or that the damages sought by the Claimant were not proximately caused by a Data Breach Incident (subject to the presumption against such defenses, which may be rebutted only by clear and convincing evidence) but which may not include any statute of limitations; and (ii) any and all documents that Defendants wish to have considered by the Arbitrator. Defendants may also submit to the Arbitrator a comprehensive memorandum of law addressing common issues raised by the claims of multiple Settlement Class Members seeking arbitration of their claims. For good cause shown and under exceptional circumstances, Union Pacific may request an extension not to exceed thirty (30) additional days to investigate a claim submitted to Arbitration. Rather than filing a response to a claim, Defendants may decide simply to pay fifty-percent (50%) of the relief sought by the Claimant. In those circumstances, Defendants shall so notify the Arbitrator and the Claimant of the payment, no further proceedings shall occur regarding that claim, and Union Pacific’s payment will constitute final relief with respect to that Claim.

6.1(f). In the event Defendants submit a Response Letter, the Claimant may submit to the Arbitrator within thirty (30) days after the

Claimant receives a copy of the Defendants' Response Letter: (i) an additional letter (the "Reply Letter") of no more than three (3) pages in length submitted under penalty of perjury setting forth the Claimant's reply to Defendants' Response Letter; and (ii) any and all additional documents or other evidence the Claimant wishes to have considered by the Arbitrator.

6.1(g). The Arbitrator shall submit its ruling in writing to Defendants and the Claimant as soon as is practicable after the deadline for submitting a Reply Letter (regardless of whether a Reply Letter is submitted), but the Arbitrator will be asked to render its ruling in no event more than sixty (60) days after the deadline for submitting a Reply Letter. Defendants will be responsible for the Arbitrator's fees and costs. There will be no in-person hearing, but the Arbitrator may convene a brief telephonic conference at his or her discretion. The Arbitrator will:

- make the process simple and efficient from the perspective of the Claimant;
- treat Claims in a manner such that a Settlement Class Member submitting a Claim will not ordinarily have a need to hire a lawyer, and the Arbitrator will take that into account in examining and arbitrating the Claim;
- presume that properly shown damages are valid (not including fraudulent Claims), subject to Union Pacific having the opportunity to rebut that presumption by clear and convincing evidence; and
- presume that identity-theft damages are proximately caused by Union Pacific's Data Breach Incident(s), subject to Union

Pacific having the opportunity to rebut that presumption by clear and convincing evidence.

6.1(h). The Arbitrator may grant settlement compensation only on an individual basis. No joinder, request for class certification, or representative action may be made or granted by the Arbitrator. If the Arbitrator rules in favor of the Claimant, the amount awarded by the Arbitrator shall be fifty-percent (50%) of the actual compensatory damages established by the Claimant from identity theft. The Arbitrator shall not be permitted to award, and Settlement Class Members expressly agree to waive, any claim for consequential damages, punitive damages, attorneys' fees (except to the extent allowed under Paragraph 6.1(i)), injunctive relief, statutory awards or penalties, and any other damages other than those expressly permitted herein. Any Settlement Class Member who receives an award of damages from the Arbitrator will be entitled to an additional one (1) year of Equifax Credit Watch (or a similar product selected by Union Pacific in Union Pacific's sole discretion), which Union Pacific will pay for separately from the Identity Theft Claim Fund (as defined in Paragraph 6.1(m)).

6.1(i). Examples of compensatory damages for which payment can be sought from the Identity Theft Claim Fund, which are provided for illustration purposes only, are: (i) Claimant's actual out-of-pocket costs paid to a creditor (notwithstanding the Settlement Class Member's attempt to dispute said charges) for credit that was improperly opened in the Claimant's name as a result

of identity theft; and (ii) the cost of obtaining any documents reasonably required by the Settlement Class Member to report the identity theft or to dispute charges or credit opened in the Settlement Class member's name. Examples of financial expenses or damages for which payment cannot and will not be paid under this Settlement, which are provided for illustration purposes only, are: (i) the cost of credit monitoring services; (ii) the costs of an attorney hired by a Claimant or any administration services obtained by a Claimant in connection with actual or suspected identity theft (except that such attorney and legal expenses, if in a reasonable amount and reasonably incurred, can be paid under this Settlement if such expenses claimed do not exceed \$500 and are supported by an itemized invoice), except that a Claimant may not seek attorney and legal expenses in connection with hiring an attorney or administrator to pursue arbitration under this Agreement.; (iii) the costs of medical and/or health treatment, or other claimed damages, due to any anxiety, emotional distress, or medical condition(s) that the Settlement Class Member contends is attributable to identity theft or the fear of identity theft; and (iv) the value of a Settlement Class Member's time spent identifying or resolving identity theft issues.

6.1(j). **Time Period to Submit Claims.** Settlement Class Members can submit claims from the Effective Date of the Settlement until three years after Effective Date (the "**Claim Termination Date**"). Any claims filed by

Settlement Class Members after the Claim Termination Date will be rejected as untimely. Any claim filed by Settlement Class Members prior to the Claim Termination Date shall be processed and, if determined to be valid, shall be paid in accordance with the procedures specified herein.

6.1(k). Requirement of Exhaustion of Certain Remedies. In order for a Settlement Class Member to be eligible to recover damages in an Arbitration, the Settlement Class Member must establish that he or she has exhausted certain consumer remedies. In the case of credit that has been improperly opened in the Settlement Class Member's name, the Settlement Class Member must first dispute the account with the creditor and the three national credit bureaus (Equifax, Experian, and TransUnion). The Settlement Class Notice and the Identity Theft Claim Form will provide Settlement Class Members with instructions on how to dispute such items. In such case, an award of compensation in the Arbitration will only be available if the Settlement Class Member can establish that the creditor, merchant, or furnisher of the credit has not removed the disputed accounts/charges and/or the credit bureau(s) has not removed them from the Settlement Class Member's credit report. Ordinarily, such proof will require written documentation of communications with the creditor. In addition, in all instances of actual or suspected identity theft for which a Settlement Class Member submits a claim, the Settlement Class Member will be required to

establish that he or she has reported the identity theft to the local police and requested that the police prepare a report (regardless of whether the police take any action or prepare a police report). In addition, if a Settlement Class Member has insurance against identity theft, then in order for a Settlement Class Member to be eligible to recover damages in Arbitration, the Settlement Class Member must establish that an insurance claim was submitted, and any proceeds from that insurance will be a set-off to compensatory damages that can be claimed by a Settlement Class Member.

6.1(l). **Availability of Identity Theft Claim Forms.**

Union Pacific will make copies of the Identity Theft Claim Form available on its website and/or on the Settlement Website (defined in Paragraph 9, below) until the Claim Termination Date, and as otherwise agreed to by the Parties.

6.1(m). **Cap on Total Amount of Monetary Payments and on Individual Payments.** Union Pacific has agreed to make available up to a total of \$550,000 for Monetary Payments under the Settlement for Claims (the “**Identity Theft Claim Fund**”). The Parties and their counsel believe, based on the information available to them and their own factual investigations, that \$550,000 will be adequate to pay any monetary claims payment of Settlement Class Members. If, however, Settlement Class Members submit valid Identity Theft Claim Forms such that the \$550,000 being made available by Union Pacific

to pay such claims is depleted, then Union Pacific shall be under no obligation to pay any claims upon the depletion of the fund, and Settlement Class members who submit Identity Theft Claim Forms after the fund is depleted shall be entitled to no Monetary Payments under the Settlement. If at the time of the Claim Termination Date there are pending Identity Theft Claim Forms, and the payment of those claims in full would exhaust the remaining money available to pay claims under the Settlement, Monetary Payment Fund, then the payment of any such Monetary Payment claims shall be reduced pro rata. In no event, regardless of the number of valid Identity Theft Claim Forms, will Union Pacific be required to pay more than \$550,000 in payment of Claims. Further, under no circumstances will any Settlement Class Member individually be entitled to a Monetary Payment of more than \$25,000 regardless of the number or types of claims submitted by the Settlement Class Member.

6.1(n). **Undistributed Settlement Funds.** Any undistributed settlement funds will be retained by Union Pacific in consideration for the other terms herein.

6.1(o). **Distribution of and Terms Applicable to Monetary Benefits.** Within three months after the Effective Date, Union Pacific shall begin providing the above-referenced benefits. Each Settlement Class Member is responsible for notifying Union Pacific of a change in address,

telephone number, or name. Union Pacific may hire one or more vendors to help administer the Settlement.

6.1(p). Distribution of Funds: Checks Not Cashed

Within Six (6) Months. If a Settlement Class Member receives a Monetary Payment after submitting a valid Identity Theft Claim Form and the check is not cashed within six (6) months, it shall be null and void and there shall be no further obligation to make payment to such Settlement Class Member. Such funds shall revert to Union Pacific, to again be part of the Identity Theft Claim Fund. Union Pacific will make one attempt to verify the correct address and re-mail any checks that are returned to it by the U.S. Postal Service. All checks sent to Settlement Class Members by Union Pacific that remain undeliverable shall also revert to Union Pacific.

6.2 Affirmative Relief Provided by Union Pacific.

6.2(a). All of the Affirmative Relief contemplated by this Settlement is expressly contingent upon the proposed Settlement receiving the Court's final approval, the Court entering the Final Order, the final settlement of these Actions, and the occurrence of the Effective Date. Defendants shall implement the following changes for a term of at least five (5) years from the Effective Date:

6.2(a)(i). As a general matter Union Pacific will cease using Social Security Numbers as a routine means of identifying its employees and will instead use Social Security Numbers only to the extent required by law (*e.g.*, for payroll or retirement purposes) or as required in the operations of Union Pacific's business (*e.g.*, new employee applications or licensing). In addition, Union Pacific will take the specific steps discussed below.

6.2(a)(ii). Access to Union Pacific's records containing Social Security Numbers will be restricted to employees with job duties and responsibilities that require access to such information (*e.g.*, for payroll or retirement purposes) or as otherwise required by law. Access by a particular employee will terminate when that employee's need for such access ends; and Union Pacific will instruct the employee to delete permanently any such records from all computers on which the employee stored the records.

6.2(a)(iii). Union Pacific's paper and electronic records containing Social Security Numbers will be maintained in the following manner. With respect to paper records or removable media containing Social Security Numbers, such paper records and removable media must be stored in a secure location, such as a locked desk or file cabinet or stored in a file room with restricted access, when not in use. Electronic records containing Social Security Numbers on file servers shall be stored in a secure directory or a folder with access restricted to the

employee(s) with job responsibilities that require access to such Social Security Numbers. In such instances, database and application “views” will be restricted so as to prevent access by employees whose job responsibilities do not require them to have access to Social Security Numbers. With respect to laptop computers, workstations, and shared network drives, Union Pacific has or will instruct its employees to modify any records containing Social Security Numbers to remove the Social Security Number, to delete the record in its entirety, or to move the record to a secure location on the network where it will be stored in accordance with the provisions of this paragraph. In addition, Union Pacific will implement full disk encryption for all data files stored on Union Pacific laptop computers, which will protect those files from unauthorized access.

6.2(b). The Parties recognize that because of Union Pacific’s historical reliance on Social Security Numbers as a means of employee identification, as well as the size of Union Pacific’s enterprise and the number of computers systems and computer users within Union Pacific, compliance with the terms of this Agreement, and with the Affirmative Relief in particular, will require the modification of many computer systems and user devices and that it could take as long as two and one-half years from the Effective Date for Union Pacific to be in compliance with the Affirmative Relief provisions of this Agreement. In that regard, the Parties have agreed that Union Pacific shall implement the Affirmative

Relief described above in as soon as is reasonably practicable, and no later than in accordance with following schedule:

(i) Access Restriction: Union Pacific will implement measures to restrict access to computer system applications in a manner consistent with an employee's job requirements on or before December 31, 2007;

(ii) Encryption: Union Pacific will implement encryption technology on its laptop computers on or before December 31, 2007;

(iii) Application Modifications: Union Pacific will complete its modification of its inventory of applications and all other uses of Social Security Numbers so that those applications and uses do not display Social Security Numbers to individuals unless those individuals have a legitimate business need to access such information on or before December 31, 2009 (as described in Paragraph 6.2(a)(i)); and

(iv) Internal Forms and Documentation: Union Pacific will cease using Social Security Numbers as a routine means of employee identification (except for payroll, tax, and new hire purposes) on internal documents or forms on or before December 31, 2008.

Notwithstanding the foregoing, all of the references to time periods with respect to completing the Affirmative Relief shall be suspended in their entirety upon any *force majeure*, including, without limitation, acts of God, fires, earthquakes, acts

of terror, acts of war (whether declared or undeclared), or intervention of any governmental authority. Specifically, upon any *force majeure*, such time periods shall be extended by the longer of either thirty (30) days or a reasonable time following consultation between Class Counsel and counsel for Union Pacific.

6.2(c). Union Pacific shall use its best reasonable efforts and procedures designed to ensure its compliance with the schedule for implementation of the Affirmative Relief terms. If, notwithstanding such efforts, Union Pacific believes it will not be able to comply with any time period for the Affirmative Relief in this Agreement, then Union Pacific may seek the consent of Class Counsel to extend the time period(s) for such compliance. In the event Union Pacific and Class Counsel agree to such an extension, then the extension will be provided to Union Pacific and presented to the Court in a stipulated order without further notice to the Settlement Class. In the event Class Counsel refuses to provide an extension of time after consultation with Union Pacific, then, after notice to Class Counsel, and upon good cause shown, Defendants may petition the Court for relief from or a continuance of any provision of the Affirmative Relief or this Agreement.

6.2(d). For purposes of the Affirmative Relief provisions of this Agreement, Union Pacific shall be deemed to be in compliance with this Agreement if Union Pacific is in substantial compliance with those Affirmative

Relief provisions. For purposes of this Agreement, “substantial compliance” shall mean that Union Pacific has engaged in commercially reasonable efforts to be in compliance with this Agreement taking into account the following: the risk of harm to employees or former employees from release or loss of their Social Security Numbers, the nature and purpose of this Settlement Agreement, the manner in which Union Pacific protects its own sensitive information, the size of Union Pacific’s enterprise, the number of computer users within Union Pacific, the number and types of different applications used by computer users within Union Pacific, technological issues encountered by Union Pacific in attempting to comply with the Affirmative Relief provisions of this Agreement regardless of whether such issues were reasonably foreseeable, and the staffing resources that Union Pacific has available or reasonably could make available.

6.2(e). The Court shall retain jurisdiction of the Actions for the purpose of interpretation of, compliance with, and enforcement of this Agreement, including enforcement of the affirmative relief herein.

6.2(f). Nothing in this Settlement or Settlement Agreement shall prevent the Defendants from complying with the law as it may exist now or in the future, or from making future changes to their computers and computer systems consistent with applicable statutes, statutory amendments, exemptions, regulations or case law precedent. Furthermore, nothing in this Settlement Agreement shall

prevent Defendants from complying with their obligations under state and federal law.

6.2(g). Relation to Other Agreements, Laws, and Interpretations. The Parties recognize that situations may arise in which provisions of the Agreement may conflict with, or differ from, other laws, rules, regulations, statutes, agreements, and the like. In that regard, the parties have agreed as follows:

6.2(g)(i). Other Agreements or Legal Requirements. In the event that in the future, in conjunction with any other matter, lawsuit, regulatory matter, or similar event, Defendants (or any of their successors, if applicable) enter into any agreement, consent judgment, settlement, injunction, or consent decree regarding the subject matter of the Affirmative Relief or any section herein, or are otherwise required by a court or state or governmental agency to do something or refrain from doing something regarding the subject matter of any section herein, or concerning or relating to the subject matter of the Action (“Other Agreement or Requirement”), then, after notice to and consultation with Class Counsel, Defendants may petition the Court for relief from any provision of the Affirmative Relief or this Agreement. If the Court grants such relief, then the Settlement will be modified accordingly without the requirement of notice to the Settlement Class or additional consideration by the requesting party. The Parties intend that any

such relief will not be granted as a matter of course but instead only upon a showing by Union Pacific of good cause as to why any protections afforded by this Settlement Agreement should be modified.

6.2(g)(ii). **New Law or New Legal Interpretation.** In the event any federal or state law, rule, regulation, or a judicial, agency, or administrative interpretation including but not limited to formal policy statement is passed, adopted, communicated or rendered after the Effective Date of this Agreement concerning or relating to the Affirmative Relief or the subject matter of any provision of the Affirmative Relief or this Agreement, or concerning the subject matter of the Litigation (a “New Law or Interpretation”), then, after notice to and consultation with Class Counsel, Defendants may petition the Court for relief from any provision of the Affirmative Relief or this Agreement. If the Court grants such relief, then the Settlement will be modified accordingly without the requirement of notice to the Settlement Class or additional consideration by the requesting party. The Parties intend that any such relief will not be granted as a matter of course but instead only upon a showing by Union Pacific of good cause as to why any protections afforded by this Settlement Agreement should be modified.

6.2(g)(iii). **Inconsistent Agreements, Law, or Legal Interpretation.** In the event any New Law or Interpretation, or Other Agreement

or Requirement, imposes requirements that are inconsistent with any provision of this Agreement, or Defendants directly or indirectly become bound by any agreement, consent judgment, settlement, or other binding document regarding the subject matter of any provision or section herein, or is otherwise required by a court or state or governmental agency to do something or refrain from doing something regarding the subject matter of any provision herein, or concerning or relating to the subject matter of the Affirmative Relief or the Litigation, then, in the good faith exercise of their discretion, Defendants may comply with such inconsistent requirement(s) or inconsistent agreement(s), and such actions will constitute compliance with this Agreement and shall not be deemed a breach thereof; provided, however, that Defendants (either individually or jointly) shall timely provide written notice to Class Counsel and the Court of the inconsistent New Law or Interpretation, or Other Agreement or Injunction, with which either or both Defendants intend to comply, and if Class Counsel disputes the inconsistency, then Class Counsel may petition the Court for an order requiring Defendants to comply with the claimed inconsistent provision of this Agreement. The Parties intend that any such modification of Union Pacific's duties hereunder will not be approved as a matter of course but instead only upon a showing by Union Pacific of good cause as to why any protections afforded by this Settlement Agreement should be modified.

6.2(g)(iv). For purposes of this Agreement, a requirement of a New Law or Interpretation, or Other Agreement or Requirement, shall be deemed to be inconsistent with a provision or provisions of this Agreement if Defendants cannot comply with the New Law or Interpretation, or Other Agreement or Requirement, without violating a corresponding provision or provisions in this Agreement.

6.2(h). **Reporting Obligations.** Upon the conclusion of the last deadline established in Paragraph 6.2(b)(i)-(iv), Union Pacific shall conduct an internal audit to ensure that the Affirmative Relief required under Paragraph 6.2 of this Agreement has been satisfactorily implemented on or before the deadlines established in Paragraph 6.2(b)(i)-(iv), and to report to the Chairman of Union Pacific's Board of Directors on the findings of said audit. In addition, Union Pacific will provide a written summary of the report to the Court.

7. **Cessation of Litigation Activity.** Class Plaintiffs and Class Counsel will not initiate any additional litigation against Union Pacific concerning the Data Breach Incidents. Immediately upon full execution of this Agreement, Class Plaintiffs, Class Counsel and Union Pacific will cease all litigation activity in the Action (other than any activity to implement and/or enforce this Settlement Agreement). In the preliminary approval papers, the Parties will request that the Court stay all motions or other pre-trial matters and continue any hearing or trial settings until each of the conditions precedent to the Parties' obligations to

proceed to consummate the Settlement provided for herein has been satisfied or waived.

8. **Class Certification.** The Court's certification of the Settlement Class shall not be deemed to be the adjudication of any fact or issue for any purpose other than the accomplishment of the settlement provisions set forth herein and shall not be considered as law of the case, *res judicata*, or collateral estoppel in this or any other proceeding unless the settlement receives final approval and the Final Order and Judgment approving the terms of this Settlement Agreement is entered. In the event the settlement provided for herein is not accomplished according to all the terms of this Agreement, the District Court's certification order shall be null and void and shall be vacated, and thereafter no class will remain certified; provided that, thereafter Class Plaintiffs and Class Counsel may seek certification of a new class before the District Court, and Union Pacific may oppose such certification on any grounds. The Action for all purposes will revert to its status as of prior to the execution of this Settlement Agreement.

9. **Class Notification.** For purposes of mailing Court-approved class notices and establishing that the best practicable notice has been given, membership in the Settlement Class shall be determined with the approval of Class Counsel from the records of Union Pacific. Notice shall be given by first-class mailing at Union Pacific's sole expense in a manner to be approved by the Court.

Union Pacific shall provide an Internet website (the “Settlement Website”) containing information about the Settlement, as well as access to the Settlement Agreement, the Class Notice, the Request Form, and orders of the Court. The Settlement Website will be accessible no later than five (5) days prior to the mailing of the Notice described above, and it shall remain accessible for six months after the Fund Termination Date. Union Pacific shall also make additional copies of the Class Notice and the Identity Theft Claim Form available to any Class Member who requests same.

10. **Application for Attorneys’ Fees and Expenses.** Class Counsel will apply to the Court for an aggregate award of attorneys’ fees and actual expenses (including their court costs) in a total amount not to exceed \$350,000. Defendant will not oppose Class Counsel’s application for an award of up to \$350,000. Class Counsel agree not to seek or accept an amount of fees and expenses in excess of \$350,000. Subject to Court approval, Union Pacific will pay or cause to be paid to Class Counsel such fees and expenses as may be awarded by the Court, up to a maximum of \$350,000. Any fees and expenses awarded to Class Counsel shall be paid within ten (10) business days after the Effective Date, or in the event the Court has not yet awarded attorneys’ fees as of the Effective Date, within ten (10) business days of such award.

The fees and expenses represent all of the fees, expenses, and court costs Union Pacific agrees to pay, if awarded by the Court, in connection with the Settlement to any Settlement Class Member or their counsel irrespective of the counsel making the application. Union Pacific shall not be liable for any further fees and expenses or any claim by any counsel or Settlement Class Member for additional fees or expenses relating to the allegations forming the basis of the Action (except as provided in Paragraph 6.1). In the event the Settlement is not finally approved, Union Pacific is under no obligation to pay any of Class Counsel's fees and expenses. In the event of an appeal, Union Pacific retains the right to proceed with the Settlement, or, at its option, escrow the monies to be paid to the Settlement Class and to Class Counsel in separate accounts, in a manner to be approved by the Court, with interest accruing for the benefit of the Settlement Class and Class Counsel.

All such fees and expenses paid by Union Pacific shall be in lieu of statutory fees, if any, that the Class Plaintiffs might otherwise have been entitled to recover.

11. **Incentive Award to Class Plaintiffs.** In recognition of the time and effort the Class Plaintiffs have expended in pursuing the lawsuits, in participating in the Actions, in fulfilling their obligations and responsibilities as Class Representatives, and of the benefits conferred on all of the Class Members by the

Settlement, Class Counsel will ask the Court to grant an Incentive Award to each Class Plaintiff in an amount not to exceed Five-Hundred Dollars (\$500.00) per Class Plaintiff. Defendants agree that they will not oppose any request by Class Counsel for such Incentive Awards. Defendants shall pay such Incentive Award approved by the Court within ten (10) business days of the Effective Date. No other agreement exists between the Parties as to payments to be made to the Class Plaintiffs.

12. **Dismissal.** The Final Order will provide that the Action is dismissed with prejudice (including all three above-captioned cases).

13. **Release of Defendants.** The Final Order will provide that upon the Effective Date, for and in consideration of the terms and undertakings herein, the sufficiency and fairness of which are acknowledged, all members of the Settlement Class who have not excluded themselves from the Settlement Class will release Defendants (as defined in Paragraph 1.5) from all claims relating to the Data Breach Incidents, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated that, as of the date that this Agreement is fully executed: (i) arise out of or are related in any way to any or all of the acts, omissions, facts, matters, transactions, or occurrences that were directly or indirectly alleged, asserted, described, set forth, or referred to in the Actions (including but not limited to

claims for alleged negligence, breach of contract, breach of the right to privacy, and unfair and deceptive acts and practices); (ii) arise out of or are related in any way to a Data Breach Incident; or (iii) arise out of Defendants' failure (or alleged failure) to safeguard personal or confidential employee information. This release does not apply to enforcement of the terms of the Settlement.

The failure of any Settlement Class Member to claim or obtain any relief made available shall not affect the releases herein. As to any Settlement Class Member who otherwise would be entitled to receive benefits under this Settlement Agreement and who for any reason fails to submit a Identity Theft Claim Form by the Fund Termination Date, all rights of such Settlement Class Member to receive monetary benefits in this Action shall lapse and be forfeited. Defendants shall not be required to remit any additional consideration to claiming Settlement Class Members on account of forfeiture by any Settlement Class Member.

Class Plaintiffs and all Settlement Members expressly waive and/or are deemed to waive all rights under California Civil Code Section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASES, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

14. **Form of Notice to Settlement Class Members.** Once the Court approves a notice of class action, proposed settlement, and hearing (the “Class Notice”) and approves a manner of dissemination to the Settlement Class Members, Union Pacific will disseminate the Class Notice to the Settlement Class Members as ordered. The Parties will recommend a Class Notice substantially in the form of Exhibit A hereto. Prior to giving notice, Union Pacific will create a list of all Settlement Class Members that includes the Class Members’ latest addresses. Union Pacific will utilize an address refreshing service to obtain the most current available address for each Settlement Class Member to the extent the address in Union Pacific’s records can be updated. Assuming the Court approves giving Class Notice by mail and subject to approval of the Court, there will be a single mailing of the Class Notice to each Settlement Class Member as set forth herein.

The foregoing terms with respect to mailing and notice are material conditions precedent to Union Pacific’s obligations under this Agreement. If the extent of mailing of notices and manner of publication provided for in this Agreement are not approved by the Court in all material respects, Union Pacific will not be obligated to proceed with the Settlement provided for herein.

15. **Receipt of Mail.** Union Pacific shall be responsible for obtaining a United States Post Office Box or otherwise providing an address for the purpose

of receiving requests for exclusion and objections. Union Pacific shall also be responsible for giving notice of the receipt of any such requests for exclusion or objections by providing complete copies to Class Counsel promptly.

16. **Settlement Administration.** Union Pacific may hire a third-party administrator to perform services to effectuate the terms of the Settlement Agreement or may elect to “self-administer” the terms of the Settlement Agreement.

17. **Court Submission.** Settlement Class Counsel and Union Pacific’s counsel will submit this Settlement Agreement and the exhibits hereto, along with such other supporting papers as may be appropriate, to the Court for preliminary approval of this Settlement Agreement pursuant to Rule 23 of the Federal Rules of Civil Procedure. If the Court declines to grant preliminary approval of this Settlement Agreement and to order notice of hearing with respect to the proposed Settlement Class, or if the Court declines to grant final approval to the foregoing after such notice and hearing, this Settlement Agreement will terminate as soon as the Court enters an order unconditionally and finally adjudicating that this Settlement Agreement will not be approved. In the event the Court grants preliminary approval of the Settlement Agreement, the parties will request that the Court enter a scheduling order setting the dates by which Class Members must opt

out of the settlement, and file any objections, as well as schedule the final fairness hearing and any other dates in this matter.

18. **Final Judgment.** The Settlement is expressly conditioned upon dismissal with prejudice of the Action and entry of a Final Order as defined in Paragraph 1.7 of this Agreement. The Parties will jointly submit a proposed Final Order prior to the fairness hearing.

19. **Defendants' Right to Set Aside Settlement.** Union Pacific shall have the right to set aside or rescind this Agreement, in the good faith exercise of its discretion, if any of the following events occur:

(a) Opt-Outs. More than 500 members of the Settlement Class opt out;

(b) Objection(s) to Settlement Sustained. If any objections to the Settlement are sustained;

(c) Modification(s) by the Court. If there are any modifications to this Agreement by the Court, by any other court, or by any tribunal, agency, entity, or person.

In the event Union Pacific exercises its discretion to set aside the Settlement, this Agreement and all negotiations, proceedings, documents prepared, and statements made in connection herewith shall be without prejudice to the Settling Parties, shall not be deemed or construed to be an admission or confession

by the Settling Parties of any fact, matter, or proposition of law, and shall not be used or admissible in any manner for any purpose, and all parties to the Action shall stand in the same position as existed prior to the execution of the Settlement Agreement, and as if this Agreement had not been negotiated, made, or filed with the Court. In such event, the parties to the Action shall move the Court to vacate any and all orders entered by the Court pursuant to the provisions of this Agreement, including any order certifying the Class for settlement purposes.

20. **Integration.** This Settlement Agreement contains a full, complete, and integrated statement of each and every term and provision agreed to by and among the Parties and supersedes any prior writings or agreements (written or oral) between or among the Parties, which prior agreements may no longer be relied upon for any purpose. This Settlement Agreement shall not be orally modified in any respect and can be modified only by the written agreement of the Parties. In the event a dispute arises between the Parties over the meaning or intent of this Agreement, prior drafts, notes, memoranda, discussions, or any other oral communications or documents regarding the negotiations, meaning or intent of this Agreement shall not be offered or admitted into evidence. Class Plaintiffs and Class Counsel acknowledge that, in entering into this Settlement Agreement, they have not relied upon any representations, statements, actions, or inaction by Defendant or its counsel that are not expressly set forth herein.

21. **Headings.** Headings contained in this Agreement are for convenience of reference only and are not intended to alter or vary the construction and meaning of this Agreement.

22. **Governing Law.** To the extent not governed by the Federal Rules of Civil Procedure, the contractual terms of this Agreement shall be interpreted and enforced in accordance with the substantive law of the State of Nebraska.

23. **Interpretation.** The Parties negotiated this Agreement on an “arms’-length” basis between parties of equal bargaining power. Also, the Agreement has been drafted jointly by Class Counsel and counsel for Defendants. Accordingly, this Agreement shall be interpreted in a neutral manner, without any rule of interpretation that ambiguities shall be construed in favor of or against any of the Parties.

24. **Notice.** Except as otherwise specifically provided herein, whenever any written notice is required by the terms of this Agreement, it shall be deemed effective on the date received, addressed as follows:

If to the Class Plaintiffs or Settlement Class, to:

Robert E. O’Connor, Jr.
2433 South 130th Circle
Omaha, Nebraska 68144

Robert G. Pahlke
PAHLKE, SMITH, SNYDER,
PETITT & EUBANKS
1901 First Avenue, P.O. Box 1204

Scottsbluff, NE 69363-1204

Clifford A. Cantor
LAW OFFICES OF CLIFFORD A. CANTOR, P.C.
627 208th Avenue SE
Sammamish, WA 98074-7033

-and-

Michael R. Perri
PHILLIPS McFALL McCAFFREY
McVAY & MURRAH, P.C.
101 North Robinson
Corporate Tower, Thirteenth Floor
Oklahoma City, Oklahoma 73102

If to Defendants to:

Kenneth M. Kliebard, Esq.
HOWREY LLP
321 North Clark Street, Suite 3400
Chicago, Illinois 60610

-and-

William M. Lamson, Jr.
LAMSON, DUGAN AND MURRAY, LLP
Lamson, Dugan and Murray Building
10306 Regency Parkway Drive
Omaha, Nebraska 68114-3743

25. **Counterpart Execution.** This Agreement may be executed in any number of counterparts and will be binding when it has been executed and delivered by the last signatory hereto to execute a counterpart. A facsimile of a signature or email of a scanned signature shall be deemed to constitute an original signature for purposes of this Agreement. After execution of counterparts by each

designated signatory, Defendant agrees to furnish each party with a composite conformed copy of this Agreement reflecting all counterpart signatures.

26. **Binding Upon Successors.** This Agreement shall be binding upon and inure to the benefit of the Parties hereof and their representatives, heirs, successors, and assigns.

27. **Severability.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions if the Parties and their counsel mutually elect by written stipulation to be filed with the Court within twenty (20) days to proceed as if such invalid, illegal, or unenforceable provisions had never been included in this Agreement.

28. **Continuing Jurisdiction.** Without affecting the finality of the Final Judgment, the Court shall retain continuing jurisdiction over the Action and the Parties, including all members of the Settlement Class, the administration and enforcement of the settlement, and the benefits to the Settlement Class hereunder, including for such purposes as supervising the implementation, enforcement, construction, and interpretation of this Settlement Agreement (including the Affirmative Relief), the order preliminarily approving the Settlement, and the Final Judgment, and hearing and determining an application by Settlement Class

Counsel for an award of attorneys' fees and reimbursement of costs and expenses. Any dispute or controversies arising with respect to the interpretation, enforcement, or implementation of the Settlement Agreement shall be presented by motion to the Court.

29. **Warranty of Counsel.** Kenneth M. Kliebard and William Lamson unconditionally represent and warrant that they are fully authorized to execute and deliver this Agreement on behalf of Union Pacific.

The undersigned parties have executed this Agreement as of the date first above written.

s/Kenneth M. Kliebard
Kenneth M. Kliebard, Esq.
Howrey LLP
321 North Clark Street, Suite 3400
Chicago, Illinois 60610
Phone: 312-595-1239
Fax: 312-595-2250

William M. Lamson, Jr.
Lamson, Dugan and Murray, LLP
10306 Regency Parkway Drive
Omaha, Nebraska 68114-3743
Phone: 402-397-7300
Fax: 402-397-7824

*Attorneys for Union Pacific
Corporation and Union Pacific
Railroad Company*

Approved as to form by Class Counsel:

s/Robert G. Pahlke

Robert G. Pahlke
PAHLKE, SMITH, SNYDER,
PETITT & EUBANKS
1901 First Avenue, P.O. Box 1204
Scottsbluff, NE 69363-1204
Phone: 308.635.3161
Fax: 308.632.3128

Clifford A. Cantor
LAW OFFICES OF
CLIFFORD A. CANTOR, P.C.
627 208th Avenue SE
Sammamish, WA 98074-7033
Phone: 425.868.7813
Fax: 425.868.7870
Attorneys for the Huck Plaintiffs

s/Robert E. O'Connor, Jr.

Robert E. O'Connor, Jr.
2433 South 130th Circle
Omaha, Nebraska 68144
Phone: 402.330.5906
Fax: 402.330.9763

Ryan M. Sewell
215 South Main Street
Council Bluffs, Iowa 51503
Phone: 712.328.1575
Fax: 712.328.1562

*Attorneys for the Blackmore
Plaintiffs*

Forrest Hickman

John Watson

Thomas Slusher

Eugene Gallegos

John Morris

David Blackmore

Jerry Eubank

Jeffrey Klapprodt

Jacob Moore

Chris Nelson

George Owen

William Platt

William Price

Chris Tucker

David Boiles

Ronald Hart

J.T. Culwell, Jr.

James Bose

Don Johnson

Tyler Jones

Jack D. Luge

William Bosley