

**SECOND AMENDED SETTLEMENT AGREEMENT
AND RELEASE**

This Second Amended Settlement Agreement and Release (the “Settlement” or “Settlement Agreement” or “Agreement”) is made as of October 24, 2016, by and among the following parties, as hereinafter defined: (a) Settlement Class Representatives, on behalf of themselves and the Class Members, by and through Settlement Class Counsel; and (b) Kmart Corporation (“Kmart”) and Sears Holdings Corporation (“Sears”) (collectively “Sears/Kmart”), by and through its undersigned counsel (“Sears/Kmart’s Counsel”). Settlement Class Representatives and Sears/Kmart are the “Parties” or a “Party.”

This Settlement Agreement **supersedes, renders void, terminates, and nullifies** the “Amended Settlement Agreement and Release” entered into on August 11, 2016 between the Parties.

RECITALS

WHEREAS, on October 10, 2014, Sears/Kmart announced that on the prior day, October 9, 2014, Sears/Kmart’s Information Technology team detected a criminal intrusion into Kmart’s payment data systems, resulting in the potential compromise of payment card information;

WHEREAS, following the announcement by Sears/Kmart, financial institution plaintiffs, including Settlement Class Representatives, filed class action complaints in multiple courts across the country;

WHEREAS, the Settlement Class Representatives have alleged common law claims and violations of state consumer fraud statutes based on Sears/Kmart’s allegedly inadequate security protocols;

WHEREAS, on June 8, 2015, the Judicial Panel on Multidistrict Litigation (“MDL Panel”) denied a Motion for Consolidation and Transfer of Related Actions filed by certain plaintiffs and suggested the self-consolidation of the actions;

WHEREAS, the Settlement Class Representatives thereafter consolidated the actions before the United States District Court for the Northern District of Illinois and filed a Consolidated Amended Class Action Complaint;

WHEREAS, Sears/Kmart moved to dismiss the Settlement Class Representatives' Consolidated Amended Class Action Complaint on October 9, 2015 for lack of subject-matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1), for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), and for failure to allege personal jurisdiction under Rule 12(b)(2);

WHEREAS, by letter dated October 6, 2015, MasterCard asserted the right under its operating regulations and pursuant to the MasterCard ADC program to assess and collect from Sears/Kmart, through its acquiring banks, certain losses that MasterCard alleged its issuers had incurred as a result of the Data Breach;

WHEREAS, Sears/Kmart disputed MasterCard's assessment and filed an appeal of the assessment on December 14, 2015 pursuant to the MasterCard Security Rules and Procedures manual;

WHEREAS, by letter dated March 8, 2016, Visa asserted the right under its operating regulations and pursuant to the Visa GCAR program to assess and collect from Sears/Kmart, through its acquiring banks, certain losses Visa alleged its issuers had incurred as a result of the Data Breach;

WHEREAS, Sears/Kmart denies (a) the allegations and all liability with respect to any and all facts and claims alleged in the Consolidated Amended Class Action Complaint; (b) that the Settlement Class Representatives and the class they currently represent have suffered the damages they allege, (c) that the Consolidated Amended Class Action Complaint satisfies the

requirements to be tried as a class action under Federal Rule of Civil Procedure 23, and (d) that MasterCard and Visa properly imposed assessments on Sears/Kmart in the amounts asserted by MasterCard and Visa;

WHEREAS, Settlement Class Representatives assert (a) that facts alleged in the Consolidated Amended Class Action Complaint raise a reasonable expectation that discovery will reveal evidence to support Settlement Class Representatives' claims; (b) that there is sufficient evidence that the Settlement Class Representatives and the Class have suffered the damages they allege, and (c) that the Consolidated Amended Class Action Complaint demonstrates that the claims would properly be resolved through class action proceedings, including trial, pursuant to Federal Rule of Civil Procedure 23;

WHEREAS, despite their belief that their claims are meritorious, that they and the Class Members they represent have been injured and suffered damages, and that the Consolidated Amended Class Action Complaint satisfies the requirements to be tried as a class action under Federal Rule of Civil Procedure 23, the Settlement Class Representatives and Settlement Class Counsel have concluded, after an investigation of the facts and after carefully considering the circumstances of the Consolidated Amended Class Action Complaint, that it would be in the best interests of the Class to enter into this Agreement, which interests include the substantial value to be derived by this Settlement and the interest in avoiding the uncertainties of litigation and assuring that the benefits reflected herein are obtained for the Class;

WHEREAS, despite its belief that it has valid and complete defenses to the claims asserted against it and that the Settlement Class Representatives' claims are without merit, Sears/Kmart has nevertheless agreed to enter into this Agreement to reduce and avoid further

risk, expense, inconvenience, and the distraction of burdensome and protracted litigation and thereby to resolve any controversy;

WHEREAS, the Settlement set forth in this Agreement is a product of sustained, arm's length negotiations conducted in multiple mediation sessions over a period of several months before the Honorable Wayne R. Andersen, former Judge for the United States District Court for the Northern District of Illinois;

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein and without: (a) any admission or concession on the part of the Settlement Class Representatives or Settlement Class Counsel of the lack of merit of the Consolidated Amended Class Action Complaint; or (b) any admission or concession of liability or wrongdoing or lack of merit of any defense whatsoever by Sears/Kmart with respect to the Consolidated Amended Class Action Complaint,

IT IS HEREBY STIPULATED AND AGREED by the Parties, that the Action, the Consolidated Class Action Complaint and the claims set forth therein, the Plaintiff Released Claims, and the Sears/Kmart Released Claims, be settled, compromised, and dismissed with prejudice, subject to Court approval as required by Federal Rule of Civil Procedure 23, on the following terms and conditions:

1. DEFINITIONS

As used in this Agreement, the terms set forth in this section in boldface type will have the following meanings:

1.1 Action. The action brought on behalf of financial institutions against Sears/Kmart relating to the Data Breach that was consolidated in the United States District Court for the Northern District of Illinois the matter entitled *Greater Chautauqua Federal Credit Union, First Choice Federal Credit Union, Gulf Coast Bank & Trust Company,*

Governmental Employees Credit Union, and Oteen V.A. Federal Credit Union v. Kmart Corp. and Sears Holdings Corp., Case No. 1:15-cv-02228.

1.2 Alert. A notice which Settlement Class Members received under the ADC or GCAR programs which informs them of card numbers which may have been compromised as a result of the Data Breach.

1.3 ADC. MasterCard's Account Data Compromise program, as set forth in the MasterCard's *Security Rules and Procedures*.

1.4 Agreement or Settlement Agreement. This document, including all exhibits.

1.5 Application. This term has the meaning set forth in Section 8.3.

1.6 Assessment by MasterCard. MasterCard's final ADC Recovery assessment of \$5,923,909.32, which includes an assessment of \$5,798,909.32 relating to the Data Breach and a \$125,000 case management fee, dated on or about October 6, 2015.

1.7 Assessment by Visa. Visa's final GCAR program assessment of \$7,574,497.18 relating to the Data Breach, dated on or about March 8, 2016.

1.8 Class Members or Class. All entities in the United States and its Territories that issued payment cards identified as having been at risk in an Alert issued by Visa or MasterCard as a result of the payment card Data Breach that was publicly disclosed by Kmart on October 10, 2014. Excluded from the class are all entities that have entered into a separate release of claims arising from the Data Breach, including American Express Company and DFS Services LLC (Discover).

1.9 Complaint. The Consolidated Amended Class Action Complaint filed by the financial institution plaintiffs in the matter entitled *Greater Chautauqua Federal Credit Union, First Choice Federal Credit Union, Gulf Coast Bank & Trust Company, Governmental*

Employees Credit Union, and Oteen V.A. Federal Credit Union v. Kmart Corp. and Sears Holdings Corp., Case No. 1:15-cv-02228.

1.10 Compromised Payment Card. A payment card that was identified as having been at risk in an Alert issued by Visa or MasterCard as a result of the payment card data breach that was publicly disclosed by Sears/Kmart on October 10, 2014 (the “Data Breach”).

1.11 Compromised Payment Card Account. The payment card account associated with a Compromised Payment Card.

1.12 Correction Request. This term shall have the meaning set forth in Section 4.4.3.

1.13 Court. The Honorable John Z. Lee, United States District Court Judge, Northern District of Illinois, or such other judge to whom the Action or Complaint may hereafter be assigned.

1.14 Data Breach. The payment card data breach impacting Kmart stores that was publicly disclosed by Sears/Kmart on October 10, 2014.

1.15 Distribution Plan. The plan, substantially in the form of Exhibit A for distributing the Settlement Class Escrow Account to Settlement Class Members.

1.16 Effective Date. The first date after which the following events and conditions have occurred: (i) the Court has entered the Final Judgment and the Final Judgment has not been set aside, materially modified, or overturned by the Court or on appeal, and (ii) the time for any motion or petition for reconsideration, appeal, or writ with regard to the Final Judgment has expired or the Settlement is affirmed on appeal or review without material change, no other appeal or petition for rehearing or review is pending, and the time period during which further petition for hearing, review, appeal, or certiorari could be taken has finally expired.

1.17 Escrow Agent. The Escrow Agent shall be Huntington Bank.

1.18 Fee Request. This term shall have the meaning set forth in Section 8.1.

1.19 Final Approval Hearing. The hearing held by the Court for the purpose of determining whether to (a) grant final approval of the Settlement, (b) grant the Application, and (c) enter the Final Judgment.

1.20 Final Approval. The date that the Court enters an order and judgment granting final approval of the Settlement and determines the amount of the fees and costs awarded to Settlement Class Counsel. In the event that the Court issues separate orders addressing the foregoing matters, then Final Approval means the date of the last of such orders.

1.21 Final Approval Order. The Final Judgment and order of dismissal with prejudice that the Court enters upon Final Approval in the form attached as Exhibit B. In the event that the Court issues separate orders addressing the matters constituting Final Approval, then Final Approval Order includes all such orders.

1.22 Final Judgment. A final judgment and order of dismissal with prejudice entered by the Court in the form attached as Exhibit C.

1.23 Final Opt-Outs Report. This term shall have the meaning set forth in Section 4.4.5.

1.24 Fraud Window. The period within which fraudulent charges from the Data Breach must fall to qualify for recovery under the GCAR and ADC.

1.25 GCAR. Visa's Global Compromised Account Recovery program as set forth in Visa's operating regulations and as administered by Visa.

1.26 MasterCard. This term shall mean "MasterCard International Incorporated."

1.27 Maximum Payout Amount. The total amount that eligible Settlement Class Members claim in Tier 2 of the Distribution Plan.

1.28 Notices. The information, substantially in the form of Exhibit D, to be provided to Class Members pursuant to a notice plan to be approved by the Court.

1.29 Non GCAR Eligible Compromised Payment Cards. All Visa-branded cards for which an assessment was not paid pursuant to the GCAR program.

1.30 Opt-Outs Report. This term has the meaning set forth in Section 4.4.2.

1.31 Plaintiffs or Financial Institution Plaintiffs. The named plaintiffs in the Complaint.

1.32 Plaintiff Released Claims. This term has the meaning set forth in Section 7.1.

1.33 Plaintiff Released Persons. This term has the meaning set forth in Section 7.2.

1.34 Plaintiff Releasing Persons. This term has the meaning set forth in Section 7.1.

1.35 Preliminary Approval Order. The Order of Preliminary Approval of Settlement to be entered by the Court substantially in the form attached as Exhibit E hereto.

1.36 Sears/Kmart Released Claims. This term has the meaning set forth in Section 7.2.

1.37 Sears/Kmart Released Parties. This term has the meaning set forth in Section 7.2.

1.38 Released Parties. This term has the meaning set forth in Section 7.1.

1.39 Service Payments. One time payments to the Settlement Class Representatives, through Settlement Class Counsel, as set forth in Section 8.3.

1.40 Settlement. The settlement embodied in this Settlement Agreement.

1.41 Settlement Administrator. Subject to Court approval, Epiq Systems, Inc.

1.42 Settlement Class. This term has the meaning set forth in Section 3.1.

1.43 Settlement Class Counsel. This term includes the following firms and individuals:

MURRAY LAW FIRM
Arthur M. Murray
650 Poydras Street, Suite 2150
New Orleans, LA 70130
504-525-8100
amurray@murray-lawfirm.com

HAUSFELD, LLP
James J. Pizzirusso
1700 K. Street, NW
Suite 650
Washington, DC 20006
202-540-7200
jpizzirusso@hausfeld.com

LOCKRIDGE GRINDAL NAUEN P.L.L.P.
Karen H. Riebel
100 Washington Avenue South
Suite 2200
Minneapolis, MN 55401
612-339-6900
khriebel@locklaw.com

1.44 Settlement Class Escrow Account. The account described in Section 5.3.1 of this Agreement.

1.45 Settlement Class Members. The entities that comprise the Settlement Class.

1.46 Settlement Class Representatives. The named plaintiffs in the Complaint: Greater Chautauqua Federal Credit Union, First Choice Federal Credit Union, Gulf Coast Bank & Trust Company, Governmental Employees Credit Union, and Oteen V.A. Federal Credit Union.

1.47 Settlement Fund. An amount equal to \$5,200,000. The Settlement Fund will be used to pay all costs of class notice and settlement administration, service awards to the Named Plaintiffs, and the claims of eligible Settlement Class members pursuant to the Distribution Plan attached as Exhibit A.

1.48 Visa. This term shall mean “Visa Inc.”

2. SETTLEMENT PROCEDURES

2.1 All activities in the Action or relating to the Complaint, other than those in furtherance of the Settlement, shall remain suspended until the Final Approval Hearing and issuance of the Final Judgment, or until further order of this Court.

2.2 As soon as possible after the execution of this Agreement, the Settlement Class Representatives shall move the Court for a Preliminary Approval Order substantially in the form of Exhibit E.

2.3 At the time of the submission of this Agreement to the Court as described in Section 2.2, the Settlement Class Representatives shall request that, after notice is given to Settlement Class Members, the Court hold the Final Approval Hearing and approve the Settlement.

2.4 At least 21 days before the deadline for Settlement Class Members to file objections to the Settlement, Settlement Class Counsel shall file with the Court, and serve upon Sears/Kmart (i) their motion for an award of attorneys' fees, costs, and expenses ("Fee Request"); and (ii) any application by Settlement Class Representatives for awards of Service Payments.

2.5 At the Final Approval Hearing, the Parties will request that the Court enter the Final Approval Order.

3. THE SETTLEMENT CLASS

3.1 Settlement Class. For settlement purposes only, the Parties agree that the Court should certify a Settlement Class in the Actions pursuant to Fed. R. Civ. P. 23(b)(3), defined as follows:

All entities in the United States and its Territories that issued payment cards identified as having been at risk in an alert issued

by Visa or MasterCard as a result of the payment card data breach that was publicly disclosed by Kmart on October 10, 2014.

Excluded from the Settlement Class are all entities that have entered a separate release with Kmart, including American Express Company and DFS Services LLC (Discover), and all entities that validly request exclusion from the Settlement Class pursuant to Section 4.4 of the Settlement Agreement.

If the Court enters the Preliminary Approval Order, the parties agree they will not assert that such action is an adjudication of any fact or issue for any purpose other than the effectuation of this Agreement or that it may be considered as law of the case or *res judicata* or have collateral estoppel effect in this or any other proceeding.

4. NOTICE, OPT-OUTS, AND OBJECTIONS

4.1 Manner of Giving Notice to the Class. Pursuant to the Preliminary Approval Order, the Settlement Administrator will provide notice to Class Members in accordance with a notice plan to be approved by the Court in such Order.

4.2 Other Required Notice. Sears/Kmart will serve, or cause to be served, the notice required under 28 U.S.C. § 1715.

4.3 Payment of Expenses Relating to Notice and Administration. All costs associated with providing notice to Class Members and with administration of the Settlement will be paid from the Settlement Class Escrow Account.

4.4 Opt Outs by Class Members.

4.4.1 Procedures for Opt-Outs. The Parties will request that the Court order procedures for Class Members to request to “opt out” (i.e., to be excluded from the Settlement Class) in accordance with the provisions in the Preliminary Approval Order. No request to opt

out shall be valid unless the Class Member requests to be excluded from the settlement. Exclusion requests must be made in writing, including the Class Member's name, address, telephone number, statement that the Class Member wants to be excluded, the name of this proceeding (*Greater Chautauqua Federal Credit Union, First Choice Federal Credit Union, Gulf Coast Bank & Trust Company, Governmental Employees Credit Union, and Oteen V.A. Federal Credit Union v. Kmart Corp. and Sears Holdings Corp.*, Case No. 1:15-cv-02228), and signature. A request to opt out shall be considered valid if the Class Member sends a letter by U.S. Mail that includes all of the information set forth in the prior sentence, and sends such completed form or letter to the Settlement Administrator at the address provided in the Notices attached as Exhibit D, postmarked no more than ninety (90) days after the date the Preliminary Approval Order is entered. Each Class Member that submits a request to opt out in accordance with the previous sentence and the provisions of the Preliminary Approval Order shall be excluded from the Settlement Class. Class Members seeking to opt out will also be asked to provide the number of accounts that they issued. Each Class Member that does not submit a valid request to opt out shall remain in the Settlement Class and shall be bound by the Settlement and release provided in Section 7 of this Agreement.

4.4.2 Opt-Outs Report. Within seven (7) days of the date set forth in the Notices by which opt-out requests must be postmarked, Settlement Class Counsel shall cause the Settlement Administrator to send to Settlement Class Counsel and to Sears/Kmart's Counsel: (i) copies of all requests to opt out; (ii) a report identifying (a) each Class Member that submitted a request to opt out; (b) the number of accounts issued by each such Class Member; and (c) the Settlement Administrator's determination as to the validity or invalidity of each such Class

Member's request to opt out pursuant to the provisions of Section 4.4.4 of this Settlement Agreement and the Preliminary Approval Order (the "Opt-Outs Report").

4.4.3 Within fourteen (14) days of the Settlement Administrator's delivery of the Opt-Outs Report pursuant to Section 4.4.2, the Settlement Class Representatives, through Settlement Class Counsel, and Sears/Kmart, through Sears/Kmart's Counsel, shall have the opportunity to submit a request that the Settlement Administrator correct any information included in the Opt-Outs Report that is believed to be incorrect, including but not limited to information regarding the number of accounts actually issued by a Class Member (a "Correction Request"). Any such Correction Request must be emailed to the Settlement Administrator and delivered to all other Parties in accordance with Section 13 of this Agreement. The Parties shall meet and confer regarding any Correction Requests prior to submitting them to the Settlement Administrator. If there is disagreement among the Parties regarding a Correction Request, the Party disputing the Correction Request shall have three (3) business days following the submission of the Correction Request to submit a request that the Settlement Administrator reject the Correction Request.

4.4.4 If any party submits a Correction Request pursuant to the procedures set forth in Section 4.4.3, then Settlement Class Counsel shall cause the Settlement Administrator, not later than seven (7) days after the later of (i) the date of the Correction Request and (ii) any objection or dispute regarding such Correction Request, to deliver to Settlement Class Counsel and to Sears/Kmart's Counsel another version of the Opt-Outs Report, incorporating any requested corrections that the Settlement Administrator determines should be made. Any Opt-Out Report delivered pursuant to this Section 4.4.4 shall supersede and replace any prior version of the Opt-Outs Report.

4.4.5 Following the time period for the submission of any Correction Requests and, if applicable, the Settlement Administrator's delivery of another version of the Opt-Outs Report pursuant to Section 4.4.4, and no later than fourteen (14) days before the Final Approval Hearing date, Settlement Class Counsel shall cause the Settlement Administrator to file the then-operative Opt-Outs Report with the Court. To the extent there is any dispute between the Parties regarding any determination made in the Opt-Outs Report filed with the Court, the Parties shall present such disputes to the Court for resolution no later than seven (7) days before the Final Approval Hearing date. In the event that no dispute is presented pursuant to this Section 4.4.5, the "Final Opt-Outs Report" shall be the Opt-Outs Report filed with the Court pursuant to this Section 4.4.5. In the event that a Party presents a dispute to the Court pursuant to this Section 4.4.5, the "Final Opt-Outs Report" shall be the Opt-Outs Report filed with the Court pursuant to this Section 4.4.5, as modified (if at all) by the Court's ruling on such dispute.

4.4.6 Effect of Opt Outs by Class Members. Either Party shall have the right to terminate the Settlement Agreement if Settlement Class Members who issued a certain percentage of the total number of accounts submit valid requests to opt out as separately agreed to by the Parties and submitted to the Court for *in camera* review.

4.5 Objections by Settlement Class Members

4.5.1 Procedure for Objections. The Parties will request that the Court order procedures for Settlement Class Members to object to the approval of the Settlement, the Application, or both, in accordance with the provisions in the Preliminary Approval Order.

5. WAIVER OF APPEAL OF CARD BRAND ASSESSMENTS AND SETTLEMENT FUND DISTRIBUTION

5.1 MasterCard Assessment. As part of this Agreement, Sears/Kmart has agreed to drop its challenge to and pay the final assessment (including any fines and administration costs)

relating to the Data Breach that was issued by MasterCard pursuant to its Account Data Compromise (“ADC”) program (“the Final MasterCard Assessment”) and has withdrawn the appeal it filed pursuant to MasterCard’s Security Rules and Procedures manual. The funds received by MasterCard for the Final MasterCard Assessment in the amount of \$5,798,909.32 will be distributed pursuant to the ADC program guidelines. As part of this Agreement, Sears/Kmart has agreed to provide the full MasterCard Assessment amount to Class Members.

5.2 Visa Assessment. After negotiating in good faith with Visa to reduce the assessment issued by Visa pursuant to its Global Compromised Account Recovery (“GCAR”) program relating to the Data Breach (“the Original Visa Assessment”), as part of this Agreement, Sears/Kmart has agreed to waive its right to appeal and pay the final assessment. The funds received by Visa for the Final Visa Assessment in the amount of \$7,574,497.18 will be distributed through the GCAR program guidelines. As part of this Agreement, Sears/Kmart has agreed to provide the full Visa Assessment amount to Class Members.

5.3 Distribution of Monetary Payments to Settlement Class Members. Settlement Class Members will also be eligible to receive additional payments from the Settlement Class Escrow Account to the extent provided for in the Distribution Plan, attached as Ex. A.

5.3.1 Settlement Class Escrow Account. Within five (5) business days of the later of (i) the Court’s Preliminary Approval Order and (ii) Settlement Class Counsel’s provision to Sears/Kmart of the account information for the Settlement Class Escrow Account, Sears/Kmart shall pay \$200,000 of the Settlement Fund into the interest-bearing Settlement Class Escrow Account to be used in the first instance to pay the costs of notice and administration of the Settlement. To the extent that the costs of notice and administration of the Settlement exceed \$200,000, such costs shall be paid out of the remainder of the Settlement Class Escrow Account;

Sears/Kmart shall not bear any obligations relating to such costs. Sears/Kmart shall pay \$5,000,000 into the interest-bearing Settlement Class Escrow Account within five (5) business days after the Effective Date. The money in the Settlement Class Escrow Account shall be a Court-approved Qualified Settlement Fund for federal tax purposes pursuant to Treas. Reg. § 1.468B-1. The Escrow Agent shall be responsible for all administrative, accounting and tax compliance activities in connection with the Settlement Class Escrow Account and the monies deposited into the Settlement Class Escrow Account, including any filing necessary to obtain Qualified Settlement Fund status pursuant to Treas. Reg. § 1.468B-1. Sears/Kmart shall provide to the Escrow Agent any documentation necessary to facilitate obtaining Qualified Settlement Fund status for the Settlement Class Escrow Account pursuant to Treas. Reg. § 1.468B-1. All taxes on income or interest generated by the Settlement Class Escrow Account, if any, shall be paid out of the Settlement Class Escrow Account.

5.3.2 Distribution of the Settlement Class Escrow Account. The Settlement Class Escrow Account shall be used to (i) pay all costs and expenses associated with notice and administration of the Settlement, including but not limited to any taxes due on the account, as set forth in Section 5.3.1 of the Agreement; (ii) make payments to the Settlement Class Members in accordance with the Distribution Plan, and as approved by the Court; and (3) make any Service Payments to Settlement Class Representatives as set forth in Section 8.3 of the Agreement.

5.3.3 Distribution of Remaining Funds. The Parties intend that the entire Settlement Class Escrow Account be distributed pursuant to the claims administration process, and the Distribution Plan is designed to avoid remaining funds. To the extent that any funds remain, no portion of the Settlement Class Escrow Account shall be returned to Sears/Kmart.

Any such remaining funds will be distributed by the Settlement Administrator pro rata to eligible Settlement Class Members or as otherwise directed by the Court.

5.3.4 All Claims Satisfied. Each Settlement Class Member shall look solely to the payments due to any such Settlement Class Member as a result of the Assessment by Visa, the Assessment by MasterCard, and/or the Distribution Plan for satisfaction of all Plaintiff Released Claims.

5.3.5 No Responsibility for Distribution. After the Effective Date, Sears/Kmart and its insurers shall have no responsibility, financial obligation, or liability whatsoever with respect to the investment or distribution of the Settlement Fund, or with respect to the administration of the settlement or the Settlement Class Escrow Account.

6. INJUNCTIVE RELIEF.

6.1 Kmart agrees to use commercially reasonable efforts to implement the following security protocols within six (6) months after the Effective Date. Kmart will notify Settlement Class Counsel, in writing, five (5) months after the Effective Date should it appear that any of the following measures will not be implemented within the six (6) month time period contemplated by this Paragraph.

6.1.1 Information Security Responsibilities. Sears/Kmart will appoint and maintain an executive with responsibility for the company's program(s) to protect the security of cardholder data.

6.1.2 Cardholder Data Risk Assessments. Sears/Kmart will obtain an annual independent assessment of its compliance with the Payment Card Industry Data Security Standard, Requirements and Security Assessment Procedures, Version 3.1 or later.

6.1.3 Vendor Program. Sears/Kmart will develop and use reasonable steps to

select and engage service providers that are capable of maintaining reasonable safeguards to protect cardholder data. Sears/Kmart will evaluate the use of two-factor authentication for all third party Vendors with access to Sears/Kmart's cardholder data, and implement such two-factor authentication if technically feasible and practical for Sears/Kmart's and its Vendor's existing computer systems and networks. For the avoidance of doubt, "Vendors" excludes full or part-time employees, consultants hired in their individual capacity by Sears/Kmart, contractors hired in their individual capacity by Sears/Kmart, or other persons hired in their individual capacity by Sears/Kmart.

6.1.4 Employee Education. Sears/Kmart will develop and implement a program to educate and train appropriate members of its workforce on the importance of information security and the protection of cardholder data.

6.1.5 Enhanced Security Measures. Sears/Kmart will:

6.1.5.1 Implement and utilize Point-to-Point Encryption (P2PE) for cardholder data at all of Sears/Kmart's card-present point-of-sale endpoints, except for endpoints at Sears/Kmart retail locations that are scheduled for closure on or before December 31, 2016;

6.1.5.2 Implement and utilize EMV chip card technology at all of Sears/Kmart's card-present point-of-sale endpoints, except for endpoints at Sears/Kmart retail locations that are scheduled for closure on or before December 31, 2016; and

6.1.5.3 Build a tokenization vault to serve as a centralized and secured repository for retaining all Sears/Kmart cardholder data (once implemented, all applications that process cardholder data for Sears/Kmart will store tokens instead

of cardholder data, thereby increasing the security by limiting the storage of this sensitive information in a centralized, highly controlled repository).

6.2 The obligations set forth in this Section 6 concerning Injunctive Relief shall expire on the third anniversary of the Effective Date.

7. RELEASE OF CLAIMS

7.1 Release of Settlement Class Claims. As of the Effective Date, the Settlement Class Representatives and all other Settlement Class Members, on their own behalves and on behalf of their respective past and present parents, subsidiaries, affiliates, associates, divisions, successors, predecessors, assignors, assignees, and assigns, and each of their respective past and present officers, directors, shareholders, members, insurers, agents, and employees (associates) (“Plaintiff Releasing Persons”), shall be deemed to have waived any right to assert against Sears/Kmart, MasterCard, Visa, and these entities’ present, former, and future parents, subsidiaries, affiliates, divisions, successors, predecessors, associates, agents, assignors, assignees, and assigns, and each of their respective present, former or future, officers, directors, shareholders, insurers, employees (associates), agents, acquirers, processors, representatives, attorneys, and accountants (collectively, “Released Parties”), and to have irrevocably released and forever discharged the Released Parties from and for, any and all liabilities, claims, cross- claims, causes of action, rights, actions, suits, debts, liens, contracts, agreements, damages, costs, attorneys’ fees, losses, expenses, obligations, or demands, of any kind whatsoever, existing or potential, or suspected or unsuspected, whether raised by claim, counterclaim, setoff, or otherwise, including any known or unknown claims, which they ever had, now have, or may claim now or in the future to have, that (i) were alleged or asserted against any of the Released Parties in the Action or Complaint; (ii) arise out of the

same nucleus of operative facts as any of the claims alleged or asserted in the Action or Complaint; or (iii) arise out of the Data Breach or any disclosures or notices that Sears/Kmart made or failed to make about the Data Breach or any assessments by MasterCard and/or Visa relating to the Data Breach (“Plaintiff Released Claims”).

7.2 Release of Plaintiff Released Parties. As of the Effective Date, Sears/Kmart, and those entities’ present, former, and future parents, subsidiaries, affiliates, divisions, successors, predecessors, associates, agents, assignors, assignees, and assigns, and each of their respective present, former or future, officers, directors, shareholders, insurers, employees (associates), agents, acquirers, processors, representatives, attorneys, and accountants (collectively, “Sears/Kmart Released Parties”) shall be deemed to have waived any right to assert against Settlement Class Representatives, the other Settlement Class Members, and Settlement Class Counsel (“Plaintiff Released Persons”), and to have irrevocably released and forever discharged the Plaintiff Released Persons from and for, any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts, agreements, damages, costs, attorneys’ fees, losses, expenses, obligations, or demands, of any kind whatsoever, existing or potential, or suspected or unsuspected, whether raised by claim, counterclaim, setoff, or otherwise, including any known or unknown claims, which it ever had, now has, or may claim now or in the future to have, relating to the institution or prosecution of the Action (“Sears/Kmart Released Claims”).

7.3 Unknown Claims. For purposes of the releases set forth in Sections 7.1 and 7.2 and the Final Judgment, “unknown claims” means claims that Sears/Kmart and the Plaintiff Releasing Persons do not know or suspect to exist in their favor as of the entry of the Final Judgment, which if known by them might have affected their settlement of the Actions or the Complaint. It is the intention of the Parties and the Settlement Class Members that, upon the

Effective Date, Sears/Kmart and each of the Plaintiff Releasing Persons shall be deemed to have, and by operation of the Final Judgment shall have, expressly waived and relinquished, to the fullest extent permitted: (a) by section 1542 of the California Civil Code, or (b) by any law of any state or territory of the United States, federal law, or principle of common law which is similar, comparable, or equivalent to section 1542 of the California Civil Code, the provisions, rights and benefits of any statute or law which might otherwise render a general release unenforceable with respect to unknown claims. Section 1542 of the California Civil Code reads:

Section 1542. General Release, extent. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Upon the Effective Date, Sears/Kmart and each of the Plaintiff Releasing Persons shall be deemed to have acknowledged that such party is aware that such party may hereafter discover facts other than or different from those that they know or believe to be true with respect to the subject matter of the Plaintiff Released Claims and Sears/Kmart Released Claims, but it is such party's intention to, and each of them shall be deemed upon the Effective Date to have, waived and fully, finally, and forever settled and released any and all Plaintiff Released Claims and Sears/Kmart Released Claims, whether known or unknown, suspected or unsuspected, asserted or unasserted, contingent or non-contingent, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

7.4 Bar to Future Suits. Upon entry of the Final Judgment, Sears/Kmart, the Settlement Class Representatives and other Settlement Class Members shall be enjoined from prosecuting any claim they have released in the preceding paragraphs in any proceeding against

any of the Plaintiff Released Persons, Sears/Kmart Released Persons or based on any actions taken by any of the Plaintiff Released Persons or Sears/Kmart Released Persons that are authorized or required by this Agreement or by the Final Judgment. It is further agreed that the Settlement may be pleaded as a complete defense to any proceeding subject to this section.

8. SERVICE PAYMENTS, ATTORNEYS' FEES AND LITIGATION EXPENSES AND REIMBURSEMENTS

8.1 Attorneys' Fees and Expenses. Sears/Kmart understands that Settlement Class Counsel will apply for a reasonable award of attorneys' fees and expenses (the "Fee Request"), which shall be separate from the Settlement Fund. The Parties have agreed to have Judge Wayne Andersen arbitrate a proposed fee which the Parties will agree not to challenge, and which must be submitted to the Court as a Fee Request for approval. Sears/Kmart will pay the attorneys' fees and expenses awarded by the Court.

8.2 Payment Procedure. Within ten (10) business days of the Effective Date, Sears/Kmart shall cause any attorneys' fees and costs awarded by the Court pursuant to the Fee Request, to be paid to a Trust Account to be agreed upon by the Parties. Settlement Class Counsel shall be solely responsible for distributing any awarded attorneys' fees and costs.

8.3 Service Payments. Any Service Payments made to Settlement Class Representatives will be paid from the Settlement Fund as contemplated in Sections 1.46 and 5.3.2 of the Agreement. Settlement Class Counsel may apply for a Service Payment of up to \$10,000.00 to be paid to each of the five Settlement Class Representatives in this case. The final amount of any Service Payments will be determined by the Court. Settlement Class Counsel will be solely responsible for making any application to the Court on behalf of the Settlement Class Representatives for Service Payments (the "Application") and for distributing any awarded Service Payments to the Settlement Class Representatives.

8.4 No Additional Amounts Due. Sears/Kmart shall not be liable for any additional fees, costs, or expenses of Settlement Class Counsel, the Settlement Class Representatives, or any other Settlement Class Member in connection with the Action or Complaint, or for any other service awards. Settlement Class Counsel and Settlement Class Representatives agree that they will not seek any additional fees, costs, expenses, or service awards from Sears/Kmart in connection with the Actions or the Complaint.

9. SETTLEMENT ADMINISTRATOR'S REPORTING OBLIGATIONS

9.1 The Settlement Administrator shall administer various aspects of the Settlement, including:

9.1.1 Obtaining the name, mailing address, and/or e-mail address information of Settlement Class Members for the purpose of sending Mail and E-mail Notice to Settlement Class Members;

9.1.2 With the cooperation and assistance of counsel for Sears/Kmart, obtaining information necessary to establish a reasonably practical procedure to verify Settlement Class Members eligibility as set forth in the Distribution Plan;

9.1.3 Establishing and maintaining a post office box for mailed written notifications of exclusion from the Settlement Class;

9.1.4 Establishing and maintaining the Settlement Website;

9.1.5 Establishing and maintaining a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answering the questions of the Settlement Class Members who call with or otherwise communicate such inquiries;

9.1.6 Responding to any mailed Settlement Class Member inquiries;

9.1.7 Processing all written notifications of exclusion from the Settlement Class;

9.1.8 Providing bi-weekly reports and the reports required by Section 4.4 of the Agreement related to Opt-Outs;

9.1.9 No later than fourteen (14) days before the Final Approval Hearing date, the Settlement Administrator shall file with the Court a sworn declaration verifying that notice was provided to Class Members as required in the Preliminary Approval Order; and

9.1.10 Performing any function related to settlement administration at the agreed-upon instruction of both Settlement Class Counsel and Sears/Kmart.

10. CONTINGENCIES

10.1 Contingencies. This Agreement shall be deemed terminated if: (a) the Court fails to enter the Preliminary Approval Order; (b) the Court fails to enter the Final Judgment; (c) the Final Judgment is not fully upheld on appeal, if any appeal of the Final Judgment is taken; (d) the Parties elect to terminate pursuant to Section 4.4.6 above; or (e) by written instrument signed by all Parties or their successors in interest or their duly authorized representatives prior to the Effective Date.

10.2 Effect of Termination.

10.2.1 In the event that this Agreement is terminated pursuant to Section 4.4.6, or fails to become effective for any reason whatsoever, then all obligations under this Agreement shall cease to be of any force and effect, and the Parties shall be deemed to have reverted to their respective positions as of October 21, 2015, and they shall proceed in all respects as if this Agreement, its exhibits, and any related agreements or orders, including any modification of the class definition pursuant to the Preliminary Approval Order, had never been executed or entered,

except that the provisions set forth in this Section 10.2.1, and in Section 2.1, Section 10.2.2, Section 12, Section 14.2, and Section 15.6 shall survive any such termination. Further, the fact that Sears/Kmart did not oppose the certification of the Settlement Class, or that the Court preliminary or finally approved the certification of a Settlement Class, shall not be used or cited thereafter by any person or entity, including in any contested proceeding relating to the certification of any class.

10.2.2 In the event this Agreement is terminated, or fails to become effective for any reason whatsoever, then the Parties agree to jointly seek an order from the Court restoring the Parties to their positions as of October 21, 2015, with respect to the Action and Complaint.

11. CONTINUING JURISDICTION

The Court shall retain jurisdiction to implement and enforce this Agreement's terms and the Final Judgment.

12. PUBLICITY; CONFIDENTIALITY

The Parties agree that all of their negotiations relating to this Settlement Agreement are, and shall remain, confidential and subject to the confidentiality provisions governing the Parties' mediation. The Parties further agree that they will not make the settlement reflected herein public until the Settlement Agreement is formally submitted to the Court. In issuing public statements, including responding to any inquiries from the public media concerning the Action or the Complaint or the settlement of the Action or the Complaint, the Settlement Class Representatives, Settlement Class Counsel, Sears/Kmart, and Sears/Kmart's Counsel will limit their statements to the provision of such factual information as is contained in the settlement notice, the Settlement Agreement, the pleadings, and any of the various court transcripts or orders in the Action or the Complaint. The Settlement Class Representatives, Settlement Class Counsel, Sears/Kmart, and Sears/Kmart's Counsel may further state to the effect that "the matter

has been settled to the satisfaction of all parties.” Nothing in this Section 12 shall limit (a) the ability of Settlement Class Counsel or the Settlement Class Representatives, after the Settlement Agreement is formally submitted to the Court, to communicate privately with a Settlement Class Member concerning the settlement, provided that no information regarding the negotiations relating to the Settlement are disclosed, (b) the ability of Sears/Kmart or its successors to make such public disclosures as the federal securities laws require or to provide information about the settlement to state and federal regulators, other government officials, or its insurers/reinsurers after the Settlement Agreement is formally submitted to the Court, (c) the ability of Sears/Kmart to communicate with MasterCard or Visa about the Settlement and any card brand assessments, in order to ensure that the card brand assessments are handled in a manner contemplated by the Settlement, or (d) the ability of Sears/Kmart to notify its insurers about the Settlement.

13. NOTICES

Any communication, verification, or notice sent by any Party in connection with this Agreement shall be sent by email (in which case it will be effective on transmission to each representative of a party for whom an email address is listed below, unless the party making delivery is notified that the email was not received by such representative of the other party) or overnight mail (in which case, it will be effective on the business day after being deposited with a reputable delivery service) as follows:

To Settlement Class Representatives:

MURRAY LAW FIRM
Arthur M. Murray
650 Poydras Street, Suite 2150
New Orleans, LA 70130
504-525-8100
amurray@murraylaw-firm.com

HAUSFELD, LLP
James J. Pizzirusso
1700 K. Street, NW
Suite 650
Washington, DC 20006
202-540-7200
jpizzirusso@hausfeld.com

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

Karen H. Riebel
100 Washington
Avenue South
Suite 2200
Minneapolis, MN 55401
612-339-6900
khriebel@locklaw.com

To Sears/Kmart:

KING & SPALDING LLP

Phyllis B. Sumner
S. Stewart Haskins
1180 Peachtree Street NE
Atlanta, GA 30309
404-572-4600
psumner@kslaw.com
shaskins@kslaw.com

Sears Holdings Management Corporation

c/o Legal Intake
3333 Beverly Road
Hoffman Estates, Illinois 60179
847-286-0405
legalint@searshc.com

14. MISCELLANEOUS

14.1 Entire Agreement. This Agreement contains the entire agreement between the Parties and supersedes all prior understandings, agreements, or writings regarding the subject matter of this Agreement.

14.2 No Liability. Nothing contained herein, or in any document or instrument contemplated by this Agreement, is to be construed as an admission of wrongdoing or liability by any party, such wrongdoing and liability being expressly denied, and no final adjudication having been made. The Parties have entered into this Agreement solely as a compromise of all claims for the purpose of concluding the disputes between them, and the Agreement may not be used by any third party against any Party. Pursuant to Fed. R. Evid. 408, the entering into and

carrying out of this Agreement, and any negotiations or proceedings related to it, shall not be construed as, or deemed evidence of, an admission or concession by any of the Parties or a waiver of any applicable statute of limitations, and shall not be offered or received into evidence in any action or proceeding against any Party in any court, administrative agency or other tribunal for any purpose whatsoever.

14.3 Amendment. This Agreement may be amended or modified only by a written instrument signed by all Parties or their successors in interest or their duly authorized representatives.

15. REPRESENTATIONS AND WARRANTIES

15.1 No Additional Persons with Financial Interest. Sears/Kmart shall not be liable for any additional attorneys' fees and expenses of any Settlement Class Members' counsel, including any potential objectors or counsel representing a Settlement Class Member individually, other than what is expressly provided for in this Agreement. Settlement Class Counsel agree to hold Sears/Kmart harmless from any claim that the term "Settlement Class Counsel" as defined in Section 1.42 of this Agreement fails to include any person or firm who claims that they are entitled to a share of any attorneys' fees awarded to Settlement Class Counsel in connection with the Action or the Financial Institutions Complaint.

15.2 Parties Authorized to Enter into Agreement. Each person executing this Agreement represents and warrants that he or she is fully authorized to enter into this Agreement and to carry out the obligations provided for herein. Each person executing this Agreement on behalf of Settlement Class Representatives or Sears/Kmart covenants, warrants and represents that he or she is and has been fully authorized to do so by the Settlement Class Representatives or Sears/Kmart. Each Settlement Class Representative and Sears/Kmart hereby

further represents and warrants that it intends to be bound fully by the terms of this Agreement.

15.3 Governing Law. This Agreement is intended to and shall be governed by the laws of the State of Illinois without regard to its choice of law principles.

15.4 Exclusive Jurisdiction and Venue for Enforcement. Any dispute relating to this Settlement Agreement and/or Judgement shall be resolved exclusively in the U.S. District Court for the Northern District of Illinois. The Parties agree to submit to the exclusive jurisdiction and venue for the purposes described above.

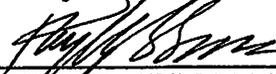
15.5 No Construction Against Drafter. This Agreement shall be deemed to have been drafted by the Parties, and any rule that a document shall be interpreted against the drafter shall not apply to this Agreement.

15.6 Agreement Binding on Successors in Interest. This Agreement shall be binding on and inure to the benefit of the respective heirs, successors, and assigns of the Parties.

15.7 Execution in Counterparts. This Agreement shall become effective upon its execution by all of the Parties' attorneys. The signatories may execute this Agreement in counterparts. Each counterpart shall be deemed to be an original, and execution of counterparts shall have the same force and effect as if all signatories had signed the same instrument. Signatures sent in PDF format by email will constitute sufficient execution of this Agreement.

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

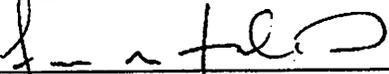
Counsel for Sears/Kmart



KING & SPALDING LLP

Phyllis B. Sumner
S. Stewart Haskins
1180 Peachtree Street NE
Atlanta, GA 30309
404-572-4600
psumner@kslaw.com
shaskins@kslaw.com

Sears/Kmart

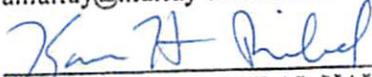


Andrew M. Johnstone
Deputy General Counsel – Litigation
Sears Holdings Management Corporation
3333 Beverly Road, B6-349B
Hoffman Estates, Illinois 60179
847-286-8157
andrew.johnstone@searshc.com

Settlement Class Counsel

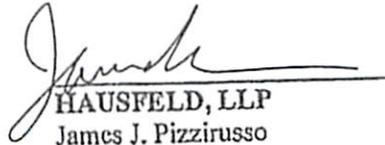
~~MURRAY LAW FIRM~~

Arthur M. Murray
650 Poydras Street, Suite 2150
New Orleans, LA 70130
504-525-8100
amurray@murray-lawfirm.com



LOCKRIDGE GRINDAL NAUEN P.L.L.P.

Karen H. Riebel
100 Washington Avenue South
Suite 2200
Minneapolis, MN 55401
612-339-6900
khriebel@locklaw.com



HAUSFELD, LLP
James J. Pizzirusso
1700 K. Street, NW
Suite 650
Washington, DC 20006
202-540-7200
jpizzirusso@hausfeld.com