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BILLINGS DIV.

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ATTORNEYS FOR DEFENDANT

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA
BILLINGS DIVISION

JASON PINTER, LOWELL DENNIS
SCHAFER, AND ANGELA TATE,
individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

D.A. DAVIDSON & CO.,

Defendant.

Case No. CV-09-59-BLG-RFC
Hon. Richard F. Cebull

AMENDED SETTLEMENT
AGREEMENT

This Amended Settlement Agreement, dated as of November 10,, 2009 (the "Settlement Agreement"), is made and entered into by and among the following Settling Parties (as defined at § IV, ¶ 1.14 below): (i) Jason Pinter, Lowell Dennis Schafer, and Angela Tate ("Representative Plaintiffs"), individually and on behalf of the Settlement Class (as defined at § IV, ¶ 1.12 below), by and through John Heenan, Esq., Heenan Law Firm, Steven C. Haddon, Esq., Haddon Law Firm, and Benjamin R. Bingham, Esq., Bingham & Lea, P.C. (collectively, "Co-Lead Settlement Class Counsel"); and (ii) D.A. Davidson & Co., for its benefit and for the benefit of all of its Related Entities (as defined herein) (together, "Davidson"), and by and through Davidson's counsel of record, James H. Goetz, Goetz, Gallik & Baldwin, P.C., and J Jackson, Dorsey & Whitney LLP. The Settlement Agreement is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined at § IV, ¶ 1.11 below) upon and subject to the terms and conditions hereof.

I. THE LITIGATION

On or about December 20, 2007, a database ("Database") containing certain confidential

1 personal and financial information of Davidson's then current and former clients ("Stolen
2 Information") was compromised by a computer hacker who illegally obtained access to that
3 Stolen Information through a sophisticated network intrusion. The hacker did not gain access to
4 Davidson's operating systems or account information (other than as described below) or detail
5 and the unauthorized access did not enable the third party to affect or alter client accounts
6 through Davidson systems. The Stolen Information may have consisted of name, address, email
7 address, Davidson account number, social security or tax identification number, date of birth,
8 November 30, 2007, account balance, if any, and a Davidson financial consultant's ID number of
9 current and former clients.
10

11 Davidson learned of the breach on or about January 16, 2008. Davidson immediately
12 notified law enforcement and other regulatory authorities, and it retained an IT forensic security
13 and consulting firm to conduct an investigation into the scope and nature of the network
14 intrusion. Law enforcement, Davidson, and the IT forensic security and consulting firm
15 coordinated their efforts. Although Davidson was prepared to notify its clients and former
16 clients of the breach almost immediately, it delayed its notification for several days at the request
17 of law enforcement, as allowed by Montana Code Annotated § 30-14-1704(3).
18

19 On January 29, 2008, Davidson sent a letter to all its present and former clients whose
20 data was in the Database informing them of the illegal breach. The next day, on January 30,
21 2008, Davidson publicly announced the illegal breach.
22

23 In Davidson's January 29, 2008 letter, Davidson informed those present and former
24 clients of actions they could take to protect themselves from the possibility of identity theft and
25 offered them, at Davidson's expense, a one-year enrollment in Experian's Triple Advantage

1 three bureau credit monitoring product. Subsequently, Davidson extended the offer to provide
2 two years instead of one year of enrollment at its expense, and the offer to enroll and take
3 advantage of this service, at Davidson's expense, remains open for any Affected Party. As of the
4 date of this Settlement Agreement, approximately 50,000 Affected Parties have enrolled.

5 As of the time of the illegal hacking, Affected Parties resided in all 50 states.

6 Neither the Representative Plaintiffs, their counsel, nor any Affected Party has informed
7 Davidson that any Affected Party has suffered from identity theft arising from the illegal
8 hacking, and Davidson has no independent knowledge of any such identity theft arising from the
9 illegal hacking.
10

11 Co-Lead Settlement Class Counsel planned several lawsuits, to be filed in federal and
12 state courts asserting claims against Davidson arising from the illegal hacking incident. They
13 have chosen to forego pursuit of these claims in lieu of and pending this settlement.
14

15 Pursuant to the terms set out below, this Settlement Agreement resolves all Claims (as
16 that term is defined in at § IV, ¶ 1.2), actions and proceedings that are asserted, or could be
17 asserted, against Davidson arising out of or related to the Stolen Information by or on behalf of
18 all persons in the United States whose information was included in the Stolen Information ("the
19 Litigation"), but excluding the rights of Class Members who opt out of the Settlement.

20 **II. CLAIMS OF THE REPRESENTATIVE PLAINTIFFS AND BENEFITS OF**
21 **THE SETTLEMENT**

22 The Representative Plaintiffs believe that the claims asserted in the Litigation have
23 merit. The Representative Plaintiffs and Co-Lead Settlement Class Counsel, however, recognize
24 and acknowledge the expense and length of continued proceedings necessary to prosecute the
25

1 Litigation against Davidson, through motion practice, trial, and potential appeals. Co-Lead
2 Settlement Class Counsel also have taken into account the uncertain outcome and the risk of
3 further litigation, as well as the difficulties and delays inherent in such litigation. Co-Lead
4 Settlement Class Counsel are also mindful of the inherent problems of proof and possible
5 defenses to the claims asserted in the Litigation. Co-Lead Settlement Class Counsel believe that
6 the settlement set forth in this Settlement Agreement confers substantial benefits upon the
7 Settlement Class. Representative Plaintiffs and Co-Lead Settlement Class Counsel have
8 determined that the settlement set forth in this Settlement Agreement is fair, reasonable,
9 adequate, and in the best interests of the Settlement Class.
10

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

12 Davidson denies each and every claim and contention alleged against it in the Litigation
13 and all charges of wrongdoing or liability alleged against it. Nonetheless, Davidson and its
14 counsel have concluded that further continuation of the Litigation would be protracted and
15 expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and
16 upon the terms and conditions set forth in this Settlement Agreement. Davidson is also mindful
17 of the needs and interests of its present and former clients whose personal information was
18 compromised by the illegal hack. Davidson has also taken into account the uncertainty and risks
19 inherent in any litigation, including in class action cases such as this Litigation. Davidson has,
20 therefore, determined that it is desirable that the Litigation be settled in the manner and upon the
21 terms and conditions set forth in this Settlement Agreement.
22

23 **IV. TERMS OF SETTLEMENT**

24 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among
25

1 the Representative Plaintiffs, individually and on behalf of the Settlement Class, by and through
2 Co-Lead Settlement Class Counsel, and Davidson that, subject to the approval of the Court, the
3 Litigation and the Released Claims shall be finally and fully compromised, settled, and released,
4 and the Litigation shall be dismissed with prejudice as to all Settling Parties, upon and subject to
5 the terms and conditions of this Settlement Agreement, as follows.

6 **1. Definitions**

7 As used in the Settlement Agreement, the following terms have the meanings specified
8 below:
9

10 1.1 "Affected Party" or "Affected Parties" means any and all persons whose
11 personal information was included in the Database and which Database was subjected to the
12 illegal hack that occurred on or about December 20, 2007.

13 1.2 "Claims" means all known claims and Unknown Claims, actions,
14 allegations, demands, rights, liabilities, and causes of action of every nature and description
15 whatsoever, whether contingent or non-contingent, whether at law or equity, and whether under
16 the law of any state or federal law.
17

18 1.3 "Claims Administration" means the provision of Summary Notice and
19 Notice, as those terms are defined in § IV, ¶ 3.1(c), and the processing of claims received from
20 Settlement Class Members, as described in § IV, ¶¶ 2.1 & 2.2.

21 1.4 "Costs of Claims Administration" means the expense of, and all actual
22 costs associated with, the Claims Administrator that arise from Claims Administration.
23

24 1.5 "Effective Date" means the first date by which all of the events and
25 conditions specified in § IV, ¶ 9.1 hereof have occurred and have been met.

1 1.6 "Final" means the occurrence of all of the following events: (i) the
2 settlement pursuant to this Settlement Agreement is approved by this court ("Court"); (ii) the
3 Court has entered a Judgment (as that term is defined herein); (iii) the time to appeal or seek
4 permission to appeal from the Judgment has expired or, if appealed, the appeal has been
5 dismissed in its entirety, or the Judgment has been affirmed in its entirety by the court of last
6 resort to which such appeal may be taken, and such dismissal or affirmance has become no
7 longer subject to further appeal or review.
8

9 1.7 "Judgment" means a judgment rendered by the Court (i) in the form
10 attached hereto as Exhibit A, or (ii) a judgment (a) substantially similar to such form in both
11 terms and cost, and (b) which is agreeable to each Settling Party in its sole discretion.
12

13 1.8 "Opt-Out Date" means the date by which members of the Settlement Class
14 must deliver, as set forth in ¶ 4.1 below, their requests to be excluded from the Settlement Class
15 in order for that request to be effective.
16

17 1.9 "Person" means an individual, corporation, partnership, limited
18 partnership, limited liability company or partnership, association, joint stock company, estate,
19 legal representative, trust, unincorporated association, government or any political subdivision or
20 agency thereof, and any business or legal entity, and their respective spouses, heirs,
21 predecessors, successors, representatives, or assignees.
22

23 1.10 "Related Entities" means any past or present director, officer, employee,
24 agent, attorney, predecessor, successor, parent, subsidiary, division, and any affiliated entity of
25 Davidson.

 1.11 "Released Claims" shall collectively mean any and all Claims, including,

1 without limitation, any causes of action under the Fair Credit Reporting Act, 15 U.S.C. §§
2 1681 *et seq.*; Gramm-Leach-Bliley Act 15 U.S.C. §§ 6801 *et seq.*; the Montana Unfair Trade
3 Practice and Consumer Protection Act of 1973, §§ 30-14-101 *et seq* MCA; Consumer Protection
4 Act, the California Business & Professional Code §§ 17200 *et seq.*, California Civil Code §§
5 1798.80-84 *et seq.*, California Civil Code §§ 1798.53; The Washington Disposal of Personal
6 Information Act, Wash. Rev. Code §§ 19.215.005 *et seq*; and any similar, related, or analogous
7 or applicable federal or state statutes, regardless of the state; any and all causes of action, at law
8 or in equity, for negligence, negligence per se, breach of contract, breach of fiduciary duty,
9 breach of confidence, invasion of privacy, misrepresentation (whether fraudulent, negligent or
10 innocent), unjust enrichment, and bailment, and including, but not limited to, any and all claims
11 for damages, injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys' fees
12 and expenses, pre-judgment interest, credit monitoring services, the creation of a fund for future
13 damages, statutory damages, punitive damages, special damages, exemplary damages,
14 restitution, the appointment of a receiver, and any other form of relief, that either have been
15 asserted or could have been asserted by any Settlement Class Member against Davidson based
16 on, relating to, concerning or arising out of the Stolen Records or the allegations, facts, or
17 circumstances described in the Litigation. Released Claims shall not include the right of any
18 Settlement Class Member or Davidson to enforce the terms of the settlement contained in this
19 Settlement Agreement.

22 1.12 "Settlement Class" means all Affected Parties. Excluded from the
23 definition of the Settlement Class are (i) Davidson and its officers, directors, and any persons
24 employed by any Davidson entity on or before January 16, 2008; (ii) the Court presiding over
25

1 any motion to approve this Settlement Agreement; (iii) any Person or entity named as a
2 defendant in any of the pending lawsuits in the concerned Litigation; (iv) Davidson's counsel of
3 record and their spouses; and (v) those Persons who timely and validly request exclusion from
4 the Settlement Class.

5 1.13 "Settlement Class Member(s)" means a Person(s) who falls within the
6 definition of the Settlement Class.

7 1.14 "Settling Parties" means, collectively, Davidson, and the Representative
8 Plaintiffs, individually and on behalf of the Settlement Class Members.

9 1.15 "Unknown Claims" means any of the Released Claims that any Settlement
10 Class Member, including any Representative Plaintiff, does not know or suspect to exist in
11 his or her favor at the time of the release of Davidson that, if known by him or her, might have
12 affected his or her settlement with and release of Davidson, or might have affected his or her
13 decision not to object to and/or to participate in this settlement. With respect to any and all
14 Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, the
15 Representative Plaintiffs expressly shall have, and each of the other Settlement Class
16 Members shall be deemed to have, and by operation of the Judgment shall have, waived the
17 provisions, rights, and benefits conferred by California Civil Code § 1542, and also any and
18 all provisions, rights, and benefits conferred by any law of any state, province, or territory of
19 the United States, or principle of common law, which is similar, comparable, or equivalent to
20 California Civil Code § 1542, which provides:

21
22
23
24 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
25 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM

1 OR HER MUST HAVE MATERIALLY AFFECTED HIS
2 OR HER SETTLEMENT WITH THE DEBTOR.

3 The Settlement Class Members, including the Representative Plaintiffs, and any of them,
4 may hereafter discover facts in addition to or different from those that they, and any of them,
5 now know or believe to be true with respect to the subject matter of the Released Claims, but
6 the Representative Plaintiffs expressly shall have, and each other Settlement Class Member
7 shall be deemed to have, and by operation of the Judgment shall have, upon the Effective
8 Date, fully, finally, and forever settled and released any and all Released Claims. The
9 Settling Parties acknowledge, and the Settlement Class Members shall be deemed by
10 operation of the Judgment to have acknowledged, that the foregoing waiver is a material
11 element of the settlement of which this release is a part. Notwithstanding the foregoing, the
12 Settling Parties acknowledge and incorporate, as if fully set forth herein, the last sentence of
13 ¶ 1.11 above.

14
15 1.16 "United States" as used in this Settlement Agreement includes the District
16 of Columbia and Puerto Rico.

17 **2. The Settlement**

18 2.1 (a) Damage Reimbursement

19 (i) Davidson shall reimburse each Settlement Class Member
20 for any actual and unreimbursed out-of-pocket damage (other than the expenditure of time)
21 (e.g., bank overdraft charges) that: (a) directly results from identity theft caused by the Stolen
22 Information; and (b) occurred during the time period from December 20, 2007 through and
23 including June 1, 2011 provided that claims for credit monitoring shall not qualify as
24 reimbursable damage under this paragraph.
25

1 (ii) Settlement Class Members seeking reimbursement for
2 damages described in subparagraph 2.1(a)(i) must submit a written claim under penalty of
3 perjury to Davidson in a form and format to be mutually agreed upon by the Settling Parties,
4 together with proof of the damages . A Settlement Class Member wishing to make such a claim
5 may file a completed and notarized claim form beginning at any time upon receipt of the
6 Summary Notice referred to in § IV, ¶ 3.1(c) of this Agreement. However, all such claims must
7 be received by no later than June 1, 2011. All claims received after June 1, 2011 will be barred.
8

9 (iii) A claim shall be determined to be valid when a claimant
10 has submitted a claim form that is documented, completed, and submitted in a proper and timely
11 fashion. Proper documentation is intended to require some objective proof of injury by the
12 claimant of both the amount of damages suffered as well as the connection of that damage to
13 the December 2007 illegal hacking of Davidson's Database, which is the subject of this
14 litigation. By way of illustration, proper documentation includes, but is not limited to, credit
15 card statements, invoices, medical records, and receipts. Proper documentation would not
16 include, for example, a claim consisting solely of a personal declaration or affidavit by the
17 claimant or his/her agent or representative.
18

19 (iv) No Settlement Class Member may recover more than
20 \$10,000.00 in total from Davidson for all damages described in subparagraph 2.1(a)(i).
21 Davidson's total liability for all damages claimed by all Settlement Class Members pursuant to
22 this subparagraph 2.1(a) is limited, in the aggregate, to One Million and No/100 Dollars
23 (\$1,000,000.00).
24

25 (v) In the event of total claims as determined by the procedures

1 set forth in subparagraphs 2.1(a)(i)-(iv) above exceed the \$1,000,000.00 maximum dollar amount
2 described in subparagraph 2.1(a)(iv) above, then each claim determined to be valid will be paid
3 on a proportionate basis calculated by the proportion of the \$1,000,000.00 total divided by the
4 total dollar amount of all claims allowed.

5 (vi) In the event of total claims as determined by the procedures
6 set forth in subparagraphs 2.1(a)(i)-(iv) above are less than the \$1,000,000.00 maximum dollar
7 amount described in subparagraph 2.1(a)(iv) above, then all funds remaining shall be retained by
8 Davidson.
9

10
11 (b) Dispute Resolution and Timing of Payment of Claims

12 (i) Following the submission of any claim under
13 subparagraphs 2.1(a), Davidson shall have thirty (30) days from the date of receipt of the claim or
14 thirty (30) days from the Effective Date, whichever is later, to either approve the claim, deny the
15 claim, or identify in writing to the Settlement Class Member, with copies to Co-Lead Settlement
16 Class Counsel, such consents and additional information ("Claim Supplementation") as
17 Davidson may reasonably request. If Davidson requests such Claim Supplementation, the
18 Settlement Class Member shall provide such Claim Supplementation to Davidson by within
19 forty-five (45) days of Davidson's request. In the event circumstances interfere with a
20 Settlement Class Member's ability to comply with the 45-day period, the Settlement Class
21 Member may request and, for good cause shown (*e.g.*, illness, out of the country, mail failure,
22 lack of cooperation of third parties), shall be given a reasonable extension during which to
23
24
25 comply.

1 (ii) Davidson shall have thirty (30) days from receipt of the
2 Claim Supplementation to approve or deny the claim. In the event that Davidson denies a claim,
3 the Settlement Class Member may: (1) accept the decision; or (2) dispute the decision by
4 submitting a claim to the Claims Administrator for resolution within forty-five (45) days of the
5 denial. Davidson shall supply the Settlement Class Member with the information necessary to
6 make the submission to Claims Administrator. In the event circumstances interfere with the
7 Settlement Class Member's ability to comply within the 45-day submission period, the
8 Settlement Class Member may request a reasonable extension of that period from Claims
9 Administrator, which shall be granted if good cause is shown (e.g., illness, out of the country,
10 mail failure, lack of cooperation of third parties).

12 (iii) The Claims Administrator shall notify Davidson and Co-
13 Lead Settlement Class Counsel of the submission of any claim for dispute resolution, and
14 Davidson shall have thirty (30) days from the date of such notice to provide its reasons for
15 rejection of the claim. The Claims Administrator shall resolve the dispute in accordance with its
16 Policy on Consumer Arbitrations Pursuant to Pre-Dispute Clauses—Minimum Standards of
17 Procedural Fairness, attached hereto as Exhibit B.

19 (iv) The decision of the Claims Administrator shall be final.
20 The costs of Claims Administration shall be the sole obligation of and paid for by Davidson.
21 Any legal fees or expenses incurred during the dispute resolution process, and all fees and
22 expenses incurred by Co-Lead Settlement Class Counsel and by Davidson, shall be borne by the
23 party incurring them.

25 (v) No payment shall be made by Davidson pursuant to
paragraph 2.1(a) to any Settlement Class Member until all claims submitted by all Settlement

1 Class Members have been concluded either by approval for payment by Davidson or pursuant to
2 dispute resolution process pursuant to this paragraph 2.1(b). Subject to the limitations set forth
3 in subparagraphs 2.1(a)(iv)-(v), Davidson shall pay all valid claims within 30 days after all
4 claims submitted to Davidson by all Settlement Class Members have been concluded.

5 2.2 The Settling Parties agree, for purposes of this settlement only, to the
6 certification of the Settlement Class, pursuant to Rule 23 of the Federal Rules of Civil Procedure.

7 If the settlement set forth in this Settlement Agreement is not approved by the Court, or if the
8 settlement is terminated or cancelled pursuant to the terms of this Settlement Agreement, then
9 this Settlement Agreement, and the certification of the Settlement Class provided for herein, will
10 be vacated and a joint dismissal will be requested pursuant to § IV, ¶ 9.3(a), without prejudice to
11 any party's position on the issue of class certification or any other issue. The Settling Parties'
12 agreement to the certification of the Settlement Class is also without prejudice to any position
13 asserted by the Settling Parties in any other proceeding, case, or action, as to which all of their
14 rights are specifically preserved.
15
16
17

18 **3. Order of Preliminary Approval and Publishing of Notice of a Final**
19 **Fairness Hearing**

20 3.1 As soon as practicable after the execution of the Settlement Agreement,
21 Co-Lead Settlement Class Counsel and counsel for Davidson shall jointly submit this Settlement
22 Agreement to the Court, and Co-Lead Settlement Class Counsel shall file a motion for
23 preliminary approval of the settlement with the Court and apply for entry of an order (the "Order
24 of Preliminary Approval and Publishing of Notice of a Final Fairness Hearing"), in the form
25 attached hereto as Exhibit C, an order substantially similar to such form in both terms and
cost, requesting, *inter alia*,

1 (a) certification of the Settlement Class for settlement purposes only
2 pursuant § IV, ¶ 2.2;

3 (b) preliminary approval of the settlement as set forth herein;

4 (c) approval of the publication of a customary form of summary notice
5 (the "Summary Notice") in a form and format mutually agreed upon by the Settling Parties (in a
6 manner certified by the Claims Administrator to reach an appropriate percentage of the putative
7 class, targeted to adults over 18 in the United States), and a customary long form of notice
8 ("Notice") in a form and format mutually agreed upon by the Settling Parties, to be circulated by
9 a website. The Summary Notice and the Notice together shall include a fair recitation of the
10 parties' respective litigation positions, the general terms of the settlement set forth in the
11 Settlement Agreement, instructions for how to object to or opt-out of the settlement, the process
12 and instructions for making claims to the extent contemplated herein, and the date, time, and
13 place of the Final Fairness Hearing;
14

15 (d) appointment of The Garden City Group, Inc. as Claims
16 Administrator;

17 (e) approval of the Summary Notice, Notice, and claim form.

18 3.2 Davidson shall pay for and shall assume the administrative responsibility
19 of providing notice to the Affected Parties in accordance with the Order of Preliminary
20 Approval and Publishing of Notice of a Final Fairness Hearing, and the costs of such notice,
21 together with the Costs of Claims Administration, shall be paid by Davidson. For all Affected
22 Parties who Davidson has a current mailing address, Summary Notice shall be provided via first-
23 class direct mail. The notice program otherwise shall be by publication as designated by the
24 Claims Administrator and approved by the Court. The Claims Administrator, in conjunction
25

1 with Davidson, shall establish a settlement website and shall maintain and update the content of
2 the website throughout the claim period, with access to the Summary Notice, Notice,
3 and claim form approved by the Court, as well as this Settlement Agreement. The Claims
4 Administrator also will provide copies of the forms of Summary Notice, Notice, and claim form
5 approved by the Court, as well as this Settlement Agreement, on the approved website. Prior to
6 the Final Fairness Hearing, Co-Lead Settlement Class Counsel and Davidson shall cause to be
7 filed with the Court an appropriate affidavit or declaration with respect to complying with this
8 provision of notice.
9

10 3.3 Co-Lead Settlement Class Counsel and Davidson shall request that after
11
12 notice is given, the Court hold a hearing (the "Final Fairness Hearing") and grant final approval
13 of the settlement set forth herein. If the Court changes the date of the Final Fairness Hearing,
14 any such new date shall be posted on the approved website.
15

16 3.4 Co-Lead Settlement Class Counsel and Davidson further agree that the
17 proposed Order of Preliminary Approval and Publishing of Notice of a Final Fairness Hearing
18 shall provide, subject to Court approval, that, pending the final determination of the fairness,
19 reasonableness, and adequacy of the settlement set forth in the Settlement Agreement, no
20 Affected Party, either directly, representatively, or in any other capacity, shall institute,
21 commence, or prosecute, against Davidson, any of the Released Claims in any action or
22 proceeding in any court or tribunal.
23

24 3.5 Davidson shall comply with the obligation to give notice under the Class
25 Action Fairness Act of 2005, 28 U.S.C. § 1715, in connection with the proposed settlement. No
later than 10 calendar days before the Final Fairness Hearing, counsel for Davidson shall file

1 with the Court one or more declarations stating that Davidson has complied with its notice
2 obligations under 28 U.S.C. § 1715.

3 3.6 Davidson shall provide at its own expense by U.S. mail a supplemental
4 notice to the class, including persons who have previously opted out of the class, in the form
5 substantially attached as Supplemental Exhibit A as approved by the Court at the Final Fairness
6 Hearing.

7
8 3.7 Because the Settlement Agreement has been modified prior to the Final
9 Fairness Hearing, in response to objections filed, certain changes to the Notice presently posted
10 on the website www.dadsettlement.com are necessary. Subject to the Court approval, such
11 modified Notice, a proposed form of which is attached hereto as Supplemental Exhibit B, shall
12 be posted on the website to replace the present Notice. And the Summary Notice form shall be
13 removed from the website www.dadsettlement.com.

14
15 3.8 Davidson agrees to maintain on its website www.dadco.com a link to the
16 class action settlement website www.dadsettlement.com through June 10, 2011 the language of
17 which shall be developed solely at Davidson's discretion.

18 3.9 Davidson also agrees to place this Amended Settlement Agreement and
19 the supplemental notice on the class action website www.dadsettlement.com.

20 **4. Opt-Out Procedures**

21 4.1 Each Affected Party wishing to opt out of the Settlement Class shall
22 individually sign and timely submit written notice of such intent to: John Heenan, Heenan Law
23 Firm, 3970 Avenue D, Suite A, , Billings, MT 59102. The written notice must clearly manifest
24 an intent to be excluded from the Settlement Class. To be effective, written notice must be
25

1 received at least twenty-one (21) calendar days prior to the date as set by the Court in the Notice
2 for the Final Fairness Hearing.

3 4.2 All Affected Parties who submit valid and timely notices of their intent to
4 be excluded from the Settlement Class, as set forth in § IV, ¶ 4.1, referred to herein as "Opt-
5 Outs," shall not receive any benefits or be bound by the terms of this Settlement Agreement. All
6 Persons falling within the definition of the Settlement Class who do not request to be excluded
7 from the Settlement Class in the manner set forth in § IV, ¶ 4.1, except as otherwise ordered by
8 the Court, shall be bound by the terms of this Settlement Agreement and Judgment entered
9 thereon.
10

11 4.3 Because the Settlement Agreement dated June 26, 2009, has been modified in
12 response to objections prior to the Final Fairness Hearing, and because the modifications are
13 beneficial to the class, the Parties agree that those persons who have previously opted out of the
14 class pursuant to this Paragraph 4, should have the reasonable opportunity to revoke their opt
15 outs. Accordingly, all those persons who timely opted out of the class shall have to and
16 including March 1, 2010, to revoke their exclusion from the Class. Notice of any such
17 revocation must be sent by U.S. mail, postage prepaid, and must be postmarked no later than
18 March 1, 2010, to: John Heenan, Heenan Law Firm, 3970 Avenue D, Suite A, , Billings, MT
19 59102.
20

21 **5. Objection Procedures**

22 5.1 Each Settlement Class Member wishing to object to the settlement shall
23 submit a timely written notice of his objection. Such notice shall state (i) the objector's full
24 name, address, telephone number, and e-mail address, (ii) information identifying the objector as
25

1 a Settlement Class Member, such as (a) proof (*e.g.*, a letter from Davidson) that their personal
2 financial information may have been compromised, or (b) an affidavit setting forth, in as much
3 detail as the objector can reasonably provide, (1) the fact of receiving a letter from Davidson,
4 indicating that their personal financial information may have been compromised, and the
5 approximate date of said receipt, and (2) documentation supporting the objector's allegation of
6 damage, if the objector is making such an allegation, (iii) a written statement of all grounds for
7 the objection accompanied by any legal support for the objection, (iv) copies of any papers,
8 briefs or other documents upon which the objection is based, (v) the identity of all counsel
9 representing the objector, (vi) the identity of all counsel representing the objector who will
10 appear at the Fairness Hearing, (vii) a list of all persons who will be called to testify at the
11 Fairness Hearing in support of the objection, (viii) a statement confirming whether the objector
12 intends to testify at the Fairness Hearing, (ix) a list of other class action cases in which the
13 objector or objector's counsel have appeared as settlement objectors or as counsel for settlement
14 objectors in the preceding five (5) years, and (x) the objector's signature or the signature of the
15 objector's duly authorized attorney or other duly authorized representative (along with
16 documentation setting forth such documentation).

17
18
19
20 5.2 To be timely, written notice of an objection in appropriate form must be
21 filed with the Clerk of the United States District Court for the District of Montana, Billings,
22 Division, 316 N. 26th Ave., Billings, Montana, 59101, twenty-one (21) calendar days prior to the
23 date set in the Notice for the Final Fairness Hearing, and served therewith upon both of the
24 following: Co-Lead Settlement Class Counsel, John Heenan, Heenan Law Firm, 3970 Avenue D,
25 Suite A, Billings, MT 59102; Steven C. Haddon, Haddon Law Office, 7 W. 6th Ave., 4th Fl.,

1 Helena, MT 59601; and Benjamin R. Bingham, Bingham & Lea, 319 Maverick Street, San
2 Antonio, TX 78212; and co-counsel for Davidson, James H. Goetz, Goetz, Gallik & Baldwin,
3 35 N. Grand, P. O. Box 6580, Bozeman, MT 59715; and J David Jackson, Dorsey & Whitney,
4 50 South Sixth Street, Suite 1500, Minneapolis, MN 55402-1498. If appropriate, filing and
5 service may also be made via the court's ecf system.

6 **6. Releases**

7
8 6.1 Upon the Effective Date, each Settlement Class Member, including
9 Representative Plaintiffs, shall be deemed to have, and by operation of the Judgment shall have,
10 fully, finally, and forever released, relinquished, and discharged all Released Claims.

11 6.2 Upon the Effective Date, Davidson shall be deemed to have, and by
12 operation of the Judgment shall have, fully, finally, and forever released, relinquished, and
13 discharged, Representative Plaintiffs, each and all of the Settlement Class Members, Co-Lead
14 Settlement Class Counsel, and all other Co-Lead Settlement Class Counsel who have consented
15 to and joined in the settlement, from all Claims, including Released Claims and Unknown
16 Claims, based upon or arising out of the institution, prosecution, assertion, settlement or
17 resolution of the Litigation, except for enforcement of the Settlement Agreement as to such
18 matters as pertain to each of them.
19

20 **7. Plaintiffs' Counsel's Attorneys' Fees, Costs, and Expenses, and**
21 **Incentive Awards**

22 7.1 The Settling Parties have reached an agreement on an amount to be paid in
23 attorneys' fees, costs, and expenses. The Settling Parties have agreed that Co-Lead Settlement
24 Class Counsel are entitled to an award of attorneys' fees, costs, and expenses in the amount of
25 One Hundred Eighty Five Thousand and No/100 Dollars (\$185,000, of which Co-Lead
Settlement Class Counsel shall pay \$12,000 to Elizabeth A. Brennan).

1 7.2 Davidson has agreed to pay, subject to Court approval, incentive awards
2 of One Thousand and No/100 Dollars (\$1,000.00) to each Representative Plaintiff.

3 7.3 Within 10 days of the Effective Date, Davidson shall pay the attorneys'
4 fees, costs, and expenses, and the incentive awards, as set forth above in § IV, ¶¶ 7.1 and 7.2, to
5 an account established and/or directed by Co-Lead Settlement Class Counsel. Co-Lead
6 Settlement Class Counsel shall thereafter distribute the award of attorneys' fees, costs, and
7 expenses, and the incentive awards, consistent with § IV, ¶¶ 7.1 and 7.2.

8 7.4 The amounts of any award of attorneys' fees, costs, and expenses and
9 incentive awards are intended to be considered by the Court separately from the Court's
10 consideration of the fairness, reasonableness, and adequacy of the settlement.
11

12
13 **8. Administration of Claims**

14 8.1 The Claims Administrator, together with Davidson, as set fort in § IV, ¶
15 2.1(b) above, shall administer and calculate the claims submitted by Settlement Class Members
16 under § IV, ¶ 2.1, except as provided otherwise therein. Co-Lead Settlement Class Counsel and
17 Davidson's counsel shall be given reports as to both claims and distribution, and have the right to
18 review and obtain supporting documentation and challenge such reports if they believe them to
19 be inaccurate or inadequate.
20

21 8.2 Except as otherwise ordered by the Court, all Settlement Class Members
22 who fail to timely submit a claim form for any benefits hereunder within the time frames set
23 forth herein, or such other period as may be ordered by the Court, or otherwise allowed, shall be
24 forever barred from receiving any payments or benefits pursuant to the settlement set forth
25 herein, but will in all other respects be subject to and bound by the provisions of the Settlement
Agreement, the releases contained herein, and the Judgment.

1 8.3 No Person shall have any claim against Davidson, Davidson's counsel,
2 Co-Lead Settlement Class Counsel based on distributions of benefits made substantially in
3 accordance with the Settlement Agreement and the settlement contained herein, or further
4 order(s) of the Court.

5 8.4 All payments and distributions hereunder, unless expressly provided
6 otherwise or for an identity theft claim pursuant to § IV, ¶ 2.1(a) of this Settlement
7 Agreement, shall be made within thirty (30) days of the completion of the Claims Administration
8 process.
9

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

12 9.1 The Effective Date of the settlement shall be conditioned on the
13 occurrence of all of the following events:

14 (a) the Court has entered the Order of Preliminary Approval and
15 Publishing of Notice of a Final Fairness Hearing, as required by § IV, ¶ 3.1, hereof;

16 (b) no more than 10 percent (10%) of the putative class members opt
17 out of the class;

18 (c) the Court has entered the Judgment granting final approval of the
19 settlement as set forth herein; and
20

21 (d) the Judgment has become Final, as defined in § IV, ¶ 1.6, hereof.

22 9.2 If all of the conditions specified in ¶ 9.1 hereof are not satisfied, then the
23 Settlement Agreement shall be canceled and terminated subject to ¶ 9.3 hereof, unless Davidson
24 agrees in writing to waive the conditions of subparagraph 9.1(b) and proceed with the Settlement
25 Agreement.

 9.3 In the event that the Settlement Agreement is not approved by the Court or

1 the settlement set forth in the Settlement Agreement is terminated in accordance with its terms,

2 (a) the Settling Parties shall be restored to their respective positions in
3 the Litigation, and shall jointly request a dismissal of the lawsuit without prejudice, and

4 (b) the terms and provisions of the Settlement Agreement shall have
5 no further force and effect with respect to the Settling Parties and shall not be used in the
6 Litigation or in any other proceeding for any purpose, and any judgment or order entered by the
7 Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc*
8 *pro tunc*. Notwithstanding any statement in this Settlement Agreement to the contrary, no order
9 of the Court or modification or reversal on appeal of any order reducing the amount of attorneys'
10 fees, costs, and expenses awarded to Co-Lead Settlement Class Counsel shall constitute grounds
11 for cancellation or termination of the Settlement Agreement.
12

13 (c) Davidson may include any expenses incurred under the terms of
14 this Settlement Agreement, including without limitation the fees referred to in § IV, ¶ 3.2 of this
15 Settlement Agreement, in any application it may make for recovery of fees or expenses should it
16 eventually prevail in any litigation that proceeds after a terminated settlement.
17

18 9.4 Upon establishment of the Effective Date, as set forth in subparagraph
19 9.1(b)above, the Parties shall post the effective date prominently on the approved website.

20 **10. Miscellaneous Provisions**

21 10.1 The Settling Parties: (a) acknowledge that it is their intent to consummate
22 this Settlement Agreement; and (b) agree to cooperate to the extent reasonably necessary to
23 effectuate and implement all terms and conditions of this Settlement Agreement, and any
24 applicable requirements under the Class Action Fairness Act of 2005, and to exercise their best
25 efforts to accomplish the terms and conditions of this Settlement Agreement. Co-Lead

1 Settlement Class Counsel and Davidson's counsel shall coordinate efforts for effectuating the
2 required notice to the Attorneys General of all states where an Affected Party resides.

3 10.2 The Settling Parties intend this settlement to be a final and complete
4 resolution of all disputes between them with respect to the Litigation. The settlement
5 compromises claims that are contested and shall not be deemed an admission by any Settling
6 Party as to the merits of any claim or defense. The Settling Parties each agree that the settlement
7 was negotiated in good faith by the Settling Parties, and reflects a settlement that was reached
8 voluntarily after consultation with competent legal counsel. The Settling Parties reserve their
9 right to rebut, in a manner that such party determines to be appropriate, any contention made in
10 any public forum that the Litigation was brought or defended in bad faith or without a reasonable
11 basis.
12

13 10.3 Neither the Settlement Agreement, nor the settlement contained herein,
14 nor any act performed or document executed pursuant to or in furtherance of the Settlement
15 Agreement or the settlement: (a) is or may be deemed to be, or may be used as an admission of,
16 or evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing or
17 liability of any of Davidson; or (b) is or may be deemed to be, or may be used as an admission
18 of, or evidence of, any fault or omission of any of Davidson, in any civil, criminal, or
19 administrative proceeding in any court, administrative agency, or other tribunal. Davidson may
20 file the Settlement Agreement and/or the Judgment in any action that may be brought against
21 them in order to support a defense or counterclaim based on principles of res judicata, collateral
22 estoppel, release, good faith settlement, judgment bar, reduction, or any other theory of claim
23 preclusion, issue preclusion or similar defense or counterclaim.
24
25

 10.4 The Settlement Agreement may be amended or modified only by a written

1 instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

2 10.5 This Amended Settlement Agreement, together with the Exhibits attached
3 hereto, constitutes the entire agreement among the parties hereto and no representations,
4 warranties, or inducements have been made to any party concerning the Settlement Agreement
5 other than the representations, warranties, and covenants contained and memorialized in such
6 document. Except as otherwise provided herein, each party shall bear its own costs. This
7 Amended Settlement Agreement supersedes in its entirety the Settlement Agreement dated June
8 26, 2009.

9
10 10.6 Co-Lead Settlement Class Counsel, on behalf of the Settlement Class, are
11 expressly authorized by the Representative Plaintiffs to take all appropriate actions required or
12 permitted to be taken by the Settlement Class pursuant to the Settlement Agreement to effectuate
13 its terms, and also are expressly authorized to enter into any modifications or amendments to the
14 Settlement Agreement on behalf of the Settlement Class that they deem appropriate.

15
16 10.7 Each counsel or other Person executing the Settlement Agreement on
17 behalf of any party hereto hereby warrants that such Person has the full authority to do so.

18 10.8 The Settlement Agreement may be executed in one or more counterparts.
19 All executed counterparts and each of them shall be deemed to be one and the same instrument.
20 A complete set of original executed counterparts shall be filed with the Court.

21 10.9 The Settlement Agreement shall be binding upon, and inure to the benefit
22 of, the successors and assigns of the parties hereto.

23
24 10.10 The Court shall retain jurisdiction with respect to implementation and
25 enforcement of the terms of the Settlement Agreement, and all parties hereto submit to the
jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in

1 the Settlement Agreement.

2 10.11 This Settlement Agreement shall be considered to have been negotiated,
3 executed and delivered, and to be wholly performed, in the State of Montana, and the rights and
4 obligations of the parties to the Settlement Agreement shall be construed and enforced in
5 accordance with, and governed by, the internal, substantive laws of the State of Montana without
6 giving effect to that State's choice of law principles.

7
8 10.12 As used herein, "he" means "he, she, or it"; "his" means "his, hers, or its";
9 and "him" means "him, her, or it."

10 10.13 All dollar amounts are in United States dollars, unless otherwise expressly
11 stated.

12 10.14 All agreements made and orders entered during the course of the
13 Litigation relating to the confidentiality of information shall survive this Settlement Agreement.

14
15 IN WITNESS WHEREOF, the parties hereto have caused the Settlement Agreement to
16 be executed, by their duly authorized attorneys.

17 DATED this 12th day of NOVEMBER, 2009

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JASON PINTER
Subscribed and sworn to before me this
____ day of _____, 2009

LOWELL DENNIS SCHAFER
Subscribed and sworn to before me this
____ day of _____, 2009

ANGELA TATE
Subscribed and sworn to before me this
____ day of _____, 2009

HEENAN LAW FIRM, PLLC
By 
John Heenan
P. O. Box 2278
Billings, MT 59103
Ph: (406) 839-9091
Fax: (406) 839-9092
Email: john@heenanlawfirm.com

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By _____
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Street
San Antonio, TX 78212
Ph: (210) 224-1819
Fax: (210) 224-0141
Email: ben@binghamandlea.com

1 D.A. DAVIDSON & CO.

2
3 By Larry Martiny
4 Its General Counsel

5 Subscribed and sworn to before me this
6 _____ day of _____, 2009
7 _____
8

GOETZ, GALLIK & BALDWIN, P.C.

By [Signature]
James Goetz
P.O. Box 6580
Bozeman, MT 59771-6580
Ph: 406-587-0618
Email: jim@goetzlawfirm.com

9
10 DORSEY & WHITNEY LLP

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