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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

SALLY MCAULEY, et al., individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

PIERCE COLLEGE DISTRICT,

Defendant.

No. 23-2-11064-7

SETTLEMENT AGREEMENT

1 This Settlement Agreement, dated August 9, 2024, is made and entered into
2 by and among Plaintiffs Sally McAuley, Amber Cooper, Alex Neigel, April Perez,
3 Logan Knapp, James Mikita, Robby Luthy, Peter Clement, Mercedes Freund, Dale
4 Jarrell, Ben McAuley, Karlee Pangis, Ray Shepherd, Jessica Hogan, Aman Centers,
5 Jessica Bodas, and Dennis Liberatore, individually and on behalf of the Settlement
6 Class, and their heirs, assigns, or other successors in interest (“Plaintiffs”) and Pierce
7 College District (“Pierce College”), its officers, agents, and employees
8 (“Defendant”) and together with Plaintiffs, the “Settling Parties”, by and through
9 their respective counsel. This Agreement is intended by the Settling Parties to fully,
10 finally, and forever resolve, discharge, and settle all of Plaintiffs’ Released Claims,
11 as defined below, upon and subject to the terms and conditions hereof, and subject to
12 the Court’s approval.

13 RECITALS

14 WHEREAS, on November 8, 2023, Plaintiff McAuley filed a class action
15 complaint in the Superior Court of the State of Washington, County of Pierce, entitled
16 *McAuley v. Pierce College District*, Case No. 23-2-11064-7 (the “*McAuley Action*”);

17 WHEREAS, on November 22, 2023, Plaintiff Cooper filed a putative class
18 action against Defendant in the Superior Court of the State of Washington, County
19 of Pierce, entitled *Cooper v. Pierce College District*, Case No. 23-2-11372-7 (the
20 “*Cooper Action*”);

21 WHEREAS, on March 15, 2024, the *McAuley* and *Cooper* Actions were
22 consolidated into the *McAuley Action* and on May 9, 2024, Plaintiffs filed their
23 operative Consolidated Complaint;

24 WHEREAS, the operative Consolidated Complaint asserts a claim against
25 Defendant for Negligence (the “*Litigation*”), arising from the Data Security Incident
26 (as such term is defined below);

27 WHEREAS, Defendant has denied and continues to deny: (a) each and every
28 allegation and all charges of wrongdoing or liability of any kind whatsoever asserted

1 or which could have been asserted in this Litigation; (b) that the Plaintiffs in the
2 Litigation and the class they purport to represent have suffered any damage or harm;
3 and (c) that the Litigation satisfies the requirements to be tried as a class action under
4 Washington law.

5 WHEREAS, without acknowledging or admitting any fault or liability on the
6 part of the Defendant, the Settling Parties have agreed to enter into this Agreement
7 as a reasonable and appropriate compromise of Plaintiffs' and Class Members'
8 claims to put to rest all controversy and to avoid the uncertainty, risk, and/or expense
9 of burdensome, protracted, and costly litigation that would be involved in pursuing
10 and defending this Action. This Agreement is for settlement purposes only, and
11 nothing in this Agreement shall constitute, be construed as, or be admissible in
12 evidence as any admission of the validity of any claim or any fact alleged by Plaintiffs
13 in this Action or in any other pending or subsequently filed action, or of any
14 wrongdoing, fault, violation of law, or liability of any kind on the part of Defendant
15 or admission by any of the parties of the validity or lack thereof of any claim,
16 allegation, or defense asserted in this Litigation or in any other action;

17 WHEREAS, the Settling Parties participated in good faith, arms-length
18 settlement discussions, which included a mediation held on April 12, 2024, with
19 experienced and respected mediator, Jill Sperber of JAMS, through which the basic
20 terms of a settlement were negotiated and agreed to in principle;

21 WHEREAS, Class Counsel conducted a thorough examination and evaluation
22 of the relevant law and facts to assess the merits of the claims to be resolved in this
23 settlement and how best to serve the interests of the putative class in the Litigation.
24 Based on this investigation and the negotiations described above, Class Counsel have
25 concluded, taking into account the sharply contested issues involved, the risks,
26 uncertainty and cost of further pursuit of this Litigation, and the benefits to be
27 provided to the Settlement Class pursuant to this Agreement, that a settlement with
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1 Defendant on the terms set forth in this Agreement is fair, reasonable, adequate and
2 in the best interests of the putative class;

3 WHEREAS, this Settlement Agreement is intended to fully, finally and forever
4 resolve all claims and causes of action asserted, or that could have been asserted
5 based upon the facts alleged in the Complaint, against Defendant and the Released
6 Persons, by and on behalf of the Plaintiffs and Settlement Class Members, and any
7 other such actions by and on behalf of any other putative classes of individuals
8 against Defendant originating, or that may originate, in jurisdictions in the United
9 States, reasonably related to the facts alleged in the Consolidated Complaint.

10 NOW, THEREFORE, IT IS HEREBY AGREED, by and between the Settling
11 Parties, that, subject to the approval of the Court as provided for in this Agreement,
12 the Litigation and Released Claims shall be fully and finally settled, compromised,
13 and released, on the following terms and conditions:

14 **I. DEFINITIONS**

15 As used in this Settlement Agreement, the following terms have the meanings
16 specified below:

17 1.1 “Action” or “Litigation” means *McAuley, et al. v. Pierce College*
18 *District*, Case No. 23-2-11064-7 (consolidated with Case No. 23-2-11372-7),
19 pending before the Court as of the date of this Agreement.

20 1.2 “Agreement” or “Settlement Agreement” means this agreement.

21 1.3 “Claims Administration” means the issuing of notice of this settlement
22 to Class Members and the processing and payment of claims received from
23 Settlement Class Members by the Claims Administrator.

24 1.4 “Claims Administrator” means CPT Group, who is experienced in
25 administering class action claims generally and specifically those of the type
26 provided for and made in data breach litigation.

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1 1.5 “Claims Deadline” means the postmark and/or online submission
2 deadline for valid claims submitted pursuant to ¶ 2 below. The Claims Deadline is
3 ninety (90) days after the Notice Commencement date.

4 1.6 “Claim Form” means the claim form to be used by Settlement Class
5 Members to submit a Settlement Claim, either through the mail or online through the
6 Settlement Website, substantially in the form as shown in **Exhibit A**.

7 1.7 “Claimant” means a Settlement Class Member who submits a Claim
8 Form for a Settlement Payment.

9 1.8 “Class Members” means all individuals residing in the United States to
10 whom Defendant or its authorized representative sent a notice concerning the July
11 2023 Data Security Incident announced by Defendant. Class Members specifically
12 excludes all persons who are directors or officers of Pierce College, the Judge
13 assigned to the Action, and that Judge’s immediate family and Court staff. Class
14 Members consist of approximately 160,835 individuals. These individuals constitute
15 the “Settlement Class” solely for purposes of certifying a settlement class in this
16 Litigation.

17 1.9 “Costs of Claims Administration” means all actual costs associated with
18 or arising from Claims Administration. The Claims Administrator shall, from the
19 Settlement Fund, pay all Costs of Claims Administration subject to approval by Class
20 Counsel.

21 1.10 “Court” means the Superior Court of the State of Washington, County
22 of Pierce.

23 1.11 “Data Security Incident” means the cyberattack perpetrated on Pierce
24 College beginning on or around July 23, 2023, and which Defendant learned about
25 on or around July 24, 2023.

26 1.12 “Dispute Resolution” means the process for resolving disputed
27 Settlement Claims as set forth in this Agreement.
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1 1.13 “Final” or “Effective Date” mean the occurrence of all of the following
2 events: (i) the settlement pursuant to this Settlement Agreement is approved by the
3 Court; (ii) the Court has entered a Judgment (as that term is defined herein); and (iii)
4 the time to appeal or seek permission to appeal from the Judgment has expired or, if
5 appealed, the appeal has been dismissed in its entirety, or the Judgment has been
6 affirmed in its entirety by the court of last resort to which such appeal may be taken,
7 and such dismissal or affirmance has become no longer subject to further appeal or
8 review. Notwithstanding the above, any order modifying or reversing any attorneys’
9 fees award or service award made in this case shall not affect whether the Judgment
10 is “Final” as defined herein or any other aspect of the Judgment.

11 1.14 “Final Approval of the Settlement” means an order and judgment that
12 the Court enters and which finally approves the Settlement Agreement without
13 material change to the Parties’ agreed-upon proposed final approval order and
14 judgment.

15 1.15 “Judgment” means a judgment rendered by the Court.

16 1.16 “Long Notice” means the long form notice of settlement to be posted on
17 the Settlement Website, substantially in the form as shown in **Exhibit B**.

18 1.17 “Notice Commencement Date” means thirty (30) days following entry
19 of the Preliminary Approval Order.

20 1.18 “Notice Program” means steps taken by the Claims Administrator to
21 notify Class Members of the settlement as set forth below.

22 1.19 “Objection Date” means the date by which Settlement Class Members
23 must file with the Court, with service to Proposed Lead Class Counsel for the Settling
24 Parties, their objection to the Settlement Agreement for that objection to be effective.
25 The Objection Date is sixty (60) days after the Notice Commencement Date.

26 1.20 “Opt-Out Date” means the date by which Class Members must mail
27 their requests to be excluded from the Settlement Class for that request to be
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1 effective. The postmark date shall constitute evidence of the date of mailing for these
2 purposes. The Opt-Out Date is sixty (60) days after the Notice Commencement Date.

3 1.21 “Person” means an individual, corporation, partnership, limited
4 partnership, limited liability company or partnership, association, joint stock
5 company, estate, legal representative, trust, unincorporated association, government
6 or any political subdivision or agency thereof, and any business or legal entity, and
7 their respective spouses, heirs, predecessors, successors, representatives, or
8 assignees.

9 1.22 “Preliminary Approval Order” means the order preliminarily approving
10 the Settlement Agreement and ordering that notice be provided to Class Members
11 substantially in the form attached hereto as **Exhibit C**.

12 1.23 “Proposed Settlement Class Counsel” and “Class Counsel” means
13 Timothy W. Emery of Emery Reddy, PLLC (“Proposed Lead Class Counsel”) and
14 Kaleigh N. Boyd of Tousley Brain Stephens PLLC, M. Anderson Berry of Clayco C.
15 Arnold, A Professional Corp., Daniel Srourian of Srourian Law Firm, P.C., and Tyler
16 J. Bean of Siri & Glimstad LLP (“Proposed Additional Class Counsel”).

17 1.24 “Related Entities” means Pierce College’s respective past or present
18 officers, directors, employees, servants, members, partners, principals, shareholders,
19 owners, parents, subsidiaries, divisions, partnerships, and related or affiliated entities,
20 and each of their respective predecessors, successors, directors, officers, employees,
21 principals, agents, attorneys, executors, heirs, administrators, joint ventures, personal
22 representatives, assigns, transferees, trustees, insurers, and reinsurers, and includes,
23 without limitation, any Person or government (including but not limited to the State
24 of Washington) related to any such entity who is, was, or could have been named as
25 a defendant in any of the actions comprising the Litigation.

26 1.25 “Released Claims” shall collectively mean any and all past, present, and
27 future claims, causes of action, lawsuits, set-offs, costs, expenses, attorneys’ fees,
28 losses, rights, demands, charges, complaints, actions, suits, petitions, obligations,

1 debts, contracts, penalties, damages, or liabilities of any nature whatsoever, whether
2 known or unknown, liquidated or unliquidated, accrued or unaccrued, fixed or
3 contingent, direct or derivative, matured or unmatured, in law or equity, and any other
4 form of legal or equitable relief that has been asserted, was asserted, or could have
5 been asserted, by any Settlement Class Member against any of the Released Persons
6 reasonably related to the operative facts alleged in or otherwise described by the
7 Consolidated Complaint. Released Claims shall not include the right of any
8 Settlement Class Member or any of the Released Persons to enforce the terms of the
9 Settlement contained in this Settlement Agreement and shall not include the claims
10 of Class Members who have timely excluded themselves from this Settlement using
11 the protocol described herein.

12 1.26 “Released Persons” means Pierce College and its Related Entities.

13 1.27 “Settlement Claim” means a claim for settlement benefits made under
14 the terms of this Settlement Agreement.

15 1.28 “Settlement Class Member(s)” means Class Members who do not
16 timely and validly opt-out of the Agreement by excluding themselves from this
17 settlement proceeding using the protocol described herein.

18 1.29 “Settlement Class Representatives” or “Representative Plaintiffs”
19 means Sally McAuley, Amber Cooper, Alex Neigel, April Perez, Logan Knapp,
20 James Mikita, Robby Luthy Peter Clement, Mercedes Freund, Dale Jarrell, Ben
21 McAuley, Karlee Pangis, Ray Shepherd, Jessica Hogan, Aman Centers, Jessica
22 Bodas, and Dennis Liberatore.

23 1.30 “Settlement Fund” shall mean the fund established by Defendant
24 pursuant to ¶ 2.2.1 of this Agreement.

25 1.31 “Settling Parties” means, collectively, Pierce College and Plaintiffs,
26 individually and on behalf of the Settlement Class Members.

27 1.32 “Settlement Website” means a website, the URL for which to be
28 mutually selected by the Settling Parties, that will inform Class Members of the terms

1 of this Settlement Agreement, their rights, dates and deadlines and related
2 information, as well as provide the Class Members with the ability to submit a
3 Settlement Claim online.

4 1.33 “Short Notice” means the short form notice of the proposed class action
5 settlement, substantially in the form as shown in **Exhibit D**. The Short Notice will
6 direct recipients to the Settlement Website and inform Class Members of, among
7 other things, the Claims Deadline, the Opt-Out Date and Objection Date, and the date
8 of the Final Fairness Hearing.

9 1.34 “United States” as used in this Settlement Agreement includes all 50
10 states, the District of Columbia, and all territories.

11 1.35 “Valid Claims” means Settlement Claims in an amount approved by the
12 Claims Administrator or found to be valid through the claims processing and/or
13 Dispute Resolution process, or through the process for review and challenge set forth
14 in the section entitled, “Administration of Claims.”

15 **II. SETTLEMENT CLASS BENEFITS**

16 2.1.1 Settlement Fund. Within twenty-one (21) days of an order
17 granting preliminary approval of the Settlement, Defendant will fund a non-
18 reversionary cash settlement fund in the amount of \$600,000 for the benefit of
19 Settlement Class Members. The remaining \$600,000 will be funded within fourteen
20 (14) days of the entry of an order granting final approval of the Settlement. As set
21 forth below, the Settlement Fund will be used to pay for: (i) Compensation for
22 Ordinary Losses (¶ 2.2.1); (ii) Compensation for Extraordinary Losses (¶ 2.2.2); (iii)
23 Costs of Claims Administration (¶ 1.9); (iv) identity theft protection and credit
24 monitoring services (¶ 2.3); (v) service awards (¶ 9.1); and (vi) attorney’s fees and
25 litigation expenses (¶ 9.2).

26 2.2 Cash Benefits. Defendant agrees to make available from the Settlement
27 Fund the below compensation to Settlement Class Members who submit valid and
28 timely Claim Forms. Claims will be reviewed for completeness and plausibility by

1 the Claims Administrator. For claims deemed invalid, the Claims Administrator shall
2 provide Claimants an opportunity to cure, unless an inability to cure is apparent from
3 the face of the claim, e.g., the Claimant is not a Class Member.

4 2.2.1 Compensation for Ordinary Losses: All Settlement Class
5 Members may submit a claim for documented out-of-pocket losses including, for
6 example, lost time, unreimbursed losses relating to fraud or identity theft,
7 unreimbursed costs of credit monitoring incurred between the time of the Data
8 Incident and the time the claim is submitted, and unreimbursed bank fees, postage,
9 or gasoline for travel (“Ordinary Losses”) and time spent remedying issues related to
10 the Data Incident (“Attested Time”), up to \$500 per individual. The Settlement Fund
11 will be used to pay valid and timely submitted claims for each of the following
12 categories:

13 a) Documented out-of-pocket expenses incurred as a direct
14 result of the Data Security Incident, namely, postage, copying, scanning, faxing,
15 mileage and other travel-related charges, parking, notary charges, research charges,
16 cell phone charges (only if charged by the minute), long distance phone charges, data
17 charges (only if charged based on the amount of data used), text message charges
18 (only if charged by the message), bank fees, accountant fees, and attorneys’ fees, all
19 of which must be fairly traceable to the Data Security Incident and must not have
20 been previously reimbursed by a third party. Expenses must be attested to and
21 supported by documentation substantiating the full extent of the amount claimed; and

22 b) Reimbursement for Lost Time (“Attested Time”):
23 Settlement Class Members may submit claims to be compensated for lost time they
24 reasonably spent responding to the Data Security Incident. Settlement Class
25 Members may claim up to three (3) hours of time compensated at the rate of \$30 per
26 hour. All such lost time must be fairly traceable to the Data Security Incident,
27 reasonably described by type of lost time incurred, and supported by an attestation
28 that the time spent was reasonably incurred dealing with the Data Security Incident.

1 2.2.2 Compensation for Extraordinary Losses. In addition to the
2 benefits otherwise provided herein, all Settlement Class Members who submit a
3 Valid Claim using the Claim Form, including necessary documentation, are eligible
4 for the following compensation for Extraordinary Losses, not to exceed \$5,000 per
5 Settlement Class Member, for proven monetary loss as a result of actual identity theft
6 if: (i) the loss is an actual, documented, and unreimbursed monetary loss; (ii) the loss
7 was fairly traceable to the Data Incident; (iii) the loss occurred during the specified
8 time period; (iv) the loss is not already covered by one or more of the normal
9 reimbursement categories; and (v) the Settlement Class Member made reasonable
10 efforts to avoid, or seek reimbursement for, the loss, including and not limited to
11 exhaustion of all available credit monitoring insurance and identify theft insurance.

12 2.2.3 Settlement Class Members seeking reimbursement under ¶¶ 2.2.1
13 and/or 2.2.2 must complete and submit to the Claims Administrator a Claim Form in
14 a form substantially similar to the one attached as **Exhibit A**, postmarked or
15 submitted online on or before the Claims Deadline. The notice to the Class Members
16 will specify this deadline and other relevant dates described herein. The Claim Form
17 must be verified by the Settlement Class Member with a statement that his or her
18 claim is true and correct, to the best of his or her knowledge and belief. Notarization
19 shall not be required. Claims for Ordinary Losses and Extraordinary Losses must be
20 attested to and supported by documentation substantiating the full extent of the
21 amount claimed. Failure to provide such supporting documentation, as requested on
22 the Claim Form, shall result in denial of a claim. No documentation is needed for
23 lost-time expenses. Disputes as to claims submitted under this paragraph are to be
24 resolved pursuant to the provisions stated in ¶¶ 2.4, 10.1.

25 2.3 Identity Theft Protection and Credit Monitoring. Settlement Class
26 Members may submit a Claim to accept three years of free identity theft and credit
27 monitoring services. The services shall provide three-bureau monitoring for all Valid
28 Claims and shall include: (1) identity theft insurance (with a \$1,000,000 policy limit);

1 (2) real-time credit monitoring services; and (3) access to fraud resolution agents.
2 Settlement Class Members will need to enroll to receive this benefit.

3 2.4 Residual Funds / Pro Rata Reduction. In the event that Compensation
4 for Ordinary Losses, Compensation for Extraordinary Losses, Identity Theft
5 Protection and Credit Monitoring services, Claims Administration Costs, Service
6 Awards to Class Representatives, and Attorney's Fees and Litigation Expenses
7 exceed the Settlement Fund, all class member payments will be reduced on a pro rata
8 basis such that Defendant's maximum amount to be paid does not exceed the non-
9 reversionary Settlement Fund. If Compensation for Ordinary Losses, Compensation
10 for Extraordinary Losses, Identity Theft Protection and Credit Monitoring, Claims
11 Administration Costs, Service Awards to Class Representatives, and the Attorney's
12 Fees and Litigation Expenses Award do not exceed the Settlement Fund, all
13 remaining funds will be distributed on a per class member basis, up to an additional
14 \$500 for each claimant, to all Settlement Class Members who submitted a Valid
15 Claim. As to any portion of the settlement fund that remains after all of the above
16 have been paid, the parties shall meet and confer regarding the appropriate use of
17 such residual funds, including the possibility for using residual funds for additional
18 Identity Theft Protection services or whether any such funds shall be paid to the Legal
19 Foundation of Washington.

20 2.5 Business Practice Enhancements, Including Monetary Investment into
21 Data Security. Defendant has and will continue to undertake certain reasonable steps
22 to enhance the security deployed to secure access to its data network, including the
23 following:

- 24 a) Shifted authentication to a baseline which requires multi-factor
25 authentication for all employees.
- 26 b) Multi-factor authentication requirement to access the Virtual Private
27 Network (VPN) which is applicable to the subset of employees who are
28 approved for VPN access.

- 1 c) Contract or receiving service from cybersecurity organization(s) which
2 provide staffed security operations center that focuses on proactive
3 managed detection and response that include providing threat
4 monitoring, detection, defense, and mitigation through the managed
5 network.
- 6 d) Maintain modern air-gapped, immutable, and access-controlled backup
7 solution(s).
- 8 e) Continued engagement with MS-ISAC to provide vulnerability
9 scanning, cybersecurity assessments, and implement recommended
10 additional security best practices as applicable.
- 11 f) Having information and/or cybersecurity specialist staff work both
12 within the Information Technology department and throughout the
13 organization on implementing data retention practices in alignment with
14 the Washington State Archives Record Retention Schedules.
15 Additionally, staff will also support the rollout of document sensitivity
16 labeling coupled with data loss prevention policies already in place, and
17 develop a more robust training plan on the securing and storage of data
18 based on state and college data classification definitions.

19 2.6 Dispute Resolution. The Claims Administrator, in its discretion to be
20 reasonably exercised, will determine whether: (1) the Claimant is a Settlement Class
21 Member; (2) the Claimant has provided all information needed to complete the Claim
22 Form, including any documentation and/or attestation that may be necessary to
23 reasonably support the Ordinary Losses described in ¶ 2.2.1; and (3) the information
24 submitted could lead a reasonable person to conclude that more likely than not the
25 Claimant has suffered the claimed losses as a result of the Data Security Incident.
26 The Claims Administrator may, at any time, request from the Claimant, in writing,
27 additional information as the Claims Administrator may reasonably require in order
28 to evaluate the claim (e.g., documentation requested on the Claim Form, information

1 regarding the claimed losses, available insurance and the status of any claims made
2 for insurance benefits, and claims previously made for identity theft and the
3 resolution thereof). For any such Settlement Claims that the Claims Administrator
4 determines to be implausible, the Claims will be deemed invalid and submitted to
5 counsel for the Settling Parties. If counsel for the Settling Parties agree that any such
6 claim is a Valid Claim, the Claims Administrator shall follow counsel's joint
7 direction regarding the disposition of the claim.

8 2.6.1 Upon receipt of an incomplete or unsigned Claim Form or a
9 Claim Form that is not accompanied by sufficient documentation to determine
10 whether the claim is facially valid, the Claims Administrator shall request additional
11 information and give the Claimant thirty (30) days to cure the defect before rejecting
12 the claim. If the defect is not cured, then the claim will be deemed invalid and there
13 shall be no obligation to pay the claim.

14 2.6.2 Following receipt of additional information requested by the
15 Claims Administrator, the Claims Administrator shall have thirty (30) days to accept,
16 in whole or lesser amount, or reject each claim. If, after review of the claim and all
17 documentation submitted by the Claimant, the Claims Administrator determines that
18 such a claim is valid, then the claim shall be paid, subject to the review and challenge
19 process set forth in ¶ 10.1. If the claim is determined to be invalid, then the Claims
20 Administrator will submit it to counsel for the Settling Parties. If counsel for the
21 Settling Parties agree that any such claim is a Valid Claim, the Claims Administrator
22 shall follow counsel's joint direction regarding the disposition of the claim.

23 2.6.3 Settlement Class Members shall have thirty (30) days from
24 receipt of the offer to accept or reject any offer of partial payment received from the
25 Claims Administrator. If a Settlement Class Member rejects an offer from the Claims
26 Administrator, the Claims Administrator shall have fifteen (15) days to reconsider its
27 initial adjustment amount and make a final determination. If the Claimant approves
28 the final determination, then the approved amount shall be the amount to be paid. If

1 the Claimant does not approve the final determination within thirty (30) days, then
2 the dispute will be submitted to counsel for the Settling Parties within an additional
3 ten (10) days. The Claims Administrator shall follow counsel for the Settling Parties'
4 joint direction regarding the disposition of the claim.

5 **III. CLASS CERTIFICATION**

6 3.1 The Settling Parties agree, for purposes of this settlement only, to the
7 certification of the Settlement Class. If the settlement set forth in this Settlement
8 Agreement is not approved by the Court, or if the Settlement Agreement is terminated
9 or cancelled pursuant to the terms of this Settlement Agreement, this Settlement
10 Agreement, and the certification of the Settlement Class provided for herein, will be
11 vacated and the Litigation shall proceed as though the Settlement Class had never
12 been certified, without prejudice to any Person's or Settling Party's position on the
13 issue of class certification or any other issue. The Settling Parties' agreement to the
14 certification of the Settlement Class is also without prejudice to any position asserted
15 by the Settling Parties in any other proceeding, case or action, as to which all of their
16 rights are specifically preserved. All discussions and agreements related to the
17 Settlement Agreement shall be considered confidential and inadmissible pursuant to
18 ER 408.

19 **IV. NOTICE AND CLAIMS ADMINISTRATION**

20 4.1 The Settling Parties selected CPT Group to be the Claims Administrator,
21 who will be charged with delivering sufficient notice (including direct notice) and
22 administering the claims process. The Claims Administrator shall, from the
23 Settlement Fund, pay the entirety of the Costs of Claims Administration, including
24 the cost of notice, subject to approval by Class Counsel.

25 4.2 After the Court enters an order finally approving the Settlement, the
26 Claims Administrator shall provide the requested relief to all Settlement Class
27 Members that made valid and timely claims, subject to the individual caps on
28 Settlement Class Member payments set forth in ¶ 2 above.

1 **V. PRELIMINARY APPROVAL**

2 5.1 As soon as practicable after the execution of the Settlement Agreement,
3 Proposed Settlement Class Counsel and counsel for Pierce College shall jointly
4 submit this Settlement Agreement to the Court, and Proposed Settlement Class
5 Counsel will file an unopposed motion for preliminary approval of the settlement
6 with the Court requesting entry of a Preliminary Approval Order in a form
7 substantially similar to the one attached as **Exhibit C**, requesting, among other
8 things:

- 9 a) certification of the Settlement Class for settlement purposes only
10 pursuant to ¶ 3.1;
- 11 b) preliminary approval of the Settlement Agreement as set forth
12 herein;
- 13 c) appointment of Proposed Settlement Class Counsel as Settlement
14 Class Counsel;
- 15 d) appointment of Plaintiffs as Settlement Class Representatives;
- 16 e) Approval of the Notice Program and Notices;
- 17 f) Approval of the Claim Form and Claims process; and
- 18 g) Appointment of CPT Group as the Settlement Administrator.

19 The Short Notice, Long Notice, and Claim Form will be reviewed and approved by
20 the Claims Administrator but may be revised as agreed upon by the Settling Parties
21 prior to submission to the Court for approval.

22 5.2 The Claims Administrator shall, from the Settlement Fund, pay for
23 providing notice to Class Members in accordance with the Preliminary Approval
24 Order. Service Awards to Class Representatives and attorneys' fees, costs, and
25 expenses of Settlement Class Counsel, as approved by the Court, shall be paid by the
26 Claims Administrator, from the Settlement Fund, as set forth in ¶ 9 below.

27 5.3 Notice shall be provided to Class Members by the Claims
28 Administrator as follows:

1 5.3.1 Class Member Information: No later than fourteen (14) days after
2 entry of the Preliminary Approval Order, Pierce College shall provide the Claims
3 Administrator with the name, last known physical address, and/or email address of
4 each Class Member to the extent known (collectively, “Class Member Information”).
5 The Class Member Information and its contents shall be used by the Claims
6 Administrator solely for the purpose of performing its obligations pursuant to this
7 Settlement Agreement and shall not be used for any other purpose at any time. The
8 Claims Administrator shall not reproduce, copy, store, or distribute in any form,
9 electronic or otherwise, the Class Member Information, except to administer the
10 settlement as provided in this Settlement Agreement, or provide all data and
11 information in its possession to the Settling Parties upon request.

12 5.3.2 Settlement Website: Prior to the dissemination of the Settlement
13 Class Notice, the Claims Administrator shall establish the Settlement Website that
14 will inform Class Members of the terms of this Settlement Agreement, their rights,
15 dates and deadlines and related information. The Settlement Website shall include,
16 in .pdf format and available for download, the following: (i) the Long Notice; (ii) the
17 Claim Form; (iii) the Preliminary Approval Order; (iv) this Settlement Agreement;
18 (v) the operative Consolidated Complaint filed in the Litigation; and (vi) any other
19 materials agreed upon by the Parties and/or required by the Court. The notice and
20 claim materials will also be available in Spanish on the Settlement Website. The
21 Settlement Website shall provide Class Members with the ability to complete and
22 submit the Claim Form electronically.

23 5.3.3 Short Notice: Within thirty (30) days after the entry of the
24 Preliminary Approval Order and to be substantially completed not later than forty-
25 five (45) days after entry of the Preliminary Approval Order, and subject to the
26 requirements of this Agreement and the Preliminary Approval Order, the Claims
27 Administrator will provide notice to Class Members as follows:
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a) Via U.S. mail and/or email to all Class Members. Before any mailing under this paragraph occurs, the Claims Administrator shall run the postal addresses of Class Members through the United States Postal Service (“USPS”) National Change of Address database to update any change of address on file with the USPS;

i. In the event that a mailed Short Notice is returned to the Claims Administrator by the USPS because the address of the recipient is no longer valid, and the envelope contains a forwarding address, the Claims Administrator shall re-send the Short Notice to the forwarding address within seven (7) days of receiving the returned Short Notice;

ii. In the event that subsequent to the first mailing of a Short Notice, and at least fourteen (14) days prior to the Opt-Out and Objection Deadline, a Short Notice is returned to the Claims Administrator by the USPS because the address of the recipient is no longer valid, *i.e.*, the envelope is marked “Return to Sender” and does not contain a new forwarding address, the Claims Administrator shall perform a standard skip trace, in the manner that the Claims Administrator customarily performs skip traces, in an effort to attempt to ascertain the current address of the particular Class Member in question and, if such an address is ascertained, the Claims Administrator will re-send the Short Notice within

1 Post Office box established by the Claims Administrator. The written notice must
2 clearly manifest a Person’s intent to opt-out of the Settlement Class. To be effective,
3 written notice must be postmarked by the Opt-Out Date.

4 6.2 Persons who submit valid and timely notices of their intent to opt-out of
5 the Settlement Class, as set forth in ¶ 6.1 above, referred to herein as “Opt-Outs,”
6 shall not receive any benefits of and/or be bound by the terms of this Settlement
7 Agreement. All Persons falling within the definition of the Settlement Class who do
8 not opt-out of the Settlement Class in the manner set forth in ¶ 6.1 above shall be
9 bound by the terms of this Settlement Agreement, Release, and Judgment entered
10 thereon.

11 6.3 Within ten (10) days after the Opt-Out Date as approved by the Court,
12 if there have been more than 40 valid opt outs, Defendant may, by notifying
13 Settlement Class Counsel and the Court in writing, within five (5) business days from
14 the date the Claims Administrator provides written notice to Defendant of the number
15 of opt-outs, void this Settlement Agreement. If Defendant voids the Settlement
16 Agreement, Defendant shall be obligated to pay all settlement expenses already
17 incurred, excluding any attorneys’ fees, costs, and expenses of Proposed Settlement
18 Class Counsel and service awards and shall not, at any time, seek recovery of same
19 from any other party to the Litigation or from counsel to any other party to the
20 Litigation.

21 **VII. OBJECTION PROCEDURES**

22 7.1 Each Settlement Class Member desiring to object to the Settlement
23 Agreement shall submit a timely written notice of his or her objection by the
24 Objection Date. Such notice shall state: (i) the objector’s full name and address; (ii)
25 the case name and docket number – *Sally McAuley, et al. v. Pierce College District*,
26 Case No. 23-2-11064-7 (Washington State Superior Court for Pierce County); (iii)
27 information identifying the objector as a Settlement Class Member, including proof
28 that the objector is a Settlement Class Member (e.g., copy of the objector’s settlement
notice, copy of original notice of the Data Security Incident, or a statement explaining

1 why the objector believes he or she is a Settlement Class Member); (iv) a written
2 statement of all grounds for the objection, accompanied by any legal support for the
3 objection the objector believes applicable; (v) the identity of any and all counsel
4 representing the objector in connection with the objection; (vi) a statement whether
5 the objector and/or his or her counsel will appear at the Final Fairness Hearing; and
6 (vii) the objector's signature or the signature of the objector's duly authorized
7 attorney or other duly authorized representative (if any) representing him or her in
8 connection with the objection. To be timely, written notice of an objection that
9 substantially complies with ¶7.1(i)-(vii) must be mailed, with a postmark date no later
10 than the Objection Date, to Proposed Lead Class Counsel: Timothy W. Emery of
11 Emery Reddy, PLLC, 600 Stewart Street, Suite 1100, Seattle, WA 98101; and
12 counsel for Pierce College, Casie Collignon, Baker & Hostetler, LLP, 1801
13 California Street, Suite 4400, Denver, CO 80202. For all objections mailed to
14 Proposed Lead Class Counsel and counsel for Pierce College, Proposed Settlement
15 Class Counsel will file them with the Court with the Motion for Final Approval of
16 Settlement.

17 7.2 Although the Court's stated policy is to hear from any class member
18 who attends the Final Fairness Hearing and asks to speak regarding his or her
19 objection to the settlement, the Parties reserve the right to challenge the objection of
20 any Settlement Class Member who fails to comply with the requirements for
21 objecting in ¶ 7.1 as having waived and forfeited any and all rights he or she may
22 have to appear separately and/or to object to the Settlement Agreement, and assert
23 that such Settlement Class Member is bound by all the terms of the Settlement
24 Agreement and by all proceedings, orders and judgments in the Litigation. The
25 exclusive means for any challenge to the Settlement Agreement shall be through the
26 provisions of ¶ 7.1. Without limiting the foregoing, any challenge to the Settlement
27 Agreement, the final order approving this Settlement Agreement, or the Judgment to
28

1 be entered upon final approval shall be pursuant to appeal under the Washington State
2 Court Rules of Appellate Procedure and not through a collateral attack.

3 **VIII. RELEASES**

4 8.1 Upon sixty (60) days after the Effective Date, each Settlement Class
5 Member, including Plaintiffs, shall be deemed to have, and by operation of the
6 Judgment shall have, fully, finally, and forever released, relinquished, and discharged
7 all Released Claims. Further, upon the Effective Date, and to the fullest extent
8 permitted by law, each Settlement Class Member, excluding Opt-Outs but including
9 Plaintiffs, shall directly, indirectly, or in any representative capacity, be permanently
10 barred and enjoined from commencing, prosecuting, or participating in any recovery
11 in any action in this or any other forum (other than participation in this Settlement
12 Agreement as provided herein) in which any of the Released Claims is asserted.

13 8.2 Upon sixty (60) days after the Effective Date, Pierce College shall be
14 deemed to have, and by operation of the Judgment shall have, fully, finally, and
15 forever released, relinquished, and discharged, the Settlement Class Representatives,
16 the Settlement Class Members, and Proposed Settlement Class Counsel, of all claims,
17 based upon the institution, prosecution, assertion, settlement, or resolution of the
18 Litigation or the Released Claims, except for enforcement of the Settlement
19 Agreement. Any other claims or defenses Pierce College may have against the
20 Settlement Class Representatives, the Settlement Class Members, and the Proposed
21 Settlement Class Counsel including, without limitation, any claims based upon any
22 retail, banking, debtor-creditor, contractual, or other business relationship with such
23 Persons not based on the institution, prosecution, assertion, settlement, or resolution
24 of the Litigation are specifically preserved and shall not be affected by the preceding
25 sentence.

26 8.3 Notwithstanding any term herein, neither Pierce College nor its Related
27 Entities shall have or shall be deemed to have released, relinquished or discharged
28

1 any claim or defense against any Person other than Representative Plaintiffs, each
2 and all of the Settlement Class Members, and Proposed Settlement Class Counsel.

3 **IX. SERVICE AWARD AND ATTORNEYS' FEES AND EXPENSES**

4 9.1 After an agreement had been reached as to the essential terms of a
5 settlement (i.e., Settlement Class benefits), the Parties negotiated the amount of a
6 service award to the Representative Plaintiffs. Subject to Court approval, the
7 Representative Plaintiffs shall seek, and Defendant agrees to pay out of the
8 Settlement Fund, a total service award amount, not to exceed \$61,000 to be allocated
9 between the Representative Plaintiffs. The Claims Administrator shall, from the
10 Settlement Fund, pay the service awards approved by the Court up to the agreed
11 maximum.

12 9.2 After an agreement had been reached as to the essential terms of a
13 settlement (i.e., Settlement Class benefits), the Parties negotiated the amount of
14 Plaintiff's attorneys' fees and litigation expenses. Plaintiffs shall seek an award of
15 combined attorneys' fees and costs not to exceed one-third of the Settlement Fund.
16 The Claims Administrator shall, from the Settlement Fund, pay the attorneys' fees
17 and expenses award approved by the Court up to the agreed maximum.

18 9.3 The Claims Administrator shall, from the Settlement Fund, pay the
19 service awards and attorneys' fees and expenses awarded by the Court to Emery
20 Reddy, PLLC within fourteen (14) days after the Effective Date. The attorneys' fees
21 and expenses award will be allocated among Proposed Settlement Class Counsel.
22 Defendant bears no responsibility or liability relating to the allocation of the
23 attorneys' fees and expenses among Proposed Settlement Class Counsel.

24 9.4 The finality or effectiveness of the Settlement Agreement shall not
25 depend upon the Court awarding any particular attorneys' fees and expenses award
26 or service award. No order of the Court, or modification or reversal or appeal of any
27 order of the Court concerning the amount(s) of any attorneys' fees and expenses,
28 and/or service awards ordered by the Court to Proposed Settlement Class Counsel or

1 Representative Plaintiffs shall affect whether the Judgment is final or constitute
2 grounds for cancellation or termination of this Settlement Agreement.

3 **X. ADMINISTRATION OF CLAIMS**

4 10.1 The Claims Administrator shall administer and calculate the claims
5 submitted by Settlement Class Members under ¶¶ 2.2.1 and 2.2.2. Proposed
6 Settlement Class Counsel and counsel for Pierce College shall be given reports as to
7 both claims and distribution, and have the right to challenge the claims and
8 distribution set forth in the reports, including by requesting and receiving, for any
9 approved claim, the name of the Settlement Class Member, a description of the
10 approved claim, including dollar amounts to be paid as Ordinary Losses, and all
11 supporting documentation submitted. If counsel for the Settling Parties agree that any
12 such claim is improper, the Claims Administrator shall follow counsel's joint
13 direction regarding the disposition of the claim. If the Settling Parties cannot agree
14 on the disposition of a claim, the Settling Parties, upon the election of either Settling
15 Party, will submit the claim for disposition to a jointly agreed upon impartial third-
16 party claim referee for determination. The Claims Administrator's determination of
17 whether a Settlement Claim is a Valid Claim shall be binding, subject to the above
18 right of review and challenge and the Dispute Resolution process set forth in ¶ 2.6.
19 All claims agreed to be paid in full by Pierce College shall be deemed Valid Claims.

20 10.2 Checks for Valid Claims shall be mailed and postmarked, and
21 electronic payments shall be issued electronically, within sixty (60) days of the
22 Effective Date, or within thirty (30) days of the date that the claim is approved,
23 whichever is later.

24 10.3 All Settlement Class Members who fail to timely submit a claim for
25 any benefits hereunder within the time frames set forth herein, or such other period
26 as may be ordered by the Court, or otherwise allowed, shall be forever barred from
27 receiving any payments or benefits pursuant to the settlement set forth herein, but
28

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

3 10.4 No Person shall have any claim against the Claims Administrator,
4 Pierce College, Proposed Settlement Class Counsel, Proposed Class Representatives,
5 and/or Pierce College's counsel based on distributions of benefits, or the denial of
6 benefits, to Settlement Class Members.

7 **XI. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL,**
8 **CANCELLATION, OR TERMINATION**

9 11.1 The Effective Date of the settlement shall be conditioned on the
10 occurrence of all of the following events:

- 11 a) The Court has entered the Preliminary Approval Order, as
12 required by ¶ 5.1;
- 13 b) The Court has entered the Judgment granting final approval to the
14 settlement as set forth herein; and
- 15 c) Judgment has become Final, as defined in ¶ 1.14.

16 11.2 If all conditions specified in ¶ 11.1 hereof are not satisfied and the
17 Effective Date does not occur, the Settlement Agreement shall be terminated unless
18 Proposed Settlement Class Counsel and Pierce College's counsel mutually agree in
19 writing to proceed with the Settlement Agreement.

20 11.3 Within three (3) days after the Opt-Out Date, the Claims Administrator
21 shall furnish to Proposed Settlement Class Counsel and to Pierce College's counsel
22 a complete list of all timely and valid requests for exclusion (the "Opt-Out List").

23 11.4 Except as provided in ¶ 6.3, in the event that the Settlement Agreement
24 is not approved by the Court or the settlement set forth in this Settlement Agreement
25 is terminated in accordance with its terms, (a) the Settling Parties shall be restored to
26 their respective positions in the Litigation and shall jointly request that all scheduled
27 litigation deadlines be reasonably extended by the Court so as to avoid prejudice to
28 any Settling Party or Settling Party's counsel, and (b) the terms and provisions of the

1 Settlement Agreement shall have no further force and effect and shall not be used in
2 the Litigation or in any other proceeding for any purpose, and any judgment or order
3 entered by the Court in accordance with the terms of the Settlement Agreement shall
4 be treated as vacated, *nunc pro tunc*. Notwithstanding any statement in this
5 Settlement Agreement to the contrary, no order of the Court or modification or
6 reversal on appeal of any order reducing the amount of attorneys' fees, costs,
7 expenses, and/or service awards shall constitute grounds for cancellation or
8 termination of the Settlement Agreement. Further, notwithstanding any statement in
9 this Settlement Agreement to the contrary, Pierce College shall be obligated to pay
10 amounts already billed or incurred for costs of notice to the Settlement Class, Claims
11 Administration, and Dispute Resolution pursuant to ¶ 4.1 above and shall not, at any
12 time, seek recovery of same from any other party to the Litigation or from counsel to
13 any other party to the Litigation. In the event any of the releases or definitions set
14 forth in ¶¶ 1.25, 1.26, 1.27, 8.1, or 8.2 are not approved by the Court as written, the
15 Settlement Agreement shall be terminated and provisions (a) and (b) of this paragraph
16 shall apply to the Settling Parties and this Agreement unless Proposed Settlement
17 Class Counsel and Pierce College's counsel mutually agree in writing to proceed with
18 the Settlement Agreement.

19 11.5 Prior to the Effective Date, Class Counsel may amend the Consolidated
20 Complaint to include additional Representative Plaintiffs.

21 **XII. MISCELLANEOUS PROVISIONS**

22 12.1 The Settling Parties (i) acknowledge that it is their intent to
23 consummate this agreement; and (ii) agree to cooperate to the extent reasonably
24 necessary to effectuate and implement all terms and conditions of this Settlement
25 Agreement, and to exercise their best efforts to accomplish the terms and conditions
26 of this Settlement Agreement.

27 12.2 The Settling Parties intend this settlement to be a final and complete
28 resolution of all disputes between them with respect to the Litigation. The settlement

1 comprises claims that are contested and shall not be deemed an admission by any
2 Settling Party as to the merits of any claim or defense. The Settling Parties each agree
3 that the settlement was negotiated in good faith by the Settling Parties, and reflects a
4 settlement that was reached voluntarily after consultation with competent legal
5 counsel. The Settling Parties reserve their right to rebut, in a manner that such party
6 determines to be appropriate, any contention made in any public forum that the
7 Litigation was brought or defended in bad faith or without a reasonable basis. It is
8 agreed that no Party shall have any liability to any other Party as it relates to the
9 Litigation, except as set forth herein.

10 12.3 Neither the Settlement Agreement, nor the settlement contained herein,
11 nor any act performed or document executed pursuant to or in furtherance of the
12 Settlement Agreement or the settlement (i) is or may be deemed to be or may be used
13 as an admission of, or evidence of, the validity or lack thereof of any Released Claim,
14 or of any wrongdoing or liability of any of the Released Persons; or (ii) is or may be
15 deemed to be or may be used as an admission of, or evidence of, any fault or omission
16 of any of the Released Persons in any civil, criminal or administrative proceeding in
17 any court, administrative agency or other tribunal. Any of the Released Persons may
18 file the Settlement Agreement and/or the Judgment in any action that may be brought
19 against them or any of them in order to support a defense or counterclaim based on
20 principles of *res judicata*, collateral estoppel, release, good faith settlement,
21 judgment bar, or reduction or any other theory of claim preclusion or issue preclusion
22 or similar defense or counterclaim.

23 12.4 The Settlement Agreement may be amended or modified only by a
24 written instrument signed by or on behalf of all Settling Parties or their respective
25 successors-in-interest.

26 12.5 This Settlement Agreement contains the entire understanding between
27 Pierce College and Plaintiffs individually and on behalf of the Settlement Class
28 Members regarding the Litigation settlement and this Agreement, and this Agreement

1 supersedes all previous negotiations, agreements, commitments, understandings, and
2 writings between Pierce College and Plaintiffs, including between counsel for Pierce
3 College and Class Counsel, in connection with the Litigation settlement and this
4 Agreement. Except as otherwise provided herein, each party shall bear its own costs.

5 12.6 Proposed Settlement Class Counsel, on behalf of the Settlement Class,
6 is expressly authorized by Plaintiffs to take all appropriate actions required or
7 permitted to be taken by the Settlement Class pursuant to the Settlement Agreement
8 to effectuate its terms, and also is expressly authorized to enter into any modifications
9 or amendments to the Settlement Agreement on behalf of the Settlement Class which
10 they deem appropriate in order to carry out the spirit of this Settlement Agreement
11 and to ensure fairness to the Settlement Class.

12 12.7 Each counsel or other Person executing the Settlement Agreement on
13 behalf of any party hereto hereby warrants that such Person has the full authority to
14 do so.

15 12.8 The Settlement Agreement may be executed in one or more
16 counterparts. All executed counterparts and each of them shall be deemed to be one
17 and the same instrument.

18 12.9 The Settlement Agreement shall be binding upon, and inure to the
19 benefit of, the successors and assigns of the parties hereto.

20 12.10 The Court shall retain jurisdiction with respect to implementation and
21 enforcement of the terms of the Settlement Agreement, and all parties hereto submit
22 to the jurisdiction of the Court for purposes of implementing and enforcing the
23 settlement embodied in the Settlement Agreement.

24 12.11 All dollar amounts are in United States dollars (USD).

25 12.12 Cashing a settlement check (paper or electronic) is a condition
26 precedent to any Settlement Class Member's right to receive monetary settlement
27 benefits. All settlement checks shall be void ninety (90) days after issuance and shall
28 bear the language: "This check must be cashed within ninety (90) days, after which

1 time it is void.” If a check becomes void, the Settlement Class Member shall have
2 until six months after the Effective Date to request re-issuance. If no request for re-
3 issuance is made within this period, the Settlement Class Member will have failed to
4 meet a condition precedent to recovery of monetary settlement benefits, the
5 Settlement Class Member’s right to receive monetary relief shall be extinguished,
6 and Pierce College shall have no obligation to make payments to the Settlement Class
7 Member under ¶¶ 2.2.1 and/or 2.2.2 or any other type of monetary relief. The same
8 provisions shall apply to any re-issued check. For any checks that are issued or re-
9 issued for any reason more than one hundred eighty (180) days from the Effective
10 Date, requests for further re-issuance will not be honored after such checks become
11 void.

12 12.13 All agreements made and orders entered during the course of the
13 Litigation relating to the confidentiality of information shall survive this Settlement
14 Agreement.

15 IN WITNESS WHEREOF, the parties hereto have caused the Settlement
16 Agreement to be executed.

17
18 **EMERY REDDY, PLLC**

19 /s/ Timothy W. Emery
20 600 Stewart Street, Suite 1100
21 Seattle, WA 98101
22 Telephone: 206-442-9106
23 emeryt@emeryreddy.com

24 **SIRI & GLIMSTAD LLP**

25 /s/ Tyler J. Bean
26 Tyler J. Bean
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