

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS +
COUNTY DEPARTMENT, CHANCERY DIVISION+**

BARB LHOTA, JORGE P. NEWBERY,
MONDUOUKPE SEYIVE BANI A MEDEGAN
FAGLA, CRISTINA HEER, MORGAN
STRUNSKY, QIXIN CHEN, BEICHEN SHI, and
RICHARD DELANO CORNELL, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

MICHIGAN AVENUE IMMEDIATE
CARE, S.C.

Defendant.

Case No. 2022-CH-06616

Judge: Hon. Pamela McLean Meyerson

DECLARATION OF RAINA C. BORRELLI

I, Raina C. Borrelli, hereby declare as follows:

1. I am an attorney at Turke & Strauss LLP, counsel of record for Plaintiffs S Barb Lhota, Qixin Chen, Beichen Shi, Jorge Newbery, Mondoukpe Seyive Bani A Medegan Fagla, Cristina Heer, Morgan Strunsky and Richard Delano Cornell. I have personal knowledge of the facts set forth in this declaration. I am submitting this declaration in support of Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement.

2. On July 8, 2022, Plaintiff Barb Lhota filed the first putative class action in the Circuit Court of Cook County, County Department, Chancery Division. Additional actions were subsequently filed, with the Plaintiffs later combining their claim in an Amended Complaint.

3. On April 5, 2023, this Court preliminarily approved the class action settlement between Plaintiffs and Defendant Michigan Avenue Immediate Care, S.C. ("MAIC" or "Defendant") (together with Plaintiffs, the "Parties") and directed that notice be sent to the Settlement Class.

4. Defendant will establish a non-reversionary Settlement Fund of \$850,000, from which each Settlement Class Member will receive either an Alternative Cash Payment of \$50.00 or a Lost Time and Out-of-Pocket Losses Claim of up to \$100.00 in time (at \$25.00 per hour) and up to \$2500.00 in documented out-of-pocket losses.

5. Class Counsel believes that the Settlement is in the best interest of the Settlement Class Members because the Settlement Class Members will be provided an immediate payment instead of having to wait for lengthy litigation and any subsequent appeals to run their course. Further, due to the defenses Defendant has indicated that it would raise should the case proceed through litigation—and the resources Defendant has committed to defend and litigate this matter—it is possible that the Settlement Class Members would receive no benefit whatsoever in the absence of this Settlement. Given Class Counsel’s extensive experience litigating similar class action cases in federal and state courts across the country, this factor also weighs in favor of granting preliminary approval.

6. Prior to reaching this Settlement, the Parties exchanged information regarding the facts and size of the class during formal discovery, and thoroughly investigated the facts and law relating to Plaintiff’s allegations and Defendant’s defenses.

7. Attached hereto as **Exhibit 1** is a true and correct copy of the Settlement Agreement in this matter.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 1st day of August 2023, at Eagan, Minnesota.

/s/ Raina C. Borrelli
Raina C. Borrelli

CERTIFICATE OF SERVICE

I, Raina C. Borrelli, hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record via the ECF system.

DATED this 1st day of August, 2023.

By: /s/ Raina C. Borrelli
Raina Borrelli (*pro hac vice*)
raina@turkestrauss.com
TURKE & STRAUSS LLP
613 Williamson St., Suite 201
Madison, Wisconsin 53703-3515
Telephone: (608) 237-1775
Facsimile: (608) 509 4423

— EXHIBIT 1 —

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement” or “Agreement”) is entered into by and between Barb Lhota, Qixin Chen, Beichen Shi, Jorge Newbery, Mondoukpe Seyive Bani A Medegan Fagla, Cristina Heer, Morgan Strunsky and Richard Delano Cornell individually and on behalf of Participating Settlement Class Members (as defined below) (together, “Plaintiffs”), and Michigan Avenue Immediate Care, S.C. (“Defendant”), in the following actions (collectively, “the Actions”):

- *Barb Lhota v. Michigan Avenue Immediate Care, S.C.*, Case No. 2022CH06616 (Cir. Ct. Cook Cty.);
- *Qixin Chen and Beichen Shi v. Michigan Avenue Immediate Care, S.C.*, Case No. 2022CH07101 (Cir. Ct. Cook Cty.);
- *Jorge Newberry v. Michigan Avenue Immediate Care, S.C.*, Case No. 2022CH07128 (Cir. Ct. Cook Cty.);
- *Mondoukpe Seyive Bani A Medegan Fagla, Cristina Heer, and Morgan Strunsky v. Michigan Avenue Immediate Care, S.C.*, Case No. 2022CH07692 (Cir. Ct. Cook Cty.); and
- *Richard Delano Cornell v. Michigan Avenue Immediate Care, S.C.*, Case No. 1:22-cv-03885 (N.D. Ill.).

RECITALS

WHEREAS, this dispute arises from a data incident involving the Defendant’s records, which contained certain personally identifying information and protected health information (the “Data Incident”); and

WHEREAS, the Plaintiffs initiated the five (5) Actions following this Data Incident; and

WHEREAS, Plaintiffs and Defendant (together, the “Parties”) have engaged in settlement negotiations pursuant to both Federal Rule of Evidence (“FRE”) 408 and Illinois Rule of Evidence (“IRE”) 408 in order to avoid the expense and uncertainties of litigation, which included (a) informal settlement discovery and discussions; and (b) an exchange of mediation statements; and

WHEREAS, following extensive, arm’s-length settlement negotiations that culminated in an all-day mediation session on November 2, 2022 conducted by Judge Palmer, the Parties reached a settlement in principle; and

WHEREAS, Defendant denies any wrongdoing whatsoever including, without limitation, as to: (a) the allegations and any and all liability or damages with respect to any and all facts and claims alleged in the Actions, whether as to individual Plaintiffs or as to the putative class; and (b) that the Actions satisfy the requirements to be certified as a class action under the both Federal Rule of Civil Procedure 23 and 735 ILCS 5/2-801; and

WHEREAS, this Agreement shall in no event be construed or deemed to be evidence of or an admission or concession by Defendant as to any claim, fault, liability, wrongdoing or damage whatsoever, or as to any infirmity in the defenses that Defendant have asserted or would assert, or

as to the requirements of both Federal Rule of Civil Procedure 23 and 735 ILCS 5/2-801 and whether Plaintiffs satisfy those requirements;

NOW, THEREFORE, in exchange for the mutual promises and valuable consideration described above and provided for in this Agreement, and without any admission or concession by any Party, the Parties agree to a full, complete, and final settlement and resolution of the Actions, subject to Court approval, on the following terms and conditions:

I. DEFINITIONS

In addition to terms defined at various points within this Agreement, the following defined terms shall have the meanings set forth below:

1. “Actions” mean the class action lawsuits captioned *Barb Lhota v. Michigan Avenue Immediate Care, S.C.*, Case No. 2022CH06616 (Cir. Ct. Cook Cty.) (the “Lhota Action”), *Qixin Chen and Beichen Shi v. Michigan Avenue Immediate Care, S.C.*, Case No. 2022CH07101 (Cir. Ct. Cook Cty.) (the “Chen Action”), *Jorge Newberry v. Michigan Avenue Immediate Care, S.C.*, Case No. 2022CH07128 (Cir. Ct. Cook Cty.) (the “Newberry Action”), and *Mondoukpe Seyive Bani A Medegan Fagla, Cristina Heer, and Morgan Strunsky v. Michigan Avenue Immediate Care, S.C.*, Case No. 2022CH07692 (Cir. Ct. Cook Cty.) (the “Fagla Action”), which are pending in the Cook County (IL) Chancery Court, and the class action lawsuit dismissed on November 9, 2022 captioned *Richard Delano Cornell v. Michigan Avenue Immediate Care, S.C.*, Case No. 1:22-cv-03885 (N.D. Ill.) (the “Cornell Action”), which was pending in the United States District Court for the Northern District of Illinois;

2. “Agreement” or “Settlement Agreement” means this Agreement.

3. “Alternative Cash Payment” shall mean the \$50.00 in compensation for each eligible Claim filed that does not seek compensation for Out-of-Pocket Losses, as that term is defined in Paragraph 29.

4. “Approved Claim” means the timely submitted Claim Form by a Participating Settlement Class Member that has been approved by the Settlement Administrator.

5. “Claim Form” or “Claim” means the form(s) Participating Settlement Class Members must submit to be eligible for reimbursement of Out-of-Pocket Losses and payment for attested time under the terms of this Agreement. The Claim Form is attached to the Settlement Agreement as Exhibit 3.

6. “Claims Deadline” means the last day to submit a timely Claim Form(s), which will ninety (90) days after the Notice Deadline.

7. “Claims Period” means the period of time during which Settlement Class Members may submit Claim Forms to receive Settlement benefits, which will end on the Claims Deadline.

8. “Class Counsel” means Kenneth A. Wexler, Bethany R. Turke, and Eaghan S. Davis of Wexler Boley & Elgersma, Samuel J. Strauss and Raina C. Borrelli of Turke & Strauss

LLP (Counsel for the Lhota Action); Carl V. Malmstrom of Wolf Haldenstein Adler Freeman & Hert LLC (Counsel for the Chen Action); Thomas A. Zimmerman, Jr. and Matthew C. De Re of Zimmerman Law Offices, P.C., Marc E. Dann and Brian D. Flick of DannLaw (Counsel for the Newbery Action); Gary E. Mason and Danielle L. Perry of Mason LLP (Counsel for the Fagla Action); and Daniel O. Herrera, Nickolas J. Hagman, and Olivia Lawless of Cafferty Clobes Meriwether & Sprengel LLP, Gary M. Klinger and David K. Leitz of Milberg Coleman Bryson Phillips Grossman, PLLC (Counsel for the Cornell Action).

9. “Settlement Class Representatives” means Barb Lhota, Qixin Chen, Beichen Shi, Jorge Newbery, Mondoukpe Seyive Bani A Medegan Fagla, Cristina Heer, Morgan Strunsky and Richard Delano Cornell.

10. “Court” means the Honorable Pamela McLean Meyerson, Cook County Circuit Court Chancery Division Judge, or any such other judge to whom these Actions may hereafter be assigned.

11. “Data Incident” means the Data Incident described in the Recitals *supra* and initially disclosed by Michigan Avenue Immediate Care, S.C. on or about June 24, 2022.

12. “Data Incident Notice” means the notice of the Data Incident sent by Michigan Avenue Immediate Care, S.C. to the Plaintiffs and Settlement Class Members on or about June 24, 2022.

13. “Defendant” or “MAIC” means Michigan Avenue Immediate Care, S.C. and its predecessors, successors, affiliates, subsidiaries, parent, assigns, directors, principals, partners, officers, agents, dealers, suppliers, attorneys, representatives, and employees.

14. “Defendant’s Counsel” means Mark Olthoff, Brisa Wolfe, and Kevin Hogan of Polsinelli PC.

15. “Effective Date” means one (1) business day following the latest of: (i) the date upon which the time expires for filing or noticing any appeal of the Final Approval Order and Judgment; (ii) entry of the Final Approval Order and Judgment if no parties have standing to appeal; or (iii) if any appeal, petition, request for rehearing, or other review has been filed, the Final Approval Order and Judgment is affirmed without material change or the appeal is dismissed or otherwise disposed of, no other appeal, petition, rehearing, or other review is pending, and the time for further appeals, petitions, requests for rehearing, or other review has expired.

16. “Fee Application” means any motion for an award of attorneys’ fees, Litigation Costs and Expenses, and Service Award Payments to be paid from the Settlement Fund, as set forth in Paragraphs 73 and 75.

17. “Fee Award and Costs” means the amount of attorneys’ fees and reimbursement of Litigation Costs and Expenses awarded by the Court to Class Counsel.

18. “Final Approval Order and Judgment” means an order and judgment that the Court enters after the Final Approval Hearing, which finally approves the Settlement Agreement, certifies the Settlement Class, dismisses the Actions with prejudice, otherwise satisfies the settlement-related provisions of Federal Rule of Civil Procedure 23 and 735 ILCS 5/2-80 and is consistent with all material provisions of this Settlement Agreement. Class Counsel and Defendant’s Counsel will work together on a proposed Final Approval Order and Judgment, which all Parties must approve before filing for the Court’s consideration. The Final Approval Order and Judgment is attached as Exhibit 4.

19. “Final Approval Hearing” means the hearing to be conducted by the Court to determine the fairness, adequacy, and reasonableness of the Settlement pursuant to Federal Rule of Civil Procedure 23 and 735 ILCS 5/2-80 and whether to issue the Final Approval Order and Judgment.

20. “Litigation Costs and Expenses” means costs and expenses incurred by Class Counsel in connection with commencing, prosecuting, and settling the Actions.

21. “Lost Time” means time that a Settlement Class Member actually incurred as a result of the Data Incident, supported by attestation. Lost Time may be compensated for up to 4 hours at \$25.00 per hour or \$100.00.

22. “Net Settlement Fund” means the amount of funds that remain in the Settlement Fund after funds are paid from or allocated for payment from the Settlement Fund for the following: (1) valid claims made by Settlement Class Members for Out-of-Pocket Losses and Lost Time fairly traceable to the Data Incident; (2) Settlement Notice and Administration Expenses; (3) Fee Award and Costs; and (4) Service Awards.

23. “Notice” or “Settlement Class Notice” means notice of the proposed class action Settlement to be provided to Settlement Class Members pursuant to the Preliminary Approval Order, substantially in the forms attached hereto as Exhibits 1 and 2. “Notice” includes the summary postcard notice to be mailed by U.S. mail to Settlement Class Members (Exhibit 1) and the long-form notice which shall be mailed to Settlement Class Members who request a copy and shall be used to create the Settlement Website (Exhibit 2).

24. “Notice Deadline” means the last day by which Notice must be issued to the Settlement Class Members, and will occur thirty (30) days after entry of the Preliminary Approval Order.

25. “Notice and Administration Expenses” means all of the expenses incurred in the administration of this Settlement, including, without limitation, all expenses or costs associated with providing Notice to the Settlement Class, locating Settlement Class Members, processing claims, determining the eligibility of any person to be a Settlement Class Member, and administering, calculating and distributing the Settlement Fund to Settlement Class Members. Administration Expenses also includes all reasonable third-party fees and expenses incurred by the Settlement Administrator in administering the terms of this Agreement.

26. “Notice Plan” means the process contained in paragraph 53 describing how the Settlement Administrator shall provide notice of this Settlement to the Settlement Class Members.

27. “Objection Deadline” is the last day on which a Settlement Class Member may file an objection to the Settlement or Fee Application, which will be forty-five (45) days after the Notice Deadline.

28. “Opt-Out Deadline” is the last day on which a Settlement Class Member may file a request to be excluded from the Settlement Class, which will be forty-five (45) days after the Notice Deadline.

29. “Out-of-Pocket Losses” means out-of-pocket costs or expenditures that a Settlement Class Member actually incurred as a result of the Data Incident that are supported by Reasonable Documentation. “Out-of-Pocket Losses” may be compensated up to the sum of Two Thousand Five Hundred Dollars (\$2,500.00). “Out-of-Pocket Losses” include things such as the purchase of identity-protection services, credit-monitoring services, or ID-theft insurance that were purchased after receipt of the Data Incident Notice but no later than September 24, 2022 (approximately 90-days after the issuance of the Data Incident Notice). “Out-of-Pocket Losses” must be fairly traceable to the Data Incident and cannot have been paid for or already been reimbursed to the Settlement Class Member by a third party.

30. “Participating Settlement Class Member” means a Settlement Class Member who does not submit a valid Request for Exclusion prior to the Opt-Out Deadline.

31. “Preliminary Approval Order” means an order directing issuance of Notice to Settlement Class Members, determining that the Court will likely be able to approve the Settlement under Federal Rule of Civil Procedure 23 and 735 ILCS 5/2-801 and determining that the Court will likely be able to certify the Settlement Class for purposes of judgment, and which is consistent with all material provisions of this Settlement Agreement. Class Counsel and Defense Counsel will work together on a proposed Preliminary Approval Order, which all Parties must approve before filing for the Court’s consideration. The Preliminary Approval Order is attached as Exhibit 5.

32. “Reasonable Documentation” means documentation contemporaneously generated or prepared by a third party or the Settlement Class Member supporting a claim for documented Lost Time or Out-of-Pocket Losses. Non-exhaustive examples of Reasonable Documentation include telephone records, correspondence (including emails), or receipts. Except as expressly provided herein, personal certifications, declarations, or affidavits from the Participating Settlement Class Member do not constitute Reasonable Documentation but may be included to provide clarification, context, or support for other submitted Reasonable Documentation.

33. “Released Claims” means any and all past, present, and future claims, causes of action, counterclaims, lawsuits, rights, demands, charges, complaints, actions, obligations, or liabilities under any legal or equitable theory, whether known or Unknown (as the term “Unknown Claims” is defined herein), suspected, or unsuspected or capable of being known or suspected, asserted or unasserted, liquidated or unliquidated, legal, administrative, statutory, or equitable, and

whether, accrued, unaccrued, matured, or not matured, including, but not limited to, negligence; negligence per se; negligent training and supervision; breach of fiduciary duty; breach of confidence; invasion of privacy; breach of contract; unjust enrichment; breach of implied contract; breach of the implied covenant of good faith and fair dealing; intrusion upon seclusion; public disclosure of private facts; the Illinois Consumer Fraud and Deceptive Business Practices Act and any other state or federal consumer protection statute; misrepresentation (whether fraudulent, negligent, or innocent); bailment; wantonness; failure to provide adequate notice pursuant to any breach notification statute, regulation, or common law duty; and any causes of action under any statutes in effect in any states in the United States; and including, but not limited to, any and all claims for damages, injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys' fees, costs and expenses, set-offs, losses, pre-judgment interest, credit monitoring services, the creation of a fund for future damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, the appointment of a receiver, and any other form of relief that either has been asserted, or could have been asserted, by any Participating Settlement Class Member against any of the Released Persons based on, relating to, concerning, or arising out of the Data Incident and alleged exposure and compromise of any Settlement Class Member's private information, personally identifiable information, and/or protected health information or any other allegations, facts, or circumstances described in the Actions. Released Claims shall not include the right of any Participating Settlement Class Member or any of the Released Persons to enforce the terms of the Settlement contained in this Settlement Agreement.

34. "Released Persons" means Defendant and its past or present owners, parents, subsidiaries, divisions, and related or affiliated entities of any nature whatsoever, whether direct or indirect, as well as each of Defendant's and these entities' respective predecessors, successors, directors, officers, shareholders, employees, servants, representatives, principals, agents, advisors, consultants, vendors, partners, contractors, attorneys, accountants, insurers, reinsurers, assigns subrogees, and includes, without limitation, any person related to any such entity who is, was or could have been named as a defendant in the Actions, other than any third-party person who is found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads nolo contendere to any such charge."

35. "Request for Exclusion" is the written communication by or on behalf of a Settlement Class Member in which he or she requests to be excluded from the Settlement Class in the form and manner provided for in the Notice.

36. "Service Award Payment" means compensation awarded by the Court and paid to the Settlement Class Representatives in recognition of their role in this litigation and their efforts on behalf of the Settlement Class.

37. "Settlement" means the settlement of the Actions by and between the Parties, and the terms thereof as stated in this Settlement Agreement.

38. "Settlement Administrator" means RG/2 Claims Administration. Class Counsel and Defendant's Counsel may, by agreement, substitute a different Settlement Administrator, subject to Court approval.

39. “Settlement Class” means the 144,104 individuals identified on the Defendant’s Settlement Class List whose certain personal information and certain health-related information was involved in the Data Incident. Excluded from the Settlement Class are: (1) the judges presiding over these Actions, and members of their direct family; (2) the Defendant, its subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parent companies have a controlling interest and their current or former officers, directors, and employees; and (3) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.

40. “Settlement Class List” means the list generated by or for MAIC containing the full names and current or last known addresses for all persons who fall under the definition of the Settlement Class, which Defendant or Defendant’s agent shall provide to the Settlement Administrator within seven (7) days of the entry of the Preliminary Approval Order.

41. “Settlement Class Member” means an individual who falls within the definition of the Settlement Class.

42. “Settlement Fund” means Eight Hundred and Fifty Thousand Dollars (\$850,000.00) to be paid by Defendant or on Defendant’s behalf as specified in Paragraphs 46, including any interest accrued thereon after payment, this being the full and complete limit and extent of Defendant’s obligations with respect to the Settlement.

43. “Settlement Payment” or “Settlement Check” mean the payment to be made via mailed check and/or electronic payment to a Participating Settlement Class Member pursuant to Section IV and the Claims Administration Protocol attached as Addendum A.

44. “Settlement Website” means the website that the Settlement Administrator will establish as soon as practicable following entry of the Preliminary Approval Order, but prior to the mailing of the Notice, as a means for Settlement Class Members to obtain notice of and information about the Settlement and relevant case documents and deadlines. The Settlement Website shall contain relevant documents, including, but not limited to, the Notice, Claim Form, this Agreement, the motion for preliminary approval of the Settlement to be filed by Class Counsel, the Preliminary Approval Order to be filed by Class Counsel, Fee Application to be filed by Class Counsel, and the operative complaints in the Actions. The Settlement Website shall also include a toll-free telephone number, e-mail address, and mailing address through which Settlement Class Members may contact the Settlement Administrator directly. The Settlement Website shall not include any advertising and shall remain operational until at least sixty (60) days after all Settlement Payments have been distributed.

45. “Taxes and Tax-Related Expenses” means any and all applicable taxes, duties, and similar charges imposed by a government authority (including any estimated taxes, interest or penalties) arising in any jurisdiction, if any, with respect to the income or gains earned by or in respect of the Settlement Fund, including, without limitation, any taxes that may be imposed upon Defendant with respect to any income or gains earned by or in respect of the Settlement Fund for any period while it is held in the Settlement Fund.

II. SETTLEMENT FUND

46. **Establishment of Settlement Fund.** Within twenty-one (21) days of the entry of the Preliminary Approval Order, Defendant shall deposit the sum of \$850,000 into an account established and administered by the Settlement Administrator at a financial institution agreed upon by the Settlement Administrator, Defendant, and Class Counsel. The Settlement Administrator shall provide wiring instructions and a properly completed and duly executed IRS Form W-9 to Defendant within five (5) days of the entry of the Preliminary Approval Order.

47. **Non-Reversionary.** The Settlement Fund is non-reversionary. As of the Effective Date, all rights of Defendant in or to the Settlement Fund shall be extinguished, except in the event this Settlement Agreement is terminated, as described in Paragraphs 62-65. Any funds remaining in the Settlement Fund after the time period discussed in paragraph 11 of Addendum A and following any payments issued pursuant to Paragraph 14 of Addendum A, if any, shall be paid to St. Jude's Children Hospital, a cy pres recipient, subject to the Court's approval.

48. **Qualified Settlement Fund.** The Parties agree that the Settlement Fund is intended to be maintained as a qualified settlement fund within the meaning of Treasury Regulation § 1.468 B-1, and that the Settlement Administrator, within the meaning of Treasury Regulation § 1.468 B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of the Settlement Fund and paying from the Settlement Fund any Taxes and Tax-Related Expenses owed with respect to the Settlement Fund. The Parties agree that the Settlement Fund shall be treated as a qualified settlement fund from the earliest date possible and agree to any relation-back election required to treat the Settlement Fund as a qualified settlement fund from the earliest date possible. Any and all funds held in the Settlement Fund shall be held in an interest-bearing account insured by the Federal Deposit Insurance Corporation. Funds may be placed in a non-interest bearing account as may be reasonably necessary during the check-clearing process. The Settlement Administrator shall provide an accounting of any and all funds in the Settlement Fund, including any interest accrued thereon and payments made pursuant to this Agreement, upon request of any of the Parties.

49. **Custody of Settlement Fund.** The Settlement Fund shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed pursuant to this Settlement Agreement or the balance returned to those who paid the Settlement Fund in the event this Settlement Agreement is terminated in accordance with Paragraphs 65-67.

50. **Use of the Settlement Fund.** As further described in this Agreement and in Addendum A, the Settlement Fund shall be used by the Settlement Administrator to pay for the following: (1) reimbursement for Out-of-Pocket Losses and Lost Time; (2) payment of the Alternative Cash Payment; (3) Notice and Administration Costs; (4) Fee Award and Costs as awarded by the Court; and (5) Service Award Payments approved by the Court. No amounts may be withdrawn from the Settlement Fund unless expressly authorized by this Agreement or approved by the Court. Responsibility for effectuating payments described in this Paragraph shall rest solely with the Settlement Administrator and neither Defendant nor Defendant's agents shall have any responsibility whatsoever with respect to effectuating such payments.

51. **Taxes and Representations.** Taxes and Tax-Related Expenses relating to the Settlement Fund, if any, shall be considered Notice and Administrative Expenses and shall be timely paid by the Settlement Administrator out of the Settlement Fund without prior order of the Court. Further, the Settlement Fund shall indemnify and hold harmless the Parties and their counsel for Taxes and Tax-Related Expenses (including, without limitation, taxes payable by reason of any such indemnification payments). The Parties and their respective counsel have made no representation or warranty, and have no responsibility, with respect to the tax treatment by any Settlement Class Representative or any Settlement Class Member of any payment or transfer made pursuant to this Agreement or derived from or made pursuant to the Settlement Fund. Each Settlement Class Representative and Participating Settlement Class Member shall be solely responsible for the federal, state, and local tax consequences to him, her or it of the receipt of funds from the Settlement Fund pursuant to this Agreement.

III. SETTLEMENT BENEFITS AND ADMINISTRATION

52. **Claims Administration Protocol.** Settlement Class Members may submit claims to be compensated from the Settlement Fund for Lost Time and for reimbursement for Out-of-Pocket Losses as set forth in the Claims Administration Protocol, attached hereto as Addendum A. Settlement Class Members may alternatively submit claims to be compensated for the Alternative Cash Payment in lieu of seeking compensation for Out-of-Pocket Losses. All of these Settlement benefits shall be administered by the Settlement Administrator as set forth in the Claims Administration Protocol, attached hereto as Addendum A.

IV. SETTLEMENT CLASS NOTICE, OPT-OUTS, AND OBJECTIONS

53. **Notice.** Within seven (7) days after the date of the Preliminary Approval Order, Defendant shall provide the Settlement Class List to the Settlement Administrator. Within thirty (30) days after entry of the Preliminary Approval Order, the Settlement Administrator shall disseminate Notice to the Settlement Class Members. Notice shall be disseminated via U.S. mail to all Settlement Class Members. Class Counsel may direct the Settlement Administrator to send reminder notices to Settlement Class Members at any time prior to the Claims Deadline. The process to issue Notice as described in this Paragraph and the creation and maintenance of the Settlement Website [www.MAICincident.com] shall constitute the “Notice Plan.”

54. **Final Approval Hearing.** The Notice must set forth the time and place of the Final Approval Hearing (subject to change) and state that any Settlement Class Member who does not file a timely and adequate objection in accordance with this Paragraph waives the right to object or to be heard at the Final Approval Hearing and shall be forever barred from making any objection to the Settlement.

55. **Opt-Outs.** The Notice shall explain the procedure for Settlement Class Members to exclude themselves or “opt-out” of the Settlement by submitting a Request for Exclusion to the Settlement Administrator postmarked no later than the Opt-Out Deadline. The Request for Exclusion must include the name of the proceeding, the individual’s full name, current address, personal signature, and the words “Request for Exclusion” or a comparable statement that the individual does not wish to participate in the Settlement in the communication. The Notice must

state that any Settlement Class Member who does not file a timely Request for Exclusion in accordance with this Paragraph will lose the opportunity to exclude himself or herself from the Settlement and will be bound by the Settlement.

56. **Objections.** The Notice shall explain the procedure for Settlement Class Members to object to the Settlement or Fee Application by submitting written objections to the Court no later than the Objection Deadline. A written objection must include (i) the name of the proceedings; (ii) the Settlement Class Member's full name, current mailing address, and telephone number; (iii) a statement of the specific grounds for the objection, as well as any documents supporting the objection; (iv) the identity of any attorney(s) representing the objector; (v) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; (vi) a statement identifying all class action settlements objected to by the Settlement Class Member in the previous five years; and (vii) the signature of the Settlement Class Member or the Settlement Class Member's attorney.

V. DUTIES OF THE SETTLEMENT ADMINISTRATOR

57. **Duties of Settlement Administrator.** The Settlement Administrator shall perform the functions and duties necessary to effectuate the Settlement and as specified in this Agreement, including, but not limited to, those set forth in Addendum A.

58. **Limitation of Liability.** The Parties, Class Counsel, and Defendant's Counsel shall not have any liability whatsoever with respect to (i) any act, omission or determination of the Settlement Administrator, or any of its respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes and Tax-Related Expenses.

59. **Indemnification.** The Settlement Administrator shall indemnify and hold harmless the Parties, Class Counsel, and Defendant's Counsel for (i) any act or omission or determination of the Settlement Administrator, or any of Settlement Administrator's designees or agents, in connection with the Notice Plan and the administration of the Settlement; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any Taxes and Tax-Related Expenses.

VI. PRELIMINARY APPROVAL, FINAL APPROVAL, AND JURISDICTION

60. **Certification of the Settlement Class.** For purposes of this Settlement only, the Parties stipulate to the certification of the Settlement Class, which is contingent upon both the Court entering the Final Approval Order and Judgment of this Settlement and the occurrence of the Effective Date.

61. **Preliminary Approval.** Following execution of this Agreement, Class Counsel shall file a motion for preliminary approval of the Settlement, in a form agreeable to the Parties, within thirty (30) days thereof or a date thereafter that is agreeable to the Parties and the Court. The Preliminary Approval Motion shall seek preliminary approval including:

- (a) Stay all proceedings in the Actions other than those related to the approval of the Settlement;
- (b) Preliminarily certifying a Settlement Class for settlement purposes only and preliminarily approving this Agreement for purposes of issuing Class Notice;
- (c) Appointing the Settlement Class Representatives as the Settlement Class Representatives for settlement purposes only;
- (d) Appointing Class Counsel as counsel for the Settlement Class, for settlement purposes only;
- (e) Approval of the Class Notice Plan;
- (f) Approval of the form and contents of a long-form notice (“Long Notice”) to be posted on the Settlement Website substantially similar to the one attached hereto as Exhibit 2 and a postcard notice (“Postcard Notice”) substantially similar to the one attached hereto as Exhibit 1 to be sent to Settlement Class Members, which together shall include a fair summary of the Parties’ respective litigation positions, the general terms of the Settlement set forth in this Agreement, instructions for how to object to or submit a Request for Exclusion from the Settlement, the process and instructions for making Settlement Claims to the extent contemplated herein, and the date, time and place of the Final Approval Hearing;
- (g) Approve a Claim Form substantially similar to that in the Settlement Agreement attaches as Exhibit 3;
- (h) Appoint RG2 as Claims Administrator;
- (i) Schedule an appropriate Opt-Out Deadline, Objection Deadline, and other settlement-related dates and deadlines to be included in the Class Notice; and
- (j) Schedule the Final Approval Hearing.

The Defendant will not oppose entry of the Preliminary Approval Order so long as it is substantially in the form attached to this Agreement as Exhibit 5, and is otherwise consistent with this Agreement.

62. **Final Approval.** Class Counsel shall move the Court for a Final Approval Order and Judgment of this Settlement, to be issued following the Final Approval Hearing. The Final Approval Motion shall ask the Court to:

- (a) Determine that the Agreement is fair, adequate, and reasonable;
- (b) Finally certify the Settlement Class for settlement purposes only;
- (c) Determine that the Notice Plan satisfies due process requirements;
- (d) Dismiss all claims in the Actions with prejudice.
- (e) Bar and enjoin any Settlement Class Members who did not timely opt out in accordance with the requirements of the Agreement from asserting any of the Released Claims; and
- (f) Release and forever discharge Defendant and the Released Persons from the Released Claims, as provided for in this Agreement.

63. **Jurisdiction.** The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation and enforcement of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Plan and the Settlement Administrator. As part of its agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

VII. MODIFICATION AND TERMINATION

64. **Modification.** The terms and provisions of this Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however, that, after entry of the Preliminary Approval Order, the Parties may, by written agreement, effectuate such amendments, modifications, or expansions of this Agreement and its implementing documents (including all exhibits hereto) without further notice to the Settlement Class or approval by the Court if such changes are consistent with the Court's Preliminary Approval Order and do not materially alter, reduce, or limit the rights of Settlement Class Members under this Agreement.

65. **Settlement Not Approved.** If: (1) the Court does not issue the Preliminary Approval Order or Final Approval Order and Judgment; (2) the Effective Date does not occur; or (3) the Final Approval Order and Judgment is modified or reversed in any material respect by any appellate or other court, the Parties shall have 60 days from the date of such non-occurrence during which the Parties shall work together in good faith in considering, drafting, and submitting reasonable modifications to this Agreement to address any issues identified by the Court or that otherwise caused the Preliminary Approval Order or Final Approval Order and Judgment not to issue or the Effective Date not to occur. If such efforts are unsuccessful, either Party may at their sole discretion terminate this Agreement on seven days written notice to the other Party. For

avoidance of any doubt, neither Party may terminate the Agreement while an appeal from an order granting approval of the Settlement is pending.

66. **Effect of Termination.** In the event of a termination as provided in Paragraphs 65 or 66, this Agreement and the Settlement shall be considered null and void; all of the Parties' obligations under the Agreement shall cease to be of any force and effect and the Parties shall return to the status quo ante in the Action as if the Parties had not entered into this Agreement or the Settlement. Further, in the event of such a termination, the certification of the Settlement Class shall be void. Defendant reserve the right to contest class certification for all purposes other than this Settlement. Any orders preliminarily or finally approving the certification of any class contemplated by the Settlement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity in support of claims or defenses or in support or in opposition to a class certification motion. In addition: (a) the fact that Defendant did not oppose certification of a class under the Settlement shall not be used or cited thereafter by any person or entity, including in a contested proceeding relating to class certification and (b) in the event of such a termination, all of the Parties' respective pre-Settlement claims and defenses will be preserved.

VIII. RELEASES

67. **The Release.** Upon the Effective Date, and in consideration of the Settlement benefits described herein, each of the Settlement Class Representatives and Participating Settlement Class Members, and each of their respective heirs, executors, administrators, representatives, agents, partners, successors, attorneys, and assigns shall be deemed to have released, acquitted, and forever discharged any and all Released Claims against the Released Persons.

68. **Unknown Claims.** The Released Claims include the release of Unknown Claims. "Unknown Claims" means any and all Released Claims that Participating Settlement Class Member does not know or suspect to exist in his or her favor as of the Effective Date and which, if known by him or her, might have affected his or her decision(s) with respect to the Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, all Participating Settlement Class Members shall have waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, the District of Columbia, or principle of common law or otherwise, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides as follows:

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

Settlement Class Representatives and Class Counsel acknowledge, and each Participating Settlement Class Member by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Released Claims was separately bargained for and was a key element of the Settlement Agreement.

Upon the Effective Date, each of the Settlement Class Representatives and Participating Settlement Class Members, and each of their respective heirs, executors, administrators, representatives, agents, partners, successors, attorneys, and assigns shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state, the District of Columbia or territory of the United States, by federal law, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to Section 1542 of the California Civil Code. The Settlement Class Representatives and Participating Settlement Class Members, and each of their respective heirs, executors, administrators, representatives, agents, partners, successors, attorneys, and assigns acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Release, but that it is their intention to finally and forever settle and release the Released Claims, including but not limited to any Unknown Claims they may have, as that term is defined in this Paragraph.

69. **Mutual Understanding.** The Parties understand that if the facts upon which this Agreement is based are found hereafter to be different from the facts now believed to be true, each Party expressly assumes the risk of such possible difference in facts, and agrees that this Agreement, including the releases contained herein, shall remain effective notwithstanding such difference in facts. The Parties agree that in entering this Agreement, it is understood and agreed that each Party relies wholly upon its own judgment, belief, and knowledge and that each Party does not rely on inducements, promises, or representations made by anyone other than those embodied herein.

70. **Release of Class Representatives and Class Counsel.** Upon the Effective Date, the Released Persons shall be deemed to have released, acquitted, and forever discharged the Settlement Class Representatives and Class Counsel from any and all claims or causes of action of every kind and description, including any causes of action in law, claims in equity, complaints, suits or petitions, and any allegations of wrongdoing, demands for legal, equitable or administrative relief (including, but not limited to, any claims for injunction, rescission, reformation, restitution, disgorgement, constructive trust, declaratory relief, compensatory damages, consequential damages, penalties, exemplary damages, punitive damages, attorneys' fees, costs, interest or expenses), whether known or unknown, that arise out of, are based upon, or relate to prosecution of the Actions, the Settlement Agreement, or the Settlement claims process (provided, however, that this release and discharge shall not include claims relating to the enforcement of the terms of the Settlement or this Agreement).

71. **Bar to Future Suits.** Upon entry of the Final Approval Order and Judgment, the Settlement Class Representatives and other Participating Settlement Class Members shall be enjoined from prosecuting any claim they have released in the preceding paragraphs in any proceeding against any of the Released Persons or based on any actions taken by any of the Released Persons that are authorized or required by this Agreement or by the Final Approval Order. Likewise, the Released Persons shall be enjoined from prosecuting any claim they have released in the preceding paragraphs in any proceeding against Settlement Class Representatives and Class Counsel or based on any actions taken by Settlement Class Representatives and Class Counsel that

are authorized or required by this Agreement or by the Final Approval Order. It is further agreed that the Settlement may be pleaded as a complete defense to any proceeding subject to this section.

IX. SERVICE AWARD PAYMENTS

72. **Service Award Payments.** At least fourteen (14) days before the Opt-Out and Objection Deadlines, Class Counsel will file a Fee Application that will include a request for Service Award Payments for the Settlement Class Representatives in recognition for their contributions to the Actions not to exceed \$1,000.00 per Settlement Class Representative. The Settlement Administrator shall make the Service Award Payments to the Settlement Class Representatives from the Settlement Fund. Such Service Award Payment shall be paid by the Settlement Administrator, in the amount approved by the Court, no later than ten (10) days after the Effective Date.

73. **No Effect on Agreement.** In the event the Court declines to approve, in whole or in part, the payment of service awards in the amount requested, the remaining provisions of this Agreement shall remain in full force and effect. No decision by the Court, or modification or reversal or appeal of any decision by the Court, concerning the amount of the Service Award Payments shall constitute grounds for termination of this Agreement.

X. ATTORNEYS' FEES, COSTS, EXPENSES

74. **Attorneys' Fees and Costs and Expenses.** At least fourteen (14) days before the Opt-Out and Objection Deadlines, Class Counsel will file a Fee Application for an award of attorneys' fees and Litigation Costs and Expenses to be paid from the Settlement Fund not to exceed thirty-five percent (35.00%) of the Settlement Fund for fees, or \$297,500.00, and Class Counsel's request for reimbursement of Litigation Costs and Expenses not to exceed \$20,000.00. Prior to the disbursement or payment of the Fee Award and Costs under this Agreement to the IOLTA trust account of Mason LLP, Mason LLP shall provide to the Settlement Administrator a properly completed and duly executed IRS Form W-9. The Fee Award and Costs (plus any interest accrued thereon) shall be paid by the Settlement Administrator, in the amount approved by the Court, no later than ten (10) days after the Effective Date.

75. **Allocation.** Unless otherwise ordered by the Court, The Fee Award and Costs shall be distributed as agreed by Class Counsel, and Mason LLP shall have the responsibility to distribute any approved Fee Award and Costs amongst Class Counsel. Defendant shall have no liability or other responsibility for allocation of any such attorneys' fees and costs.

XI. NO ADMISSION OF LIABILITY

76. **No Admission of Liability.** The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either previously or in connection with the negotiations or proceedings connected with this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever.

77. **No Use of Agreement.** Neither the Settlement Agreement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (i) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by Plaintiffs; or (ii) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission by Defendant in the Actions or in any proceeding in any court, administrative agency or other tribunal.

XII. MISCELLANEOUS

78. **Integration of Exhibits.** The Addendum and exhibits to this Agreement and any exhibits thereto are a material part of the Settlement and are incorporated and made a part of the Agreement.

79. **Entire Agreement.** This Agreement, including all exhibits hereto, shall constitute the entire Agreement among the Parties with regard to the subject matter hereof and shall supersede any previous agreements, representations, communications and understandings among the Parties. This Agreement may not be changed, modified, or amended except in writing signed by all Parties, subject to Court approval. The Parties contemplate that, subject to Court approval or without such approval where legally permissible and where such changes are non-material, the exhibits to this Agreement may be modified by subsequent agreement of counsel for the Parties prior to dissemination of the Settlement Class Notice to the Settlement Class.

80. **Deadlines.** If any of the dates or deadlines specified herein falls on a weekend or legal holiday, the applicable date or deadline shall fall on the next business day. All reference to “days” in this agreement shall refer to calendar days unless otherwise specified.

81. **Construction.** For the purpose of construing or interpreting this Agreement, the Parties agree that this Agreement is to be deemed to have been drafted equally by all Parties hereto and shall not be construed strictly for or against any Party.

82. **Cooperation of Parties.** The Parties to this Agreement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, defend Court approval, and to do all things reasonably necessary to complete and effectuate the Settlement described in this Agreement.

83. **Obligation to Meet and Confer.** Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other in good faith prior to seeking Court intervention.

84. **Governing Law.** The Agreement shall be construed in accordance with, and be governed by, the laws of the State of Illinois, without regard to the principles thereof regarding choice of law.

85. **Consent to Jurisdiction for Enforcement of this Agreement.** The Parties and each Settlement Class Member irrevocably submit to the exclusive jurisdiction of the Court for

any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of the Agreement and its Exhibits, but for no other purpose.

86. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all signatories do not sign the same counterparts. Original signatures are not required. Any signature submitted electronically through e-mail of an Adobe PDF shall be deemed an original.

87. **Notices.** All notices to Class Counsel provided for herein, shall be sent by overnight mail and email to:

Thomas A. Zimmerman, Jr.
Zimmerman Law Offices, P.C.
77 W. Washington Street, Suite 1220
Chicago, IL 60606
tom@attorneyzim.com

All notices to Defendant provided for herein, shall be sent by overnight mail and email to:

Kevin M. Hogan
Polsinelli PC
150 N. Riverside Plaza, Suite 3000
Chicago, Illinois 60606
kmhogan@polsinelli.com

Mark A. Olthoff
Brisa I. Wolfe
Polsinelli PC
900 W. 48th Place, Suite 900
Kansas City, Missouri 64112
molthoff@polsinelli.com
bwolfe@polsinelli.com

The notice recipients and addresses designated above may be changed by written notice.

88. **Authority.** Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party or Parties on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IT IS SO AGREED BY THE PARTIES.

By: Mark A. Olthoff
Mark A. Olthoff
Polsinelli PC
Counsel for Defendant

Date: 1/26/23

By: _____
Raina Borrelli
Turke & Strauss LLP
(Counsel for the Lhota Action)

Date: _____

By: _____
Carl V. Malmstrom
Wolf Haldenstein Adler Freeman & Hert LLC
(Counsel for the Chen Action)

Date: _____

By: _____
Thomas A. Zimmerman, Jr.
Zimmerman Law Offices, P.C.
(Counsel for the Newbery Action)

Date: _____

By: _____
Gary M. Klinger
Milberg Coleman Bryson Phillips Grossman, PLLCOR
Gary E. Mason
Mason LLP
(Counsel for the Fagla Action)

Date: _____

By: _____
Gary M. Klinger
Milberg Coleman Bryson Phillips Grossman, PLLC
(Counsel for the Cornell Action)
Counsel for Plaintiffs and the Settlement Class

Date: _____

IT IS SO AGREED BY THE PARTIES.

By: _____
Mark A. Olthoff
Polsinelli PC
Counsel for Defendant

Date: _____

By: *Raina Borrelli*
By: [Raina Borrelli \(Jan 27, 2023 10:18 CST\)](#)
Raina Borrelli
Turke & Strauss LLP
(Counsel for the Lhota Action)

Date: Jan 27, 2023

By: *Carl V. Malmstrom*
By: [Carl V. Malmstrom \(Jan 27, 2023 09:54 CST\)](#)
Carl V. Malmstrom
Wolf Haldenstein Adler Freeman & Hert LLC
(Counsel for the Chen Action)

Date: Jan 27, 2023

By: *Thomas A. Zimmerman, Jr.*
By: [Thomas A. Zimmerman, Jr \(Jan 27, 2023 08:05 PST\)](#)
Thomas A. Zimmerman, Jr.
Zimmerman Law Offices, P.C.
(Counsel for the Newbery Action)

Date: Jan 27, 2023

By: *Gary M. Klinger*
By: [Gary M. Klinger \(Jan 27, 2023 09:55 CST\)](#)
Gary M. Klinger
Milberg Coleman Bryson Phillips Grossman, PLLCOR
Gary E. Mason
Mason LLP
(Counsel for the Fagla Action)

Date: Jan 27, 2023

By: *Gary M. Klinger*
By: [Gary M. Klinger \(Jan 27, 2023 09:55 CST\)](#)
Gary M. Klinger
Milberg Coleman Bryson Phillips Grossman, PLLC
(Counsel for the Cornell Action)
Counsel for Plaintiffs and the Settlement Class

Date: Jan 27, 2023

ADDENDUM A – CLAIMS ADMINISTRATION PROTOCOL

1. **Claims for Reimbursement for Out-of-Pocket Losses.** All Settlement Class Members may submit a claim for up to \$2,500.00 for reimbursement of Out-of-Pocket Losses. The maximum amount a Settlement Class Member can receive for an approved claim for reimbursement for Out-of-Pocket Losses and Extraordinary Out-of-Pocket Losses is \$2,500.00. To receive reimbursement for Out-of-Pocket Losses, Settlement Class Members must submit a valid Claim Form that includes Reasonable Documentation as defined in the Settlement Agreement. Self-prepared documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but may be considered by the Settlement Administrator to add clarity or to support other submitted documentation.

2. **Reimbursement for Lost Time.** All Settlement Class Members may submit a claim for reimbursement of Lost Time up to four (4) hours at \$25.00 per hour for self-certified Attested Time (undocumented time).

3. **Alternative Cash Payment.** All Settlement Class Members who do not submit a claim for Out-of-Pocket Losses may submit a claim for the Alternative Cash Payment of \$50.00. To receive reimbursement for the Alternative Cash Payment, Settlement Class Members must submit a valid Claim Form.

4. **Assessing Claims for Reimbursement for Out-of-Pocket Losses.** The Settlement Administrator shall verify that each person who submits a Claim Form is a Settlement Class Member. The Settlement Administrator shall have the sole discretion and authority to determine whether and to what extent Reasonable Documentation for Out-of-Pocket Losses reflects valid Out-of-Pocket Losses actually incurred that are fairly traceable to the Data Incident, but may consult with Class Counsel in making individual determinations. In assessing what qualifies as “fairly traceable,” the Settlement Administrator will consider (i) whether the timing of the loss occurred on or after November 2021 but prior to the Notice Date; and (ii) whether the loss was for something typically associated with or linked to data breaches (e.g., losses associated with ID theft, the purchased of credit monitoring or identify protection services or insurance). The Settlement Administrator is authorized to contact any Settlement Class Member (by e-mail, telephone, or U.S. mail) to seek clarification regarding a submitted claim prior to making a determination as to its validity.

5. **Assessing Claims for Lost Time.** The Settlement Administrator shall have the sole discretion and authority to determine whether the prerequisites have been met in order to award payments of Lost Time, but may consult with Class Counsel in making individual determinations. The Settlement Administrator is authorized to contact any Settlement Class Member (by e-mail, telephone, or U.S. mail) to seek clarification regarding a submitted claim prior to making a determination as to its validity.

6. **Disputes.** To the extent the Settlement Administrator determines a claim for Out-of-Pocket Losses, Lost Time, or the Alternative Cash Payment is deficient in whole or part, within a reasonable time of making such a determination, the Settlement Administrator shall notify the Settlement Class Member of the deficiencies and give the Settlement Class Member twenty-one

(21) days to cure the deficiencies. Such notifications shall be sent via mail and e-mail, unless the claimant did not provide an e-mail address, in which case such notifications shall be sent only via U.S. mail. If the Settlement Class Member attempts to cure the deficiencies but, at the sole discretion and authority of the Settlement Administrator, fails to do so, the Settlement Administrator shall notify the Settlement Class Member of that determination within ten (10) days of the determination. The Settlement Administrator may consult with Class Counsel in making such determinations. All such determinations of disputed claims by the Settlement Administrator are final.

7. **Payment Timing.** Payments for Approved Claims for reimbursement for Out-of-Pocket Losses, Lost Time, and/or the Alternative Cash Payment shall be issued in the form of a check mailed and/or an electronic payment as soon as practicable after the allocation and distribution of funds are determined by the Settlement Administrator following the Effective Date.

8. **Timing.** Settlement Checks shall bear in the legend that they expire if not negotiated within ninety (90) days of their date of issue. If a Settlement Check is not cashed within sixty (60) days after the date of issue, the Settlement Administrator is authorized to send an e-mail and/or place a telephone call to that Participating Settlement Class Member reminding him/her of the deadline to cash such check.

9. **Returned Checks.** For any Settlement Check returned to the Settlement Administrator as undeliverable (including, but not limited to, when the intended recipient is no longer located at the address), the Settlement Administrator shall make reasonable efforts to locate a valid address and resend the Settlement Payment within thirty (30) days after the check is returned to the Settlement Administrator as undeliverable. In attempting to locate a valid address, the Settlement Administrator is authorized to send an e-mail and/or place a telephone call to that Participating Settlement Class Member to obtain updated address information. Any replacement Settlement Checks issued to Participating Settlement Class Members shall remain valid and negotiable for sixty (60) days from the date of their issuance and may thereafter automatically be canceled if not cashed by the Participating Settlement Class Members within that time.

10. **Uncashed Checks.** To the extent that a Settlement Check is not cashed within ninety (90) days after the date of issue, the Settlement Administrator shall undertake the following actions: (1) attempt to contact the Participating Settlement Class Member by e-mail and/or telephone to discuss how to obtain a reissued check; (2) if those efforts are unsuccessful, make reasonable efforts to locate an updated address for the Participating Settlement Class Member using advanced address searches or other reasonable methods; and (3) reissuing a check or mailing the Participating Settlement Class Member a postcard (either to an updated address if located or the original address if not) providing information regarding how to obtain a reissued check. Any reissued Settlement Checks issued to Participating Settlement Class Members shall remain valid and negotiable for sixty (60) days from the date of their issuance and may thereafter automatically be canceled if not cashed by the Participating Settlement Class Members within that time.

11. **Unclaimed Property.** No portion of the Settlement Fund shall revert or be repaid to Defendant after the Effective Date. To the extent any monies remain in the Net Settlement Fund more than 120 days after the distribution of Settlement Payments to the Participating Settlement

Class Members, or 30 days after all reissued Settlement Checks are no longer negotiable, whichever occurs later or as otherwise agreed to by the Parties, any remaining monies shall be paid to St. Jude's Children's Research Hospital.

12. **Deceased Class Members.** If the Settlement Administrator is notified that a Participating Settlement Class Member is deceased, the Settlement Administrator is authorized to reissue the Settlement Check to the Participating Settlement Class Member's estate upon receiving proof the Participating Settlement Class Member is deceased and after consultation with Class Counsel.

13. **Submission of Electronic and Hard Copy Claims.** Participating Settlement Class Members may submit Claim Forms to the Settlement Administrator electronically via a claims website or physically by mail to the Settlement Administrator. Claim Forms must be submitted electronically or postmarked during the Claims Period and on or before the Claims Deadline.

14. **Contingencies.**

(a) In the event that the aggregate amount of all Settlement Payments exceeds the total amount of the Net Settlement Fund after payment of Court-approved attorneys' fees and Litigation Costs and Expenses, then all valid Out-of-Pocket Loss Claims shall be paid in full and then each valid Lost Time Claim and Alternative Cash Payment Claim shall be proportionately reduced on a *pro rata* basis. In no event shall the Settlement Fund be increased for any reason.

(b) In the event that the aggregate amount of all Settlement Payments does not exceed the Net Settlement Fund, then each Settlement Class Member who is entitled to receive payment for an Out-of-Pocket Loss Claim, a Lost Time Claim and/or an Alternative Cash Payment Claim shall receive additional funds increased on a *pro rata* basis (in other words, the same additional amount is added to each claimant's payment) so that the Net Settlement Fund is depleted.

15. **Duties of Settlement Administrator.** The Settlement Administrator shall perform the functions and duties necessary to effectuate the Settlement and as specified in this Agreement, including, but not limited to, the following:

- a. Creating, administering, and overseeing the Settlement Fund;
- b. Obtaining the Settlement Class List for the purpose of disseminating Notice to Settlement Class Members;
- c. Providing Notice to Settlement Class Members via U.S. mail and e-mail;
- d. Establishing and maintaining the Settlement Website;
- e. Establishing and maintaining a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answering the questions of Settlement

- Class Members who call with or otherwise communicate such inquiries within one (1) business day;
- f. Responding to any Settlement Class Member inquiries within a reasonable amount of time, but no later than five (5) business days from the date of receipt;
 - g. Reviewing, determining the validity of, and processing all claims submitted by Settlement Class Members;
 - h. Receiving Requests for Exclusion and Objections from Settlement Class Members and providing Class Counsel and Defendant's Counsel a copy thereof no later than three (3) days following the deadline for submission of the same. If the Settlement Administrator receives any Requests for Exclusion, objections, or other requests from Settlement Class Members after the Opt-Out and Objection Deadlines, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and to Defendant's Counsel;
 - i. After the Effective Date, processing and transmitting Settlement Payments to Settlement Class Members;
 - j. Providing weekly or other periodic reports to Class Counsel that include the number of claims submitted, the number of claims approved, information regarding the number of Settlement Checks mailed and delivered, Settlement Checks cashed, undeliverable information, and any other requested information relating to Settlement Payments. The Settlement Administrator shall also, as requested by Class Counsel and from time to time, provide the amounts remaining in the Net Settlement Fund;
 - k. In advance of the Final Approval Hearing, preparing a sworn declaration to submit to the Court that: (i) attests to implementation of the Notice Plan in accordance with the Preliminary Approval Order; (ii) identifies each Settlement Class Member who timely and properly submitted a Request for Exclusion; (iii) the number of objections received; and (iv) the number of claims received;
 - l. Issuing notification to the appropriate government officials of this Settlement Agreement pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715; and
 - m. Performing any function related to Settlement administration at the agreed-upon instruction of Class Counsel or Defendant's Counsel, including, but not limited to, verifying that Settlement Payments have been distributed.