

## **SETTLEMENT AGREEMENT**

This Settlement Agreement<sup>1</sup> is entered into between Plaintiffs Martin Rogers, Phoebe Gossman, Steven Peasley, Louise Peasley, Nikki Grote, Michael Hamilton, Mark Hart, Norman Lewman, Kristy Irwin, Teri Casey, and Larry Rogers (collectively “Plaintiffs”), on behalf of themselves and the Settlement Class, and Des Moines Orthopaedic Surgeons, P.C. (“Defendant”), as of the date last signed below. Plaintiffs and Defendant are known collectively as the “Parties.” The Parties hereby agree to the following terms in full settlement of the Action, subject to a Final Approval Order entered by the Court.

### **I. Procedural History**

1. Defendant owns and operates an orthopedic medicine practice in and around Des Moines, Iowa. During the normal operations of its business, Defendant collects and maintains the Private Information of its prospective and actual patients as a requirement for those persons to obtain consultations or services.
2. On or about February 17, 2023, Defendant became aware of unusual and suspicious activity on its computer network environment. Defendant took steps to secure its systems, and through investigation determined that its network had been accessed and exfiltrated by an unauthorized user from February 15, 2023, through February 17, 2023 (the “Data Incident”). The type of Private Information accessed by the unauthorized actor in the Data Incident included names, Social Security numbers, dates of birth, driver’s license numbers and/or state identification numbers, passports, direct deposit bank information, medical information, health insurance information, and other sensitive information (collectively “Private Information” or “PII”).

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<sup>1</sup> All capitalized terms herein shall have the same meanings as those defined in Section II herein.

3. Defendant began sending notices to those whose PII was exfiltrated on or around January 2024.

4. The first Complaint was filed February 2, 2024, in the federal court for the Southern District of Iowa, *Nikki Grote v. Des Moines Orthopaedic Surgeons, P.C.* (No. 4:23-cv-00041-SHL-WPK). Two additional actions were filed, *Norman Lewman v. Des Moines Orthopaedic Surgeons, P.C.* (4:24-cv-00049-SHL-WBJ) (filed Feb. 8, 2024), and *Mark Hart v. Des Moines Orthopaedic Surgeons, P.C.* (4:24-cv-00059-SHL-HCA) (filed Feb. 13, 2024). Plaintiffs later dismissed their federal actions and brought claims in Iowa state court, ultimately filing an Amended Petition in the Iowa District Court, Dallas County, Case No. 05251CVC044835.

5. The parties have engaged in litigation, including informal discovery.

6. The Parties engaged in a mediation on June 25, 2025, with mediator Jill Sperber, and arrived at an agreement to resolve matters as expressed through this Settlement Agreement.

7. The Parties now agree to settle the Action entirely, without any admission of liability or wrongdoing, with respect to all Released Claims of the Releasing Parties. Defendant has entered into this Agreement to resolve all controversies and disputes arising out of or relating to the allegations made in the Complaint, and to avoid the litigation costs and expenses, distractions, burden, expense, and disruption to their business operations associated with further litigation. Defendant does not in any way acknowledge, admit to, or concede any of the allegations made in the Complaint, and expressly disclaims and denies any fault or liability, or any charges of wrongdoing that have been or could have been asserted in the Complaint. Nothing contained in this Agreement shall be used or construed as an admission of liability, and this Agreement shall not be offered or received in evidence in any action or proceeding in any court or other forum as an admission or concession of liability or wrongdoing of any nature or for any other purpose other

than to enforce the terms of this Agreement. Plaintiffs have entered into this Agreement to recover on the claims asserted in the Complaint, and to avoid the risk, delay, and uncertainty of continued litigation. Plaintiffs do not in any way concede that the claims alleged in the Complaint lack merit or are subject to any defenses. The Parties intend this Agreement to bind Plaintiffs, Defendant, and all Settlement Class Members.

NOW, THEREFORE, in light of the foregoing, for good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree, subject to approval by the Court, as follows.

## II. **Definitions**

8.     **“Action”** means the class action lawsuit in this Court entitled: *Rogers, et al., v. Des Moines Orthopaedic Surgeons, P.C.* Case No. 05251CVC044835.”

9.     **“Agreement”** or **“Settlement”** or **“Settlement Agreement”** means this Settlement Agreement entered into by the Plaintiffs and Defendant, including all exhibits.

10.    **“Claim”** means the submission of a Claim Form by a Claimant for Settlement Class Member Benefits.

11.    **“Claims Deadline”** means the postmark or online submission deadline for Valid Claims (as defined below), which is ninety (90) days after Notice is mailed to Settlement Class Members.

12.    **“Claim Form”** means the proof of claim, substantially in the form attached hereto as Exhibit A, which may be modified, subject to the Parties’ approval, to meet the requirements of the Settlement Administrator.

13.    **“Claimant”** means a Claimant who submits a Claim Form.

14.     **“Claims Process”** means the process by which Settlement Class Members may submit Claim Forms online at the Settlement Website or by mail to the Settlement Administrator, including the procedure to approve or reject Claims.

15.     **“Class Counsel”** means Philip J. Krzeski of Chestnut Cambronne P.A., Nickolas J. Hagman of Cafferty Clobes Meriwether & Sprengel LLP, John J. Nelson of Milberg Coleman Bryson Phillips Grossman, PLLC, Terence R. Coates of Markovits Stock & DeMarco, LLC, Kevin Laukaitis of Laukaitis Law LLC, and Amina Thomas of Cohen Malad LLP.

16.     **“Class List”** means a list of Settlement Class members’ names, postal addresses and email addresses (if available) that Defendant shall prepare and provide to the Settlement Administrator within 7 days of Preliminary Approval.

17.     **“Class Representatives”** mean Plaintiffs Martin Rogers, Phoebe Gossman, Steven Peasley, Louise Peasley, Nikki Grote, Michael Hamilton, Mark Hart, Norman Lewman, Kristy Irwin, Teri Casey, and Larry Rogers.

18.     **“Court”** means the Iowa District Court, Dallas County and the Judge(s) assigned to the Action.

19.     **“Defendant’s Counsel”** means James Monagle of Mullen Coughlin LLC

20.     **“Effective Date”** means the day after the entry of the Final Approval Order, provided there are no objections to the Settlement. If there are objections to the Settlement, then the Effective Date shall be the later of: (a) 60 days after entry of the Final Approval Order if no appeals are taken from the Final Approval Order; or (b) if appeals are taken from the Final Approval Order, then the earlier of 30 days after the last appellate court ruling affirming the Final Approval Order or 30 days after the entry of a dismissal of the appeal.

21.     **“Escrow Account”** means the interest-bearing account to be established by the Settlement Administrator consistent with the terms and conditions described herein.

22.     **“Extraordinary Expenses”** are those costs borne by a Class member as a result of the Data Incident that are not otherwise reimbursed, and which are other than normal mitigatory costs. An example of an Extraordinary Expense would be unreimbursed fraud. The Settlement Administrator shall be the sole determiner of whether an expense is Ordinary or Extraordinary.

23.     **“Final Approval”** means the final approval of the Settlement, which occurs when the Court enters the Final Approval Order.

24.     **“Final Approval Hearing”** means the hearing held before the Court during which the Court will consider granting Final Approval of the Settlement and the Motion for Attorneys’ Fees, Costs, and Service Awards.

25.     **“Final Approval Order”** means the final order the Court enters granting Final Approval of the Settlement. The proposed Final Approval Order shall be in a form agreed upon by the Parties and shall be substantially in the form attached as an exhibit to the Motion for Final Approval. Final Approval Order also includes the orders, which may be entered separately, determining the amount of attorneys’ fees and costs awarded to Class Counsel and Service Awards to the Class Representatives.

26.     **“Long Form Notice”** means the long form notice of the Settlement, substantially in the form attached hereto as Exhibit B, that shall be posted on the Settlement Website and shall be available to Settlement Class Members by mail on request made to the Settlement Administrator.

27. “**Motion for Attorneys’ Fees, Costs, and Service Awards**” means the motion that Plaintiffs and Class Counsel shall file with the Court seeking approval for attorneys’ fees, costs and expenses, and Class Representatives’ Service Awards.

28. “**Motion for Final Approval**” means the motion that Plaintiffs and Class Counsel shall file with the Court seeking Final Approval of the Settlement

29. “**Motion for Preliminary Approval**” means the motion that Plaintiffs shall file with the Court seeking Preliminary Approval of the Settlement.

30. “**Notice**” means the Postcard Notice and Long Form Notice that Plaintiffs will ask the Court to approve in connection with the Motion for Preliminary Approval.

31. “**Notice Date**” means 30-days after entry of the Preliminary Approval Order and is the date by which the Claims Administrator shall establish the Settlement Website, toll-free telephone line, and complete the initial mailing of the Postcard Notice as set forth in ¶ 67.

32. “**Notice Program**” means the methods provided for in this Agreement for giving Notice to the Settlement Class and consists of Postcard Notice and the Long Form Notice.

33. “**Notice of Deficiency**” means the notice sent by the Settlement Administrator to a Claimant who has submitted an invalid Claim.

34. “**Objection Date**” means 60 days after the Notice Date and is the date by which Settlement Class Members must mail their objection to the settlement for that objection to be effective. The postmark date shall constitute evidence of the date of mailing for these purposes.

35. “**Opt-Out Date**” means 60 days after the Notice Date and is the date by which Settlement Class Members must mail their requests to be excluded from the Settlement Class for that request to be effective. The postmark date shall constitute evidence of the date of mailing for these purposes.

36.     **“Party”** means each of the Plaintiffs and Defendant, and “Parties” means Plaintiffs and Defendant, collectively.

37.     **“Postcard Notice”** or **“Short Form Notice”** means the postcard notice of the Settlement, substantially in the form attached hereto as Exhibit C that the Settlement Administrator shall disseminate to Settlement Class members by mail. This notice shall have a tear-off feature to make filing a claim easier for Settlement Class Members.

38.     **“Preliminary Approval”** means the preliminary approval of the Settlement, which occurs when the Court enters the Preliminary Approval Order, substantially in the form attached to the Motion for Preliminary Approval.

39.     **“Preliminary Approval Order”** means the order preliminarily approving the Settlement and proposed Notice Program, substantially in the form attached hereto as Exhibit 4.

40.     **“Releases”** means the releases and waiver set forth in Section XII of this Agreement.

41.     **“Released Claims”** means any and all actual, potential, filed or unfiled, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected claims, demands, liabilities, rights, causes of action, damages, punitive, exemplary or multiplied damages, expenses, costs, indemnities, attorneys’ fees and/or obligations, whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever, based on any federal, state, local, statutory or common law or any other law, against the Released Parties, or any of them, arising out of or relating to actual or alleged facts, transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions or failures to act relating to the claims made in the Complaint.

42.     **“Released Parties”** means Defendant and Carrier Access IT, L.C. (CAIT), and each entity which is controlled by, controlling or under common control with Defendant or CAIT, and their past, present, and future direct and indirect heirs, assigns, associates, corporations, investors, owners, parents, subsidiaries, affiliates, divisions, officers, directors, shareholders, members, agents, servants, employees, partners, attorneys, insurers, reinsurers, benefit plans, predecessors, successors, managers, administrators, executors, and trustees.

43.     **“Releasing Parties”** means Plaintiffs and Settlement Class Members and their respective past, present, and future heirs, devisees, beneficiaries, conservators, executors, estates, administrators, assigns, trustees, receivers, agents, attorneys, accountants, financial and other advisors, and any other representatives of any of these persons and entities.

44.     **“Service Awards”** means the payment the Court may award the Plaintiffs for serving as Class Representatives, which is in addition to any Settlement Class Member Benefit due to Plaintiffs as Settlement Class Members.

45.     **“Settlement Administrator”** means Analytics Consulting LLC.

46.     **“Settlement Administration Costs”** means all costs and fees of the Settlement Administrator regarding Notice and Settlement administration.

47.     **“Settlement Class”** means all living individuals who were sent a notice by Defendant that their Private Information may have been impacted in the Data Incident. Excluded from the Settlement Class are all persons who are: (a) directors and officers of Defendant; (b) the Judge assigned to the Action, that Judge’s immediate family, and Court staff; and (c) natural persons who properly execute and submit a Request for Exclusion prior to the expiration of the Opt-Out Period.

48. “**Settlement Class Member**” means any member of the Settlement Class who has not opted-out of the Settlement.

49. “**Settlement Website**” means the website the Settlement Administrator will establish as a means for the Settlement Class members to submit Claim Forms and obtain notice and information about the Settlement, including hyperlinked access to this Agreement, the Preliminary Approval Order, Long Form Notice, Claim Form, Motion for Attorneys’ Fees, Costs, and Service Awards, Motion for Final Approval, and Final Approval Order, as well as other documents as the Parties agree to post or the Court orders posted. The Settlement Website shall remain online and operable for at least six months following Final Approval.

50. “**Valid Claim**” means a Claim Form submitted by a Settlement Class member that is: (a) submitted in accordance with the provisions of the Settlement; (b) accurately, fully, and truthfully completed and executed, with all of the information requested in the Claim Form, by a Settlement Class Member; (c) signed physically or by e-signature by a Settlement Class Member personally, subject to the penalty of perjury; (d) returned via mail and postmarked by the Claim Form Deadline, or, if submitted online, submitted by 11:59 p.m. Pacific time on the Claims Deadline; and (e) determined to be valid by the Settlement Administrator. The Settlement Administrator may require additional information from the Claimant to validate the Claim, including, but not limited to, answers related to questions regarding the validity or legitimacy of the physical or e-signature. Failure to respond to the Settlement Administrator’s Notice of Deficiency may result in a determination that the Claim is not a Valid Claim.

### **III. Settlement Benefits**

51. **Monetary Relief.** As set forth in more detail below, Settlement Class Members may claim (a) reimbursement for documented ordinary out-of-pocket losses of up to \$400, (b)

reimbursement for up to 4 hours lost time (at a rate of \$25 per hour), and (c) reimbursement for documented extraordinary losses of up to \$5,000. As an alternative to a claim for documented ordinary and extraordinary losses and lost time, Settlement Class Members may claim a \$25 Alternative Cash Payment, or a \$100 Alternative Cash Payment if their Social Security Number was affected by this Data Incident. Monetary Relief is subject to an aggregate cap of \$1,000,000.

52. **Documented Ordinary Out-of-Pocket Losses.** All Settlement Class Members who submit a Valid Claim using the Claim Form are eligible for any documented and attested-to ordinary out-of-pocket expenses directly associated with dealing with the Data Incident, not to exceed \$400 per Settlement Class Member, that were incurred more likely than not as a result of the Data Incident, including but not limited to (i) unreimbursed expenses, charges and/or losses relating to fraud or identity theft such as unreimbursed bank fees; long distance phone charges; cell phone charges (only if charged by the minute); data charges (only if charged based on the amount of data used); postage; gasoline for local travel; fees for credit repair or similar services; and costs associated with freezing or unfreezing credit; and/or any other charge or loss reasonably related to the Data Incident incurred by Class Members between February 15, 2023 and the Claims Deadline. To receive reimbursement for out-of-pocket losses, Settlement Class Members must submit a Valid Claim, including supporting documentation, to the Settlement Administrator. Reimbursement for out-of-pocket expenses is subject to the following terms: (1) the loss is an actual, documented, and unreimbursed monetary loss; (2) the loss was more likely than not caused by the Data Incident; and (3) the loss occurred between February 15, 2023, and the Claims Deadline.

53. **Extraordinary Losses.** Settlement Class Members are also eligible to receive reimbursement for documented extraordinary losses, not to exceed \$5,000 per Settlement Class

Member. To be eligible for this benefit the monetary loss must be: (i) actual, documented, and unreimbursed, with documented proof of loss to be submitted with the claim; (ii) more likely than not caused by the Data Incident; (iii) have occurred between February 15, 2023 through and including the end of the Claims Deadline; and (iv) must not already be covered by one or more of the above-referenced reimbursed expenses. A Settlement Class Member who claims extraordinary losses must also provide documentation that he or she made reasonable efforts to avoid, or seek reimbursement for, such extraordinary losses, including, but not limited to, exhaustion of all available credit monitoring insurance and identity theft insurance.

54. **Lost Time.** Class Members are also eligible to receive reimbursement for up to four (4) hours of lost time spent dealing with the Data Incident, rounded to the nearest whole hour, calculated at the rate of \$25 per hour. Class Members may receive up to four hours of lost time if the Class Member attests that any claimed lost time was spent responding to issues raised by the Data Incident, and briefly describes how the lost time was spent. Claims for reimbursement of lost time may be combined with claims for documented ordinary out-of-pocket expenses.

55. **Alternative Cash Payment.** As an alternative to seeking reimbursement of documented ordinary out-of-pocket and extraordinary losses and lost time, Settlement Class Members may receive a one-time cash payment of \$25. Settlement Class Members whose Social Security Numbers were identified by Defendant as being affected by the Data Incident may claim a one-time cash payment of \$100 (in lieu of, and not in addition to the \$25 payment).

56. **Aggregate Cap on Claims for Monetary Relief.** Defendant's obligation to pay for reimbursement for documented ordinary out-of-pocket and extraordinary losses, lost time, and alternative cash payments will not, under any circumstance, exceed \$1,000,000 in the aggregate. If the total of valid claims for monetary relief exceeds \$1,000,000, each claim shall be reduced *pro*

*rata.* Nothing in this Settlement Agreement shall be construed as requiring Defendant to provide, and Defendant shall not be required to provide for a double payment for the same loss or injury that was reimbursed or compensated by any other source. This aggregate cap shall not apply to the costs of credit monitoring, business practice changes, notice and claims administration, or attorneys' fees, costs, and service awards, all of which will be paid for by Defendant outside of this Aggregate Cap.

57. **Credit Monitoring and Identity Theft Protection.** In addition to, and regardless of whether they submit a claim for any form of Monetary Relief, Settlement Class Members may claim three (3) years of three-bureau credit monitoring and identity theft protection services. The identity theft monitoring will include identity theft insurance of at least \$1 million.

58. Settlement Class Members seeking Monetary Relief or Credit Monitoring must complete and submit a Claim Form to the Settlement Administrator, postmarked or submitted online on or before the Claims Deadline. The notice to the Settlement Class will specify this deadline and other relevant dates described herein. The Claim Form must be verified by the Settlement Class Member with a statement that his or her claim is true and correct, to the best of his or her knowledge and belief and is being made under penalty of perjury. Notarization shall not be required. The Settlement Class Member must submit reasonable documentation that the ordinary and extraordinary losses claimed were both actually incurred and plausibly arose from the Data Incident. Failure to provide supporting documentation of the out-of-pocket expenses referenced above, as requested on the Claim Form, shall result in denial of a claim.

59. **Business Practice Changes.** By signature to this Settlement Agreement, Defendant confirms and certifies the following: Since the date of the Data Security Incident, Defendant has implemented certain cybersecurity business practice improvements. Defendant has implemented

various technical, administrative, and physical security improvements, including new and additional hardware and software security tools. Defendant incurred substantial one-time and ongoing costs associated with such improvements and has committed to enhanced security spending of at least \$250,000 per year for the next three years. The costs associated with such data security measures have been paid by Defendant separate and apart from the Settlement Amount.

#### **IV. Certification of the Settlement Class**

60. In the Motion for Preliminary Approval, Plaintiffs shall propose and request to the Court that the Settlement Class be certified for Settlement purposes. Defendant agrees solely for purposes of the Settlement provided for in this Agreement, and the implementation of such Settlement, that this case shall proceed as a class action; provided however, that if a Final Approval Order is not issued, then any certification shall be null and void and, for the avoidance of doubt, Defendant shall retain all rights to object to any future requests to certify a class. Plaintiffs and Class Counsel shall not reference this Agreement in support of any subsequent motion for class certification of any class in the Action.

#### **V. Settlement Approval**

61. Within 10 days following execution of this Agreement by all Parties and Class Counsel, Class Counsel shall file a Motion for Preliminary Approval. The proposed Preliminary Approval Order shall be attached to the motion as an exhibit and shall be in a form agreed to by Class Counsel and Defendant.

62. The Motion for Preliminary Approval shall, among other things, request the Court: (1) preliminarily approve the terms of the Settlement as being within the range of fair, adequate, and reasonable; (2) provisionally certify the Settlement Class for settlement purposes only; (3) approve the Notice Program set forth herein and approve the form and content of the Notices of

the Settlement; (4) approve the Claim Form and Claim Process; (5) approve the procedures for Settlement Class members to opt-out of the Settlement or for Settlement Class Members to object to the Settlement; (6) appoint Analytics Consulting LLC as the Settlement Administrator; (7) appoint Plaintiffs who sign this Agreement as Class Representatives and Philip J. Krzeski of Chestnut Cambronne P.A., Nickolas J. Hagman of Cafferty Clobes Meriwether & Sprengel LLP, John J. Nelson of Milberg Coleman Bryson Phillips Grossman, PLLC, Terence R. Coates of Markovits Stock & DeMarco, LLC, Kevin Laukaitis of Laukaitis Law LLC, and Amina Thomas of Cohen Malad, LLP as Class Counsel for Settlement purposes; (8) stay the Action pending Final Approval of the Settlement; and (9) schedule a Final Approval Hearing for a time and date mutually convenient for the Court, the Parties, Class Counsel, and Defendant's Counsel.

## **VI. Settlement Administrator**

63. The Parties agree that, subject to Court approval, Analytics Consulting LLC shall be the Settlement Administrator. The Parties shall jointly oversee the Settlement Administrator. The Settlement Administrator shall fulfill the requirements set forth in the Preliminary Approval Order and the Agreement and comply with all applicable laws, including, but not limited to, the Due Process Clause of the United States Constitution.

64. The Settlement Administrator shall administer various aspects of the Settlement as described in the next paragraph and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including, but not limited to, effectuating the Notice Program, handling the Claims process, and distributing the Cash Payments to Settlement Class Members who submit Valid Claims.

65. The Settlement Administrator's duties include:

- a. Completing the Court-approved Notice Program by noticing the Settlement Class via Postcard Notice, sending out Long Form Notices and paper Claim Forms on request from Settlement Class members, reviewing Claim Forms, notifying Claimants of deficient Claim Forms using the Notice of Deficiency, and sending Settlement Class Member Benefits to Settlement Class Members who submit Valid Claims;
- b. Establishing and maintaining the Escrow Account approved by the Parties;
- c. Establishing and maintaining a post office box to receive opt-out requests from the Settlement Class, objections from Settlement Class members, and Claim Forms;
- d. Establishing and maintaining the Settlement Website to provide important information and to receive electronic Claim Forms;
- e. Establishing and maintaining an automated toll-free telephone line for Settlement Class members to call with Settlement-related inquiries, and answer the frequently asked questions of Settlement Class members who call with or otherwise communicate such inquiries;
- f. Responding to any mailed Settlement Class member inquiries;
- g. Processing all opt-out requests from the Settlement Class;
- h. Providing weekly reports to Class Counsel and Defendant's Counsel that summarize the number of Claims submitted, Claims approved and rejected, Notice of Deficiency sent, opt-out requests and objections received that week, the total number of opt-out requests and objections received to date, and other pertinent information;

- i. In advance of the Final Approval Hearing, preparing a declaration for the Parties confirming that the Notice Program was completed in accordance with the terms of this Agreement and the Preliminary Approval Order, describing how the Notice Program was completed, indicating the number of Claim Forms received, providing the names of each Settlement Class member who timely and properly requested to opt-out from the Settlement Class, indicating the number of objections received, and other information as may be necessary to allow the Parties to seek and obtain Final Approval;
- j. Distributing Cash Payments by electronic means or by paper check;
- k. Paying Court-approved attorneys' fees, costs, and Service Awards; and
- l. Any other Settlement administration function at the instruction of Class Counsel and Defendant, including, but not limited to, verifying that the Cash Payments have been properly distributed.

## **VII. Notice to the Settlement Class, Opt-Out Procedures, and Objection Procedures**

66. Defendant will make available to the Settlement Administrator the Class List no later than seven days after entry of the Preliminary Approval Order. To the extent necessary, Defendant will cooperate with updating the Class List to accomplish the Notice Program and otherwise administer the Settlement.

67. Within 30 days following entry of the Preliminary Approval Order, the Settlement Administrator shall commence the Notice Program provided herein, using the forms of Notice approved by the Court. Class Members shall receive a Postcard Notice by mail.

68. The Postcard Notice shall include, among other information: a description of the material terms of the Settlement; how to submit a Claim Form; the Claim Form Deadline; the last

day of the Opt-Out Period for Settlement Class members to opt-out of the Settlement Class; the last day of the Objection Period for Settlement Class Members to object to the Settlement and/or Motion for Attorneys' Fees, Costs, and Service Awards; the Final Approval Hearing date; and the Settlement Website address at which Settlement Class Members may access this Agreement and other related documents and information. The Postcard Notice shall have a tear-off feature to make filing a claim easier for Settlement Class Members Class Counsel and Defendant's Counsel shall insert the correct dates and deadlines in the Notice before the Notice Program commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. If the date or time for the Final Approval Hearing changes, the Settlement Administrator shall update the Settlement Website to reflect the new date. No additional notice to the Settlement Class is required if the date or time for the Final Approval Hearing changes.

69. The Settlement Administrator shall establish the Settlement Website no later than the day before Notice is first initiated. The Settlement Administrator shall ensure the Settlement Website makes available the Court-approved online Claim Form that can be submitted directly on the Settlement Website or in printable version that can be sent by U.S. Mail to the Settlement Administrator.

70. The Long Form Notice also shall include a procedure for Settlement Class members to opt-out of the Settlement Class, and the Postcard Notice shall direct Settlement Class members to review the Long Form Notice to obtain the opt-out instructions. A Settlement Class member may opt-out of the Settlement Class by mailing a request to opt-out to the Settlement Administrator postmarked no later than the Opt-Out Deadline. The opt-out request must be personally signed by the Settlement Class member and contain the requestor's name, address, telephone number, and email address (if any), and include a statement indicating a request to be excluded from the

Settlement Class. Any Settlement Class Member who does not timely and validly request to opt-out shall be bound by the terms of this Agreement even if that Settlement Class Member does not submit a Valid Claim.

71. The Long Form Notice also shall include a procedure for Settlement Class Members to object to the Settlement and/or Motion for Attorneys' Fees, Costs, and Service Awards, and Postcard Notice shall direct Settlement Class members to review the Long Form Notice to obtain the objection instructions. Written Objections must be sent by U.S. Mail to the Settlement Administrator. For a written Objection to be considered by the Court, the relevant Settlement Class Member must submit the Objection no later than the Objection Deadline, as specified in the Notice, and the relevant Settlement Class Member must not have excluded herself from the Settlement Class. If submitted by mail, an Objection shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by courier (e.g., Federal Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label.

72. For a written objection to be considered by the Court, the objection must also set forth:

- a. the objector's full name, mailing address, telephone number, and email address (if any);
- b. all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel;
- c. the identity of all counsel (if any) who represent the objector, including any former or current counsel who may claim an entitlement to compensation for any reason

related to the objection to the Settlement and/or Motion for Attorneys' Fees, Costs, and Service Awards;

- d. the identity of all counsel (if any) representing the objector, and whether they will appear at the Final Approval Hearing;
- e. a list of all cases, including case name, court file number, and court, in which the objector has previously filed an objection;
- f. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection (if any);
- g. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
- h. the objector's signature (an attorney's signature is not sufficient).

73. Class Counsel and/or Defendant's Counsel may conduct limited discovery on any objector or objector's counsel.

74. The Court will hear from any Settlement Class Member who has fulfilled the preceding requirements and wishes to appear at the Final Approval Hearing and make an objection orally.

75. The Settlement Administrator shall perform reasonable address traces for Postcard Notices that are returned as undeliverable. By way of example, a reasonable tracing procedure would be to run addresses of returned postcards through the Lexis/Nexis database that can be utilized for such purpose. No later than 30 days following the Notice Date, the Settlement Administrator shall complete the re-mailing of Postcard Notice to those Settlement Class members whose new addresses were identified as of that time through address traces.

76. The Notice Program shall be substantially completed no later than 30 days following the Notice Date.

### **VIII. Claim Form Process and Disbursement of Settlement Class Member Benefits**

77. The Notice and the Settlement Website will explain to Settlement Class Members that they may be entitled to a Settlement Class Member Benefit and how to submit a Claim Form.

78. Claim Forms may be submitted online through the Settlement Website or through U.S. Mail by sending them to the Settlement Administrator at the address designated on the Claim Form.

79. The Settlement Administrator shall collect, review, and address each Claim Form received to determine whether the Claim Form meets the requirements set forth in this Settlement and is thus a Valid Claim. The Settlement Administrator shall examine the Claim Form before designating the Claim as a Valid Claim to determine that the information on the Claim Form is reasonably complete. The Settlement Administrator shall have the sole authority to determine whether a Claim by any Claimant is a Valid Claim.

80. The Settlement Administrator shall use all reasonable efforts and means to identify and reject duplicate claims. No Settlement Class member may submit more than one Claim Form. The Settlement Administrator shall identify any Claim Forms that appear to seek relief on behalf of the same Settlement Class member. If the Settlement Administrator identifies any Claim Form that appears to be a duplication, the Settlement Administrator shall contact the Settlement Class member in an effort to determine which Claim Form is the appropriate one for consideration.

81. The Settlement Administrator shall exercise, in its discretion, all usual and customary steps to prevent fraud and abuse and take any reasonable steps to prevent fraud and abuse in the Claim process. The Settlement Administrator may, in its discretion, deny in whole or

in part any Claim Form to prevent actual or possible fraud or abuse. By agreement, the Parties can instruct the Settlement Administrator to take whatever steps it deems appropriate if the Settlement Administrator identifies actual or possible fraud or abuse relating to the submission of claims, including, but not limited to, denying in whole or in part any Claim to prevent actual or possible fraud or abuse. If any fraud is detected or reasonably suspected, the Settlement Administrator and Parties may require information from Claimants or deny Claims, subject to the supervision of the Parties and ultimate oversight by the Court.

82. Claim Forms that do not meet the terms and conditions of this Settlement shall be promptly rejected by the Settlement Administrator and the Settlement Administrator shall advise the Claimant or Settlement Class member of the reason(s) why the Claim Form was rejected. However, if the Claim Form is rejected for containing incomplete or inaccurate information, and/or omitting required information, the Settlement Administrator may send a Notice of Deficiency explaining what information is missing or inaccurate and needed to validate the Claim and have it submitted for consideration. The Settlement Administrator shall notify the Claimant using the contact information provided in the Claim Form. The additional information and/or documentation can include, for example, answers to questions regarding the validity of the Claimant's physical or e-signature. A Claimant shall have until the Claim Form Deadline, or 15 days from the date the Notice of Deficiency is sent to the Claimant via mail and postmarked or via email, whichever is later, to reply to the Notice of Deficiency and provide the required information. If the Claimant timely and adequately provides the requested information and/or documentation, the Claim shall be deemed a Valid Claim and processed by the Settlement Administrator. If the Claimant does not timely and completely provide the requested information and/or documentation, the Settlement Administrator shall reduce or deny the Claim unless Defendant and Class Counsel otherwise agree.

83. Where a good faith basis exists, the Settlement Administrator may reduce or reject a Claim for, among other reasons, the following:

- a. Failure to fully complete and/or sign the Claim Form;
- b. Illegible Claim Form;
- c. The Claim Form is fraudulent;
- d. The Claim Form is duplicative of another Claim Form;
- e. The Claimant is not a Settlement Class member;
- f. The Claimant submitted a timely and valid request to opt out of the Settlement Class;
- g. The person submitting the Claim Form requests that payment be made to a person or entity other than the Claimant for whom the Claim Form is submitted;
- h. Failure to submit a Claim Form by the Claim Form Deadline; and/or
- i. The Claim Form otherwise does not comply with the requirements of this Settlement.

84. The Settlement Administrator's reduction or denial of a Claim is final, subject to the following dispute resolution procedures:

- a. The Settlement Administrator shall have 30 days from the Claim Form Deadline to approve or reject Claims;
- b. A request for additional information by sending a Notice of Deficiency shall not be considered a denial for purposes of this Paragraph;
- c. If a Claim is rejected, the Settlement Administrator shall notify the Claimant using the contact information provided in the Claim Form. Class Counsel and

Defendant's Counsel shall be provided with copies of all such notifications to Claimants; and

d. The Settlement Administrator's determination as to whether to approve, deny, or reduce a Claim shall be final and binding.

85. The Settlement Administrator shall provide all information gathered in investigating Claims, including, but not limited to, copies of all correspondence and email and all notes of the Settlement Administrator, the decision reached, and all reasons supporting the decision, if requested by Class Counsel. Additionally, Class Counsel shall have the right to inspect the Claim Forms and supporting documentation received by the Settlement Administrator at any time upon reasonable notice.

86. No person or entity shall have any claim against Defendant, Defendant's Counsel, Plaintiffs, the Settlement Class, Class Counsel, and/or the Settlement Administrator based on any eligibility determinations, distributions, or awards made in accordance with this Settlement.

87. Defendant shall pay or cause to be paid to the Settlement Administrator the amount of valid Claims within thirty (30) days of the Effective Date, or within thirty (30) days of the date that the claim is approved, whichever is later. The Settlement Administrator shall pay valid Claims, whether via mailed check or electronic distribution, within forty-five (45) days of the Effective Date, or within thirty (30) days of the date that the claim is approved, whichever is later. If this Settlement Agreement is terminated or otherwise does not become Final prior to the payment of valid Claims, Defendant shall have no obligation to pay such claims and shall only be required to pay costs and expenses related to Notice and Claims Administration that were already incurred.

88. Cash Payments to Settlement Class Members will be made by electronic payment or by paper check. Settlement Class Members will have a period of 90 days to redeem their

electronic payment or to cash their paper check. In the event of any complications arising in connection with the issuance of an electronic payment, the Settlement Administrator shall provide written notice to Class Counsel and Defendant's Counsel. Absent specific instructions from Class Counsel and Defendant's Counsel, the Settlement Administrator shall proceed to resolve the dispute using its best practices and procedures to ensure that the funds are fairly and properly distributed to the person or persons who are entitled to receive them. In the event the Settlement Administrator is unable to distribute funds to the person or persons entitled to receive them due to incorrect or incomplete information provided to the Settlement Administrator, the funds shall become residual funds, and the Settlement Class Member shall forfeit their entitlement right to the funds.

## **IX. Final Approval Order and Final Judgment**

89. Plaintiffs shall file their Motion for Attorneys' Fees, Costs, and Service Awards no later than 14 days before the Opt-Out and Objection Deadlines, and their Motion for Final Approval of the Settlement no later than 14 days before the Final Approval Hearing. At the Final Approval Hearing, the Court will hear argument on Plaintiffs' Motion for Final Approval of the Settlement and the Motion for Attorneys' Fees, Costs, and Service Awards. In the Court's discretion, the Court will also hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement and/or to the Motion for Attorneys' Fees, Costs, and Service Awards.

90. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order and final judgment thereon, and whether to grant the Motion for Attorneys' Fees, Costs, and Service Awards. Such proposed Final Approval Order shall, among other things:

- a. Determine that the Settlement is fair, adequate and reasonable;
- b. Finally certify the Settlement Class for settlement purposes only;
- c. Determine that the Notice Program satisfies Due Process requirements;
- d. Bar and enjoin all Releasing Parties from asserting or otherwise pursuing any of the Released Claims at any time and in any jurisdiction, including during any appeal from the Final Approval Order; and retain jurisdiction over the enforcement of the Court's injunctions;
- e. Release Defendant and the other Released Parties from the Released Claims; and
- f. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Defendant, Plaintiffs, all Settlement Class Members, and all objectors, to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

## **X. Service Awards, Attorneys' Fees and Costs**

91. The Settling Parties did not discuss the payment of attorneys' fees, costs, expenses and/or service award to Plaintiffs until after the substantive terms of the settlement had been agreed upon, other than that Defendant would not object to a request for reasonable attorneys' fees, costs, expenses, and service awards to Plaintiffs as may be ordered by the Court. Defendant and Class Counsel then negotiated and agreed to the provisions described in ¶¶ 92-93.

92. Class Counsel may petition the court for attorneys' fees, inclusive of any costs and expenses of the Litigation, in an amount not to exceed \$900,000.00. Defendant has agreed to pay any Court award of attorneys' fees and expenses up to \$900,000.00. Defendant shall pay any Court award of attorneys' fees and expenses separately from Class Relief, and outside of the \$1 million aggregate cap on monetary relief described in ¶ 56 above.

93. Subject to Court approval, Defendant has agreed not to object to a request for service awards in the amount of \$1,500 to each of the named Plaintiffs who are appointed as Class Representatives. Defendant shall pay any Service Awards separately from Class Relief, and outside of the \$1 million aggregate cap on monetary relief described in ¶ 56 above.

94. If awarded by the Court, Defendant shall pay the attorneys' fees, costs, expenses, and service awards to the Settlement Administrator within fourteen (14) days after the Effective Date. The Settlement Administrator shall thereafter distribute the award of attorneys' fees, costs, and expenses to Plaintiffs' Counsel and service awards to Plaintiffs consistent with ¶¶ 92-93. The payment of attorneys' fees, costs, expenses, and service awards shall be paid outside of the aggregate cap in ¶ 56.

95. The Settling Parties agree that Defendant will not in any event or circumstance be required to pay any amounts to Class Counsel for attorneys' fees, costs, and expenses in excess of the combined amount identified above in ¶ 92, or to pay any amounts to the Class Representative for service awards in excess of the amount identified above in ¶ 93.

96. Any award of attorneys' fees, costs, and expenses, and the service award to Plaintiff, are intended to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement. These payments will not in any way reduce the consideration being made available to the Settlement Class as described herein. No order of the Court, or modification or reversal or appeal of any order of the Court, concerning the amount(s) of any attorneys' fees, costs, expenses, and/or service awards ordered by the Court to Class Counsel or Plaintiff shall affect whether the Judgment is Final or constitute grounds for cancellation or termination of this Settlement Agreement.

## **XI. Disposition of Residual Funds**

97. It is anticipated that the only residual funds from this Settlement will be from unnegotiated payments to Settlement Class Members (*i.e.*, either uncashed checks or unredeemed electronic payments). Any residual funds shall revert to the Defendant.

## **XII. Releases**

98. Upon the Effective Date, and on the condition that the payment set forth in ¶ 87 was made, and in consideration of the settlement relief and other consideration described herein, the Releasing Parties shall be deemed to have, and by operation of the Final Approval Order shall have, fully, finally, and forever released, acquitted, relinquished, and completely discharged the Released Parties from any and all Released Claims, including but not limited to any state law or common law claims arising out of or relating to the Data Incident that the Releasing Parties may have or had, as related to and alleged in the operative Complaint. The Releasing Parties agree that, once this Agreement is executed, they will not, directly or indirectly, individually or in concert with another, maintain, cause to be maintained, or voluntarily assist in maintaining any further demand, action, claim, lawsuit, arbitration, or similar proceeding, in any capacity whatsoever, against any of the Released Parties based on any of the Released Claims. These Releases do nothing to affect the rights and duties of the Parties under this Settlement, and the Parties can continue to seek any available remedy for failure to perform under this Settlement Agreement as described in ¶ 100.

99. Settlement Class Members who opt-out of the Settlement prior to the expiration of the Opt-Out Period will not release their claims, and they will not receive a Cash Payment.

100. Upon the Effective Date: (a) this Settlement shall be the exclusive remedy for any and all Released Claims of Plaintiffs and Settlement Class Members; and (b) Plaintiffs and Settlement Class Members stipulate to be and shall be permanently barred and enjoined by Court order from initiating, asserting, or prosecuting any Released Claim against the Released Parties,

whether on behalf of Plaintiffs, any Settlement Class Member or others, in any jurisdiction, including in any federal, state, or local court or tribunal.

### **XIII. Termination of Settlement**

101. This Agreement shall be subject to and is expressly conditioned on the occurrence of all of the following events:

- a. Court approval of the Settlement consideration set forth in Section III and the Releases set forth in Section XII of this Agreement;
- b. The Court has entered the Preliminary Approval Order;
- c. The Court has entered the Final Approval Order, and all objections, if any, are overruled, and all appeals taken from the Final Approval Order are resolved in favor of Final Approval; and
- d. The Effective Date has occurred.

102. If any of the conditions specified in the preceding paragraph are not met, or if the Court otherwise imposes any modification or condition to approval of the Settlement to which the Parties do not consent, then this Agreement shall be cancelled and terminated.

103. In the event this Agreement is terminated or fails to become effective, then the Parties shall return to the *status quo ante* in the Action as if the Parties had not entered into this Agreement, and the Parties shall jointly file a status report in the Court seeking to reopen the Action and all papers filed. In such event, the terms and provisions of this Agreement shall have no further force and effect with respect to the Parties and shall not be used in this Action or in any other action or proceeding for any other purpose, and any order entered by this Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

#### **XIV. Effect of Termination**

104. The grounds upon which this Agreement may be terminated are set forth in Section XIII. In the event of a termination, this Agreement shall be considered null and void; all of Plaintiffs', Class Counsel's, Defendant, Defendant's Counsel's obligations under the Settlement 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. In addition, in the event of such a termination, all of the Parties' respective pre-settlement rights, claims, and defenses will be retained and preserved.

105. In the event the Settlement is terminated in accordance with the provisions of this Agreement, any discussions, offers, or negotiations associated with this Settlement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose. In such event, all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court.

#### **XV. No Admission of Liability**

106. This Agreement reflects the Parties' compromise and settlement of disputed claims. This Agreement shall not be construed as or deemed to be evidence of an admission or concession of any point of fact or law. Defendant has denied and continues to deny each of the claims and contentions alleged in the Complaint. Defendant specifically denies that a class could or should be certified in the Action for litigation purposes. Defendant does not admit any liability or wrongdoing of any kind, by this Agreement or otherwise. Defendant has agreed to enter into this Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of any further claims that were asserted or could possibly have been asserted in the Action.

107. Class Counsel believe the claims asserted in the Action have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly, and time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel have investigated the facts and law relevant to the merits of the claims, conducted informal discovery, and conducted independent investigation of the alleged claims. Class Counsel concluded that the proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class.

108. This Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties in connection with the negotiations of 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.

109. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement (a) 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 the Plaintiffs or Settlement Class Members, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any proceeding in any court, administrative agency, or other tribunal.

110. In addition to any other defenses Defendant or the Released Parties may have at law, in equity, or otherwise, to the extent permitted by law, this Agreement may be pleaded as a full and complete defense to and may be used as the basis for an injunction against, any action,

suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of this Agreement or the Releases contained herein.

## **XVI. Miscellaneous Provisions**

111. ***Confidentiality.*** To the extent permitted by ethics rules, the Parties and their counsel shall keep confidential all settlement communications, including communications regarding the negotiation and drafting of this Agreement. This paragraph shall not be construed to limit or impede the Notice requirements contained in this Agreement, nor shall this paragraph be construed to prevent Class Counsel or Defendant's Counsel from notifying or explaining that the Action has settled or limit the representations that the Parties or their counsel may make to the Court to assist in the Court's evaluation of the Settlement, Preliminary Approval, Final Approval, and any objection to the Settlement's terms. Defendant may also provide information about the Settlement to their attorneys, members, partners, insurers, brokers, agents, and other persons or entities as required by securities laws or other applicable laws and regulations.

112. ***Gender and Plurals.*** As used in this Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

113. ***Binding Effect.*** This Agreement shall be binding upon, and inure to and for the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.

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

115. ***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 and certify to the Court that they have met and conferred in an attempt to resolve the dispute.

116. ***Integration and No Reliance.*** This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. This Agreement is executed without reliance on any covenant, agreement, representation, or warranty by any Party or any Party's representative other than those expressly set forth in this Agreement. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

117. ***No Conflict Intended.*** Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

118. ***Governing Law.*** Except as otherwise provided herein, the Agreement shall be construed in accordance with, and be governed by, the laws of the state of Iowa, without regard to the principles thereof regarding choice of law.

119. ***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 Parties do not sign the same counterparts. Original signatures are not required. Any signature submitted by email of a PDF shall be deemed an original.

120. ***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 also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Settlement

Administrator. As part of the agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose. The Court shall retain jurisdiction over the enforcement of the Court's injunction barring and enjoining all Releasing Parties from asserting any of the Released Claims and from pursuing any Released Claims against the Released Parties at any time and in any jurisdiction, including during any appeal from the Final Approval Order.

121. **Notices.** All notices provided for herein shall be sent by email with a hard copy sent by overnight mail to:

If to Plaintiffs or Class Counsel:

Nickolas J. Hagman  
**CAFFERTY CLOBES MERIWETHER & SPRENGEL LLP**  
135 S. LaSalle, Suite 3210  
Chicago, IL 60603  
[nhagman@cafferyclobes.com](mailto:nhagman@cafferyclobes.com)

John J. Nelson\*  
**MILBERG COLEMAN BRYSON**  
**PHILLIPS GROSSMAN, LLC**  
280 S. Beverly Drive  
Beverly Hills, CA 90212  
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**CHESTNUT CAMBRONNE PA**  
100 Washington Avenue S., Suite 1700  
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Amina A. Thomas  
**COHEN MALAD, LLP**  
One Indiana Square, Suite 1400  
Indianapolis, Indiana 46204  
[athomas@cohenmalad.com](mailto:athomas@cohenmalad.com)

If to Defendant or Defendant's Counsel:

James Monagle  
**MULLEN COUGHLIN LLC**  
500 Capitol Mall, Suite 2350  
Sacramento, CA 95814  
jmonagle@mullen.law

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice Program.

122. ***Modification and Amendment.*** This Agreement may not be amended or modified, except by a written instrument signed by Class Counsel and Defendant's Counsel and, if the Settlement has been approved preliminarily by the Court, approved by the Court.

123. ***No Waiver.*** The waiver by any Party of any breach of this Agreement by another Party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

124. ***Authority.*** Class Counsel (for the Plaintiffs and the Settlement Class Members), and Defendant's Counsel, represent and warrant that the persons signing this Agreement on their behalf have full power and authority to bind every person, partnership, corporation, or entity included within the definitions of Plaintiffs and Defendant respectively to all terms of this Agreement. 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 on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement.

125. ***Agreement Mutually Prepared.*** Neither Plaintiffs nor Defendant shall be considered the drafter of this Agreement or any of its provisions for the purpose of any statute,

case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

126. ***Independent Investigation and Decision to Settle.*** The Parties understand and acknowledge they: (a) have performed an independent investigation of the allegations of fact and law made in connection with this Action; and (b) that even if they may hereafter 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 Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. All Parties recognize and acknowledge they reviewed and analyzed data that they and their experts used to make certain determinations, arguments, and settlement positions. The Parties agree this Settlement is fair, reasonable, and adequate, and will not attempt to renegotiate or otherwise void or invalidate or terminate the Settlement irrespective of what any unexamined data later shows. It is the Parties' intention to resolve their disputes in connection with this Action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

127. ***Receipt of Advice of Counsel.*** Each Party acknowledges, agrees, and specifically warrants that he, she, or it has fully read this Agreement and the Releases contained herein, received independent legal advice with respect to the advisability of entering into this Agreement and the Releases, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases.

## PLAINTIFFS AND THE SETTLEMENT CLASS

*Martin Rogers*

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Martin Rogers

*Phoebe Gossman*

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Phoebe Gossman

*Steven Peasley*

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Steven Peasley

*Louise Peasley*

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Louise Peasley

*Nikki Grote*

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Nikki Grote

*Michael Hamilton*

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Michael Hamilton

*Mark Hart*

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Mark Hart

*Norman Lewman*

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Norman Lewman

*Kristy Irwin*

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Kristy Irwin

*Teri Casey*

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Teri Casey

*for fs*  
\_\_\_\_\_  
Larry Rogers

**CLASS COUNSEL** (For Plaintiffs and the Settlement Class)

*Nickolas J. Hagman*  
\_\_\_\_\_  
Nickolas J. Hagman  
CAFFERTY CLOBES MERIWEATHER & SPRENGEL LLP

*John J. Nelson*  
\_\_\_\_\_  
John J. Nelson  
MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC

*Philip J. Krzeski*  
\_\_\_\_\_  
Philip J. Krzeski  
CHESTNUT CAMBRONNE P.A.

*Terence R. Coates*  
\_\_\_\_\_  
Terence R. Coates  
MARKOVITS, STOCK, & DEMARCO, LLC

*Kevin Laukaitis*  
\_\_\_\_\_  
Kevin Laukaitis  
LAUKAITIS LAW LLC

*Amina Thomas*  
\_\_\_\_\_  
Amina Thomas  
COHEN MALAD, LLP

**DES MOINES ORTHPAEDIC SURGEONS, P.C.,**

*Nick Honkamp*  
\_\_\_\_\_  
Name: NICK HONKAMP  
Title: President Board

**COUNSEL FOR DEFENDANT.**

*J. Monagle*  
\_\_\_\_\_  
James Monagle  
MULLEN COUGHLIN LLC