

**DISTRICT COURT, WELD COUNTY  
STATE OF COLORADO**

CHERYL McCULLEY, *et al.*,

*Plaintiffs,*

v.

BANNER HEALTH,

*Defendant.*

Case No.: 2026CV30182

**CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

This Class Action Settlement Agreement and Release (“Agreement” or “Settlement Agreement”) is entered into by and among: (i) Plaintiffs Cheryl McCulley, Rebecca Blount, Cindy Freriks, Jill Schreidl, Demetria Ann Santiago-Laboy, Oscar Irazaba, Faith Robeson, and Tami Carroll (“Plaintiffs” or “Class Representatives”); (ii) the Settlement Class (as defined herein); and (iii) Defendant Banner Health (“Banner” or “Defendant”).

The Settlement Class and Plaintiffs are collectively referred to as the “Settlement Class” unless otherwise noted. The Plaintiffs and Banner are collectively referred to as the “Parties.” This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined herein), upon and subject to the terms and conditions of this Agreement, and subject to the final approval of the Court.

**I. RECITALS**

WHEREAS, this case arises from Plaintiffs’ allegations that Defendant disclosed information about Plaintiffs and Class Members, including personally identifiable information (“PII”) and protected health information (“PHI”), to third parties including, but not limited to,

Meta Platforms, Inc. d/b/a Meta (“Facebook”) and Google LLC (“Google”) via tracking pixels (“Tracking Technologies”) installed on Defendant’s website and webpages;

WHEREAS, Plaintiffs allege that Defendant’s implementation and use of such Tracking Technologies resulted in the invasion of Plaintiffs’ and Class Members’ privacy and other alleged common law and statutory violations.

WHEREAS, the initial lawsuit against Banner was filed in the United States District Court for the District of Arizona. However, extensive discovery revealed that many of the challenged business practices, including the corporate decisions to use the Tracking Technologies, as well as the related technical support and marketing operations occurred in or near Banner’s facilities located in Colorado; the relevant business operations remain in Colorado and are anticipated to remain in Colorado. As such, the business practices changes subject to this Settlement Agreement have also occurred and will continue to occur primarily in Colorado;

WHEREAS, shortly before the noticed 30(b)(6) corporate representative depositions were scheduled to occur in Colorado, the Parties agreed to mediate the case with Bruce Friedman, Esq. of JAMS Mediation, a nationally recognized mediator for complex privacy class actions;

WHEREAS, the Parties conducted a full day in-person mediation with Mr. Friedman in Las Vegas, Nevada on January 12, 2026;

WHEREAS, although the Parties did not reach a settlement at the mediation, following additional negotiations over the course of the next several weeks and a mediator’s proposal from Mr. Friedman, the Parties were able to reach an agreement in principle to resolve the Action on February 3, 2026;

WHEREAS, the Parties executed a Settlement Term Sheet on February 11, 2026;

WHEREAS, this Action was filed in the District Court, Weld County, State of Colorado on February 11, 2026;

WHEREAS, at all times, Banner has denied and continues to deny any wrongdoing whatsoever and has denied and continues to deny that it committed, threatened, or attempted to commit any wrongful act or violation of law or duty alleged in the Action and believes it would have prevailed on summary judgment and at trial;

WHEREAS, nonetheless, considering the uncertainty and risks inherent in any litigation, Banner has concluded it is desirable and beneficial that the Action be fully and finally settled and terminated in the manner and upon the terms and conditions set forth in this Agreement;

WHEREAS, Plaintiffs believe that the claims asserted in the Action against Banner have merit and that they would have prevailed at summary judgment and trial. Nonetheless, Plaintiffs and Class Counsel recognize that Banner has raised factual and legal defenses, including on class certification that present a risk that Plaintiffs and/or Settlement Class may not prevail;

WHEREAS, Plaintiffs believe it is desirable that the Released Claims be fully and finally compromised, settled, and resolved with prejudice, and have concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate to the Settlement Class, and that it is in the best interests of the Settlement Class to settle the claims raised in the Action pursuant to the terms and provisions of this Agreement.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiffs and Banner, by and through their undersigned counsel, that, subject to final approval of the Court after a hearing or hearings as provided for in this Settlement Agreement, in consideration of the benefits flowing to the Parties from the Agreement set forth herein, that the Action and the

Released Claims shall be finally and fully compromised, settled, and released, and the Action shall be dismissed with prejudice, upon and subject to the terms and conditions of this Agreement.

## II. SETTLEMENT TERMS AND DEFINITIONS

### 1. DEFINITIONS.

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

1.1. **“Action”** means the case short-captioned *Cheryl McCulley, et al. v. Banner Health*, Case Number: 2026CV30182, District Court, Weld County, State of Colorado.

1.2. **“Agreement”** or **“Settlement Agreement”** means this Settlement Agreement and Release and each and every exhibit attached hereto.

1.3. **“Approved Claim”** means a Claim Form submitted by a Settlement Class Member that (a) is timely and submitted in accordance with the directions on the Claim Form, the provisions of this Agreement, and the Court’s Preliminary Approval Order; (b) is fully completed and executed by the Settlement Class Member under penalty of perjury; and (c) satisfies the conditions of eligibility for a Settlement Benefit as set forth in this Agreement and the Court’s Preliminary Approval Order.

1.4. **“Claim Form”** means the document substantially in the form attached hereto as Exhibit A, as approved by the Court. The Claim Form, which shall be completed by Settlement Class Members who wish to file a claim for a Settlement Benefit, shall be available in electronic and paper formats.

1.5. **“Claims Deadline”** means the date by which all Claim Forms must be postmarked or submitted electronically to be considered timely and shall be sixty (60) days after the Notice Date. The Claims Deadline shall be clearly set forth in the Notice and the Claim Form.

1.6. **“Class Counsel”** means Carolyn Cuneo and Gary M. Klinger of Milberg PLLC; Hart L. Robinovitch of Zimmerman Reed LLP; David S. Almeida of Almeida Law Group LLC; and Joseph M. Lyon, of The Lyon Firm, ALC.

1.7. **“Class Period”** means the period from June 1, 2020 through November 22, 2023.

1.8. **“Class Representatives”** means Plaintiffs Cheryl McCulley, Rebecca Blount, Cindy Freriks, Jill Schreidl, Demetria Ann Santiago-Laboy, Oscar Irazaba, Faith Robeson and Tami Carroll.

1.9. **“Court”** means the District Court for Weld County, State of Colorado.

1.10. **“Defendant”** means Defendant Banner Health referred to herein as Banner.

1.11. **“Effective Date”** means the date on which the Agreement becomes final, which shall be one (1) business day following the latest of: (i) the date upon which the time expires for filing or noticing any appeal of the Court’s Final Judgment approving the Settlement Agreement; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee Award, the date of completion, in a manner that finally affirms and leaves in place the Final Judgment without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or certiorari, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on certiorari.

1.12. **“Fee Award”** means the amount of attorneys’ fees and reimbursement of expenses awarded to Class Counsel by the Court to be paid either from a Qualified Settlement Fund or directly to Class Counsel through their direction.

1.13. **“Final Approval Hearing”** means the hearing before the Court where the Parties will request that the Final Judgment be entered finally approving the Settlement as fair, reasonable, and adequate, and approving the Fee Award and Service Award to the Class Representatives.

1.14. **“Final Judgment”** means the Final Judgment and Order to be entered by the Court approving the Agreement after the Final Approval Hearing.

1.15. **“Notice”** means the notice of this proposed Class Action Settlement Agreement and Final Approval Hearing, which is to be sent to the Settlement Class substantially in the manner set forth in this Agreement, is consistent with the requirements of Due Process, and is substantially in the form of Exhibits B, C, and D hereto.

1.16. **“Notice Date”** means the date by which the initial Direct Notice set forth in Section 4.1 is to commence, which shall be no later than forty-five (45) days after Preliminary Approval.

1.17. **“Objection Deadline”** means the date by which a written objection to this Settlement Agreement must be made, which will be sixty (60) days after the Notice Date, or such other date as ordered by the Court.

1.18. **“Opt-Out Deadline”** or **“Exclusion Deadline”** is the last day on which a Settlement Class Member may file a written request to be excluded from the Settlement Class, which will be sixty (60) days after the Notice Date, or such other date as ordered by the Court.

1.19. **“Person”** shall mean, without limitation, any individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assigns. “Person” is not intended to include any governmental agencies or governmental actors, including, without limitation, any state Attorney General office.

1.20. **“Preliminary Approval”** means the Court’s certification of the Settlement Class for settlement purposes, preliminary approval of this Settlement Agreement, and approval of the form and manner of the Notice.

1.21. **“Preliminary Approval Order”** means the order preliminarily approving the Settlement Agreement, certifying the Settlement Class for settlement purposes, and directing notice thereof to the Settlement Class, which will be agreed upon by the Parties and submitted to the Court in conjunction with Plaintiffs’ motion for preliminary approval of the Agreement.

1.22. **“Privacy Shield Pro”** means the Cyex privacy product that includes the following features: data broker opt out where requests are automatically made to have the Class Member’s personal information removed; private search features to protect the collection and storage of personal information and ensure searches are anonymous; VPN in Touch to encrypt data and create a secure connection to mask IP addresses and prevent eavesdropping; password protection; and dark web monitoring. The retail value is currently listed as \$24.99 a month.

1.23. **“Qualified Settlement Fund”** shall mean an account established by the Settlement Administrator from which the Settlement Administrator will pay Settlement Benefits to Settlement Class Members who submit Approved Claims. Banner shall provide funds to the Settlement Administrator to pay Approved Claims, the attorneys’ Fee Award, and Service Awards as approved by the Court.

1.24. **“Released Claims”** means any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, rights, causes of action, contracts or agreements, extra contractual claims, damages, punitive, exemplary or multiplied damages, expenses, costs, attorneys’ fees, and/or obligations (including “Unknown Claims” as defined below), whether in law or in equity, accrued or unaccrued, direct,

individual or representative, of every nature and description whatsoever, whether based on state, federal, local, statutory, or common law or any other law, rule or regulation, against the Released Parties, or any of them, arising out of any facts, transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions or failures to act regarding the alleged disclosure, use, interception or transfer of information of or related to the Settlement Class Members through use of the Meta and/or Google pixel or any other alleged digital tracking, analytics, or advertising technologies, including without limitation all claims that were brought or could have been brought in the Action by or on behalf of any and all Releasing Parties relating to, concerning, or arising out of Banner's use of the Meta and/or Google pixel or any other tracking, analytics, or advertising technologies, or the allegations, facts, or circumstances described in the Action. Claims for medical malpractice, claims arising from facts and circumstances not described in the Action, and claims arising from facts and circumstances that occur after Effective Date are not Released Claims.

1.25. **"Released Parties"** means Defendant Banner, as well as any and all of Banner's respective present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parent companies, subsidiaries, joint venturers, partners, associates, affiliates, employers, employees, agents, consultants, independent contractors, insurers, reinsurers, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns and companies, firms, trusts, and corporations. For purposes of clarity, the Parties expressly agree that Released Parties as to the Settlement Class does not include Meta, Google / Alphabet, or any of their affiliated entities like Instagram or YouTube.

1.26. **“Releasing Parties”** means Plaintiffs, those Settlement Class Members who do not timely opt out of the Settlement Class, and all of their respective present or past heirs, executors, estates, administrators, predecessors, successors, assigns, insurers, partners, attorneys, accountants, financial and other advisors, legal representatives, and successors in interest.

1.27. **“Service Award”** means the amount to be paid, if and as approved by the Court, to Plaintiffs in an amount of two thousand five hundred dollars (\$2,500.00) each (or such other amount as determined by the Court). Such award will be paid by Defendant within thirty (30) days from the later of: (i) the Effective Date; or (ii) the provision of a W-9 and payment instructions.

1.28. **“Settlement Administration Expenses”** means the reasonable expenses incurred by the Settlement Administrator in providing Notice, processing claims, responding to inquiries from Settlement Class Members, mailing checks for Approved Claims, and related services. Settlement Administration Expenses shall be paid by Defendant.

1.29. **“Settlement Administrator”** means Kroll Settlement Administration, LLC, the settlement administration company that has been selected by the Parties to oversee the distribution of Notice, as well as the processing and payment of Approved Claims to the Settlement Class as set forth in this Agreement.

1.30. **“Settlement Class”** is defined as follows:

All individuals who had a Banner Health Patient Account (formerly the MyBanner patient portal) and who logged into this account using one of Banner’s web properties or applications on or between June 1, 2020 and November 22, 2023.

The Settlement Class is comprised exclusively of individual natural persons, and the Parties estimate that this number consists of approximately 1,028,000 natural persons. Excluded from the Settlement Class are the following: (i) Defendant, any entity in which Defendant has a controlling interest, and Defendant’s affiliates, parents, subsidiaries, officers, directors, legal representatives, successors, and assigns; (ii) any judge, justice, or judicial officer presiding over the litigation and

the members of their immediate families and judicial staff; and (iii) any individual who timely and validly excludes themselves from the Settlement.

1.31. **“Settlement Class Member”** means a Person who falls within the definition of the Settlement Class as set forth above and who does not submit a valid request for exclusion.

1.32. **“Settlement Class List”** means the list of names, addresses, and/or email addresses of Settlement Class Members to be provided by Defendant to the Settlement Administrator.

1.33. **“Settlement Payment”** means the payment to be made by Defendant for each Approved Claim submitted by a Settlement Class Member. The Settlement Payment for each Approved Claim shall be \$20.00. The Settlement Administrator shall track all Approved Claims and report to Defendant the total amount due for all Approved Claims. Defendant shall pay all Approved Claims directly to the Settlement Administrator for distribution to Settlement Class Members who submitted valid claims.

1.34. **“Settlement Benefits”** means the benefits to be provided to Settlement Class Members as described in Section 2 of this Agreement.

1.35. **“Settlement Website”** means the website to be created, launched, and maintained by the Settlement Administrator, which shall provide access to relevant case documents including the Notice, Claim Form, and other relevant documents.

1.36. **“Unknown Claims”** means claims that could have been raised in the Action and that Plaintiffs, any member of the Settlement Class or any Releasing Party, do not know or suspect to exist, which, if known by him, her or it, might affect his, her or its agreement to release the Released Parties or the Released Claims or might affect his, her or its decision to agree, to object or not to object to the Settlement. Upon the Effective Date, Plaintiffs, the Settlement Class Members, and the Releasing Parties shall be deemed to have, and shall have, expressly waived and

relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, 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.

Upon the Effective Date, each of the Releasing Parties 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. Plaintiffs, the Settlement Class Members, and the Releasing Parties 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, notwithstanding any Unknown Claims they may have, as that term is defined in this paragraph.

## **2. SETTLEMENT BENEFITS.**

2.1. Settlement Structure. Banner agrees to pay for all valid and Approved Claims submitted by Settlement Class Members, Settlement Administration Expenses, the Fee Award, and Service Awards as approved by the Court.

2.2. Payments to Settlement Class Members. Banner will pay or cause to be paid the following: (i) the automatic provision to each Settlement Class Member of an authorization code sent with the Notice which allows the Settlement Class Member to enroll in one year of CyEx Privacy Shield Pro without additional cost pursuant to Paragraph 2.4(b) below; (ii) Approved Claims for cash benefits submitted by Settlement Class Members pursuant to Paragraph 2.4(a)

below; (iii) the Notice and Settlement Administration Expenses actually incurred by the Settlement Administrator as described in Paragraph 4 below; (iv) the Fee Award, as described in Paragraph 8.1 below; and (iv) any Service Award to the Plaintiffs, as may be ordered by the Court and as described in Paragraph 8.3 below.

2.3. Schedule of Payments. Banner will make payments in accordance with the following schedule:

- (a) *Notice and Settlement Administration Expenses.* Amounts for Notice and Settlement Administration Expenses, to be paid within thirty (30) days of when such amounts are invoiced to Banner and become due and owing.
- (b) *Fee Award.* An amount equal to the Fee Award as ordered by the Court, to be paid as described in Paragraph 8.1, below.
- (c) *Service Award.* An amount equal to \$2,500.00 each, or such other amount as may be ordered by the Court, to be paid to each of the Class Representatives as described in Paragraph 8.3, below.
- (d) *Payment of Approved Claims.* An amount equal to the Settlement Payment (\$20.00) multiplied by the number of Approved Claims, which amount is to be paid out by Kroll within 30 days after all the claims are finally processed or as soon thereafter as reasonably possible.

2.4 Claims Process. Each Settlement Class Member will automatically receive a code for redeeming CyEx Privacy Shield Pro without cost and may also submit a Claim Form for a cash payment, consistent with this section and as determined by the Court.

- (a) *Cash Payment.* Each Settlement Class Member may submit a claim for a cash payment of \$20.00. Each Settlement Class Member may choose to

receive his or her cash payment via check, Venmo, PayPal, or Zelle. Payment by check will be the default payment method in the event that a Settlement Class Member does not state a preferred method of payment. Cash payments for Approved Claims will be paid thirty (30) days after the funding as set forth in Section 2.2 (d) above.

- (b) *CyEx Privacy Shield Pro*. Each Settlement Class Member will automatically receive a code with the Settlement Class Member Notice which provides the ability to enroll in one year of CyEx Privacy Shield Pro without additional cost, which includes the following features: Dark Web Monitoring, VPN In Touch, Password Scan, Private Search functionality, Password Defense, Digital Vault, and Data Broker Opt-Out services. Instructions for how to enroll in the Privacy Shield Pro product will be sent with the Settlement Class Member notice. The product has a current retail value of \$24.99 a month. The instructions will include the code for enrollment. The CyEx Privacy Shield Pro enrollment will not require Class Members to provide a credit card or other payment mechanism and shall not automatically renew at the end of the initial one-year term. After final approval of the Settlement Kroll shall send a reminder email to those class members who submitted a valid claim for CyEx with instructions on finalizing their enrollment in the CyEx Privacy Shield Pro product.

2.5 Deadline to Deposit or Cash Physical Checks. Settlement Class Members with Approved Claims who receive a payment by physical check shall have 120 days following distribution to deposit or cash their benefit check.

2.6 Returned Checks. For any Settlement Payment 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 find a valid address and resend the Settlement Payment within 30 days after the check is returned to the Settlement Administrator as undeliverable. The Settlement Administrator shall only make one attempt to resend a Settlement Payment.

2.7 Residual. In the event of any uncashed checks, no funds shall revert to the Defendant after the Effective Date. Any funds remaining with the Settlement Administrator as the result of uncashed checks shall be distributed to the Colorado Lawyer Trust Foundation (COLTAF).

2.8 Representations & Business Practices Changes. In connection with this settlement, and in connection with this litigation, Banner makes the following representations and business practices changes:

- (a) Banner represents that there was no Meta Pixel tracking in the Banner Patient Account portal (formerly the MyBanner patient portal), including Cerner.
- (b) Banner has removed any Google Analytics tracking from the Banner Account portal (formerly the MyBanner patient portal), including Cerner.
- (c) Banner will not place the Meta Pixel or Google Analytics in the Banner Patient Account portal (formerly the MyBanner patient portal) for a period of at least two years without appropriate informed consent and/or the ability to opt-out.

2.9 Settlement Administration Process. After the Settlement is preliminarily approved by the Court, the Settlement Administrator will provide notice to Settlement Class Members in a manner mutually agreed upon by the Parties, including direct email notice for all Settlement Class Members for whom Banner has an email address. After the Court enters an order finally approving

the Settlement, Banner will pay proceeds to the Settlement Administrator for all valid and approved claims for cash payments and for the CyEx Privacy Shield product. The Parties agree that Banner shall be responsible for the payment of Settlement Administration Expenses.

### **3. RELEASE.**

3.1. Release: The relief stated above will be provided to Settlement Class Members as consideration for their general release by Settlement Class Members of Banner and Released Parties, that are, have become, or may become a part of Banner or the Released Parties, for all Released Claims.

3.2. Covenant Not to Sue. Class Representatives and their counsel respectively covenant and agree that they will not make, assert, or maintain any claim, litigation, or cause of action against Banner or any Released Parties at any time related to any of the Released Claims.

3.3. Claims Period. The Parties agree that the period for filing claims will be set at a date certain of sixty (60) days from the date that notice is mailed to the Settlement Class.

3.4. No Admission: Nothing relating to this Agreement shall be cited to as, construed to be, admissible as, or deemed an admission by Banner or any other Released Party of any liability, culpability, negligence, misconduct, or other wrongdoing toward the Class Representatives, the Settlement Class Members, or any other person, which liability, culpability, negligence, misconduct, or other wrongdoing is expressly denied by Banner.

3.5. The obligations incurred pursuant to this Settlement Agreement shall be a full and final disposition of the Action and any and all Released Claims, as against all Released Parties.

3.6. Upon the Effective Date, the Releasing Parties shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties. Further, upon the Effective Date and

to the fullest extent permitted by law, each Settlement Class Member shall, either directly, indirectly, representatively, or in any capacity, be permanently barred and enjoined from filing, commencing, prosecuting, intervening in, or participating (as a class member or otherwise) in any lawsuit, action, or other proceeding in any jurisdiction (other than participation in the Settlement as provided herein) against any Released Party based on the Released Claims.

#### **4. NOTICE TO THE CLASS, OBJECTIONS, AND OPT OUTS**

4.1 The notice plan shall consist of the following:

- (a) *Settlement Class List.* No later than thirty (30) days after Preliminary Approval, Banner shall produce to the Settlement Administrator an electronic list from its records that includes the names, email addresses, and/or physical addresses, to the extent available, belonging to Persons within the Settlement Class based on a reasonable review of Defendant's records. Class Counsel's assent to this Agreement shall constitute consent on behalf of the Settlement Class to disclose this information. This electronic document shall be called the "Class List," and shall be provided to the Settlement Administrator.
- (b) *Direct Notice.* In the event that the Court preliminarily approves the Settlement, no later than the Notice Date, the Settlement Administrator shall send Notice via email substantially in the form attached as Exhibit B along with an electronic link to the Claim Form to all Settlement Class Members for whom a valid email address is available in the Class List. In the event transmission of email notice results in any "bounce-backs," the Settlement Administrator shall, where reasonable, correct any issues that may have

caused the “bounce-back” to occur and make a second attempt to re-send the email notice.

- (c) *Postcard Notice.* Notice shall be provided in a form substantially similar to that of the Postcard Notice attached as Exhibit C hereto to those Settlement Class Members for whom Banner does not have an email address or for whom the Settlement Administrator receives an email bounce-back which the Settlement Administrator is not able to correct by a second attempt. The Postcard Notice shall be mailed directly to these Settlement Class Members and shall include information regarding the Settlement in substantially the same form as the email notice.
- (d) *Settlement Website.* On or before the Notice Date, Notice regarding the Settlement shall also be provided on a website which shall be administered and maintained by the Settlement Administrator and shall include the ability to file Claim Forms online. The Settlement Website shall contain all forms of Notice attached hereto as Exhibits B and C as well as the long form notice attached as Exhibit D. The Parties shall jointly approve the Settlement Website URL.
- (e) *Contact from Class Counsel.* Class Counsel, in their capacity as counsel to Settlement Class Members, may respond to inquiries or objections from Settlement Class Members to provide information about the Settlement Agreement, to answer any questions Settlement Class Members may have about the Settlement Agreement.

4.2. The Notice shall advise the Settlement Class of their rights, including the right to be excluded from, comment upon, or object to the Settlement Agreement or any of its terms. The Notice shall specify that any objection to the Settlement Agreement, and any papers submitted in support of said objection, shall be considered by the Court at the Final Approval Hearing only if, on or before the Objection Deadline approved by the Court and specified in the Notice, the Person making the objection files notice of an intent to object and at the same time (a) files copies of such papers he or she proposes to be submitted at the Final Approval Hearing with the Clerk of the Court, or alternatively, if the objection is from a Class Member represented by counsel, files any objection through the Court's electronic filing system, and (b) sends copies of such papers by mail to Class Counsel and Defendant's Counsel.

4.3 Any Settlement Class Member who intends to object to this Agreement must present the objection in writing, must be personally signed by the objector, and must include: (1) the objector's name and address; (2) an explanation of the basis upon which the objector claims to be a Settlement Class Member; (3) all grounds for the objection, including all citations to legal authority and evidence supporting the objection; (4) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection (the "Objecting Attorney"); and (5) a statement indicating whether the objector intends to appear at the Final Approval Hearing (either personally or through counsel who file an appearance with the Court in accordance with the Local Rules). This objection shall be filed with the Court and also sent to the undersigned counsel by U.S. Mail or email so that it is received before the Objection Deadline: David A. Carney, Baker & Hostetler LLP, 127 Public Square, Ste. 2000, Cleveland, OH 44114 for Defendant Banner; and Joseph M.

Lyon, The Lyon Firm ALC, 2754 Erie Ave., Cincinnati, Ohio, 45208 for the Settlement Class. Objections received after the Objection Deadline shall be invalid and not considered by the Court.

4.4 If an Objecting Attorney representing a Settlement Class Member has objected to any class action settlement where the objector or the Objecting Attorney asked for or received any payment in exchange for dismissal of the objection, or any related appeal, without any modification to the settlement, then the objection must include a statement identifying each such case by full case caption and amount of payment received. Any challenge to the Settlement Agreement, the Final Order, or the Final Judgment shall be pursuant to appeal under the applicable rules of appellate procedure and not through a collateral attack.

4.5 A Settlement Class Member may request to be excluded from the Settlement Class by sending a written request postmarked on or before the Exclusion Deadline approved by the Court and specified in the Notice. To exercise the right to be excluded, a Person in the Settlement Class must timely send a written request for exclusion to the Settlement Administrator as specified in the Notice, providing (i) his or her name and address, (ii) a signature, (iii) the name and number of the case, and (iv) a statement that he or she wishes to be excluded from the Settlement Class for purposes of this Settlement. A request to be excluded that does not include all of this information, that is sent to an address other than that designated in the Notice, or that is not postmarked within the time specified shall be invalid, and the Person(s) serving such a request shall be a member(s) of the Settlement Class and shall be bound by this Agreement as a Settlement Class Member, if approved. Any Settlement Class Member who validly elects to be excluded from this Agreement shall not: (i) be bound by any orders or the Final Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Agreement; or (iv) be entitled to object to any aspect of this Agreement. The request for exclusion must be personally signed by the Person

requesting exclusion. So-called “mass” or “class” opt-outs shall not be allowed. To be valid, a request for exclusion must be postmarked or received by the date specified in the Notice.

4.6 The Final Approval Hearing shall be no earlier than one hundred twenty (120) days after the Preliminary Approval Order.

4.7 Any Settlement Class Member who does not, using the procedures set forth in this Agreement and the Notice, either seek exclusion from the Settlement Class or timely file an Approved Claim Form shall not be entitled to receive any payment or benefits pursuant to this Agreement, but will otherwise be bound by all of the terms of this Agreement, including the terms of the Final Judgment to be entered in the Action and the Releases provided in the Agreement, and will be barred from bringing any action against any of the Released Parties concerning the Released Claims.

4.8 No Person shall have any claim against the Settlement Administrator, the Released Parties, Banner’s Counsel, Class Counsel, or the Class Representatives based on distributions of benefits to Settlement Class Members.

## **5. SETTLEMENT ADMINISTRATION.**

5.1 The Settlement Administrator shall administer the relief provided by this Settlement Agreement by processing Claim Forms in a rational, responsive, cost-effective, and timely manner. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices and such records will be made available to Class Counsel and Banner’s Counsel upon request. The Settlement Administrator shall provide Class Counsel and Banner’s Counsel with information concerning Notice, administration, and implementation of the Settlement Agreement.

5.2 Should the Court request, the Parties shall submit a timely report to the Court summarizing the work performed by the Settlement Administrator, including a report of all amounts paid to Settlement Class Members on account of Approved Claims.

5.3 Without limiting the foregoing, the Settlement Administrator shall:

a. Forward to Banner' Counsel, with copies to Class Counsel, all original documents and other materials received in connection with the administration of the Settlement, and all copies thereof, within thirty (30) days after the date on which all Claim Forms have been finally approved or disallowed in accordance with the terms of this Agreement;

b. Receive requests to be excluded from the Settlement Class and other requests and promptly provide to Class Counsel and Defendant's Counsel copies thereof;

c. If the Settlement Administrator receives any exclusion forms or other requests after the deadline for the submission of such forms and requests, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendant's Counsel;

d. Provide weekly reports to Class Counsel and Defendant's Counsel, including without limitation, reports regarding the number of Claim Forms received, the number approved by the Settlement Administrator, and the categorization and description of Claim Forms rejected, in whole or in part, by the Settlement Administrator; and

e. Make available for inspection by Class Counsel or Defendant's Counsel the Claim Forms received by the Settlement Administrator at any time upon reasonable notice.

5.4 The Settlement Administrator shall be obliged to employ reasonable procedures to screen claims for abuse or fraud and deny Claim Forms where there is evidence of abuse or fraud. The Settlement Administrator will reject any claim that does not comply in any material respect with the instructions on the Claim Form or the terms of this Agreement, or is submitted after the

Claims Deadline. Each claimant who submits an invalid Claim Form to the Settlement Administrator must be given notice of the Claim Form's deficiency and an opportunity to cure the deficiency within twenty-one (21) days of the date of the notice. The Settlement Administrator may contact any Person who has submitted a Claim Form to obtain additional information necessary to verify the Claim Form.

5.5 Defendant's Counsel and Class Counsel shall have the right to challenge the acceptance or rejection of a Claim Form submitted by Settlement Class Members and to obtain and review supporting documentation relating to such Claim Form. To the extent Class Counsel and Defendant's Counsel are not able to agree on the disposition of a challenge, the disputed claim shall be submitted to mediator Mr. Friedman for binding determination, the mediator in the case who will make the decision after hearing argument from both sides.

5.6 In the exercise of its duties outlined in this Agreement, the Settlement Administrator shall have the right to reasonably request additional information from the Parties or any Settlement Class Member.

## **6. TERMINATION OF SETTLEMENT.**

6.1 Subject to Sections 9.1-9.3 below, Banner or Class Representatives on behalf of the Settlement Class shall have the right to terminate this Agreement by providing written notice of the election to do so ("Termination Notice") to all other Parties hereto within twenty-one (21) days of any of the following events: (i) the Court's refusal to grant Preliminary Approval of this Agreement in any material respect; (ii) the Court's refusal to grant final approval of this Agreement in any material respect; (iii) the Court's refusal to enter the Final Judgment in this Action in any material respect; or (iv) the date upon which the Final Judgment is modified or reversed in any material respect by any Court of Appeals or Supreme Court.

6.2 Subject to Sections 9.1-9.3 below, Banner shall have the right, but not the obligation, in its sole discretion, to terminate this Agreement by providing written notice to Class Counsel within seven (7) days if more than three hundred (300) Settlement Class Members exercise their right to be excluded from the Settlement.

6.3 If Banner seeks to terminate the Agreement on the basis of Section 6.2 above, the Parties agree that any dispute as to whether Banner may invoke Section 6.2 to terminate the Agreement that they cannot resolve on their own after reasonable, good faith efforts, will be submitted to mediator Mr. Bruce Friedman of JAMS for binding determination, the mediator in the case who will make the decision after hearing argument from both sides.

6.4 The Parties agree that the Court's failure to approve, in whole or in part, the Fee Award or the Service Awards set forth in Section 8 below shall not prevent the Agreement from becoming effective, nor shall it be grounds for termination. Any applications for approval of the Fee Award or Service Awards are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement.

6.5 If the Agreement is terminated pursuant to Sections 6 or 9 of this Agreement, Banner shall still be responsible for the payment of any Settlement Administration Expenses that have been incurred.

## **7. PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER.**

7.1 Promptly after the execution of this Settlement Agreement, Class Counsel shall submit this Agreement together with its Exhibits to the Court and shall move the Court for Preliminary Approval of the Settlement set forth in this Agreement; certification of the Settlement Class for settlement purposes only; appointment of Class Counsel and the Class Representatives; and entry of a Preliminary Approval Order (attached hereto as **Exhibit E**), which order shall set a

Final Approval Hearing date and approve the Notice and Claim Form for dissemination and/or publication substantially in the form of Exhibits A, B, C, and D hereto. The Preliminary Approval Order shall also authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications, and expansions of the Settlement Agreement and its implementing documents (including all exhibits to this Agreement) so long as they are consistent in all material respects with the terms of the Settlement Agreement and do not limit or impair the rights of the Settlement Class.

7.2 Banner stipulates to class certification of the Settlement Class. Banner's agreement as to class certification of the Settlement Class is solely for purposes of effectuating the Settlement and no other purpose. Banner retains all of its objections, arguments, and defenses with respect to class certification and any other issues, and reserves all rights to contest class certification and any other issue if the Settlement set out in this Agreement does not result in entry of the Final Approval Order and Final Judgment, if the Court's approval is reversed or vacated on appeal, if this Settlement is terminated as provided herein, or if the Settlement set forth in this Settlement Agreement otherwise fails to become effective. The Parties acknowledge that there has been no stipulation to any classes or certification of any classes for any purpose other than effectuating the Settlement, and that if the Settlement set forth in this Settlement Agreement is not finally approved, if the Court's approval is reversed or vacated on appeal, if this Settlement Agreement is terminated as provided herein, or if the Settlement set forth in this Settlement Agreement otherwise fails to become effective, this agreement as to certification of the Settlement Class becomes null and void *ab initio*, and this Settlement Agreement or any other settlement-related statement may not be cited regarding certification of the Class, or in support of an argument for certifying any class for any purpose related to this Action or any other proceeding.

7.3 At the time of the submission of this Agreement to the Court as described above, Class Counsel shall request that, after Notice is given, the Court hold a Final Approval Hearing and approve the Settlement of the Action as set forth herein.

7.4 After Notice is given, the Parties shall request and seek to obtain from the Court a Final Judgment, which will (among other things):

7.4.1 Find that the Court has personal jurisdiction over all Settlement Class Members and that the Court has subject matter jurisdiction to approve the Agreement, including all exhibits thereto;

7.4.2 Approve the Settlement Agreement and the proposed Settlement as fair, reasonable, and adequate as to, and in the best interests of, the Settlement Class Members; direct the Parties and their Counsel to implement and consummate the Agreement according to its terms and provisions; and declare the Agreement to be binding on, and have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of the Settlement Class Members and Releasing Parties;

7.4.3 Find that the Notice implemented pursuant to the Agreement: (1) constitutes the best practicable notice under the circumstances; (2) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action, their right to object to or exclude themselves from the proposed Agreement, and to appear at the Final Approval Hearing; (3) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and (4) meets all applicable requirements of the Colorado Rules of Civil Procedure, the Due Process Clauses of the United States and Colorado Constitutions, and the rules of the Court;

7.4.4 Find that Class Representatives and Class Counsel adequately represent the Settlement Class for purposes of entering into and implementing the Agreement;

7.4.5 Dismiss the Action (including all individual claims and Settlement Class Claims presented thereby) on the merits and with prejudice, without fees or costs to any party except as provided in the Settlement Agreement;

7.4.6 Incorporate the Release set forth above, make the Release effective as of the Effective Date, and forever discharge the Released Parties as set forth herein;

7.4.7 Permanently bar and enjoin all Settlement Class Members who have not been properly excluded from the respective Settlement Class from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in, any lawsuit or other action in any jurisdiction based on the Released Claims;

7.4.8 Without affecting the finality of the Final Judgment for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement and the Final Judgment, and for any other necessary purpose; and

7.4.9 Incorporate any other provisions, as the Court deems necessary and just.

**8. CLASS COUNSEL'S ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS.**

8.1 Class Counsel may receive, subject to Court approval, attorneys' fees, costs, and expenses not to exceed \$3,750,000.00. Class Counsel will petition the Court for such Fee Award no later than 14 days prior to the Opt-Out/Objection Deadline.

8.2 The Fee Award shall be payable within thirty (30) days from the later of: (i) the Effective Date; or (ii) the provision of payment routing information and tax I.D. numbers for Class Counsel. Payment of the Fee Award shall be made by the Settlement Administrator by wire transfer

to Class Counsel in accordance with the instructions provided by Class Counsel, after completion of necessary forms by Class Counsel, including, but not limited to, W-9 forms. Notwithstanding the foregoing, if for any reason the Final Judgment is reversed or rendered void as a result of an appeal(s), then any Persons or firms who shall have received the funds shall be severally liable for payments made pursuant to this Section, and shall return such funds to the Defendant.

8.3 Subject to Court approval, Class Representatives Cheryl McCulley, Rebecca Blount, Cindy Freriks, Jill Schreidl, Demetria Ann Santiago-Laboy, Oscar Irazaba, Faith Robeson, and Tami Carroll may be paid Service Awards by Banner, subject to Court approval, in addition to any Settlement payment as a result of an Approved Claim pursuant to this Agreement, and in recognition of their efforts on behalf of the Settlement Class. Class Counsel on behalf of Class Representatives may petition the Court for a Service Award of \$2,500.00 to each of the Class Representatives who shall be entitled to receive the amount approved by the Court. If approved, such award will be paid by Defendant within thirty (30) days from the later of: (i) the Effective Date; or (ii) the provision of a W-9 and payment instructions.

8.4 Counsel for the Parties represent that they did not discuss attorneys' fees or Service Awards until all material terms of the Settlement relief for the Settlement Class had been agreed upon. The Settlement is not conditioned upon the Court's approval of a Fee Award to Class Counsel.

## **9. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION.**

9.1 The Effective Date shall mean the date set forth in paragraph 1.11 of the Definitions section of this Agreement.

9.2 In the event that the Agreement is not approved by the Court, or the Settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, then

this Settlement Agreement shall be canceled and terminated subject to Section 6.1 and Section 6.2 unless Class Counsel and Banner's Counsel mutually agree in writing to proceed with this Agreement. If any Party is in material breach of the terms hereof and fails to cure such material breach within thirty (30) days of notice, any other Party, provided that it is in substantial compliance with the terms of this Agreement, may terminate this Agreement on notice to all Parties.

9.3 If this Agreement is terminated or fails to become effective for the reasons set forth in Sections 6 and 9 above, the Parties shall be restored to their respective positions in the Action as of the date of the signing of this Agreement, as if the Agreement had never existed.

## **10. MISCELLANEOUS PROVISIONS.**

10.1 The Parties (a) acknowledge that it is their intent to consummate this Settlement Agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement, to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Agreement, to secure final approval, and to defend the Final Judgment through any and all appeals. Class Counsel and Defendant's Counsel agree to cooperate with one another in seeking Court approval of the Settlement Agreement, entry of the Preliminary Approval Order, and the Final Judgment, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Agreement.

10.2 The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Plaintiffs, the Settlement Class and each or any of them, on the one hand, against the Released Parties, and each or any of the Released Parties, on the other hand. Accordingly, the Parties agree not to assert in any forum that

the Action was brought by Plaintiffs or defended by Defendant, or each or any of them, in bad faith or without a reasonable basis.

10.3 The Parties have relied upon the advice and representation of counsel, selected by them, concerning their respective legal liability for the claims hereby released. The Parties have read and understand fully the above and foregoing agreement and have been fully advised as to the legal effect thereof by counsel of their own selection and intend to be legally bound by the same.

10.4 The Parties agree that they will not make any public out-of-court statements regarding the Settlement or the Settlement's terms, including on their websites other than through the agreed content to be posted on the Settlement Website.

10.5 Whether or not the Effective Date occurs or the Settlement Agreement is terminated, neither this Agreement nor the Settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement:

10.5.1 Is, may be deemed, or shall be used, offered, or received against the Released Parties, or each or any of them, as an admission, concession or evidence of, the validity of any Released Claims, the truth of any fact alleged by the Plaintiffs, the deficiency of any defense that has been or could have been asserted in the Action, the violation of any law or statute, the reasonableness of the settlement amount or the Fee Award, or of any alleged wrongdoing, liability, negligence, or fault of the Released Parties, or any of them;

10.5.2 Is, may be deemed, or shall be used, offered, or received against the Released Parties, as an admission, concession or evidence of any fault, misrepresentation or omission with respect to any statement or written document approved or made by the Released Parties, or any of them;

10.5.3 Is, may be deemed, or shall be used, offered, or received against the Released Parties, or each or any of them, as an admission or concession with respect to any liability, negligence, fault or wrongdoing as against any Released Party, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. However, the Settlement, this Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to this Agreement and/or Settlement may be used in any proceedings as may be necessary to effectuate the provisions of this Agreement. Further, if this Settlement Agreement is approved by the Court, any Party or any of the Released Parties may file this Agreement and/or the Final Judgment in any action that may be brought against such Party or Parties in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim;

10.5.4 Is, may be deemed, or shall be construed against Plaintiffs, the Settlement Class, the Releasing Parties, or each or any of them, or against the Released Parties, or each or any of them, as an admission or concession that the consideration to be given hereunder represents an amount equal to, less than or greater than that amount that could have or would have been recovered after trial; and

10.5.5 Is, may be deemed, or shall be construed as or received in evidence as an admission or concession against Plaintiffs, the Settlement Class, the Releasing Parties, or each and any of them, or against the Released Parties, or each or any of them, that any of Plaintiffs' claims are with or without merit or that damages recoverable in the Action would have exceeded or would have been less than any particular amount.

10.6 The headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

10.7 The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breaches of this Agreement.

10.8 All of the Exhibits to this Agreement are material and integral parts thereof and are fully incorporated herein by this reference.

10.9 This Agreement and its Exhibits set forth the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements and undertakings with respect to the matters set forth herein. No representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents. This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

10.10 Except as otherwise provided herein, each Party shall bear its own costs.

10.11 Plaintiffs represent and warrant that they have not assigned any claim, right, or interest therein as against the Released Parties to any other Person or Party and that they are fully entitled to release the same.

10.12 Each counsel or other Person executing this Settlement Agreement, any of its Exhibits, or any related settlement documents on behalf of any Party hereto, hereby warrants and represents that such Person has the full authority to do so and has the authority to take appropriate action required or permitted to be taken pursuant to the Agreement to effectuate its terms. Class Counsel in particular warrants that they are authorized to execute this Settlement Agreement on

behalf of Plaintiffs and the Settlement Class (subject to final approval by the Court after notice to all Settlement Class Members), and that all actions necessary for the execution of this Settlement Agreement have been taken.

10.13 This Agreement may be executed in one or more counterparts. Signature by digital means, facsimile, or in PDF format will constitute sufficient execution of this Agreement. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court if the Court so requests.

10.14 This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto and the Released Parties.

10.15 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in this Agreement.

10.16 This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

10.17 This Agreement is deemed to have been prepared by counsel for all Parties, as a result of arm's-length negotiations among the Parties. Because all Parties have contributed substantially and materially to the preparation of this Agreement, it shall not be construed more strictly against one Party than another.

10.18 Where this Agreement requires notice to the Parties, such notice shall be sent to the undersigned counsel: David A. Carney, Baker & Hostetler LLP, 127 Public Square, Ste. 2000, Cleveland, OH 44114; and Joseph M. Lyon of The Lyon Firm ALC, 2754 Erie Avenue, Cincinnati, Ohio 45208.

10.19 The Parties agree to the following timeline, which shall control over any inconsistent dates herein (subject to Court approval):

|                                                                            |                                                              |
|----------------------------------------------------------------------------|--------------------------------------------------------------|
| <b><u>Grant of Preliminary Approval</u></b>                                |                                                              |
| Banner provides the Settlement Class List                                  | 30 days after Preliminary Approval                           |
| Notice Date                                                                | 45 days after Preliminary Approval                           |
| Settlement Website Launch                                                  | 45 days after Preliminary Approval                           |
| Motion for Attorneys' Fees and Class Representative Service Awards         | 14 days before Objection & Opt Out Deadline                  |
| Objection & Opt Out Deadline                                               | 60 days after Notice Date                                    |
| Settlement Administrator Provide Notice of Opt-Outs and/or Objections      | 67 days after Notice Date                                    |
| Claim Deadline                                                             | 60 days after Notice Date                                    |
| <b><u>Final Approval Hearing</u></b>                                       |                                                              |
| Motion for Final Approval                                                  | 14 days before Final Approval Hearing Date                   |
| Final Approval Hearing                                                     | No earlier than 120 Days after Preliminary Approval          |
| <b><u>Effective Date</u></b>                                               | As defined in Section 1.11                                   |
| Payment of Attorneys' Fees, Expenses, and Service Awards                   | 30 days after Effective Date                                 |
| Distribution of Privacy Monitoring Services & Payment of Settlement Claims | 30 days after Effective Date or as Final Claims Are Approved |
| Stale Check Date                                                           | 120 days after Effective Date                                |
| Settlement Website Deactivation                                            | 120 days after Effective Date                                |
|                                                                            |                                                              |

**PLAINTIFF CHERYL MCCULLEY**



Date: 04 / 22 / 2026

**BANNER HEALTH**

BY: \_\_\_\_\_  
Name and Title

Date: \_\_\_\_\_

**PLAINTIFF REBECCA BLOUNT**



Date: 04 / 23 / 2026

**PLAINTIFF CINDY FRERICKS**

*Cindy Frericks*

---

Date: 04 / 22 / 2026

**PLAINTIFF JILL SCHREIDL**

*Jill C Schreidl*

---

Date: 04 / 27 / 2026

**PLAINTIFF DEMETRIA ANN  
SANTIAGO-LABOY**

*Demetria Ann Santiago-Laboy*

---

Date: 04 / 24 / 2026

**PLAINTIFF OSCAR IRAZABA**

---

Date: \_\_\_\_\_

**PLAINTIFF FAITH ROBESON**

*Faith Robeson*

---

Date: 04 / 22 / 2026

**PLAINTIFF TAMI CARROLL**

*Tami Carroll*

---

Date: 04 / 22 / 2026

**PLAINTIFF CINDY FRERICKS**

---

Date: \_\_\_\_\_

**PLAINTIFF JILL SCHREIDL**

---

Date: \_\_\_\_\_

**PLAINTIFF DEMETRIA ANN  
SANTIAGO-LABOY**

---

Date: \_\_\_\_\_

**PLAINTIFF OSCAR IRAZABA**

---

© 2025 Intel April 23, 2026 07:48:02 PDT  
Date: 23/04/2026

**PLAINTIFF FAITH ROBESON**

---

Date: \_\_\_\_\_

**PLAINTIFF TAMI CARROLL**

---

Date: \_\_\_\_\_

**Approved as to form:**

**THE LYON FIRM** on behalf of Class **BAKER & HOSTETLER LLP**  
Counsel

DocuSigned by:

*Joseph Lyon*

2EC40737B435435...

\_\_\_\_\_  
Joseph M. Lyon

Date: 4/30/2026

*Attorney for the Plaintiffs and the Class*

*David Carney*

\_\_\_\_\_  
David Carney

Date: 4/27/26

*Attorney for Defendant Banner Health*

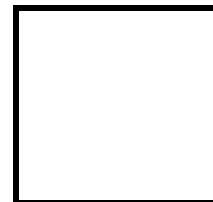
# **EXHIBIT A**

\*000000000000\*  
0 0 0 0 0 0 0 0 0 0 0 0

Your claim must be  
submitted online or  
postmarked by:  
**Month XX, 2026**

**CLAIM FORM**

*McCulley, et al. v. Banner Health*  
Case No. 2026CV30182  
District Court for Weld County, State of Colorado



**GENERAL INSTRUCTIONS**

If you received Notice of this Settlement, records indicate that you are a Settlement Class Member and may be entitled to Settlement Benefits. Please refer to the Long Form Notice posted on the Settlement Website **www.[website].com** for more information.

**To receive a Settlement Payment, you must submit a Claim Form by **Month XX, 2026**.**

Claims may be submitted online at **www.[website].com** or by mail at the address below. Please type or legibly print all requested information in blue or black ink. Mail your completed Claim Form by U.S. Mail to:

*McCulley, et al. v. Banner Health*  
c/o Kroll Settlement Administration LLC  
P.O. Box **XXXX**  
New York, NY 10150-**XXXX**

**Check the box below to request a Settlement Payment:**

☐ **Cash Payment:** Yes, I would like to receive a \$20 cash payment.

*Note:* In their Notice, all Settlement Class Members automatically received a code to redeem **one (1) year of CyEx Privacy Shield Pro**, which includes: Dark Web Monitoring, VPN In Touch, Password Scan, Private Search functionality, Password Defense, Digital Vault, and Data Broker Opt-Out services. If the court grants final approval of the Settlement, the enrollment code will become active for all Settlement Class Members who do not opt out of the Settlement.

**I. NAME AND CONTACT INFORMATION**

Provide your name and contact information below. You must notify the Settlement Administrator if your contact information changes after you submit this Claim Form.

|                  |                                          |           |
|------------------|------------------------------------------|-----------|
| Class Member ID: |                                          |           |
| First Name:      | Last Name:                               |           |
| Address 1:       |                                          |           |
| Address 2:       |                                          |           |
| City:            | State:                                   | Zip Code: |
| Email Address:   | Phone Number:<br>(          )          - |           |

---

## II. PAYMENT SELECTION

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If you would like to receive your payment through electronic transfer (Venmo, PayPal, or Zelle), please visit the Settlement Website ([www.\[website\].com](http://www.[website].com)) and timely file your Claim Form online on or before **Month XX, 2026**. The Settlement Website includes a step-by-step guide for you to complete the electronic payment option. If you submit this Claim Form by mail, you will receive your payment by check.

---

## III. ATTESTATION & SIGNATURE

---

I swear and affirm under the laws of the State of Colorado that the information I have supplied in this Claim Form is true and correct to the best of my recollection, and that this form was executed on the date set forth below.

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Signature Date (mm/dd/yyyy)

\_\_\_\_\_  
Print Name

For more information, visit [www.\[website\].com](http://www.[website].com) or call the Settlement Administrator toll free at **(XXX) XXX-XXXX**.

# **EXHIBIT B**

**To:** <<ClassMember>>  
**From:** Settlement Administrator  
**Subject:** Legal Notice of Class Action Settlement with Banner Health

**Class Member ID:** <<RefNum>>  
<<FirstName>> <<LastName>>

### **NOTICE OF CLASS ACTION SETTLEMENT**

## **Records indicate that you logged into a Banner Health Patient Account (formerly the MyBanner patient portal) on or between June 1, 2020 and November 22, 2023, and may be entitled to benefits from a class action settlement.**

A Settlement has been reached with Banner Health (“Defendant” or “Banner”), in a class action lawsuit, *McCulley, et al. v. Banner Health*, Case No. 2026CV30182, (the “Action”) that alleged that Defendant disclosed Settlement Class Members’ personally identifiable information (“PII”) and protected health information (“PHI”) to third parties, including Meta Platforms, Inc. d/b/a Meta (“Facebook”) and Google LLC (“Google”) via tracking technologies installed on Banner’s website and webpages. The Plaintiffs allege that Banner’s implementation and use of such tracking technologies resulted in the invasion of Settlement Class Members’ privacy and other alleged common law and statutory violations. Defendant denies all allegations of liability and wrongdoing.

**Who is included?** Defendant’s records indicate that you are a Settlement Class Member. The Settlement Class includes all individuals who had a Banner Health Patient Account (formerly the MyBanner patient portal) and who logged into this account using one of Banner’s web properties or applications on or between June 1, 2020 and November 22, 2023.

**What does the Settlement provide?** Defendant will pay for all valid and Approved Claims submitted by Settlement Class Members, Notice and Settlement Administration Expenses, attorneys’ Fee Award, and Service Awards for the Class Representatives as approved by the Court. Each Settlement Class Member will automatically receive a code to enroll in one (1) year of CyEx Privacy Shield Pro and may also submit a Claim Form for a cash payment of \$20.

You may enroll in CyEx Privacy Shield Pro once the Settlement becomes final. Please visit the website [www.\[website\].com](http://www.[website].com) after the Final Approval Hearing to see when to activate the code.

To enroll in this service, enter the following code at [URL]: Privacy Shield Code: <Insert Code>

**How do I get a Settlement Payment?** You must submit a Claim Form online at [www.\[website\].com](http://www.[website].com) or by mail, postmarked by **Month XX, 2026**, to be eligible to receive a Settlement Payment. Please visit the website for a full description of the Settlement Benefits and how to submit a Claim Form.

**What are my other options?** If you do nothing, you will be legally bound by the terms of the Settlement and will release your legal claims against the Defendant and the other Released Parties as defined in the Settlement Agreement. If you do not want to be legally bound by the Settlement, you must request to be excluded from the Settlement (or opt out) by **Month XX, 2026**. If you want to object to the Settlement or some part of it, you may file an objection by **Month XX, 2026**. Please visit [www.\[website\].com](http://www.[website].com) for more information on the claims you are releasing and instructions on how to opt out or object.

**Who represents me?** The Court appointed Carolyn Cuneo and Gary M. Klinger of Milberg PLLC; Hart L. Robinovitch of Zimmerman Reed LLP; David S. Almeida of Almeida Law Group LLC; and Joseph M.

Lyon of The Lyon Firm ALC as Class Counsel to represent you and the Settlement Class Members. If you want to be represented by your own lawyer, you may hire one at your own expense.

**The Court's Final Approval Hearing.** The Court will hold a **Final Approval Hearing on Month XX, 2026** to consider approving the Settlement, the attorneys' Fee Award of up to \$3,750,000, a Service Award of \$2,500 to each of the Class Representatives, and the Settlement Notice and Administration Expenses. You or your attorney may appear at the hearing at your own cost, but you are not required to. This Notice is only a summary. For more information, access to related documents, or to change your address, please visit [www.\[website\].com](http://www.[website].com) or call toll-free XXX-XXX-XXXX.

# **EXHIBIT C**

McCulley, et al. v. Banner  
c/o Kroll Settlement Administration LLC  
P.O. Box XXXXXX  
New York, NY 10150-XXXX

FIRST-CLASS MAIL  
U.S. POSTAGE PAID  
CITY, ST  
PERMIT NO. XXXX

ELECTRONIC SERVICE REQUESTED

NOTICE OF CLASS ACTION  
SETTLEMENT

**Records indicate that you  
logged into a Banner Health  
Patient Account (formerly the  
MyBanner patient portal) on  
or between June 1, 2020 and  
November 22, 2023, and may  
be entitled to benefits from a  
class action settlement.**

[www.\[website\].com](http://www.[website].com)

<<Refnum Barcode>>

**Class Member ID:** <<Refnum>>

Postal Service: Please do not mark or cover

<<FirstName>> <<LastName>>

<<Address>>

<<Address2>>

<<City>>, <<ST>> <<Zip>>-<<zip4>>

<<Country>>

A Settlement has been reached with Banner Health ("Defendant" or "Banner"), in a class action lawsuit, *McCulley, et al. v. Banner Health*, Case No. 2026CV30182, (the "Action") that alleged that Defendant disclosed Settlement Class Members' personally identifiable information ("PII") and protected health information ("PHI") to third parties, including Meta Platforms, Inc. d/b/a Meta ("Facebook") and Google LLC ("Google") via tracking technologies installed on Banner's website and webpages. The Plaintiffs allege that Banner's implementation and use of such tracking technologies resulted in the invasion of Settlement Class Members' privacy and other alleged common law and statutory violations. Defendant denies all allegations of liability and wrongdoing.

**Who is included?** Defendant's records indicate that you are a Settlement Class Member. The Settlement Class includes all individuals who had a Banner Health Patient Account (formerly the MyBanner patient portal) and who logged into this account using one of Banner's web properties or applications on or between June 1, 2020 and November 22, 2023.

**What does the Settlement provide?** Defendant will pay for all valid and Approved Claims submitted by Settlement Class Members, Settlement Notice and Administration Expenses, attorneys' Fee Award, and Service Awards for the Class Representatives as approved by the Court. Each Settlement Class Member will automatically receive a code to enroll in one (1) year of CyEx Privacy Shield Pro and may also submit a Claim Form for a cash payment of \$20 ("Settlement Payment").

You may enroll in CyEx Privacy Shield Pro once the Settlement becomes final. Please visit the website [www.\[website\].com](http://www.[website].com) after the Final Approval Hearing to see when to activate the code.

To enroll in this service, enter the following code at [URL]: Privacy Shield Code: <Insert Code>

**How do I get a Settlement Payment?** You must submit a Claim Form online at [www.\[website\].com](http://www.[website].com) or by mail, postmarked by **Month XX, 2026**, to receive a Settlement Payment. Please visit the website for a full description of the Settlement Benefits and how to submit a Claim Form.

**What are my other options?** If you do nothing, you will be legally bound by the terms of the Settlement and will release your legal claims against Defendant and the other Released Parties as defined in the Settlement Agreement. If you do not want to be legally bound by the Settlement, you must request to be excluded from the Settlement (or opt out) by **Month XX, 2026**. If you want to object to the Settlement or some part of it, you may file an objection by **Month XX, 2026**. Please visit [www.\[website\].com](http://www.[website].com) for more information on the claims you are releasing and instructions on how to opt out or object.

**Who represents me?** The Court appointed Carolyn Cuneo and Gary M. Klinger of Milberg PLLC; Hart L. Robinovitch of Zimmerman Reed LLP; David S. Almeida of Almeida Law Group LLC; and Joseph M. Lyon of The Lyon Firm ALC as Class Counsel to represent you and the Settlement Class Members. If you want to be represented by your own lawyer, you may hire one at your own expense.

**The Court's Final Approval Hearing.** The Court will hold a Final Approval Hearing on **Month XX, 2026** to consider approving the Settlement, the attorneys' Fee Award of up to \$3,750,000, a Service Award of \$2,500 to each of the Class Representatives, and the Settlement Notice and Administration Expenses. You or your attorney may appear at the hearing at your own cost, but you are not required to. This Notice is only a summary. For more information, access to related documents, or to change your address, please visit [www.\[website\].com](http://www.[website].com) or call toll-free **XXX-XXX-XXXX**.

# **EXHIBIT D**

## **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

District Court for Weld County, State of Colorado  
*McCulley, et al. v. Banner Health*, Case No. 2026CV30182

### **Did you log in to a Banner Health Patient Account (formerly the MyBanner patient portal) between June 1, 2020 and November 22, 2023? You may be eligible for benefits from a class action settlement.**

*A Court authorized this Notice. You are not being sued. This is not a solicitation from a lawyer.*

- A Settlement has been reached with Banner Health (“Defendant” or “Banner”) in a class action lawsuit that alleges Defendant disclosed Settlement Class Members’ personally identifiable information (“PII”) and protected health information (“PHI”) to third parties, including Meta Platforms, Inc. d/b/a Meta (“Facebook”) and Google LLC (“Google”) via tracking technologies installed on Banner’s website and webpages. The Plaintiffs allege that Banner’s implementation and use of such Tracking Technologies resulted in the invasion of Settlement Class Members’ privacy and other alleged common law and statutory violations. Defendant denies all allegations of liability and wrongdoing.
- You are included in the Settlement if you had a Banner Health Patient Account (formerly the MyBanner patient portal) and logged into this account using one of Banner’s web properties or applications on or between June 1, 2020 and November 22, 2023.
- Under the proposed Settlement, Defendant will pay for all valid and Approved Claims submitted by Settlement Class Members, Settlement Notice and Administration Expenses, attorneys’ Fee Award, and Service Awards for the Class Representatives as approved by the Court. Each Settlement Class Member will automatically receive a code to enroll in one (1) year of CyEx Privacy Shield Pro and may also submit a Claim Form for a cash payment of \$20 (“Settlement Payment”).
- If you are a Settlement Class Member, your rights are affected whether you do or do not act. Please read this Notice carefully.

| <b>SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS</b>         |                                                                                                                                                                                                                                                                                                                                                       | <b>DEADLINE</b>       |
|---------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| <b>SUBMIT A CLAIM FORM</b>                              | The only way to receive a Settlement Payment is by submitting a valid and timely Claim Form.                                                                                                                                                                                                                                                          | <b>Month XX, 2026</b> |
| <b>OPT OUT OF THE SETTLEMENT</b>                        | If you opt out, you will not be bound by the terms of the Settlement and you will keep the right to sue the Defendant about the Released Claims resolved by this Settlement. You will not receive any benefits from the Settlement.                                                                                                                   | <b>Month XX, 2026</b> |
| <b>OBJECT TO THE SETTLEMENT AND/OR ATTEND A HEARING</b> | If you do not opt out of the Settlement, you may object to it and tell the Court what you do not like about it. You may also ask the Court for permission to speak about your objection at the Final Approval Hearing. If you object, you can still submit a Claim Form and receive Settlement Benefits.                                              | <b>Month XX, 2026</b> |
| <b>DO NOTHING</b>                                       | If you do nothing, you will not get a payment from this Settlement and you give up the right to sue, continue to sue, or be part of another lawsuit against the Defendant about the Released Claims the Settlement resolves. But after the Settlement receives final approval, you will be able to enroll in one (1) year of CyEx Privacy Shield Pro. | <b>No Deadline</b>    |

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement.

Questions? Visit **www.[website].com** or call **(XXX) XXX-XXXX**.

## WHAT THIS NOTICE CONTAINS

|                                                                  |   |
|------------------------------------------------------------------|---|
| <b>Basic Information</b>                                         | 3 |
| 1. Why was this Notice issued?                                   | 3 |
| 2. What is this Action about?                                    | 3 |
| 3. What is a class action?                                       | 3 |
| 4. Why is there a Settlement?                                    | 3 |
| <b>Who is in the Settlement?</b>                                 | 3 |
| 5. Who is included in the Settlement?                            | 3 |
| 6. Are there exceptions to being included in the Settlement?     | 4 |
| <b>The Settlement Benefits</b>                                   | 4 |
| 7. What are the Settlement Benefits?                             | 4 |
| 8. Tell me more about the CyEx Privacy Shield Pro benefit.       | 4 |
| 9. What claims am I releasing if I stay in the Settlement Class? | 4 |
| <b>How to Get a Payment – Making a Claim</b>                     | 4 |
| 10. How do I submit a Claim Form for a Settlement Payment?       | 4 |
| 11. When will I get my Settlement Benefits?                      | 5 |
| <b>The Lawyers Representing You</b>                              | 5 |
| 12. Do I have a lawyer in this case?                             | 5 |
| 13. Should I get my own lawyer?                                  | 5 |
| 14. How will the lawyers be paid?                                | 5 |
| <b>Excluding Yourself from the Settlement</b>                    | 5 |
| 15. How do I opt out of the Settlement?                          | 5 |
| <b>Objecting to the Settlement</b>                               | 6 |
| 16. How do I tell the Court if I do not like the Settlement?     | 6 |
| 17. What is the difference between objecting and opting out?     | 7 |
| <b>The Court’s Final Approval Hearing</b>                        | 7 |
| 18. When is the Court’s Final Approval Hearing?                  | 7 |
| 19. Do I have to come to the Court’s Final Approval Hearing?     | 7 |
| <b>If You Do Nothing</b>                                         | 7 |
| 20. What happens if I do nothing at all?                         | 7 |
| <b>Getting More Information</b>                                  | 7 |
| 21. How do I get more information?                               | 7 |

## **BASIC INFORMATION**

### **1. Why was this Notice issued?**

A Court authorized this Notice because you have a right to know about the proposed Settlement of this class action lawsuit and about all of your options before the Court decides whether to grant final approval of the Settlement. This Notice explains the Action, your legal rights, what benefits are available, and who can receive them.

The lawsuit is called *McCulley, et al. v. Banner Health*, Case No. 2026CV30182 pending in the District Court for Weld County, Colorado. The people that filed this lawsuit are called the “Plaintiffs” and the company they sued, Banner Health, is called the “Defendant” or “Banner.”

### **2. What is this Action about?**

This Action alleges that Defendant disclosed information about Settlement Class Members to third parties, including, but not limited to, Meta Platforms, Inc. d/b/a Meta (“Facebook”) and Google LLC (“Google”) via tracking technologies installed on Banner’s website and webpages. This information included the personally identifiable information (“PII”) and protected health information (“PHI”) of individuals who had a Banner Health Patient Account (formerly the MyBanner patient portal) and who logged into this account using one of Banner’s web properties or applications between June 1, 2020 and November 22, 2023. Plaintiffs allege that Defendant’s implementation and use of such Tracking Technologies resulted in the invasion of Settlement Class Members’ privacy and other alleged common law and statutory violations. Defendant denies all allegations of liability and wrongdoing.

### **3. What is a class action?**

In a class action, one or more individuals sue on behalf of other people with similar claims. These individuals who sue are known as “Class Representatives” or Plaintiffs. Together, the people included in the class action are called a “Settlement Class” or “Settlement Class Members.” One court resolves the lawsuit for all Settlement Class Members, except for those who exclude themselves (sometimes called, “opting out”) from a settlement. In this Settlement, the Class Representatives are Plaintiffs Cheryl McCulley, Rebecca Blount, Cindy Freriks, Jill Schreidl, Demetria Ann Santiago-Laboy, Oscar Irazaba, Faith Robeson, and Tami Carroll.

### **4. Why is there a Settlement?**

The Court did not decide in favor of Plaintiffs or Defendant. Defendant denies all claims and contends that it has not violated any laws. Plaintiffs and Defendant agreed to a Settlement to avoid the costs and risks of a trial, and through the Settlement, Settlement Class Members are eligible to claim payments. Plaintiffs and their attorneys, who also represent Settlement Class Members as “Class Counsel,” believe the Settlement is best for all Settlement Class Members.

## **WHO IS IN THE SETTLEMENT?**

### **5. Who is included in the Settlement?**

The Settlement Class includes all individuals who had a Banner Health Patient Account (formerly the MyBanner patient portal) and who logged into this account using one of Banner’s web properties or applications on or between June 1, 2020 and November 22, 2023. The Settlement Class is comprised exclusively of individual natural persons and is estimated to consist of approximately 1,028,000 natural persons.

## **6. Are there exceptions to being included in the Settlement?**

Yes. Excluded from the Settlement Class are: (i) Defendant, any entity in which Defendant has a controlling interest, and Defendant's affiliates, parents, subsidiaries, officers, directors, legal representatives, successors, and assigns; (ii) any judge, justice, or judicial officer presiding over the litigation and the members of their immediate families and judicial staff; and (iii) any individual who timely and validly excludes themselves from the Settlement.

## **THE SETTLEMENT BENEFITS**

### **7. What are the Settlement Benefits?**

If approved by the Court, Defendant will pay for all valid and Approved Claims submitted by Settlement Class Members, Settlement Notice and Administration Expenses, attorneys' fees, costs, and expenses, and Service Awards as approved by the Court. Under the Settlement, each Settlement Class Member will automatically receive a code to redeem one (1) year of CyEx Privacy Shield Pro and may also submit a Claim Form for a cash payment of \$20 ("Settlement Payment").

### **8. Tell me more about the CyEx Privacy Shield Pro benefit.**

All Settlement Class Members will receive a code which will allow you to enroll without additional cost in one (1) year of CyEx Privacy Shield Pro, which includes the following features: Dark Web Monitoring, VPN In Touch, Password Scan, Private Search functionality, Password Defense, Digital Vault, and Data Broker Opt-Out services.

After the Settlement receives final approval by the court, instructions for how to enroll in the CyEx Privacy Shield Pro product will be sent to all Settlement Class Members who do not opt out of the Settlement (*see* Question 15). The instructions will include the code for enrollment. The CyEx Privacy Shield Pro enrollment will not require you to provide a credit card or other payment mechanism and will not automatically renew at the end of the initial one-year term.

### **9. What claims am I releasing if I stay in the Settlement Class?**

Unless you opt out of the Settlement Class, you cannot sue, continue to sue, or be part of any other lawsuit against the Defendant about any of the legal claims this Settlement resolves. The "Release" section in the Settlement Agreement describes the legal claims that you give up if you remain in the Settlement Class. The Settlement Agreement can be found [www.\[website\].com](http://www.[website].com).

## **HOW TO GET A PAYMENT – MAKING A CLAIM**

### **10. How do I submit a Claim Form for a Settlement Payment?**

You must submit a Claim Form to receive a Settlement Payment. Claim Forms may be submitted online by **Month XX, 2026**, at [www.\[website\].com](http://www.[website].com) or mailed to the Settlement Administrator, postmarked by **Month XX, 2026**, at:

*McCulley, et al. v. Banner Health*  
c/o Kroll Settlement Administration LLC  
ATTN: Claims  
P.O. Box XXXXXX  
New York, NY 10150-XXXX

Questions? Visit [www.\[website\].com](http://www.[website].com) or call (XXX) XXX-XXXX.

## **11. When will I get my Settlement Benefits?**

The short answer is – after the Settlement is finally approved and challenges, if any, to that approval are finally resolved. The Court is scheduled to hold a Final Approval Hearing on **Month XX, 2026, at XX:XX x.m. MT**, to decide whether to approve the Settlement, the attorneys’ fees, costs, and expenses for Class Counsel for representing the Settlement Class, and Service Awards for the Class Representatives.

If the Court approves the Settlement, there may be appeals. It is always uncertain whether appeals will be filed and, if so, how long it will take to resolve them. Settlement Benefits will be distributed as soon as possible, if and when the Court grants final approval of the Settlement and after any appeals are resolved.

## **THE LAWYERS REPRESENTING YOU**

### **12. Do I have a lawyer in this case?**

Yes, the Court appointed Carolyn Cuneo and Gary M. Klinger of Milberg, PLLC; Hart L. Robinovitch of Zimmerman Reed LLP; David S. Almeida of Almeida Law Group LLC; and Joseph M. Lyon of The Lyon Firm ALC as Class Counsel to represent you and other members of the Settlement Class. You will not be charged directly for these lawyers; instead, their compensation will be paid by the Defendant (subject to Court approval).

If you want to be represented by your own lawyer, you may hire one at your own expense.

### **13. Should I get my own lawyer?**

It is not necessary for you to hire your own lawyer because Class Counsel works for you. If you want to be represented by your own lawyer, you may hire one at your own expense.

### **14. How will the lawyers be paid?**

Class Counsel may receive, subject to Court approval, attorneys’ fees, costs, and expenses of up to \$3,750,000 (“Fee Award”). The Defendant has agreed to pay Class Counsel’s Fee Award.

## **EXCLUDING YOURSELF FROM THE SETTLEMENT**

### **15. How do I opt out of the Settlement?**

If you do not want to receive any benefits from the Settlement, and you want to keep your right to separately sue the Defendant about the legal issues in this case, you must take steps to exclude yourself from the Settlement Class. This is called “opting out” of the Settlement Class. The Opt-Out Deadline to submit a “request for exclusion” from the Settlement is **Month XX, 2026**.

To opt out of the Settlement, you must submit a written request for exclusion that includes the following information:

- A statement indicating that you want to opt out of the Settlement Class, such as “I wish to be excluded from the Settlement Class in *McCulley, et al. v. Banner Health, Case No.: 2026CV30182*”; and
- Your name, address, and personal signature.

Your request for exclusion must be mailed to the Settlement Administrator at the address below, postmarked no later than **Month XX, 2026**.

McCulley, et al. v. Banner Health  
c/o Kroll Settlement Administration LLC  
ATTN: Request for Exclusion  
P.O. Box XXXXXX  
New York, NY 10150-XXXX

You may only exclude yourself; so-called “mass” or “class” opt-outs are not allowed. If you do not exclude yourself from the Settlement by the Opt-Out Deadline, you will be bound by all of the Court’s decisions.

## **OBJECTING TO THE SETTLEMENT**

### **16. How do I tell the Court if I do not like the Settlement?**

If you are a Settlement Class Member, you can choose (but are not required) to object to the Settlement if you do not like it or a portion of it, whether that be to the Settlement Benefits, the request for the attorneys’ Fee Award, or the Service Award payments, the releases provided to the Defendant, or some other aspect of the Settlement. Through an objection, you give reasons why you think the Court should not approve the Settlement.

For an objection to be considered by the Court, it must include:

- a. The case name and number, *McCulley, et al. v. Banner Health*, Case No. 2026CV30182;
- b. Your name and address;
- c. An explanation of the basis upon which you claim to be a Settlement Class Member;
- d. All grounds for the objection, including all citations to legal authority and evidence supporting the objection;
- e. The name and contact information of any and all attorneys representing, advising, or in any way assisting you in connection with the preparation or submission of the objection (“Objecting Attorney”);
- f. If your attorney(s) has objected to any class action settlement where the objector or the Objecting Attorney asked for or received any payment in exchange for dismissal of the objection, or any related appeal, without any modification to the settlement, then your objection must also include a statement identifying each such case by the full case caption as well as the amount of payment received;
- g. A statement indicating whether you intend to appear at the Final Approval Hearing (either personally or through counsel who must file an appearance with the Court in accordance with the Local Rules); and
- h. Your personal signature.

Your objection must be in writing, filed with the Court, and emailed or mailed to Class Counsel and Defendant’s Counsel at the addresses below, so that is it **received** no later than **Month XX, 2026**.

| Clerk of the Court                                                                                       | Class Counsel                                                                              | Defendant’s Counsel                                                                                         |
|----------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|
| District Court for Weld County,<br>Colorado<br>Clerk of the Court<br>Street Address<br>City, ST Zip Code | Joseph M. Lyon<br>The Lyon Firm ALC<br>2754 Erie Ave.<br>Cincinnati, Ohio, 45208<br>Email: | David A. Carney,<br>Baker & Hostetler LLP<br>127 Public Square, Ste. 2000,<br>Cleveland, OH 44114<br>Email: |

### 17. What is the difference between objecting and opting out?

Objecting is telling the Court that you do not like something about the Settlement. You can object to the Settlement only if you do not exclude yourself from the Settlement. Excluding yourself from the Settlement means telling the Court you do not want to be part of the Settlement. If you opt out, you cannot object to the Settlement because it no longer affects you.

## **THE COURT'S FINAL APPROVAL HEARING**

### 18. When is the Court's Final Approval Hearing?

The Court is scheduled to hold a Final Approval Hearing on **Month XX, 2026**, at **XX:XX x.m.** MT, at the District Court for Weld County, Colorado, **Street Address**, Greeley, CO 80631, to decide whether to approve the Settlement, the Fee Award not to exceed \$3,750,000 for Class Counsel for representing the Settlement Class, and \$2,500 Service Awards for each of the Class Representatives who brought this lawsuit on behalf of the Settlement Class. The date and time of this hearing may change without further notice. Please check **www.[website].com** for updates.

### 19. Do I have to come to the Final Approval Hearing?

No. Class Counsel will answer any questions the Court may have. You may attend at your own expense. If you file an objection, you may, but you do not have to come to the Final Approval Hearing to talk about it. If you file your written objection on time and in accordance with the requirements above (*see* Question 16), the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary for the Court to consider an objection that was filed on time and meets the requirements above.

## **IF YOU DO NOTHING**

### 20. What happens if I do nothing at all?

If you are a Settlement Class Member and you do nothing, you will give up your right to start a lawsuit, continue a lawsuit, or be part of any other lawsuit against the Defendant and the Released Parties, as defined in the Settlement Agreement, about the legal issues resolved by this Settlement. In addition, you will be bound by the Release in the Settlement Agreement and will not be eligible to receive a Settlement Payment. You will, however, be eligible to enroll in the CyEx Privacy Shield Pro benefit (*see* Question 8).

## **GETTING MORE INFORMATION**

### 21. How do I get more information?

This Notice summarizes the proposed Settlement. Complete details are provided in the Settlement Agreement. The Settlement Agreement and other related documents are available at the Settlement Website **www.[website].com**. If you have additional questions or need to update your address, you may contact the Settlement Administrator via the Settlement Website, by phone at **(XXX) XXX-XXXX**, or by mail at:

***McCulley, et al. v. Banner Health***  
c/o Kroll Settlement Administration LLC  
P.O. Box **XXXXXX**  
New York, NY 10150-**XXXX**

# **EXHIBIT E**

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                      |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------|
| <p><b>DISTRICT COURT, WELD COUNTY</b><br/> <b>STATE OF COLORADO</b><br/> 901 9<sup>th</sup> Avenue<br/> Greeley, CO 80631</p> <hr/> <p><b>CHERYL MCCULLEY, REBECCA BLOUNT,<br/> CINDY FRERIKS, JILL SCHREIDL, DEMETRIA<br/> ANN SANTIAGO-LABOY, OSCAR IRAZABA,<br/> FAITH ROBESON, and TAMI CARROLL,<br/> individually and on behalf of all others similarly<br/> situated,</b></p> <p><b>Plaintiffs,</b></p> <p><b>v.</b></p> <p><b>BANNER HEALTH</b></p> <p><b>Defendant.</b></p>                                                                                                                                   | <p>▲ <b>COURT USE ONLY</b> ▲</p>                                     |
| <p>Carolyn Cuneo<br/> <b>MILBERG PLLC</b><br/> 800 S. Gay Street, Suite 1100<br/> Knoxville, TN 37929<br/> T: (866) 252-0878<br/> cjcuneo@milberg.com</p> <p>Hart L. Robinovitch<br/> <b>ZIMMERMAN REED LLP</b><br/> 14648 N. Scottsdale Road, Suite 130<br/> Scottsdale, AZ 85254<br/> T: (480) 348-6400<br/> Facsimile: (480) 348-6415<br/> Hart.robinovitch@zimmreed.com</p> <p>David S. Almeida<br/> <b>ALMEIDA LAW GROUP LLC</b><br/> 849 W. Webster Avenue<br/> Chicago, IL 60614<br/> T: (708) 529-5418<br/> david@almeidalawgroup.com</p> <p>Joseph M. Lyon<br/> <b>THE LYON FIRM</b><br/> 2754 Erie Ave.</p> | <p><b>Case<br/> Number: 2026CV30182</b></p> <p><b>CrtRm/Div:</b></p> |

|                                                                                                                                                                                                    |  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| Cincinnati, OH 45208<br>T: (513) 381-2333<br>Facsimile: (513) 766-9011<br>jlyon@thelyonfirm.com<br><br><i>Attorneys for Plaintiffs and the Proposed Class</i><br><i>* Pro Hac Vice forthcoming</i> |  |
| <b>[PROPOSED] PRELIMINARY APPROVAL ORDER</b>                                                                                                                                                       |  |

**WHEREAS**, Plaintiffs Cheryl McCulley, Rebecca Blount, Cindy Freriks, Jill Schreidl, Demetria Ann Santiago-Laboy, Oscar Irazaba, Faith Robeson, and Tami Carroll, on behalf of themselves and others similarly situated, and Defendant Banner Health have entered into a Settlement Agreement that fully and finally settles the above-captioned litigation and provides for a complete dismissal with prejudice for all claims arising out of Defendant’s use of Tracking Technologies that have been or could have been asserted against Defendant in the Action on the terms and conditions set forth in the Settlement Agreement, subject to and contingent on the approval of the Court;<sup>1</sup>

**WHEREAS**, Plaintiffs have moved, pursuant to Rule 23 of the Colorado Rules of Civil Procedure, for an order preliminarily approving the Settlement in accordance with the Settlement Agreement, certifying the Settlement Class for purposes of the Settlement only, appointing Plaintiffs as Class Representatives, appointing Class Counsel as counsel for the Settlement Class, appointing Kroll Settlement Administration, LLC (“Kroll”) as Settlement Administrator, and allowing Notice to Settlement Class Members as more fully described herein;

**WHEREAS**, the Court has read and considered: (a) Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement and Memorandum of Law in Support; (b) the

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<sup>1</sup> All capitalized terms shall have the meanings defined in the Settlement Agreement, which is attached as Exhibit A to the Joint Declaration of Class Counsel in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement.

Joint Declaration of Class Counsel in Support of the Unopposed Motion for Preliminary Approval of Class Action Settlement and exhibits attached thereto; and (c) all prior pleadings and proceedings heretofore.

**NOW, THEREFORE, IT IS HEREBY ORDERED:**

1. **Class Certification for Settlement Purposes Only.** For settlement purposes only, the Court certifies a Settlement Class defined as follows:

**Settlement Class:** All individuals who had a Banner Health Patient Account (formerly the MyBanner patient portal) and who logged into this account using one of Banner's web properties or applications on or between June 1, 2020 and November 22, 2023.

SA ¶ 1.30. Excluded from the Settlement Class are: (i) Defendant, any entity in which Defendant has a controlling interest, and Defendant's affiliates, parents, subsidiaries, officers, directors, legal representatives, successors, and assigns; (ii) any judge, justice, or judicial officer presiding over the litigation and the members of their immediate families and judicial staff; and (iii) any individual who timely and validly excludes themselves from the Settlement. *Id.*

2. **Class Findings.** The Court provisionally finds, for settlement purposes only, that the requirements of Colorado Rule of Civil Procedure 23 have been met, including: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members would be impracticable; (b) there are issues of law and fact common to the Settlement Class; (c) the claims of the Class Representatives are typical of and arise from the same operative facts and seek similar relief as the claims of the Settlement Class Members; (d) the Class Representatives and Class Counsel will fairly and adequately protect the interests of the Settlement Class as the Class Representatives has no interest antagonistic to or in conflict with the Settlement Class and has retained experienced and competent counsel to prosecute this matter on behalf of the Settlement Class; (e) questions of law or fact common to the Settlement Class Members predominate over

any questions affecting only individual class members; and (f) a class action and class settlement is superior to other methods available for a fair and efficient resolution of the controversy.

3. **Settlement Class Representatives and Class Counsel.** Cheryl McCulley, Rebecca Blount, Cindy Freriks, Jill Schreidl, Demetria Ann Santiago-Laboy, Oscar Irazaba, Faith Robeson, and Tami Carroll are hereby provisionally designated and appointed as the Class Representatives. The Court provisionally finds that the Class Representatives are similarly situated to absent Class Members and therefore typical of the Class and that they will be adequate Class Representatives.

The Court finds that Carolyn Cuneo and Gary M. Klinger of Milberg PLLC; Hart L. Robinovitch of Zimmerman Reed LLP; David S. Almeida of Almeida Law Group LLC; and Joseph M. Lyon of The Lyon Firm, LLC are experienced and adequate counsel and are hereby provisionally designated as Class Counsel.

4. **Preliminary Settlement Approval.** The Court hereby preliminarily approves the Settlement, as embodied in the Settlement Agreement, as being fair, reasonable, and adequate to the Settlement Class, subject to further consideration at the Final Approval Hearing to be conducted as described below.

5. **Final Approval Hearing.** A Final Approval Hearing shall be held on \_\_\_, 2026 at \_\_\_ am/pm in Courtroom \_\_\_ of the District Court, Weld County, State of Colorado, 901 9<sup>th</sup> Avenue, Greeley, Colorado 80631 for the following purposes: (a) to determine whether the proposed Settlement on the terms and conditions provided for the Settlement Agreement is fair, reasonable, and adequate to the Settlement Class; (b) to determine whether a proposed Judgment should be entered dismissing the Action with prejudice against Defendant; (c) to determine whether the motion of Class Counsel for a Fee Award should be approved; (d) to determine whether the motion of the Class Representatives for Service Awards should be approved; and (e) to consider

any other matters that may be properly brought the Court in connection with the Settlement. Notice of the Settlement and the Final Approval Hearing shall be given to the Settlement Class Members as set forth in Paragraph 8 of this Order.

6. The Court may adjourn the Final Approval Hearing without further notice to the Settlement Class Members and may approve the proposed Settlement with such modifications as the Parties may agree, if appropriate, without further notice to the Settlement Class Members.

7. **Retention of Settlement Administrator.** Class Counsel is hereby authorized to retain Kroll to supervise and administer the Notice procedure in connection with the proposed Settlement as well as the processing of Claims as set forth more fully in the Settlement Agreement.

8. **Approval of Form and Content of Notice.** The Court (a) approves, as to form and content, the Claim Form and Notices, attached to the Settlement Agreement as Exhibits A, B, C, and D; and (b) finds that the mailing and distribution of the Notice as set forth in the Settlement Agreement (i) is the best notice practicable under the circumstances; (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class Members of the pendency of the Action, of the effect of the proposed Settlement (including the releases to be provided thereunder), of Class Counsel's request for the Fee Award and Class Representatives' request for Service Awards, of their right to exclude themselves from the Settlement Class, and of their right to appear at the Final Approval Hearing; (iii) constitutes due, adequate and sufficient notice to all persons entitled to receive notice of the proposed Settlement; and (iv) satisfies the requirements of C.R.C.P. 23, the Colorado and United States Constitutions (including the Due Process Clause and other provisions guaranteeing due process of law), and all other applicable law and rules. The date and time of the Final Approval Hearing shall be included in the Notice before they are distributed.

9. **Participation in the Settlement.** Settlement Class Members must submit a Claim Form in order to qualify for benefits under the Settlement. All Settlement Class Members who do not exclude themselves from the Settlement may submit a Claim Form to receive, after Final Judgment is entered, reimbursement for a cash payment in the amount of \$20.00. All Settlement Class Members will also automatically receive access to twelve months of CyEx Privacy Shield Pro.

10. Settlement Class Members who do not submit a valid request for exclusion, pursuant to Paragraph 12 of this Order, will be subject to and bound by the provisions in the Settlement Agreement, the Release included in that Settlement Agreement, and the Final Judgment, even if they do not submit a claim.

11. **Distribution and Allocation Plan.** Settlement Class Representatives and Defendant have created a process through which Settlement Class Members can submit claims to the Settlement Administrator. The Court preliminarily approves the process described in the Settlement Agreement and directs that the Settlement Administrator effectuate the evaluation of submitted claims and distribution of Settlement benefits according to the terms of the Settlement Agreement, should the Settlement be finally approved.

12. **Exclusion from Class.** Any Settlement Class Member who wishes to be excluded from the Settlement Class must mail a written notification of the intent to exclude himself or herself from the Settlement Class to the Settlement Administrator at the address provided in the Notice, postmarked no later than sixty (60) Days from the date of Notice and posted to the Settlement Website.

Any Settlement Class Member who does not timely and validly excuse herself or himself from the Settlement shall be bound by the terms of the Settlement Agreement. If Final Judgment

is entered, any Settlement Class Member who has not submitted a timely, valid written notice of exclusion from the Settlement Class shall be bound by all proceedings, orders, and judgments in this matter, including but not limited to the Release set forth in the Final Judgment, including Settlement Class Members who have previously litigated or who subsequently initiate any litigation against any or all the Released Persons relating to the claims and transactions released in the Settlement. All Settlement Class Members who submit valid and timely notices of exclusion from the Settlement Class shall not be entitled to receive any benefits of the Settlement.

13.     **Objections and Appearances.** No Settlement Class Member shall be heard, and no papers, briefs, pleadings, or other documents submitted by any Settlement Class Member shall be received and considered by the Court, unless the objection includes all of the information set forth in Paragraph 4.3 of the Settlement Agreement, which provides: any Settlement Class Member who intends to object to this Agreement must present the objection in writing, must be personally signed by the objector, and must include: (1) the objector's name and address; (2) an explanation of the basis upon which the objector claims to be a Settlement Class Member; (3) all grounds for the objection, including all citations to legal authority and evidence supporting the objection; (4) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection (the "Objecting Attorney"); and (5) a statement indicating whether the objector intends to appear at the Final Approval Hearing (either personally or through counsel who file an appearance with the Court in accordance with the Local Rules). This objection shall be filed with the Court and also sent to the undersigned counsel by U.S. Mail or email so that it is received before the Objection Deadline: David A. Carney, Baker & Hostetler LLP, 127 Public Square, Ste. 2000, Cleveland, OH 44114 for Defendant Banner; and Joseph M. Lyon, The Lyon Firm, 2754 Erie Ave., Cincinnati,

Ohio, 45208 for the Settlement Class. Objections received after the Objection Deadline shall be invalid and not considered by the Court.

14. Any Settlement Class Member who fails to comply with the provisions in Paragraphs 9 and 10 shall waive and forfeit any and all rights he or she may have to object, and shall be bound by all terms of the Settlement Agreement, this Order, and by all proceedings, orders, and judgments in this matter, including, but not limited to, the release in the Settlement Agreement if Final Judgment is entered. If Final Judgment is entered, any Settlement Class Member who fails to object in the matter prescribed herein shall be deemed to have waived his or her objections and shall forever be barred from making any such objections in this action or in any other proceeding or from challenging or opposing, or seeking to reverse, vacate, or modify any approval of the Settlement Agreement, the service award request, or the fee award request.

15. **Termination of Settlement.** In accordance with the Settlement Agreement, if the Settlement is not finally approved by the Court or is terminated in accordance with the Settlement Agreement, then this Order shall become null and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing as of the date of the execution of the Settlement Agreement. In such event, the Settlement and Settlement Agreement shall become null and void and be of no further notice and effect, and neither the Settlement Agreement nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to any purpose of whatsoever.

16. **Use of Order.** This Order shall be of no force or effect if Final Judgment is not entered or there is no Effective Date, and, as outlined in Paragraph 10.5 of the Settlement Agreement, it shall not be construed or used as an admission, concession, evidence of, or declaration by or against Defendant of any fault, wrongdoing, breach, liability, the certifiability of

the class, or any of the points items outlined in Paragraph 10.5 of the Settlement Agreement. Nor shall this Order be construed or used as an admission, concession, or declaration by or against the Class Representatives or any other Settlement Class Member that his or her claim lacks merit or that the relief requested is inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claim he, she, or it may have in this litigation or in any other lawsuit.

17. **Stay of Proceedings and Temporary Injunction.** Unless otherwise ordered by the Court, the Court stays all proceedings in the Action other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement Agreement. Pending final determination of whether the Settlement should be approved, the Court bars and enjoins Plaintiffs, and any and all other members of the Settlement Class, from commencing or prosecuting any and all of the Released Claims against the Release Entities.

18. **Settlement Administration Fees and Expenses.** All reasonable costs incurred with notifying Settlement Class Members of the Settlement and administering the Settlement shall be paid by the Defendant as set forth in the Settlement Agreement.

19. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

20. **Summary of Deadlines.** The preliminarily approved Settlement shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the Settlement Agreement and/or this Order include, but are not limited to, the following:

**Commencement of Notice Program**

**Notice Date:** 60 Days after Preliminary Approval is Granted

**Motion for Final Approval Deadline:** 14 Days prior to the Final Approval Hearing

**Motion for Service Awards, Attorneys' Fees, and Costs Deadline:** 14 Days prior to the Objection & Opt-Out Deadline

**Exclusion Deadline:** 60 Days after issuance of Notice

**Objection Deadline:** 60 Days after issuance of Notice

**Claims Deadline:** 60 Days after issuance of Notice

**Final Approval Hearing:** at least 120 Days after Preliminary Approval is Granted

**IT IS SO ORDERED** this \_\_\_\_ day of \_\_\_\_\_, 2026

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**Judge, District Court, Weld  
County, State of Colorado**