

**STATE OF NORTH DAKOTA  
IN DISTRICT COURT COUNTY OF BURLEIGH  
SOUTH CENTRAL JUDICIAL DISTRICT**

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<b>In re Dakota Eye Institute Data Security Litigation</b>	<b>Case No. 08-2023-cv-02710</b>
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**SETTLEMENT AGREEMENT AND RELEASE**

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This Settlement Agreement is made and entered into by and among the following Settling Parties (as defined below): Leo Bitterman, Dion Wolbaum II, Amy Ebel-Delorme, Dennis Johnston, Vhonda Condry, and Chris Cleveland, individually and on behalf of all others similarly situated (“Plaintiffs”), and Dakota Eye Institute LLP (“DEI” or “Defendant” and, together with Plaintiffs, the “Parties” or “Settling Parties”). The Settlement Agreement is subject to Court approval and intended by the Settling Parties to resolve, discharge, and settle the Released Claims and this Litigation (as defined below), upon and subject to the terms and conditions set forth below.

**INTRODUCTION**

This Settlement resolves a putative nationwide class action brought by Plaintiffs, individually and on behalf of all others similarly situated individuals.

**PROCEDURAL BACKGROUND**

The case arises from the alleged compromise of sensitive personal information as a result of a cybersecurity incident that Defendant discovered on or about October 2023 (the

“Data Breach”) in which an unauthorized party was able to access and remove certain files from Defendant’s system, that included Plaintiffs’ and Class Members’ full names, date of birth, health insurance information, medical information, and Social Security numbers (collectively, “Private Information”). Plaintiffs and the putative Class Members all provided Defendant with their PII as part of their information technology staffing services.

In response to the Data Breach, Defendant sent a Notice Letter (“Notice Letter”) on or around October 31, 2023, to each of the impacted individuals providing a description of the type of Private Information involved. Plaintiffs allege that because of the Data Breach, Plaintiffs and approximately 107,143 Class Members suffered ascertainable losses and harm in the form of invasion of privacy, the loss of the benefit of the bargain, out-of-pocket expenses, the value of their time reasonable incurred to remedy or mitigate the effects of the attack, emotional distress, and the imminent risk of future harm caused by the compromise of their sensitive Private Information.

On April 26, 2024, Plaintiffs filed their Consolidated Class Action Complaint in a class action lawsuit in the District Court of Burleigh County, South Central Judicial District, North Dakota, captioned *In re Dakota Eye Institute Data Security Litigation*, Case No. 08-2023-cv-02710. Plaintiffs alleged both individually and on behalf of a nationwide Class that, as a direct result of the Data Breach, Plaintiffs and Class Members suffered numerous injuries and would likely suffer additional harm in the future. Plaintiffs’ claims for alleged damages and remedies included the following categories of harms: (i) lost or diminished value of Private Information; (ii) out-of-pocket expenses associated with the prevention, detection, and recovery from identity theft, tax fraud, and/or unauthorized use

of their Private Information; (iii) time and opportunity costs associated with attempting to mitigate the actual consequences of the Data Breach, including but not limited to lost time; (iv) emotional distress, fear, anxiety, nuisance and annoyance related to the theft and compromise of their Private Information; and (v) the continued and substantially increased risk to their Private Information which: (a) remains unencrypted and available for unauthorized third parties to access and abuse; and (b) may remain backed up in Defendant's possession and is subject to further unauthorized disclosures so long as Defendant fails to undertake appropriate and adequate measures to protect the Private Information.

Plaintiffs, individually and on behalf of other members of the proposed nationwide class, collectively asserted claims for negligence, violations of N.D.C.C. § 51-22, unjust enrichment, breach of implied contract, and declaratory judgment. Defendant denies these allegations and the claims asserted in their entirety and filed a Motion to Dismiss. Prior to a ruling from the Court, the Parties chose to stay the Court's decision pending settlement discussions.

### **SETTLEMENT DISCUSSIONS**

Recognizing the risk and expenses of prolonged litigation, the parties agreed to pursue informal discovery and settlement discussions. After Defendant produced informal discovery regarding the scope and nature of the Data Breach, and following significant negotiations, the Parties were able to reach a resolution. The agreed resolution and settlement are memorialized in this Settlement Agreement. Defendant continues to deny

any liability or wrongdoing of any kind and enters into this Settlement Agreement solely to avoid the burden, expense, and uncertainty of continued litigation.

Pursuant to the terms identified below, this Settlement Agreement provides for the resolution of all claims and causes of action asserted, or that could have been asserted, against Defendant and the Released Persons (as defined below) relating to the Data Breach and this Litigation, by and on behalf of Plaintiffs and Class Members.

### **CONFIRMATORY DISCOVERY**

Before entering into this Settlement Agreement, and in response to informal discovery requests for settlement purposes from Plaintiffs, Defendant produced informal discovery that addressed the class size, manner and mechanism of the Data Breach, and Defendant's insurance policy.

### **PLAINTIFFS' CLAIMS AND BENEFITS OF SETTLING**

Plaintiffs and Class Counsel believe the claims asserted in the Litigation, as set forth in their Complaint against Defendant, have merit. Plaintiffs and Class Counsel recognize and acknowledge, however, the expense and length of continued proceedings necessary to prosecute the Litigation against Defendant through motion practice, discovery, class certification, trial, and potential appeals. Plaintiffs and Class Counsel have also considered the uncertain outcome and risk of further litigation, as well as the difficulties and delays inherent in such litigation, especially in complex class actions. Class Counsel are highly experienced in class action litigation and, in particular, data incident and privacy litigation, and have previously served as lead counsel in numerous other data incident class actions through final approval. Plaintiffs and Class Counsel have determined that the Settlement

set forth in this Settlement Agreement is fair, reasonable, and adequate, and in the best interests of the Class Members.

### **DENIAL OF WRONGDOING AND LIABILITY**

Defendant expressly denies each and every allegation, claim, and contention asserted in the Complaint and denies that it or any of its affiliates engaged in any unlawful, negligent, or improper conduct. Defendant further denies any liability whatsoever to Plaintiffs or the Settlement Class and maintains that it acted at all times in accordance with applicable laws and industry standards, including maintaining reasonable and appropriate data security measures. Defendant also notes that, to date, there has been no evidence of misuse of the information allegedly affected by the Data Breach or that any Class Member has suffered compensable harm. Nonetheless, Defendant recognizes that continued litigation would be protracted, burdensome, and expensive, and could divert substantial time and resources from its operations and patient care. In light of these practical considerations and the inherent uncertainties of litigation, Defendant believes that resolution of this matter through settlement is in its best interests. This Settlement is a compromise and shall not be construed as an admission of liability, wrongdoing, or unlawful conduct of any kind by Defendant, all of which are expressly denied.

### **TERMS OF SETTLEMENT**

In consideration of the covenants, agreements, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiffs, individually and on behalf of the Class Members, Class Counsel, as

set forth in the signature block below, and Defendant that, subject to the approval of the Court, the Released Claims (as defined below) shall be finally and fully compromised, settled, and released, and the Litigation shall be dismissed with prejudice as to the Settling Parties and the Class Members, without costs as to Released Persons, Plaintiffs, Class Counsel, or the Settlement Class, except as explicitly provided for in this Settlement Agreement, subject to the approval of the Court, upon and subject to the terms and conditions of this Settlement Agreement, as follows:

**1. Definitions**

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

1.1 “Administration Fees” shall mean the fees, costs and other expenses incurred for Settlement Administration, as defined below.

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

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

1.4 “Claim Form” means the form that will be used by Class Members to submit a Claim to the Settlement Administrator and that is substantially in the form as shown in **Exhibit A** to this Settlement Agreement.

1.5 “Claims Deadline” means the postmark and/or online submission deadline for Claims, which shall be 60 days after the Notice Deadline (as defined below). The Claims Deadline shall clearly be set forth in the order granting Preliminary Approval of the Settlement, as well as in the Notice and on the Claim Form.

1.6 “Class” means all natural persons residing in the United States whose Private Information was compromised in the Data Breach of Dakota Eye Institute LLC, which was disclosed to the public on or about October 31, 2023, (the “Class”). The Class specifically excludes: (i) the Judge assigned to evaluate the fairness of this settlement (including any members of the Court’s staff assigned to this case); (ii) Defendant’s officers and directors; and (iii) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Breach or who pleads nolo contendere to any such charge.

1.7 “Class Counsel” or “Settling Class Counsel” means Nathan D. Prosser, Hellmuth & Johnson PLLC, and Philip Krzeski, Chestnut Cambronne PA.

1.8 “Class Member(s)” or “Settlement Class Member(s)” means any Person or Persons who falls within the definition of the Class.

1.9 “Court” means the District Court of Burleigh County, South Central Judicial District, North Dakota.

1.10 “Data Breach” means the cyberattack against Defendant which occurred in or about October 2023, and is the subject of the Litigation.

1.11 “Dispute Resolution” means the process for resolving disputed Claims as set forth in this Agreement.

1.12 “Effective Date” shall be conditioned on the occurrence of all the following events:

- a) the Court has entered an Order of Preliminary Approval;

- b) Defendant has not exercised its option to terminate the Settlement Agreement pursuant to ¶ 10;
- c) the Court has entered the Judgment granting final approval to the settlement as set forth herein; and,
- d) d) the Judgment has become Final, as defined in ¶ 1.14.

and means one business day following the latest of: (i) the date upon which the time expires for filing or noticing any appeal of the Judgment or one (1) business day following entry of an order granting final approval of the settlement if no parties have standing to appeal; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to attorneys' fees and reimbursement of expenses, the date of completion, in a manner that finally affirms and leaves in place the Judgment without any material modification, of all proceedings arising out of the appeal(s) (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(s) following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on certiorari with respect to the Judgment.

1.13 "Escrow Account" means the account opened by the Settlement Administrator at Verita Global, LLC.

1.14 "Final" means the occurrence of all of the following events: (i) the settlement pursuant to this Settlement Agreement is approved by the Court; (ii) the Court has entered a Judgment (as that term is defined herein); and (iii) the time to appeal or seek permission to appeal from the Judgment has expired or, if appealed, the appeal has been dismissed in



its entirety, or the Judgment has been affirmed in its entirety by the Court of last resort to which such appeal may be taken, and such dismissal or affirmance has become no longer subject to further appeal or review. Notwithstanding the above, any order modifying or reversing any attorneys' fees award or service awards made in this case shall not affect whether the Judgment is "Final" as defined herein or any other aspect of the Judgment.

1.15 "Final Approval Order" is the order through which the Court grants final approval of class action settlement and finds that this settlement is fair, reasonable, and adequate.

1.16 "Judgment" means a judgment rendered by the Court.

1.17 "Litigation" means this case, *In re Dakota Eye Institute Data Security Litigation*, Case No. 08-2023-cv-02710, in the District Court of Burleigh County, South Central Judicial District, North Dakota.

1.18 "Long Notice" means the long-form notice of settlement to be posted on the Settlement Website (as defined below), substantially in the form as shown in **Exhibit B** to this Settlement Agreement.

1.19 "Notice" means the direct notice of this proposed Settlement, which is to be provided substantially in the manner set forth in this Settlement Agreement and **Exhibits A through C** and is consistent with the requirements of Due Process.

1.20 The "Notice Deadline" means 30 days after the entry of the Preliminary Approval Order, which is the date that Notice must be sent to Class Members as required in this Agreement.

1.21 “Objection Deadline” means the date by which a written objection to this Settlement Agreement must be postmarked and/or filed with the Court and sent to the Settlement Administrator, which shall be designated as forty-six (46) days after Notice Deadline, or such other date as ordered by the Court.

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

1.23 “Plaintiffs” and/or “Class Representatives” mean Leo Bitterman, Dion Wolbaum II, Amy Ebel-Delorme, Dennis Johnston, Chris Cleveland, and Vhonda Condry.

1.24 “Preliminary Approval Order” means the order preliminarily approving the Settlement Agreement and ordering that Notice be provided to the Class. The Settling Parties’ proposed form of Preliminary Approval Order is attached to this Settlement Agreement as **Exhibit D**.

1.25 “Released Claims” shall collectively mean any and all past, present, and future claims and causes of action of any nature whatsoever related to the Data Breach in any way, including, but not limited to, any causes of action arising under or premised upon any statute, constitution, law, ordinance, treaty, regulation, or common law of any country, state, province, county, city, or municipality, including 15 U.S.C. § 45, *et seq.*, and all similar statutes in effect in any states in the United States as defined below; state consumer-protection statutes; negligence; negligence *per se*; breach of contract; breach of implied

contract; breach of fiduciary duty; breach of confidence; invasion of privacy; fraud; misrepresentation (whether fraudulent, negligent or innocent); unjust enrichment; bailment; wantonness; breach of the covenant of good faith and fair dealing; failure to provide adequate notice pursuant to any breach notification statute or common law duty; and including, but not limited to, any and all claims for damages, injunctive relief, disgorgement, declaratory relief or judgment, equitable relief, attorneys' fees and expenses, pre-judgment interest, credit monitoring services, the creation of a fund for future damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, and/or the appointment of a receiver, whether known or unknown, liquidated or unliquidated, accrued or unaccrued, fixed or contingent, direct or derivative, and any other form of legal or equitable relief that either has been asserted, was asserted, or could have been asserted, by any Class Member against any of the Released Persons based on, relating to, concerning or arising out of the alleged Data Breach or the allegations, transactions, occurrences, facts, or circumstances alleged in or otherwise described in the Litigation. The Released Claims extend to all matters that were asserted, could have been asserted, or could in the future be asserted, against the Released Persons by or on behalf of any Class Member, to the fullest extent permitted by law. This release is intended to be final and comprehensive. Released Claims shall not include the right of any Class Member or any of the Released Persons to enforce the terms of the settlement contained in this Settlement Agreement.

1.26 "Related Entities" means Defendant's past or present parents, subsidiaries, divisions, and related or affiliated entities, each of their respective predecessors, successors, directors, officers, employees, principals, agents, attorneys, insurers, and

reinsurers, includes, without limitation, any Person related to any such entity who is, was or could have been named as a defendant in any of the actions in the Litigation, other than any Person who is found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Breach or who pleads *nolo contendere* to any such charge, and includes any entity with whom Defendant contracted that, on behalf of Defendant, held data involved in the Data Breach who is, was or could have been named as a defendant in any of the actions in the Litigation.

1.27 “Released Persons” means Defendant and its Related Entities and each of their past or present parents, subsidiaries, divisions, and related or affiliated entities, and each of their respective predecessors, successors, directors, officers, employees, principals, agents, attorneys, heirs, executors, members, managers, owners, shareholders, insurers, and reinsurers, and all past, present, and future contractors, vendors, consultants, and third-party service providers. This includes, without limitation, any entity or individual that, at any time, provided services to or acted on behalf of Defendant with respect to the storage, processing, transmission, or security of data involved in the Data Breach, and who is, was, or could have been named as a defendant in any of the actions in the Litigation. This definition is intended to be interpreted broadly to include any person or entity that could reasonably be considered to have potential liability based on any theory arising from or relating to the Data Breach.

1.28 “Releasing Parties” shall refer, jointly and severally, and individually and collectively, to Plaintiffs, the Settlement Class Members, and to each of their predecessors,

successors, heirs, executors, administrators, and assigns of each of the foregoing, and anyone claiming by, through, or on behalf of them.

1.29 “Remainder Funds” means any funds that remain in the Settlement Fund after payments from the Settlement Fund are paid for all Valid Claims (as defined below). The funds remaining in the Settlement Fund after payments for Valid Claims have been distributed and the time for cashing and/or depositing checks has expired will be Remainder Funds. The Remainder Funds will be distributed to one or more court-approved charitable organizations as a *cy pres* distribution. If a *cy pres* distribution is necessary, the Parties will jointly recommend the entity or entities to the Court that will be the recipients of the *cy pres* distribution.

1.30 “Service Award” shall have the meaning ascribed to it as set forth in ¶ 7.3 of this Settlement Agreement. The Service Award requested in this matter will be \$2,000 to each of the Class Representatives, subject to court approval and will be in addition to any other Settlement benefits Plaintiffs may receive. All Service Awards shall be paid through the Settlement Fund.

1.31 “Settlement Administration” means the processing and payment of claims received from Class Members by the Settlement Administrator.

1.32 “Settlement Administrator” means Verita Global, LLC.

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

1.34 “Settlement Fund” means a fund to be funded by Defendant which shall be deposited into the Escrow Account, which shall not exceed One Million Dollars

(\$1,000,000.00). Under no circumstances shall Defendant be required to fund more than One Million Dollars (\$1,000,000.00) into the Escrow Account. In the event that the total value of Valid Claims, Service Awards, Attorneys' Fees, and Settlement Administration Costs exceeds the Settlement Fund, all payment shall be reduced on a pro rata basis to ensure total payments do not exceed the \$1,000,000 cap.

1.35 "Settling Parties" means, collectively, Defendant and Plaintiffs, individually and on behalf of the Class and all Released Persons.

1.36 "Settlement Payment" means an amount up to a maximum of Five Thousand Dollars per person (\$5,000.00). In no event shall DEI be required to pay more than this amount for a claim made under the terms of this Settlement Agreement. The actual amount of the Settlement Payment paid for Approved Claims will be determined on a "claims made" basis such that only those individual Approved Claims will be funded up to the maximum amount. The Service Awards to Plaintiffs is in addition to any Settlement Payment he may receive.

1.37 "Short Notice" means the short notice of the proposed class action settlement, substantially in the form as shown in **Exhibit C** to this Settlement Agreement. The Short Notice will direct recipients to the Settlement Website where recipients may view, *inter alia*, the Long Notice and make a claim for monetary relief. The Short Notice will also inform Class Members, *inter alia*, of the Claims Deadline, the Objection Date, and the date of the Final Fairness Hearing (as defined below).

1.38 "Settlement Website" shall be a dedicated website that the Settlement Administrator will establish and will contain detailed information about this Litigation.

1.39 “United States” as used in this Settlement Agreement means the United States of America and includes all of its States, the District of Columbia and all territories.

1.40 “Unknown Claims” means any of the Released Claims that any Class Member, including Plaintiffs, does not know or suspect to exist in his/her favor at the time of the release of the Released Persons that, if known by him or her, might have affected his or her settlement with, and release of, the Released Persons, or might have affected his or her decision not to object to and/or to participate in this Settlement Agreement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that upon the Effective Date, Plaintiffs intend to and expressly shall have, and each of the other Class Members intend to and shall be deemed to have, and by operation of the Judgment shall have, waived the provisions, rights, and benefits conferred to Class Members, including Plaintiffs, may hereafter discover facts in addition to, or different from, those that they, and any of them, now know or believe to be true with respect to the subject matter of the Released Claims, but Plaintiffs expressly shall have, and each other Class Member shall be deemed to have, and by operation of the Judgment shall have, upon the Effective Date, fully, finally and forever settled and released any and all Released Claims, including Unknown Claims. The Settling Parties acknowledge, and Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

1.41 “Valid Claims” means timely Claims in an amount approved by the Settlement Administrator or found to be valid through the claims processing and/or Dispute Resolution process.

## **2. Settlement Benefits**

2.1 Claimed Benefits: All Class Members shall have the opportunity to submit a Claim Form for certain claimed benefits. The claimed benefits, as described below, shall include: (1) Ordinary Out of Pocket Losses, (2) Credit Monitoring, (3) Extraordinary Losses, and (4) Alternate Cash Payment. Any Valid Claim may be combined with any other Valid Claim.

2.2 Ordinary Out-of-Pocket Losses: Every Settlement Class Member may submit a claim for up to \$1,000.00 each for out-of-pocket expenses and losses, which are unreimbursed costs, expenditures, or losses incurred by a Settlement Class member that are reasonably traceable to the Data Breach (“Out-of-Pocket Losses”). “Fairly traceable” shall mean demonstrably related to the Data Breach and supported by contemporaneous documentation. Defendant shall have the right to review any Claim deemed valid and may object to the Settlement Administrator’s determination. Out-of-Pocket Losses may include, without limitation, the following:

- a. unreimbursed costs, expenses, losses or charges incurred a result of identity theft or identity fraud, falsified tax returns, or other possible misuse of a Settlement Class Member’s Social Security number;
- b. unreimbursed costs incurred on or after October 1, 2023, associated with accessing or freezing/unfreezing credit reports with any credit reporting agency;
- c. other unreimbursed miscellaneous expenses incurred related to any Out-of-Pocket Expenses such as notary, fax, postage, copying, mileage, and long-distance telephone charges;
- d. other mitigative costs fairly traceable to the Data Breach that were



incurred on or after October 1, 2023, through the date of the Settlement Class Member's claim submission; and

- e. unpaid time off work to address issues reasonably traceable to the Data Breach at the actual hourly rate of that Settlement Class Member.

2.3 Settlement Class Members who elect to submit a claim for reimbursement of Out-of- Pocket Losses must provide to the Claims Administrator information required to evaluate the claim, including: (1) the Settlement Class Member's name and current address; (2) documentation reasonably supporting their claim; and (3) a brief description of the nature of the loss, if the nature of the loss is not apparent from the documentation alone. Documentation supporting Out-of-Pocket Losses can include receipts or other documentation not "self-prepared" by the Settlement Class Member concerning the costs incurred. "Self-prepared" documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to clarify or support other submitted documentation. Out-of-Pocket Losses will be deemed "reasonably traceable" if: (1) the timing of the loss occurred on or after October 1, 2023, and (2) in the Claims Administrator's sole determination, the Out-of-Pocket Losses were reasonably caused by the Data Breach and supported by contemporaneous documentation. Defendant shall have the right to review any Claim deemed valid and may object to the Settlement Administrator's determination.

2.4 Extraordinary Losses: All members of the Settlement Class who have suffered a monetary loss arising out of or related to identity theft and who submit a Valid Claim using the Claim Form are eligible for up to \$5,000.00, if: (1) the loss is an actual, documented and unreimbursed monetary loss arising out or relating to identity theft; (2)

the loss is fairly traceable to the Data Breach; (3) the loss occurred between October 1, 2023, and the Claims Deadline; (4) the loss is not already covered by one or more of the reimbursement categories listed in above; and (5) the member of the Settlement Class made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all available credit monitoring insurance and identity theft insurance.

2.5 Credit Monitoring Services: DEI will pay for credit monitoring services as follows. All Settlement Class Members shall be offered a two-year membership of single-bureau (“1B”) credit monitoring with at least \$1,000,000.00 in fraud insurance.

2.6 Alternate Cash Payments: In lieu of Credit Monitoring Services, Class Members may elect to receive a cash payment in the amount of Forty-Five Dollars (\$45.00). If a Class Member attempts to claim both Credit Monitoring Services and Alternative Cash Payment under the Settlement, the Settlement Administrator is authorized to contact the Settlement Class Member (by e-mail, telephone, or U.S. mail) to seek clarification regarding which benefit he or she would like to select. If the Settlement Administrator is unable to contact the Settlement Class Member who has chosen both Credit Monitoring Services and Alternative Cash Payment, the default settlement benefit shall be the cash payment of Forty-Five Dollars (\$45.00).

2.7 Claim Form Submission: Settlement Class Members submitting a claim must complete and submit a Claim Form to the Claims Administrator, postmarked or submitted online on or before the Claims Deadline. A Claim Form must be verified by the Settlement Class Member with a statement that his or her claim is true and correct, to the best of his or her knowledge and belief. Notarization is not required.

2.8 Business Practices Changes & Confirmatory Discovery. Defendant has provided reasonable access to confidential confirmatory discovery regarding its information security policies, the number of Class Members broken down by category, state of residence, the facts and circumstances of the Data Breach and Defendant's response thereto, and the changes and improvements that have been made or are being made to protect Class Members' Private Information. The Parties agree this discovery is complete and sufficient for settlement purposes.

2.9 Dispute Resolution for Claims. The Settlement Administrator, in its sole discretion to be reasonably exercised, will determine whether: (1) the claimant is a Class Member; (2) the claimant has provided all information needed to complete the Claim Form, including any documentation that may be necessary to reasonably support the Out-of-Pocket Loss Claims, Extraordinary Losses; (3) the information submitted could lead a reasonable person to conclude that it is more likely than not the claimant has suffered the claimed losses as a result of the Data Breach; and (4) the claimant timely submitted their Claim Form. The Settlement Administrator may, at any time, request from the claimant, in writing, additional information that the Settlement Administrator deems reasonably necessary to evaluate the claim, e.g., documentation requested on the Claim Form, information regarding the claimed losses, and claims previously made for identity theft and the resolution thereof. For any such claims that the Settlement Administrator determines to be invalid, the Settlement Administrator will submit those claims to the Settling Parties, by and through their respective Counsel. If, upon meeting and conferring, the Settling

Parties disagree as to the Claim validity, then the Claim shall be referred back to the Settlement Administrator for final determination on the Claim validity.

2.10 Upon receipt of an incomplete or unsigned Claim Form or a Claim Form that is not accompanied by sufficient documentation to determine whether the claim is facially valid, the Settlement Administrator shall request additional information and allow the claimant fourteen (14) days from the date of the request to cure the defect. If the defect is not cured within the time allotted, then the claim will be deemed invalid.

2.11 Following timely receipt of additional information pursuant to a request by the Settlement Administrator, the Settlement Administrator shall have ten (10) days to accept or reject the Claim. If, after review of the Claim and all documentation submitted by the claimant, the Settlement Administrator determines that such a claim is valid, then the Claim shall be paid. If the Claim is not valid because the claimant has not provided the information requested by the Settlement Administrator, then the Settlement Administrator may reject the Claim without any further action. A defect in one Claim shall not cause rejection of any other Valid Claim submitted by the claimant.

2.12 Class Members shall have ten (10) days from receipt of the approval of a Claim that provides a payment that deviates from the losses described on the Claim Form to accept or reject the Claim.

2.13 Settlement Expenses. All costs for notice to the Class Members as required under ¶ 3.2, Administration Fees under ¶ 1.1 and the costs of Dispute Resolution described in ¶ 2.6, shall be paid out of the Settlement Fund.

2.14 Class Certification. The Settling Parties agree, for purposes of this settlement only, to the certification of the Class. If the settlement set forth in this Settlement Agreement is not approved by the Court, or if the Settlement Agreement is terminated or cancelled pursuant to the terms of the Settlement Agreement, this Settlement Agreement and the certification of the Class provided for herein will be vacated and the Litigation shall proceed as though the Class had never been certified, without prejudice to any Person's or Settling Party's position on the issue of class certification or any other issue. The Settling Parties' agreement to the certification of the Class is also without prejudice to any position asserted by the Settling Parties in any other proceeding, case or action, as to which all of their rights are specifically preserved.

### **3. Order of Preliminary Approval and Publishing of Notice of Final Fairness Hearing**

3.1. As soon as practicable after the execution of the Settlement Agreement, Proposed Class Counsel shall jointly submit this Settlement Agreement to the Court, and Class Counsel will file a motion for preliminary approval of the settlement with the Court requesting entry of a Preliminary Approval Order in the form substantially similar to **Exhibit D** in both terms and cost, requesting, *inter alia*:

- a) certification of the Class for settlement purposes only;
- b) preliminary approval of the Settlement Agreement as set forth herein;
- c) appointment of Proposed Class Counsel as Class Counsel;
- d) appointment of Plaintiffs as Class Representatives;

- e) approval of a Claim Form to be used by Class Members to make a claim in a form substantially similar to the one attached as **Exhibit A** to this Settlement Agreement;
- f) approval of the Long Notice to be posted on the Settlement Website in a form substantially similar to the one attached as **Exhibit B** to this Settlement Agreement, which, together with the Short Notice, shall include a fair summary of the Parties' respective litigation positions, statements that the settlement and notice of settlement are legitimate and that the Class Members are entitled to benefits under the settlement, the general terms of the settlement set forth in the Settlement Agreement, instructions for how to object to the settlement, instructions for how to obtain the Settlement Benefits, the process and instructions for making claims to the extent contemplated herein, and the date, time and place of the Final Fairness Hearing;
- g) approval of the Short Notice to be mailed to Class Members in a form substantially similar to the one attached as **Exhibit C** to this Settlement Agreement; and
- h) appointment of Verita Global, LLC as the Settlement Administrator.

The Short Notice, Long Notice, and Claim Form have been reviewed and approved by the Settlement Administrator but may be revised as agreed upon by the Settling Parties before submission to the Court for approval. Immaterial revisions to these documents may also be made prior to dissemination of notice. Any changes to the Preliminary Approval

Order, Short Notice, Long Notice, and Claim Form that do not materially affect the substance of the Settlement Agreement that the Court may require will not invalidate this Settlement Agreement.

3.2 Costs for providing notice to the Class in accordance with the Preliminary Approval Order, and the costs of such notice, together with the Administration Fees shall be paid from the Settlement Fund. Attorneys' fees, costs, and expenses of Proposed Class Counsel, and any Service Awards to the Class Representatives, as approved by the Court, shall also be paid from the Settlement Fund. Notice shall be provided to Class Members by the Settlement Administrator as follows:

- a) *Class Member Information*: No later than fourteen (14) days after entry of the Preliminary Approval Order, Defendant shall provide the Settlement Administrator with the name, last known physical address, and last known email address of each Class Member (collectively, "Class Member Information") that Defendant possesses.
- b) Class Member Information and its contents shall be used by the Settlement Administrator solely for the purpose of performing its obligations pursuant to this Agreement and shall not be used for any other purpose at any time. Except to administer the settlement as provided in this Settlement Agreement, or provide all data and information in its possession to the Settling Parties upon request, the Settlement Administrator shall not reproduce, copy, store, or

distribute in any form, electronic or otherwise, the Class Member Information.

- c) *Settlement Website*: Within fourteen (14) days of the Preliminary Approval Order, the Settlement Administrator shall establish the Settlement Website (www.\_\_\_\_\_.com) that will inform Class Members of the terms of this Settlement Agreement, their rights, dates and deadlines and related information (“Settlement Website”). The Settlement Website shall include, in .pdf format and available for download, the following: (i) the Long Notice; (ii) the Claim Form; (iii) the Preliminary Approval Order; (iv) this Settlement Agreement; and (v) any other materials agreed upon by the Parties and/or required by the Court. The Settlement Website shall provide Class Members with the ability to complete and submit the Claim Form electronically, and shall have a “Contact Us” page whereby Class Members can send an email with any additional questions to a dedicated email address and send hardcopy documents to a designated Post Office box established by the Settlement Administrator.
- d) *Short Notice*: fourteen (14) days after the entry of the Preliminary Approval Order (“Notice Date”), and subject to the requirements of this Settlement Agreement and the Preliminary Approval Order, the Settlement Administrator shall post the Short Notice to the Settlement



Website. By the Notice Date, the Settlement Administrator shall begin to provide notice to the Class through the following means:

- i. via U.S. Mail to the Class Member's postal address that Defendant provided to the Settlement Administrator. Before any mailing under this paragraph occurs, the Settlement Administrator shall run the postal addresses of Class Members through the United States Postal Service ("USPS") National Change of Address database to update any change of address on file with the USPS;
- ii. in the event that a Short Notice is returned to the Settlement Administrator by the USPS because the address of the recipient is no longer valid, and the envelope contains a forwarding address, the Settlement Administrator shall re-send the Short Notice to the forwarding address if the Short Notice is returned as undeliverable;
- iii. in the event that subsequent to the first mailing of a Short Notice, and at least fourteen (14) days prior to the Objection Date, a Short Notice is returned to the Settlement Administrator by the USPS because the address of the recipient is no longer valid, i.e., the envelope is marked "Return to Sender" and does not contain a new forwarding address, the Settlement Administrator shall perform a standard skip trace,

in the manner that the Settlement Administrator customarily performs skip traces, in an effort to attempt to ascertain the Class Member's current address and, if such an address is ascertained, the Settlement Administrator will re-send the Short Notice within seven (7) days of receiving such information. This shall be the final requirement for mailing.

- e) Publishing, within fourteen (14) days of the Preliminary Approval Order, the Claim Form, Long Notice and this Settlement Agreement on the Settlement Website, as specified in the Preliminary Approval Order, and maintaining and updating the website throughout the claim period;
- f) A toll-free help line with an IVR system and a live operator option shall be made available to provide Class Members with additional information about the settlement. The Settlement Administrator also will provide copies of the Long Notice and paper Claim Form, as well as this Settlement Agreement, upon request;
- g) Contemporaneously with seeking Final Approval of the Settlement, Class Counsel and Defendant shall cause to be filed with the Court an appropriate affidavit or declaration with respect to complying with these provisions regarding notice.

3.3 The Short Notice, Long Notice, and other applicable communications to the Class may be adjusted by the Settlement Administrator in consultation and agreement with

the Settling Parties as may be reasonable and not inconsistent with such approval. The initial round of Notice under the Notice Program shall be completed within thirty (30) days after entry of the Preliminary Approval Order (the Notice Deadline).

3.4 Proposed Class Counsel and Defendant's counsel shall request that after notice is completed the Court hold a hearing (the "Final Fairness Hearing") and grant final approval of the settlement set forth herein, and request that the Final Fairness Hearing occur on a date that is convenient for the Court and is at least 135 days after the entry of the Preliminary Approval Order.

3.5 Defendant will also cause the Settlement Administrator to provide (at Defendant's expense) notice to the relevant state and federal governmental officials as required by the Class Action Fairness Act.

#### **4. Objection Procedures**

4.1 Each Class Member desiring to object to the Settlement Agreement shall submit a timely written notice of their objection by the Objection Date. Such notice shall state: (i) the objector's full name and address; (ii) the case name and docket number, *In re Dakota Eye Institute Data Security Litigation*, Case No. 08-2023-cv-02710, in the District Court of Burleigh County, South Central Judicial District, North Dakota; (iii) information identifying the objector as a Class Member, including proof that the objector is a member of the Class (e.g., copy of the objector's settlement notice, copy of original notice of the Data Breach, or a statement explaining why the objector believes they are a Class Member); (iv) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (v) the identity of any and all counsel

representing the objector in connection with the objection; (vi) a statement whether the objector and/or their counsel will appear at the Final Fairness Hearing; and (vii) the objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative (if any) representing him or her in connection with the objection. To be timely, written notice of an objection in the appropriate form must be mailed, with a postmark date no later than the Objection Date, to Nathan D. Prosser, Hellmuth & Johnson PLLC or Philip J. Krzeski, Chestnut Cambronne PA, as Class Counsel; and Kevin M. Ringel, Freeman Mathis & Gary, LLP, as counsel for Defendant. The objector or their counsel shall also file any Objection with the Court through the Court's electronic filing system or submitting them to the Clerk of Court. For all objections mailed to Class Counsel and counsel for Defendant, Class Counsel will file them with the Court with the Motion for Final Approval of the Settlement, unless the Objection(s) were previously filed on the docket.

4.2 Any Class Member who fails to comply with the requirements for objecting shall waive and forfeit any and all rights they may have to appear separately and/or to object to the Settlement Agreement, and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders and judgments in the Litigation. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions of this Settlement Agreement. Without limiting the foregoing, any challenge to the Settlement Agreement, the final order approving this Settlement Agreement, or the Judgment to be entered upon final approval shall be pursuant to appeal under the Federal Rules of Appellate Procedure and not through a collateral attack.

## **5. Release**

5.1 Upon the Effective Date, each Class Member, including Plaintiffs, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims as against all Released Persons. Further, upon the Effective Date, and to the fullest extent permitted by law, each Class Member, including Plaintiffs, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public or in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in any action in this or any other forum (other than participation in the settlement as provided herein) in which any of the Released Claims is asserted. This includes but is not limited to claims for damages, injunctive relief, statutory relief, restitution, or declaratory relief. Each Class Member expressly waives any rights under federal or state law to assert unknown claims and acknowledges the finality of this release regardless of whether future facts or losses become known. In addition, no Class Member shall have the right to opt out of the release after the Effective Date, nor shall any court have jurisdiction to entertain such a challenge. Any other claims or defenses Plaintiffs and each and all of the Class Members may have against Defendant that are not based upon or do not arise out of the institution, prosecution, assertion, settlement, or resolution of the Data Breach, the Litigation, or the Released Claims are specifically preserved and shall not be affected by the preceding sentence.

## **6. Plaintiffs' Counsel's Attorneys' Fees, Costs, and Expenses; Service Awards to Plaintiffs**

6.1 The Settling Parties did not discuss the payment of Attorneys' Fees, Costs, and Expenses and/or Service Awards to the Plaintiffs, until after the substantive terms of the settlement had been agreed upon, other than that reasonable Attorneys' Fees, Costs, and Expenses and Service Awards to Plaintiffs as may be agreed to by Defendant and Class Counsel and as ordered by the Court shall be paid from the Settlement Fund.

6.2 Class Counsel shall file a Motion for Attorneys' Fees, Reimbursement of Litigation Costs and Expenses, and Class Representatives Service Awards at least fourteen (14) days before the deadline for Class Members to Object to the Settlement. Defendant will pay \$350,000.00 to Plaintiff's counsel for attorneys' fees and expenses and agrees not to challenge a petition for an award of attorneys' fees and reasonable expenses of \$350,000.00. Any attorneys' fees, costs, expenses, or service awards shall be paid to Class Counsel within 12 days from the Effective Date. Class Counsel, in their sole discretion, shall allocate and distribute any amounts of attorneys' fees, costs, and expenses awarded by the Court among Class Counsel.

6.3 Subject to Court approval, Plaintiffs intend to request, and Defendant agrees not to challenge, a Service Award in the amount of up to \$2,000.00 to each of the Plaintiffs as compensation for the Plaintiffs' time and efforts expended on behalf of the Class.

6.4 No order of the Court, or modification or reversal or appeal of any order of the Court, concerning the amount(s) of any Attorneys' Fees, Costs, and Expenses and/or Service Awards ordered by the Court to Class Counsel or Plaintiffs shall affect whether the Judgment is Final or constitute grounds for cancellation or termination of this Settlement Agreement. Under no circumstances shall any portion of a reduced Service Award or Fee

Award and Costs be redistributed to the Settlement Class or otherwise increase Defendant's monetary obligations under this Agreement.

**7. Settlement Fund**

7.1 Deposits. Defendant agrees to make a payment of, and deposit that payment into, the Settlement Fund as follows:

- a) Within thirty (30) days of the Court granting preliminary approval of this Settlement Agreement, Defendant shall pay all costs associated with notifying the Settlement Class Members of this Settlement Agreement in an amount estimated by the Claims Administrator (said amount being part of and not in addition to the Settlement Fund);
- b) Within thirty (30) days of the Effective Date, Defendant shall pay into a Qualified Settlement Fund to be established and maintained by the Settlement Administrator the remaining portion of the Settlement Fund; and,
- c) Within forty-two (42) days of the Effective Date, the Settlement Administrator shall pay to Class Counsel any attorneys' fees, costs, expenses, and service award pursuant.

Settlement Administrator shall use this balance to pay for Costs of Settlement Administration.

7.2 Custody of the Settlement Fund. The Settlement Fund shall be deposited into an appropriate trust established by the Settlement Administrator but shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund

is distributed pursuant to the Settlement Agreement or returned to those who paid the Settlement Fund in the event this Settlement Agreement is voided, terminated, or cancelled.

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

7.4 Taxes. All taxes relating to the Settlement Fund shall be paid out of the Settlement Fund, shall be considered an Administrative Expense, and shall be timely paid by the Settlement Administrator without prior order of the Court. Further, the Settlement Fund shall indemnify and hold harmless the Parties and their counsel for taxes



(including, without limitation, taxes payable by reason of any such indemnification payments). The Parties and their respective counsel have made no representation or warranty with respect to any tax treatment by any Class Representatives or any Class Member of any payment or transfer made pursuant to this Agreement or derived from or made pursuant to the Settlement Fund. Each Class Representatives and Class Member shall be solely responsible for the federal, state, and local tax consequences to him, her, they, or it of the receipt of funds from the Settlement Fund pursuant to this Agreement.

## **8. Administration of Claims**

8.1 The Settlement Administrator shall administer and calculate the Claims submitted by Class Members. Class Counsel and Defendant shall be given reports as to both claims and distribution, and have the right to review and obtain supporting documentation and challenge such reports if they believe them to be inaccurate or inadequate. The Settlement Administrator's determination of whether a Claim is a Valid Claim shall be binding, subject to the Dispute Resolution process.

8.2 Payment of Valid Claims shall be made within forty-two (42) days of the Effective Date. Class Members may elect to receive settlement benefits via check or electronic payment.

8.3 All Class Members who fail to timely submit a Valid Claim for any benefits hereunder within the time frames set forth herein, or such other period as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any payments or benefits pursuant to the settlement set forth herein, but will in all other respects be

subject to, and bound by, the provisions of the Settlement Agreement, the releases contained herein and the Judgment.

8.4 No Person shall have any claim against the Settlement Administrator, Defendant, Class Counsel, Plaintiffs, and/or Defendant's counsel based on distributions of benefits to Class Members.

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

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

- a) the Court has entered the Judgment granting final approval to the settlement and certification of the Class as set forth herein; and
- b) the Judgment has become Final, as defined in ¶ 1.14.

9.2 If all conditions specified in ¶ 1.14 hereof are not satisfied, the Settlement Agreement shall be canceled and terminated unless Class Counsel and Defendant's counsel mutually agree in writing to proceed with the Settlement Agreement. Defendant may terminate this Agreement if the number of Class Members who opt out exceeds a 10% threshold disclosed to the Court in camera. If this Settlement is not finalized, Defendant reserves all defenses and shall not be deemed to have waived any rights by engaging in settlement discussions.

9.3 In the event that the Settlement Agreement including the releases are not approved by the Court or the settlement set forth in the Settlement Agreement is terminated in accordance with its terms, (i) the Settling Parties shall be restored to their respective

positions in the Litigation and shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Settling Party or Settling Party's counsel, and (ii) the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Settling Parties and shall not be used in the Litigation or in any other proceeding for any purpose, and any Judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*. Notwithstanding any statement in this Settlement Agreement to the contrary, no order of the Court or modification or reversal on appeal of any order reducing the amount of Attorneys' Fees, Costs, and Expenses and/or Service Awards shall constitute grounds for cancellation or termination of the Settlement Agreement. Further, notwithstanding any statement in this Settlement Agreement to the contrary, Defendant shall be obligated to pay amounts already billed or incurred for costs of notice to the Class, Settlement Administration, and Dispute Resolution and shall not, at any time, seek recovery of same from any other party to the Litigation or from counsel to any other party to the Litigation.

#### **10. Miscellaneous Provisions**

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

10.2 The Settling Parties intend this settlement to be a final and complete resolution of all claims and disputes between them, as well as the Releasing Parties, with

respect to the Data Breach and this Litigation. The settlement compromises claims, including but not limited to all Released Claims, that are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling Parties each agree that the settlement was negotiated in good faith by the Settling Parties, and reflects a settlement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum that the litigation was brought or defended in bad faith or without a reasonable basis. It is agreed that no Party shall have any liability to any other Party as it relates to the Litigation, except as set forth herein. Nothing in this Agreement, nor any public statement made in connection with it, shall be construed as or used to suggest an admission of liability, fault, or wrongdoing by any Party. The Parties further agree that they shall not, directly or indirectly, make or cause to be made any public or private statement, whether oral or written, that is intended or reasonably could be interpreted to disparage or defame Defendant or its employees, practices, or reputation. This includes but is not limited to statements in media interviews, press releases, social media, conferences, or continuing legal education materials. Class Counsel may accurately describe the terms of the settlement in public filings and notices but shall not characterize the Defendant's conduct in a manner that implies wrongdoing or liability. Nothing in this provision shall restrict Defendant from responding to public allegations, correcting misinformation, or making accurate public disclosures as required by law or regulation.

10.3 Neither the Settlement Agreement, nor the settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the settlement (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing or liability of any of the Released Persons; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Released Persons in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Any of the Released Persons may file the Settlement Agreement and/or the Judgment in any action that may be brought against them or any of them 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.

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

10.5 The exhibits to this Settlement Agreement and any exhibits thereto are a material part of the Settlement and are incorporated and made a part of the Agreement.

10.6 This Settlement Agreement, including all exhibits hereto, contains the entire understanding between Defendant and Plaintiffs, individually and on behalf of the Class and all Released Entities, regarding the payment of the Litigation settlement and supersedes all previous negotiations, agreements, commitments, understandings, and writings between the Parties in connection with the payment of the Litigation settlement. Except as

otherwise provided herein, each party shall bear its own costs. This Settlement Agreement supersedes all previous agreements made between the Parties.

10.7 Class Counsel, on behalf of the Class, and Defendant's counsel, on behalf of Defendant, are expressly authorized to take all appropriate actions required or permitted to be taken by the Parties pursuant to the Settlement Agreement to effectuate its terms, and also are expressly authorized to enter into any modifications or amendments to the Settlement Agreement on behalf of the Parties which they deem appropriate in order to carry out the spirit of this Settlement Agreement and to ensure fairness to the Parties.

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

10.9 The Settlement Agreement may be executed in one or more counterparts. 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.

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

10.11 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Settlement Agreement, and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in the Settlement Agreement. The Court shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation and enforcement

of the Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice and the Settlement Administrator. As part of its agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

10.12 As used herein, “he” means “he, she, they, or it;” “his” means “his, hers, theirs, or its,” and “him” means “him, her, them, or it.”

10.13 The Settlement Agreement shall be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the State of North Dakota, and the rights and obligations of the parties to the Settlement Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of North Dakota.

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

10.15 If a Class Member opts to receive settlement benefits via mailed check, cashing the settlement check is a condition precedent to any Class Member’s right to receive settlement benefits. All settlement checks shall be void 90 days after issuance and shall bear the language: “This check must be cashed within 90 days, after which time it is void.” If a check becomes void, the Class Member shall have until six months after the Effective Date to request re-issuance. If no request for re-issuance is made within this period, the Class Member will have failed to meet a condition precedent to recovery of settlement benefits, the Class Member’s right to receive monetary relief shall be extinguished, and there shall be no obligation to make payments to the Class Member for

expense reimbursement or any other type of monetary relief. The same provisions shall apply to any re-issued check. For any checks that are issued or re-issued for any reason more than 180 days after the Effective Date, requests for re-issuance need not be honored after such checks become void.

10.16 The Settlement Website shall be deactivated 180 days after the Effective Date.

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

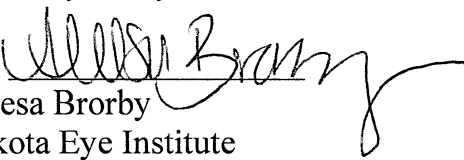
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IN WITNESS WHEREOF, the parties hereto have caused the Settlement Agreement to be executed, by their duly authorized attorneys.

By: \_\_\_\_\_  
Kevin M. Ringel  
Freeman Mathis & Gary, LLP  
*Counsel for Defendant*

Date: 8/7/2025

By:  \_\_\_\_\_  
Aleesa Brorby  
Dakota Eye Institute

Date: 7/31/2025

By: \_\_\_\_\_  
Leo Bitterman  
Plaintiff

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

By: \_\_\_\_\_  
Dion Wolbaum II  
Plaintiff

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

By: \_\_\_\_\_  
Amy Ebel-Delorme  
Plaintiff

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

By: \_\_\_\_\_  
Dennis Johnston  
Plaintiff

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

By: \_\_\_\_\_  
Chris Cleveland  
Plaintiff

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

By: \_\_\_\_\_  
Vhonda Condry  
Plaintiff

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

By: \_\_\_\_\_  
Nathan D. Prosser,  
Hellmuth & Johnson PLLC

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

By: \_\_\_\_\_  
Philip Krzeski,

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

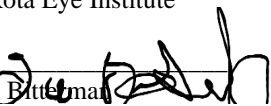
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By: \_\_\_\_\_  
Kevin M. Ringel  
Freeman Mathis & Gary, LLP  
*Counsel for Defendant*

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

By: \_\_\_\_\_  
Aleesa Brorby  
Dakota Eye Institute

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

By:  \_\_\_\_\_  
Leo Buttenman  
Plaintiff

Date: 07/28/2025

By: \_\_\_\_\_  
Dion Wolbaum II  
Plaintiff

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

By: \_\_\_\_\_  
Amy Ebel-Delorme  
Plaintiff

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

By: \_\_\_\_\_  
Dennis Johnston  
Plaintiff

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

By: \_\_\_\_\_  
Chris Cleveland  
Plaintiff

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

By: \_\_\_\_\_  
Vhonda Condry  
Plaintiff

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

By: \_\_\_\_\_  
Nathan D. Prosser,  
Hellmuth & Johnson PLLC

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

By: \_\_\_\_\_  
Philip Krzeski,

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

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By: \_\_\_\_\_  
Kevin M. Ringel  
Freeman Mathis & Gary, LLP  
*Counsel for Defendant*

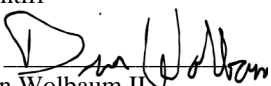
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Aleesa Brorby  
Dakota Eye Institute

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

By: \_\_\_\_\_  
Leo Bitterman  
Plaintiff

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

By:   
Dion Wolbaum II  
Plaintiff

Date: 07/28/2025

By: \_\_\_\_\_  
Amy Ebel-Delorme  
Plaintiff

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

By: \_\_\_\_\_  
Dennis Johnston  
Plaintiff

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

By: \_\_\_\_\_  
Chris Cleveland  
Plaintiff

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

By: \_\_\_\_\_  
Vhonda Condry  
Plaintiff

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

By: \_\_\_\_\_  
Nathan D. Prosser,  
Hellmuth & Johnson PLLC

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

By: \_\_\_\_\_  
Philip Krzeski,

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

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

By: \_\_\_\_\_  
Kevin M. Ringel  
Freeman Mathis & Gary, LLP  
*Counsel for Defendant*

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

By: \_\_\_\_\_  
Aleesa Brorby  
Dakota Eye Institute

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

By: \_\_\_\_\_  
Leo Bitterman  
Plaintiff

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

By: \_\_\_\_\_  
Dion Wolbaum II  
Plaintiff

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

By:  \_\_\_\_\_  
Amy Ebel-Delorme (Jul 28, 2025 15:04:06 CDT)  
Amy Ebel-Delorme  
Plaintiff

Date: Jul 28, 2025  
\_\_\_\_\_

By: \_\_\_\_\_  
Dennis Johnston  
Plaintiff

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

By: \_\_\_\_\_  
Chris Cleveland  
Plaintiff

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

By: \_\_\_\_\_  
Vhonda Condry  
Plaintiff

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

By: \_\_\_\_\_  
Nathan D. Prosser,  
Hellmuth & Johnson PLLC

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

By: \_\_\_\_\_  
Philip Krzeski,

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

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By: \_\_\_\_\_  
Kevin M. Ringel  
Freeman Mathis & Gary, LLP  
*Counsel for Defendant*

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

By: \_\_\_\_\_  
Aleesa Brorby  
Dakota Eye Institute

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

By: \_\_\_\_\_  
Leo Bitterman  
Plaintiff

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

By: \_\_\_\_\_  
Dion Wolbaum II  
Plaintiff

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

By: \_\_\_\_\_  
Amy Ebel-Delorme  
Plaintiff

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

By:  \_\_\_\_\_  
Dennis Johnston (Jul 28, 2025 17:34:53 CDT)  
Dennis Johnston  
Plaintiff

Date: 07/28/2025

By: \_\_\_\_\_  
Chris Cleveland  
Plaintiff

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

By: \_\_\_\_\_  
Vhonda Condry  
Plaintiff

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

By: \_\_\_\_\_  
Nathan D. Prosser,  
Hellmuth & Johnson PLLC

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

By: \_\_\_\_\_  
Philip Krzeski,

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

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

By: \_\_\_\_\_  
Kevin M. Ringel  
Freeman Mathis & Gary, LLP  
*Counsel for Defendant*

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

By: \_\_\_\_\_  
Aleesa Brorby  
Dakota Eye Institute

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

By: \_\_\_\_\_  
Leo Bitterman  
Plaintiff

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

By: \_\_\_\_\_  
Dion Wolbaum II  
Plaintiff

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

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

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Dennis Johnston  
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Date: \_\_\_\_\_

By: Chris Cleveland  
Chris Cleveland  
Plaintiff

Date: 07/28/2025

By: \_\_\_\_\_  
Vhonda Condry  
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Date: \_\_\_\_\_

By: \_\_\_\_\_  
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Hellmuth & Johnson PLLC

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

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Philip Krzeski,

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

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By: \_\_\_\_\_  
Kevin M. Ringel  
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*Counsel for Defendant*

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

By: \_\_\_\_\_  
Aleesa Brorby  
Dakota Eye Institute

Date: \_\_

By: \_\_\_\_\_  
Leo Bitterman  
Plaintiff

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

By: \_\_\_\_\_  
Dion Wolbaum II  
Plaintiff

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

By: \_\_\_\_\_  
Amy Ebel-Delorme  
Plaintiff

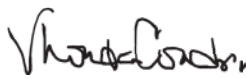
Date: \_\_

By: \_\_\_\_\_  
Dennis Johnston  
Plaintiff

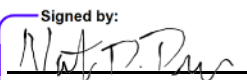
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Chris Cleveland  
Plaintiff

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

By:  \_\_\_\_\_  
Vhonda Condry  
Plaintiff

Date: 07 / 29 / 2025

Signed by:   
By: \_\_\_\_\_  
Nathan D. Prosser,  
Hellmuth & Johnson PLLC

Date: 8/11/2025 | 2:47 PM CDT

Signed by:   
By: \_\_\_\_\_  
Philip Krzeski,

Date: 8/11/2025 | 12:52 PM PDT

Chestnut Cambronne PLLC

*Proposed Class Counsel*

### SETTLEMENT TIMELINE

<b><u>From Order Granting Preliminary Approval</u></b>	
Defendant provides list of Class Members to the Settlement Administrator	+14 days
Long and Short Notices Posted on the Settlement Website	+14 days
Defendant pays cost of Notice Program and Claims Administration	+30 days
Notice Deadline	+30 days
Counsel's Motion for Attorneys' Fees, Reimbursement of Litigation Costs and Expenses, and Class Representatives Service Awards	+62 days
Objection Deadline	+76 days
Settlement Administrator Provide List of Objections to the Parties' counsel	+83 days
Claims Deadline	+90 days
<b><u>Final Approval Hearing</u></b>	+135 (at minimum) from Order Granting Preliminary Approval
Motion for Final Approval	-21 days before Final Approval Hearing
<b><u>From Order Granting Final Approval</u></b>	
Effective Date	+1 day after all conditions met pursuant to ¶ 1.11 of the Settlement Agreement
Payment of Attorneys' Fees and Expenses and Class Representatives Service Awards from Settlement Fund	+42 days after Effective Date
Payment of Claims to Class Members from Settlement Fund	+42 days after Effective Date



# Exhibit A

In re Dakota Eye Institute Data Security  
Litigation  
Claims Administrator  
P.O. Box XXXXX  
Los Angeles, CA XXXXX-XXXX

**DED9**

«3of9 barcode»

«BARCODE»

Postal Service: Please do not mark barcode

DED9: ClaimID: «Claim Number»

PIN: «PIN»

«FIRST1» «LAST1»

«ADDRESS LINE 1» «ADDRESS LINE 2»

«CITY», «STATE»«PROVINCE» «POSTALCODE»

«COUNTRY»



VISIT THE SETTLEMENT WEBSITE BY  
SCANNING THE PROVIDED QR CODE

*In re Dakota Eye Institute Data Security Litigation*

STATE OF NORTH DAKOTA IN  
DISTRICT COURT COUNTY OF BURLEIGH  
SOUTH CENTRAL JUDICIAL DISTRICT

Case No. 08-2023-cv-02710

**Must Be Postmarked**

**No Later Than**

\_\_\_\_\_, 2025

Claim ID: <<ClaimNumber>>

PIN: <<PIN>>

## Claim Form

### GENERAL CLAIM FORM INFORMATION

This Claim Form should be filled out online or submitted by mail if your private information was compromised in the Data Breach of Dakota Eye Institute LLC, which was disclosed to the public on or about October 31, 2023.

If you wish to submit a claim by mail, please provide the information requested below. Please print clearly in blue or black ink. This Claim Form must be mailed and postmarked by **no later than** \_\_\_\_\_, 2025.

#### Claimant Information

<input type="text"/>															<input type="text"/>			<input type="text"/>														
First Name															M.I.			Last Name														
<input type="text"/>																																
Unique Identifier (Can be found on the Postcard Notice or Email Notice you received informing you about this Settlement. If you need additional help locating this ID, please contact the Claims Administrator.)																																
<input type="text"/>																																
Primary Address																																
<input type="text"/>																																
Primary Address Continued																																
<input type="text"/>																																
City															State					ZIP Code												
<input type="text"/>																																
Email Address																																
<input type="text"/>																																
Area Code					Telephone Number																											

\*DED9ONE\*

FOR CLAIMS PROCESSING ONLY	OB	CB	DOC LC REV	RED A B
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- ☐ By filling in this circle, I certify I am a Member of the Settlement Class and I request the two years of three-bureau credit monitoring and identity theft/fraud insurance services with coverage of up to \$1,000,000.00.

### Out-of-Pocket Monetary Loss

- By filling in this circle, I also certify that I am also a member of the Settlement Class defined as: All natural persons residing in the United States whose Private Information was compromised in the Data Breach of Dakota Eye Institute LLC, which was disclosed to the public on or about October 31, 2023.

As a member of the Class, I am submitting a claim for monetary losses in the amount of \$      .

on account of out-of-pocket expenses incurred as a result of the Security Incident. I understand that I am required to provide documentation supporting my claims for out-of-pocket expenses and that I may not claim more than \$5,000.00.

*More detailed information about Monetary Claims for the Class can be found in the Settlement Agreement.*

## Out-of-Pocket Expenses

Please provide clear and legible copies of contemporaneous, third-party documentation supporting your claim, such as receipts, bank statements, official correspondence, or other records generated by a business, financial institution, or government agency. Documentation must be dated and must directly relate to the claimed out-of-pocket expense. “Self-prepared” documents (such as handwritten notes or receipts created by you) are not sufficient on their own and will not be accepted as primary proof, but may be submitted to clarify or supplement other valid documentation. Only expenses incurred on or after October 1, 2023, and that are reasonably traceable to the Dakota Eye Institute data breach are eligible for reimbursement. Expenses incurred outside this timeframe or unrelated to the data breach will not be considered.

The Claims Administrator may contact you for additional information or clarification before processing your claim. Claims that are not adequately supported by required documentation, appear duplicative, or are suspected to be fraudulent will be denied. Dakota Eye Institute and the Claims Administrator reserve the right to audit, verify, and object to any claim that does not meet the requirements of the Settlement.

You may redact (black out) any information in your supporting documentation that is not relevant to your claim (such as unrelated transactions or account numbers), provided that the remaining information is sufficient to substantiate your claim.

Description of the unreimbursed, out-of-pocket loss which occurred, and the documents attached to support this claim:

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### Alternate Cash Payment

Members of the Class may submit a Claim for Alternate Cash Payment in lieu of Credit Monitoring Services. You may elect to receive a cash payment in the amount of Forty-Five Dollars (\$45.00) under this settlement benefit, by filling in the circle next to the attestation.

- By filling in this circle, I certify I am a Member of the Settlement Class and I request the Alternate Cash Payment in lieu of Credit Monitoring Services.

5

losses were actually incurred as a result of the Dakota Eye Institute data breach and that you understand any false statements or material omissions may result in denial of your claim and may be subject to penalties under applicable law.

Signature: \_\_\_\_\_

Dated (mm/dd/yyyy): \_\_\_\_\_

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

**\*DED9TWO\***



## **Exhibit B**

# Notice of In re Dakota Eye Institute Data Security Litigation

**If you received Notice Letter of a cybersecurity incident discovered in October 2023, you may be entitled to benefits from a class action settlement.**

A federal court has authorized this Notice. This is not a solicitation from a lawyer.

**Please read this Notice carefully and completely; your legal rights are affected whether you act or don't act.**

## **THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ IT CAREFULLY.**

- A Settlement has been proposed in a class action lawsuit against Dakota Eye Institute LLP (“DEI” or “Defendant”) claiming negligence, violations of N.D.C.C. § 51-22, unjust enrichment, breach of implied contract, and declaratory judgement. Plaintiffs alleged both individually and on behalf of a nationwide Class that, as a result of the DEI Data Breach discovered in October 2023, Plaintiffs and Class Members suffered numerous injuries and would likely suffer additional harm in the future. This settlement is not an admission of liability or wrongdoing by Dakota Eye Institute LLP. DEI denies all allegations of wrongdoing and has agreed to settle this matter solely to avoid the burden and expense of continued litigation.
- If you are a person residing in the United States whose Private Information was compromised in the DEI Data Breach, you may be eligible to claim Out-of-Pocket Losses, Extraordinary Losses, and a two-year membership of single-bureau (“1B”) credit monitoring with at least \$1,000,000.00 in fraud insurance.
- In lieu of credit monitoring services, you may also be eligible to receive a \$45 cash payment, increased or decreased depending upon the number of claims filed.
- To receive reimbursement for documented losses, credit monitoring services, or a cash payment, you must complete and submit a Claim Form.
- Please read this notice carefully. Your legal rights will be affected, and you have a choice to make now.

Summary of Your Legal Rights and Options	
<b>SUBMIT A CLAIM FORM</b>	The only way to get a payment or credit monitoring from this Settlement
<b>EXCLUDE YOURSELF BY OPTING OUT FROM THE SETTLEMENT</b>	Do not get a settlement payment. This is the only option that allows you to be part of any other lawsuit against the Defendant for the legal claims made in this case and released by the settlement.
<b>OBJECT TO THE SETTLEMENT</b>	Write to the Court with reasons why you do not agree with the Settlement.
<b>GO TO THE FINAL APPROVAL HEARING</b>	You may ask the Court for permission for you or your attorney to speak about your objection at the Final Approval Hearing.
<b>DO NOTHING</b>	You will not get a cash payment or credit monitoring services, and you will give up certain legal rights.

- 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. If the Court denies final approval, the Settlement will be null and void and the litigation will continue with the Defendant.

Questions? Go to [www.XXXXXXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXXXXXX.com) or call 1-XXX-XXX-XXXX.

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3. What is a class action?	
4. Why is there a settlement?	
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6. Are there exceptions to being included?	
7. What should I do if I'm not sure whether I am included?	
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## BASIC INFORMATION

### 1. Why is this Notice being provided?

The Court directed that this Notice be provided because you have a right to know about a proposed settlement that has been reached in a class action lawsuit and about all of your options before the Court decides whether to grant final approval to the Settlement. If the Court approves the Settlement, and after objections or appeals, if any, are resolved, the Settlement Administrator appointed by the Court will distribute the benefits that the Settlement allows. This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

Judge David C. Norton of \_\_\_ is overseeing this class action. The case is known as *In re Dakota Eye Institute Data Security Litigation*, Case No. 08:2023-cv-02710, currently pending in the District Court of North Dakota, South Central Judicial District, Burleigh County. The people who filed the lawsuit are called Plaintiffs and the company they sued, Dakota Eye Institute LLP, is called “DEI” or the Defendant.

### 2. What is this lawsuit about?

The lawsuit claims (1) in October 2023 an unauthorized third-party gained access and removed certain files from Defendant’s system (the “Data Breach”), (2) the Data Incident exposed full names, date of birth, health insurance information, medical information, and Social Security numbers (“Private Information”) of Plaintiff’s and Class Members’s, (3) on or around October 31, 2024, Defendant sent a Notice Letter (“Notice Letter”) to the impacted individuals providing a description of the type of Private Information involved.

To date, there is no evidence that any of the information involved in the data breach has been misused or that any Class Member has suffered harm as a result of the incident. Dakota Eye Institute maintains that it acted at all times in accordance with applicable laws and industry standards.

### 3. What is a class action?

In a class action, one or more people called class representatives (in this Action, Leo Bitterman, Dion Wolbaum II, Amy Ebel-Delorme, Dennis Johnston, and Vhonda Condry) sue on behalf of themselves and other people who have similar claims. Together, all these people are called class or class members. One court resolves the issues for all class members, except for people who exclude themselves from the settlement class.

### 4. Why is there a Settlement?

The Court did not decide in favor of Plaintiffs or Defendant. Instead, the Plaintiffs negotiated a settlement with the Defendant that allows them to avoid the risks and costs of lengthy and uncertain litigation and the uncertainty of a trial and appeals. It also allows the Settlement Class Members to be compensated without further delay. The Class Representatives and their attorneys think the Settlement is best for all the Settlement Class Members.

## WHO IS INCLUDED IN THE SETTLEMENT?

### 5. How do I know if I am part of the Settlement?

The Settlement Class is defined as: “All natural persons residing in the United States whose Private Information was compromised in the Data Breach of Dakota Eye Institute LLC, which was disclosed to the public on or about October 31, 2023, (the “Class”).”

There are approximately 107,143 Class Members.



## 6. Are there exceptions to being included?

Yes, the following are not included in the Settlement Class: (i) the Judge assigned to evaluate the fairness of this settlement (including any members of the Court's staff assigned to this case); (ii) Defendant's officers and directors; and any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Breach or who pleads nolo contendere to any such charge.

## 7. What should I do if I am not sure whether I am included?

If you are not sure whether you are included in the Settlement Class, you can ask for free help by calling the Settlement Administrator, at 1-XXX-XXX-XXXX or you can visit [www.\[website\].com](http://www.[website].com) for more information.

# THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

## 8. What does the Settlement provide?

Under the Settlement, the Defendant will establish a non-reversionary settlement fund which shall be deposited into the Escrow Account, which shall not exceed One Million Dollars (\$1,000,000). These funds will be used to pay for all valid claims made by Settlement Class Members, notice and administration costs, service awards to the Class Representatives, and attorneys' fees and costs. Any remaining funds will be distributed to one or more court-approved charitable organizations as a *cy pres* distribution.

## 9. What can I get from the Settlement?

Settlement Class Members may file a claim for one or more of the following settlement benefits.

**Ordinary Out-of-Pocket Losses:** Every Settlement Class Member may submit a claim for up to \$1,000 each for out-of-pocket expenses and losses, which are unreimbursed costs, expenditures, or losses incurred by a Settlement Class member that are reasonably traceable to the Data Breach. **You must provide proper documentation to make a successful claim for Out-of-Pocket Losses.** All claims for monetary reimbursement must be supported by contemporaneous, non-self-prepared documentation (such as receipts, bank statements, or official correspondence). Handwritten or self-prepared documents alone are not sufficient. The Settlement Administrator may request additional information and may deny any claims that are not adequately supported or that appear fraudulent or duplicative. Dakota Eye Institute reserves the right to audit claims and object to any claims it believes are not valid.

**Extraordinary Losses:** All members of the Settlement Class who have suffered a monetary loss arising out of or related to identity theft and who submit a Valid Claim using the Claim Form are eligible for up to \$5,000. **You must provide proper documentation to make a successful claim for Extraordinary Losses.**

Claims for Monetary Losses and Extraordinary Losses are subject to a *pro rata* decrease depending upon the number of claims filed and approved.

**Credit Monitoring Services:** DEI will pay for credit monitoring services as follows. All Settlement Class Members shall be offered a two-year membership of single-bureau ("1B") credit monitoring with at least \$1,000,000 in fraud insurance.

**Alternate Cash Payments:** In lieu of Credit Monitoring Services, Class Members may elect to receive a cash payment in the amount of Forty-Five Dollars (\$45.00).

The Settlement provides benefits on a claims-made basis. Only those Class Members who submit valid and timely claims will receive settlement benefits. The total amount available for all settlement payments, including

attorneys' fees, administration costs, and service awards, is capped at \$1,000,000. If the total value of valid claims and expenses exceeds this cap, all payments will be reduced on a pro rata basis.

You must strictly comply with all deadlines and procedural requirements for submitting claims, opting out, or objecting to the Settlement. Failure to do so will result in waiver of those rights.

#### 10. What am I giving up if I stay in the Class?

If you are a Settlement Class Member and you do not exclude yourself from the Settlement, you will give up your right to sue, continue to sue, or be part of any other lawsuit against Defendant or other released parties concerning the claims released by this Settlement. The Settlement Agreement describes the legal claims that you give up if you remain in the Settlement Class. The entire text of the Settlement Agreement can be viewed at [www.\[website\].com](http://www.[website].com).

### HOW TO GET BENEFITS—SUBMITTING A CLAIM FORM

#### 11. How can I get a payment?

To qualify for a cash payment, you must complete and submit a Claim Form by **[DATE]**. Claim Forms are available and may be filed online at [www.\[website\].com](http://www.[website].com). Claim Forms are also available by calling 1-\_\_\_\_-\_\_\_\_ or by writing to: *In re Dakota Eye Institute Data Security Litigation*, Settlement Administrator, P.O. Box XXXX XXXXXX

Be sure to read the Claim Form instructions carefully, include all required information, and your signature.

The Settlement Administrator will review your claim to determine the validity and amount of your payment.

#### 12. When will I get my payment?

The Court will hold a Final Approval Hearing on **[DATE]**, to decide whether to approve the Settlement. If the Court approves the Settlement, there may be appeals. It is always uncertain whether any appeals can be resolved favorably, and resolving them can take them, perhaps more than a year. Payments and credit monitoring services will be made after the Settlement is approved and becomes final (meaning there is no appeal from the order approving the Settlement). Updates regarding the Settlement will be posted on the Settlement website, [www.\[website\].com](http://www.[website].com).

### THE LAWYERS REPRESENTING YOU

#### 13. Do I have a lawyer in this case?

Yes. The Court appointed Nathan D. Prosser of Hellmuth & Johnson PLLC, and Philip Krzeski of Chestnut Cambronne PA to represent you and the other the Settlement Class Members. These lawyers are called Class Counsel. These lawyers and their firms are experienced in handling similar cases. You will not be charged for their services.

#### 14. Should I get my own lawyer?

If you want your own lawyer, you may hire one, but you will be responsible for any payment for that lawyer's services. For example, you can ask your own lawyer to appear in court for you if you want someone other than Class Counsel to speak for you. You may also appear for yourself without a lawyer.

#### 15. How will the lawyers be paid?

The attorney representing the Class have not yet received any payment for her legal services or any reimbursement of the costs or out-of-pocket expenses she has incurred. Defendant will pay \$350,000 to Plaintiff's Counsel for attorneys' fees and expenses and agrees not to challenge a petition for an award of attorneys' fees and reasonable expenses of \$350,000. Any attorneys' fees, costs, expenses, or service awards shall be paid to Class Counsel within 12 days from the Effective Date.

The Settlement Class is represented by the Plaintiffs named above, who have been designated as the "Class Representatives." Class Representatives may make a claim for benefits like all other Settlement Class Members but will also each request a \$2,000 award for the efforts they have expended on behalf of the Settlement Class.

The Court will determine whether to approve the amount of fees and costs and expenses requested by Class Counsel, as well as the amount of the service awards for the Class Representatives. Class Counsel will file an application for fees, expenses, and service awards no later than [DATE]. The application will be available on the Settlement Website, [www.\[website\].com](http://www.[website].com), or you can request a copy by contacting the Settlement Administrator.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

### 16. How do I get out of the Settlement?

If you are a Settlement Class Member and you do not want the benefits from the Settlement, and you want to keep your right, if any, to sue the Defendant or released parties on your own about the legal issues in this case, then you must take steps to get out of the Settlement. This is called excluding yourself from—or "opting out" of—the Settlement Class.

You may opt out of the Settlement by [DATE]. To opt out, you must complete and submit an Exclusion Request Form online at [www.website.com](http://www.website.com) or send a letter to the Settlement Administrator containing:

- Your full name and current address;
- A clear statement saying you elect to be excluded from the Settlement in *In re Dakota Eye Institute Data Security Litigation*, No. 08-2023-cv-02710; and
- Your signature.

You must submit your Exclusion Request Form online by [DATE] or by mail postmarked no later than [DATE], to:

*In re Dakota Eye Institute Data Security Litigation. Settlement Administrator*  
P.O. Box XXXX  
XXXXXX

If you fail to include the required information, your request will be deemed invalid and you will remain a Settlement Class Member and be bound by the Settlement, including all releases.

### 17. If I am a Settlement Class Member and don't opt out, can I sue the Defendant for the same thing later?

No. You must opt out of the Settlement to keep your right to sue Defendant or other released parties for any of the claims resolved by the Settlement.

### 18. What happens if I opt out?

If you opt out of the Settlement, you will not have any rights as a member of the Settlement Class. You will not receive a payment or credit monitoring services as part of the Settlement. You will not be bound by the Settlement, releases, or by any further orders or judgments in this case. You will keep the right, if any, to sue on the claims alleged in the case at your own expense.

In addition, if you opt out of the Settlement, you cannot object to this Settlement because the Settlement no longer affects you. If you object to the Settlement and request to exclude yourself, your objection will be voided, and you will be deemed to have excluded yourself.

## OBJECTING TO THE SETTLEMENT

### 19. How do I tell the Court that I do not like the Settlement?

If you are a Settlement Class Member and you do not opt out of the Settlement, you can object to the Settlement if you do not think it is fair, reasonable, or adequate. You can give reasons why you think the Court should not approve the Settlement. You can't ask the Court to change or order a different settlement; the Court can only approve or deny this Settlement. The Court will consider your views before making a decision. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

You may object to any part of the proposed Settlement in writing. You may also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney.

All notices of an intent to object to the Class Settlement Agreement must be written and should include all of the following:

1. The case name and number (*In re Dakota Eye Institute Data Security Litigation*, Case No. 08-2023-cv-02710);
2. Your full name, current address, telephone number, and email address;
3. A sworn statement or documentation indicating that you are a member of the Settlement Class;
4. The reasons why you object to the Settlement, including any documents supporting your objection;
5. The name, address, and telephone number of your attorney (if any) representing you in your objection, including any former or current counsel who may be entitled to compensation for any reason if your objection is successful, and legal and factual support for the right to such compensation;
6. A statement indicating whether you or your attorney intend to appear at the Final Approval Hearing;
7. If you have retained an attorney and your attorney will appear at the Final Approval Hearing:
  - a. The name, address, telephone number, and email address of your attorney;
  - b. A list of all persons who will be called to testify in support of the objection;
  - c. Copies of any papers, briefs, or other documents upon which the objection is based;
  - d. A list of all other class actions in which you or your attorney has been involved in presenting objections over the last five years (whether or not you or your attorney appeared in the matter); and
  - e. Your attorney's signature
8. Your signature.

Completed objections must be submitted online at [www.website.com](http://www.website.com) by [DATE] or mailed to *In re Dakota Eye Institute Data Security Litigation*, Settlement Administrator, P.O. Box \_\_\_\_\_ postmarked by [DATE].

### 20. What's the difference between objecting and opting out?

Objecting is telling the Court that you don't like something about the Settlement. Excluding yourself is telling the Court you do not want to be part of the Class in this Settlement. If you exclude yourself from the Settlement, you have no basis to object or file a claim because the Settlement no longer applies to you.

## THE COURT'S FINAL APPROVAL HEARING

### 21. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing (also called the Fairness Hearing) at [Date and Time], at the [redacted]. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will take into consideration any properly-filed written objections and may also listen to people who asked to speak at the hearing. The Court will also decide whether to approve payments of fees, expenses, and service awards.

The Court may reschedule the Final Approval Hearing or change any of the deadlines described in this notice. The date of the Final Approval Hearing may change without further notice to the Settlement Class Members. Be sure to check the website, [www.\[website\].com](http://www.[website].com) for updates.

If the Settlement is not finally approved by the Court, or if the Effective Date does not occur, Dakota Eye Institute expressly reserves all rights, claims, and defenses as if no settlement had been negotiated or proposed, and the parties will be restored to their respective positions in the litigation.

## **22. 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 wish. If you send an objection, you do not have to come to the hearing to talk about it. As long as you mailed or filed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

## **23. May I speak at the Final Approval Hearing?**

Yes. You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you should include a statement in your written objection (*see* Question 19) that you intend to appear at the hearing. Be sure to include your name, address, and signature as well. It is in the judge's discretion to let you speak at the Final Approval Hearing. You cannot speak at the hearing if you exclude yourself from the Class.

## **IF I DO NOTHING**

## **24. What happens if I do nothing at all?**

If you do nothing, you will not receive a cash payment or credit monitoring services from this Settlement. If the Court approves the Settlement, you will be bound by the Settlement Agreement. This means you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Defendant about the issues resolved by this Settlement and released by the Settlement Agreement.

## **GETTING MORE INFORMATION**

## **25. Are more details about the Settlement available?**

This notice summarizes the proposed Settlement—more details are in the Settlement Agreement and other case documents available at [www.\[website\].com](http://www.[website].com). You may also call 1-\_\_\_\_-\_\_\_\_, or write to the *In re Dakota Eye Institute Data Security Litigation*, Settlement Administrator, P.O. Box \_\_\_\_\_.

**All questions regarding the Settlement, claims process, or notice should be directed to the Settlement Administrator, not to Dakota Eye Institute, to ensure consistent and accurate information is provided to Class Members**

**PLEASE DO NOT CONTACT THE COURT, THE COURT CLERK'S OFFICE, OR DEFENDANT TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.**

## **Exhibit C**

**If You Received a Notice Letter of a Data Breach discovered in October 2023, you may be entitled to benefits from a class action settlement.**

If you are a person residing in the United States whose Private Information was compromised in the Data Breach of Dakota Eye Institute LLC, which was disclosed to the public on or about October 31, 2023, you may be part of a class action settlement. As part of the settlement, you may be able to file a claim for cash and credit monitoring services. This notice is only a summary. For more complete information, please read the full notice by visiting the website [www.website.com](http://www.website.com), by writing to the address at the bottom of the notice, or by calling toll-free (888) \_\_\_\_ - \_\_\_\_.

**What Are My Legal Rights?**

- If you wish to remain a member of the settlement class, you do not have to do anything. To receive money, you must file a claim. If the Court approves the proposed settlement, you will be bound by all of the Court's orders. This means you will not be able to make any claims against Dakota Eye Institute LLC or its customers that are covered by the settlement.
- If you wish to submit a claim, visit [www.website.com](http://www.website.com), and follow the instructions, or call toll-free (888) \_\_\_\_ - \_\_\_\_ to obtain a claim form. All claims must be submitted or postmarked by [DATE].
- If you do not wish to be a member of the settlement class, you must submit a letter to the Settlement Administrator at the address below postmarked by [DATE]. If you request to be excluded from the settlement class, you cannot submit a claim form.

*In re Dakota Eye Institute Data Security Litigation*  
c/o Claims Administrator

P.O. \_\_\_\_

\_\_\_\_\_  
(888) \_\_\_\_ - \_\_\_\_

## **Exhibit D**



STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

IN DISTRICT COURT  
SOUTH CENTRAL JUDICIAL DISTRICT

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**In re Dakota Eye Institute Data Security  
Litigation**

**Case No. 08-2023-cv-02710**

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**[PROPOSED]  
ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION  
FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT  
AND FOR CERTIFICATION OF SETTLEMENT CLASS**

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[ ¶ 1] This Litigation<sup>1</sup> comes before the Court on the motion of Plaintiffs Leo Bitterman, Dion Wolbaum II, Amy Ebel-Delorme, Dennis Johnston, and Vhonda Condry, on behalf of themselves and the Settlement Class they seek to represent, for an order granting Preliminary Approval of the class action Settlement between Plaintiffs and Defendant, Dakota Eye Institute LLP (“DEI”).

[ ¶ 2] Having considered the Plaintiffs' Unopposed Motion for Preliminary Approval, the declaration filed in support thereof, and having heard argument of counsel or otherwise reviewed the record, with good cause appearing therefore,

IT IS HERERY ORDERED THAT:

[ ¶ 3] The Parties have agreed to settle this Litigation upon the terms and conditions set forth in the Settlement Agreement, which has been filed with the Court. The Settlement Agreement, including all exhibits thereto, is preliminarily approved as fair, reasonable, and adequate. Class Counsel has investigated the facts and law relating to the matters alleged in the Consolidated Class Action Complaint, legal research as to the sufficiency of the claims, an evaluation of the risks

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<sup>1</sup> All capitalized terms used throughout this memorandum have the same meanings as those defined in the Settlement Agreement.

associated with continued litigation, trial, and/or appeal. The Settlement was reached as a result of arm's length negotiations between Class Counsel and counsel for DEI. The Settlement confers substantial benefits upon the Settlement Class, without the costs, uncertainties, delays, and other risks associated with continued litigation, trial, and/or appeal and is fair, adequate, and reasonable. Nothing in this Order, the Settlement Agreement, or any related documents or proceedings shall be construed as or deemed to be evidence of an admission or concession by Defendant Dakota Eye Institute LLP of any liability, wrongdoing, or unlawful conduct. The Settlement is a compromise of disputed claims and is entered into solely to avoid the burden, expense, and uncertainty of continued litigation. The Settlement is structured on a claims-made basis, such that only those Class Members who submit valid and timely claims will receive settlement benefits.

[ ¶ 4] The Court conditionally certifies, for settlement purposes only, the following Settlement Class:

**All natural persons residing in the United States whose Private Information was compromised in the Data Breach of Dakota Eye Institute LLC, which was disclosed to the public on or about October 31, 2023 (the “Class”).**

The Class specifically excludes: (i) the Judge assigned to evaluate the fairness of this settlement (including any members of the Court’s staff assigned to this case); (ii) Defendant’s officers and directors; and (iii) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Breach or who pleads nolo contendere to any such charge.

[ ¶ 5] The Court conditionally finds, for settlement purposes only and conditioned upon the entry of this Order and the Final Approval Order, that the prerequisites for a class action under N.D. R. Civ. P. 23(a)-(c) have been satisfied in that: (a) the number of members of the Settlement Class is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law

and fact common to the Settlement Class; (c) a class action will allow for the fair and efficient adjudication of the controversy at hand; and (d) the representative parties, Plaintiffs as Class Representatives and their experienced Class Counsel, have fairly and adequately represented the interests of the Settlement Class and will continue to do so. In making these findings, the Court has exercised its discretion in conditionally certifying the Settlement Class.

[ ¶ 6] The Court approves, as to form and content, the Notices, including the Postcard Notice and Long Form Notice, attached to the Agreement as Exhibits B and C. The Notices contain all of the essential elements necessary to satisfy the requirements of N.D. R. Civ. P. 23(g) and state due process provisions, including a description of the Settlement's material terms; a date by which members of the Settlement Class may opt-out of the Settlement; a date by which Settlement Class Members may object to the Settlement; the Final Approval Hearing date; and Settlement Website address where the members of the Settlement Class may access the Agreement, Long Form Notice, and other related documents.

[ ¶ 7] The Court approves the Notice Program, as described in the Agreement. As soon as possible after the entry of this order, and no later than 60 days prior to Final Approval Hearing, the Settlement Administrator will complete the Notice Program as provided in the Agreement. The Postcard Notice and Long Form Notice shall be updated by Class Counsel and DEI to include the correct dates and deadlines in the Notice before the Notice Program commences, based upon those dates and deadlines set by the Court herein. The Court finds that the Notice Program is reasonable, that it constitutes due, adequate, and sufficient notice to all persons entitled to receive Notice, and that it meets the requirements of due process and N.D. R. Civ. P. 23.

[ ¶ 8] The Notice will identify the opt-out and objection deadline at least 30 days prior to the Final Approval Hearing.

[ ¶ 9] Any member of the Settlement Class may, upon request, opt-out of the Settlement pursuant to N.D. R. Civ. P. 23(h) by submitting to the Settlement Administrator at the physical address listed in the Notice, an opt-out request letter. The written notice must (i) identify the case name and docket number, *In re Dakota Eye Institute Data Security Litigation*, Case No. 08-2023-cv-02710, in the District Court of Burleigh County, South Central Judicial District, North Dakota; (ii) identify the name and address of the individual seeking exclusion from the Settlement; (iii) be personally signed by the individual seeking exclusion; (iv) include a statement clearly indicating the individual's intent to be excluded from the Settlement; and (v) request exclusion only for that one individual whose personal signature appears on the request. To be effective, the written notice shall be postmarked no later than the Opt-Out Deadline. All those persons submitting valid and timely notices of exclusion shall not be entitled to receive any benefits of the Settlement.

[ ¶ 10] Any member of either or both of the Settlement Class, and who does not opt-out from the Settlement, may object to the terms of the proposed Settlement as reflected in the Agreement, the certification of the Settlement Class the entry of the Final Approval Order the amount of attorneys' fees and costs requested by Class Counsel, and/or the amount of the Service Awards requested for the Class Representatives. To be valid and considered by the Court, an objection must include: : (i) the objector's full name and address; (ii) the case name and docket number, *In re Dakota Eye Institute Data Security Litigation*, Case No. 08-2023-cv-02710, in the District Court of Burleigh County, South Central Judicial District, North Dakota; (iii) information identifying the objector as a Class Member, including proof that the objector is a member of the Class (e.g., copy of the objector's settlement notice, copy of original notice of the Data Breach, or a statement explaining why the objector believes they are a Class Member); (iv) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (v)

the identity of any and all counsel representing the objector in connection with the objection; (vi) a statement whether the objector and/or their counsel will appear at the Final Fairness Hearing; and (vii) the objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative (if any) representing him or her in connection with the objection. Objections must be mailed to Clerk of the Court, Class, Counsel, Defendant's counsel, and the Settlement Administrator at the at the physical addresses listed in the Long Form Notice. For an objection to be considered by the Court, the objection must be submitted no later than the last day of the Opt-Out Period (30 days before the Final Approval Hearing), as specified in the Notice. If submitted by mail, an objection shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (e.g. Federal Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label.

[ ¶ 11] Any Settlement Class Member who does not make his or her objection in the manner and by the date set forth in this Order shall be deemed to have waived any objections and shall be forever barred from raising such objections in this or any other action or proceeding, absent further order of the Court.

[ ¶ 12] Plaintiffs and DEI may file responses to any objections that are submitted. Any Settlement Class Member who timely files and serves an objection in accordance with this order may appear at the Final Approval Hearing either in person or through an attorney.

[ ¶ 13] For purposes of settlement only, the Court finds and determines that it will likely find at the final approval stage that Plaintiffs will fairly and adequately represent the interests of the Settlement Class in enforcing their rights in the Litigation, and appoints them Class

Representatives, and the following attorneys are preliminarily appointed as Class Counsel for the Settlement Class:

**HELLMUTH & JOHNSON PLLC**

Nathan D. Prosser (P02814)

8050 West 78<sup>th</sup> Street

Edina, MN 55439

Phone: (952) 941-4005

*nprosser@hjlawfirm.com*

**CHESTNUT CAMBRONNE PLLC**

Philip J. Krzeski

100 Washington Ave. S., Suite 1700

Minneapolis, MN 55401

Phone: (612) 339-7300

*pkrzeski@chestnutcambronne.com*

[ ¶ 14] The Parties have selected Verita Global, LLC to serve as the Settlement Administrator. The Court hereby approves of and appoints Verita Global, LLC as the Settlement Administer and directs Verita Global, LLC to commence the Notice Program and to otherwise comply with all obligations of the Settlement Administrator as outlined in the Agreement.

[ ¶ 15] Pleadings in support of Final Approval, inclusive of Class Counsel's application for attorneys' fees and costs and for Service Awards for the Class Representatives, shall be filed no later than 15 days before the last day of the Opt-Out Period. At the Final Approval Hearing, the Court will hear argument on Plaintiffs' Motion for Final Approval of the Settlement, and on Class Counsel's application for attorneys' fees and costs, and for Service Awards for the Class Representatives. In the Court's discretion, the Court will also hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement, to Class Counsel's application for attorneys' fees and costs, or the Service Awards application, provided the objectors submitted timely objections that meet all of the requirements listed in the Agreement and this Order.

[ ¶ 16] The dates of performance contained herein may be extended by order of the Court, for good cause shown, without further notice to the Settlement Class.

[ ¶ 17] The Settlement will not become effective unless the Court enters a Final Approval Order finally approving the Settlement. If the Agreement does not become effective in accordance with the Agreement, or if the Agreement is not finally approved, then the Agreement shall become null and void, and this Preliminary Approval Order shall be null and void and shall be vacated. In such a case, the Parties shall proceed in all respects as if the Agreement had not been executed and the Parties shall in no way be prejudiced in proceeding with or defending this Litigation, the provisional class certification effected herein will be null and void, and DEI shall have the right to oppose and object, on any and all grounds, to certification of the Settlement Class or any other classes at any future time.

[ ¶ 18] The Final Approval Hearing will be conducted in \_\_\_\_\_, North Dakota on 2025, at \_:\_ a.m./p.m. The hearing may be in person or virtually and the Court will advise the Parties at least 15 days prior to the hearing date. No later than 10 days before the hearing, the Settlement Administrator shall post to the Settlement Website the manner in which the hearing shall be held.

[ ¶ 19] All pretrial proceedings in this Litigation are stayed and suspended until further order of this Court, except such actions as may be necessary to implement the Agreement and this Preliminary Approval Order.

[ ¶ 20] Upon the entry of this Order, the Class Representatives and all members of the Settlement Class shall be provisionally enjoined and barred from asserting any claims against DEI and the Released Parties arising out of, relating to, or in connection with the Released Claims prior to the Court's decision as whether to grant Final Approval of the Settlement.

[ ¶ 21] This Settlement, and any and all negotiations, statements, documents, and/or proceedings in connection with the Settlement, shall not be construed or deemed to be evidence of an admission or concession by DEI of any liability or wrongdoing by DEI or any of its affiliates, agents, representatives, vendors, or any other person or entity acting on its behalf with respect to the conduct alleged in the Litigation or that the case was properly brought as a class action, and shall not be construed or deemed to be evidence of an admission or concession that any person suffered compensable harm or is entitled to any relief with respect to the conduct alleged in the Litigation. DEI may file the Agreement in any action or proceeding that may be brought against it 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.

[ ¶ 22] For the benefit of the Settlement Class and to protect this Court's jurisdiction, this Court retains continuing jurisdiction over the Settlement proceedings to ensure the effectuation thereof in accordance with the Settlement preliminarily approved herein and the related orders of this Court.

[ ¶ 23] Class Counsel and counsel for DEI are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Preliminary Approval Order or the Agreement, including making, without further approval of the Court minor changes to the form or content of the Notices that they jointly agree are reasonable or necessary.

[ ¶ 24] The Court confirms the following schedule (which the Court, upon showing of good cause by the Parties, may extend any of the deadlines):



Deadline to Complete Notice Program	60 days prior to the Final Approval Hearing
Deadline for Class Counsel to File the Motion for Final Approval of the Settlement, Application for Attorneys Fees, Costs, and Service Awards	45 days prior to the Final Approval Hearing
Deadline for Members of the Settlement Class to Opt-Out of the Agreement	30 days prior to the Final Approval Hearing
Deadline for Settlement Class Members to Object to the Settlement	30 days prior to the Final Approval Hearing
Deadline to Respond to Objections	15 days prior to the Final Approval Hearing
Final Approval Hearing	_____, 2025 at _____ a.m/p.m.

IT IS SO ORDERED.

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

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Judge of the District Court, North Dakota