

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF RIVERSIDE**

DONALD CROSSLIN and MATTHEW  
PAONE, individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

DAP HEALTH, INC.,

Defendant.

Case No. CVRI2500186

Assigned to: Hon. Harold W. Hopp  
Dept.: 1

**SETTLEMENT AGREEMENT**

The Parties<sup>1</sup>, who intend to fully, finally, and forever resolve, discharge, and settle all of Plaintiffs' Released Claims, by and through their respective counsel, in consideration for and subject to the promises, terms, and conditions contained in this Settlement Agreement, hereby warrant, represent, acknowledge, covenant, stipulate and agree, subject to Court approval, as follows:

**I. DEFINITIONS**

1. **"Action"** means the class action lawsuit entitled: *Donald Crosslin and Matthew Paone v. DAP Health, Inc.*, Case No. CVRI2500186, pending in the Riverside County Superior Court.

2. **"Administrative Expenses"** means all the expenses incurred in the administration of this Settlement, including, without limitation, all Notice Expenses, locating Settlement Class Members, providing Notice to Settlement Class Members, determining the eligibility of any person to be a Settlement Class Member, administrating and processing Settlement Class Member claims and Claim Forms, and administering, calculating, and distributing Cash Payments and Credit Monitoring to the Claimants with Valid Claims.

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

3. “**Agreement**” or “**Settlement**” or “**Settlement Agreement**” means this Settlement Agreement.

4. “**Application for Attorneys’ Fees, Costs, and Service Awards**” means the application made with the Motion for Final Approval of attorneys’ fees and costs for Class Counsel, and Service Awards for the Class Representatives.

5. “**Business Day(s)**” means Monday, Tuesday, Wednesday, Thursday, and Friday, excluding holidays observed by the State of California.

6. “**Cash Payment**” means compensation paid to Settlement Class Members who submitted a Claim and elected Cash Payment A – Documented Losses, Cash Payment B – Pro Rata Cash, and/or Cash Payment C – California Statutory Cash Payment.

7. “**Cash Payment A – Documented Losses**” means the Settlement Class Member Benefit consisting of a maximum payment of \$5,000.00, that Settlement Class Members, who incurred documented losses, may elect pursuant to Section V herein.

8. “**Cash Payment B – Pro Rata Cash**” means the Settlement Class Member Benefit in the estimated amount of \$25.00 that Settlement Class Members may elect pursuant to Section V herein.

9. “**Cash Payment C – California Statutory Cash Payment**” means the Settlement Class Member Benefit in the estimated amount of \$75.00 that Settlement Class Members may elect pursuant to Section V herein.

10. “**Claim**” means the submission of a Claim Form by a Claimant to elect a Cash Payment and/or Credit Monitoring.

11. “**Claim Form**” means the form attached hereto as ***Exhibit 1***, as approved by the Court. The Claim Form must be submitted physically (via U.S. Mail) or electronically (via the Settlement Website) by Settlement Class Members who wish to file a claim for Settlement benefits pursuant to the terms and conditions of this Agreement. The Claim Form shall be available for download from the Settlement Website. The Settlement Administrator shall mail a Claim Form, in hardcopy form, to any Settlement Class Member who so requests.

12. **“Claims Deadline”** means 90 days after the earliest day on which the Notice is first distributed and is the last day by which a Claim Form may be submitted to the Settlement Administrator for a Settlement Class Member to be eligible for a Cash Payment. The Claims Deadline shall be clearly set forth in the Long Form Notice, the Postcard Notice, the Claim Form, and the Court’s order granting Preliminary Approval.

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

14. **“Claims Period”** means the period during which Settlement Class Members may submit Claim Forms to receive their given share of the Settlement benefits and shall commence on the Notice Date and end on the Claims Deadline.

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

16. **“Class Counsel”** means John Nelson of Milberg, PLLC and Kristen Lake Cardoso of Kopelowitz Ostrow P.A.

17. **“Class List”** means the list of Settlement Class Members’ names and postal addresses that Defendant maintains that Defendant shall prepare and provide to the Settlement Administrator within 10 Business Days of Preliminary Approval.

18. **“Class Notice Date”** means 45 Days after the Court’s entry of the Preliminary Approval Order.

19. **“Class Representative(s)”** and **“Plaintiffs”** means those Plaintiffs who have signed this Agreement, including potentially, Donald Crosslin and Matthew Paone.

20. **“Complaint”** means the First Amended Complaint filed by Plaintiffs on June 6, 2025.

21. **“Court”** means the Riverside County Superior Court and the Judge(s) assigned to the Action.

22. **“Credit Monitoring”** means the two years of one-bureau of credit and medical records monitoring product provided through the Settlement that Settlement Class Members may

elect to receive pursuant to Section V herein.

23. **“Data Incident”** means the cybersecurity incident that took place in July of 2024 involving Defendant and resulting in the potential unauthorized access to or acquisition of Settlement Class Members’ Private Information.

24. **“Day(s)”** shall mean, for a period expressed in “day(s),” the number of calendar days identified in the period, excluding the day of the event that triggers the period, but including the last day of the period except when the last day is a Saturday, Sunday, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

25. **“Defendant”** means DAP Health, Inc., the defendant in the Action.

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

27. **“Documented Loss(es)”** refers to monetary losses incurred by a Settlement Class Member and supported by Reasonable Documentation for attempting to remedy losses that are more likely than not traceable to the Data Incident, and that have not been reimbursed through other means. A claim for a Documented Loss must be supported by Reasonable Documentation that a Settlement Class Member actually incurred unreimbursed losses and consequential expenses that are more likely than not traceable to the Data Incident. “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to support a Documented Loss, but can be considered to add clarity or support to other submitted documentation.

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

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

30. **“Fee and Expense Award”** means the amount of attorneys’ fees and

reimbursement of Litigation Costs awarded by the Court to Class Counsel.

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

32. **“Final Approval Hearing”** means the hearing held before the Court during which the Court will consider granting Final Approval of the Settlement and the Application for Attorneys’ Fees, Costs, and Service Awards pursuant to the California Code of Civil Procedure and whether to issue the Final Approval Order and Judgment.

33. **“Final Approval Order”** means the final order the Court enters granting Final Approval of the Settlement, which finally approves the Settlement Agreement.

34. **“Judgment”** means the judgment to be entered by the Court, which will be posted on the Settlement Website upon being entered.

35. **“Litigation Costs”** means reasonable litigation costs and expenses incurred by Class Counsel in connection with commencing, prosecuting, settling the Action, and obtaining an order of final judgment, in an amount not to exceed \$30,000.

36. **“Long Form Notice”** means the long form notice of the Settlement, substantially in the form attached hereto as *Exhibit 2*, that shall be posted on the Settlement Website and shall be available to Settlement Class Members by mail on request made to the Settlement Administrator.

37. **“Motion for Final Approval”** means the motion that Plaintiffs and Class Counsel shall file with the Court seeking Final Approval of the Settlement, including Class Counsel’s Application for Attorneys’ Fees, Costs, and Service Awards.

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

39. **“Net Settlement Fund”** means the Settlement Fund after deductions for the following: (a) reasonable Administrative Expenses incurred pursuant to this Settlement Agreement, (b) Taxes, (c) any Service Awards approved by the Court, and (d) any Fee and Expense Award approved by the Court.

40. “**Notice**” means the Postcard Notice, Publication Notice, Long Form Notice Settlement Website and settlement telephone line that Plaintiffs will ask the Court to approve in connection with the Motion for Preliminary Approval.

41. “**Notice Date**” means the date upon which Settlement Class Notice is first disseminated to the Settlement Class, which shall be within 45 Days after entry of the Preliminary Approval Order.

42. “**Notice Plan**” means the methods provided for in this Agreement for giving Notice to the Settlement Class and consists of the Postcard Notice, Publication Notice, Long Form Notice, Settlement Website and toll-free Settlement telephone line.

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

44. “**Objection Deadline**” means 30 days before the initial scheduled Final Approval Hearing. The deadline for filing an objection will be clearly set forth in the Settlement Class Notice.

45. “**Objection Form**” means the form attached hereto as ***Exhibit 3***, as approved by the Court. The Objection Form must be submitted physically (via U.S. Mail) by Settlement Class Members. The Objection Form shall be available for download from the Settlement Website.

46. “**Opt-Out Deadline**” means 30 days before the initial scheduled Final Approval Hearing. The deadline for filing an Opt-Out Request will be clearly set forth in the Settlement Class Notice.

47. “**Opt-Out Form**” means the form attached hereto as ***Exhibit 4***, as approved by the Court. The Opt-Out Form must be submitted physically (via U.S. Mail) by Settlement Class Members. The Opt-Out Form shall be available for download from the Settlement Website.

48. “**Opt-Out Request**” is the written communication by or on behalf of a Settlement Class Member in which he or she requests to be excluded from the Settlement Class pursuant to the terms of the Agreement. The deadline to submit an Opt-Out Request is the date that falls on the last Day of the Opt-Out Period.

49. **“Participating Settlement Class Member”** means a Settlement Class Member who submits a Valid Claim for their given share of the Settlement benefits pursuant to the terms and conditions of this Agreement.

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

51. **“Plaintiffs”** means Donald Crosslin and Matthew Paone, the plaintiffs in the Complaint.

52. **“Postcard Notice”** means the postcard notice of the Settlement, substantially in the form attached hereto as ***Exhibit 5*** that the Settlement Administrator shall disseminate to Settlement Class Members by mail.

53. **“Preliminary Approval”** means the preliminary approval of the Settlement, which occurs when the Court enters the Preliminary Approval Order.

54. **“Preliminary Approval Order”** means the order preliminarily approving the Settlement and proposed Notice Program, substantially in the form attached hereto as ***Exhibit 6***.

55. **“Private Information”** means information collected and/or maintained by Defendant, including, but not limited to names, Social Security numbers, addresses, dates of birth, phone numbers, driver’s license numbers, passport numbers, birth certificate numbers, vehicle license plate and VIN numbers, financial account numbers, Medicare/Medicaid numbers, health insurance plan and policy numbers, medical diagnoses, medical procedures and treatments, procedure/treatment dates and locations, treatment costs, laboratory test results and images, vital signs records, medical histories, allergies, prescription drugs taken and written, medical provider names, and other sensitive data.

56. **“Publication Notice”** means notice of the settlement to be published in the *Press-Enterprise*, a newspaper of general circulation in Riverside County pursuant to California Government Code § 6000, et seq.

57. **“Reasonable Documentation”** means documentation supporting a claim for a Documented Loss including, but not limited to, credit card statements, bank statements, invoices,

telephone records, photographs, and receipts. Documented Losses cannot be documented solely by a personal certification, declaration, or affidavit from the Claimant; the Claimant must provide supporting documentation in addition to any such certification, declaration, or affidavit. “Self-prepared” documents such as handwritten receipts, by themselves, do not constitute Reasonable Documentation, but can be considered to add clarity or support to other submitted documentation.

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

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

60. **“Released Parties”** means Defendant and each entity which is controlled by, controlling or under common control with Defendant and its officers, directors, agents, servants, and employees. This shall also refer to Defendant’s insurer Tokio Marine HCC, as they will fund the settlement on behalf of the Defendant. The term shall also refer to Defendant’s subsidiary, Borrego Health, as they were identified in the Defendant’s breach notification letters to the Settlement Class.

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

62. **“Service Awards”** means the payments the Court may award the Plaintiffs for

serving as Class Representatives, which is in addition to any Settlement Class Member Benefit due to Plaintiffs as Settlement Class Members.

63. **“Settlement Administrator”** means the qualified third-party administrator and agent agreed to by the Parties and approved and appointed by the Court in the Preliminary Approval Order to administer the Settlement, including providing the Notice. The Parties agree to recommend that the Court appoint Epiq as Settlement Administrator to: design, consult on, and implement the Notice and related requirements of this Agreement; implement the Notice, the Settlement Website, the submission and review of Claim Forms, and related requirements of this Agreement, subject to the Court’s approval.

64. **“Settlement Administration Costs”** means all costs and fees of the Settlement Administrator relating to Notice and Settlement administration.

65. **“Settlement Class”** means all individuals in the United States whose Private Information was compromised in the Data Incident, including all individuals who received notice of the Data Incident and who have not opted-out of the Settlement. The Settlement Class consists of approximately 129,973 individuals. Excluded from the Settlement Class are: (a) the Judges presiding over the Action, Class Counsel, and members of their families; (b) Defendant and its subsidiaries, parent companies, successors, predecessors, and any entity in which Defendant or its parents, have a controlling interest, and its current or former officers and directors; (c) persons who properly execute and submit an Opt-Out Request prior to the expiration of the Opt-Out Period; and (d) the successors or assigns of any such excluded persons.

66. **“Settlement Class List”** means the list generated by Defendant containing the name, email (if available), and last known physical mailing address for persons that fall under the definition of the Settlement Class, which Defendant will provide to the Settlement Administrator within 10 Business Days of the entry of the Preliminary Approval Order.

67. **“Settlement Class Member”** means any member of the Settlement Class.

68. **“Settlement Class Member Benefit(s)”** means Cash Payments and Credit Monitoring that Settlement Class Members may elect to claim pursuant to Section V herein.

69. **“Settlement Fund”** means the non-reversionary \$1,300,000.00 in cash that Defendant is obligated to fund or cause to be funded under the terms of the Settlement.

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

71. **“Taxes”** means (a) any and all applicable taxes, duties, and similar charges imposed by a government authority (including any estimated taxes, interest or penalties) arising in any jurisdiction, if any, with respect to the income or gains earned by or in respect of the Settlement Fund, including, without limitation, any taxes that may be imposed upon Defendant or its counsel with respect to any income or gains earned by or in respect of the Settlement Fund for any period while it is held in the Settlement Fund; (b) any other taxes, duties and similar charges imposed by a government authority (including any estimated taxes, interest or penalties) relating to the Settlement Fund that the Settlement Administrator determines are or will become due and owing, if any; and (c) any and all expenses, liabilities and costs incurred in connection with the taxation of the Settlement Fund including without limitation, expenses of tax attorneys and accountants).

72. **“Valid Claim”** means a Claim Form submitted by a Settlement Class Member that is: (a) submitted in accordance with the provisions of the Settlement; (b) accurately, fully, and truthfully completed and executed, with all of the information requested in the Claim Form, by a Settlement Class Member; (c) signed physically or by e-signature by a Settlement Class Member personally, subject to the penalty of perjury; (d) returned via mail and postmarked by the Claim Form Deadline, or, if submitted online, submitted by 11:59 p.m. Pacific time on the Claim Form Deadline; and (e) determined to be valid by the Settlement Administrator. The Settlement Administrator may require additional information from the Claimant to validate the Claim,

including, but not limited to, answers related to questions regarding the validity or legitimacy of the physical or e-signature. Failure to respond to the Settlement Administrator's Notice of Deficiency may result in a determination that the Claim is not a Valid Claim.

## **II. RECITALS**

73. On or about July 22, 2024, Defendant experienced a cybersecurity attack that affected its computer systems.

74. Defendant's subsequent investigation determined that during the Data Incident an unauthorized actor accessed certain files that contained Private Information on its systems.

75. Following an investigation to identify individuals whose Private Information may have been affected, Defendant began notifying potentially impacted individuals about the Data Incident in December 2024.

76. On January 10, 2025, the Plaintiff Crosslin filed a class action lawsuit titled *Crosslin v. DAP Health, Inc.*, case number CVRI2500186, with the Court.

77. On February 5, 2025, Plaintiff Paone filed a class action lawsuit titled *Paone v. DAP Health, Inc.*, case number CVRI2500382, with the Court. Plaintiff Paone subsequently dismissed this lawsuit on May 13, 2025 without prejudice, with the intention of joining Plaintiff Crosslin's lawsuit via an amended complaint.

78. On June 6, 2025, Plaintiffs filed their First Amended Class Action Complaint in the lawsuit filed by Plaintiff Crosslin, asserting claims for negligence, breach of implied contract, unjust enrichment, violation of the California Confidentiality of Medical Information Act (Cal. Civ. Code § 56.36 *et seq.*), violation of California's Unfair Competition Law (Cal Bus. & Prof. Code § 17200, *et seq.*), and violation of the California Consumer Privacy Act (Cal. Civ. Code §§ 1798.100 *et seq.*, § 1798.150(a)).

79. Defendant denies all material allegations in the Action, denies wrongdoing of any kind, denies that it is liable on any of the claims asserted, and maintains that a class action cannot properly be certified for purposes of litigation and trial, as opposed to for purposes of settlement.

80. Before entering into this Settlement Agreement, Plaintiffs, by and through their

respective counsel, conducted a thorough examination, investigation, and evaluation of the relevant law, facts, and allegations to assess the merits of the claims and potential claims to determine the strength of liability, potential remedies, and all defenses thereto.

81. This Settlement was reached as a result of extensive arm's-length negotiations between the Parties and their counsel, and after an all-day mediation session with respected mediator, Jill Sperber of Judicate West. Before and during these settlement discussions and mediation, the Parties had an arm's-length exchange of sufficient information to permit Plaintiffs and their counsel to evaluate the claims and potential defenses and to meaningfully conduct informed settlement discussions.

82. As a result of extensive, arm's-length negotiations, Plaintiffs and Class Counsel, on behalf of the Settlement Class, and Defendant entered into this Agreement to settle and resolve the class claims alleged in the Action.

83. Pursuant to the terms set forth below, this Agreement resolves all claims, actions, and proceedings asserted, or that could be asserted, against Defendant arising out of or related to the Data Incident, as set forth in the release contained herein, by or on behalf of members of the Settlement Class herein defined but excluding the rights of Class Members who opt out from the Settlement Class pursuant to the terms and conditions herein.

84. Class Counsel, on behalf of the Plaintiffs and the Settlement Class, have thoroughly examined the law and facts relating to the matters at issue in the Action, Plaintiffs' claims, and Defendant's potential defenses, including conducting an independent investigation, as well as an assessment of the merits of expected arguments in a motion for class certification. Based on an analysis of the facts and the law applicable to Plaintiffs' claims in the Action, and taking into account the burden, expense, and delay of such continued litigation, including the risks and uncertainties associated with class certification and other defenses Defendant may assert, a protracted trial and appeal(s), as well as the fair, cost-effective, and assured method of resolving the claims of the Settlement Class, Plaintiffs and Class Counsel believe that resolution is an appropriate and reasonable means of ensuring that the Settlement Class is afforded important

benefits as expediently as possible. Plaintiffs and Class Counsel have also taken into account the uncertain outcome and the risk of further litigation, as well as the difficulties and delays inherent in such litigation.

85. Plaintiffs and Class Counsel believe that the terms set forth in this Settlement Agreement confer substantial benefits upon the Settlement Class and have determined that they are fair, reasonable, adequate, and in the best interests of the Settlement Class.

86. Defendant has similarly concluded that this Settlement Agreement is desirable to avoid the time, risk, and expense of defending protracted litigation, and to resolve finally and completely the claims of Plaintiffs and the Settlement Class.

87. This Settlement Agreement, whether consummated or not, and any actions or proceedings taken pursuant to this Settlement Agreement, are for settlement purposes only and Defendant specifically denies any and all wrongdoing and any liability in connection with the Data Incident. The existence of, terms in, and any action taken under or in connection with this Settlement Agreement shall not constitute, be construed as, or be admissible in evidence as, any admission by Defendant of (a) the validity of any claim or fact asserted in the Action or any other pending or future action or (b) any wrongdoing, fault, violation of law, or liability of any kind on the part of Defendant or any of the Released Parties.

### **III. TERMS OF SETTLEMENT**

88. It is hereby stipulated and agreed, by and among Plaintiffs, individually and on behalf of the Settlement Class, and Defendant that, subject to Court approval, the Action and Plaintiffs' Released Claims shall be finally and fully compromised, settled, and released, and that the Judgment and Final Approval Order shall be entered subject to the following terms and conditions of this Settlement Agreement.

89. Preliminary Approval. Class Counsel shall submit this Agreement to the Court and shall move the Court to enter the Preliminary Approval Order.

90. Cooperation. The Parties shall, in good faith, cooperate, assist, and undertake all reasonable actions and steps to accomplish all requirements of this Agreement on the schedule set

by the Court, subject to the terms of this Agreement.

91. Certification of the Settlement Class. For purposes of this Settlement only, Plaintiffs and Defendant stipulate to the certification of the Settlement Class, pursuant to California Code of Civil Procedure §§ 382 *et seq.*, which is contingent upon the Court entering the Final Approval Order and Judgment of this Settlement and the occurrence of the Effective Date. Should (a) the Settlement not receive Final Approval from the Court, or (b) the Effective Date not occur, the certification of the Settlement Class shall be void. Plaintiffs and Defendant further stipulate to designate the Class Representatives as the representatives for the Settlement Class.

92. Final Approval. Class Counsel shall move the Court for Final Approval and entry of the Final Approval Order and Judgment no later than 14 Days prior to the Final Approval Hearing.

93. Releases

a. The Release. 10 days after the Effective Date, and in consideration of full payment of the Settlement Fund by Defendant and the Settlement benefits described herein, each Releasing Party shall be deemed to have released, acquitted, and forever discharged Defendant and each of the Released Parties from any and all Released Claims.

b. Exclusive Remedy. This Agreement shall be the sole and exclusive remedy of the Releasing Parties against any of the Released Parties relating to any and all Released Claims. Upon the entry of the Judgment, each and every Releasing Party shall be permanently barred and enjoined from initiating, asserting and/or prosecuting any Released Claim(s) against any of the Released Parties in any court, arbitration, tribunal, forum, or proceeding.

c. Jurisdiction of the Court. Without affecting the finality of the Final Approval Order and Judgment in any way, and even after the Effective Date, pursuant to Code of Civil Procedure § 664.6, the Court shall retain exclusive and continuing jurisdiction over the implementation of the Settlement, Action, the Parties, Settlement Class Members, and the Settlement Administrator in order to interpret and enforce the

terms, conditions, and obligations of this Agreement.

94. Settlement Fund.

a. Initial Deposit and Final Payment. Defendant's insurance carrier shall pay an initial payment into the Settlement Fund 30 days after the Court enters the Preliminary Approval Order and Defendant receives a W9 and payment instructions from the Settlement Administrator. The initial payment is expected to cover reasonable costs associated with the Notice Plan and any other Administrative Expenses incurred prior to entry of the Final Approval Order and the Judgment. The remainder of the Settlement Fund shall be paid to the Settlement Administrator no later than 30 days after the Effective Date. For the avoidance of doubt, and for purposes of this Settlement Agreement only, Defendant's liability shall not exceed \$1,300,000.00 absent an express written agreement between the Parties to the contrary.

b. Custody of Settlement Fund. The Settlement Fund shall be deposited in an appropriate trust established by the Settlement Administrator pursuant to the terms and conditions set forth below; but it shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed pursuant to this Settlement Agreement or returned to those who paid the Settlement Fund in the event this Settlement Agreement is voided, terminated, or cancelled. In the event this Settlement Agreement is voided, terminated, or cancelled due to lack of approval from the Court or any other reason: (a) the Class Representatives and Class Counsel shall have no obligation to repay any of the Administrative Expenses that have been paid or incurred in accordance with the terms and conditions of this Agreement; (b) any amounts remaining in the Settlement Fund after payment of Administrative Expenses paid or incurred in accordance with the terms and conditions of this Agreement, including all interest earned on the Settlement Fund net of any Taxes, shall be returned to Defendant and (c) no other Person shall have any further claim whatsoever to such amounts.

95. Non-Reversionary. This Settlement is not a reversionary settlement. As of the

Effective Date, all rights of Defendant in or to the Settlement Fund shall be extinguished, except in the event this Settlement Agreement is voided, cancelled, or terminated, as described in Section 9 of this Agreement. In the event the Effective Date occurs, no portion of the Settlement Fund shall be returned to Defendant.

96. Use of the Settlement Fund. As further described in this Agreement, the Settlement Fund shall be used by the Settlement Administrator to pay for: (a) all Administrative Expenses; (b) any Taxes; (c) any Service Awards; (d) any Fee and Expense Award; (e) Cash Payments and/or Settlement benefits, pursuant to the terms and conditions of this Agreement; and (f) any other Settlement benefits.

97. Financial Account. The Settlement Fund shall be an account established and administered by the Settlement Administrator, at a financial institution (that is not any of the Released Parties) recommended by the Settlement Administrator and approved by Class Counsel and Defendant, and shall be maintained as a qualified settlement fund pursuant to Treasury Regulation § 1.468 B-1, *et seq.*

98. Payment/Withdrawal Authorization. No amounts from the Settlement Fund may be withdrawn unless (a) expressly authorized by the Settlement Agreement and Class Counsel or (b) approved by the Court. The Parties, by agreement, may authorize the periodic payment of actual reasonable Administrative Expenses from the Settlement Fund as such expenses are invoiced without further order of the Court. The Settlement Administrator shall provide Class Counsel and Defendant with notice of any withdrawal or other payment the Settlement Administrator proposes to make from the Settlement Fund before the Effective Date at least 7 Business Days prior to making such withdrawal or payment.

99. Payments to Class Members. The Settlement Administrator, subject to such supervision and direction of the Court and/or Class Counsel as may be necessary or as circumstances may require, shall administer and/or oversee distribution of the Settlement Fund to Participating Settlement Class Members pursuant to this Agreement.

100. Treasury Regulations & Fund Investment. The Parties agree that the Settlement

Fund is intended to be maintained as a qualified settlement fund within the meaning of Treasury Regulation § 1.468 B-1, and that the Settlement Administrator, within the meaning of Treasury Regulation § 1.468 B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of the Settlement Fund and paying from the Settlement Fund any Taxes 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. All interest on the funds in the Escrow Account shall accrue to the benefit of the Settlement Class. Any interest shall not be subject to withholding and shall, if required, be reported appropriately to the Internal Revenue Service by the Settlement Administrator. The Settlement Administrator is responsible for the payment of all Taxes.

101. 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 the tax treatment by any Class Representative or any Settlement Class Member of any payment or transfer made pursuant to this Agreement or derived from or made pursuant to the Settlement Fund. Each Class Representative and Settlement Class Member shall be solely responsible for the federal, state, and local tax consequences to him or her of the receipt of funds from the Settlement Fund pursuant to this Agreement.

102. Limitation of Liability.

a. Defendant and Defendant's Counsel shall not have any responsibility for or liability whatsoever with respect to (a) any act, omission or determination of Class Counsel, the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (b) the management, investment or distribution of the Settlement Fund; (c) the formulation, design or terms of the disbursement of the Settlement Fund; (d) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (e) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (f) the payment or withholding of any Taxes, expenses and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.

b. Class Representatives and Class Counsel shall not have any liability whatsoever with respect to (a) any act, omission or determination of the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (b) the management, investment or distribution of the Settlement Fund; (c) the formulation, design or terms of the disbursement of the Settlement Fund; (d) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (e) any losses suffered by or fluctuations in the value of the Settlement Fund; or (f) the payment or withholding of any Taxes, expenses and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.

c. The Settlement Administrator shall indemnify and hold Class Counsel, the Settlement Class, Class Representatives, Defendant, and Defendant's Counsel harmless for (a) any act or omission or determination of the Settlement Administrator, or any of Settlement Administrator's designees or agents, in connection with the Notice Plan and the administration of the Settlement; (b) the management, investment or distribution of the Settlement Fund; (c) the formulation, design or terms of the disbursement of the Settlement

Fund; (d) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (e) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (f) the payment or withholding of any Taxes, expenses and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.

#### **IV. SETTLEMENT BENEFITS**

103. Prospective Relief. Without admitting any liability, Defendant agrees, as a material term of this Settlement, to implement and maintain certain cybersecurity, data privacy protocols, and deploy additional security measures.

104. Cash Payments. Each Participating Settlement Class Member may qualify for the following Cash Payments:

a. Cash Payment A - Documented Losses. Participating Settlement Class Members may submit a claim for a Cash Payment of up to \$5,000.00 for reimbursement of Documented Losses. To make a claim for Documented Losses, a Settlement Class Member must submit to the Settlement Administrator the following: (a) a Claim Form electing to receive “Cash Payment A – Documented Losses”; (b) an attestation regarding any actual and unreimbursed Documented Loss; and (c) Reasonable Documentation that demonstrates the Documented Loss to be reimbursed pursuant to the terms of the Settlement. Any Participating Settlement Class Member who submits a Claim for Cash Payment A - Documented Losses that is rejected by the Settlement Administrator and that is not cured, and did not make a Claim Payment B – Pro Rata Cash, will be considered as a Claim for Cash Payment B – Pro Rata Cash.

b. Cash Payment B – Pro Rata Cash. In addition to any claim for Cash Payment A - Documented Losses, each Participating Class Member may submit a claim to receive Cash Payment B – Alternate Cash, which will be adjusted on a *pro rata* basis. The amount of the payments for Cash Payment B – Pro Rata Cash will be determined in accordance with the Plan of Allocation in Section 4.7 after amounts sufficient to pay Valid Claims for benefits have been deducted from the Settlement Fund. Plaintiffs will not need to supply

any documentary proof to select this option. Based on their collective experience from prior cases, Class Counsel estimates the approximate amount of the payment will be approximately \$25.00.

c. Cash Payment C-California Statutory Cash Payment. In addition to the above, all Settlement Class Members to whom Defendant mailed Notice of the Data Incident and who were residents of the State of California on July 22, 2024, may claim a separate statutory award of \$75.00 in recognition of their release of claims under the California Consumer Privacy Act. The amount of the California Statutory Cash Payment may be adjusted if the total amount of claims exceeds the Settlement Fund and will be calculated in accordance with Section 4.7 herein.

105. Credit Monitoring. In addition to the above, Settlement Class Members may elect to receive 2 years of credit and medical record monitoring services, which will include 1-bureau credit monitoring that will provide notice of changes to the Participating Settlement Class Member's credit profile, fraud consultation, identity theft restoration services, and up to \$1 million dollars of identity theft insurance coverage.

106. Cash Payment Methods. Participating Settlement Class Members will be provided the option to receive any Cash Payment due to them pursuant to the terms of this Agreement via various digital methods, *e.g.*, PayPal, Venmo, etc. In the event Participating Settlement Class Members do not exercise this option, they will receive their Cash Payment via a physical check sent by U.S. Mail.

107. Deadline to File Claims. Claim Forms must be received on or before the Claims Deadline.

108. The Settlement Administrator. The Settlement Administrator shall have the sole authority to determine whether a Claim Form is substantially valid, timely, and complete, and to what extent a Claim Form is electing to receive a Documented Loss Payment. To the extent the Settlement Administrator determines a claim is deficient for a reason other than late posting, within 7 Days of making such a determination, the Settlement Administrator shall notify the Claimant of

the deficiencies and that Claimant shall have 20 Days to cure the deficiencies and re-submit the claim. No notification is required for late-posted claims. The Settlement Administrator shall exercise reasonable discretion to determine whether the Claimant has cured the deficient claim. If the Claimant fails to cure the deficiency, the claim shall stand as determined.

109. Distribution of Cash Payments.

a. It is the intention of the Parties to distribute to Class Members as much of the Settlement Fund as practicable. Accordingly, the Settlement Fund shall be used to make payments in the following order: (a) all Administrative Expenses (including applicable Taxes, if any), (b) Class Counsel's attorneys' fees and cost and Court-approved Service Awards for the Class Representatives, (c) the costs of providing Credit Monitoring, (d) Valid Claims for Cash Payment A - Documented Losses; (e) Valid Claims for Cash Payment C - California Statutory Cash Payment; and (f) Valid Claims for Cash Payment B – Pro Rata Cash. The remaining amount is the Net Settlement Fund. The amount of the Cash Payment B – Pro Rata Cash payments shall be the Net Settlement Fund divided by the number of Valid Claims submitted for that option.

b. In the event the Settlement Fund is insufficient to cover the payment for the Credit Monitoring claimed by Participating Settlement Class Members, the duration of the Credit Monitoring coverage will be reduced to exhaust the fund. In such an unanticipated event, no Net Settlement Funds will be distributed to Claimants for Valid Claims for Cash Payments. In the unanticipated event that the aggregate amount of payments for all Documented Losses and Credit Monitoring exceeds the total amount of the Net Settlement Fund, then the value of the payment for Documented Losses to each Participating Settlement Class Member shall be reduced, on a *pro rata* basis, such that the aggregate value of all payments for all Documented Losses and Credit Monitoring will not exceed the Net Settlement Fund. If that occurs, no Net Settlement Funds will be distributed to Claimants with Valid Claims for Cash Payment B – Pro Rata Cash or Cash Payment C – California Statutory Cash payments. All such determinations shall be performed by the

Settlement Administrator.

110. Deadline to Deposit or Cash Physical Checks. Settlement Class Members with Valid Claims who receive a Cash Payment by physical check shall have 90 Days following distribution to deposit or cash their settlement check. Cashing a settlement check (paper or electronic) is a condition precedent to any Settlement Class Member's right to receive benefits under the Settlement. 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."

111. Uncashed Funds. For monetary relief claimed but not cashed by Settlement Class Members, the Claims Administrator shall submit the total of all such uncashed monetary relief to Electronic Frontier Foundation ("EFF"), the leading nonprofit defending digital privacy, free speech, and innovation for 35 years and counting. *See* <https://www.eff.org/>.

112. Returned Checks. For any Cash Payment returned to the Settlement Administrator as undeliverable (including, but not limited to, when the intended recipient is no longer located at the address), the Settlement Administrator shall make reasonable efforts to find a valid address and resend the Cash Payment within 20 Days after the check is returned to the Settlement Administrator as undeliverable. The Settlement Administrator shall only make one attempt to resend a Cash Payment.

## **V. SETTLEMENT ADMINISTRATION**

113. Submission of Claims.

a. Submission of Electronic and Hard Copy Claims. Settlement Class Members may submit electronically verified Claim Forms to the Settlement Administrator through the Settlement Website, or may download Claim Forms to be filled out, signed, and submitted physically by mail to the Settlement Administrator. Claim Forms must be submitted electronically or postmarked during the Claims Period and on or before the Claims Deadline. The Settlement Administrator shall reject any Claim Forms that are incomplete, inaccurate, or not timely received and will provide Claimants notice and the ability to cure defective claims, unless otherwise noted in this Agreement.

b. Review of Claim Forms. The Settlement Administrator will review Claim Forms submitted by Settlement Class Members to determine whether they are eligible for a Cash Payment.

c. Settlement Administrator's Duties.

i. Cost Effective Claims Processing. The Settlement Administrator shall, under the supervision of the Court and Class Counsel, administer the relief provided by this Agreement by processing Claim Forms in a rational, responsive, cost-effective and timely manner, and calculate Cash Payments in accordance with this Agreement.

ii. Dissemination of Notices. The Settlement Administrator shall disseminate the Notice as provided for in this Agreement.

iii. Maintenance of Records. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall maintain all such records as required by applicable law in accordance with its business practices and such records will be made available to Class Counsel and Defendant's Counsel upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. Upon request, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel with information concerning Notice, administration, and implementation of the Settlement.

iv. Receive Opt-Out Requests from Settlement Class Members and provide Class Counsel and Defendant's Counsel a copy thereof no later than 5 Days following the deadline for submission of the same. If the Settlement Administrator receives any Requests for Exclusion or other requests from Settlement Class Members after the expiration of the Opt-Out Period, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendant's Counsel;

v. Provide weekly reports to Class Counsel and Defendant's Counsel

that include, without limitation, reports regarding the number of Claim Forms received, the number of Claim Forms approved by the Settlement Administrator, and the categorization and description of Claim Forms rejected by the Settlement Administrator. The Settlement Administrator shall also, as requested by Class Counsel or Defendant's Counsel and from time to time, provide the amounts remaining in the Net Settlement Fund;

vi. Make available for inspection by Class Counsel and Defendant's Counsel the Claim Forms and any supporting documentation received by the Settlement Administrator at any time upon reasonable notice; and

vii. Cooperate with any audit by Class Counsel or Defendant's Counsel, who shall have the right but not the obligation to review, audit, and evaluate all Claim Forms for accuracy, veracity, completeness, and compliance with the terms and conditions of this Agreement.

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

115. Timing of Settlement Benefits. The Settlement Administrator shall comply with the terms and conditions of this Agreement herein and shall timely make all Cash Payments contemplated in this Agreement within 30 Days after: (a) the Effective Date; or (b) all Claim Forms have been processed subject to the terms and conditions of this Agreement, whichever date is later. No later than 10 Days after the Effective Date, the Settlement Administrator will securely transmit to the provider of the Credit Monitoring a list of Participating Settlement Class Members with Valid Claims electing to receive the Credit Monitoring, including their names and email addresses. Within 30 Days of the transmission, Participating Settlement Class Members will be sent the enrollment instructions for the Credit Monitoring.

## **VI. NOTICE TO THE SETTLEMENT CLASS**

116. As set forth in this Section 6, the Notice will be disseminated to the Settlement

Class through a combination of Postcard Notice, Long Form Notice, Publication Notice, and Settlement Website, as approved by the Court in the Preliminary Approval Order, and described in this Agreement, and in order to comply with all applicable laws, including but not limited to, California Code of Civil Procedure Section 382 *et seq.*, the Due Process of the United States Constitution, and any other applicable statute, law or rule.

117. Within 15 Days after the date of the Preliminary Approval Order, Defendant shall provide the Settlement Class List to the Settlement Administrator.

118. Confidentiality. Any information relating to Settlement Class Members provided to the Settlement Administrator pursuant to this Agreement shall be provided solely for the purpose of providing Notice to the Class Members (as set forth herein) and allowing them to recover under this Agreement; shall not be used by the Settlement Administrator for marketing; shall be kept in strict confidence by the Parties, their counsel, and the Settlement Administrator; shall not be disclosed to any third party; shall be destroyed after all distributions to Class Members have been made; and shall not be used for any other purpose. Moreover, because the Settlement Class List and information contained therein will be provided to the Settlement Administrator solely for purposes of providing Notice and benefits to the Settlement Class and processing opt-out requests, the Settlement Administrator will ensure that any information provided to it by Class Members, Class Counsel, Defendant, or Defendant's Counsel, will be secure and used solely for the purpose of effecting this Settlement. This provision is intended solely to protect the privacy of Settlement Class Members and against disclosure of their sensitive Private Information, and will not impede Class Counsel's ability to discharge its duties to the Settlement Class or the Settlement Administrator's ability to administer the Settlement.

119. Postcard Notice. No later than the Notice Date, or such other time as may be ordered by the Court, the Settlement Administrator shall disseminate the Postcard Notice to Settlement Class Members as follows:

- a. The Settlement Administrator will send the Postcard Notice by U.S. Mail, postage prepaid. For any Postcard Notice that has been mailed via U.S. Mail and returned

by the Postal Service as undeliverable, the Settlement Administrator shall re-mail the notice to the forwarding address, if any, provided by the Postal Service on the face of the returned mail; and

b. Neither the Parties nor the Settlement Administrator shall have any other obligation to re-mail individual notices that have been mailed as provided herein.

c. In the event the Settlement Administrator transmits a Postcard Notice via U.S. Mail, then the Settlement Administrator shall perform any further investigations deemed appropriate by the Settlement Administrator, including using the National Change of Address (“NCOA”) database maintained by the United States Postal Service, in an attempt to identify current mailing addresses for individuals or entities whose names are provided by Defendant.

d. The Settlement Administrator shall begin disseminating the Postcard Notice set forth herein within 45 Days after the Notice Date.

e. The Claims Deadline for all individuals who receive a re-mailed Postcard Notice shall be 90 days from the date of distribution of the re-mailed Postcard Notice.

120. The Publication Notice shall include the use of advertisements published on the *Press-Enterprise*, a newspaper of general circulation in Riverside County pursuant to California Government Code § 6000, et seq. Publication Notice shall be managed by the Settlement Administrator and shall be reasonable in scope and expense and carefully tailored to notify only potential class members as best as practicable.

121. Fraud Prevention. The Settlement Administrator shall use reasonable and customary fraud-prevention mechanisms to prevent (a) submission of Claim Forms by persons other than potential Settlement Class Members, (b) submission of more than one Claim Form per person, and (c) submission of Claim Forms seeking amounts to which the Claimant is not entitled. In the event a Claim Form is submitted without a unique class member identifier, the Settlement Administrator shall make reasonable efforts to ensure that the Claim is valid.

122. Settlement Website. Prior to any dissemination of the Postcard Notice and prior to

the Notice Date, the Settlement Administrator shall cause the Settlement Website to be launched on the Internet in accordance with this Agreement. The Settlement Administrator shall create the Settlement Website. The Settlement Website shall contain information regarding how to submit Claim Forms (including submitting Claims Forms electronically through the Settlement Website) and relevant documents, including, but not limited to, the Long Form Notice, the Claim Form, and Opt-Out and Objection Forms, this Agreement, the Preliminary Approval Order entered by the Court, the operative Complaint in the Action, details about the Final Approval Hearing, as well as the Final Approval Order and Judgement when entered by the Court. The Settlement Website shall also include a toll-free telephone number and mailing address through which Settlement Class Members may contact the Settlement Administrator directly. The Settlement Website shall also make available the Long Form Notice in Spanish and Arabic. Any changes to the time or location of the Final Approval Hearing promptly will be indicated on the Settlement Website.

123. Contents of the Long Form Notice. The Long Form Notice shall, *inter alia*, (a) specify the deadline for Settlement Class Members to opt-out, object to, or otherwise comment upon the Settlement by day, month, and year, and describe the method by which Class Members may object to, opt out from, or otherwise comment on the Settlement as set forth in this Agreement; (b) contain instructions on how to submit a Claim Form; (c) note the deadline for Settlement Class Members to submit Claim Forms; and (d) note the date, time, and location of the Final Approval Hearing.

## **VII. OPT-OUT PROCEDURES**

124. Any Settlement Class Member may submit an Opt-Out Request from the Settlement at any time during the Opt-Out Period. To be valid, the Opt-Out Request must be postmarked or received by the Settlement Administrator on or before the end of the Opt-Out Period. Requests for Exclusion must be submitted to the Settlement Administrator via U.S. Mail. Requests for Exclusion must be in writing and must identify the case name *Donald Crosslin and Matthew Paone v. DAP Health, Inc.*, Case No. CVRI2500186 (Riverside Superior Court); state the name, address, and telephone number of the Settlement Class Members seeking exclusion; be

physically signed by the Person(s) seeking exclusion; and must also contain a statement to the effect that “I/We hereby request to be excluded from the proposed Settlement Class in *Donald Crosslin and Matthew Paone v. DAP Health, Inc.*, Case No. CVRI2500186 (Riverside Superior Court).” Settlement Class Members may utilize the Opt-Out Form to submit their Opt-Out Request.

125. Any Person who elects to request exclusion from the Settlement Class shall not (a) be bound by any orders or Judgment entered in the Action, (b) be entitled to relief under this Agreement, (c) gain any rights by virtue of this Agreement, or (d) be entitled to object to any aspect of this Agreement. No Person may request to be excluded from the Settlement Class through “mass” or “class” opt-outs.

#### **VIII. OBJECTION AND COMMENT PROCEDURES**

126. Any Settlement Class Member may object or comment in support of or in opposition to the Settlement and may do so in writing using the Objection Form, in person, or through counsel, at his or her own expense, at the Final Approval Hearing.

127. Objections must be in writing and mailed to the Settlement Administrator.

128. All Objections must include the following:

- a. the case name: *Donald Crosslin and Matthew Paone v. DAP Health, Inc.*, Case No. CVRI2500186 (Riverside Superior Court);
- b. the Settlement Class Member’s full name, current physical mailing address, and telephone number;
- c. a statement indicating whether the objection applies only to the objector, a subset of the Settlement Class, or the entire Settlement Class;
- d. the specific grounds for the objection; and
- e. all documents or writings that the Settlement Class Member desires the Court to consider.

129. All written objections must be postmarked no later than the Objection Deadline.

130. Objections will not be filed with the Court.

131. The Settlement Administrator shall promptly forward any objection(s) it receives to Class Counsel and Defendant's Counsel.

132. Notwithstanding the above, the Court will hear from any Class Member who attends the Final Approval Hearing and asks to speak, including those Class Members who have not submitted an Objection.

133. Any Class Member who does not make their objection(s) in the manner and by the date set forth in this Section shall be deemed to have waived any objections and shall be forever barred from raising such objections, unless they personally appear at the Final Approval hearing.

#### **IX. MODIFICATION OR TERMINATION OF THE AGREEMENT**

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

135. In the event this Agreement is terminated pursuant to any provision herein, then the Settlement proposed herein shall become null and void (with the exception of Sections 103.b, 103.c, and 144 herein) and shall have no legal effect and may never be mentioned at trial or in dispositive or class motions or motion papers (except as necessary to explain the timing of the procedural history of the Action), and the Parties will return to their respective positions existing immediately before the execution of this Agreement.

136. Notwithstanding any provision of this Agreement, in the event this Agreement is not approved by any court, or terminated for any reason, or the Settlement set forth in this Agreement is declared null and void, or in the event that the Effective Date does not occur, Settlement Class Members, Plaintiffs, and Class Counsel shall not in any way be responsible or liable for any of the Administrative Expenses or any expenses, including costs of notice and

administration associated with this Settlement or this Agreement, except that each Party shall bear its own attorneys' fees and costs.

**X. SERVICE AWARDS AND ATTORNEYS' FEES AND COSTS**

137. Class Representatives may each seek a Service Award, not to exceed \$5,000.00, to be awarded and approved by the Court and to be paid from the Settlement Fund.

138. The Settlement Administrator shall pay the Service Awards approved by the Court to the Class Representatives from the Settlement Fund. Such Service Awards shall be paid by the Settlement Administrator, in the amount approved by the Court, within 30 Days after the Effective Date.

139. In the event the Court declines to approve, in whole or in part, the payment of Service Awards in the amounts requested, the remaining provisions of this Agreement shall remain in full force and effect. No decision by the Court, or modification or reversal or appeal of any decision by the Court, concerning the amount of a Service Awards shall constitute grounds for cancellation or termination of this Agreement.

140. The amount of Service Awards to be applied for as set forth herein was negotiated independently from the other terms of the Settlement. Further, the allowance or disallowance by the Court of a Service Award will be considered and determined by the Court separately from the Court's consideration and determination of the fairness, reasonableness, and adequacy of the Settlement.

141. Class Counsel shall apply to the Court for an award of attorneys' fees of up to one-third of the Settlement Fund (a maximum amount of \$433,333.33), plus reimbursement of costs.

142. Class Counsel may seek a Fee and Expense Award in their Application for Attorneys' Fees, Costs, and Services Awards, to be paid from the Settlement Fund. The Application for Attorneys' Fees, Costs, and Services awards shall be submitted as part of Plaintiffs' Motion for Final Approval and shall be posted on the Settlement Website. Prior to the disbursement or payment of the Fee and Expense Award under this Agreement, Class Counsel

shall provide to the Settlement Administrator a properly completed and duly executed IRS Form W-9.

143. The Fee and Expense Award shall be paid by the Settlement Administrator, in the amount approved by the Court, 30 Days after the Effective Date.

144. There is no written joint prosecution or fee splitting agreement between and among Class Counsel and other counsel for Plaintiffs. Unless otherwise ordered by the Court, Class Counsel shall have the sole and absolute discretion to allocate any approved Fee and Expense Award based on contributions from each firm. Defendant shall have no liability or other responsibility for allocation of any such attorneys' fees and costs.

145. The amount of the Fee and Expense Award to be applied for by Class Counsel was negotiated independently from the other terms of the Settlement. The Parties negotiated the Fee and Expense Award to be sought by Class Counsel only after reaching an agreement upon the relief provided to the Settlement Class.

146. The Settlement is not conditioned upon the Court's approval the Application for Attorneys' Fees, Costs, and Service Awards. In the event the Court declines to approve, in whole or in part, the Fee and Expense Award in the amounts requested, the remaining provisions of this Agreement shall remain in full force and effect. No decision by the Court, or modification or reversal or appeal of any decision by the Court, concerning the amount of the Fee and Expense Award shall constitute grounds for cancellation or termination of this Agreement.

## **XI. JUDGMENT**

147. This Agreement is subject to and conditioned upon the issuance by the Court of the Judgment, which will grant Final Approval of this Agreement and among other things shall:

- a. Decree that neither the Judgment nor this Agreement constitutes an admission by Defendant of any liability or wrongdoing whatsoever;
- b. Bar all Releasing Parties from asserting against any of the Released Parties any and all Released Claims;
- c. Release each Released Party from any and all Released Claims;

d. Determine that this Agreement is entered into in good faith and represents a fair, reasonable, and adequate settlement that is in the best interests of the members of the Settlement Class; and

e. Preserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Defendant and all Participating Settlement Class Members, to administer, supervise, construe, and enforce this Agreement in accordance with its terms for the mutual benefit of the Parties, but without affecting the finality of the Judgment.

## **XII. REPRESENTATIONS AND WARRANTIES**

148. In addition to the representations and warranties set forth in Section II ("Recitals") of this Agreement, each signatory to this Agreement represents and warrants (a) that he, she, they, or it has all requisite power and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated herein, (b) that the execution, delivery, and performance of this Agreement and the consummation by it of the actions contemplated herein have been duly authorized by all necessary corporate action on the part of each signatory, and (c) that this Agreement has been duly and validly executed and delivered by each signatory, and constitutes its legal, valid and binding obligation.

149. No Admission of Liability or Wrongdoing. This Agreement, whether consummated or not, and any negotiations, proceedings or agreements relating to this Agreement, and any matters arising in connection with settlement negotiations, proceedings, or agreements:

a. Shall not be admissible in any action or proceeding for any reason, other than an action to enforce the terms hereof;

b. Shall not be described as, construed as, offered or received against the Released Parties as evidence of and/or deemed to be evidence of any presumption, concession, or admission by any Released Party of the truth of any fact alleged by Plaintiffs; the validity of any claim that has been or could have been asserted in the Action or in any litigation; the deficiency of any defense that has been or could have been asserted

in the Action or in any litigation; or any liability, negligence, fault, or wrongdoing of any of the Released Parties; and

c. Shall not be described as or construed against the Released Parties, Plaintiffs, or any Settlement Class Members as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been awarded to said Plaintiffs or the members of the Settlement Class after trial.

### **XIII. MISCELLANEOUS PROVISIONS**

150. Entire Agreement. This Agreement, including all exhibits hereto, shall constitute the entire Agreement among the Parties regarding the subject matter hereof and shall supersede any previous agreements, representations, communications and understandings among the Parties. Each of the Parties to this Agreement acknowledges that no other Party to this Agreement, nor any agent or attorney of any such party, has made any promise, representation, or warranty, express or implied, not contained in this Agreement to induce either party to execute this Agreement. Neither Party is relying on the other Party or their agents or attorneys and rather each Party decided to resolve the dispute in their own independent determination and judgment. This Agreement may not be changed, modified, or amended except in writing signed by all Parties, subject to Court approval. The Parties contemplate that, subject to Court approval or without such approval where legally permissible, the exhibits to this Agreement may be modified by subsequent agreement of counsel for the Parties prior to dissemination of the Settlement Class Notice to the Settlement Class.

151. Best Efforts. The Parties agree that they will make all reasonable efforts needed to reach the Effective Date and fulfill their obligations under this Agreement.

152. Governing Law. This Agreement shall be construed under and governed by the laws of the State of California, applied without regard to laws applicable to choice of law.

153. Execution by Counterparts. This Agreement may be executed by the Parties in one or more counterparts, each of which shall be deemed an original but all of which together shall

constitute one and the same instrument. Facsimile signatures or signatures sent via email shall be treated as original signatures and shall be binding.

154. Notices. Any notice, instruction, application for Court approval, or application for Court orders sought in connection with this Agreement or other document to be given by any Party to any other Party shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid, if to Defendant to Defendant's Counsel, or if to Plaintiffs or the Settlement Class to Class Counsel, or to other recipients as the Court may specify. All notices to the Parties or counsel required herein shall be made in writing and communicated by mail and email to the following:

| If to Plaintiffs or Class Counsel:                                                                                                                                                                                                                                  | If to Defendant or Defendant's Counsel:                                                                                                                                          |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| John J. Nelson<br><b>MILBERG, PLLC</b><br>280 S. Beverly Drive<br>Beverly Hills, CA 90212<br>jnelson@milberg.com<br><br>Kristen Lake Cardoso<br><b>KOPELOWITZ OSTROW P.A.</b><br>One West Las Olas, Suite 500<br>Fort Lauderdale, FL 33301<br>cardoso@kolawyers.com | James Monagle<br><b>Mullen Coughlin LLC</b><br>500 Capitol Mall, Suite 2350<br>Sacramento, CA 95814<br>(267) 930-1529 - Office<br>(415) 846-8435 - Mobile<br>jmonagle@mullen.law |

155. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the heirs, successors, assigns, executors, and legal representatives of each of the Parties hereto.

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

157. Severability. The waiver or breach by one Party of any provision of this Agreement shall not be deemed a waiver or breach of any other provision of this Agreement.

158. Integration of Exhibits. The exhibits to this Agreement and any exhibits thereto are an integral and material part of the Settlement and are hereby incorporated and made a part of the Agreement.

159. Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

160. Counterparts. 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.

161. Deadlines. If any of the dates or deadlines specified herein falls on a weekend or legal holiday, the applicable date or deadline shall fall on the next Business Day. The Parties reserve the right to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.

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**IN WITNESS WHEREOF**, each of the Parties hereto has caused this Agreement to be executed on its behalf by its duly authorized counsel of record, all as of the day set forth below:

|                                                                                                                  |                                                                                                                                                                            |
|------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>DEFENDANT DAP HEALTH, INC.:</b><br><br>_____<br>Dated: _____<br>By: _____<br>Its: _____                       | <b>DEFENDANT'S COUNSEL:</b><br><br>_____<br>Dated: _____<br>James Monagle<br>MULLEN COUGHLIN LLC                                                                           |
| <b>PLAINTIFFS:</b><br><br>_____<br>Dated: _____<br>Donald Crosslin<br><br>_____<br>Dated: _____<br>Matthew Paone | <b>PLAINTIFFS' COUNSEL:</b><br><br>_____<br>Dated: _____<br>John J. Nelson<br>MILBERG, PLLC<br><br>_____<br>Dated: _____<br>Kristen Lake Cardoso<br>KOPELOWITZ OSTROW P.A. |

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