

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Settlement Agreement” or “Settlement”) is entered into by and between: (i) Coastal Orthopedics & Sports Medicine of Southwest Florida, P.A. (“COSM” or “Defendant”), and (ii) Karl Ford, Barbara Balbo, and Vikki Comarsh-White (“Plaintiffs”) individually and on behalf of the Settlement Class (as defined below), in the consolidated class action *In Re: Coastal Orthopedics & Sports Medicine of Southwest Florida Data Breach Litigation*, Case No. 2024-CA-001078AX, in the Circuit Court of the Twelfth Judicial Circuit in and for Manatee County, Florida. COSM and Plaintiffs are collectively referred to herein as the “Parties.” The lawsuits, collectively, are referred to herein as the “Litigation.”

### **I. FACTUAL BACKGROUND AND RECITALS**

1. On July 1, 2024, Plaintiff Karl Ford filed a class action lawsuit in the Circuit Court of the Twelfth Judicial Circuit in and for Manatee County, Florida (Case No. 2024-CA-001078AX) (“*Ford Action*”) against COSM based on potential unauthorized access to certain systems within COSM’s network discovered on June 11, 2023 (the “Data Incident,” as further defined below), alleging claims of negligence, negligence *per se*, breach of implied contract, breach of fiduciary duty, unjust enrichment, and declaratory relief.

2. The Data Incident resulted in the potential access of personal identifying information (“PII”) (defined as part of the “Private Information” below) by an unauthorized third party.

3. On July 10, 2024, Plaintiff Barbara Balbo filed a related class action lawsuit stemming from the same Data Incident in the Circuit Court of the Twelfth Judicial Circuit in and for Manatee County, Florida (Case No. 2024-CA-001117AX) (“*Balbo Action*”) against COSM.

4. On July 19, 2024, Vikki Comarsh-White filed a class action lawsuit in the Middle District of Florida, Tampa Division (Case No. 8:24-cv-01707-KKM-SPF) against COSM stemming from the Data Incident (“*Comarsh-White Action*”) alleging claims of negligence, negligence *per se*, breach of implied contract, breach of fiduciary duty, unjust enrichment, and violations of the Florida Deceptive and Unfair Trade Practices Act.

5. *Ford* and *Balbo* were later consolidated under *In Re: Coastal Orthopedics & Sports Medicine of Southwest Florida Data Breach Litigation*, Case No. 2024-CA-001078AX, and a consolidated complaint was filed on October 3, 2024.

6. Later in October, the Parties began discussing the potential for early resolution, and agreed to pursue mediation with Rodney Max of Upchurch, Watson, White & Max on December 2, 2024.

7. On December 29, 2024, Vikki Comarsh-White filed a Notice of Voluntary Dismissal in the *Comarsh-White Action*.

8. Prior to mediation, the Parties exchanged informal discovery related to class size, unique data sets, and the nature of the Data Incident, that allowed the parties to evaluate their respective risks and negotiate from an informed basis as to the strengths and weaknesses of claims

and defenses to reach a reasonable settlement value. That informal discovery revealed that 203,427 individuals may have had their Private Information accessed and/or acquired by an unauthorized party as a result of the Data Incident. Of those 203,427 individuals, 72,516 may have had their respective Social Security numbers accessed and/or acquired by an unauthorized party as a result of the Data Incident.

9. On December 2, 2024, the Parties attended a mediation via Zoom with Rodney Max. Prior to mediation the Parties had fully briefed relevant issues and discussed potential settlement structure. After vigorous, arms-length negotiations, and with the assistance and guidance of Rodney Max, the Parties were able to reach an agreement on the central terms of a settlement. Over the next few weeks, the Parties diligently negotiated the finer points of the agreement and drafted the settlement papers and exhibits included herein.

10. The Parties have negotiated a settlement by which they agree and hereby wish to resolve all matters pertaining to, arising from, or associated with the Litigation, including all claims that Plaintiffs and the Settlement Class Members (defined below) have or may have had against COSM and Related Entities (defined below), as set forth herein.

11. The Parties have agreed to settle the Litigation on the terms and conditions set forth herein in recognition that the outcome of the Litigation is uncertain and that achieving a final result through the Litigation would require substantial additional risk, uncertainty, discovery, time, and expense for the Parties.

12. COSM denies all claims of wrongdoing or liability that Plaintiffs, Settlement Class Members, or anyone else have asserted in this Litigation, could have asserted, or may assert in the future. Despite COSM's position that it is not liable for, and has good defenses to, the claims alleged in the Litigation, COSM desires to settle the Litigation, and thus avoid the expense, risk, exposure, inconvenience, uncertainty, and distraction of continued litigation of any action relating to the matters being fully settled and finally resolved and released in this Settlement Agreement. Neither this Settlement Agreement, nor any negotiation or act performed, or document created in relation to the Settlement Agreement, or negotiation or discussion thereof is, or may be deemed to be, or may be used as, any admission of, or evidence of, any wrongdoing or liability.

13. Plaintiffs and Class Counsel (defined below) have conducted an investigation into the facts and the law regarding the Litigation and have concluded that a settlement according to the terms set forth below is fair, reasonable, and adequate, and beneficial to and in the best interests of Plaintiffs and the Settlement Class (defined below), recognizing: (1) the existence of complex and contested issues of law and fact; (2) the risks inherent in litigation; (3) the likelihood that future proceedings will be unduly protracted and expensive if the proceeding is not settled by voluntary agreement; (4) the magnitude of the benefits derived from the contemplated settlement in light of both the maximum potential and likely range of recovery to be obtained through further litigation and the expense thereof, as well as the potential of no recovery whatsoever; and (5) Class Counsel's determination that the settlement is fair, reasonable, adequate, and will substantially benefit the Settlement Class Members.

14. Considering the risks and uncertainties of continued litigation and all factors bearing on the merits of settlement, the Parties are satisfied that the terms and conditions of this Settlement Agreement are fair, reasonable, adequate, and in their respective best interests.

15. 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, it is agreed by and among the undersigned that the Litigation be settled and compromised, and that the Releasors release the Released Parties of the Released Claims, without costs as to Released Parties, Plaintiffs, Class Counsel, or the Settlement Class, except as explicitly provided for in this Settlement Agreement, subject to the approval of the Court, on the following terms and conditions.

## II. DEFINITIONS

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

16. “**Approved Claims**” means complete and timely Claim Forms submitted by Settlement Class Members that have been approved by the Settlement Administrator.

17. “**Claim Form**” means the form that Settlement Class Members may submit to obtain compensation under this Settlement Agreement, which is attached as **Exhibit C**. The Claim Form shall require a sworn and signed/electronically signed affirmation under penalty of perjury but shall not require a notarization or any other form of independent verification. The Claim Form includes both the paper copy of the form and the online form available through the Settlement Website.

18. “**Claims Deadline**” means the date by which all Claim Forms must be postmarked (if mailed) or submitted (if filed electronically) to be considered timely, and shall be set as a date ninety (90) days after the Notice Deadline. The Claims Deadline shall be clearly specified in the Preliminary Approval Order, as well as in the Notice and the Claim Form.

19. “**Class Counsel**” means Mariya Weekes of Milberg Coleman Bryson Phillips Grossman PLLC and Katherine Earle Yanes of Kynes Markman & Felman, P.A.

20. “**Claimant**” means a Settlement Class Member who submits a Claim Form by the Claims Deadline.

21. “**Counsel**” or “**Counsel for the Parties**” means both Class Counsel and Defendant’s Counsel, collectively.

22. “**Court**” shall mean the Circuit Court of the Twelfth Judicial Circuit in and for Manatee County, Florida, and any Judge assigned to the Litigation at the time of the Order of Preliminary Approval of this Settlement Agreement or the Judgment (defined below).

23. “**Court-Approved Remainder Funds Recipient**” or “**Remainder Funds Recipient**” shall mean a charitable group agreed to by both parties, subject to final approval by the Court.

24. “**Data Incident**” means the cyberattack carried out by an unauthorized third party on COSM’s computer systems discovered by Defendant on June 11, 2023, that potentially resulted in the access of certain Private Information by an unauthorized third party.

25. **“Days”** means calendar days, except, when computing any period of time prescribed or allowed by this Settlement Agreement, does not include the day of the act, event, or default from which the designated period of time begins to run. Further, when computing any period of time prescribed or allowed by this Settlement Agreement, includes the last day of the period, unless it is a Saturday, a Sunday, or a Federal legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal legal holiday.

26. **“Defendant”** means Coastal Orthopedics & Sports Medicine of Southwest Florida, P.A. (“COSM”).

27. **“Defendant’s Counsel”** means Yameel L. Mercado Robles, Robyn M. Feldstein, and Raika N. Casey of Baker & Hostetler LLP.

28. **“Effective Date”** means the date after all of the following material conditions have been fulfilled:

- a) the Court has entered an Order of Preliminary Approval, the form of which is attached to this Settlement Agreement as **Exhibit D**;
- b) COSM has not exercised its option to terminate the Settlement Agreement pursuant to Paragraph 90;
- c) the Court has entered the Judgment (defined below) granting final approval to the Settlement as set forth herein;
- d) the Judgment has become Final, as defined in Paragraph 31; and
- e) a business day has passed 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.

29. **“Fee and Expense Application”** shall mean the motion to be filed by Class Counsel 14 days prior to the deadline for Settlement Class Members to object to or opt-out from the Settlement, in which they seek approval of an award of attorneys’ fees, as well as a Service Award for the Class Representative.

30. **“Fee Award and Expenses”** means the amount of attorneys’ fees and reimbursement of litigation expenses awarded by the Court to Class Counsel.

31. **“Final”** means the Final Approval Order has been entered on the docket, and (1) the time to appeal from such order has expired and no appeal has been timely filed; (2) if such an appeal has been filed, it has been finally resolved and has resulted in an affirmation of the Final Approval Order; or (3) the Court following the resolution of the appeal enters a further order or orders approving settlement on the material terms set forth herein, and either no further appeal is taken from such order(s) or any such appeal results in affirmance of such order(s).

32. **“Final Approval Hearing”** means the hearing before the Court where the Plaintiffs may request a judgment to be entered by the Court approving the Settlement Agreement, approving the Fee Award and Expenses, and approving a Service Award to the Class Representatives. The hearing may be held by video conference, and if so, instructions will be posted on the Settlement Website.

33. **“Final Approval Order”** shall mean an order, the proposed form of which is attached as **Exhibit E**, entered by the Court that:

- i. Certifies the Settlement Class pursuant to Florida Rule of Civil Procedure 1.220;
- ii. Finds that the Settlement Agreement is fair, reasonable, and adequate, was entered into in good faith and without collusion, and approves and directs consummation of this Settlement Agreement;
- iii. Dismisses Plaintiffs’ claims pending before it with prejudice and without costs, except as explicitly provided for in this Settlement Agreement;
- iv. Approves the Releases provided in Section IX and orders that, as of the Effective Date, the Released Claims will be released as to Released Parties;
- v. Reserves jurisdiction over the Settlement and this Settlement Agreement;
- vi. Finds that there is no just reason for delay of entry of Final Approval Order with respect to the foregoing; and
- vii. Enters final Judgment.

34. **“Frequently Asked Questions”** or **“FAQs”** means questions and answers to those questions that are frequently posed by Class Members about class action settlements and specifically about this Settlement.

35. **“Group 1 Settlement Class Members”** shall refer to and mean Settlement Class Members whose respective Social Security number was compromised during the Data Incident.

36. **“Group 2 Settlement Class Members”** shall refer to and mean Settlement Class Members whose respective Social Security number was not compromised during the Data Incident.

37. **“Judgment”** shall mean the final judgment as ordered, adjudged and decreed by the Court in the Litigation in the Final Approval Order.

38. **“Litigation”** shall refer to and mean *In Re: Coastal Orthopedics & Sports Medicine of Southwest Florida Data Breach Litigation*, Case No. 2024-CA-001078AX and the consolidated *Ford* and *Balbo* actions.

39. **“Long Form Notice”** is the content of the Notice substantially in the form attached as **Exhibit B** to this Settlement Agreement that will be posted on the Settlement Website and that will include robust details about the Settlement.

40. **“Notice”** means the notice of this proposed Settlement sent directly to Settlement Class Members, which is to be provided substantially in the manner set forth in this Settlement Agreement in the form attached as **Exhibits A and B hereto**, and is consistent with the requirements of Due Process. The Notice Deadline in this case will be forty-five (45) days after the Court enters the Preliminary Approval Order. This definition also includes the content of Paragraph 84, which includes the term “Notice Date.”

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

42. **“Notice Deadline”** means the last day by which Notice must be issued to the Settlement Class Members, which will occur forty-five (45) days after the Court enters the Preliminary Approval Order.

43. **“Objection/Exclusion Deadline”** means the date by which a written objection to this Settlement Agreement (“Objection”) or a Request for Exclusion submitted by a person within the Settlement Class must be postmarked and/or filed with the Court and sent to the Settlement Administrator, which shall be designated as a date sixty (60) days after the Notice Deadline, or such other date as ordered by the Court. The definition will also be known as the Objection Date and/or Exclusion Date.

44. **“Opt-Out Deadline”** is the last day on which a Settlement Class Member may file a request to be excluded from the Settlement Class, which will be sixty (60) days after the Notice Date and is the same as the Exclusion Deadline.

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

46. **“Parties”** shall mean Plaintiffs and Defendant, collectively.
47. **“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.
48. **“Plaintiffs”** or **“Class Representatives”** shall mean the named class representatives Karl Ford, Barbara Balbo, and Vikki Comarsh-White.
49. **“Preliminary Approval Order”** shall mean the Court’s Order preliminarily approving the Settlement Agreement, certifying the Settlement Class for settlement purposes, and directing notice of the Settlement to the Settlement Class substantially in the form of the Notice set forth in this Settlement Agreement. Attached as **Exhibit D**.
50. **“Private Information”** can include, but does not necessarily include, full names, Social Security number, dates of birth, and medical treatment and health insurance information, which is protected health information as defined by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”).
51. **“Related Entities”** means COSM’s past or present divisions and related or affiliated entities, and each of COSM’s predecessors, successors, directors, officers, employees, principals, agents, representatives, attorneys, insurers, and reinsurers, and 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.
52. **“Release”** shall have the meaning ascribed to it as set forth in Paragraph 92 of this Settlement Agreement.
53. **“Released Claims”** shall have the meaning ascribed to it as set forth in Section XI of this Settlement Agreement.
54. **“Released Parties”** shall have the meaning ascribed to it as set forth in Section XI of this Settlement Agreement.
55. **“Releasors”** 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.
56. **“Remainder Funds”** means any funds that remain in the Settlement Fund after all deductions from the Settlement Fund and for settlement payments to Class Members. Often in class action settlements, some number of class members submitting valid claims and who are then issued a settlement check fail to cash and/or deposit their settlement payments. The funds remaining in the Settlement Fund after settlement payments have been distributed and the time for cashing and/or depositing checks has expired will be Remainder Funds. The Remainder Funds

constitute *de minimis* or otherwise remaining funds that will be sent to the Remainder Funds Recipient as defined at paragraph 23, subject to approval of the court.

57. “**Service Award**” shall have the meaning ascribed to it as set forth in Section X of this Settlement Agreement. The Service Award requested in this matter will be \$2,500.00 to each Class Representative, subject to Court approval.

58. “**Settlement Administrator**” or “**Kroll**” means Kroll Settlement Administration, an entity jointly selected and supervised by Class Counsel and Defendant to administer the settlement, pursuant to Section IV of this Settlement Agreement.

59. “**Settlement Class**” or “**Class**” means all individuals residing in the United States whose Private Information may have been accessed and/or acquired by an unauthorized party as a result of the Data Incident experienced by Defendant in June 2023. Excluded from the Settlement Class are: (1) the Judge presiding over this Litigation, and members of his direct family; (2) the Defendant and its current or former parents, subsidiaries, affiliates, officers and directors; and (3) Settlement Class Members who submit a valid Request for Exclusion prior to the Opt-Out Deadline.

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

61. “**Settlement Class List**” means a list of each Settlement Class Member’s full name and current or last known address, Group 1/Group 2 identifier, and current or last known email address, which Defendant or Defendant’s agent shall provide to the Settlement Administrator within fourteen (14) days of the entry of the Preliminary Approval Order.

62. “**Settlement Fund**” means an amount to be paid by, or on behalf of, Defendant totaling one million four hundred and three thousand six hundred and forty-six dollars and thirty cents (\$1,403,646.30 USD), including any interest accrued thereon after payment, this being the full and complete limit and extent of Defendant’s obligations with respect to the Settlement.

63. “**Settlement Payment**” means the payment to be made via mailed check and/or electronic payment to a Participating Settlement Class Member by the Settlement Administrator from the Settlement Fund. Payments for valid claims shall be sent or postmarked within thirty (30) days after entry of the Effective Date or sixty (60) days after the Claims Deadline. All checks shall be void ninety (90) days after issuance. If a check becomes void, the Settlement Class Member shall have until thirty (30) days after the void date to request re-issuance by the Settlement Administrator. Settlement Class Members who do not timely cash their Settlement checks and/or fail to request a reissuance will be considered as having waived any right to a cash payment under the Settlement Agreement.

64. “**Settlement Website**” means a website established and administered by the Settlement Administrator, which shall contain information about the Settlement, including electronic copies of **Exhibits A-E** (or any forms of these notices that are approved by the Court), this Settlement Agreement, and all Court documents related to the Settlement. The Settlement Website will be publicly viewable and contain broad information about the Settlement, including but not limited to, copies of the Complaint filed in the Circuit Court of the Twelfth Judicial Circuit in and for

Manatee County, Florida, a copy of the Long Form Notice, Short Form Notice, FAQs, Claim Forms that may be submitted online through the Settlement Website or mailed to the Settlement Administrator, and the deadlines for filing a Claim Form, Objection, Request for Exclusion, and the date of the Final Approval Hearing. The Settlement Website is viewed as an important piece of the Notice to Class Members. The Settlement Website will remain active until 90 days after the Effective Date, or until 90 days after the Settlement Administrator has determined that all Settlement Funds have been distributed and no further distributions to Settlement Class Members are possible, whichever is later.

65. **“Short Form Notice”** is the postcard notice that will be mailed and emailed to each available Settlement Class Member. Short Form Notice will include a copy of the Claim Form, in the same or substantially similar form as **Exhibit A** hereto.

66. **“Taxes and Tax-Related Expenses”** means any and all applicable taxes, duties, and similar charges imposed by any 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, understanding the Defendant is a tax-exempt entity, 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.

67. **“United States”** means all fifty states within the United States, the District of Columbia, Puerto Rico, and all territories of the United States, United States overseas military bases, embassies, or other governmental establishment. A Settlement Class Member will be deemed to “reside” in the United States even if they hold temporary residence in a Non-U.S. jurisdiction due to overseas employment or other extenuating circumstance.

68. **“Unknown Claims”** means any of the Released Claims that any Class Member, including any Plaintiffs, do not know or suspect to exist in his/her favor at the time of the Release of the Released Parties that, if known by him or her, might have affected his or her settlement with, and release of, the Released Parties, 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 expressly shall have, and each of the other Class Members shall be deemed to have, and by operation of the Judgment shall have waived and released any right to pursue any possible Unknown Claims against Defendant. Class Members 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. The Parties acknowledge, and Class Members shall be deemed by operation of the Final Approval Order to have acknowledged, that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part. Unknown Claims additionally includes any principles of law similar to and including Section 1542 of the California Civil Code, which are: CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE

DEBTOR OR RELEASED PARTY. For the avoidance of doubt, Settlement Class Members provide acknowledgement, waiver, and release of all Unknown Claims at Paragraph 92 herein.

69. “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. Eastern 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.

### **III. SETTLEMENT FUND**

70. **Establishment of Settlement Fund.** The total sum owed by Defendant under the terms of this Settlement Agreement is one million four hundred and three thousand six hundred and forty-six dollars and thirty cents (\$1,403,646.30 USD). The “Net Settlement Fund” is the amount of the Settlement Fund, plus interest accrued thereon, minus the cost of Notice and Administrative Expenses, Settlement Payment(s), Court-approved Fee Award and Expenses, Court-approved Service Awards for Class Representatives, and certain Settlement Fund taxes and costs. Defendant or its insurer shall pay costs sufficient to create the Settlement Fund as follows:

- a) COSM or its insurer shall pay all costs associated with notifying the Settlement Class Members of this Settlement Agreement and administering the Settlement to the Final Approval Order as such costs become due to the Settlement Administrator (said amount being part of and not in addition to the Settlement Fund). Should additional costs and/or expenses be required that are not due to the Settlement Administrator but necessary for the Settlement they shall be paid in the same manner as the foregoing costs and equally be deemed part of and not in addition to the Settlement Fund;
- b) Within forty-five (45) days of entry of the Final Approval Order, COSM or its insurer shall pay into a Qualified Settlement Fund to be established and maintained by the Settlement Administrator for the remaining portion of the Settlement Fund remaining after administration and notification costs paid pursuant to this Paragraph 70(a);
- c) Within thirty (30) days of the Effective Date, the Settlement Administrator shall pay to Class Counsel any attorneys’ fees, costs, expenses, and Service Awards for Class Representatives pursuant to §§ X and XI; and
- d) Within thirty (30) days of the Effective Date, or sixty (60) days after the Claims Deadline, whichever is later, the Settlement Administrator shall distribute funds and credit monitoring codes to all valid Claimants.

71. **Qualified Settlement Fund.** The Parties agree that the Settlement Fund is intended to be maintained as a qualified settlement fund within the meaning of Treasury Regulation § 1.468

B-1 (“Qualified Settlement Fund”), and that the Settlement Administrator, within the meaning of Treasury Regulation § 1.468 B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of the Settlement Fund and paying from the Settlement Fund any Taxes and Tax-Related Expenses owed with respect to the Settlement Fund. The Parties agree that the Settlement Fund shall be treated as a qualified settlement fund from the earliest date possible and agree to any relation-back election required to treat the Settlement Fund as a qualified settlement fund from the earliest date possible. Any and all funds held in the Settlement Fund shall be held in an interest-bearing account insured by the Federal Deposit Insurance Corporation (“FDIC”). 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 Settlement Agreement, upon request of any of the Parties.

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

73. **Use of the Settlement Fund.** As further described in this Settlement Agreement and in **Exhibit B** to this Agreement, the Settlement Fund shall be used by the Settlement Administrator to pay for the following: (1) Documented Monetary Losses; (2) the cost of purchasing credit and identity theft restoration services; and (3) Pro Rata Cash Payments all as more fully described below in Paragraph 77(C); (4) Notice and Administrative Expenses; (4) attorneys’ fees and litigation expenses as awarded by the Court in the Fee Award and Expenses; (5) Service Award payments approved by the Court; and (6) transfer of Remainder Funds to Remainder Funds Recipient to the extent any exist following the preceding administration of all other payments. No amounts may be withdrawn from the Settlement Fund unless expressly authorized by this Settlement Agreement or approved by the Court. Responsibility for effectuating payments described in this paragraph shall rest solely with the Settlement Administrator and neither Defendant nor Defendant’s agents shall have any responsibility whatsoever with respect to effectuating such payments.

74. **Pro Rata Adjustments on Cash Payments.** The total benefits claimed by all Settlement Class Members will be subject to a pro rata increase in the event the amount of Valid Claims is insufficient to exhaust the entire Net Settlement Fund. Similarly, in the event the amount of Valid Claims exhausts the amount of the Settlement Fund, the amount of the Cash Payments will be reduced pro rata accordingly. For purposes of calculating the pro rata increase or decrease, the Settlement Administrator must distribute the funds in the Net Settlement Fund first for payment of Documented Monetary Losses, then Credit Monitoring and then for Cash Payments. Any pro rata increases or decreases to Cash Payments will be on an equal percentage basis. In the unexpected event the value of Credit/Data Monitoring on its own exhausts the amount of the Settlement Fund, the length of the Credit/Data Monitoring provided will be reduced as necessary to bring the cost within the Settlement Fund.

75. **Taxes and Representations.** Taxes and Tax-Related Expenses relating to the Settlement Fund, if any, shall be considered Notice and Administrative Expenses and shall be timely paid by the Settlement Administrator out of the Settlement Fund without prior order of the

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

#### **IV. SETTLEMENT BENEFITS AND ADMINISTRATION**

76. The Settlement Administrator will agree to make the following benefits available to Settlement Class Members who submit valid and timely claim forms from the Settlement Fund. Claims will be subject to review for completeness and plausibility by a Settlement Administrator, and Claimants will have the opportunity to seek review by the Parties' Counsel, if they dispute the Settlement Administrator's initial determination. Any claim greater than \$1,000.00 will be escalated to the counsel of the Parties for further review and good faith resolution.

77. **Settlement Relief:** All Settlement Class Members may claim reimbursement of actual Documented Monetary Losses as set forth in Paragraph 77(A) below, Credit Monitoring and Identity Restoration Services as described in Paragraph 77(B) below, and a Pro Rata Cash Payment as described in Paragraph 77(C) below. The Pro Rata Cash Payments will be calculated differently depending on whether the claimant is a Group 1 or Group 2 Settlement Class Member.

- A. **Reimbursement of Documented Monetary Losses:** All Settlement Class Members may claim reimbursement for associated monetary loss by submitting a claim along with supportive documentation for Monetary Losses ("Documented Monetary Loss"). Settlement Class Members may claim *Documented Monetary Losses*, as defined below, which loss must be fairly traceable to the Data Incident, and combined will be capped at \$10,000.00 per Settlement Class Member.
  - i. **Supporting Documents:** To receive reimbursement for any Documented Monetary Loss, Settlement Class Members must submit supporting documentation of the loss and a description of how the loss is fairly traceable to the Data Incident, if not readily apparent from the documentation. Documented Monetary Losses can be supported with the following evidence: receipts or other documentation not "self-prepared" by the Claimant and that demonstrates the reasonable costs actually incurred by the Claimant. "Self-prepared" documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but may be considered to add clarity or support other submitted documentation.
  - ii. **Documented Monetary Losses:** Group 1 and Group 2 Settlement Class Members may submit a claim for documented out-of-pocket expenses fairly traceable to the Data Incident, up to \$10,000.00 total

per individual. Documented Monetary Losses may include various types of out-of-pocket losses that were incurred on or after June 6, 2023 through the date of the claim submission deadline: credit monitoring costs; unreimbursed bank or credit card fees, long distance phone charges, postage, or gasoline for local travel. This list of reimbursable documented out-of-pocket expenses is not meant to be exhaustive, rather it is exemplary. Settlement Class Members may make claims for any documented unreimbursed out-of-pocket losses reasonably related to the Data Incident or to mitigating the effects of the Data Incident. The Claim Form and supporting documentation must demonstrate that: (i) the loss is an actual, documented, and unreimbursed monetary loss; (ii) the loss was more likely than not caused by the Data Incident; (iii) the loss occurred between June 6, 2023 and the date of claim submission; (iv) the Claimant made reasonable efforts to avoid the loss or seek reimbursement for the loss, including, but not limited to, exhaustion of all available credit monitoring insurance and identity theft insurance. Documented Monetary Losses may include, without limitation, the unreimbursed costs, expenses, losses or charges incurred as a result of identity theft or identity fraud, falsified tax returns, or other possible misuse of Private Information. The Settlement Administrator shall have discretion to determine whether any claimed loss is reasonably related to the Data Security Incident.

- B. Credit Monitoring and Identity Restoration Services:** All Settlement Class Members may claim two years of one-bureau credit monitoring, including \$1 million of fraud/identity theft insurance and medical information monitoring.

The Settlement Administrator, from the Settlement Fund, will purchase/provide credit monitoring codes to valid claimants.

- C. Pro Rata Cash Payment:** All Settlement Class Members may make a claim for a cash payment that will be calculated *pro rata* according to whether the claimant is a Group 1 or Group 2 Settlement Class Member. Group 1 Pro Rata Cash Payments shall be three times (3x) the amount of Group 2 Pro Rata Cash Payments. The payments shall be calculated by dividing remaining funds in the Settlement Fund, after payment of Settlement Administration Fees, Fee Award and Expenses, Credit Monitoring and Identity Restoration Services, and Documented Monetary Losses, by the number of eligible claims. In making this calculation, each Group 1 Pro Rata Cash Payment claim will be counted as three claims, while each Group 2 Pro Rata Cash Payment claim will be counted as one claim.

78. **Settlement Administration Fees:** The Settlement Fund amount provided by, or on behalf of, Defendant will pay the entirety of the Notice and Administrative Expenses. Defendant shall have no obligation to pay any portion of Notice and Administrative Expenses beyond the

payment of the Settlement Fund. The Parties agree to solicit competitive bids for the settlement administration fees and to rely upon postcard notice, all in order to limit the Notice and Administrative Expenses while still providing effective Notice to the Class.

79. Within forty-five (45) days of entry of the Final Approval Order, and receipt of payee instructions and a Form W-9 for the payee, Defendant or its insurer shall provide to the Settlement Administrator the remainder of the Settlement Fund pursuant to Paragraph 70 in full satisfaction of its Settlement Fund obligations, and the Settlement Fund will be used to satisfy Approved Claims for Settlement Class Members in exchange for a full, fair, and complete release of all Released Parties from Released Claims, and dismissal of the Litigation with prejudice.

80. The Settlement Fund represents the total extent of Defendant's monetary obligations under the Settlement Agreement. Defendant's contribution to the Settlement Fund shall be fixed under this Section and shall be final. Defendant shall have no obligation to make further payments into the Settlement Fund and shall have no financial responsibility or obligation relating to the Settlement beyond the Settlement Fund, except insofar as any such obligations that are explicitly provided for in this Settlement Agreement.

81. Once a Settlement Administrator is mutually agreed to by the Parties and after the Settlement is preliminarily approved by the Court, the Settlement Administrator will provide Notice pursuant to the terms of this Settlement Agreement.

82. After the Defendant or its insurer provides the Settlement Administrator the remainder of the Settlement Fund obligations pursuant to Paragraph 70, the Settlement Administrator shall, as soon as reasonably possible, provide the requested relief to all Settlement Class Members that made an Approved Claim, subject to the procedure set forth herein.

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

## **V. SETTLEMENT CLASS NOTICE, OPT-OUTS, AND OBJECTIONS**

84. **Notice.** Within fourteen (14) days after the date of the Preliminary Approval Order, Defendant shall provide the Settlement Class List to the Settlement Administrator. Within forty-five (45) days after the date of the Preliminary Approval Order, the Settlement Administrator shall disseminate Notice to the Settlement Class Members. Notice shall be disseminated via U.S. mail to all Settlement Class Members. The process to issue Notice as described in this paragraph and the creation and maintenance of the Settlement Website shall constitute the "Notice Plan." The date that the notice is sent is the "Notice Date."

85. **Final Approval Hearing.** The Notice must set forth the time and place of the Final Approval Hearing (subject to change) if known at the time of Notice and state that any Settlement

Class Member who does not file a timely and adequate objection in accordance with this Paragraph waives the right to object or to be heard at the Final Approval Hearing and shall be forever barred from making any objection to the Settlement.

86. **Opt-Outs.** The Notice shall explain the procedure for Settlement Class Members to exclude themselves or “opt-out” of the Settlement by submitting a Request for Exclusion to the Settlement Administrator postmarked no later than the Opt-Out Deadline. The Request for Exclusion must include: (i) the name of the proceeding; (ii) the individual’s full name and current address; (iii) personal signature; and (iv) the words “Request for Exclusion” or a comparable statement that the individual does not wish to participate in the Settlement in the communication. The Notice must state that any Settlement Class Member who does not file a timely Request for Exclusion in accordance with this Paragraph will lose the opportunity to exclude himself or herself from the Settlement and will be bound by the Settlement. A Settlement Class Member who submits a Request for Exclusion must waive their right to object to the Settlement Agreement under Paragraph 87 and lacks standing to assert objections. Any Member of the Settlement Class who timely elects to be excluded shall not: (i) be bound by any order or the Judgment; (ii) be entitled to relief under the Settlement Agreement; (iii) gain any rights by virtue of the Settlement Agreement; or (iv) be entitled to object to any aspect of the Settlement Agreement. No later than seven (7) days after the Opt-Out Deadline, the Settlement Administrator shall distribute the Opt-Out and Objection Report.

87. **Objections.** The Notice shall explain the procedure for Settlement Class Members to object to the Settlement or Fee and Expense Application by submitting written objections to the Court and serving them on Class Counsel and Counsel for COSM no later than the Objection/Exclusion Deadline. A written objection must include: (i) the name of the proceeding; (ii) the Settlement Class Member’s full name, current mailing address, and telephone number; (iii) a statement of the specific grounds for the objection, as well as any documents supporting the objection; (iv) the identity of any attorneys representing the objector; (v) a statement regarding whether the Settlement Class Member (or his/her attorney) intends to appear at the Final Approval Hearing; (vi) a statement identifying all class action settlements objected to by the Settlement Class Member in the previous five (5) years; and (vii) the signature of the Settlement Class Member or the Settlement Class Member’s attorney.

## **VI. DUTIES OF THE SETTLEMENT ADMINISTRATOR**

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

- a. Creating, administering, and overseeing the Settlement Fund;
- b. Obtaining the Settlement Class List for the purpose of disseminating Notice to Settlement Class Members;
- c. Performing National Change of Address searches and/or skip tracing on the Settlement Class List;
- d. Providing Notice to Settlement Class Members via U.S. mail;

- e. Re-sending Notice to Settlement Class Members whose mailing is returned with a forwarding address at least 14-days prior to the Claims Deadline; where a Notice is returned without a forwarding address, the Settlement Administrator shall make reasonable efforts (such as skip tracing) to ascertain the correct address for the Settlement Class Member and resend;
- f. Establishing and maintaining the Settlement Website;
- g. Establishing and maintaining a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answering the questions of Settlement Class Members who call with or otherwise communicate such inquiries within one (1) business day;
- h. Responding to any mailed Settlement Class Member inquiries within no more than three (3) business days;
- i. Reviewing, determining the validity of, and processing all claims submitted by Settlement Class Members;
- j. Receiving Requests for Exclusion and objections from Settlement Class Members and providing Class Counsel and Defendant's Counsel a copy thereof no later than three (3) days following the deadline for submission of the same. If the Settlement Administrator receives any Requests for Exclusion, objections, or other requests from Settlement Class Members after the Opt-Out and Objection Deadlines, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendant's Counsel;
- k. Providing regular status updates to Class Counsel and Defendant's Counsel pertaining to mailing and remailing rates, claims submissions, requests for exclusion, and objections;
- l. After the Effective Date, processing and transmitting Settlement Payments to Settlement Class Members;
- m. Calculating the amount of Pro Rata Cash Payments, if any, upon notice to Class Counsel and Defendant's Counsel;
- n. Processing and transmitting Pro Rata Cash Payments to Settlement Class Members, if applicable;
- o. Providing weekly or other periodic reports to Class Counsel and Defendant's Counsel that include information regarding the number of Settlement Payments mailed and delivered or checks sent via electronic means, Settlement Payments checks cashed, undeliverable information, and any other requested information relating to Settlement Payments. 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;

- p. No later than sixteen (16) days in advance of the Final Approval Hearing, preparing an affidavit to submit to the Court that: (i) attests to implementation of Notice in accordance with the Preliminary Approval Order; and (ii) identifies each Settlement Class Member who timely and properly submitted a Request for Exclusion;
- q. Transferring any Remainder Funds to the designated recipient; and
- r. Performing any other function related to settlement administration as provided for in this Settlement Agreement or at the agreed-upon instruction of Class Counsel or Defendant's Counsel, including, but not limited to, verifying that Settlement Payments have been distributed.

## **VII. PRELIMINARY APPROVAL, FINAL APPROVAL, AND JURISDICTION**

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

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

86. **Final Approval.** Class Counsel shall move the Court for a Final Approval Order of this Settlement, to be issued following the Final Approval Hearing, within a reasonable time after the Notice Deadline, Objection Deadline, and Opt-Out Deadline.

87. **Jurisdiction.** The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding or dispute arising out of or relating to this Settlement 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 Settlement Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Settlement Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Plan and the Settlement Administrator. As part of its agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

## **VIII. MODIFICATION AND TERMINATION**

88. **Modification.** The terms and provisions of this Settlement 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 Settlement 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 Settlement Agreement.

89. **Settlement Not Approved.** If: (1) the Court does not issue the Preliminary Approval Order or Final Approval Order; (2) the Effective Date does not occur; or (3) the Final Approval Order is modified or reversed in any material respect by any appellate or other court, the Parties shall have 60 days from the date of such non-occurrence during which the Parties shall work together in good faith in considering, drafting, and submitting reasonable modifications to this Settlement Agreement to address any issues identified by the Court or that otherwise caused the Preliminary Approval Order or Final Approval Order not to issue or the Effective Date not to occur. If such efforts are unsuccessful, either Party may, at their sole discretion, terminate this Settlement Agreement on seven days written notice to the other Party. For avoidance of any doubt, neither Party may terminate the Agreement while an appeal from an order granting approval of the Settlement is pending.

90. **Termination.** Defendant may terminate this Settlement Agreement on seven (7) days written notice to Class Counsel if more than the agreed-upon number of individuals (more than 25 Class Members) submit valid Requests for Exclusion.

91. **Effect of Termination.** In the event of a termination as provided in this Section VIII, this Settlement Agreement and the Settlement shall be considered null and void; all of the Parties' obligations under the Settlement Agreement shall cease to be of any force and effect and the Parties shall return to the status quo ante in the Litigation as if the Parties had not entered into this Settlement Agreement or the Settlement. Further, in the event of such a termination, the certification of the Settlement Class shall be void. Defendant reserves the right to contest class certification for all purposes other than this Settlement. Any orders preliminarily or finally approving the certification of any class contemplated by the Settlement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity in support of claims or defenses or in support or in opposition to a class certification motion. In addition: (a) the fact that Defendant did not oppose certification of a class under the Settlement shall not be used or cited thereafter by any person or entity, including in a contested proceeding relating to class certification and (b) in the event of such a termination, all of the Parties' respective pre-Settlement claims and defenses will be preserved. 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 Fee Award and Expenses, and/or Service Award shall constitute grounds for cancellation or termination of the Settlement Agreement. Further, notwithstanding any statement in this Settlement Agreement to the contrary, COSM shall be obligated to pay amounts already billed or incurred for costs of Notice to the Class and Claims Administration.

## **IX. RELEASES**

92. **Release.** Upon entry of the Final Approval Order, Settlement Class Members release, acquit, and forever discharge Defendant and its Related Entities, including any past or present employees, officers, directors, affiliates, contractors, vendors, service providers, and representatives, shareholders, partners, members, managers, owners, heirs, executors, predecessors, successors, assigns, attorneys, Defendant's Counsel, insurers (including excess insurers and reinsurers), and/or sureties ("Released Parties") from any and all Released Claims (the "Release"). "Released Claims" shall collectively mean any and all claims, causes of action,

complaints and allegations, 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, without limitation, claims of negligence; negligence *per se*; breach of contract; breach of implied contract; breach of fiduciary duty; breach of confidence; intrusion into private affairs; invasion of privacy; fraud; misrepresentation (whether fraudulent, negligent or innocent); unjust enrichment; bailment; wantonness; breach of the covenant of good faith and fair dealing; and 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, equitable relief, attorneys' fees and expenses, pre-judgment interest, credit monitoring services, statutory damages, punitive damages, special damages, exemplary damages, restitution, and/or the appointment of a receiver, whether liquidated or unliquidated, accrued or unaccrued, fixed or contingent, direct or derivative, having been asserted presently or in the future, and any other form of legal or equitable relief that either has been asserted, was asserted, or could have been asserted, by any Settlement Class Member against any of the Released Parties based on, relating to, concerning or arising out of the Data Incident or the allegations, transactions, occurrences, facts, or circumstances alleged in or otherwise described in the complaints filed in the Litigation, defense of the Litigation, the Settlement Agreement, or the Settlement claims process (provided, however, that this release and discharge shall not include claims relating to the enforcement of the terms of the Settlement or this Settlement Agreement) from the beginning of time until the Effective Date of the Settlement Agreement. Released Claims shall include Unknown Claims as defined in Paragraph 68. Released Claims shall not include the right of any Class Member or any of the Released Parties to enforce the terms of the settlement contained in this Settlement Agreement, and shall not include the claims of Class Members who have timely excluded themselves from the Class. Settlement Class Members waive any principles of law similar to and including Section 1542 of the California Civil Code, which provides: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY. Settlement Class Members agree that Section 1542 and all similar federal or state laws, rules, or legal principles of any other jurisdiction are knowingly and voluntarily waived in connection with the claims released in this Settlement Agreement, and agree that this is an essential term of this Settlement Agreement. Settlement Class Members acknowledge that they may later discover claims presently unknown or suspected, or facts in addition to or different from those which they now believe to be true with respect to the matters released in this Settlement Agreement. Nevertheless, Settlement Class Members fully, finally, and forever settle and release the Released Claims against the Released Parties.

93. **Waiver.** Each Releasor waives any and all defenses, rights, and benefits that may be derived from the provisions of applicable law in any jurisdiction that, absent such waiver, may limit the extent or effect of the release contained in this Settlement Agreement.

94. **Mutual Understanding.** The Parties understand that if the facts upon which this Settlement Agreement is based are found hereafter to be different from the facts now believed to be true, each Party expressly assumes the risk of such possible difference in facts, and agrees that this Settlement Agreement, including the releases contained herein, shall remain effective

notwithstanding such difference in facts. The Parties agree that in entering this Settlement Agreement, it is understood and agreed that each Party relies wholly upon its own judgment, belief, and knowledge and that each Party does not rely on inducements, promises, or representations made by any Person other than those embodied herein.

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

96. **Bar to Future Suits.** Upon entry of the Final Approval Order, the Class Representatives and other Settlement Class Members and Class Counsel shall be enjoined from prosecuting any claim they have released in the preceding paragraphs in any proceeding against Defendant or based on any actions taken by any of the Released Parties that are authorized or required by this Settlement Agreement or by the Final Approval Order. Likewise, Defendant and its representatives, officers, agents, directors, principals, affiliates, employees, insurers, and attorneys shall be enjoined from prosecuting any claim they have released in the preceding paragraphs in any proceeding against Class Representatives and Class Counsel or based on any actions taken by Class Representatives and Class Counsel that are authorized or required by this Settlement Agreement or by the Final Approval Order. It is further agreed that the Settlement may be pleaded as a complete defense to any proceeding subject to this section.

## **X. SERVICE AWARD PAYMENT**

97. **Service Award Payment.** At least fourteen (14) days before the Opt-Out and Objection Deadlines, Class Counsel will file a Fee and Expense Application that will include a request for a Service Award payment for the Class Representatives in recognition of their contributions to this Litigation in an amount not to exceed \$2,500.00 per representative. The Settlement Administrator shall make the Service Award payments to the Class Representatives from the Settlement Fund. Such Service Award payment shall be paid by the Settlement Administrator, in the amount approved by the Court, no later than thirty (30) days after the Effective Date.

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

## **XI. ATTORNEYS' FEES, COSTS, EXPENSES**

99. **Attorneys' Fees and Costs and Expenses.** At least fourteen (14) days before the Opt-Out and Objection Deadlines, Class Counsel will file a Fee and Expense Application for an award of attorneys' fees not to exceed 33.33% of the Settlement Fund, or \$467,882.10, and litigation costs not to exceed \$25,000.00, to be paid to Class Counsel, including any other counsel appearing for Class Representative in the Litigation who Class Counsel have agreed to or understand intend to be compensated by the Settlement. Prior to the disbursement or payment of the Fee Award and Expenses under this Agreement to the IOLTA trust account of Milberg Coleman Bryson Phillips Grossman PLLC. Milberg Coleman Bryson Phillips Grossman PLLC shall provide to the Settlement Administrator a properly completed and duly executed IRS Form W-9. Fee Award and Expenses (plus any interest accrued thereon) shall be paid by the Settlement Administrator, in the amount approved by the Court, no later than thirty (30) days after the Effective Date.

100. **No Effect on Settlement Agreement.** In the event the Court declines to approve, in whole or in part, the Fee Award and Expenses in the amount requested, the remaining provisions of this Settlement 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 Award and Expenses shall constitute grounds for termination of this Settlement Agreement.

## **XII. NO ADMISSION OF LIABILITY**

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

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

## **XIII. MISCELLANEOUS**

103. **Integration of Exhibits.** 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 Settlement Agreement.

104. **Entire Agreement.** This Settlement Agreement, including all exhibits hereto, shall constitute the entire Settlement Agreement among the Parties with regard to the subject matter hereof and shall supersede any previous agreements, representations, communications and understandings among the Parties. This Settlement Agreement may not be changed, modified, or

amended except in writing signed by all Parties, subject to Court approval. The Parties contemplate that, subject to Court approval or without such approval where legally permissible and where such changes are non-material, the exhibits to this Settlement Agreement may be modified by subsequent agreement of Counsel for the Parties prior to dissemination of Notice to the Settlement Class.

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

106. **Construction.** For the purpose of construing or interpreting this Settlement Agreement, the Parties agree that this Settlement 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.

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

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

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

110. **Minors.** A Parent and/or Legal Guardian who is entitled to maintain an action on behalf of a Settlement Class Member who is a minor child may submit a Claim Form on behalf of the minor child pursuant to Florida Statute § 744.387(2).

111. **Severability.** In the event that one or more of the provisions contained in this Settlement Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions of the Settlement Agreement, which shall remain in full force and effect as though the invalid, illegal, or unenforceable provision(s) had never been a part of this Settlement Agreement as long as the benefits of this Settlement Agreement to Defendant or the Settlement Class Members are not materially altered, positively or negatively, as a result of the invalid, illegal, or unenforceable provision(s) and as long as the Release Claims are not narrowed or eliminated as a result of the invalid, illegal, or unenforceable provision(s). In the event that the invalid, illegal, or unenforceable provision has this effect, the Parties must cooperate in good faith to amend the Settlement Agreement to diminish or eliminate the effect.

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

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


Mariya Weekes MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC 201 Sevilla Avenue, 2nd Floor Coral Gables, FL 33134 mweekes@milberg.com	Katherine Earle Yanes KYNES, MARKMAN & FELMAN, P.A. P.O. Box 3396 Tampa, FL 33601-3396 kyanes@kmf-law.com
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All notices to Defendant provided for herein, shall be sent by overnight mail and email to their contact information below:

Robyn M. Feldstein  
BAKER & HOSTETLER LLP  
45 Rockefeller Plaza  
New York, NY 10111  
rfeldstein@bakerlaw.com

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

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

By:   
Robyn M. Feldstein  
BAKER & HOSTETLER LLP  
*Counsel for Defendant*

Date: 1/23/2025

By: \_\_\_\_\_

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

Coastal Orthopedics & Sports Medicine of Southwest Florida, P.A. *Defendant*

By: *Mariya Weekes*  
Mariya Weekes (Jan 22, 2025 17:50 EST)  
Mariya Weekes  
MILBERG COLEMAN BRYSON  
PHILLIPS GROSSMAN, PLLC

Date: 1/22/2025

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

Mariya Weekes MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC 201 Sevilla Avenue, 2nd Floor Coral Gables, FL 33134 mweekes@milberg.com	Katherine Earle Yanes KYNES, MARKMAN & FELMAN, P.A. P.O. Box 3396 Tampa, FL 33601-3396 kyanes@kmf-law.com
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All notices to Defendant provided for herein, shall be sent by overnight mail and email to their contact information below:

Robyn M. Feldstein  
BAKER & HOSTETLER LLP  
45 Rockefeller Plaza  
New York, NY 10111  
rfeldstein@bakerlaw.com

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

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

By: \_\_\_\_\_  
Robyn M. Feldstein  
BAKER & HOSTETLER LLP  
*Counsel for Defendant*

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

By: Paige C. Selmay

Date: 1/23/2025

Coastal Orthopedics & Sports Medicine of Southwest Florida, P.A. *Defendant*

By: \_\_\_\_\_  
Mariya Weekes  
MILBERG COLEMAN BRYSON  
PHILLIPS GROSSMAN, PLLC

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

By: Katherine Earle Yanes  
Katherine Earle Yanes  
KYNES, MARKMAN & FELMAN, P.A.  
Counsel for Plaintiffs and the Settlement Class

Date: 01/22/2025

By: Karl Ford  
Karl Ford

Date: 01/23/2025

By: Barbara Balbo  
Barbara Balbo

Date: 1/23/2025

By: Vikki Comarsh-White  
Vikki Comarsh-White

Date: 01/22/2025

*Class Representatives*

### SETTLEMENT TIMELINE

<b>Grant of Preliminary Approval</b>	
COSM provides list of Settlement Class Members to the Settlement Administrator	+14 days after Preliminary Approval
Long Form and Short Form Notices Posted on the Settlement Website	+45 days after Preliminary Approval
Notice Deadline	+45 days after Preliminary Approval
Class Counsel's Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Class Representatives Service Award	-14 days prior to the Objection Deadline and Opt-Out Deadline
Objection Deadline	+60 days after Notice Date
Exclusion Deadline	+60 days after Notice Date
Claims Deadline	+90 days after Notice Date
Settlement Administrator Provide List of Objections/Exclusions to Counsel	+7 days after deadline for Opt-Out
<b>Final Approval Hearing</b>	
Motion for Final Approval	+100 days after Preliminary Approval Order
	-14 Days before Final Approval Hearing
<b>Final Approval</b>	

Effective Date	+1 day after all conditions met pursuant to ¶ 26
Payment of Attorneys' Fees and Expenses Class Representative Service Award	+30 days after Effective Date
Payment of Claims	+30 days of the Effective Date, or +60 days after the Claims Deadline, whichever is later
Settlement Website Deactivation	+90 days after Payment of Claims

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This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [\\$1.4M+ Coastal Orthopedics Settlement Ends Data Breach Lawsuit Over June 2023 Cyberattack](#)

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