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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

*In re: Proliance Surgeons Data Breach
Litigation,*

Governing Case No. 23-2-23579-7
SEA

Consolidated Case Numbers:
23-2-23699-8 SEA
23-2-24032-4 SEA
23-2-24495-8 SEA

SETTLEMENT AGREEMENT

1 This Settlement Agreement, dated December 12, 2025, is made and entered
2 into by and among Plaintiffs Donna L. Maziarka, Betty A. Deforest, Randy Akers,
3 Angeline Di Fazio, Jeffrey Eaton, Sarah Cardenas, Samuel Levy, Alicia Berend,
4 Rodney Mael, Eric Makus, and Gwendolyn Bachmann (“Plaintiffs”) and Defendant
5 Proliance Surgeons, Inc., P.S. (“Proliance” or “Defendant”) (together with Plaintiffs,
6 the “Settling Parties”), by and through their respective counsel. This Agreement is
7 intended by the Settling Parties to fully, finally, and forever resolve, discharge, and
8 settle all of Plaintiffs’ Released Claims, as defined below, upon and subject to the
9 terms and conditions hereof, and subject to the Court’s approval.

10 **RECITALS**

11 WHEREAS, between November 23, 2023, and December 11, 2023, four cases
12 were filed, including the Governing Case (No. 23-2-23579-7 SEA) and the three
13 other consolidated cases (23-2-23699-8 SEA, 23-2-24032-4 SEA, 23-2-24495-8
14 SEA);

15 WHEREAS, each of the consolidated cases arises from the cyberattack
16 experienced by Proliance on or about February 11, 2023, in which cybercriminals
17 accessed and obtained personally identifiable information (“PII”) and protected
18 health information (“PHI”) (collectively, “Private Information”) relating to Plaintiffs
19 and approximately 437,792 Class Members (the “Data Security Incident”);

20 WHEREAS, each lawsuit alleged that Plaintiffs’ and Class Members’ Private
21 Information was accessed from Proliance’s computer system as a result of the alleged
22 failure to implement and maintain reasonable data security safeguards by the
23 defendant(s) named in each of the consolidated cases, and that Plaintiffs and Class
24 Members suffered damages as a result of such conduct.

25 WHEREAS, on December 18, 2023, a motion to consolidate the cases was
26 filed;

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1 WHEREAS, on January 2, 2024, the Court entered an Order Granting
2 Plaintiffs’ Motion to Consolidate Related Cases, and on March 18, 2024, Plaintiffs
3 filed their operative Consolidated Complaint—*see* Dkt No. 12, 63;

4 WHEREAS, the operative Consolidated Complaint asserts claims against
5 Defendant for Negligence, Breach of Implied Contract, Unjust Enrichment, and
6 violation of the Washington Consumer Protection Act (Wash. Rev. Code
7 § 19.86.020, *et seq.*);

8 WHEREAS, Defendant has denied and continues to deny: (a) each and every
9 allegation and all charges of wrongdoing or liability of any kind whatsoever asserted
10 or which could have been asserted in this Litigation; (b) that the Plaintiffs in the
11 Litigation and the class they purport to represent have suffered any cognizable
12 damage or harm caused by Defendant’s conduct related to the Data Security Incident;
13 and (c) that the Plaintiffs could satisfy the requirements necessary to try the Litigation
14 as a class action under Washington law;

15 WHEREAS, despite Defendant’s position that it is not liable for, and has good
16 and meritorious defenses to, the claims alleged in the Litigation, and without
17 acknowledging or admitting any fault or liability on the part of the Defendant, the
18 Settling Parties have agreed to enter into this Agreement as a reasonable and
19 appropriate compromise of Plaintiffs’ and Class Members’ claims, to put to rest all
20 controversy, and to avoid the uncertainty, risk, expense, and burdensome, protracted,
21 and costly litigation that would be involved in pursuing and defending this Litigation.
22 This Agreement is for settlement purposes only, and nothing in this Agreement shall
23 constitute, be construed as, or be admissible in evidence as any admission of the
24 validity of any claim or any fact alleged by Plaintiffs in this Litigation, in any of the
25 individual lawsuits consolidated into this Litigation, or in any other pending or
26 subsequently filed action, or of any wrongdoing, fault, violation of law, or liability
27 of any kind on the part of Defendant or admission by any of the parties of the validity
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1 or lack thereof of any claim, allegation, or defense asserted in this Litigation or in
2 any other action;

3 WHEREAS, the Settling Parties participated in good faith, arm's-length
4 settlement discussions, which included a mediation held on July 30, 2025, with
5 experienced and respected mediator, Bennett G. Picker of Stradley Ronon Stevens &
6 Young, LLP, and subsequent negotiations facilitated by Mr. Picker, through which,
7 following a mediator's proposal, the basic terms of a settlement were negotiated and
8 agreed to in principle;

9 WHEREAS, Class Counsel conducted a thorough examination and evaluation
10 of the relevant law and facts to assess the merits of the claims to be resolved in this
11 settlement and how best to serve the interests of the putative class in the Litigation.
12 Based on this investigation and the negotiations described above, Class Counsel have
13 concluded, taking into account the sharply contested issues involved, the risks,
14 uncertainty and cost of further pursuit of this Litigation, and the benefits to be
15 provided to the Settlement Class pursuant to this Agreement, that a settlement with
16 Defendant on the terms set forth in this Agreement is fair, reasonable, adequate and
17 in the best interests of the putative class;

18 WHEREAS, this Settlement Agreement is intended to fully, finally and forever
19 resolve all claims and causes of action asserted, or that could have been asserted
20 based upon the facts alleged in the Consolidated Complaint, against Defendant and
21 the Released Persons, by and on behalf of the Plaintiffs and Settlement Class
22 Members, and any other such actions by and on behalf of any other putative classes
23 of individuals against Defendant originating, or that is amenable to or may originate,
24 in jurisdictions in the United States, reasonably related to the facts alleged in the
25 Consolidated Complaint.

26 NOW, THEREFORE, IT IS HEREBY AGREED, by and between the Settling
27 Parties, that, subject to the approval of the Court as provided for in this Agreement,
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1 the Litigation and Released Claims shall be fully and finally settled, compromised,
2 and released, on the following terms and conditions:

3 **I. DEFINITIONS**

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

6 1.1 “Agreement” or “Settlement Agreement” means this agreement.

7 1.2 “Claims Administration” means the issuing of notice of the settlement
8 reflected in this Agreement to Class Members and the processing and payment of
9 claims received from Settlement Class Members by the Claims Administrator.

10 1.3 “Claims Administrator” means Kroll Settlement Administration, LLC
11 (“Kroll”), who is experienced in administering class action claims generally and
12 specifically those of the type provided for and made in data breach litigation.

13 1.4 “Claims Deadline” means the postmark and/or online submission
14 deadline for valid claims submitted pursuant to ¶ 2.2 below. The Claims Deadline is
15 ninety (90) days after the Notice Commencement Date.

16 1.5 “Claim Form” means the claim form to be used by Settlement Class
17 Members to submit a Settlement Claim, either through the mail or online through the
18 Settlement Website, substantially in the form as shown in **Exhibit A**.

19 1.6 “Claimant” means a Settlement Class Member who submits a Claim
20 Form for a Settlement Payment.

21 1.7 “Class Members” means all individuals residing in the United States
22 whose Private Information was potentially or actually compromised in the Data
23 Security Incident, including all those who were sent notice of the Data Security
24 Incident by Proliance or its authorized representatives. Class Members is defined to
25 specifically exclude: (a) all individuals who are directors or officers of Defendant or
26 any entity in which a Defendant has a controlling interest, (b) the affiliates, legal
27 representatives, attorneys, successors, heirs, and assigns of Defendant, (c) the Judge
28 assigned to the Litigation, and (d) that Judge’s immediate family and Court staff.

1 There are approximately 437,392 Class Members. These individuals constitute the
2 “Settlement Class” solely for purposes of certifying a settlement class in this
3 Litigation.

4 1.8 “Consolidated Complaint” means the consolidated complaint filed on
5 March 18, 2024, in Governing Case No. 23-2-23579-7, *In re Proliance Data Breach*,
6 in the King County Superior Court of Washington.

7 1.9 “Costs of Claims Administration” means all actual costs associated with
8 or arising from Claims Administration. The Claims Administrator shall, from the
9 Settlement Fund, pay all Costs of Claims Administration subject to approval by Class
10 Counsel and Defendant’s Counsel.

11 1.10 “Court” means the King County Superior Court in the State of
12 Washington.

13 1.11 “Data Security Incident” means the data security incident alleged in the
14 operative Consolidated Complaint, *i.e.*, the cyberattack perpetrated against Proliance
15 on or around February 11, 2023.

16 1.12 “Defendant’s Counsel” means Christopher G. Dean and David W.
17 Schelberg of McDonald Hopkins LLC.

18 1.13 “Dispute Resolution” means the process for resolving disputed
19 Settlement Claims as set forth in this Agreement.

20 1.14 “Effective Date” means the Effective Date as defined in ¶ 11.1 below.

21 1.15 “Final Approval Order” means an order and judgment that the Court
22 enters which finally approves the Settlement Agreement without material change to
23 the Settling Parties’ agreed-upon proposed final approval order and judgment. Class
24 Counsel shall move the Court for a Final Approval Order of this Settlement fourteen
25 (14) days prior to the date of the Final Fairness Hearing.

26 1.16 “Judgment” means a judgment rendered by the Court.
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1 1.17 “Litigation” means *In re: Proliance Surgeons Data Breach Litigation*
2 (consolidated into Governing Case No. 23-2-23579-7 SEA), pending before the
3 Court as of the date of this Agreement.

4 1.18 “Long Notice” means the long form notice of settlement to be posted on
5 the Settlement Website, substantially in the form as shown in **Exhibit B**.

6 1.19 “Notice Commencement Date” means thirty (30) days following entry
7 of the Preliminary Approval Order.

8 1.20 “Notice Program” means steps taken by the Claims Administrator to
9 notify Class Members of the settlement as set forth below.

10 1.21 “Objection Date” means the date by which Class Members must file
11 with the Court, with service to Proposed Settlement Class Counsel for the Settling
12 Parties, their objection to the Settlement Agreement for that objection to be effective.
13 The Objection Date is sixty (60) days after the Notice Commencement Date.

14 1.22 “Opt-Out Date” means the date by which Class Members must mail
15 requests to be excluded from the Settlement Class for that request to be effective. The
16 postmark date shall constitute evidence of the date of mailing for these purposes. The
17 Opt-Out Date is sixty (60) days after the Notice Commencement Date.

18 1.23 “Person” means an individual, corporation, partnership, limited
19 partnership, limited liability company or partnership, association, joint stock
20 company, estate, legal representative, trust, unincorporated association, government
21 or any political subdivision or agency thereof, and any business or legal entity, and
22 their respective spouses, heirs, predecessors, successors, representatives, or
23 assignees.

24 1.24 “Plaintiffs’ Counsel” means Timothy W. Emery and M. Anderson Berry
25 of Emery Reddy PC, Kaleigh N. Boyd of Tousley Brain Stephens PLLC, Raina C.
26 Borrelli of Strauss Borrelli PLLC, Gary M. Klinger of Milberg Coleman Bryson
27 Phillips Grossman LLC, and Nickolas J. Hagman of Cafferty Clobes Meriwether &
28 Sprengel LLP, and their associated law firms.

1 1.25 “Postcard Notice” means the postcard notice of the proposed class
2 action settlement, substantially in the form as shown in **Exhibit C**. The Postcard
3 Notice will direct recipients to the Settlement Website and inform Class Members of,
4 among other things, the Claims Deadline, the Opt-Out Date and Objection Date, and
5 the date of the Final Fairness Hearing. The Postcard Notice will also include a
6 shortened version of the Claims Form, allowing Settlement Class Members to submit
7 via mail a claim for Pro Rata Cash Fund payment and for Medical Identity-Theft
8 Protection without the need to visit the Settlement Website.

9 1.26 “Preliminary Approval Order” means the order preliminarily approving
10 the Settlement Agreement and ordering that notice be provided to Class Members
11 substantially in the form attached hereto as **Exhibit D**.

12 1.27 “Proposed Settlement Class Counsel” and “Class Counsel” means
13 Timothy W. Emery of Emery Reddy PC and Kaleigh N. Boyd of Tousley Brain
14 Stephens PLLC.

15 1.28 “Related Entities” means Defendant’s respective past or present
16 officers, directors, regents, employees, consultants, servants, members, partners,
17 principals, shareholders, owners, parents, subsidiaries, divisions, partnerships,
18 corporations, public hospital districts, medical centers and other healthcare providers,
19 faculty practice plans, workforce members, subsidiaries, divisions, partners, joint
20 venturers, licensees, customers, and related or affiliated entities (including without
21 limitation all entities who had information impacted in the Data Security Incident, all
22 Proliance organizations without regard to whether such organizations are legally
23 recognized entities or proper defendants, as well as any entities in which Defendant
24 has a controlling interest), and respective past or present predecessors, successors,
25 directors, officers, employees, principals, agents, creditors, attorneys, executors,
26 heirs, administrators, joint ventures, personal representatives, assigns, transferees,
27 trustees, insurers, and reinsurers, and includes, without limitation, any Person or
28 government (including but not limited to the State of Washington) related to any such

1 entity who is, was, or could have been named as a defendant in any of the actions
2 comprising the Litigation.

3 1.29 “Released Claims” shall collectively mean any and all past, present, and
4 future claims, causes of action, lawsuits, set-offs, costs, expenses, attorneys’ fees,
5 losses, rights, demands, charges, complaints, actions, matters, suits, petitions,
6 obligations, debts, contracts, penalties, damages (including incidental damages,
7 consequential damages, statutory damages, and punitive damages), rights to
8 restitution, disgorgement, or other monetary relief, or liabilities of any kind and
9 description and of any nature whatsoever, whether known or unknown, liquidated or
10 unliquidated, accrued or unaccrued, fixed or contingent, direct or derivative, matured
11 or unmatured, in law or equity, and any other form of legal or equitable relief that
12 has been asserted, was asserted, or could have been asserted, by any Settlement Class
13 Member against any of the Released Persons that arises out of or otherwise relates to
14 the Data Security Incident or the investigation thereof, that is reasonably related to
15 the operative facts alleged in or otherwise described by the Consolidated Complaint
16 or the investigation thereof, and/or that otherwise relate in any way to the Released
17 Persons’ collection, receipt, storage, acquisition, use, aggregation, compilation,
18 distribution, disclosure, protection, transfer, or access to any records or systems
19 affected by the Data Security Incident or information reflected therein. Released
20 Claims shall not include the right of any Settlement Class Member or any of the
21 Released Persons to enforce the terms of the Settlement contained in this Settlement
22 Agreement and shall not include the claims of Class Members who have timely
23 excluded themselves from this Settlement using the protocol described herein.

24 1.30 “Released Persons” means Defendant and their Related Entities.

25 1.31 “Settlement Claim” means a claim for settlement benefits made under
26 the terms of this Settlement Agreement.
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1 1.32 “Settlement Class Member(s)” means Class Members who do not
2 timely and validly opt-out of the Agreement by excluding themselves from this
3 settlement proceeding using the protocol described herein.

4 1.33 “Settlement Class Representatives” or “Representative Plaintiffs”
5 means Donna L. Maziarka, Betty A. Deforest, Randy Akers, Angeline Di Fazio,
6 Jeffrey Eaton, Sarah Cardenas, Samuel Levy, Alicia Berend, Rodney Mael, Eric
7 Makus, and Gwendolyn Bachmann.

8 1.34 “Settlement Fund” shall mean the common fund established pursuant to
9 ¶ 2.1.1 of this Agreement.

10 1.35 “Settling Parties” means, collectively, Defendant and Plaintiffs,
11 individually and on behalf of the Settlement Class Members.

12 1.36 “Settlement Website” means a website, the URL for which will be
13 mutually selected by the Settling Parties in consultation with the Claims
14 Administrator, that will inform Class Members of the terms of this Settlement
15 Agreement, their rights, dates and deadlines and related information, as well as
16 provide the Class Members with the ability to submit a Settlement Claim online.

17 1.37 “United States” as used in this Settlement Agreement includes all 50
18 states, the District of Columbia, and all territories.

19 1.38 “Valid Claims” means Settlement Claims in an amount approved by the
20 Claims Administrator or found to be valid through the claims processing and/or
21 Dispute Resolution process, or through the process for review and challenge set forth
22 in the section entitled, “Administration of Claims.”

23 **II. SETTLEMENT CLASS BENEFITS**

24 2.1.1 Settlement Fund. Defendant and/or their insurers shall create a non-
25 reversionary common fund of four million four hundred and fifty thousand dollars
26 (\$4,450,000.00) as consideration for the releases obtained in this Settlement. Within
27 thirty (30) days of the Preliminary Approval Order, Defendant will pay or cause to
28 be paid the Claims Administrator’s reasonable set-up costs, notice, and early

1 administration costs into an account established and administered by the Claims
2 Administrator at a financial institution agreed upon by the Claims Administrator,
3 Defendant's Counsel, and Class Counsel. The remainder of the \$4,450,000.00 (*i.e.*,
4 the amounts remaining to be paid after the initial payment) will be paid into the non-
5 reversionary cash settlement fund within thirty (30) days of the Effective Date of the
6 Settlement. The Claims Administrator shall provide a detailed invoice for its
7 reasonable set-up costs, notice, and early administration costs, wiring instructions,
8 and a properly completed and duly executed IRS Form W-9, along with any other
9 necessary forms, to Defendant within five (5) days after the entry of the Preliminary
10 Approval Order. Class Counsel shall be responsible for promptly notifying the
11 Claims Administrator of entry of the Preliminary Approval Order. As set forth below,
12 the Settlement Fund will be used to pay for: (i) Compensation for Out-of-Pocket
13 Losses (¶ 2.2.1); (ii) Pro Rata Cash Payments (¶ 2.2.3); (iii) Costs of Notice and
14 Claims Administration (¶ 1.8); (iv) Medical Identity-Theft Protection and
15 Monitoring services (¶ 2.3); (v) any service awards approved by the Court (¶ 9.1);
16 and (vi) any attorneys' fees and litigation expenses approved by the Court (¶ 9.2).
17 Defendant shall have no other responsibilities, financial obligations, or liability under
18 this Agreement whatsoever, including without limitation, with respect to the
19 selection of the Settlement Fund account, investment of Settlement Fund account
20 funds, or payment of the administrative, legal, accounting, or other costs occasioned
21 by the use or administration of the Settlement Fund, except such amounts as may
22 have been incurred by the Claims Administrator in the event the settlement does not
23 become final. In addition, under no circumstances will Defendant or any of the
24 Released Persons have any liability for taxes or tax expenses for class members, their
25 counsel, or any third party under this Settlement Agreement. To the extent this
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1 Settlement Agreement does not become final, Defendant will be entitled to the return
2 of any amounts not already incurred by the Claims Administrator.

3 2.2 Cash Benefits. The Claims Administrator will make available from the
4 Settlement Fund the below compensation to Settlement Class Members who submit
5 valid and timely Claim Forms. Claims will be reviewed for completeness and
6 plausibility by the Claims Administrator. For claims deemed invalid, the Claims
7 Administrator shall provide Claimants an opportunity to cure, unless an inability to
8 cure is apparent from the face of the claim, *e.g.*, the Claimant is not a Settlement
9 Class Member.

10 2.2.1 Compensation for Out-of-Pocket Losses: All Settlement Class
11 Members may submit a claim for up to \$5,000.00 for documented out-of-
12 pocket losses incurred as a direct result of the Data Security Incident, to be
13 paid out of the Settlement Fund. Examples of the kind of documented out-of-
14 pocket losses that may be claimed include unreimbursed losses relating to
15 fraud or identity theft, unreimbursed costs of credit monitoring incurred
16 between the time of the Data Security Incident and the time the claim is
17 submitted, postage, copying, scanning, faxing, mileage and other travel-related
18 charges, parking, notary charges, research charges, cell phone charges (only if
19 charged by the minute), long distance phone charges, data charges (only if
20 charged based on the amount of data used), text message charges (only if
21 charged by the message), bank fees, accountant fees, and attorneys' fees, all of
22 which must be fairly traceable to the Data Security Incident and must not have
23 been previously reimbursed by a third party. Self-prepared documentation
24 alone is not sufficient to support an out-of-pocket claim. Expenses must be
25 attested to and supported by documentation substantiating the full extent of the
26 amount claimed.

27 2.2.2 Settlement Class Members seeking reimbursement under ¶ 2.2.1
28 must complete and submit to the Claims Administrator a Claim Form in a form

1 substantially similar to the one attached as **Exhibit A**, postmarked or submitted
2 online or received on or before the Claims Deadline. The notice to the Class
3 Members will specify this deadline and other relevant dates described herein.
4 The Claim Form must be verified by the Settlement Class Member with a
5 statement that his or her claim is true and correct, to the best of his or her
6 knowledge and belief. Notarization is not required. Claims for Out-of-Pocket
7 Losses must be attested to and supported by documentation substantiating the
8 full extent of the amount claimed. Failure to provide such supporting
9 documentation, as requested on the Claim Form, shall result in denial of a
10 claim. Disputes as to claims submitted under this paragraph are to be resolved
11 pursuant to the provisions stated in ¶ 10.1.

12 2.2.3 Pro Rata Cash Fund Payments. All Settlement Class Members are
13 eligible to make a claim for a pro rata Cash Fund Payment of up to \$599.00,
14 regardless of whether they make a claim for Out-of-Pocket Losses, to be paid
15 out of the Settlement Fund. The Pro Rata Cash Fund Payments will evenly
16 distribute the net amount of the Settlement Fund, after payment of all approved
17 claims for Out-of-Pocket Losses, Costs of Claims Administration, the cost of
18 Medical Identity-Theft Protection and Monitoring, any fee and expenses
19 award, and Plaintiff service awards the Court may award, to each Settlement
20 Class Member who submits a Valid Claim.

21 2.3 Medical Identity-Theft Protection and Monitoring. All Settlement Class
22 Members may submit a Claim for Medical Identity-Theft Protection and Monitoring,
23 the costs of which will be paid out of the Settlement Fund. Settlement Class Members
24 are eligible to receive two (2) years of Medical Shield Complete, a medical
25 information protection and monitoring service offered through CyEx. This service
26 monitors medical and healthcare data to determine whether consumers' private health
27 information is at risk or has been exposed to medical fraud and comes with single-
28 bureau credit monitoring. Class Members may claim this service regardless of

1 whether they make a claim for Out-of-Pocket Losses or Pro Rata Cash Fund
2 Payments. Settlement Class Members will need to submit a claim and enroll in the
3 program to receive this benefit.

4 2.3.1 If sufficient funds remain in the Settlement Fund after paying out:

5 (i) Compensation for Out-of-Pocket Losses (¶ 2.2.1); (ii) Pro Rata Cash
6 Payments (¶ 2.2.3); (iii) Costs of Claims Administration (¶ 1.8); (iv) two years
7 of Medical Identity-Theft Protection and Monitoring services (¶ 2.3); (v) any
8 Plaintiff service awards the Court may award (¶ 9.1); and (vi) any attorneys'
9 fees and litigation expenses the Court may award (¶ 9.2), such remaining funds
10 shall be used to purchase additional months or years of Medical Identity-Theft
11 Protection services, to the extent the purchase of additional monitoring
12 services is economically feasible in light of the amount of funds remaining in
13 the Settlement Fund.

14 2.4 Residual Funds. In the event that there is any portion of the Settlement
15 Fund that remains after all of the above have been paid, and it is not economically
16 feasible to further distribute funds pursuant to ¶ 2.3.1, any such residual funds shall
17 be distributed to the Legal Foundation of Washington. Given that the intention is that
18 the net amount of the Settlement Fund will be fully paid out to Settlement Class
19 Members claiming the Pro Rata Cash Fund Payments, it is anticipated that the only
20 residual funds will be from uncashed settlement checks or unnegotiated electronic
21 payments.

22 2.5 Business Practice Enhancements, Including Monetary Investment into
23 Data Security. Defendant has implemented certain reasonable steps to enhance the
24 policies, processes, and security controls deployed to secure Proliance's data network
25 and patient data stored therein. Upon request from Class Counsel, Defendant will
26 provide Class Counsel with a confidential declaration or affidavit describing the
27 security enhancements that Defendant implemented on or before and up to the date
28 of the Preliminary Approval Order.

1 2.6 Dispute Resolution. The Claims Administrator, in its discretion to be
2 reasonably exercised, will determine whether: (1) the Claimant is a Settlement Class
3 Member; (2) the Claimant has provided all information needed to complete the Claim
4 Form, including any documentation and/or attestation that may be necessary to
5 reasonably support the Out-of-Pocket Losses described in ¶ 2.2.1; and (3) the
6 information submitted could lead a reasonable person to conclude that more likely
7 than not the Claimant has suffered the claimed losses as a result of the Data Security
8 Incident. The Claims Administrator may, at any time, request from the Claimant, in
9 writing, additional information as the Claims Administrator may reasonably require
10 in order to evaluate the claim (*e.g.*, documentation requested on the Claim Form,
11 information regarding the claimed losses, available insurance and the status of any
12 claims made for insurance benefits, and claims previously made for identity theft and
13 the resolution thereof). For any such Settlement Claims that the Claims Administrator
14 determines to be implausible, the Settlement Claims will be deemed invalid and
15 submitted to counsel for the Settling Parties. If counsel for the Settling Parties agree
16 that any such claim is a Valid Claim, the Claims Administrator shall follow counsel's
17 joint direction regarding the disposition of the claim.

18 2.6.1 Upon receipt of an incomplete or unsigned Claim Form or a
19 Claim Form that is not accompanied by sufficient documentation to determine
20 whether the claim is facially valid, the Claims Administrator shall request additional
21 information and give the Claimant thirty (30) days to cure the defect before rejecting
22 the claim. If the defect is not cured, then the claim will be deemed invalid and there
23 shall be no obligation to pay the claim.

24 2.6.2 Following receipt of additional information requested by the
25 Claims Administrator, the Claims Administrator shall have thirty (30) days to accept,
26 in whole or lesser amount, or reject each claim. If, after review of the claim and all
27 documentation submitted by the Claimant, the Claims Administrator determines that
28 such a claim is valid, then the claim shall be paid, subject to the review and challenge

1 process set forth in ¶ 10.1. If the claim is determined to be invalid, then the Claims
2 Administrator will submit it to counsel for the Settling Parties. If counsel for the
3 Settling Parties agree that any such claim is a Valid Claim, the Claims Administrator
4 shall follow counsel's joint direction regarding the disposition of the claim.

5 **III. CLASS CERTIFICATION**

6 3.1 The Settling Parties agree, for purposes of this settlement only, to the
7 certification of the Settlement Class. If the settlement set forth in this Settlement
8 Agreement is not approved by the Court, or if the Settlement Agreement is terminated
9 or cancelled pursuant to the terms of this Settlement Agreement, this Settlement
10 Agreement, and the certification of the Settlement Class provided for herein, will be
11 vacated and the Litigation shall proceed as though the Settlement Class had never
12 been certified, without prejudice to any Person's or Settling Party's position on the
13 issue of class certification or any other issue. The Settling Parties' agreement to the
14 certification of the Settlement Class is also without prejudice to any position asserted
15 by the Settling Parties in any other proceeding, case or action, as to which all of their
16 rights are specifically preserved. All discussions and agreements related to the
17 Settlement Agreement shall be considered confidential and inadmissible pursuant to
18 ER 408.

19 **IV. NOTICE AND CLAIMS ADMINISTRATION**

20 4.1 The Settling Parties selected Kroll to be the Claims Administrator, who
21 will be charged with delivering sufficient notice (including direct notice) and
22 administering the claims process. The Claims Administrator shall, from the
23 Settlement Fund, pay the entirety of the Costs of Claims Administration, including
24 the cost of notice, subject to approval by Class Counsel.

25 4.2 After the Effective Date, the Claims Administrator shall provide the
26 requested relief to all Settlement Class Members that made valid and timely claims,
27 subject to the individual caps on Settlement Class Member payments set forth in
28 ¶¶ 2.2.1 and 2.2.3 above.

1 **V. PRELIMINARY APPROVAL**

2 5.1 As soon as practicable after the execution of the Settlement Agreement,
3 Proposed Settlement Class Counsel shall submit this Settlement Agreement to the
4 Court, and Proposed Settlement Class Counsel will file a motion for preliminary
5 approval of the settlement with the Court requesting entry of a Preliminary Approval
6 Order in a form substantially similar to the one attached as **Exhibit D**, requesting,
7 among other things:

- 8 a) certification of the Settlement Class for settlement purposes only
9 pursuant to ¶ 3.1;
- 10 b) preliminary approval of the Settlement Agreement as set forth
11 herein;
- 12 c) appointment of Proposed Settlement Class Counsel as Settlement
13 Class Counsel;
- 14 d) appointment of Plaintiffs as Settlement Class Representatives;
- 15 e) providing that the settlement as set forth in this Agreement is not
16 an admission or evidence of wrongdoing, fault, violation of law,
17 or liability of any kind by Defendant, and that evidence relating
18 to the Agreement shall not be admissible into evidence or used in
19 any action or proceeding, except for purposes of interpreting this
20 Agreement and the Preliminary and Final Approval Orders;
- 21 f) Approval of the Notice Program and Notices;
- 22 g) Approval of the Claim Form and Claims process; and
- 23 h) Appointment of Kroll as the Claims Administrator.

24 The Long Notice, Postcard Notice, and Claim Form will be reviewed and approved
25 by the Claims Administrator but may be revised as agreed upon by the Settling Parties
26 prior to submission to the Court for approval.

1 5.2 Proposed Settlement Class Counsel will prepare and file the motion for
2 preliminary approval described in ¶ 5.1 above. Defendant’s Counsel will cooperate
3 in the preparation and filing of the same, as may be reasonable and appropriate.

4 5.3 The Claims Administrator shall, from the Settlement Fund, pay for
5 providing notice to Class Members in accordance with the Preliminary Approval
6 Order. Service awards to Plaintiff and attorneys’ fees, costs, and expenses of
7 Settlement Class Counsel, as approved by the Court, shall be paid by the Claims
8 Administrator, from the Settlement Fund, as set forth in ¶ 9 below.

9 5.4 Notice shall be provided to Class Members by the Claims Administrator
10 as follows:

11 5.4.1 Class Member Information: No later than fourteen (14) days after
12 entry of the Preliminary Approval Order, Proliance shall provide the Claims
13 Administrator with the name and last known physical address of each Class Member
14 to the extent known (collectively, “Class Member Information”). The Class Member
15 Information and its contents shall be used by the Claims Administrator solely for the
16 purpose of performing its obligations pursuant to this Settlement Agreement and shall
17 not be used for any other purpose at any time. The Claims Administrator shall not
18 reproduce, copy, store, or distribute in any form, electronic or otherwise, the Class
19 Member Information, except to administer the settlement as provided in this
20 Settlement Agreement.

21 5.4.2 Settlement Website: Prior to the dissemination of the Settlement
22 Notice, the Claims Administrator shall establish the Settlement Website that will
23 inform Class Members of the terms of this Settlement Agreement, their rights, dates
24 and deadlines and related information. The Settlement Website shall include, in .pdf
25 format and available for download, the following: (i) the Long Notice; (ii) the Claim
26 Form; (iii) the Preliminary Approval Order; (iv) this Settlement Agreement; (v) the
27 operative Consolidated Complaint filed in the Litigation; and (vi) any other materials
28 agreed upon by the Settling Parties and/or required by the Court. The notice will also

1 be available in Spanish on the Settlement Website. The Settlement Website shall
2 provide Class Members with the ability to complete and submit the Claim Form
3 electronically. Proposed Settlement Class Counsel and Defendant's Counsel will
4 cooperate in the review and approval of the Settlement Website. The Settlement
5 Website will remain operational until one hundred eighty (180) days after the
6 Effective Date.

7 5.4.3 Postcard Notice: Within thirty (30) days after the entry of the
8 Preliminary Approval Order, and subject to the requirements of this Agreement and
9 the Preliminary Approval Order, the Claims Administrator will provide notice to
10 Class Members as follows:

- 11 a) Via U.S. mail to all Class Members;
- 12 b) Before any mailing under this paragraph occurs, the Claims
13 Administrator shall run the postal addresses of Class
14 Members through the United States Postal Service
15 ("USPS") National Change of Address database to update
16 any change of address on file with the USPS;
 - 17 i. In the event that a mailed Postcard Notice is returned
18 to the Claims Administrator by the USPS because
19 the address of the recipient is no longer valid, and
20 the envelope contains a forwarding address, the
21 Claims Administrator shall re-send the Postcard
22 Notice to the forwarding address within seven (7)
23 days of receiving the returned Postcard Notice;
 - 24 ii. In the event that subsequent to the first mailing of a
25 Postcard Notice, and at least fourteen (14) days prior
26 to the Opt-Out and Objection Deadline, a Postcard
27 Notice is returned to the Claims Administrator by
28 the USPS because the address of the recipient is no

1 longer valid, *i.e.*, the envelope is marked “Return to
2 Sender” and does not contain a new forwarding
3 address, the Claims Administrator shall perform a
4 standard skip trace, in the manner that the Claims
5 Administrator customarily performs skip traces, in
6 an effort to attempt to ascertain the current address
7 of the particular Class Member in question and, if
8 such an address is ascertained, the Claims
9 Administrator will re-send the Postcard Notice
10 within seven (7) days of receiving such information.

11 This shall be the final requirement for mailing; and

- 12 c) Publishing, on or before the Notice Commencement Date,
13 the Postcard Notice, Claim Form, and Long Notice on the
14 Settlement Website, as specified in the Preliminary
15 Approval Order, and maintaining and updating the website
16 throughout the claim period.

17 Notice shall be substantially completed not later than forty-five (45) days after entry
18 of the Preliminary Approval Order.

19 5.4.4 A toll-free help line shall be made available to provide Class
20 Members with information about the settlement. Proposed Settlement Class Counsel
21 and Defendant’s Counsel will cooperate in the review and approval of any
22 information to be provided through the toll-free help line. The Claims Administrator
23 will also provide copies of the Long Notice, and paper Claim Form, as well as this
24 Settlement Agreement, upon request.

25 5.4.5 Contemporaneously with seeking a Final Approval Order,
26 Proposed Settlement Class Counsel shall cause to be filed with the Court an
27 appropriate affidavit or declaration from the Claims Administrator with respect to
28 complying with this provision of notice. Proposed Settlement Class Counsel and

1 Defendant's Counsel will cooperate in the preparation of the Claims Administrator's
2 affidavit or declaration.

3 5.5 The Postcard Notice, Long Notice, and other applicable
4 communications to the Class Members may be adjusted by the Claims Administrator,
5 respectively, in consultation and agreement with counsel for the Settling Parties, as
6 may be reasonable and consistent with such approval.

7 5.6 Proposed Settlement Class Counsel and Defendant's Counsel shall
8 request that, after notice is completed, and the time to file claims has expired, the
9 Court hold a hearing (which may be held remotely) (the "Final Fairness Hearing")
10 no earlier than one hundred and thirty (130) days after entry of the Preliminary
11 Approval Order and grant final approval of the settlement set forth herein. Proposed
12 Settlement Class Counsel will prepare and file the motion seeking a Final Approval
13 Order. Defendant's Counsel will cooperate in the preparation and filing of the same,
14 as may be reasonable and appropriate.

15 **VI. OPT-OUT PROCEDURES**

16 6.1 Each Class Member wishing to opt out of the Settlement Class shall
17 individually sign and timely submit written notice of such intent to the designated
18 Post Office box established by the Claims Administrator. The written notice must
19 clearly manifest the Class Member's intent to opt out of the Settlement Class. To be
20 effective, written notice must be received or postmarked by the Opt-Out Date. Class
21 Members will only be able to submit an opt-out request on their own behalf; mass or
22 class opt-outs will not be permitted.

23 6.2 Class Members who submit valid and timely notices of their intent to
24 opt out of the Settlement Class, as set forth in ¶ 6.1 above, referred to herein as "Opt-
25 Outs," shall not receive any benefits of and/or be bound by the terms of this
26 Settlement Agreement. All Class Members (*i.e.*, individuals falling within the
27 definition of the Settlement Class) who do not opt out of the Settlement Class in the
28

1 manner set forth in ¶ 6.1 above shall be bound by the terms of this Settlement
2 Agreement, Release, and Judgment entered thereon.

3 6.3 Defendant shall have the option to terminate this Agreement if more
4 than 5% of Class Members have opted out of the Settlement Agreement. Defendant
5 shall notify Class Counsel and the Court of its intent to terminate this Agreement
6 pursuant to this paragraph within seven (7) days from the date the Claims
7 Administrator provides the Opt-Out List to Defendant as provided in ¶ 11.3 below or
8 the option to terminate shall be considered waived. If Defendant voids the Settlement
9 Agreement, Defendant shall be obligated to pay all settlement expenses already
10 incurred, excluding any attorneys' fees, costs, and expenses of Proposed Settlement
11 Class Counsel and service awards and shall not, at any time, seek recovery of the
12 same from any other party to the Litigation or from counsel to any other party to the
13 Litigation.

14 **VII. OBJECTION PROCEDURES**

15 7.1 Each Settlement Class Member desiring to object to the Settlement
16 Agreement shall submit a timely written notice of his or her objection by the
17 Objection Date. Such notice shall state: (i) the objector's full name and address; (ii)
18 the case name and docket number—*In re: Proliance Surgeons Data Breach*
19 *Litigation*, Case No. 23-2-23579-7 SEA (Washington State Superior Court for King
20 County); (iii) information identifying the objector as a Settlement Class Member,
21 including proof that the objector is a Settlement Class Member (*e.g.*, copy of the
22 objector's settlement notice, copy of original notice of the Data Security Incident, or
23 a statement explaining why the objector believes he or she is a Settlement Class
24 Member); (iv) a written statement of all grounds for the objection, accompanied by
25 any legal support for the objection the objector believes applicable; (v) the identity
26 of any and all counsel representing the objector in connection with the objection; (vi)
27 a statement identifying the number of class action settlements the objector has
28 objected to or commented on in the last five years; (vii) for each attorney

1 representing, advising, or assisting the objector, a statement identifying every
2 objection the attorney has filed to any other class action settlements in the last five
3 years; (viii) a statement whether the objector and/or his or her counsel will appear at
4 the Final Fairness Hearing; and (ix) the objector's signature or the signature of the
5 objector's duly authorized attorney or other duly authorized representative (if any)
6 representing him or her in connection with the objection. To be timely, written notice
7 of an objection that substantially complies with ¶¶ 7.1(i)-(ix) must be mailed, such
8 that it is either received by or contains a postmark date no later than the Objection
9 Date, to Proposed Settlement Class Counsel: Timothy W. Emery, Emery Reddy PC,
10 600 Stewart Street, Suite 1100, Seattle WA 98101; and Kaleigh N. Boyd, Tousley
11 Brain Stephens PLLC, 1200 Fifth Avenue, Suite 1700, Seattle, WA 98101; and
12 Defendant Proliance's Counsel, David W. Schelberg, McDonald Hopkins PLC,
13 39533 Woodward Ave., Ste. 318, Bloomfield Hills, MI 48304.

14 7.2 For all objections mailed to Proposed Settlement Class Counsel and
15 Defendant's Counsel, Proposed Settlement Class Counsel will file them with the
16 Court with the Motion for Final Approval of Settlement.

17 7.3 The Settling Parties reserve the right to challenge the objection of any
18 Settlement Class Member who fails to comply with the requirements for objecting in
19 ¶ 7.1 as having waived and forfeited any and all rights he or she may have to appear
20 separately and/or to object to the Settlement Agreement, and assert that such
21 Settlement Class Member is bound by all the terms of the Settlement Agreement and
22 by all proceedings, orders and judgments in the Litigation. The exclusive means for
23 any challenge to the Settlement Agreement shall be through the provisions of ¶ 7.1.
24 Without limiting the foregoing, any challenge to the Settlement Agreement, the Final
25 Approval Order, or the Judgment to be entered upon final approval shall be pursuant
26 to appeal under the Washington State Court Rules of Appellate Procedure and not
27 through a collateral attack. Class Counsel is responsible for addressing and preparing
28

1 any challenges to objections, and responding to objections as may be appropriate.
2 Defendant's Counsel will cooperate in same, as may be reasonable and appropriate

3 **VIII. RELEASES**

4 8.1 Upon sixty (60) days after the Effective Date, each Settlement Class
5 Member, including Plaintiffs, shall be deemed to have, and by operation of the
6 Judgment shall have, fully, finally, and forever released, relinquished, and discharged
7 all Released Claims against the Released Persons. Further, upon the Effective Date,
8 and to the fullest extent permitted by law, each Settlement Class Member, excluding
9 Opt-Outs but including Plaintiffs, shall directly, indirectly, or in any representative
10 capacity, be permanently barred and enjoined from commencing, prosecuting, or
11 participating in any recovery in any action in this or any other forum (other than
12 participation in this Settlement Agreement as provided herein) in which any of the
13 Released Claims against the Released Persons is asserted.

14 **IX. SERVICE AWARD AND ATTORNEYS' FEES AND EXPENSES**

15 9.1 At least fourteen (14) days before the Opt-Out and Objection Deadlines,
16 Class Counsel will file a motion seeking a service award payment for the Settlement
17 Class Representatives in recognition of their contributions to this Litigation. After an
18 agreement had been reached as to the essential terms of a settlement (*i.e.*, Settlement
19 Class benefits), the Settling Parties negotiated the amount of a service award to the
20 Representative Plaintiffs. Subject to Court approval, the Representative Plaintiffs
21 shall seek a \$4,000.00 service award to each Representative Plaintiff. The Claims
22 Administrator shall, from the Settlement Fund, pay the service awards approved by
23 the Court up to the agreed maximum.

24 9.2 At least fourteen (14) days before the Opt-Out and Objection Deadlines,
25 Plaintiffs shall seek an award of attorneys' fees not to exceed one-third of the
26 Settlement Fund, or \$1,483,333.33. Plaintiffs shall also seek reimbursement for
27 reasonable, receipt-documented out-of-pocket costs and expenses without mark-up,
28 in an amount not to exceed \$100,000.00. The Claims Administrator shall, from the

1 Settlement Fund, pay the attorneys' fees and expenses award approved by the Court
2 up to the agreed maximum.

3 9.3 The Claims Administrator shall, from the Settlement Fund, pay the
4 service awards and attorneys' fees and expenses awarded by the Court to Tousley
5 Brain Stephens, PLLC within forty-five (45) days after the Effective Date. The
6 attorneys' fees and expenses award will be allocated among Plaintiffs' Counsel.
7 Proposed Settlement Class Counsel shall have the sole discretion to make the fee
8 allocations. Defendant and the Released Persons bear no responsibility or liability
9 relating to the allocation of the attorneys' fees and expenses among Plaintiffs'
10 Counsel.

11 9.4 The finality or effectiveness of the Settlement Agreement shall not
12 depend upon the Court awarding any particular attorneys' fees and expenses award
13 or service award. No order of the Court, or modification or reversal or appeal of any
14 order of the Court concerning the amount(s) of any attorneys' fees and expenses,
15 and/or service awards ordered by the Court to Proposed Settlement Class Counsel or
16 Representative Plaintiffs shall affect whether the Judgment is final or constitute
17 grounds for cancellation or termination of this Settlement Agreement.

18 **X. ADMINISTRATION OF CLAIMS**

19 10.1 The Claims Administrator shall administer and calculate the claims
20 submitted by Settlement Class Members under ¶¶ 2.2.1 and/or 2.2.3. Proposed
21 Settlement Class Counsel and Defendant's Counsel shall be given reports as to both
22 claims and distribution, and have the right to challenge the claims and distribution
23 set forth in the reports, including by requesting and receiving, for any approved claim,
24 the name of the Settlement Class Member, a description of the approved claim,
25 including dollar amounts to be paid as Out-of-Pocket Losses, and all supporting
26 documentation submitted. If counsel for the Settling Parties agree that any such claim
27 is improper, the Claims Administrator shall follow counsel's joint direction regarding
28 the disposition of the claim. If counsel for the Settling Parties cannot agree on the

1 disposition of a claim, counsel for the Settling Parties, upon the election of either
2 counsel for any Settling Party, will submit the claim for disposition to a jointly agreed
3 impartial third-party claim referee for determination. The Claims Administrator's
4 determination of whether a Settlement Claim is a Valid Claim shall be binding,
5 subject to the above right of review and challenge and the Dispute Resolution process
6 set forth in ¶ 2.6.

7 10.2 Codes for Medical Shield Complete and checks for Valid Claims shall
8 be mailed and postmarked, and electronic payments shall be issued electronically,
9 within sixty (60) days of the Effective Date, or within thirty (30) days of the date that
10 the claim is approved, whichever is later.

11 10.3 All Settlement Class Members who fail to timely submit a claim for
12 any benefits hereunder within the time frames set forth herein, or such other period
13 as may be ordered by the Court, or otherwise allowed, shall be forever barred from
14 receiving any payments or benefits pursuant to the settlement set forth herein, but
15 will in all other respects be subject to, and bound by, the provisions of the Settlement
16 Agreement, the releases contained herein, and the Judgment.

17 10.4 No Person shall have any claim against the Claims Administrator,
18 Defendant, Proposed Settlement Class Counsel, Plaintiffs' Counsel, Proposed Class
19 Representatives, and/or Defendant's counsel based on distributions of benefits, or the
20 denial of benefits, to Settlement Class Members.

21 **XI. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL,**
22 **CANCELLATION, OR TERMINATION**

23 11.1 The Effective Date of the settlement shall be conditioned on the
24 occurrence of all of the following events:

- 25 a) The settlement pursuant to this Settlement Agreement is approved
26 by the Court;
- 27 b) The Court has entered a Judgment granting final approval of the
28 settlement as set forth herein; and

1 c) The time to appeal or seek permission to appeal from the
2 Judgment has expired or, if appealed, the appeal has been
3 dismissed in its entirety, or the Judgment has been affirmed in its
4 entirety by the court of last resort to which such appeal may be
5 taken, and such dismissal or affirmance has become no longer
6 subject to further appeal or review.

7 11.2 If all conditions specified in ¶ 11.1 hereof are not satisfied and the
8 Effective Date does not occur, the Settlement Agreement shall be terminated unless
9 Proposed Settlement Class Counsel and Defendant's counsel mutually agree in
10 writing to proceed with the Settlement Agreement.

11 11.3 Within seven (7) days after the Opt-Out Date, the Claims Administrator
12 shall furnish to Proposed Settlement Class Counsel and to Defendant's counsel a
13 complete list of all timely and valid requests for exclusion (the "Opt-Out List").

14 11.4 Except as provided in ¶ 6.3, in the event that the Settlement Agreement
15 is not approved by the Court or the settlement set forth in this Settlement Agreement
16 is terminated in accordance with its terms: (a) the Settling Parties shall be restored to
17 their respective positions in the Litigation and shall jointly request that all scheduled
18 litigation deadlines be reasonably extended by the Court so as to avoid prejudice to
19 any Settling Party or Settling Party's counsel; and (b) the terms and provisions of the
20 Settlement Agreement shall have no further force and effect and shall not be used in
21 the Litigation or in any other proceeding for any purpose, and any judgment or order
22 entered by the Court in accordance with the terms of the Settlement Agreement shall
23 be treated as vacated, *nunc pro tunc*. Notwithstanding any statement in this
24 Settlement Agreement to the contrary, no order of the Court or modification or
25 reversal on appeal of any order reducing the amount of attorneys' fees, costs,
26 expenses, and/or service awards shall constitute grounds for cancellation or
27 termination of the Settlement Agreement. Further, notwithstanding any statement in
28 this Settlement Agreement to the contrary, Defendant shall be obligated to pay

1 amounts already billed or incurred for costs of notice to the Settlement Class, Claims
2 Administration, and Dispute Resolution pursuant to ¶ 4.1 above and shall not, at any
3 time, seek recovery of the same from any other party to the Litigation or from counsel
4 to any other party to the Litigation. In the event any of the releases or definitions set
5 forth in ¶¶ 1.23, 1.29, 1.30, or 8.1 are not approved by the Court as written, the
6 Settlement Agreement shall be terminated and provisions (a) and (b) of this paragraph
7 shall apply to the Settling Parties and this Agreement unless Proposed Settlement
8 Class Counsel and Defendant’s counsel mutually agree in writing to proceed with the
9 Settlement Agreement.

10 **XII. MISCELLANEOUS PROVISIONS**

11 12.1 The Settling Parties understand and acknowledge that this settlement,
12 and in turn this Agreement, constitutes a compromise and settlement of disputed
13 claims. No action taken by the Settling Parties either previously or in connection with
14 the negotiations or proceedings connected with this Settlement Agreement shall be
15 deemed or construed to be an admission of the truth or falsity of any claims or
16 defenses heretofore made, or an acknowledgment or admission by any Party of any
17 fault, liability, or wrongdoing of any kind whatsoever

18 12.2 The Settling Parties: (i) acknowledge that it is their intent to
19 consummate this agreement; and (ii) agree to cooperate to the extent reasonably
20 necessary to effectuate and implement all terms and conditions of this Settlement
21 Agreement, and to exercise their best efforts to accomplish the terms and conditions
22 of this Settlement Agreement.

23 12.3 The Settling Parties intend this settlement to be a final and complete
24 resolution of all disputes between them with respect to the Litigation. The settlement
25 compromises claims that are contested and shall not be deemed an admission by any
26 Settling Party as to the merits of any claim or defense or class certification thereof.
27 The Settling Parties each agree that the settlement was negotiated in good faith by
28 the Settling Parties, and reflects a settlement that was reached voluntarily and without

1 coercion or duress after consultation with competent legal counsel. The Settling
2 Parties reserve their right to rebut, in a manner that such party determines to be
3 appropriate, any contention made in any public forum that the Litigation was brought
4 or defended in bad faith or without a reasonable basis. It is agreed that no Settling
5 Party shall have any liability to any other Settling Party as it relates to the Litigation,
6 except as set forth herein.

7 12.4 Neither the Settlement Agreement, nor the settlement contained herein,
8 nor any act performed or document executed pursuant to or in furtherance of the
9 Settlement Agreement or the settlement: (i) is or may be deemed to be or may be
10 used as an admission of, or evidence of, the validity or lack thereof of any Released
11 Claim, or of any wrongdoing or liability of any of the Released Persons; or (ii) is or
12 may be deemed to be or may be used as an admission of, or evidence of, any fault or
13 omission of any of the Released Persons in any civil, criminal or administrative
14 proceeding in any court, administrative agency or other tribunal. Any of the Released
15 Persons may file the Settlement Agreement and/or the Judgment in any action that
16 may be brought against them or any of them in order to support a defense or
17 counterclaim based on principles of *res judicata*, collateral estoppel, release, good
18 faith settlement, judgment bar, or reduction or any other theory of claim preclusion
19 or issue preclusion or similar defense or counterclaim.

20 12.5 The Settlement Agreement may be amended or modified only by a
21 written instrument signed by or on behalf of all Settling Parties or their respective
22 successors-in-interest.

23 12.6 This Settlement Agreement contains the entire understanding between
24 Defendant, on the one hand, and Plaintiffs individually and on behalf of the Class
25 Members, on the other, regarding the settlement of the Litigation and this Agreement,
26 and this Agreement supersedes all previous negotiations, agreements, commitments,
27 understandings, and writings between Defendant and Plaintiffs, including between
28 Defendant's Counsel and Proposed Settlement Class Counsel, in connection with the

1 Litigation settlement and this Agreement. Except as otherwise provided herein,
2 Defendant, on the one hand, and Plaintiffs individually and on behalf of the Class
3 Members, on the other, shall bear their own costs.

4 12.7 Proposed Settlement Class Counsel, on behalf of the Settlement Class,
5 is expressly authorized by Plaintiffs to take all appropriate actions required or
6 permitted to be taken by the Settlement Class pursuant to the Settlement Agreement
7 to effectuate its terms, and also is expressly authorized to enter into any modifications
8 or amendments to the Settlement Agreement on behalf of the Settlement Class which
9 they deem appropriate in order to carry out the spirit of this Settlement Agreement
10 and to ensure fairness to the Settlement Class.

11 12.8 Each counsel or other Person executing the Settlement Agreement on
12 behalf of any party hereto hereby warrants that such Person has the full authority to
13 do so.

14 12.9 The Settlement Agreement may be executed in one or more
15 counterparts. All executed counterparts and each of them shall be deemed to be one
16 and the same instrument.

17 12.10 The Settlement Agreement shall be binding upon, and inure to the
18 benefit of, the successors and assigns of the parties hereto.

19 12.11 The Court shall retain jurisdiction with respect to implementation and
20 enforcement of the terms of the Settlement Agreement, and all parties hereto submit
21 to the jurisdiction of the Court for purposes of implementing and enforcing the
22 settlement embodied in the Settlement Agreement.

23 12.12 All dollar amounts are in United States dollars (USD).

24 12.13 Cashing a settlement check (paper or electronic) is a condition
25 precedent to any Settlement Class Member's right to receive monetary settlement
26 benefits. All settlement checks shall be void ninety (90) days after issuance and shall
27 bear the language: "This check must be cashed within ninety (90) days, after which
28 time it is void." If a check becomes void, the Settlement Class Member shall have

1 until six months after the Effective Date to request re-issuance. If no request for re-
2 issuance is made within this period, the Settlement Class Member will have failed to
3 meet a condition precedent to recovery of monetary settlement benefits, the
4 Settlement Class Member's right to receive monetary relief shall be extinguished,
5 Defendant shall have no obligation to make payments to or provide any other type of
6 monetary relief to the Settlement Class Member, and the Claims Administrator shall
7 have no obligation to make payments to the Settlement Class Member under ¶¶ 2.2.1
8 and/or 2.2.3 or any other type of monetary relief. The same provisions shall apply to
9 any re-issued check. For any checks that are issued or re-issued for any reason more
10 than one hundred eighty (180) days from the Effective Date, requests for further re-
11 issuance will not be honored after such checks become void.

12 12.14 This Agreement shall be construed in accordance with, and be
13 governed by, the laws of the State of Washington, without regard to the principles
14 thereof regarding choice of law.

15 12.15 All agreements made and orders entered during the course of the
16 Litigation relating to the confidentiality of information shall survive this Settlement
17 Agreement.

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1 IN WITNESS WHEREOF, the parties hereto have caused the Settlement
2 Agreement to be executed.

3 **McDonald Hopkins LLC**

4
5 /s/
6 David W. Schelberg
7 39533 Woodward Ave., Ste. 318
8 Bloomfield Hills, MI 48304

Date: _____

9 *Attorneys for Defendant Proliance Surgeons*

10 **Proliance Surgeons, Inc., P.S.**

11 /s/

Date: _____

12
13 *Chief Executive Officer*

14 **TOUSLEY BRAIN STEPHENS PLLC**

15 /s/
16 Kaleigh N. Boyd,
17 Joan M. Pradhan
18 1200 Fifth Avenue, Suite 1700
19 Seattle, WA 98101
20 Telephone: 206-682-5600

21 *Attorneys for Plaintiffs and the Settlement Class*

22 **EMERY REDDY PC**

23 /s/
24 Timothy W. Emery, WSBA No. 34078
25 600 Stewart Street, Suite 1100
26 Seattle, WA 98101

27 *Attorneys for Plaintiffs and the Settlement Class*

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DONNA L. MAZIARKA

/s/ _____

Date: _____

BETTY A. DEFOREST

/s/ _____

Date: _____

RANDY AKERS

/s/ _____

Date: _____

ANGELINE DI FAZIO

/s/ _____

Date: _____

JEFFREY EATON

/s/ _____

Date: _____

SARAH CARDENAS

/s/ _____

Date: _____

SAMUEL LEVY

/s/ _____

Date: _____

ALICIA BEREND

/s/ _____

Date: _____

RODNEY MAEL

1 /s/ _____

Date: _____

2 **ERIC MAKUS**

3

4 /s/ _____

Date: _____

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GWENDOLYN BACHMANN

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8 /s/ _____

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