

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (the “Agreement” or “Settlement Agreement”) is entered into by and between NorthBay Healthcare Corporation (“NorthBay” or “Defendant”) and Deon Issac, J.A., T.A., and N.C. (“Plaintiffs” and, together with Defendant, the “Parties”), individually and on behalf of the Settlement Class (as defined below), by and through their respective counsel.

### **I. RECITALS**

1. NorthBay is a non-profit hospital and healthcare provider headquartered in Solano County, California. NorthBay operates two hospitals in Fairfield and Vacaville, California and several care centers in Solano County. NorthBay is a California corporation principally located at 4500 Business Center Drive, Fairfield, California 94534-6888.

2. On November 29, 2022, Plaintiff Deon Isaac filed a class action complaint (the “Complaint”) in the California Superior Court for the County of Solano, captioned *Deon Isaac v. NorthBay Healthcare Corporation*, Case Number: FCS059353. On September 11, 2023, Defendant filed a Motion for Judgment on the Pleadings. On December 7, 2023, the Court granted Defendant’s Motion for Judgment on the Pleadings and dismissed Plaintiff’s Complaint in its entirety with leave to amend.

3. On January 19, 2024, Plaintiffs filed a First Amended Complaint, naming three new Plaintiffs: J.A., T.A., and N.C (the “Litigation”).

4. The Litigation arises from Plaintiffs’ allegations that Defendant disclosed information about Plaintiffs’ and Class Members’ activity on Defendant’s patient portal, Plaintiffs’ search queries, the medical services and treatments Plaintiffs sought, Plaintiffs’ scheduling of appointments or finding a doctor, and generally, protected health information (referred to herein collectively as “Private Information”) to third parties, Meta Platforms, Inc. d/b/a Meta

(“Facebook”) and Google LLC (“Google”) via tracking pixels (the “Meta Pixel” or “Pixel”) and other tracking technologies (collectively, “Tracking Tools”) installed on Defendant’s Websites (such alleged disclosures are defined below as the “Pixel Disclosure”). Plaintiffs allege that Defendant’s implementation and usage of such Tracking Tools allegedly resulted in the invasion of Plaintiffs’ and Settlement Class Members’ privacy and other alleged common law and statutory violations.

5. On December 17, 2024, the Parties, after completing informal pre-mediation discovery and submitting mediation statements, engaged in a full-day mediation before Bruce A. Friedman Esq. of JAMS. The mediation was successful, resulting in a settlement in principle and agreement on a binding settlement term sheet.

6. Defendant denies all claims asserted against it in the Litigation, denies all allegations of wrongdoing and liability, and denies all material allegations of the First Amended Complaint.

7. Class Counsel (defined below) have investigated the facts relating to the claims and defenses alleged and the underlying events in the Litigation, have made a thorough evaluation of the legal principles applicable to the claims and defenses asserted in the Litigation, and have conducted a thorough assessment of the strengths and weaknesses of the Parties’ respective positions.

8. The Parties desire to settle the Litigation and all claims arising out of or related to the allegations or subject matter of the First Amended Complaint, the Litigation, the Pixel Disclosure, and Defendant’s alleged use of Tracking Tools on the terms and conditions set forth herein for the purpose of avoiding the burden, expense, risk, and uncertainty of continuing the Litigation.

9. Plaintiffs and Class Counsel, on behalf of the Settlement Class (as defined below), have concluded—based upon their pre-suit investigation, informal discovery for settlement purposes, and taking into account the contested issues involved, the expense and time necessary to prosecute the Litigation through trial, the risks and costs associated with further prosecution of the Litigation, the uncertainties of complex litigation, the desired outcome from continued litigation, and the substantial benefits to be received pursuant to this Settlement Agreement—that a settlement with Defendant on the terms set forth herein is fair and reasonable and in the best interest of Plaintiffs and the Settlement Class. Based on those considerations, Plaintiffs and Class Counsel have made the informed decision that the Settlement—as set forth herein—confers substantial, tangible benefits upon the Settlement Class.

10. The Parties agree and understand that neither this Settlement Agreement nor the Settlement it represents shall be construed as an admission by Defendant of any wrongdoing whatsoever, including an admission of a violation of any statute or law or of liability on the claims or allegations in the Litigation or any other similar claims in other proceedings or that any such claims would be suitable for class treatment.

11. The Settlement Agreement is intended to fully, finally, and forever resolve all claims and causes of action asserted and all claims and causes of actions that could have been asserted in this Litigation arising out of or in any way related to the allegations or subject matter of the First Amended Complaint and/or Litigation that were or could have been brought by or on behalf of the Plaintiffs and/or Settlement Class Members against Defendant and/or the Released Persons.

12. The Parties, by and through their respective duly authorized counsel of record, and intending to be legally bound hereby, agree that, subject to the approval of the Court as provided

for in this Agreement, the Litigation, all matters and claims in the Complaint, and all matters and claims arising out of or related to the allegations or subject matter of the Complaint, the Litigation, the Pixel Disclosure, and Defendant's alleged use of any Tracking Tools shall be settled, compromised, and dismissed, on the merits and with prejudice, upon the following terms and conditions.

## II. DEFINITIONS

13. As used herein and in the related documents attached hereto as exhibits, the following terms have the meanings specified below:

- a. **“Agreement” or “Settlement Agreement”** means this settlement agreement, including all exhibits, which the Parties understand and agree set forth all material terms and conditions of the Settlement of the Litigation between them and which is subject to approval by the Court.
- b. **“Attorneys’ Fees and Expenses Award”** means the amount awarded by the Court to be paid to Class Counsel by Defendant or Defendant’s insurer within 30 Days of the Court’s order awarding such fees, such amount to be in full and complete satisfaction of Class Counsel’s claim or request (and any request made by any other attorneys) for payment of reasonable attorneys’ fees and Litigation Expenses incurred with respect to the Litigation.
- c. **“Approved Claim”** means the timely submission of a Claim Form by a Participating Settlement Class Member that has been approved by the Settlement Administrator subject to the Claims Review Process.
- d. **“Cash Payment”** means the \$15 cash payment that Settlement Class Members may select via a Claim Form pursuant to the Settlement. The Cash Payment will be provided by either digital payment or check mailed to each Participating Settlement Class Member who submits a Claim Form approved by the Settlement Administrator, or by the Court for good cause shown, in accordance with the distribution procedures stated in this Settlement Agreement.
- e. **“Claimant”** means a Settlement Class Member who submits a valid and timely Claim Form.
- f. **“Claim Form”** means the claim form that will be mailed and/or emailed to Settlement Class Members whereby they may receive a cash payment under the Settlement, substantially in the form attached hereto as **Exhibit A**. Settlement Class Members must submit a Claim Form, subject to the provisions of this Settlement Agreement, to obtain benefits under this Settlement Agreement.

- g. **“Claim Deadline”** is the date by which Settlement Class Members must submit a valid Claim Form to receive a cash payment under the Settlement. The Claim Deadline is sixty (60) Days after the Notice Date.
- h. **“Claims Review Process”** means the process for reviewing and determining whether claims are valid as set forth in Paragraph 25.
- i. **“Class Counsel”** shall mean the law firms of LippSmith LLP, Peiffer Wolf Carr Kane Conway & Wise LLP, and Almeida Law Group LLC.
- j. **“Class List”** shall mean a list provided by Defendant of the names and last mailing and email addresses known to Defendant for Settlement Class Members.
- k. **“Class Notice”** means the notice of this Settlement, which shall include the Long-Form Notice and Short-Form or Email Notice, substantially in the form attached hereto as **Exhibits B and C**, respectively.
- l. **“Court”** means the California Superior Court, County of Solano.
- m. **“Day(s)”** means calendar days but does not include the day of the act, event, or default from which the designated period of time begins to run. Further, and notwithstanding the above, when computing any period of time prescribed or allowed by this Settlement Agreement, Days 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.
- n. **“Defendant’s Counsel”** means Tammy Webb, Patrick Gregory, Michelle Lee, and Maveric Searle of Shook, Hardy & Bacon L.L.P.
- o. **“Defendant’s Websites”** means any and all websites owned or operated by Defendant, including Northbay.org and any web pages, sub-pages, or portals contained within those domains.
- p. **“Effective Date”** means the date defined in Paragraph 88 of this Settlement Agreement.
- q. **“Final”** with respect to a judgment or order means that the following have occurred: (i) the expiration of all deadlines to notice any appeal; (ii) if there is an appeal or appeals, the completion, in a manner that finally affirms and leaves in place the Judgment or order without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration, rehearing en banc, or petitions for review and/or certiorari, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals

following decisions on remand).

- r. **“Final Approval Hearing”** means the hearing at which the Court will determine whether the Settlement should be given final approval and whether any Attorneys’ Fees and Expenses Award and Settlement Class Representative Service Awards should be approved.
- s. **“Final Approval Order and Judgment”** means an order and judgment that the Court enters after the Final Approval Hearing which, among other things, finally approves the Settlement, certifies the Settlement Class, dismisses the Litigation with prejudice, retains the Court’s jurisdiction for the purposes of effectuating the Settlement, renders final Judgment pursuant to Cal. Code Civ. Proc. § 1235.120, and otherwise satisfies the settlement-related provisions of the Settlement in all respects.
- t. **“Litigation Expenses”** means costs and expenses incurred by Class Counsel in connection with commencing, prosecuting, mediating, and settling the Litigation, and obtaining a Final Approval Order and Judgment.
- u. **“Long-Form Notice”** means the written notice substantially in the form of **Exhibit B** to this Settlement Agreement.
- v. **“Notice and Settlement Administration Costs”** means all approved, reasonable costs incurred or charged by the Settlement Administrator in connection with effectuating the Notice Program, processing claims, and otherwise administering the Settlement. This does not include any separate costs incurred directly by Defendant or any of Defendant’s Counsel, agents, or representatives in this Litigation.
- w. **“Notice Date”** means the date, occurring within thirty (30) Days of the entry of the Preliminary Approval Order, when the Settlement Administrator shall email and/or mail by First-Class United States Mail the Postcard Notice to all Settlement Class Members for whom Defendant has valid addresses.
- x. **“Notice Program”** means the notice program described in Section VI.
- y. **“Objection Deadline”** means the date by which Settlement Class Members must file with the Court any objections to the Settlement. The Objection Deadline shall be sixty (60) Days after the Notice Date.
- z. **“Opt-Out”** means a Settlement Class Member (i) who timely submits a properly completed and executed Request for Exclusion, (ii) who does not rescind that Request for Exclusion before the end of the Opt-Out Period, and (iii) as to which there is not a successful challenge to the Request for Exclusion.
- aa. **“Opt-Out Date”** means the date by which Settlement Class Members must mail a Request for Exclusion in order to be excluded from the Settlement Class. The

postmark date shall constitute evidence of the date of mailing for these purposes. The Opt-Out Date shall be sixty (60) Days after the Notice Date.

- bb. **“Opt-Out Period”** means the period commencing on the date of entry of the Preliminary Approval Order and ending on the Opt-Out Date, during which Settlement Class Members may submit a timely Request for Exclusion.
- cc. **“Participating Settlement Class Member”** means a Settlement Class Member who does not submit a valid Request for Exclusion prior to the Opt-Out Date, as set forth in Paragraph 52.
- dd. **“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.
- ee. **“Pixel Disclosure”** means the alleged disclosure of Private Information of Plaintiffs and Settlement Class Members to any Tracking Tool provider, including but not limited to Meta (formerly known as Facebook), as a result of any use of Tracking Tools on Defendant’s Websites between November 29, 2020 and May 14, 2024.
- ff. **“Postcard Notice”** or **“Short-Form Notice”** means the written notice to be sent via email or by mail where no email address is available to Settlement Class Members pursuant to the Preliminary Approval Order substantially in the form attached as **Exhibit C** to this Settlement Agreement.
- gg. **“Preliminary Approval Date”** means the date the Preliminary Approval Order has been executed and entered by the Court.
- hh. **“Preliminary Approval Order”** means the order certifying the proposed Settlement Class for settlement purposes, preliminarily approving this Settlement Agreement, approving the Notice Program, and setting a date for the Final Approval Hearing, entered in a format the same as or substantially similar to that of the Proposed Preliminary Approval Order attached hereto as **Exhibit D**.
- ii. **“Related Parties”** means Defendant’s past or present parents, subsidiaries, divisions, and related or affiliated entities of any nature whatsoever, whether direct or indirect, as well as each of Defendant’s and these entities’ respective predecessors, successors, assigns, shareholders, members, trustees, directors, officers, employees, principals, agents, attorneys, representatives, providers, advisors, consultants, contractors, vendors, partners, insurers, reinsurers, and

subrogees, and includes, without limitation, any Person related to any such entity who could have been named as a defendant in this Litigation.

- jj. **“Released Claims”** means all claims and other matters released in and by Section XIV of this Settlement Agreement. Released Claims do not include the right of any of the Releasing Persons or Released Persons to enforce the terms of the Settlement contained in this Agreement.
- kk. **“Released Persons”** means Defendant and the Related Parties.
- ll. **“Releasing Persons”** means Plaintiffs and any and all Settlement Class Members who do not timely opt out of the Settlement Class, and each of their respective present or past spouses, heirs, estates, trustees, principals, beneficiaries, guardians, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, assigns, and/or anyone claiming through them or acting or purporting to act for them or on their behalf.
- mm. **“Request for Exclusion”** means a fully completed and properly executed written request that is timely submitted to the Settlement Administrator by a Settlement Class Member under Section VIII of this Agreement and is postmarked on or before the Opt-Out Date. For a Request for Exclusion to be properly completed and executed, it must: (i) identify the case name and number of the Litigation; (ii) state the Settlement Class Member’s full name, address, and telephone number; (iii) contain the Settlement Class Member’s personal and original signature; (iv) state unequivocally the Settlement Class Member’s intent to be excluded from the Settlement; and (v) request exclusion only for that one Settlement Class Member whose personal and original signature appears on the request. All Requests for Exclusion must be submitted individually in connection with a Settlement Class Member, *i.e.*, one request is required for every Settlement Class Member seeking exclusion.
- nn. **“Settlement”** means the settlement reflected by this Settlement Agreement.
- oo. **“Settlement Administrator”** means the Court-appointed class action settlement administrator retained to carry out the Notice Program, administer the claims-made process for payment of Cash Payments, and perform other actions as specified in this Settlement Agreement, as agreed to by the Parties, and/or as ordered by the Court. The Parties, subject to Court approval, have agreed to use Simpluris, Inc., a legal services company experienced in administering class action claims generally and specifically those of the type provided for in the Litigation, as Settlement Administrator in this matter.
- pp. **“Settlement Agreement”** means this Settlement Agreement, including all exhibits hereto.

qq. “**Settlement Class**” means all individuals residing in California whose personal information or health information was or may have been disclosed to a third party without authorization or consent through any Tracking Tools on Defendant’s websites or patient portal between November 29, 2020 and May 14, 2024. Excluded from the Class are: (i) the officers and directors of Defendant and their affiliates, parents, and subsidiaries; (ii) any judge, justice, or judicial officer presiding over the Litigation and the members of their immediate families and judicial staff; (iii) any individual who timely and validly excludes themselves from the Settlement, and (iv) the successors or assigns of any such excluded persons. This exclusion does not apply, and should not be read to apply, to those employees of Defendant who receive notification from the Settlement Administrator regarding this Settlement Agreement. The Settlement Class consists of approximately 33,540 individuals.

rr. “**Settlement Class Representatives**” means Plaintiffs who filed the First Amended Complaint in the Litigation: Deon Issac, J.A., T.A., and N.C.

ss. “**Settlement Class Member**” means any Person who is a member of the Settlement Class.

tt. “**Settlement Website**” means a dedicated website created and maintained by the Settlement Administrator, which will contain relevant documents and information about the Settlement, including this Settlement Agreement, the Short-Form Notice, the Long-Form Notice, and important deadlines, among other things, as agreed upon by the Parties and, where required, approved by the Court.

uu. “**Service Awards**” means the amount to be paid to the Settlement Class Representatives to compensate them for the time and effort spent pursuing this class action lawsuit on behalf of the Settlement Class, subject to approval of the Court, and which shall not exceed an amount of one thousand two hundred and fifty dollars (\$1,250.00) for each Class Representative. The Service Awards shall be paid by Defendant.

vv. “**Tracking Tools**” means any third-party pixels, cookies, web analytics, and/or tracking technologies, that track or monitor website visitor activity or that disclose website visitor information to the Tracking Tool provider. Tracking Tools include, but are not limited to, the Meta Pixel.

ww. “**Valid Claims**” means settlement claims in an amount approved and found to be valid by the Settlement Administrator.

### III. CERTIFICATION OF THE SETTLEMENT CLASS

14. For settlement purposes only and within the context of the Settlement Agreement

only, Plaintiffs will request that the Court certify the Settlement Class, as defined herein.

15. The Plaintiffs identified in the First Amended Complaint will move to be appointed Settlement Class Representatives for settlement purposes only, and Class Counsel will move to be appointed as counsel to the Settlement Class for settlement purposes only.

16. If this Settlement Agreement is terminated or disapproved, or if the Effective Date should not occur for any reason, then Plaintiffs' request for certification of the Settlement Class will be withdrawn and deemed to be of no force or effect for any purpose in this or any other proceeding. In that event, Defendant reserves the right to assert any and all objections and defenses to certification of a class, and neither the Settlement Agreement nor any order or other action relating to the Settlement Agreement shall be offered by any Person in any litigation or other proceeding against Defendant or any Related Party as evidence in support of a motion to certify any class.

#### **IV. SETTLEMENT CONSIDERATION**

17. Defendant represents that it has implemented Freshpaint on its websites as of April 22, 2024. Freshpaint is a data privacy and compliance platform designed to prevent the transmission of identifying data, such as those alleged in Plaintiffs' First Amended Complaint, from being transmitted to third parties, including but not limited to Google and Facebook, through NorthBay's use of Tracking Tools. Freshpaint enables businesses to control and limit the transmission of user data by intercepting and filtering Tracking Tools before data is sent to third-party analytics and advertising services.

18. Defendant agrees to provide each Settlement Class Member a one-year subscription to CyEx Privacy Shield Pro, a privacy protection service designed to enhance consumer data security and limit online tracking. Each Settlement Class Member shall receive an enrollment code

to receive these CyEx services without submitting a Claim Form. Notice of each Settlement Class Member's subscription to CyEx and each Settlement Class Member's enrollment code shall be provided along with the Settlement Notice that is sent pursuant to this Settlement.

19. Defendant agrees that Settlement Class Members shall have the option to submit a Claim Form to receive an additional Cash Payment of \$15.00, which shall be paid by Defendant on a claims-made basis, subject to the terms and limitations of the Settlement Agreement.

#### **V. SETTLEMENT ADMINISTRATION**

20. All agreed upon and reasonable Notice and Settlement Administration Costs will be paid by Defendant, and such payment(s) shall not impact the amount of relief provided to Settlement Class Members.

21. The Settlement Administrator will provide written notice of the Settlement terms to all Settlement Class Members for whom Defendant has provided a valid mailing address or email address. The Settlement Administrator shall perform skip-tracing for any returned mail and shall re-mail notice to any Settlement Class Members whose addresses are uncovered by skip-tracing.

22. The Settlement Administrator will cause the Notice Program to be effectuated in accordance with the terms of the Settlement Agreement and any orders of the Court.

23. The Settlement Administrator will administer the settlement processes as set forth in this Agreement, subject to the Court's supervision and direction as circumstances may require.

24. To make a claim for a Cash Payment, a Settlement Class Member must complete and submit a valid, timely, and sworn Claim Form. A Claim Form shall be submitted online at the Settlement Website or by U.S. mail and must be submitted on the Settlement Website or postmarked (as the case may be) no later than the Claim Deadline.

25. **Claims Review Process.** The Settlement Administrator will review and evaluate each Claim Form for validity, timeliness, and completeness.

- a. The Settlement Administrator will verify that each Person who submits a Claim Form is a Settlement Class Member.
- b. The Settlement Administrator will determine whether each Claim Form submitted by a Settlement Class Member is timely.
- c. The Settlement Administrator is authorized to contact any Settlement Class Member (by e-mail, telephone, or U.S. Mail) to seek clarification regarding a submitted Claim Form prior to making a determination as to its validity.
- d. If, in the determination of the Settlement Administrator, the Settlement Class Member submits a timely but incomplete Claim Form, the Settlement Administrator shall give the Settlement Class Member notice of the deficiency(ies), and the Settlement Class Member shall have thirty (30) Days from the date of the written notice to cure the deficiency(ies). The Settlement Administrator will provide notice of deficiencies concurrently to Defendant's Counsel and Class Counsel. If any defect is not cured within the thirty (30)-Day period, then the Claim will be deemed invalid.
- e. All Settlement Class Members who submit a valid and timely Claim Form, including a Claim Form deemed defective but timely cured, shall be considered Claimants.

26. The Settlement Administrator will maintain records of all Claim Forms submitted until three hundred sixty (360) Days after entry of the Final Approval Order and Judgment. Claim Forms and supporting documentation may be provided to the Court upon request and to Class Counsel or Defendant's Counsel to the extent necessary to resolve claims determination issues pursuant to this Settlement Agreement. Class Counsel or the Settlement Administrator will provide other reports or information that the Court or Parties may request.

27. **Payment.**

- a. Within fourteen (14) Days of the Effective Date, including after exhaustion of all actual or potential appeals, and after final determinations have been made with respect to all claims submitted on or before the Claims Deadline pursuant to the Claims Review Process, the Settlement Administrator shall provide the Parties an accounting of all Approved Claims and also provide funding instructions to

Defendant. Within thirty (30) Days of receiving this accounting, Defendant or its representative shall transmit to the Settlement Administrator the funds needed to pay Approved Claims in accordance with the terms of this Agreement.

- b. Payments issued by the Settlement Administrator for Approved Claims for Cash Payments shall be issued in the form of a check or via electronic means (as agreed to by the Parties) and sent as soon as practicable after the Settlement Administrator receives the funds described in Paragraph 27.a.
- c. All Settlement Class Members who fail to submit an Approved Claim for a Cash Payment under this Agreement within the time frames set forth herein, or such other period as may be ordered by the Court, shall be forever barred from receiving any Cash Payment pursuant to the Settlement, but will in all other respects be subject to and bound by the provisions of this Agreement, including but not limited to the releases contained herein, and the Final Approval Order and Judgment.

28. **Timing.** Settlement Checks shall bear the legend that they expire if not cashed or negotiated within one hundred eighty (180) Days of their issue date.

29. **Returned Checks.** For any Settlement Check returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall, within thirty (30) Days after the check is returned to the Settlement Administrator as undeliverable, send an e-mail and/or telephone that Participating Settlement Class Member to obtain updated address information. Any replacement Settlement Checks issued to Participating Settlement Class Members shall remain valid and negotiable for one hundred twenty (120) Days from the date of issuance and thereafter will automatically be canceled and deemed void if not cashed by the Participating Settlement Class Member within that time.

30. **Voided Checks.** In the event a Settlement Check becomes void, the Participating Settlement Class Member to whom that Settlement Check was made payable will forfeit the right to a Cash Payment under the Settlement, and the Agreement will in all other respects be fully enforceable against the Participating Settlement Class Member.

31. **Residual Funds.** Funds associated with any uncashed or canceled checks shall be

“Residual Funds.” The Settlement Administrator shall provide Counsel for the Parties with a report on uncashed or cancelled checks and any Residual Funds. All Residual Funds remaining in any account maintained by the Settlement Administrator for purposes of administering this settlement shall be disbursed to *cy pres* recipient, Privacy Rights Clearinghouse, or to any other *cy pres* recipient approved of by the Court.

## **VI. NOTICE TO CLASS MEMBERS**

32. The Parties agree the following Notice Program provides reasonable notice to the Settlement Class.

33. Direct Notice shall be provided to Settlement Class Members via email for Settlement Class Members for whom the Settlement Administrator has a valid email address and otherwise by U.S. Mail for Settlement Class Members for whom the Settlement Administrator has a valid mailing address.

34. Within ten (10) Days of the entry of the Preliminary Approval Order, Defendant shall provide the Settlement Administrator with the Class List, which the Settlement Administrator shall keep strictly confidential and not share with any other party, including Plaintiffs, Claimants, or Plaintiffs’ Counsel. The Settlement Administrator shall, by using the National Change of Address database maintained by the United States Postal Service (the “Postal Service”), obtain updates, if any, to the mailing addresses prior to mailing Notice.

35. Within thirty (30) Days following entry of the Preliminary Approval Order, the Settlement Administrator shall email and/or mail the Postcard Notice to all Settlement Class Members for whom a valid email and/or mailing address is available. The Settlement Administrator shall email or mail a Claim Form to Settlement Class Members upon written or telephonic request. The Claim Form will also be available for download on the Settlement Website.

36. For any emails reported or returned as undeliverable, the Settlement Administrator shall provide Postcard Notice to the Settlement Class Member's mailing address. On a rolling basis, the Settlement Administrator shall undertake reasonable efforts to confirm the address, and to resend Notice, for any Settlement Class Members for whom the Settlement Administrator receives returned mail from the Postal Service indicating that the initial mailing was not delivered. For re-mailed Postcard Notices or those sent by mail after unsuccessful email notice, the receiving Settlement Class Member shall have at least fourteen (14) Days from the date of the re-notice to Opt-Out or Object to the Settlement. Other than as set forth above, neither the Parties nor the Settlement Administrator shall have any other obligation to re-mail Postcard Notices.

37. The mailed notice will consist of the Postcard Notice substantially in the form of **Exhibit C** attached hereto. The Settlement Administrator shall have discretion to format this Postcard Notice in a reasonable manner to minimize mailing and administrative costs without unreasonably compromising the legibility of the Notice. Before mailing of the Postcard Notice is commenced, Class Counsel and Defendant's Counsel shall first be provided with a proof copy (including what the items will look like in their final form) and shall have the right to inspect the same for compliance with the Settlement Agreement and the Court's orders.

38. No later than thirty (30) Days following entry of the Preliminary Approval Order, and prior to the mailing of the Postcard Notice to all Settlement Class Members, the Settlement Administrator will create a dedicated Settlement Website with the URL/domain name of the website address to be agreed upon by the Parties in consultation with the Settlement Administrator. The Settlement Administrator shall cause the Complaint, Long-Form Notice, Claim Form, this Settlement Agreement, Settlement and Court deadlines, and other relevant settlement and Court documents to be available on the Settlement Website. Any other content proposed to be included

or displayed on the Settlement Website shall be approved in advance by counsel for the Parties. The Settlement Website address and the fact that a more detailed Long-Form Notice is available through the Settlement Website shall be included in the Postcard Notice.

39. A toll-free number with interactive voice response, FAQs, and an option to speak to a live operator shall also be made available to address Settlement Class Members' inquiries.

40. The Settlement Website shall be maintained from the Notice Date until ninety (90) Days after the Effective Date.

41. The Notice Program shall be subject to approval by the Court as meeting the requirements of California Civil Procedure Code § 382.

42. The Long-Form Notice and Short-Form Notice approved by the Court may be adjusted by the Settlement Administrator in consultation with, and pursuant to agreement between, the Parties, as may be reasonable and necessary but not inconsistent with such Court approval.

43. At least seven (7) Days prior to the Final Approval Hearing, the Settlement Administrator shall provide Class Counsel an appropriate affidavit or declaration concerning compliance with the Court-approved Notice Program to file with the Court.

44. The Notice Program shall commence within thirty (30) Days of entry of the Preliminary Approval Order, and the provision of notice shall be completed within sixty (60) Days of the Preliminary Approval Order, except as otherwise specifically provided above.

## **VII. OBJECTIONS TO THE SETTLEMENT**

45. Any Settlement Class Member who has not excluded themselves from the Settlement and who wishes to object to the proposed Settlement must timely submit electronically or by U.S. Mail to the Settlement Administrator a written objection(s) to the Settlement ("Objection(s)"). The email address and mailing address of the Settlement Administrator shall be

provided in the Short-Form Notice and Long-Form Notice and on the Settlement Website.

46. Each Objection must, subject to any amendment to these requirements by the Court:

(i) include the case name and number of the Litigation; (ii) set forth the Settlement Class Member's full name, current address, telephone number, and email address; (iii) contain the Settlement Class Member's personal and original signature; (iv) if the objecting Settlement Class Member is represented by an attorney, or received assistance from an attorney in drafting his or her objection, the name, address, telephone number, and email address of the attorney; (v) contain a statement indicating the basis for the objecting Settlement Class Member's belief that he or she is a member of the Settlement Class; (vi) state whether the objection applies only to the Settlement Class Member, to a specific subset of the Settlement Class, or to the entire Settlement Class; (vii) set forth a statement of the legal and/or factual basis for the Objection; (viii) contain a list, including case name, court, and docket number, of all other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement in the past three (3) years; and (ix) state whether the objecting Settlement Class Member intends to appear at the Final Approval Hearing, and if so, whether personally or through counsel.

47. In addition to the foregoing requirements, if an objecting Settlement Class Member is represented by counsel and such counsel intends to speak at the Final Approval Hearing, the written objection must also include: (i) the identity of witnesses whom the objecting Settlement Class Member intends to call to testify at the Final Approval Hearing; and (ii) a description of any documents or evidence that the objecting Settlement Class Member intends to offer at the Final Approval Hearing.

48. Objections must be submitted to the Settlement Administrator, either electronically by email or by U.S. Mail, no later than sixty (60) Days after the Notice Date. The Objection

Deadline shall be included in the Short-Form and Long-Form Notices and on the Settlement Website. The Settlement Administrator must provide copies of all timely written Objections to Class Counsel and Defendant's Counsel within seven (7) days of receipt.

49. Class Counsel will respond to timely, written Objections by means of a memorandum of law filed with the Court no later than seven (7) Days prior to the Final Approval Hearing. Defendant's Counsel may, but need not, respond to timely, written Objections, by means of a memorandum of law filed with the Court prior to the Final Approval Hearing.

50. An objecting Settlement Class Member has the right, but is not required, to attend the Final Approval Hearing.

51. Any Settlement Class Member who fails to timely file an Objection pursuant to the requirements set forth in this section or otherwise as ordered by the Court, shall still have the right to appear in Court at the Final Approval Hearing to state his, her, or their objection. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions of Section VIII.

### **VIII. OPT-OUT PROCEDURES**

52. Each Person wishing to opt out of the Settlement Class shall individually sign and timely (no later than the Opt-Out Date) mail written notice of such intent ("Request for Exclusion") to the designated Post Office box established by the Settlement Administrator. The written notice must, subject to any amendment to these requirements by the Court: (i) identify the case name and number of this Litigation; (ii) state the Settlement Class Member's full name, address, and telephone number; (iii) contain the Settlement Class Member's personal and original signature; (iv) state unequivocally the Settlement Class Member's intent to be excluded from the Settlement Class; and (v) request exclusion only for that one Settlement Class Member whose personal and

original signature appears on the request. To be effective, written notice must be postmarked no later than the Opt-Out Date.

53. All Requests for Exclusion must be submitted individually in connection with a Settlement Class Member, *i.e.*, one request is required for every Settlement Class Member seeking exclusion. Any Requests for Exclusion purporting to seek exclusion on behalf of more than one Settlement Class Member shall be deemed invalid by the Settlement Administrator.

54. No later than seven (7) Days after the Opt-Out Date, the Settlement Administrator shall provide the Parties with a complete and final list of all Opt-Outs who have timely and validly excluded themselves from the Settlement Class and, upon request, copies of all Requests for Exclusion that were submitted to the Settlement Administrator. Class Counsel may present to the Court the number of Opt-Outs (if any), as well as a list of Opt-Outs that includes only first name, last initial, city, and state of each Opt-Out, no later than fourteen (14) Days before the Final Approval Hearing.

55. If the number of Persons who make a timely and valid exclusion from the Settlement Class exceeds 1% of the Settlement Class (approximately 335 opt-outs), Defendant may elect to terminate this Agreement on the ground that exclusion at that level threatens to frustrate the essential purpose of this Agreement. Defendant may exercise its right to terminate this Agreement under this subsection by notifying Class Counsel by email of its election within seven (7) Days of receiving the list of Persons making a timely and valid exclusion from the Settlement Class.

56. All Persons who submit valid and timely Requests for Exclusion, as set forth in Paragraph 52, referred to herein as “Opt-Outs,” shall not receive any benefits of or be bound by the terms of this Settlement Agreement. All Persons falling within the definition of the Settlement

Class who do not validly and timely opt out of the Settlement Class in the manner set forth in Paragraph 52 shall be bound by the terms of this Settlement Agreement and judgment entered thereon, and all subsequent proceedings, orders, and judgments applicable to the Settlement Class.

#### **IX. ATTORNEYS' FEES, EXPENSES AND SERVICE AWARDS**

57. Class Counsel shall request the Court to approve an award of reasonable attorneys' fees, to be paid by Defendant separate and apart from the class relief described herein. Plaintiffs agree that they will not seek an award exceeding \$345,000.00, and Defendant agrees not to oppose any request for attorneys' fees at or below this amount. Defendant or its representative shall pay the amount of awarded fees to Class Counsel within thirty (30) Days of the Effective Date, contingent upon receipt of any and all necessary payment instructions or tax forms from Class Counsel.

58. Class Counsel shall request the Court to approve a Service Award of no more than one thousand two hundred fifty dollars (\$1,250.00) for each of the named Plaintiffs, which award is intended to recognize Plaintiffs for their efforts in the Litigation and commitment on behalf of the Settlement Class. Defendant will not oppose such a request. If approved by the Court, these Service Awards will be paid by Defendant no later than thirty (30) Days after the Effective Date.

59. Class Counsel will file applications with the Court for the requested Service Awards and Attorneys' Fees and Expenses Award (with the Motion for Final Approval) no later than fourteen (14) Days prior to the Final Approval Hearing.

60. The Parties agree that the Court's approval or denial of any request for the Service Awards or Attorneys' Fees and Expenses Award are not conditions to this Settlement Agreement and are to be considered by the Court separately from the final approval, fairness, reasonableness, and adequacy of the Settlement. If the Court declines to approve, in whole or in part, any request

for Service Awards or for an Attorneys' Fees and Expenses Award, all remaining provisions in 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 payment of Service Awards or an Attorneys' Fees and Expenses Award, or the amounts thereof, shall be grounds to terminate or cancel this Settlement Agreement.

## **X. NOTICES**

61. All notices, instructions, and applications for Court action in connection with this Agreement shall be made in writing and communicated as follows:

All notices to Class Counsel or Plaintiffs shall be sent to:

David Almeida  
**ALMEIDA LAW GROUP LLC**  
849 W. Webster Avenue  
Chicago, Illinois 60614  
[david@almeidalawgroup.com](mailto:david@almeidalawgroup.com)

Graham B. LippSmith  
MaryBeth LippSmith  
Jaclyn L. Anderson  
**LIPPSMITH LLP**  
555 S. Flower Street, Suite 3000  
Los Angeles, California 90071  
Tel: (213) 344-1820  
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[g@lippsmith.com](mailto:g@lippsmith.com)  
[mb@lippsmith.com](mailto:mb@lippsmith.com)  
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Brandon Wise  
**PEIFFER WOLF CARR**  
**KANE CONWAY & WISE LLP**  
235 Peachtree St. NE, Ste. 400  
Atlanta, Georgia 30303  
Tel: (404) 282-4806  
[BWise@peifferwolf.com](mailto:BWise@peifferwolf.com)

All notices to Defendant's Counsel or Defendant shall be sent to:

Tammy Webb  
Patrick Gregory  
Maveric Searle  
**SHOOK, HARDY & BACON L.L.P.**  
555 Mission Street, Suite 2300  
San Francisco, CA 94105  
tbwebb@shb.com  
pgregory@shb.com  
msearle@shb.com

62. Other than attorney-client communications or communications otherwise protected from disclosure pursuant to law or rule, the Parties shall promptly provide to each other copies of comments, Objections, or other documents or filings received from a Settlement Class Member because of the Notice Program.

## **XI. SETTLEMENT APPROVAL PROCESS**

63. After execution of this Settlement Agreement, Class Counsel shall submit this Settlement Agreement to the Court and file a motion for preliminary approval of the Settlement with the Court, requesting entry of a Preliminary Approval Order in the form attached hereto as **Exhibit D**, or an order substantially similar to such form, which:

- a. Preliminarily certifies the Settlement Class for settlement purposes only;
- b. Preliminarily approves this Agreement for purposes of issuing notice of the Settlement;
- c. Preliminarily finds the proposed Settlement sufficiently fair, reasonable, adequate, and in the best interests of the Settlement Class;
- d. Finds: (i) the Notice Program constitutes valid, due, and sufficient notice to the Settlement Class Members and constitutes the best notice practicable under the circumstances, complying fully with the requirements of the laws of California and the United States, the Constitutions of the United States and California, and any other applicable law; and (ii) that no further notice to the Settlement Class is required beyond that provided through the Notice Program;

- e. Appoints Plaintiffs as the Settlement Class Representatives for settlement purposes only;
- f. Appoints Class Counsel as counsel to the Settlement Class for settlement purposes only;
- g. Appoints the Settlement Administrator and directs the Settlement Administrator to provide notice to Settlement Class Members in accordance with the Notice Program provided for in this Settlement Agreement;
- h. Approves the Settlement Administrator to administer the Settlement in accordance with the provisions of this Settlement Agreement;
- i. Approves the Opt-Out and Objection procedures as outlined in this Settlement Agreement;
- j. Schedules an appropriate Opt-Out Date, Objection Deadline, and other Settlement-related dates and deadlines to be included in the Class Notice;
- k. Schedules a Final Approval Hearing to consider whether the proposed Settlement should be finally approved by the Court;
- l. Stays all proceedings in the Litigation other than those related to approval of the Settlement; and
- m. Contains any additional provisions agreeable to the Parties that might be necessary or advisable to implement the terms of this Settlement Agreement.

64. Defendant will not oppose entry of the Preliminary Approval Order so long as it is substantially in the form attached to this Agreement as **Exhibit D** and is otherwise consistent with this Agreement.

## **XII. FINAL APPROVAL HEARING**

65. The Parties will recommend that the Final Approval Hearing shall be scheduled no earlier than one hundred twenty (120) Days after entry of the Preliminary Approval Order.

66. Plaintiffs shall file a Motion for Final Approval no later than fourteen (14) Days before the Final Approval Hearing and shall file a response to any Objections no later than seven (7) Days before the Final Approval Hearing.

67. Defendant may file a response to any Objections no later than seven (7) Days before

the Final Approval Hearing.

68. Class Counsel shall ask the Court to enter a Final Approval Order and Judgment which:

- a. Finds that the Notice Program fully and accurately informed all Settlement Class Members entitled to notice of the material elements of the Settlement; constitutes the best notice practicable under the circumstances; constitutes valid, due, and sufficient notice; and complies fully with the laws of California and the United States, the United States and California Constitutions, and any other applicable law;
- b. Finds that after proper notice to the Settlement Class, and after sufficient opportunity to object, no timely Objections to this Settlement Agreement have been made or all timely Objections have been considered and denied;
- c. Approves of the Settlement, as set forth in this Settlement Agreement, as fair, reasonable, adequate, and in the best interests of the Settlement Class, in all respects, finding that the Settlement is in good faith, and ordering the Parties and Settlement Administrator to perform the Settlement in accordance with the terms of this Settlement Agreement;
- d. Finds that neither the Final Approval Order and Judgment, the Settlement, nor the Settlement Agreement shall constitute an admission of liability or wrongdoing by any of the Parties;
- e. Subject to the reservation of jurisdiction for matters discussed in subparagraph (g) below, dismisses the Litigation with prejudice;
- f. Finds that Plaintiffs and all Settlement Class Members (other than those with valid opt-outs) shall, as of the entry of the Final Approval Order and Judgment, conclusively be deemed to have fully, finally, and forever completely released, relinquished, and discharged the Released Persons from the Released Claims; and
- g. Reserves exclusive and continuing jurisdiction over the Litigation and the Parties for the purposes of, among other things: (i) supervising the implementation, enforcement, construction, and interpretation of the Settlement Agreement and the Final Approval Order and Judgment; and (ii) supervising the administration and distribution of the settlement payments and resolving any disputes that may arise with regard to the foregoing. The Court's exclusive and continuing jurisdiction over the Litigation and Parties shall include, without limitation, the Court's power to enforce the bar against Settlement Class Members' prosecution of Released Claims against Released Persons pursuant to the All Writs Act, 28 U.S.C. § 1651, or any other applicable law.

69. If and when the Settlement becomes Final, the Litigation shall be dismissed with

prejudice, with the Parties to bear their own attorneys' fees, costs, and expenses not otherwise awarded in accordance with this Settlement Agreement.

### **XIII. TERMINATION OF THIS SETTLEMENT AGREEMENT**

70. Each Party shall have the right to terminate this Settlement Agreement if:
  - a. The Court denies preliminary approval of this Settlement Agreement (or grants preliminary approval through an order that materially differs in substance to **Exhibit D** hereto), and the Parties are unable to modify the Settlement in a manner to obtain and maintain preliminary approval;
  - b. The Court denies final approval of this Settlement Agreement;
  - c. The Final Approval Order and Judgment does not become Final by reason of a higher court reversing final approval by the Court, and the Court thereafter declines to enter a further order or orders approving the Settlement on the terms set forth herein; or
  - d. The Effective Date does not occur because the entry of an order by any court would require either material modification or termination of the Agreement.

71. In addition to the grounds set forth above, and as set forth in Paragraph 55, Defendant shall have the sole option to withdraw from and terminate this Settlement in its entirety in the event that 1% or more of Settlement Class Members submit timely and valid Requests for Exclusion by the Opt-Out Date.

72. If a Party elects to terminate this Settlement Agreement under this Section XIII, that Party must provide written notice to the other Party's counsel by hand delivery, mail, or email within ten (10) Days of the occurrence of the condition permitting termination.

73. Nothing shall prevent Plaintiffs or Defendant from appealing or seeking other appropriate relief from an appellate court with respect to any denial by the Court of final approval of the Settlement.

74. If this Settlement Agreement is terminated or disapproved, or if the Effective Date should not occur for any reason, then: (i) this Settlement Agreement, any Preliminary Approval

Order, and all of their provisions shall be rendered null and void; (ii) all Parties shall be deemed to have reverted to their respective statuses in the Litigation as of the date and time immediately preceding the execution of this Settlement Agreement; (iii) except as otherwise expressly provided, the Parties shall stand in the same position and shall proceed in all respects as if this Settlement Agreement and any related orders had never been executed, entered into, or filed; (iv) all Parties shall bear their own costs and expenses incurred while seeking to effectuate the Settlement and obtain Court approval of the Settlement; and (v) no term or draft of this Settlement Agreement nor any part of the Parties' settlement discussions, negotiations, or documentation (including any declaration or brief filed in support of the motion for preliminary approval or motion for final approval), nor any rulings regarding class certification for settlement purposes (including any Preliminary Approval Order), will have any effect or be admissible into evidence for any purpose in the Litigation or any other proceeding.

75. If the Court does not approve the Settlement or the Effective Date does not occur for any reason, Defendant shall retain all its rights and defenses in the Litigation. For example, Defendant shall have the right to move to compel arbitration, object to the maintenance of the Litigation as a class action, to move for summary judgment, and to assert defenses at trial. Nothing in this Settlement Agreement or other papers or proceedings related to the Settlement shall be used as evidence or argument by any Party concerning whether the Litigation may properly be maintained as a class action, or for any other purpose.

#### **XIV. RELEASE**

76. On the Effective Date, Plaintiffs and each and every Participating Settlement Class Member shall be bound by this Settlement Agreement and shall have recourse only to the benefits, rights, and remedies provided hereunder. No other action, demand, suit, arbitration, or other claim

or proceeding, regardless of forum, may be pursued against Released Persons with respect to the Released Class Claims.

77. On the Effective Date and in consideration of the promises and covenants set forth in this Settlement Agreement, the Releasing Persons, including Plaintiffs and each Settlement Class Member, will be deemed to have fully, finally, and forever completely released, relinquished, and discharged the Released Persons from any and all past, present, and future claims, counterclaims, lawsuits, set-offs, costs, expenses, attorneys' fees and costs, losses, rights, demands, charges, complaints, actions, suits, causes of action, obligations, debts, contracts, penalties, damages, or liabilities of any nature whatsoever, known, unknown, or capable of being known, in law or equity, fixed or contingent, accrued or unaccrued, direct or indirect, matured or not matured, individual or representative, of every nature and description whatsoever, that arise out of, or are based upon or connected to, or relate in any way to the NorthBay's use of Tracking Tools like those described in the First Amended Complaint, the operation of NorthBay's Websites or Patient Portal like those described in the First Amended Complaint, the Settlement Class Members' visits to or use of the NorthBay's Websites or Patient Portal like those described in the First Amended Complaint, or that were or could have been asserted in the Litigation (the "Release"). The Release shall be included as part of any Final Approval Order and Judgment so that all claims released thereby shall be barred by principles of res judicata, collateral estoppel, and claim and issue preclusion (the "Released Claims"). The Released Claims shall constitute and may be pled as a complete defense to any proceeding arising from, relating to, or filed in connection with the Released Claims.

78. In the event any Participating Settlement Class Member attempts to prosecute an action in contravention of a Final Approval Order and Judgment or the Settlement Agreement,

counsel for any of the Parties may forward the Settlement Agreement and the Final Approval Order and Judgment to such Participating Settlement Class Member and advise such Participating Settlement Class Member of the Release provided pursuant to the Settlement Agreement. If requested by Defendant or counsel for Defendant, Class Counsel shall provide such notice.

79. Subject to Court approval, as of the Effective Date, Plaintiffs and all Settlement Class Members who do not timely and validly Opt-Out of the Settlement shall be bound by this Settlement Agreement and the Release, and all of the Released Claims shall be dismissed with prejudice and released.

80. The Released Claims include the release of Unknown Claims. "Unknown Claims" means any of the Released Claims that could have been raised in the Litigation and that any of the Plaintiffs and each of their respective heirs, executors, administrators, representatives, agents, partners, trustees, successors, attorneys, and assigns do not know to exist or suspect to exist, which, if known by them, might affect their agreement to release Defendant and all other Released Persons, or might affect their decision to agree to, or object or not to object to, or participate or not participate in the Settlement. With respect to any and all Released Claims, the Parties stipulate and do agree that upon the Effective Date, Plaintiffs (on behalf of themselves and each Settlement Class Member) expressly shall have, and by operation of the Final Approval Order and Judgment the Releasing Persons shall have, released any and all Released Claims, including Unknown Claims. Plaintiffs (on behalf of themselves and each Settlement Class Member) may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Released Claims, but Plaintiffs expressly shall have, and all other Releasing Persons shall be deemed to have, and by operation of the Final Approval Order

and Judgment shall have, upon the Effective Date, fully, finally, and forever settled and released any and all Released Claims, including Unknown Claims.

81. Upon the Effective Date, Plaintiffs expressly shall have, and all other Releasing Persons also shall be deemed to have, and by operation of the Judgment shall have, waived for the Released Claims any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, or the law of any jurisdiction outside of the United States. The Releasing Persons acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention to finally and forever settle and release the Released Claims, notwithstanding any Unknown Claims they may have, as that term is defined in this Agreement. The Settling Parties acknowledge, and the Releasing Persons shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

82. For the avoidance of doubt, no claims involving personal injury are included in the Released Claims.

83. On entry of the Final Approval Order and Judgment, Plaintiffs and Participating Settlement Class Members shall be enjoined from prosecuting the Released Claims in any proceeding in any forum against any of the Released Persons or based on any actions taken by any Released Persons authorized or required by this Settlement Agreement or the Court or an appellate court as part of this Settlement.

84. The Parties agree that the Released Persons will suffer irreparable harm if any Participating Settlement Class Member asserts any Released Claims against any Released Persons, and that in that event, the Released Persons may seek an injunction as to such action without further

showing of irreparable harm in this or any other forum.

85. Without in any way limiting the scope of the Release, the Release covers any and all claims for attorneys' fees, costs or disbursements incurred by Class Counsel or any other counsel representing Plaintiffs or Participating Settlement Class Members, or any of them, in connection with or related in any manner to the Litigation (except for the Attorneys' Fees and Expenses Award to be paid to Class Counsel as specifically provided in Section IX and elsewhere in this Agreement), the Pixel Disclosure, Defendant's use of Tracking Tools as alleged in the Litigation, the Settlement, the administration of such Settlement and/or the Released Claims as well as any and all claims for the Service Awards to Plaintiffs.

86. The Released Persons hereby waive and relinquish any and all claims, rights or benefits that they may have under laws including, but not limited to, California Civil Code section 1542, that purport to exempt unknown claims from a general release as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH 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.

In connection with such waiver and relinquishment, the Released Persons hereby acknowledge that they or their attorneys may hereafter discover claims or facts in addition to, or different from, those which they now know or believe to exist, but that the Released Persons expressly agree to fully, finally and forever settle and release any and all such claims within the scope of the releases set forth above.

87. Nothing in the Release shall preclude any action to enforce the terms of this Settlement Agreement, including participation in any of the processes detailed herein.

## **XV. EFFECTIVE DATE**

88. The “Effective Date” of this Settlement Agreement shall be the first Day after the date when all of the following conditions have occurred:

- a. This Settlement Agreement has been fully executed by all Parties and their counsel;
- b. Orders have been entered by the Court certifying the Settlement Class, granting preliminary approval of this Settlement Agreement and approving the Notice Program and Claim Form, all as provided above;
- c. The Court-approved Short-Form Notice has been mailed, other notice required by the Notice Program has been effectuated, and the Settlement Website has been duly created and maintained as ordered by the Court;
- d. The Court has entered a Final Approval Order and Judgment finally approving this Settlement Agreement, as provided above; and
- e. The Final Approval Order and Judgment have become Final, as defined in Paragraph 13, including without limitation the exhaustion of all applicable deadlines for an appeal, or in the event an appeal is filed the resolution of such appeal.

## **XVI. MISCELLANEOUS PROVISIONS**

89. The recitals and exhibits to this Settlement Agreement are integral parts of the Settlement and are expressly incorporated and made a part of this Settlement Agreement.

90. This Settlement Agreement is for settlement purposes only. Neither the fact of nor any provision contained in this Settlement Agreement nor any action taken hereunder shall constitute or be construed as an admission of the validity of any claim or any fact alleged in the First Amended Complaint or Litigation or of any wrongdoing, fault, violation of law or liability of any kind on the part of Defendant or any admission by Defendant of any claim in this Litigation or allegation made in any other proceeding, including regulatory matters, directly or indirectly involving the Pixel Disclosure, Defendant’s use of any Tracking Tools, or allegations asserted in the First Amended Complaint and Litigation. This Settlement Agreement shall not be offered or be admissible in evidence against the Parties or cited or referred to in any action or proceeding

between the Parties, except in an action or proceeding brought to enforce its terms. Nothing contained herein is or shall be construed or admissible as an admission by Defendant that Plaintiffs' claims, or any similar claims, are suitable for class treatment.

91. In the event that there are any developments in the effectuation and administration of this Settlement Agreement that are not expressly addressed or otherwise contemplated by the terms of this Settlement Agreement, then such matters shall be negotiated in good faith by the Parties (through counsel) and absent such an agreement, shall be decided and otherwise ordered by the Court. The Parties and their counsel agree to reasonably undertake their best efforts and mutually cooperate to effectuate this Agreement, and the terms of the proposed Settlement set forth herein, including taking all steps and efforts contemplated by this Agreement, and any other reasonable steps and efforts which may become necessary by order of the Court or otherwise. The Parties further agree to reasonably cooperate in the defense of this Agreement against Objections made to the Settlement or a Final Approval Order and Judgment at the Final Approval Hearing or in any appeal of a Final Approval Order and Judgment or in any collateral attack on this Agreement or a Final Approval Order and Judgment; provided, however, that Defendant shall have sole discretion in deciding whether Defendant will make any filing in respect of any Objection, appeal, or collateral attack regarding the Settlement.

92. No Person shall have any claim against Plaintiffs, Class Counsel, Defendant, Defendant's Counsel, the Settlement Administrator, or the Released Persons, or any of the foregoing's agents or representatives based on the administration of the Settlement substantially in accordance with the terms of the Settlement Agreement or any order of the Court or appellate court.

93. In the event a third party, such as a bankruptcy trustee, former spouse, or other third

party has or claims to have a claim against any payment made to a Participating Settlement Class Member, it is the responsibility of the Participating Settlement Class Member to transmit the funds to such third party. Unless otherwise ordered by the Court, the Parties will have no, and do not agree to any, responsibility for such transmittal.

94. This Settlement Agreement constitutes the entire Settlement Agreement between and among the Parties with respect to the Settlement of the Litigation. This Settlement Agreement supersedes all prior negotiations and agreements regarding settlement and may not be modified or amended except by a writing signed by the Parties and their respective counsel. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or understanding concerning any part of the subject matter of this Settlement Agreement has been made or relied on except as expressly set forth in this Settlement Agreement.

95. There shall be no waiver of any term or condition in this Settlement Agreement absent an express writing to that effect by the waiving Party. No waiver of any term or condition in this Settlement Agreement shall be construed as a waiver of a subsequent breach or failure of the same term or condition, or waiver of any other term or condition of this Settlement Agreement.

96. This Settlement Agreement shall not be construed more strictly against one Party than another merely because it may have been prepared by counsel for one of the Parties, it being recognized that because of the arm's-length negotiations resulting in this Settlement Agreement, all Parties hereto have contributed substantially and materially to the preparation of the Settlement Agreement. All terms, conditions, and exhibits are material and necessary to this Settlement Agreement and have been relied upon by the Parties in entering into this Settlement Agreement.

97. The Agreement may be amended or modified only by a written instrument signed

by or on behalf of all Parties or their respective successors-in-interest. Amendments and modifications may be made without additional notice to the Settlement Class Members unless such notice is required by the Court.

98. This Settlement Agreement shall be construed under and governed by the laws of the State of California without regard to its choice of law provisions.

99. The Parties and each Participating Settlement Class Member irrevocably submit to the exclusive jurisdiction of the Court for any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of the Agreement and its exhibits, but for no other purpose.

100. All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Agreement, including but not limited to those relating to all information exchanged for purposes of mediation or under the auspices of California Evidence Code § 1152.

101. If any press release, social media post, or other public statement is to be issued by Settlement Class Representatives or Class Counsel concerning the Settlement, the language of such press release, social media post, or other public statement must be approved in advance and in writing by Defendant. Otherwise, Settlement Class Representatives and Class Counsel, shall not issue any press releases, social media posts, or other public statements about this Litigation or the Settlement.

102. 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).

103. This Settlement Agreement will be binding upon and inure to the benefit of the successors and assigns of the Parties, Released Persons, and Participating Settlement Class Members.

104. The headings used in this Settlement Agreement are for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement. In construing this Settlement Agreement, the use of the singular includes the plural (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).

105. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original as against any Party who has signed it and all of which shall be deemed a single Settlement Agreement. Scanned signatures or signatures sent by email or facsimile shall be as effective as original signatures.

106. Each Party to this Settlement Agreement and the signatories thereto warrant that they are acting upon their independent judgment and the advice of their counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other Party, other than the warranties and representations expressly made in this Settlement Agreement.

107. Each signatory below warrants that they have authority to execute this Settlement Agreement and bind the Party on whose behalf they are executing the Settlement Agreement.

**IN WITNESS WHEREOF**, the Parties have hereby accepted and agreed to the Settlement Agreement.

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Tammy Webb  
Patrick Gregory  
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[tbwebb@shb.com](mailto:tbwebb@shb.com)  
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***Counsel for Plaintiffs and the Settlement Class***

**Northbay Healthcare Corporation**

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By:  
Its:

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**Deon Issac, Plaintiff**



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**J.A., Plaintiff**

juan Antu

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**T.A., Plaintiff**

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**N.C., Plaintiff**

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**Northbay Healthcare Corporation**

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By:  
Its:

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**Deon Issac, Plaintiff**

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**J.A., Plaintiff**

*T.A. in*

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**T.A., Plaintiff**

Teodoro Arvisu

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**N.C., Plaintiff**

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**Northbay Healthcare Corporation**

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By:  
Its:

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**Deon Issac, Plaintiff**

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**J.A., Plaintiff**

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**T.A., Plaintiff**

*Noel Cain*

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**N.C., Plaintiff**

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**Northbay Healthcare Corporation**

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By:  
Its:



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**Deon Issac, Plaintiff**

Deon Issac

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**J.A., Plaintiff**

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**T.A., Plaintiff**

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**N.C., Plaintiff**

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## Signatories



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David Almeida

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IP number: 108.224.154.17

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