

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS**

ERYN KAPLAN, *et al.*,

*Plaintiffs*

Case No. 520763/2025

v.

NORTHWELL HEALTH,

*Defendant*

**CLASS ACTION SETTLEMENT AGREEMENT**

This Agreement ("Agreement" or "Settlement Agreement") is entered into by and among:

(i) Class Representatives Eryn Kaplan, Michael Zurl, and Kathyann McClendon; (ii) the Settlement Class (as defined herein); and (iii) Defendant Northwell Health, Inc. ("Northwell" or "Defendant"). The Plaintiffs (as defined herein) and the Defendant are collectively referred to herein as the "Parties." This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined herein), upon and subject to the terms and conditions of this Agreement, and subject to the final approval of the Court (as defined herein).

**RECITALS**

A. This case was filed as a putative class action in the United States District Court for the Eastern District of New York by Plaintiffs Eryn Kaplan and Michael Zurl on September 27, 2023 (*Kaplan v. Northwell Health*, 2:23-cv-7205 (E.D.N.Y.)). An additional putative class action was filed by Plaintiff Kathyann McClendon on September 22, 2023, in the United States District Court for the Southern District of New York (*K.M. v. Northwell Health, Inc.*, 1:23-cv-08407 (S.D.N.Y.)) before being transferred to the United States District Court for the Eastern District of

New York in January 2024 (*K.M. v. Northwell Health, Inc.*, 1:24-cv-267 (E.D.N.Y.)). The cases were later consolidated in February 2024. The material allegations of the Consolidated Amended Complaint, filed March 15, 2024, centered on Defendant's alleged disclosure of its patients' personally identifiable information to Meta, formerly known as Facebook, and other third parties without permission, in violation of state and federal statutes.

**B.** On April 15, 2024, Defendant filed its Pre-Motion Letter to Dismiss Plaintiffs' Consolidated Amended Complaint in its entirety. Plaintiffs filed their Response on April 30, 2024. The Parties argued their respective Letters on June 26, 2024. The same day, the Court granted and denied in part Defendant's requested relief. The Court dismissed the negligence claim, allowed briefing on Plaintiffs' claim under the Electronic Communications Privacy Act ("ECPA), 18 U.S.C. § 2511, *et seq.*, allowed reconsideration briefing on Plaintiffs' claim under New York General Business Law § 349, and permitted jurisdictional discovery.

**C.** Based on jurisdictional discovery, more than 90% of the Class resides in the State of New York. Accordingly, federal jurisdiction depends on the viability of Plaintiffs' sole federal claim, the ECPA claim. *See* 28 U.S.C. § 1331.

**D.** On July 26, 2024, Defendant served on Plaintiffs its Motion to Dismiss the Consolidated Class Action Complaint, including argument for dismissal of the ECPA claim. Plaintiffs opposed the Motion to Dismiss on August 26, 2024, and Defendant served its reply in support on September 5, 2024.

**E.** Before the Motion to Dismiss was argued, the Parties engaged in settlement discussions. On November 22, 2024, the Parties filed a Joint Motion to Stay Proceedings Pending Mediation. To that end, the Parties agreed to participate in a private mediation with Hon. Frank Maas (Ret.) of JAMS, a well-respected class action mediator.

**F.** To preserve the status quo for the mediation, the Court stayed litigation proceedings on December 11, 2024, and, considering the Parties' continued settlement negotiations, withdrew Defendant's Motion to Dismiss without prejudice.

**G.** As part of the mediation, and in order to competently assess their relative negotiating positions, the Parties exchanged informal discovery and provided the mediator with mediation briefing, including on issues such as the size and scope of the putative class and certain facts related to the strength of Defendant's defenses. Given that the information exchanged was similar to the information that would have been provided in formal discovery and related to the issues of class certification and summary judgment, the Parties had sufficient information to assess the strengths and weaknesses of the claims and defenses.

**H.** The Parties engaged in an in-person mediation on February 13, 2025, in New York, New York with retired United States Magistrate Judge Frank Maas, during which the Parties engaged in good faith negotiations for eleven hours, which resulted in an agreement on all material terms of a class action settlement. Thereafter, the Parties executed a term sheet.

**I.** At all times, Defendant has denied and continues to deny any wrongdoing and/or liability whatsoever; has denied and continues to deny that it committed, threatened, or attempted to commit, any wrongful act or violation of law or duty alleged in the Action or Predecessor Actions (as defined herein); has denied and continues to deny that it is legally responsible to Plaintiffs for any of the claims asserted in the Action or Predecessor Actions; and had believed and continues to believe it would have prevailed on its Motion to Dismiss, at class certification, at summary judgment, and at trial. Nonetheless, considering the uncertainty and risks inherent in any litigation, Defendant believes it is desirable that the Released Claims be fully and finally compromised, settled, resolved, and released with prejudice and has concluded it is desirable and

beneficial that the Action be fully and finally settled and terminated in the manner and upon the terms and conditions set forth in this Agreement. This Agreement is a compromise, and the Agreement, any related documents, and any negotiations resulting in it shall not be construed as or deemed to be evidence of or an admission or concession of liability or wrongdoing on the part of Defendant, or any of the Released Parties (as defined herein), with respect to any claim of any fault or liability or wrongdoing or damage whatsoever.

J. Plaintiffs believe that the claims asserted in the Action against Defendant have merit and that they would have prevailed at a motion to dismiss, class certification, summary judgment, and trial. Nonetheless, Plaintiffs and Class Counsel (as defined herein) recognize that Defendant has raised factual and legal defenses that present a risk that Plaintiffs may not prevail. Plaintiffs and Class Counsel also recognize the expense and delay associated with continued prosecution of the Action against Defendant through a renewed motion to dismiss, class certification, summary judgment, trial, and any subsequent appeals. Plaintiffs and Class Counsel have also considered the uncertain outcome and risks of litigation, especially in complex class actions, as well as the difficulties inherent in such litigation. Therefore, Plaintiffs believe it is desirable that the Released Claims be fully and finally compromised, settled, resolved, and released with prejudice and have concluded it is desirable and beneficial that the Action be fully and finally settled and terminated in the manner and upon the terms and conditions set forth in this Agreement. Based on their evaluation, Class Counsel have concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate to the Settlement Class (as defined herein), and that it is in the best interests of the Settlement Class to settle the claims raised in the Action pursuant to the terms and provisions of this Agreement.

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED** by and among

Plaintiffs, the Settlement Class, and Defendant, by and through their undersigned counsel, that, subject to final approval of the Court after a hearing or hearings as provided for in this Settlement Agreement, in consideration of the benefits flowing to the Parties from the Agreement set forth herein, that the Action, Predecessor Actions, and the Released Claims shall be finally and fully compromised, settled, resolved, and released, and the Action shall be dismissed on the merits and with prejudice, upon and subject to the terms and conditions of this Agreement.

## AGREEMENT

### 1. DEFINITIONS.

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

**1.1. “Action”** means *Kaplan v. Northwell Health*, Index No. 520763/2025, pending in the Supreme Court of New York, County of Kings.

**1.2. “Approved Claim”** means a Claim Form received by the Settlement Administrator from a Settlement Class Member that: (a) is timely postmarked or submitted online, sworn, and in accordance with the directions on the Claim Form and the provisions of the Settlement Agreement; (b) is fully and truthfully completed by a Settlement Class Member with all of the information requested in the Claim Form; (c) is signed by the Settlement Class Member, physically or electronically; and (d) is approved by the Settlement Administrator pursuant to the provisions of this Agreement.

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

**1.4. “Claim Form”** means the document substantially in the form attached hereto as Exhibit A, as approved by the Court. The Claim Form, to be completed by Settlement Class

Members who wish to file a Claim for relief, shall be provided in either electronic or paper format in the manner described in this Agreement.

**1.5. “Claims Deadline”** means the date by which all Claim Forms must be postmarked or submitted online to be considered timely and shall be set as a date ninety (90) Days after the Notice Date. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order as well as in the Notice and the Claim Form.

**1.6. “Class Counsel”** means Terence R. Coates of Markovits, Stock & DeMarco, LLC; Elena A. Belov and David S. Almeida of Almeida Law Group LLC; Gary Klinger of Milberg Coleman Bryson Phillips Grossman, PLLC; Bryan L. Bleichner, Christopher P. Renz, and Philip J. Krzeski of Chestnut Cambronne PA; Joseph M. Lyon of The Lyon Firm, LLC; and Nicholas A. Coulson of Coulson P.C.

**1.7. “Class Representatives”** means the named plaintiffs in the Action, who are Eryn Kaplan, Michael Zurl, and Kathyann McClendon.

**1.8. “Court”** means the Supreme Court of New York, County of Kings and the Judge presiding over the Action or any future court and judge where this Action may be transferred.

**1.9. “Days”** 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 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.

**1.10. “Defendant”** means Northwell Health, Inc.

**1.11. “Defendant’s Counsel”** means Kathryn E. Caldwell, Christopher P. Conniff,

Christine Moundas, and Matt Corriel of Ropes & Gray LLP.

**1.12. “Effective Date”** means the date ten (10) Days after which all of the events and conditions specified in Section 9.1 have been met and have occurred.

**1.13. “Exclusion Deadline”** means the date by which a written request for exclusion submitted by a Person within the Settlement Class must be postmarked. The Exclusion Deadline shall be designated as a date no later than sixty (60) Days after the Notice Date and no sooner than fourteen (14) Days after papers supporting the Fee Award are filed with the Court and posted to the Settlement Website listed in Section 4.1(e), or such other date as ordered by the Court.

**1.14. “Fee Award”** means the amount of attorneys’ fees and reimbursement of expenses awarded by the Court to Class Counsel, which will be paid by Defendant. Such amount will be in full and complete satisfaction of Class Counsel’s claim or request (and any request made by any other attorney) for payment of reasonable attorneys’ fees and Litigation Expenses incurred in respect of the Action and Predecessor Actions.

**1.15. “Final”** means, for purposes of Section 9.1(e) only, one business day following the latest of the following events: (i) the date upon which the time expires for filing or noticing any appeal of the Court’s Final Judgment approving the Settlement Agreement; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee Award or Service Awards, the date of completion, in a manner that finally affirms and leaves in place the Final Judgment 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 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); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on certiorari.

Notwithstanding the above, any order modifying or reversing any Fee Award or Incentive Award, or appeal solely thereof, made in this case shall not affect whether the Judgment is "Final" as defined herein or any other aspect of the Judgment.

**1.16. "Final Approval Hearing"** means the hearing before the Court where the Parties will request the Final Judgment to be entered by the Court approving the Settlement Agreement, the Fee Award, and the Service Awards to the Class Representatives.

**1.17. "Final Judgment"** means the Final Judgment and Order to be entered by the Court approving the Agreement after the Final Approval Hearing.

**1.18. "Litigation Expenses"** means costs and expenses incurred by Class Counsel in connection with commencing, prosecuting, mediating, and settling the Actions and Predecessor Actions, and obtaining a Final Judgment.

**1.19. "Notice"** means the notice of this proposed Class Action Settlement Agreement and Final Approval Hearing, which is to be sent to the Settlement Class substantially in the manner set forth in this Agreement, is consistent with the requirements of Due Process and CPLR 908 and is substantially in the form of Exhibits B and C hereto.

**1.20. "Notice Date"** means the date by which the initial direct notice set forth in Section 4.1 is complete, which shall be no later than sixty (60) Days after Preliminary Approval.

**1.21. "Objection Deadline"** means the date by which a written objection to this Settlement Agreement must be made, which shall be designated as a date no later than sixty (60) Days after the Notice Date and no sooner than fourteen (14) Days after papers supporting the Fee Award are filed with the Court and posted to the Settlement Website listed in Section 4.1(e), or such other date as ordered by the Court.

**1.22. "Opt-Out"** means any member of the Settlement Class who timely and validly

elects to be excluded from the Settlement Class per the procedures outlined in this Agreement.

**1.23.** “Person” shall mean, without limitation, any 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 spouses, heirs, predecessors, successors, representatives, agents and/or assigns. “Person” is not intended to include any governmental agencies or governmental actors, including, without limitation, any state Attorney General office.

**1.24.** “Plaintiffs” means Eryn Kaplan, Michael Zurl, Kathyann McClendon, and the Settlement Class Members.

**1.25.** “Predecessor Actions” means *Kaplan v. Northwell Health*, 2:23-cv-7205 (E.D.N.Y.), *K.M. v. Northwell Health, Inc.*, 1:24-cv-267 (E.D.N.Y.), and *K.M. v. Northwell Health, Inc.*, 1:23-cv-08407 (S.D.N.Y.).

**1.26.** “Preliminary Approval” means the Court’s certification of the Settlement Class for settlement purposes, preliminary approval of this Settlement Agreement, and approval of the form and manner of the Notice.

**1.27.** “Preliminary Approval Order” means the order preliminarily approving the Settlement Agreement, certifying the Settlement Class for settlement purposes, and directing notice thereof to the Settlement Class. Such notice will be agreed upon by the Parties and submitted to the Court in conjunction with Plaintiffs’ motion for preliminary approval of the Agreement.

**1.28.** “Privacy Monitoring” means subscription to CyEx’s Privacy Shield Pro. This program monitors the dark web for subscribers’ personal information, provides a virtual private network (“VPN”) to encrypt subscribers’ data and mask their IP addresses, allows subscribers to

use a private search engine that does not store personally identifiable information, automatically requests that data brokers remove subscribers' personal information, and manages subscribers' passwords across multiple devices, and allows consumers to store documents and records within an encrypted digital vault.

**1.29. "Released Claims"** means any and all actual, potential, filed, known or unknown, capable of being known, fixed or contingent, claimed or unclaimed, suspected or unsuspected, past, present, and future claims, counterclaims, lawsuits, set-offs, demands, liabilities, rights, charges, complaints, actions, suits, causes of action, debts, penalties, contracts or agreements, extra contractual claims, damages (including statutory, punitive, exemplary, or multiplied damages), disgorgement, pre-judgment interest, restitution, appointment of a receiver, injunctive, declaratory, equitable, or any other form of relief, expenses, costs, attorneys' fees and expenses, losses, and/or obligations, of any nature whatsoever (including "Unknown Claims" as defined below), whether in law or in equity, accrued or unaccrued, direct, indirect, or derivative, matured or not matured, individual or representative, of every nature and description whatsoever, whether based on state, federal, local, statutory, or common law or any other law, rule or regulation, against the Released Parties, or any of them, arising out of or based upon allegations, facts, or circumstances described in the Action or any complaint filed in the Predecessor Actions, Defendant's use of the Meta Pixel, Google Analytics, and/or any other tracking, analytics, and/or advertising technologies (the "Tracking Technologies"), and the alleged disclosure, use, interception or transfer of information of or related to the Plaintiffs through use of the Tracking Technologies (the "Tracking Technology Disclosure"), including without limitation all claims that were brought or could have been brought in the Action or Predecessor Actions by or on behalf of any or all of the Releasing Parties relating to, concerning, or arising out of the use of the Tracking

Technologies and/or the Tracking Technology Disclosure.

For the avoidance of doubt, the Released Claims include any claims (known or unknown) that were or could have been raised in or that relate to the allegations or subject matter of the Action and/or the Predecessor Actions.

Nothing herein is intended to release any claims that any governmental agency or governmental actor has against Defendant. The Released Claims shall be included as part of any Final Judgment so that all claims released thereby shall be barred by principles of res judicata, collateral estoppel, and claim and issue preclusion. Released Claims shall not include the claims of Opt-Outs.

**1.30. “Released Parties”** means Northwell Health, Inc., its present or past parents, subsidiaries, divisions, departments, affiliates, predecessors, successors, assigns, insurers, and related entities or affiliates of any nature whatsoever, whether direct or indirect, as well as any and all of its and their respective present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parent entities, subsidiaries, licensors, licensees, associates, affiliates, employers, employees, agents, consultants, independent contractors, vendors, customers, insurers, reinsurers, subrogees, directors, managing directors, officers, partners, principals, members, providers, trustees, attorneys, accountants, financial and other advisors, underwriters, shareholders, lenders, auditors, investment advisors, representatives, successors in interest, assigns, companies, firms, trusts, and corporations, and includes, without limitation, any Person related to any such entity who is, was, or could have been named as a defendant in this Action or the Predecessor Actions.

**1.31. “Releasing Parties”** means Plaintiffs (excluding Opt-Outs, if any), and all and each of their respective present or past spouses, heirs, beneficiaries, guardians, executors, estates,

administrators, representatives, predecessors, successors, assigns, insurers, partners, affiliates, agents, trustees, attorneys, accountants, financial and other advisors, successors in interest, and/or anyone claiming through them or acting or purporting to act for them or on their behalf.

**1.32. "Service Awards"** shall have the meaning ascribed to it as set forth in ¶ 8.3 of this Settlement Agreement. The Service Awards requested in this matter will be no more than \$3,000.00 to each Class Representative, subject to Court approval, and will be in addition to any other Settlement benefits Plaintiffs may receive.

**1.33. "Settlement"** means the settlement reflected by this Settlement Agreement.

**1.34. "Settlement Administration Expenses"** means the reasonable expenses incurred by the Settlement Administrator in providing Notice, processing claims, responding to inquiries from members of the Settlement Class, mailing checks for Approved Claims, and related services. Settlement Administration Expenses shall be paid by Defendant.

**1.35. "Settlement Administrator"** means Simpluris, Inc. or such other reputable administration company that has been selected by the Parties and approved by the Court to oversee the distribution of Notice, as well as the processing and payment of Approved Claims to the Settlement Class as set forth in this Agreement.

**1.36. "Settlement Class"** is defined as all natural persons who are members of Settlement Subclass 1 or Settlement Subclass 2.

- (a) **Settlement Subclass 1:** All patients of Northwell who logged into Northwell's FollowMyHealth patient portal between January 1, 2020 and December 31, 2023, and all patients who booked an appointment on Northwell's website, northwell.edu, between January 1, 2020 and December 31, 2023.
- (b) **Settlement Subclass 2:** All other patients of Northwell between January 1, 2020 and July 25, 2024, not including those in Settlement Subclass 1.

Excluded from the Settlement Class are: (a) Defendant's officers and directors; and (b) Defendant's Counsel and in-house counsel who advised Defendant on the Action or Predecessor Actions. Also excluded from the Settlement Class are members of the judiciary to whom this case is assigned, their families, and members of their staff.

**1.37. "Settlement Class Member"** means a Person who falls within the definition of the Settlement Class as set forth above.

**1.38. "Settlement Website"** means a website, referenced in Section 4(e) below, to be established, operated, and maintained by the Settlement Administrator for purposes of providing Notice and otherwise making available to the Settlement Class Members the documents, information, and online claims submission process referenced in Section 4(e).

**1.39. "United States"** as used in this Settlement Agreement includes the District of Columbia and all territories.

**1.40. "Unknown Claims"** means claims relating in any way to the subject matter of the Action and/or Predecessor Actions that any of the Releasing Parties does not know or suspect to exist, which if known by him or her might have affected his or her settlement with and release of the Released Parties or the Released Claims or might have affected his or her decision to agree, object or not to object to, and/or participate in the Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, Plaintiffs (excluding Opt-Outs, if any) expressly shall have, and by operation of the Court's entry of the Final Judgment the Releasing Parties shall have, released any and all Released Claims, including Unknown Claims. Upon the Effective Date, Plaintiffs (excluding Opt-Outs, if any) expressly shall have, and all other Releasing Parties shall be deemed to have, and by operation of the Judgment shall have, expressly waived and relinquished for the Released Claims, to the fullest extent permitted by law, the

provisions, rights and benefits of § 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Upon the Effective Date, the Plaintiffs (excluding Opt-Outs, if any) expressly shall have, and all other Releasing Parties also shall be deemed to have, and by operation of the Judgment shall have, waived 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, which is similar, comparable, or equivalent to § 1542 of the California Civil Code. The Releasing Parties 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 Section. The Parties acknowledge, and the Releasing Parties shall be deemed by operation of the Court's entry of the Final Judgment to have acknowledged, that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

## **2. SETTLEMENT RELIEF.**

**2.1. Relief to Settlement Class Members.** Defendant will pay or cause to be paid the following: (i) Approved Claims for benefits submitted by Settlement Class Members pursuant to Section 2.3 below; (ii) the Notice and Other Administrative Costs actually incurred by the Settlement Administrator as described in Section 4 below; (iii) the Fee Award, as described in Section 8.1 below; and (iv) any Service Awards to the Class Representatives, as may be ordered by the Court and as described in Section 8.3 below. If the proposed settlement receives final

approval, Defendant will provide to Settlement Class Members who submit Approved Claims the following benefits on the terms set forth below:

- (a) **Settlement Subclass 1:** A cash payment in the amount of fifteen dollars (\$15.00) and a twelve (12) months subscription to Privacy Monitoring.
- (b) **Settlement Subclass 2:** Twelve (12) months subscription to Privacy Monitoring.

**2.2. Schedule of Payments.** Defendant will make payments to the Settlement Administrator in accordance with the following schedule:

- (a) *Notice and Other Administrative Costs.* Amounts for Notice and Other Administrative Costs, to be paid within thirty (30) Days of when Defendant receives invoices for such amounts from Settlement Administrator and the amounts become due and owing.
- (b) *Fee Award.* An amount equal to the Fee Award as ordered by the Court, to be paid as and when described in Section 8.1.
- (c) *Service Award.* An amount equal to the Class Representatives' Service Awards as ordered by the Court, to be paid as and when described in Section 8.3.
- (d) *Payment of Valid Approved Claims.* An amount equal to fifteen dollars (\$15.00) multiplied by the number of Approved Claims for Settlement Subclass 1, which amount is to be paid on or before one hundred twenty (120) Days after the Court's entry of the Final Judgment.

**2.3. Claims Process.** Each member of Settlement Subclass 1 will be entitled to submit a Claim Form for a cash payment in the amount of fifteen dollars (\$15.00) and for twelve (12) months of Privacy Monitoring. Each member of Settlement Subclass 2 will be entitled to submit a

Claim Form for twelve (12) months of Privacy Monitoring.

(a) *Cash Payment.* Each Settlement Subclass 1 Member may file a Claim Form that will, if determined to be an Approved Claim, entitle him or her to a cash payment of fifteen dollars (\$15.00).

(b) *Privacy Monitoring.* Each Settlement Class Member may file a Claim Form that will, if determined to be an Approved Claim, entitle him or her to twelve (12) months of Privacy Monitoring.

(c) *Method of Payment.* Each member of Settlement Subclass 1 may choose to receive his or her cash payment via check, ACH, Venmo, PayPal, e-Mastercard, or Zelle. Payment by check will be the default payment method in the event that a member of Settlement Subclass 1 does not state a preferred method of payment.

(d) *Timing of Cash Payment.* Cash Payments for Approved Claims of members of Settlement Subclass 1 will be paid on or before thirty (30) Days after the funding as set forth in Section 2.2(d) above.

**2.4. Proof of Claim.** A maximum of one claim, submitted on a single Claim Form, may be submitted by each Settlement Class Member. For purposes of this Section, a member of Settlement Subclass 1's claim for the fifteen dollars (\$15.00) cash payment and the twelve (12) months of Privacy Monitoring shall be considered one "claim," as members of Settlement Subclass 1 are entitled to both forms of relief.

**2.5. Review of Claims.** The Settlement Administrator will be responsible for reviewing all Claim Forms to determine their validity. The Settlement Administrator will reject any Claim Form that does not comply in any material respect with the instructions on the Claim Form or the terms of Sections 2.3 and 2.4, above, or is postmarked or submitted online after the Claims

Deadline.

**2.6. BAA.** The approved Settlement Administrator shall agree to execute a business associate agreement that is compliant with the Health Insurance Portability and Accountability Act of 1996 or other comparable agreement acceptable to Defendant ensuring the protection of any personally identifiable information supplied by Defendant pursuant to the terms of this Agreement.

**2.7. Cash Benefit – Uncleared Checks.** In the event a member of Settlement Subclass 1 with an Approved Claim elects or defaults to be paid via check, cashing the settlement check is a condition precedent to that Settlement Class Member's right to receive settlement benefits. Those members of Settlement Subclass 1 whose cash benefit checks are not cleared within one hundred eighty (180) Days after issuance will be ineligible to receive a cash settlement benefit and Defendant will have no further obligation to make any payment pursuant to this Settlement Agreement or otherwise to such members of Settlement Subclass 1. Unpaid funds from uncleared checks will in no event revert back to Defendant. Any unpaid funds remaining after administration of the Settlement Agreement will be donated as *cypres* to a non-sectarian, not-for-profit pro bono organization to be jointly decided upon by the Parties and approved by the Court.

**2.8. Limitation of Liability.** Defendant and Defendant's Counsel shall not have any responsibility for or liability whatsoever with respect to (i) any act, omission, or determination of Class Counsel, the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment or distribution of the claims payments once such payments are funded to the Settlement Administrator; (iii) the formulation, design, or terms of the disbursement of the claims payments once such payments are funded to the Settlement Administrator; (iv) the determination, administration, calculation, or payment of any claims assessed by the Settlement Administrator in

connection with this Settlement; or (v) the filing of any returns or the payment or withholding of any taxes, expenses, and/or costs incurred by any Releasing Party in connection with the taxation of the payments Defendant makes or the Settlement Administrator distributes pursuant to this Agreement. Defendant also shall have no obligation to communicate with Settlement Class Members and others regarding amounts paid or unpaid under the Settlement Agreement.

**2.9. Third Party Creditors.** In the event a third party, including but not limited to a bankruptcy trustee or former spouse, has or claims to have a claim against any payment made to a Settlement Class Member, it is the responsibility of the Settlement Class Member to transmit the funds to such third party. Unless otherwise ordered by the Court, the Parties will have not, and do not agree to any, responsibility for such transmittal.

### **3. RELEASE.**

**3.1.** Plaintiffs believe it is desirable that the Released Claims be fully and finally compromised, settled, resolved, and released with prejudice.

**3.2.** The obligations incurred pursuant to this Settlement Agreement shall be a full and final disposition of the Action, the Predecessor Actions, and any and all Released Claims, as against all Released Parties. The Final Judgment shall provide that the Action is dismissed with prejudice as to the Releasing Parties.

**3.3.** Immediately upon the Effective Date, each of the Releasing Parties shall be deemed to have, and by operation of the Court's entry of the Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against each of the Released Parties. Further, upon the Effective Date and to the fullest extent permitted by law, each Plaintiff (excluding Opt-Outs, if any) shall, either directly, indirectly, representatively, or in any capacity, be permanently barred and enjoined from filing, commencing, prosecuting, intervening in, or

participating (as a class member or otherwise) in any lawsuit, action, or other proceeding in any jurisdiction (other than participation in the Settlement as provided herein) against any Released Party based on the Released Claims.

**3.4.** Immediately upon the Effective Date, Plaintiffs (excluding Opt-Outs, if any) shall be bound by this Agreement and shall have recourse only to the benefits, rights, and remedies provided herein. No other action, demand, suit, arbitration, or other claim or proceeding, regardless of forum, may be pursued against any of the Released Parties with respect to any of the Released Claims.

**3.5.** 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. In the event any Plaintiff attempts to prosecute an action in contravention of the Court-entered Final Judgment or this Agreement, counsel for any of the Parties may forward the Settlement Agreement and the Final Judgment to such Settlement Class Member and advise such Settlement Class Member of the release provided pursuant to the Agreement. If so requested by Defendant or Defendant's Counsel, Class Counsel shall meet and confer regarding providing a joint notice with the communication described in the preceding sentence.

**3.6.** The Parties agree that the Released Parties will suffer irreparable harm if any Releasing Party asserts or threatens to assert any Released Claim against any Released Party, and that, in that event, the Released Party may seek an injunction as to such action without further showing of irreparable harm in this or any other forum. Further, any Releasing Party that asserts in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal any Released Claim against any Released Party shall be liable to that Released Party for the Released Party's reasonable attorneys' fees and any costs incurred to defend against the

Released Claims, including without limitation fees and costs incurred to secure the injunction, and not including any attorneys' fees and costs prior to the institution of that civil, criminal or administrative proceeding.

3.7. Without in any way limiting the scope of the Released Claims, the Released Claims cover any and all claims for attorneys' fees, costs or disbursements incurred by Class Counsel or any other counsel representing any and all Plaintiffs, in connection with or related in any manner to the Action and Predecessor Actions (except for the Fee Award to be paid to Class Counsel as specifically provided in this Agreement), 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.

#### 4. NOTICE TO THE CLASS.

4.1. The Notice plan shall consist of the following:

(a) *Settlement Class List.* No later than twenty-one (21) Days after the Court's entry of the Preliminary Approval Order, Defendant shall produce to the Settlement Administrator an electronic list from its records that includes the names and email addresses, to the extent available, belonging Settlement Class Members. Class Counsel's assent to this Agreement shall constitute consent on behalf of the Settlement Class to disclose this information. This electronic document shall be called the "Class List," and shall be provided to the Settlement Administrator. Defendant shall provide the Class List to the Settlement Administrator only for the purposes of settlement administration. The Settlement Administrator shall not provide the Class List to Class Counsel or to any other person.

(b) *Direct Notice.* In the event that the Court preliminarily approves the Settlement, no later than the Notice Date, the Settlement Administrator shall send Notice

via email substantially in the form attached as Exhibit B along with an electronic link to the Claim Form to all Settlement Class Members for whom a valid email address is available in the Class List. In the event transmission of email notice results in any "bounce-backs," the Settlement Administrator shall, where reasonable, correct any issues that may have caused the "bounce-back" to occur and make a second attempt to re-send the email notice.

(c) *Reminder Notice.* Both thirty (30) Days prior to the Claims Deadline and ten (10) Days prior to the Claims Deadline, the Settlement Administrator shall send a reminder Notice via email substantially in the form attached as Exhibit B (with minor, non-material modifications to indicate that it is a reminder email rather than an initial notice), along with an electronic link to the Claim Form, to all Settlement Class Members for whom a valid email address is available in the Class List and who have not yet submitted a Claim. Other than as set forth above, neither the Parties nor the Settlement Administrator shall have any other obligations to additional email notices.

(d) *Publication Notice.* Within sixty (60) Days from the Court's entry of the Preliminary Approval Order, Notice shall be provided in the form of an advertisement in *Newsday* and the *New York Post*, as well as in the form of a substitute notice on northwell.edu, the content of which will be determined jointly by the Parties, for the period of one (1) week. The Parties will negotiate an agreed-upon response for Class Counsel and Defendant's Counsel to provide to any media outlet(s) to the extent they are contacted by any media outlets regarding the settlement. The Notice provided in the local newspapers shall be substantially in the form of Exhibit C hereto.

(e) *Settlement Website.* Within sixty (60) Days from the Court's entry of the

Preliminary Approval Order, Notice shall be provided on a website which shall be administered and maintained by the Settlement Administrator and shall include the ability to file Claim Forms online. The Notice provided on the Settlement Website ([www.nwpixelsettlement.com](http://www.nwpixelsettlement.com)) shall be substantially in the form of Exhibit B hereto. The Settlement Website shall be maintained from the Notice Date until three hundred and thirty (330) Days after the Effective Date.

(f) *Contact from Class Counsel.* Class Counsel, in their capacity as counsel to Settlement Class Members, may respond to inquiries from Settlement Class Members to provide information about the Settlement Agreement and to answer any questions Settlement Class Members may have about the Settlement Agreement.

**4.2.** The Notice shall advise the Settlement Class of their rights, including the right to be excluded from or object to the Settlement Agreement or any of its terms. The Notice shall specify that any objection to the Settlement Agreement, and any papers submitted in support of said objection, shall be considered by the Court at the Final Approval Hearing only if, on or before the Objection Deadline approved by the Court and specified in the Notice, the Person making the objection at the same time (a) files copies of such papers he or she proposes to be submitted at the Final Approval Hearing with the Clerk of the Court, or alternatively, if the objection is from a Settlement Class Member represented by counsel, files any objection through the Court's electronic filing system, and (b) sends copies of such papers by mail, hand, or overnight delivery service to Class Counsel and Defendant's Counsel.

**4.3.** Class Counsel represents that they believe that the notice procedures outlined in this Agreement are appropriate under the circumstances.

**4.4.** Any Settlement Class Member who intends to object to this Agreement must

present the objection in writing, which must be personally signed by the objector, and must include: (1) the case name and number of the Action; (2) the objector's full name, current address, telephone number, and email address; (3) proof that the Settlement Class Member is a member of the settlement (e.g., copy of settlement notice, proof of being a Northwell patient during relevant time period, proof of use of FollowMyHealth patient portal during the relevant period, and/or proof of having booked an appointment on Northwell's website during the relevant period); (4) an explanation of the basis upon which the objector claims to be a Settlement Class Member all grounds for the objection, including all citations to legal authority and evidence supporting the objection; (5) the Settlement Class Member's signature (digital or handwritten); (6) the name, contact information (address, telephone number, and email address) and state bar(s) to which counsel is admitted, as well as associated state bar numbers, of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection (the "Objecting Attorneys"), if applicable; (7) copies of any documents that the Settlement Class Member wishes to submit in support of his/her position; (8) the signature (digital or handwritten) of the Settlement Class Member's duly authorized attorney or other duly authorized representative, along with documentation setting forth such representation; (9) whether the objection applies only to the Settlement Class Member, to a specific subset of the Settlement Class, or to the entire Settlement Class; (10) 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 (11) a statement indicating whether the objector intends to appear at the Final Approval Hearing, and if so, whether personally or through Objecting Attorneys who file an appearance with the Court in accordance with the Court's Rules.

**4.5.** 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.

**4.6.** An objecting Settlement Class Member has the right, but is not required, to attend the Final Approval Hearing. If an objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, he or she must also file a notice of appearance with the Court (as well as serve the notice on Class Counsel and Defendant's Counsel) by the Objection Deadline, take all other actions or make any additional submissions as may be required in the Notice, this Settlement Agreement, or as otherwise ordered by the Court, and mail that notice and any other such pleadings to Class Counsel and Defendant's Counsel as provided in the Notice.

**4.7.** Class Counsel and Defendant's Counsel may, but need not, respond to the objections, if any, by means of a memorandum of law filed with the Court prior to the Final Approval Hearing.

**4.8.** Any Settlement Class Member who fails to timely file and serve an objection and notice, if applicable, of his or her intent to appear at the Final Approval Hearing in person or through counsel pursuant to the requirements set forth in this Section 4, and otherwise as ordered by the Court, shall not be permitted to object to the approval of the Settlement at the Final Approval Hearing, shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by appeal or other means, and shall be bound by all the terms of the Agreement and by all proceedings, orders, and judgments in the Action. The exclusive means for any challenge to the

Agreement shall be through the provisions of Section 4.

**4.9.** Any challenge to the Settlement Agreement or the Final Judgment shall be pursuant to appeal under the applicable rules of appellate procedure and not through a collateral attack.

**4.10.** A Settlement Class Member may request to be excluded from the Settlement Class by sending a written request received by the Settlement Administrator in response to the Notice that is postmarked on or before the Exclusion Deadline approved by the Court and specified in the Notice. To exercise the right to be excluded, a Person in the Settlement Class must timely send a written request for exclusion to the Settlement Administrator as specified in the Notice, providing (i) his or her full name, current address, telephone number, and email address, (ii) signature (digital or handwritten), (iii) the name and docket number of the Action, and (iv) a statement that he or she unequivocally wishes to be excluded from the Settlement Class for purposes of this Settlement. A request to be excluded that does not include all of this information, that is sent to an address other than that designated in the Notice, or that is not postmarked within the time specified, shall be invalid, and the Settlement Class Member serving such a request shall be a member of the Settlement Class and shall be bound as a Settlement Class Member by this Agreement, if approved. Opt-Outs shall not: (i) be bound by any orders or the Final Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Agreement; or (iv) be entitled to object to any aspect of this Agreement. The request for exclusion must be personally signed by the Person requesting exclusion. So-called "mass" or "class" opt-outs shall not be allowed. 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. To be valid, a request for exclusion must be postmarked by the date specified in the Notice. Defendant reserves its legal rights and defenses relating to any Opt-Outs including, but not limited to, any defenses relating to

whether any Opt-Out is a Settlement Class Member or has standing to bring a claim against Defendant.

**4.11.** 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 as a result of the notice process.

**4.12.** Within seven (7) Days after the Exclusion Deadline, the Settlement Administrator shall provide the Parties with a complete and final list of all Opt-Outs and, upon request, copies of all requests for exclusion that were received by the Settlement Administrator. Class Counsel will present to the Court the number of Opt-Outs (if any), no later than fourteen (14) Days before the Final Approval Hearing, but may not provide their Personal Information (though Class Counsel should alert the Court that such information is maintained by the Settlement Administrator), except that upon the Court's request, Class Counsel may provide the Court a list of Opt-Outs with all personal information other than first names, last initials, cities, and states of residence redacted. The Final Approval Hearing shall be no earlier than ninety (90) Days after the Notice described in Section 4.1(e) is provided.

**4.13.** Any Settlement Class Member who does not, using the procedures set forth in this Agreement and the Notice, either seek exclusion from the Settlement Class or timely file a valid Claim Form shall not be entitled to receive any payment or benefits pursuant to this Agreement, but will otherwise be bound by all of the terms of this Agreement, including the terms of the Final Judgment to be entered in the Action and the Releases provided for in the Agreement, and will be barred from bringing any action against any of the Released Parties concerning the Released Claims.

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

**4.15.** The Parties shall negotiate a statement, which shall be the exclusive public statement by the Parties, Class Counsel, and Defendant's Counsel concerning the Settlement. No press releases or postings on social media will be made about the Settlement by Class Counsel, the Class Representatives, Defendant, or Defendant's Counsel other than the above-described mutually agreed exclusive statement. This restriction, by its terms, does not apply to the Settlement Website nor does it prevent Class Counsel from postings concerning the Settlement on their respective firm websites. Notwithstanding the foregoing, Defendant and the other Released Parties shall not be restricted in making any statement about the Action, Predecessor Actions, or Settlement in response to any government inquiry, or in connection with any financial or regulatory filing, or in any disclosure required by law.

## **5. SETTLEMENT ADMINISTRATION.**

**5.1.** The Settlement Administrator shall, under the supervision of the Court, administer the relief provided by this Settlement Agreement by processing Claim Forms in a rational, responsive, cost effective, and timely manner. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices and such records will be made available to Class Counsel and Defendant's Counsel upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. The Settlement Administrator shall provide Class Counsel and Defendant's Counsel with information concerning Notice, administration, and

implementation of the Settlement Agreement. Should the Court request, the Parties shall submit a timely report to the Court summarizing the work performed by the Settlement Administrator, including a report of all amounts paid to Settlement Class Members on account of Approved Claims. Without limiting the foregoing, the Settlement Administrator shall:

- (a) Provide electronic notice of the settlement terms to all Settlement Class Members for whom Defendant has provided a valid email address;
- (b) Cause notice to be effectuated in accordance with the terms of the Agreement and any orders of the Court;
- (c) Administer the settlement process as set forth in this Agreement and as directed by Class Counsel, subject to the Court's supervision and direction as circumstances may require;
- (d) Forward to Defendant's Counsel, with copies to Class Counsel, all original documents and other materials received by the Settlement Administrator in response to the Notice in connection with the administration of the Settlement, and all copies thereof, within thirty (30) Days after the date on which all Claim Forms have been finally approved or disallowed in accordance with the terms of this Agreement;
- (e) Receive requests to be excluded from the Settlement Class and other requests and promptly provide to Class Counsel and Defendant's Counsel copies thereof. If the Settlement Administrator receives any exclusion forms or other requests after the deadline for the submission of such forms and requests, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendant's Counsel;
- (f) Provide weekly reports to Class Counsel and Defendant's Counsel, including without limitation, reports regarding the number of Claim Forms received, the

number of Claims Forms approved by the Settlement Administrator, and the categorization and description of Claim Forms rejected, in whole or in part, by the Settlement Administrator; and

(g) Make available for inspection by Class Counsel or Defendant's Counsel the Claim Forms received by the Settlement Administrator at any time upon reasonable notice.

**5.2.** The Settlement Administrator shall be obliged to employ reasonable procedures to screen claims for abuse or fraud and deny Claim Forms where there is evidence of abuse or fraud. The Settlement Administrator will reject any claim that does not comply in any material respect with the instructions on the Claim Form or the terms of Sections 2.3 and/or 2.4 above or is postmarked or submitted online after the Claims Deadline. As part of this process, the Settlement Administrator will review and evaluate each Claim Form, including any required documentation submitted, for validity, timeliness, and completeness. Each claimant who submits a timely, but incomplete, inadequately supported, or invalid Claim Form to the Settlement Administrator must be given notice of the Claim Form's deficiency and an opportunity to cure the deficiency within twenty-one (21) Days of the date of the notice. The Settlement Administrator may contact any Person who has submitted a Claim Form to obtain additional information necessary to verify the Claim Form. The Settlement Administrator will provide notice of deficiencies concurrently to Defendant's Counsel and Class Counsel. If the deficiency is not cured within the 21-Day period, then the Claim will be deemed invalid. 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.

**5.3.** Defendant's Counsel and Class Counsel shall have the right to challenge the acceptance or rejection of a Claim Form submitted by Settlement Class Members and to obtain

and review supporting documentation relating to such Claim Form. The Settlement Administrator shall follow any agreed decisions of Class Counsel and Defendant's Counsel as to the validity of any disputed submitted Claim Form. To the extent Class Counsel and Defendant's Counsel are not able to agree on the disposition of a challenge, the disputed claim shall be submitted to the Hon. Frank Maas (Ret.) for binding determination.

**5.4.** In the exercise of its duties outlined in this Agreement, the Settlement Administrator shall have the right to reasonably request additional information from the Parties or any Settlement Class Member.

**5.5.** The Settlement Administrator will maintain records of all Claim Forms submitted until three hundred sixty-five (365) Days after entry of a Final Judgment.

**5.6.** Class Counsel or the Settlement Administrator will provide other report or information that the Court or Parties may request.

**5.7.** Prior to the Final Approval Hearing, the Settlement Administrator shall provide to Class Counsel an appropriate affidavit or declaration from the Settlement Administrator to file with the Court concerning compliance with the Court-approved notice program.

## **6. TERMINATION OF SETTLEMENT.**

**6.1.** Subject to Sections 9.1-9.3 below, Defendant or Class Representatives on behalf of the Settlement Class shall have the right to terminate this Agreement by providing written notice of the election to do so ("Termination Notice") to all other Parties hereto within twenty-one (21) Days of any of the following events: (i) the Court's refusal to grant Preliminary Approval of this Agreement in any material respect (or grants preliminary approval through an order that differs from the terms of this Agreement in any material respect); (ii) the Court's refusal to grant final approval of this Agreement in any material respect; (iii) the Court's refusal to enter the Final

Judgment in this Action in any material respect; (iv) the date upon which the Final Judgment is modified or reversed in any material respect by the Appellate Division or the Court of Appeals; (v) the Effective Date does not occur for any reason, including but not limited to the entry of an order by any court that would require either material modification or termination of the Agreement; or (vi) the date upon which an Alternative Judgment, as defined in Section 9.1(d) of this Agreement, is modified or reversed in any material respect by the Appellate Division or the Court of Appeals.

**6.2.** Subject to Sections 9.1-9.3 below, Defendant shall have the right, but not the obligation, in its sole discretion, to terminate this Agreement in its entirety by providing written notice to Class Counsel within seven (7) Days if more than 0.5% of the total Settlement Class Members exercise their right to be excluded from the Settlement.

**6.3.** If Defendant seeks to terminate the Agreement on the basis of Section 6.2 above, the Parties agree that any dispute as to whether Defendant may invoke Section 6.2 to terminate the Agreement that they cannot resolve on their own after reasonable, good faith efforts, will be submitted to the Hon. Frank Maas (Ret.) for binding determination.

**6.4.** The Parties agree that the Court's failure to approve, in whole or in part, the Fee Award or the Service Awards set forth in Section 8 below shall not prevent the Agreement from becoming effective, nor shall it be grounds for termination or cancelation of this Settlement Agreement. The procedures for any application for approval of attorneys' fees, expenses, or Service Awards are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement.

**6.5.** Nothing shall prevent Plaintiffs (excluding Opt-Outs, if any) 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.

**6.6.** If this Settlement Agreement is terminated or the Court denies Final Approval, or if the Effective Date should not occur for any reason, then: (i) this Agreement, the Preliminary Approval Order, the Final Judgment (if applicable), 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 Action as of the date and time immediately preceding the execution of this 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; and (iv) no term or draft of this 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 ruling regarding class composition or class certification for settlement purposes (including any Preliminary Approval Order and, if applicable, the Final Judgment), will have any effect or be admissible into evidence for any purpose in the Action or in any other proceeding.

**6.7.** 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 Action. For example, Defendant shall have the right to move to dismiss, to object to the maintenance of the Action as a class action, to move for summary judgment, and to assert defenses at trial. Nothing in this Agreement or other papers or proceedings related to the Settlement shall be used as evidence or argument by any Party concerning whether the Action may properly be maintained as a class action, or for any other use.

## **7. PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER.**

**7.1.** Promptly after the execution of this Settlement Agreement, Class Counsel shall

submit this Agreement together with its Exhibits to the Court and shall move the Court for Preliminary Approval of the settlement set forth in this Agreement; certification of the Settlement Class for settlement purposes only; appointment of Class Counsel and the Class Representatives; and entry of a Preliminary Approval Order, which order shall set a Final Approval Hearing date and approve the Notice and Claim Form for dissemination substantially in the form of Exhibits A, B, and C hereto. The Preliminary Approval Order shall also authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement and its implementing documents (including all exhibits to this Agreement) so long as they are consistent in all material respects with the terms of the Settlement Agreement and do not limit or impair the rights of the Settlement Class.

7.2. Defendant's agreement as to certification of the Settlement Class is solely for purposes of effectuating the Settlement and no other purpose. Defendant retains all of its objections, arguments, and defenses with respect to class certification and any other issues, and reserves all rights to contest class certification and any other issue if the Settlement set out in this Agreement does not result in entry of the Final Judgment, if the Court's approval is reversed or vacated on appeal, if this Settlement is terminated as provided herein, or if the Settlement set forth in this Settlement Agreement otherwise fails to become effective. The Parties acknowledge that there has been no stipulation to any classes or certification of any classes for any purpose other than effectuating the Settlement, and that if the Settlement set forth in this Settlement Agreement is not finally approved, if the Court's approval is reversed or vacated on appeal, if this Settlement Agreement is terminated as provided herein, or if the Settlement set forth in this Settlement Agreement otherwise fails to become effective, this agreement as to certification of the Settlement Class becomes null and void *ab initio*, and this Settlement Agreement or any other settlement-

related statement may not be cited regarding certification of the Class, or in support of an argument for certifying any class for any purpose related to this Action or any other proceeding. If the Agreement is terminated or is not finally approved by the Court, 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 Agreement nor any order or other action relating to the 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.

**7.3.** At the time of the submission of this Agreement to the Court as described above, Class Counsel shall request that, after Notice is given, the Court hold a Final Approval Hearing and approve the settlement of the Action as set forth herein.

**7.4.** The Parties may file a response to any objections and a motion for final approval no later than fourteen (14) Days before the Final Approval Hearing.

**7.5.** After Notice is given, the Parties shall request and seek to obtain from the Court a Final Judgment, which will (among other things):

(a) Find that the Court has personal jurisdiction over all Settlement Class Members and that the Court has subject matter jurisdiction to approve the Agreement, including all exhibits thereto;

(b) Approve the Settlement Agreement and the proposed settlement as fair, reasonable, and adequate as to, and in the best interests of, the Settlement Class Members, in all respects, finding that the Settlement is in good faith; direct the Parties, their respective Counsel, and the Settlement Administrator to implement and consummate the Agreement

according to its terms and provisions; and declare the Agreement to be binding on, and have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiffs and Releasing Parties;

(c) Find that the Notice implemented pursuant to the Agreement (1) constitutes the best practicable notice under the circumstances; (2) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action, their right to object to or exclude themselves from the proposed Agreement, and to appear at the Final Approval Hearing; (3) is reasonable and constitutes valid, due, adequate, and sufficient notice to all persons entitled to receive notice; and (4) meets all applicable requirements of the New York Rules of Civil Procedure, the Due Process Clauses of the United States and New York Constitutions, and the rules of the Court;

(d) Find that after proper Notice to the Settlement Class, and after sufficient opportunity to object, no timely objections to this Agreement have been made or all timely objections have been considered and denied;

(e) Find that the Class Representatives and Class Counsel adequately represent the Settlement Class for purposes of entering into and implementing the Agreement;

(f) Find that neither the Final Judgment, the Settlement, nor the Agreement shall constitute an admission of liability or wrongdoing by any of the Parties;

(g) Dismiss the Action (including all individual claims and Settlement Class Claims presented thereby) on the merits and with prejudice, without fees or costs to any party except as provided in the Settlement Agreement;

(h) Incorporate the Release set forth above, make the Release effective as of the date of the Effective Date, and forever discharge the Released Parties as set forth herein;

(i) Find that Releasing Parties shall, as of the entry of the Final Approval Judgment, conclusively be deemed to have fully, finally and forever completely released, relinquished, and discharged the Released Parties from the Released Claims; and

(j) Permanently bar and enjoin all Settlement Class Members (excluding Opt-Outs, if any) from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in, any lawsuit or other action in any jurisdiction based on the Released Claims;

(k) Without affecting the finality of the Final Judgment for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement and the Final Judgment, and for any other necessary purpose; and

(l) Incorporate any other provisions, as the Court deems necessary and just.

**8. CLASS COUNSEL'S ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS.**

8.1. Class Counsel may receive, subject to Court approval, attorneys' fees, costs, and expenses not to exceed five million two hundred and fifty thousand dollars (\$5,250,000.00). Class Counsel will petition the Court for such Fee Award and Defendant agrees to not object to or otherwise challenge, directly or indirectly, Class Counsel's petition for reasonable attorneys' fees and for reimbursement of costs and expenses if limited to the amount set forth in this Section. Class Counsel, in turn, agrees to seek no more than the amount set forth in this Section from the Court in attorneys' fees and for reimbursement of costs and expenses.

8.2. If approved, the Fee Award shall be payable within ten (30) Days after entry of the Court's Final Judgment, subject to Class Counsel providing all payment routing information and tax information for Class Counsel to the Settlement Administrator. Payment of the Fee Award

shall be made by the Settlement Administrator by wire transfer to Class Counsel in accordance with the instructions to be jointly provided by Class Counsel, after completion of necessary forms by Class Counsel, including but not limited to W-9 forms. Notwithstanding the foregoing, if for any reason (i) the Final Judgment or any part thereof is vacated, overturned, reversed, or rendered void as a result of an appeal(s); (ii) the Settlement Agreement is voided, rescinded, or otherwise terminated; or (iii) the Final Judgment is upheld, but the attorneys' fees, costs, and expenses awarded by the Court or any part thereof are vacated, modified, reversed, or rendered void as a result of an appeal(s), then any Persons or firms who shall have received the funds shall be jointly and severally liable for payments made pursuant to this Section, and shall, within thirty (30) Days repay to Defendant or Defendant's insurer(s), based upon written instructions to be provided by Defendant's Counsel, the full amount of the attorneys' fees, costs, and expenses paid to Class Counsel, except that if attorneys' fees, costs, or expenses are vacated, modified, reversed, or rendered void only in part, then such attorneys' fees, costs, or expenses shall be repaid in accordance with this paragraph only to the extent vacated, modified, reversed, or rendered void. Additionally, should any Class Counsel law firm dissolve, merge, declare bankruptcy, become insolvent, or cease to exist prior to the final payment to Settlement Class Members, such firm shall provide Defendant with notice of such occurrence within fourteen (14) Days of the occurrence.

**8.3.** Subject to Court approval, the Class Representatives may be paid Service Awards by Defendant, in addition to any settlement payment as a result of an Approved Claim pursuant to this Agreement, and in recognition of each of their efforts on behalf of the Settlement Class. The Class Representatives may request a Service Award of three thousand dollars (\$3,000) each, for a total of nine thousand dollars (\$9,000). Defendant will not object to or otherwise challenge, directly or indirectly, Class Counsel's application for the Service Awards to the Class

Representatives if limited to this amount. Class Counsel, in turn, agrees to seek no more than this amount from the Court as a Service Award for the Class Representatives. If approved, such award will be paid by Defendant (in the form of a check to the Class Representatives that is sent in care of Class Counsel) within twenty-one (21) Days after the Final Judgment becomes final if no appeal is taken, or, if an appeal is taken, within ten (10) Days after all appeals have expired or been exhausted in such manner as to affirm the Court's order, subject to Class Counsel providing all payment routing information and tax I.D. numbers for Class Counsel. Payment of the Service Awards shall be made by the Settlement Administrator by wire transfer to Class Counsel in accordance with the instructions to be jointly provided by Class Counsel, after completion of necessary forms by Class Counsel, including but not limited to W-9 forms.

**8.4.** The amount of the Service Awards and Fee Award were not discussed until after the Settlement relief was agreed upon for the Settlement Class. The Parties agree that the Court's approval or denial of any request for the Fee Award or Service Awards are not conditions to this Agreement and are to be considered by the Court separately from the final approval, reasonableness, and adequacy of the Settlement. If the Court declines to approve, in whole or in part, any request for the Fee Award or Service Awards, 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 Services Awards or the Fee Award, or the amounts thereof, shall be grounds to terminate or cancel this Agreement.

**8.5.** Defendant shall not be liable for any additional attorneys' fees and expenses of any Settlement Class Members' counsel, including any potential objectors or counsel representing a Settlement Class Member individually, other than what is expressly provided for in this Agreement. Class Counsel agree to hold Defendant harmless from any claim regarding the division

of any Fee Award, and any claim that the term "Class Counsel" fails to include any counsel, Person, or firm who claims that they are entitled to a share of any Fee Award in the Action and/or Predecessor Actions.

**9. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION.**

**9.1.** The Effective Date of this Settlement Agreement shall not occur unless and until each of the following events occurs and shall be the date upon which the last (in time) of the following events occurs:

- (a) The Parties and their respective Counsel have executed this Agreement;
- (b) Class Representatives and Class Counsel have withdrawn any motions, pleadings or other filings in which Plaintiffs seek any relief in the Action;
- (c) The Court has entered the Preliminary Approval Order;
- (d) The Court-approved Notice has been effectuated, and the Settlement Website has been duly created and maintained as ordered by the Court;
- (e) The Court has entered an order finally approving the Agreement, following Notice to the Settlement Class, and has entered the Final Judgment or a judgment consistent with this Agreement in all material respects; and
- (f) The Final Judgment has become Final, as defined above, or in the event that the Court enters an order and final judgment in a form other than that provided above ("Alternative Judgment") and that has the consent of the Parties, such Alternative Judgment becomes Final.

**9.2** If some or all of the conditions specified in Section 9.1 are not met, or in the event that this Agreement is not approved by the Court, or the settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, then this Settlement

Agreement shall be canceled and terminated subject to Section 6.1 unless Class Counsel and Defendant's Counsel mutually agree in writing to proceed with this Agreement. If any Party is in material breach of the terms hereof and fails to cure such material breach within thirty (30) Days of notice, any other Party, provided that it is in substantial compliance with the terms of this Agreement, may terminate this Agreement on notice to Class Counsel or Defendant's Counsel, as applicable.

**9.3** If this Agreement is terminated or fails to become effective for the reasons set forth in Sections 6.1 and 9.1-9.2 above, the Parties shall be restored to their respective positions in the Action as of the date of the signing of this Agreement. In such event, any Final Judgment or other order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*, and the Parties shall be returned to the status quo ante with respect to the Action as if this Agreement had never been entered into.

#### **10. MISCELLANEOUS PROVISIONS.**

**10.1.** The Parties (a) acknowledge that it is their intent to consummate this Settlement Agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement, to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Agreement, to secure final approval, and to defend the Final Judgment through any and all appeals. Class Counsel and Defendant's Counsel agree to cooperate with one another in seeking Court approval of the Settlement Agreement, entry of the Preliminary Approval Order, and the Final Judgment, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Agreement.

**10.2.** The Parties further agree to reasonably cooperate in the defense of this Agreement

against objections made to the Settlement or a Final Judgement at the Final Approval Hearing or in any appeal of a Final Judgment or in any collateral attack on this Agreement or a Final Judgment.

**10.3.** The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Plaintiffs on the one hand, against each of the Released Parties on the other hand. Accordingly, the Parties agree not to assert in any forum that the Action and/or Predecessor Actions were brought by Plaintiffs or defended by Defendant, or each or any of them, in bad faith or without a reasonable basis.

**10.4.** It is understood and agreed that no consideration or amount or sum paid, credited, offered, or expended by Defendant in performance of this Agreement constitutes a penalty, fine, punitive damages, or other form of assessment for any alleged claim or offense.

**10.5.** The Parties have relied upon the advice and representation of counsel, selected by them, concerning their respective legal liability for the claims hereby released. The Parties have read and understand fully the above and foregoing Agreement and have been fully advised as to the legal effect thereof by counsel of their own selection and intend to be legally bound by the same.

**10.6.** This Agreement is for settlement purposes only. Whether or not the Effective Date occurs or the Settlement Agreement is terminated, neither this Agreement nor the Settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the settlement:

(a) Is, may be deemed, constitutes, may be construed, or shall be used, offered or received against the Released Parties, or each or any of them, as an admission, concession, or evidence of the validity of any Released Claims, including any claims in the Action, Predecessor Actions, or allegations made in any other proceedings, including

regulatory matters, directly or indirectly involving the use of Meta Pixel, Google Analytics, and/or any other tracking, analytics, and/or advertising technologies, the truth of any fact alleged by the Plaintiffs, the deficiency of any defense that has been or could have been asserted in the Action and/or Predecessor Actions, the violation of any law or statute, the reasonableness of the settlement amount or the Fee Award, or of any alleged wrongdoing, violation of law, liability, negligence, or fault of the Released Parties, or any of them;

(b) Is, may be deemed, or shall be used, offered or received against Defendant, as an admission, concession or evidence of any fault, misrepresentation or omission with respect to any statement or written document approved or made by the Released Parties, or any of them;

(c) Is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them, as an admission or concession with respect to any liability, negligence, fault or wrongdoing as against any Released Parties. However, the Settlement, this Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to this Agreement and/or Settlement may be used in any proceedings as may be necessary to effectuate the provisions of this Agreement. Further, if this Settlement Agreement is approved by the Court, any Party or any of the Released Parties may file this Agreement and/or the Court-entered Final Judgment in any action that may be brought against such Party or Parties in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim;

(d) Is, may be deemed, or shall be construed against Plaintiffs, the Settlement

Class, the Releasing Parties, or each or any of them, or against the Released Parties, or each or any of them, as an admission or concession that the consideration to be given hereunder represents an amount equal to, less than, or greater than that amount that could have or would have been recovered after trial;

(e) Is, may be deemed, or shall be construed as or received in evidence as an admission or concession against Plaintiffs, the Settlement Class, the Releasing Parties, or each and any of them, or against the Released Parties, or each or any of them, that any of Plaintiffs' claims are with or without merit or that damages recoverable in the Action or Predecessor Actions would have exceeded or would have been less than any particular amount; and

(f) Is, may be deemed, or shall be construed as or admissible as an admission by Defendant that Plaintiffs' claims, or any similar claims, are suitable for class treatment.

**10.7.** The headings used herein are used for the purpose of convenience only and are not meant to have legal effect nor affect the meaning or interpretation of this Agreement. In construing this Agreement, the use of singular includes the plural (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).

**10.8.** The recitals to this Agreement are integral parts of the settlement and are expressly incorporated and made a part of this Agreement.

**10.9.** The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Agreement or failure of the same term or condition, or waiver of any other term or condition of this Agreement. 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.

**10.10.** All of the Exhibits to this Agreement are material and integral parts thereof and are fully incorporated herein by this reference.

**10.11.** This Agreement and its Exhibits set forth the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements and undertakings with respect to the matters set forth herein. No covenants, obligations, conditions, representations, warranties, inducements, negotiations, or understanding concerning any part of the subject matter of this Agreement have been made to any Party or relied on concerning this Settlement Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents. This 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.

**10.12.** Except as otherwise provided herein, each Party shall bear its own costs.

**10.13.** Plaintiffs represent and warrant that they have not assigned any claim or right or interest therein as against the Released Parties to any other Person or Party and that they are fully entitled to release the same.

**10.14.** Each counsel or other Person executing this Settlement Agreement, any of its Exhibits, or any related settlement documents on behalf of any Party hereto, hereby warrants and represents that such Person has the full authority to do so and has the authority to take appropriate action required or permitted to be taken pursuant to the Agreement to effectuate its terms. Class Counsel in particular warrants that they are authorized to execute this Settlement Agreement on behalf of Plaintiffs (excluding Opt-Outs, if any) (subject to final approval by the Court after notice

to all Settlement Class Members), and that all actions necessary for the execution of this Settlement Agreement have been taken.

**10.15.** In the event that one or more of the provisions contained in this 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 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 Agreement, as long as the benefits of this Agreement to Defendant or the Settlement Class Members are not materially altered, positively or negatively, as a result of the omission of the invalid, illegal, or unenforceable provision(s).

**10.16.** This Agreement may be executed in one or more counterparts. Signature by digital means, facsimile, or in PDF format will constitute sufficient execution of this Agreement. Scanned signatures or signatures sent by email or facsimile shall be as effective as original signatures. All executed counterparts and each of them shall be deemed to be one and the same instrument, and each shall be deemed an original as against any Party who has signed it. A complete set of original executed counterparts shall be filed with the Court if the Court so requests.

**10.17.** This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto, the Released Parties, and the Releasing Parties.

**10.18.** The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all Parties hereto submit to the exclusive jurisdiction of the Court for purposes of any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of this Agreement and its exhibits, but for no other purpose.

**10.19.** This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of New York.

**10.20.** All agreements made and orders entered during the course of the Action or Predecessor Actions 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 Federal Rule of Evidence 408.

**10.21.** This Agreement is deemed to have been prepared by counsel as a result of arm's-length negotiations among the Parties. Because all Parties have contributed substantially and materially to the preparation of this Agreement, it 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. All terms, conditions, and exhibits are material and necessary to this Agreement and have been relied upon by the Parties in entering into the Agreement.

**10.22.** Each Party to this 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 Agreement.

**10.23.** Where this Agreement requires notice to the Parties, such notice shall be sent to the following undersigned counsel: Kathryn E. Caldwell, Ropes & Gray LLC, Prudential Tower, 800 Boylston Street, Boston MA 02199; Christopher P. Conniff, Christine A. Moundas, and Matt Corriel, Ropes & Gray LLP, 1211 Avenue of the Americas, New York, NY 10036; Bryan L. Bleichner, Chestnut Cambronne PA, 100 Washington Ave. S., Ste. 1700, Minneapolis, MN 55401; David S. Almeida, Almeida Law Group LLC, 849 W. Webster Avenue, Chicago, IL 60614.

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ERYN KAPLAN

*Eryn Kaplan*

Date: 07 / 23 / 2025

MICHAEL ZURL

*mzr*

Date: 07 / 23 / 2025

KATHYANN McCLENDON

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

NORTHWELL HEALTH, INC.

*Lawrence A. Kraemer*

Signature

BY: Lawrence A. Kraemer

Name and Title

Date: 7 / 30 / 2025

ERYN KAPLAN

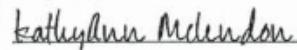
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MICHAEL ZURL

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

KATHY ANN McCLENDON

Signed by:



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Date: 7/25/2025 | 9:14 AM PDT

NORTHWELL HEALTH, INC.

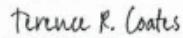
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BY: \_\_\_\_\_  
Name and Title

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

**MARKOVITS, STOCK & DEMARCO,  
LLC**

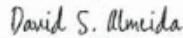
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Terence R. Coates

Date: 7/24/2025 | 8:22 AM EDT

**ALMEIDA LAW GROUP LLC**

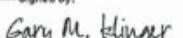
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David S. Almeida

Date: 7/23/2025 | 8:19 AM PDT

**MILBERG COLEMAN BRYSON  
PHILLIPS GROSSMAN, PLLC**

Signed by:

  
Gary M. Klinger

Date: 7/23/2025 | 9:47 AM CDT

**CHESTNUT CAMBRONNE PA**

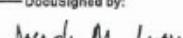
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**THE LYON FIRM**

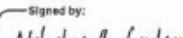
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Joseph M. Lyon

Date: 7/24/2025 | 9:28 AM EDT

**COULSON P.C.**

Signed by:

  
Nicholas A. Coulson

Date: 7/23/2025 | 11:05 AM CDT

*Attorneys for the Plaintiffs and the Class*

**ROPES & GRAY LLP**

Signed by:

  
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Kathryn E. Caldwell

Date: 7/28/2025 | 8:12 AM PDT

*Attorneys for Northwell Health, Inc.*