

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE**

Nina McClain, *on behalf of herself and all other
similarly situated,*

Plaintiff,

v.

Henry Ford Health,

Defendant.

Case No.: 25-000801-CZ

CLASS ACTION SETTLEMENT AGREEMENT

This Agreement (“Agreement” or “Settlement Agreement”) is entered into by and among: (i) Plaintiff, Nina McClain (“Plaintiff”); (ii) the Settlement Class (as defined herein); and (iii) Defendant, Henry Ford Health (“Defendant”). The Plaintiff 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.

RECITALS

A. This putative class action was originally filed on July 5, 2024, in the United States District Court for the Eastern District of Michigan; Case No. 2:24-cv-11739-DML-CI. The material allegations of the Complaint centered on Defendant’s alleged disclosure of certain types of its patients’ personally identifiable information to Meta, formerly known as Facebook, and other third-party technologies without permission. Plaintiff asserted claims against Defendant for: (1) breach of fiduciary duty/confidentiality; (2) violation of the Electronic Communications Privacy Act (“ECPA”); (3) invasion of privacy; (4) breach of implied contract; (5) unjust

enrichment; (6) negligence; and (7) violation of the Michigan Nonprofit Health Care Corporation Reform Act (“MNHCCRA”).

B. The Parties engaged in informal settlement discussions and, to that end, agreed to participate in a formal private mediation with Bennett Picker of Stradley Ronon Stevens & Young LLP, a well-respected class action mediator.

C. As part of the mediation, and in order to competently assess their relative positions, the Parties exchanged informal discovery and 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 related to the issues of class certification and summary judgment, the Parties had sufficient information to assess the strengths and weaknesses of their respective claims and defenses.

D. The arms-length mediation took place on January 8, 2025. At the end of the mediation the Parties reached agreement on the primary material terms of a class action settlement.

E. On January 15, 2025, pursuant to the terms of the settlement, Plaintiff filed a notice of voluntary dismissal and the federal case was terminated on January 16, 2025.

F. On January 17, 2025, Plaintiff re-filed her Class Action Complaint in the Circuit Court of Wayne County, Michigan, Case No. 25-000801-CZ (hereafter the “Action”).

G. Defendant denies any wrongdoing whatsoever and disputes that it committed, or threatened or attempted to commit, any wrongful act, omission, or violation of law or duty alleged in the Action and believes it would have prevailed at summary judgment and/or trial. Nonetheless, taking into account the uncertainty, risks, and expense inherent in any litigation, Defendant 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 (defined below), with respect to any claim of any fault or liability or wrongdoing or damage whatsoever.

H. Plaintiff and Class Counsel recognize that Defendant has raised factual and legal defenses that, if successful, could prevent or limit any recovery. Plaintiff and Class Counsel also recognize the expense and delay associated with continued prosecution of the Action against Defendant through class certification, summary judgment, trial, and any subsequent appeals. Plaintiff and Class Counsel have also taken into account the uncertain outcome and risks of litigation, especially in complex class actions, as well as the difficulties inherent in such litigation. Therefore, Plaintiff believes it is desirable that the Released Claims be fully and finally compromised, settled, and resolved with prejudice. 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, 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 Plaintiff, the Settlement Class, and Defendant, by and through its 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 and the Released Claims shall be finally and fully compromised, settled, and released, and the Action shall be dismissed 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 *Nina McClain v. Henry Ford Health.*, Case No. 25-000801-CZ, pending in the Circuit Court for Wayne County, and the predecessor case originally filed on July 5, 2024, in the Eastern District of Michigan; Case No. 2:24-cv-11739-DML-CI.

1.2 “Approved Claim” means a Claim Form submitted by a Settlement Class Member that: (a) is submitted timely 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.

“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

1.4 Members who wish to file a Claim for a payment, shall be able to submit the Claim Form in either electronic or paper format in the manner described below.

1.5 “Claims Deadline” means the date by which all Claim Forms must be postmarked or received to be considered timely and shall be set as a date ninety (90) days after the Preliminary Approval Order. 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 Emily E. Hughes of The Miller Law Firm, P.C., David S. Almeida of Almeida Law Group LLC, Gary M. Klinger of Milberg Coleman Bryson Phillips Grossman PLLC, and Nicholas A. Coulson of Coulson P.C.

1.7 **“Class Representative”** means the named Plaintiff in this Action, Nina McClain.

1.8 **“Court”** means the Circuit Court of Wayne County and the Judge presiding over the Action.

1.9 **“Defendant”** means Henry Ford Health.

1.10 **“Defendant’s Counsel”** means Michelle R. Gomez and Cornelia Brandfield-Harvey of Baker & Hostetler LLP.

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

1.12 **“Exclusion Deadline”** means the date by which a written request for exclusion submitted by a Person within the Settlement Class must be made, which shall be designated as a date no later than forty-five (45) 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 Paragraph 4.1(c), or such other date as ordered by the Court

1.13 **“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.

1.14 **“Final”** means 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 Incentive Award, 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.

1.15 **“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 Incentive Award to the Class Representative. The hearing may be held remotely, and if so, access instructions will be posted on the Settlement Website.

1.16 **“Final Judgment”** means the Final Judgment and Order to be entered by the Court approving the Agreement and making such other final rulings as are contemplated by this Settlement Agreement after the Final Approval Hearing. Class Counsel shall move the Court for a Final Approval Order of this Settlement no later than fourteen (14) days prior to the date of the Final Approval Hearing. Contemporaneously with seeking Final Approval of the Settlement, Parties’ Counsel shall cause to be filed with the Court a declaration from the Settlement Administrator with respect to the Notice program and the Claims process.

1.17 **“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, Michigan Court Rule 3.501, and is substantially in the form of **Exhibits B and C** hereto.

1.18 **“Notice Date”** means the date by which the initial direct Notice set forth in Paragraph 4.1 is complete, which shall be no later than thirty (30) days after Preliminary Approval.

1.19 **“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 forty-five (45) 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 Paragraph 4.1(c), or such other date as ordered by the Court.

1.20 **“Person”** shall mean, without limitation, any individual, corporation, partnership, limited partnership, limited liability company, 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, or assigns. “Person” is not intended to include any governmental agencies or governmental actors, including, without limitation, any state Attorney General office.

1.21 **“Plaintiff” or “Settlement Class Representative”** means Nina McClain.

1.22 **“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.

1.23 **“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, which will be agreed upon by the Parties and submitted to the Court in conjunction with Plaintiff’s motion for preliminary approval of the Agreement.

1.24 **“Released Claims”** means any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, rights, causes of action, contract or agreements, extra contractual claims, damages, punitive, exemplary or multiplied damages, expenses, costs, attorneys’ fees, and/or obligations (including “Unknown Claims” as defined below), whether in law or in equity, accrued or unaccrued, direct,

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 Released Parties, or any of them, arising out of any facts, transactions, events, matters occurrences, acts, disclosures, statements, representations, omissions or failures to act regarding the alleged disclosure, use, interception or transfer of information of or related to the Settlement Class Members through use of the Meta pixel or other tracking, analytics and/or advertising technologies, including without limitation all claims that were brought or could have been brought in the Action by or on behalf of any and all Releasing Parties relating to, concerning, or arising out of the Defendant's use of the Meta pixel and/or any other tracking, analytics and/or advertising technologies, or the allegations, facts, or circumstances described in the Action. Nothing herein is intended to release any claims any governmental agency or governmental actor has against Defendant, if any.

1.25 **“Released Parties”** means Henry Ford Health, as well as any and all of its respective present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parent companies, subsidiaries, licensors, licensees, associates, affiliates, employers, employees, agents, consultants, independent contractors, insurers, reinsurers, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns and companies, firms, trusts, and corporations.

1.26 **“Releasing Parties”** means Plaintiff, those Settlement Class Members who do not timely opt out of the Settlement Class, and all of their respective present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parent companies, subsidiaries, associates, affiliates, employers, employees, agents, consultants, independent contractors, insurers, directors, managing directors, officers, partners, principals, members, attorneys, accountants,

financial and other advisors, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns and companies, firms, trusts, and corporations.

1.27 **“Settlement Administration Expenses”** means the 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.

1.28 **“Settlement Administrator”** means Simpluris 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.

1.29 **“Settlement Class”** means all patients of Henry Ford Health residing in the United States who had a MyChart patient portal account with Henry Ford Health between January 1, 2020, to and through December 31, 2023.¹ Excluded from the Settlement Class are: (1) any Judge presiding over this Action, any members of the Judges’ respective staffs, and immediate members of the Judge’s family; (2) officers and directors of the Defendant, its agents, affiliates, subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest; (3) persons who timely and validly request exclusion from and/or opt-out of the Settlement Class; (4) the legal representatives, successors or assigns of any such excluded persons; and (5) Class Counsel.

1.30 **“Settlement Class Member”** means a Person who falls within the definition of the Settlement Class as set forth above and who has not submitted a valid request for exclusion.

¹ The number of distinct portal account ID’s is estimated to be approximately 819,581, and while no tracking technologies were installed inside the HFH Patient Portal, the Parties have agreed to this definition **for settlement purposes only** because Defendant can ascertain their status as a patient during the relevant time frame, those persons are more likely to have used and interacted with the HFH website, and Defendant should have contact information for those individuals.

1.31 **“Settlement Website”** means a website, referenced in Paragraph 4.1(c) 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. The Settlement Website shall be deactivated one hundred eighty (180) days after any and all initial payments for which a Settlement Class Member elected to be paid by check have been issued.

1.32 **“United States”** as used in this Settlement Agreement includes the District of Columbia and all territories.

1.33 **“Unknown Claims”** means any of the Released Claims 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. Upon the Effective Date, the Plaintiff 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, 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 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Upon the Effective Date, the Plaintiff 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 (including, without limitation, Montana Code Ann. § 28-1-1602; North Dakota Cent. Code § 9-13-02; and South Dakota Codified Laws § 20-7-11), 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 Paragraph. The Settling Parties acknowledge, and the Releasing Parties shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

2. SETTLEMENT RELIEF.

2.1 Payments to Settlement Class Members. Defendant will pay or cause to be paid the following: (i) Automatic availability of the Privacy Shield product; (ii) Approved Claims for cash benefits submitted by Settlement Class Members pursuant to Paragraph 2.3 below; (iii) the Notice and Other administrative Costs actually incurred by the Settlement Administrator as described in Section 4 below; (iv) the Fee Award, as described in Paragraph 8.1 below; and (v) any Incentive Award to the Plaintiff, as may be ordered by the Court and as described in Paragraph 8.3 below.

2.2 Schedule of Payments. Defendant will make payments 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 such amounts are invoiced to Defendant and become due and owing.

(b) *Fee Award.* An amount equal to the Fee Award as ordered by the Court, to be paid as described at Paragraph 8.1, below.

(c) *Incentive Award.* An amount equal to \$1,500.00 or as ordered by the Court, to be paid to Plaintiff as described at Paragraph 8.3, below.

(d) *Payment of Valid Approved Claims.* An amount equal to \$15.00 multiplied by the number of Valid Approved Claims, which amount is to be paid within forty-five (45) days after the Effective Date.

(e) *Instructions for Privacy Shield Pro.* Instructions for how to enroll in the Privacy Shield Pro product will be sent to Class Members with Valid Approved Claims within thirty (30) days of the Effective Date.

2.3 Claims Process. Each Settlement Class Member will be entitled to automatically receive a code for redeeming the Privacy Shield product and may submit a Claim Form for a cash payment, consistent with this section and as determined by the Court.

(a) *Cash Payment.* Each Settlement Class member may submit a claim for a cash payment of \$15.00.

2.3.a.1 Method of Payment. Each Settlement Class Member may choose to receive his or her cash payment via check, Venmo, PayPal, or Zelle. Payment by check will be the default payment method in the event that a Settlement Class Member does not state a preferred method of payment.

2.3.a.2 Payment Date. Cash payments for Approved Claims will be paid thirty (30) days after the funding as set forth in Paragraph 2.2(d) above.

(b) *Privacy Shield Pro.* Each Settlement Class member will automatically receive a code on their Notice which provides the ability to enroll in one year of Privacy Shield Pro, which includes the following features: Dark Web Watchlist, VPN In Touch,

Password Scan, Private Search functionality, Password Defense, Digital Vault, and Data Broker Opt-Out services.

2.3.b.1 Enrollment. Instructions for how to enroll in the Privacy Shield Pro product will be sent within thirty (30) days of the Effective Date.

2.3.b.2 Enrollment into the Privacy Shield Pro product may be combined with a claim for cash payment on the same Claim Form.

2.4 Proof of Claim. A maximum of one claim, submitted on a single Claim Form, may be submitted by each Settlement Class Member.

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 Paragraphs 2.3 and 2.4, above, or is submitted after the Claims Deadline.

2.6 Cash Benefit – Uncleared Checks. Cashing a settlement check is a condition precedent to any Settlement Class Member's right to receive settlement benefits. Those Settlement Class Members 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 Settlement Class members.

3. RELEASE.

3.1 The obligations incurred pursuant to this Settlement Agreement shall be a full and final disposition of the Action and any and all Released Claims, as against all Released Parties.

3.2 Upon the Effective Date, the Releasing Parties, and each of them, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties, and each of them.

Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, 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.

4. NOTICE TO THE SETTLEMENT CLASS.

4.1 The Notice Plan shall consist of the following:

(a) *Settlement Class List.* No later than fourteen (14) days after Preliminary Approval, Defendant shall produce to the Settlement Administrator an electronic list from their records that includes the names and email addresses, to the extent available and excluding duplicates, belonging to Persons within the Settlement Class. 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. Class Counsel may not send advertisements, solicitations, or communications to the Class List to solicit Class members to retain Class Counsel for any other matters or disputes.

(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 feasible, correct any issues that may have caused the "bounce-back" to occur and make a second attempt to re-send the email notice.

(c) *Settlement Website.* Within ten (10) days from entry of the Preliminary Approval Order, Notice shall be provided on a website at [INSERT URL] 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 shall be substantially in the form of **Exhibit C** hereto.

(d) *Contact from Class Counsel.* Class Counsel, in their capacity as counsel to Settlement Class Members, may from time to time contact 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, comment upon, and/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 files notice of an intention to do so and 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 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 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 objector's name and address; (2) an explanation of the basis upon which the objector claims to be a Settlement Class Member; (3) all grounds for the objection, including all citations to legal authority and evidence supporting the objection; (4) the name and contact

information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection (the “Objecting Attorneys”); (5) a statement indicating whether the objector intends to appear at the Final Approval Hearing (either personally or through counsel who files an appearance with the Court in accordance with the Local Rules); and (6) a list, by case name, court, and docket number, of all other cases in which the objector and/or the Objecting Attorneys have filed an objection to any proposed class action settlement within the last three (3) years.

4.4 If a Settlement Class Member or any of the Objecting Attorneys has objected to any class action settlement where the objector or the Objecting Attorneys asked for or received any payment in exchange for dismissal of the objection, or any related appeal, without any modification to the settlement, then the objection must include a statement identifying each such case by full case caption and amount of payment received. Any challenge to the Settlement Agreement, the Final Order, or the Final Judgment shall be pursuant to appeal under the applicable rules of appellate procedure and not through a collateral attack.

4.5 A Settlement Class Member may request to be excluded from the Settlement Class by sending a written request 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, which must include: (1) his/her name, current address, telephone number, and unique ID; (2) a signature; (3) the name and number of the case; and (4) a statement that he or she 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, or 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 Person(s) serving such a request shall be a member(s) of the Settlement Class and shall be bound as a

Settlement Class Member by this Agreement, if approved. Any member of the Settlement Class who validly elects to be excluded from this Agreement 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. To be valid, a request for exclusion must be postmarked or received by the date specified in the Notice.

4.6 The Final Approval Hearing shall be no earlier than ninety (90) days after the Notice Date.

4.7 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.

4.8 No Person shall have any claim against the Settlement Administrator, Defendant, Defendant’s Counsel, Plaintiff’s Counsel and/or the Representative Plaintiff based on distributions of benefits to Settlement Class Members.

4.9 No public statements will be made about the Settlement by Class Counsel, the Class Representative, Defendant, or Defendant’s Counsel other than the agreed content to be posted on the Settlement Website or Counsel’s Website (including LinkedIn) reflecting only publicly available details about the Settlement. Nothing in this Settlement Agreement shall be interpreted

to prevent Class Counsel from informing or advising Class Members about the terms of, their rights under, the Settlement Agreement.

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) Forward to Defendant's Counsel, with copies to Class Counsel, all original documents and other materials received 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;

(b) 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 with the final listing to be provided no later than ten (10) days following the Exclusion Deadline;

(c) Provide weekly reports to Class Counsel and Defendant's Counsel, including without limitation, reports regarding the number of Claim Forms received, the number approved by the Settlement Administrator, and the categorization and description of Claim Forms rejected, in whole or in part, by the Settlement Administrator;

(d) 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;

(e) Delivering to the Parties' counsel in a reasonably timely manner, but in no event later than sixteen (16) days before the Final Approval Hearing, a written report concerning all Requests for Exclusion (valid and invalid), all Claim Forms (valid and deficient), and all objections (valid and invalid); and Confirming in writing its completion of the administration of the Settlement.

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 Paragraphs 2.3 and/or 2.4, above, or is submitted after the Claims Deadline. Each claimant who submits an invalid Claim Form to the Settlement Administrator must be given a 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.

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 Bennett G. Picker 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.

6. TERMINATION OF SETTLEMENT.

6.1 Subject to Paragraphs 9.1-9.3 below, Defendant or the Class Representative 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; (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 Court or the Supreme Court; or (v) the date upon which an Alternative Judgment, as defined in Paragraph 9.1(d) of this Agreement is modified or reversed in any material respect by the Appellate Court or the Supreme Court.

6.2 Subject to Paragraphs 9.1-9.3 below, Defendant shall have the right, but not the obligation, in its sole discretion, to terminate this Agreement by providing written notice to Class Counsel within seven (7) days after the last day on which Settlement Class Members may submit a Request for Exclusion if more than 75 people of the total Settlement Class Members exercise their right to opt out of the Settlement.

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

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 Representative; and entry of a Preliminary Approval Order in substantially the form of that attached as Exhibit D hereto, 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 their objections, arguments, and defenses with respect to class certification and any other issue, and reserve 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 Approval Order and 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 Settlement Class, or in support of an argument for certifying any class for any purpose related to this Action or any other proceeding.

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 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; direct the Parties and their counsel 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 Plaintiff, the Settlement Class, 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 due, adequate, and sufficient notice to all persons entitled to receive notice; and (4) meets all applicable requirements of the Michigan Court Rules, the Due Process Clause of the United States and Michigan Constitutions, and the rules of the Court;

(d) find that the Class Representative and Class Counsel adequately represent the Settlement Class for purposes of entering into and implementing the Agreement;

(e) 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;

(f) 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;

(g) permanently bar and enjoin all Settlement Class Members who have not been properly excluded from the respective Settlement Class 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;

(h) 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

- (i) incorporate any other provisions, as the Court deems necessary and just.

8. CLASS COUNSEL’S ATTORNEYS’ FEES AND REIMBURSEMENT OF EXPENSES; INCENTIVE AWARD.

8.1 Class Counsel may receive, subject to Court approval, attorneys’ fees, costs, and expenses not to exceed one million, nine-hundred thousand dollars and no cents (\$1,900,000.00). Class Counsel will petition the Court for an award of such attorneys’ fees no later than fourteen days prior to the deadline for Settlement Class Members to opt-out of or object to the Settlement, 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 Paragraph. Class Counsel, in turn, agrees to seek no more than the amount set forth in this Paragraph from the Court in attorneys’ fees and for reimbursement of costs and expenses.

8.2 The Fee Award shall be payable within ten (10) days after the Effective Date. At least thirty (30) days prior to the Effective Date, Class Counsel will provide all payment routing information and tax I.D. numbers for Class Counsel. 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 properly completed and duly executed IRS Form W-9, along with any other necessary forms. Notwithstanding the foregoing, if for any reason the Final Judgment is reversed or rendered void as a result of an appeal(s) then any Persons or firms who shall have received the funds shall be severally liable for payments made pursuant to this Paragraph, and shall return such funds to the Defendant.

8.3 Subject to Court approval, the Plaintiff may be paid an Incentive Award by the Defendant, in addition to any settlement payment as a result of an Approved Claim pursuant to this Agreement, and in recognition of her efforts on behalf of the Settlement Class. Plaintiff may request an Incentive Award of \$1,500.00. Defendant will not object to or otherwise challenge, directly or indirectly, Class Counsel's application for the Incentive Award to the Class Representative if limited to this amount. Class Counsel, in turn, agrees to seek no more than this amount from the Court as an Incentive Award for the Class Representative. Such award will be paid by Defendant (in the form of a check to the Class Representative 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.

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 counsel have executed this Agreement;
- (b) The Court has entered the Preliminary Approval Order;
- (c) 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
- (d) The time to appeal has been exhausted and 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 Paragraph 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 Paragraph 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 all of the Settling Parties.

9.3 If this Agreement is terminated or fails to become effective for the reasons set forth in Paragraphs 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 intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Plaintiff, the Settlement Class and each or any of them, on the one hand, against the Released Parties, and each or any of the Released Parties, on the other hand. Accordingly, the Parties agree not to assert in any forum that the Action was brought by Plaintiff or defended by Defendant, or each or any of them, in bad faith or without a reasonable basis.

10.3 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.

10.4 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, 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, the truth of any fact alleged by the Plaintiff, the deficiency of any defense that has been or could have been asserted in the Action, the violation of any law or statute, the reasonableness of the settlement amount or the Fee Award, or of any alleged wrongdoing, 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, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. 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 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 Plaintiff, 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; and

(e) is, may be deemed, or shall be construed as or received in evidence as an admission or concession against Plaintiff, 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 Plaintiff's claims

are with or without merit or that damages recoverable in the Action would have exceeded or would have been less than any particular amount.

10.5 The headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

10.6 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.

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

10.8 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 representations, warranties, or inducements have been made to any Party 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.

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

10.10 Plaintiff represents and warrants that she has 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.

10.11 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 Plaintiff and the Settlement Class (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.

10.12 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. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court if the Court so requests.

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

10.14 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in this Agreement.

10.15 This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

10.16 This Agreement is deemed to have been prepared by counsel for all Parties, 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.

10.17 Where this Agreement requires notice to the Parties, such notice shall be sent to the undersigned counsel: Emily E. Hughes, The Miller Law Firm, P.C., 950 W. University Dr., Ste. 300, Rochester, MI 48307, David S. Almeida, Almeida Law Group LLC, 849 W. Webster Avenue, Chicago, Illinois 60614, Gary M. Klinger, Milberg Coleman Bryson Phillips Grossman PLLC, 227 W. Monroe Street, Suite 2100 Chicago, IL 60606, Nicholas A. Coulson of Coulson P.C., 300

River Place Drive, Suite 1700, Detroit, MI 48207; Michelle R. Gomez, Baker & Hostetler LLP,
1801 California Street, Suite 4400, Denver, CO 80202.

IT IS SO AGREED TO BY:

Dated: _____

NINA McCLAIN

By: _____

Nina McClain, individually and as representative of
the Settlement Class

IT IS SO STIPULATED BY COUNSEL:

Dated: _____

THE MILLER LAW FIRM, P.C.

By: _____

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Plaintiff's Attorney and Settlement Class Counsel

Dated: _____

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