

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Case Type: Other Civil

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IN RE: TWIN CITIES PAIN CLINIC DATA  
BREACH LITIGATION

Case No.: 27-CV-25-16549  
Judge: Bridget Sullivan

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**SETTLEMENT AGREEMENT**

This Settlement Agreement<sup>1</sup> is entered into between Plaintiffs Diane Rezack, Lawrence Burns, Edward Severson, Elizabeth Timmerman, and Mark Gore, on behalf of themselves and the Settlement Class, and Defendant Twin Cities Pain Clinic ("TCPC" or "Defendant"), as of the date last signed below. The Parties hereby agree, that in consideration of the promises and covenants set forth in this Agreement and upon entry by the Court of a final order and judgment, all claims of the Settlement Class against Defendant in connection with the Data Incident in the Action, shall be fully settled and compromised upon the terms and conditions contained herein.

**I. PROCEDURAL HISTORY**

1. Twin Cities Pain Clinic is a pain management center that treats its patients for bodily injuries and chronic pain. Defendant has its principal place of business at 7235 Ohms Lane in the City of Edina, County of Hennepin, State of Minnesota.

2. As part of its business, Defendant maintains the Private Information of its patients, including Plaintiffs and Class Members.

3. On or about July 9, 2025, Defendant discovered the Data Incident, wherein

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<sup>1</sup> All capitalized terms herein shall have the same meanings as those defined in Section II below.

unauthorized cybercriminal(s) accessed a cache of highly sensitive Private Information of Plaintiffs.

4. On December 19, 2025, Plaintiffs filed their Consolidated Class Action Complaint in the State of Minnesota District Court, County of Hennepin, Fourth Judicial District, *In re Twin Cities Pain Clinic Data Breach Litigation*, Case No. 27-CV-25-16549, asserting claims for Defendant's negligence, negligence per se, breach of contract, breach of implied contract, unjust enrichment, breach of fiduciary duty, breach of confidence, violations of the Minnesota Uniform Deceptive Trade Practice Act, and violations of the Minnesota Health Records Act due to the Data Incident (the "Complaint").

5. In an effort to conserve resources for the benefit of those impacted in the Data Incident, the Parties began discussing settlement.

6. In connection with their settlement discussions, the Parties exchanged informal discovery including information related to, among other things, the nature and cause of the Data Incident, the number and geographic location of victims impacted by the Data Incident, and the specific type of information potentially accessed.

7. Following prolonged and extensive arm's length negotiations over a series of dates, communications, and meetings, as well as the exchange of informal discovery, the Parties reached an agreement on the essential terms of settlement.

8. The Parties now agree to settle the Action entirely, without any admission by the Defendant of liability or wrongdoing, with respect to all Released Claims of the Releasing Parties. Defendant has entered into this Agreement to resolve all controversies and disputes arising out of or relating to the allegations made by patients in the Complaint and the Data Incident as it relates to it, and to avoid the litigation costs and expenses, distractions, burden, expense, and disruption to its

business operations associated with further litigation. Defendant does not in any way acknowledge, admit to, or concede any of the allegations made in the Complaint, and expressly disclaims and denies any fault or liability, or any charges of wrongdoing that have been or could have been asserted in the Complaint. Nothing contained in this Agreement shall be used or construed as an admission of liability, and this Agreement shall not be offered or received in evidence in any action or proceeding in any court or other forum as an admission or concession of liability or wrongdoing of any nature or for any other purpose other than to enforce the terms of this Agreement. Plaintiffs enter into this Agreement to recover on the claims asserted in the Complaint, and to avoid the risk, delay, and uncertainty of continued litigation. Plaintiffs do not in any way concede that the claims alleged in the Complaint lack merit or are subject to any defenses. The Parties intend this Agreement to bind Plaintiffs, Defendant, and all Settlement Class Members.

**NOW, THEREFORE**, in light of the foregoing, for good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree, subject to approval by the Court, as follows.

## **II. DEFINITIONS**

9. “**Action**” means the above-captioned action, *In re Twin Cities Pain Clinic Data Breach Litigation*, Case No. 27-CV-25-16549 (Minn. Dist. Ct., Hennepin Cnty.).

10. “**Agreement**” or “**Settlement**” or “**Settlement Agreement**” means this Settlement Agreement, and all exhibits attached hereto, between Plaintiffs and Defendant.

11. “**Application for Attorneys’ Fees, Costs, and Service Award**” means the application made with the Motion for Final Approval seeking attorneys’ fees, reimbursement for costs, and Class Representatives Service Award.

12. **“Cash Payment”** means the cash compensation paid to Settlement Class Members who elected to submit a Claim for either Cash Payment A – Documented Losses or Cash Payment B – Flat Cash, under Section IV herein.

13. **“Cash Payment A – Documented Losses”** means the cash compensation that Settlement Class Members with documented losses may elect under the Settlement, consisting of a maximum payment of \$4,500.00 per Settlement Class Member for extraordinary losses, or \$450.00 per Settlement Class Member for ordinary losses, upon submission of a valid Claim Form, pursuant to Section IV herein.

14. **“Cash Payment B – Flat Cash”** means the cash compensation of \$55.00 per Settlement Class Member, that Settlement Class Members may elect as an alternative to Cash Payment A pursuant to Section IV herein.

15. **“Claim”** means the submission of a Claim Form by a Claimant for Settlement Class Member Benefits.

16. **“Claim Form”** means the proof of claim the Settlement Class Members must submit to be eligible for relief under there terms of the Settlement, substantially in the form attached hereto as ***Exhibit 3***, which may be modified as necessary, subject to the Parties’ approval, to meet the requirements of the Settlement Administrator.

17. **“Claim Form Deadline”** means the deadline by which a Claim Form must be postmarked or submitted electronically to the Settlement Website, in order for a Settlement Class Member to be entitled to any of the Settlement Member Benefits. The Claim Form Deadline shall be 60 days after the Notice Deadline.

18. **“Claimant”** means a Settlement Class member who submits a Claim Form.

19. “**Claim Process**” means the process by which Claimants submit Claim Forms online at the Settlement Website or by mail to the Settlement Administrator and the Settlement Administrator determines which Claims are Valid Claims.

20. “**Class Counsel**” means: Christopher P. Renz of Chestnut Cambronne PA and Raina C. Borrelli of Strauss Borrelli PLLC.

21. “**Class List**” means the list of Settlement Class Members provided to the Settlement Administrator by the Defendant for the purpose of effectuating Notice.

22. “**Class Representatives**” or “**Plaintiffs**” mean Diane Rezack, Lawrence Burns, Edward Severson, Elizabeth Timmerman, and Mark Gore.

23. “**Court**” means the State of Minnesota District Court, County of Hennepin, Fourth Judicial District, and the Judge(s) assigned to the Action.

24. “**Credit Monitoring**” means the credit monitoring product with two years of monitoring through one credit bureau and at least one million dollars in identity theft and fraud protection insurance that Settlement Class Members may elect as a Settlement Class Member Benefit under the Settlement.

25. “**Data Incident**” means the cybersecurity incident involving Defendant resulting in the potential unauthorized access to or acquisition of Private Information that took place on or about July 9, 2025, and which is the subject of the Action.

26. “**Defendant**” means Twin Cities Pain Clinic.

27. “**Defendant’s Counsel**” means Jessica L. Copeland of Bond, Schoeneck & King, PLLC.

28. “**Double Postcard Notice**” means the double postcard notice of the Settlement with tear-off Claim Form, substantially in the form attached hereto as ***Exhibit 1***, that the Settlement

Administrator shall disseminate by mail to Settlement Class members for whom Defendant does not have a valid email address on file or whose Email Notice is returned as undeliverable.

29. “**Effective Date**” means one day after the date when this Agreement becomes Final, as described herein.

30. “**Email Notice**” means the email notice of the Settlement, substantially in the form attached hereto as **Exhibit 12**, that the Settlement Administrator shall send to Settlement Class members for whom Defendant has a valid email address on file.

31. “**Final**” means each and every of the following conditions have occurred: (1) this Settlement Agreement has been fully executed by all Parties and their counsel; (2) Order(s) have been entered by the Court certifying the Settlement Class, granting preliminary approval of this Settlement Agreement, and approving the Notice Program and Claim Form, as provided herein; (3) the Court-approved Notice has been sent and the Settlement Website has been fully created and maintained as ordered by the Court; (4) the Court has entered a Final Approval Order finally approving this Settlement Agreement, as provided herein; and (5) either (i) no appeal has been taken from the judgment as of the date on which all times to appeal or seek permission to appeal themselves have expired, or (ii) if an appeal or other review proceeding of the judgment has been commenced, it has been finally concluded and no longer is subject to further review by any court, whether by appeal, petitions or rehearing or re-argument, petitions for rehearing en banc, petitions for writ of certiorari, or otherwise, and such appeal or other review has finally been resolved in a manner that affirms the Final Approval Order in all material respects. Notwithstanding the above, any order modifying or reversing any Service Awards or award of attorneys’ fees or costs shall not affect whether a judgment in this matter is Final or any other aspect of the judgment.

32. **“Final Approval”** means the final approval of the Settlement, which occurs when the Court enters the Final Approval Order, substantially in the form attached to the Motion for Final Approval.

33. **“Final Approval Hearing”** means the hearing held before the Court during which the Court will consider granting Final Approval of the Settlement and the Application for Attorneys’ Fees, Costs, and Service Award.

34. **“Final Approval Order”** means the final order the Court enters granting Final Approval of the Settlement. The proposed Final Approval Order shall be in a form agreed upon by the Parties and shall be substantially in the form attached as an exhibit to the Motion for Final Approval. The Final Approval Order also includes the orders, which may be entered separately, determining the amount of attorneys’ fees, costs awarded to Class Counsel, and Service Awards to the Class Representatives.

35. **“Long Form Notice”** means the long form notice of the Settlement, substantially in the form attached hereto as ***Exhibit 2***, that shall be posted on the Settlement Website and shall be available to Settlement Class members by mail upon request to the Settlement Administrator.

36. **“Motion for Final Approval”** means the unopposed motion that Plaintiffs and Class Counsel shall file with the Court seeking Final Approval of the Settlement, including Class Counsel’s Application for Attorneys’ Fees, Costs, and Service Awards.

37. **“Motion for Preliminary Approval”** means the motion that Plaintiffs shall file with the court seeking Preliminary Approval of the Settlement.

38. **“Notice”** means the Email Notice, Double Postcard Notice, and Long Form Notice, attached as ***Exhibits 1-2***, that Plaintiffs will ask the Court to approve in connection with the Motion for Preliminary Approval.

39. **“Notice Deadline”** means the date by which the Settlement Administrator must first mail notice to the Settlement Class pursuant to the Notice Program, which shall be 30 days after the Court has entered the Preliminary Approval Order.

40. **“Notice Program”** means the methods provided for in this Agreement for giving Notice to the Settlement Class and consists of the Email Notice, Double Postcard Notice, Long Form Notice, Settlement Website, and toll-free Settlement phone number.

41. **“Notice of Deficiency”** means the notice sent by the Settlement Administrator to a Settlement Class member who has submitted an invalid Claim.

42. **“Objection Deadline”** means the date by which a written objection to this Settlement Agreement or a request for exclusion submitted by a person within the Settlement Class must be postmarked and/or filed with the Court and sent to the Settlement Administrator, which shall be designated as 60 days after the Notice Deadline, or such other date as ordered by the Court.

43. **“Opt-Out Deadline”** means the last day on which a Settlement Class Member may file a request to be excluded from the Settlement Class, which will be 60 days after the Notice Deadline, or such other date as ordered by the Court.

44. **“Party”** means either Plaintiffs or Defendant, and **“Parties”** means Plaintiffs and Defendant collectively.

45. **“Preliminary Approval”** means the preliminary approval of the Settlement, which occurs when the Court enters the Preliminary Approval Order, substantially in the form submitted with the Motion for Preliminary Approval.

46. **“Preliminary Approval Order”** means the order preliminarily approving the Settlement and proposed Notice Program, substantially in the form attached hereto as ***Exhibit 4***.

47. **“Private Information”** means names, dates of birth, mailing addresses, email addresses, phone numbers, financial account information, health insurance information, Social Security numbers, and medical records numbers, treatment notes, and/or provider information, among other sensitive data. The term “Private Information” is not intended here, nor should it be viewed as, referring to this term or similar term in any statute or source of law beyond this Agreement.

48. **“Releases”** means the releases and waiver set forth in Section XI of this Agreement.

49. **“Released Claims”** means any and all past, present, and future claims, demands, rights, actions or causes of action, liabilities, damages, losses, obligations, judgments, suits, penalties, remedies, matters, and issues of any kind or nature, whether known or unknown, contingent or absolute, existing or potential, suspected or unsuspected, disclosed or undisclosed, matured or unmatured, liquidated or unliquidated, legal, statutory, or equitable, in the Action or Related Actions, or in any court, tribunal, or proceeding by or on behalf of the Plaintiffs or any members of the Settlement Class, arising out of, or relating to the Data Incident, Defendant's data security practices as they relate to the Data Incident, Defendant's notification of the Data Incident, and any regulatory investigation or proceeding related to the Data Incident, and which have been asserted or could have been asserted based on the facts alleged in this Action or the Related Actions against any of the Released Parties (defined below) whether based on federal, state, local, statutory, common law, or any other law, rule or regulation, including the law of any jurisdiction outside the United States, including but not limited to claims under HIPAA, the Minnesota Health Records Act, and any other federal or state data privacy or security statute, against any or all of the Released Parties, which the Plaintiffs or any member of the Settlement Class ever had, now has, or hereinafter may have, prior to entry of the final order and judgment in this Action or the Related

Actions. Released Claims include all Unknown Claims, as defined below. Released Claims shall not include the right of Plaintiffs, Settlement Class Members, or any Released Person to enforce the terms of the Settlement Agreement and claims not arising from the facts alleged in the Action or Related Actions.

50. **“Released Parties”** means Defendant and each entity which is controlled by, controlling or under common control with Defendant and all of their present, future, or past direct or indirect heirs, executors, estates, affiliates, divisions, predecessors, successors, assigns, parents, or subsidiaries (**“Released Entities”**), and the owners, associates, employers, employees, agents, consultants, contractors, independent contractors, vendors, insurers, reinsurers, directors, managers, managing directors, officers, partners, principals, members, attorneys, accountants, administrators, bankruptcy trustee(s), financial and other advisors, investment bankers, underwriters, shareholders, lenders, auditors, investment advisors, sellers, distributors, legal representatives, successors in interest, assigns and persons, firms, trustees, trusts, corporations, officers, directors, and general or limited partners of the Released Entities.

51. **“Releasing Parties”** shall refer, jointly and severally, and individually and collectively, to Plaintiffs and Settlement Class Members and their respective past, present, and future heirs, beneficiaries, conservators, executors, estates, administrators, assigns, agents, attorneys, accountants, financial and other advisors, and any other representatives of any of these persons and entities.

52. **“Service Award”** means the payment the Court may award the Plaintiffs for serving as Class Representatives.

53. **“Settlement Administrator”** means Simpluris, the third-party notice and claims administrator jointly selected by the Parties.

54. **“Settlement Administration Costs”** means all costs and fees of the Settlement Administrator regarding Notice and Settlement administration, for which Defendant shall be solely responsible for payment; provided, however, that Settlement Administration Costs shall not exceed \$17,000.00 in the aggregate without the prior written consent of Defendant.

55. **“Settlement Class”** means all individuals in the United States who had Private Information accessed and/or acquired as a result of the Data Incident. Excluded from the Settlement Class are: (1) all persons who are directors, officers, and agents of Defendant, or its subsidiaries and affiliated companies; (2) governmental entities; and (3) the Judge assigned to the Action, that Judge’s immediate family, and Court staff.

56. **“Settlement Class Member”** means any member of the Settlement Class who has not opted out of the Settlement.

57. **“Settlement Class Member Benefits”** means the Cash Payment and/or Credit Monitoring, elected by Settlement Class Members.

58. **“Settlement Website”** means the website the Settlement Administrator will establish as a means for Settlement Class members to submit Claim Forms and obtain notice and information about the Settlement, including hyperlinked access to this Agreement, the Preliminary Approval Order, Long Form Notice, Claim Form, Motion for Final Approval, Application for Attorneys’ Fees, Costs, and Service Award, and Final Approval Order, as well as other documents as the Parties agree to post or the Court orders posted. The Settlement Website shall remain online and operable for 90 days after Final Approval.

59. **“Unknown Claims”** means any Released Claim that a Releasing Party does not know or suspect to exist in his, her, or its favor as of the Effective Date, including without limitation any claim that, if known, might have affected his, her, or its decision to enter into or not

to object to this Settlement Agreement. The Releasing Parties acknowledge that they may hereafter discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Released Claims, but agree that upon the Effective Date they shall have fully, finally, and forever settled and released any and all Released Claims, whether known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, that now exist or heretofore have existed upon any theory of law or equity, including without limitation claims that could have been raised but were not.

60.     **“Valid Claim”** means a Claim Form submitted by a Settlement Class Member that is: (a) submitted in accordance with the provisions of the Settlement; (b) accurately, fully, and truthfully completed and executed, with all of the information requested in the Claim Form, by a Settlement Class Member; (c) signed physically or by e-signature by a Settlement Class Member personally, subject to the penalty of perjury; (d) returned via mail and postmarked by the Claim Form Deadline, or, if submitted online, submitted by 11:59 p.m. Eastern time on the Claim Form Deadline; and (e) determined to be valid by the Settlement Administrator. The Settlement Administrator may require additional information from the Claimant to validate the Claim, including, but not limited to, answers related to questions regarding the validity or legitimacy of the physical or e-signature. Failure to respond to the Settlement Administrator’s Notice of Deficiency may result in a determination that the Claim is not a Valid Claim.

### **III.     CERTIFICATION OF THE SETTLEMENT CLASS**

61.     In the Motion for Preliminary Approval, Plaintiffs shall propose and request to the Court that the Settlement Class be certified for Settlement purposes only. Defendant agrees solely for purposes of the Settlement provided for in this Agreement, and the implementation of such Settlement, that this case shall proceed as a class action; provided however, that if a Final Approval

Order is not issued, then any certification shall be null and void and, for the avoidance of doubt, Defendant shall retain all rights to object to any future requests to certify a class. Plaintiffs and Class Counsel shall not reference this Agreement in support of any subsequent motion for class certification of any class in the Action.

#### **IV. SETTLEMENT CLASS MEMBER BENEFITS**

62. Settlement Class Members must submit a Valid Claim to the Settlement Administrator to receive a Cash Payment payable from the Defendant. When submitting a Valid Claim, Settlement Class Members must choose either Cash Payment A – Documented Losses or Cash Payment B – Alternate Cash. If a Settlement Class Member does not submit a Valid Claim, the Settlement Class Member will release his or her claims without receiving a Settlement Class Member Benefit.

##### **a. Monetary Payments**

The maximum amount payable to Settlement Class Members for all Claims for Cash Payment under this Settlement (excluding Credit Monitoring) shall be \$385,000.00. In the event the aggregate claimed amount of payments exceeds \$385,000.00, then the value of such payments shall be reduced on a *pro rata* basis, such that the aggregate value of all such Cash Payments does not exceed \$385,000.00.

##### **i. Cash Payment A – Documented Losses**

Settlement Class Members may submit a claim for a Cash Payment under this section for up to \$4,500.00 per Settlement Class Member for extraordinary documented losses, or up to \$450.00 per Settlement Class Member for ordinary documented losses, related to the Data Incident. To receive a documented loss payment, a Settlement Class Member must elect Cash Payment A on the Claim Form attesting under penalty of perjury to incurring documented losses. Settlement Class

Members will be required to submit reasonable documentation supporting the losses, which means documentation contemporaneously generated or prepared by a third party or the Settlement Class Member supporting a claim for expenses paid. Non-exhaustive examples of reasonable documentation include telephone records, correspondence including emails, or receipts. Except as expressly provided herein, personal certifications, declarations, or affidavits from the Settlement Class Member do not constitute reasonable documentation but may be included to provide clarification, context, or support for other submitted reasonable documentation. Settlement Class Members shall not be reimbursed for expenses if they have been reimbursed for the same expenses by another source, including compensation provided in connection with the credit monitoring and identity theft protection product offered as part of the notification letter provided by Defendant or otherwise. No payment shall be made for emotional distress, personal/bodily injury, or punitive damages, as all such amounts are not recoverable pursuant to the terms of the Settlement Agreement. The loss must be supported by clear evidence that such costs have been caused by the Data Incident, and must have occurred between July 9, 2025 and the Claim Form Deadline. The Settlement Class Member must also have made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all available credit monitoring insurance and identity theft insurance. Settlement Class Members shall not be reimbursed for the cost of self-purchased credit monitoring or identity theft protection services where substantially identical complimentary monitoring or protection services were offered and available to the Settlement Class Member by Defendant or through this Settlement; provided, however, that a Settlement Class Member may seek reimbursement as an ordinary documented loss for any credit monitoring or identity theft protection service that provides protections not duplicated by the complimentary services offered (e.g. number of years, number of bureaus, amount of identity theft protection

insurance offered, medical monitoring offered etc.).. If a Settlement Class Member does not submit reasonable documentation supporting a loss, or if their Claim is rejected by the Settlement Administrator for any reason, and the Settlement Class Member fails to cure his or her Claim, the Claim will be rejected and the Settlement Class Member's Claim will be as if he or she elected Cash Payment B.

**ii. Cash Payment B – Flat Cash**

As an alternative to Cash Payment A above, a Settlement Class Member may elect to receive Cash Payment B, which is a flat cash payment in the amount of \$55.00.

**b. Credit Monitoring**

In addition to Cash Payment A or Cash Payment B, Settlement Class Members may also make a Claim for Credit Monitoring that will include two years of credit monitoring with: (i) real time monitoring of the credit file with one credit bureau; (ii) dark web scanning with immediate notification of potential unauthorized use; (iii) security freezing assistance; (iv) victim assistance; (v) identity theft insurance; and (vi) access to fraud resolution agents to help investigate and resolve instances of identity theft. Defendant's total cost for Credit Monitoring under this Settlement shall not exceed \$21,000 in the aggregate.

**c. Cybersecurity Declaration**

As part of the Settlement, Defendant shall provide a confidential declaration confirming that cybersecurity enhancements or changes have been made since the Data Incident. The declaration and all information contained therein shall remain strictly confidential and shall not be disclosed publicly in settlement papers, court filings, or otherwise, except as required by court order.

**V. SETTLEMENT APPROVAL**

63. Within 10 days of signing this Agreement, Class Counsel shall file a Motion for Preliminary Approval which shall, among other things, request the Court: (1) preliminarily approve the terms of the Settlement as being within the range of fair, adequate, and reasonable; (2) provisionally certify the Settlement Class for settlement purposes only; (3) approve the Notice Program set forth herein and approve the form and content of the Notices; (4) approve the Claim Form and Claim Process; (5) approve the procedures for Settlement Class members to opt-out of the Settlement or for Settlement Class Members to object to the Settlement; (6) appoint Simpluris as the Settlement Administrator; (7) appoint Plaintiffs as Class Representatives and Christopher P. Renz and Raina C. Borrelli as Class Counsel for Settlement purposes; (8) stay the Action pending Final Approval of the Settlement; and (9) schedule a Final Approval Hearing for a time and date mutually convenient for the Court, the Parties, Class Counsel, and Defendant's Counsel.

**VI. SETTLEMENT ADMINISTRATION**

64. Defendant shall be solely responsible for all Settlement Administration Costs, subject to the cap set forth in Section 53 of this Agreement. The Settlement Administrator and Defendant will enter into a separate agreement related to the payment of Settlement Administration Costs, which agreement shall be executed prior to the filing of the Motion for Preliminary Approval. Plaintiffs, Class Counsel, and the Settlement Class will have no liability for the payment of the Settlement Administration Costs.

65. The Parties agree that, subject to Court approval, Simpluris shall be the Settlement Administrator. The Parties shall jointly oversee the Settlement Administrator. The Settlement Administrator shall fulfill the requirements set forth in the Preliminary Approval Order and the Agreement and comply with all applicable laws, including, but not limited to, the Due Process

Clause of the United States Constitution and the state of Minnesota. Prior to selection, any proposed Settlement Administrator shall provide a written cost estimate to the Parties, and the Settlement Administrator shall not be selected without Defendant's written approval of such cost estimate.

66. The Settlement Administrator shall administer various aspects of the Settlement as described in the next paragraph and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including, but not limited to, effectuating the Notice Program, handling the Claims Process, assessing Claim Forms and determining whether they are supported by reasonable documentation, and distributing the Cash Payments and issuing Credit Monitoring activation codes to Settlement Class Members who submit Valid Claims.

67. The Settlement Administrator's duties include the following:

a. Complete the Court-approved Notice Program by sending Email Notices to Settlement Class members for whom Defendant has valid email addresses, sending Double Postcard Notices to Settlement Class members for whom email is unavailable or undeliverable, , and sending out Long Form Notices and paper Claim Forms upon request from Settlement Class members, reviewing Claim Forms, notifying Claimants of deficient Claim Forms using the Notice of Deficiency, and sending Settlement Class Member Benefits to Settlement Class Members who submit a Valid Claim;

- a. In advance of the motion for Preliminary Approval, preparing, upon request, a declaration setting out the Settlement Administrator's experience in class action settlement administration and attesting to the sufficiency of the Notice Program.
- b. Establishing and maintaining a post office box to receive opt-out requests from the Settlement Class, and objections from Settlement Class Members;

- c. Establishing and maintaining the Settlement Website to provide important information and to receive electronic Claim Forms;
- d. Establishing and maintaining an automated toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answer the frequently asked questions of Settlement Class Members who call with or otherwise communicate such inquiries;
- e. Responding to any mailed Settlement Class Member inquiries;
- f. Processing all opt-out requests from the Settlement Class;
- g. Providing weekly reports to Class Counsel and Defendant's Counsel that summarize the number of Claims submitted, Claims approved and rejected, Notices of Deficiency sent, opt-out requests and objections received that week, the total number of opt-out requests and objections received to date, and other pertinent information;
- h. In advance of the Final Approval Hearing, preparing a declaration confirming the Notice Program was completed in accordance with the terms of this Agreement and the Preliminary Approval Order, describing how the Notice Program was completed, indicating the number of Claim Forms received, the value of the Valid Claims submitted to date, providing the names of each Settlement Class member who timely and properly requested to opt-out from the Settlement Class, indicating the number of objections received, and other information as may be necessary to allow the Parties to seek and obtain Final Approval;
- i. Reviewing Claim Forms submitted by Settlement Class Members to determine

- whether they are eligible for a Cash Payment;
- j. Emailing all Credit Monitoring activation codes to all Settlement Class Members who elect Credit Monitoring;
  - k. Collecting from Defendant and/or its insurer(s) the cash necessary to pay Valid Claims for Cash Payments;
  - l. Distributing Cash Payments to Settlement Class Members who submit Valid Claims; and
  - m. Any other Settlement administration function at the instruction of Class Counsel and Defendant's Counsel, including, but not limited to, verifying that the Cash Payments have been properly distributed.

**VII. NOTICE TO THE SETTLEMENT CLASS, OPT-OUT PROCEDURES, AND OBJECTION PROCEDURES**

68. Defendant will provide the Settlement Administrator with the Class List no later than 10 days after entry of the Preliminary Approval Order. To the extent necessary, Defendant will cooperate with updating the Class Lists to accomplish the Notice Program and otherwise administer the Settlement. Prior to any transfer of the Class List, the Settlement Administrator shall execute a data security agreement in a form acceptable to Defendant, which shall include appropriate confidentiality, data protection, and data destruction obligations.

69. Within 30 days following entry of the Preliminary Approval Order, the Settlement Administrator shall commence the Notice Program provided herein, using the Email Notice, Double Postcard Notice, and Long Form Notice approved by the Court. The Settlement Administrator shall first send Email Notices to all Settlement Class members for whom Defendant has provided valid email addresses. For Settlement Class members without valid email addresses, or for whom Email Notice is returned as undeliverable, the Settlement Administrator shall send the

Double Postcard Notice by U.S. Mail.

70. The Email Notice and Double Postcard Notice shall each include, among other information: (a) a description of the material terms of the Settlement; (b) how to submit a Claim Form (with the Double Postcard Notice including a tear-off Claim Form); (c) the Claim Form Deadline; (d) the last day of the Opt-Out Period for Settlement Class Members to opt-out of the Settlement Class; (e) the last day of the Objection Period for Settlement Class Members to object to the Settlement and/or Application for Attorneys' Fees, Costs, and Service Award; (f) the Final Approval Hearing date; and (g) the Settlement Website address at which Settlement Class members may access this Agreement and other related documents and information. Class Counsel shall insert the correct dates and deadlines in the Notices before the Notice Program commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. If the date or time for the Final Approval Hearing changes, the Settlement Administrator shall update the Settlement Website to reflect the new date. No additional notice to the Settlement Class is required if the date or time for the Final Approval Hearing changes.

71. The Settlement Administrator shall establish the Settlement Website no later than the day before Notice is first initiated. The Settlement Administrator shall ensure the Settlement Website makes available the Court-approved online Claim Form that can be submitted online directly on the Settlement Website or in printable version that can be sent by U.S. Mail to the Settlement Administrator.

72. The Email Notice and Double Postcard Notice shall each include a procedure for Settlement Class members to opt-out of the Settlement Class. A Settlement Class member may opt-out of the Settlement Class at any time during the Opt-Out Period by mailing a request to opt-out to the Settlement Administrator postmarked no later than the last day of the Opt-Out Period. The opt-

out request must be personally signed by the Settlement Class member and contain the requestor's name, address, telephone number, and email address (if any), and include a statement indicating a request to opt-out of the Settlement Class. Any Settlement Class Member who does not timely and validly request to opt-out shall be bound by the terms of this Agreement even if that Settlement Class Member does not submit a Valid Claim.

73. The Email Notice and Double Postcard Notice shall each include a procedure for Settlement Class Members to object to the Settlement and/or Application for Attorneys' Fees, Costs, and Service Award. Objections must be filed with the Court, and sent by U.S. Mail to Class Counsel, Defendant's Counsel, and the Settlement Administrator. For an objection to be considered by the Court, the objection must be submitted no later than the last day of the Objection Period, as specified in the Notice, and the Settlement Class Member must not have opted-out of the Settlement Class. If submitted by mail, an objection shall be deemed to have been submitted when posted if received with a postmark date indicated on the envelope if mailed first-class postage prepaid and addressed in accordance with the instructions. If submitted by private courier (e.g., Federal Express), an objection shall be deemed to have been submitted on the shipping date reflected on the shipping label.

74. For an objection to be considered by the Court, the objection must also set forth:

- a. the objector's full name, mailing address, telephone number, and email address (if any);
- b. all grounds for the objection, accompanied by any legal support for the objection known to the objector or objector's counsel;
- c. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to

the Settlement and/or Application for Attorneys' Fees, Costs, and Service Award, and a statement of whether they will appear at the Final Approval Hearing;

d. the number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the 5 years preceding the date of the filed objection, the caption of each case in which counsel or the firm has made such objection and a copy of any orders related to or ruling upon counsel's or the counsel's law firm's prior objections that were issued by the trial and appellate courts in each listed case in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding 5 years;

e. a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection (if any);

f. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and

g. the objector's signature (an attorney's signature is not sufficient).

75. Class Counsel and/or Defendant's Counsel may conduct limited discovery on any objector or objector's counsel.

76. The Settlement Administrator shall perform reasonable address traces for those Double Postcard Notices returned as undeliverable. By way of example, a reasonable tracing procedure would be to run addresses of returned postcards through the Lexis/Nexis database that can be utilized for such purpose. To the extent better addresses are found, the Settlement Administrator should attempt to re-mail the Double Postcard Notice.

77. The Notice Program shall be completed in its entirety no later than 60 days before the original date set for the Final Approval Hearing.

#### **VIII. CLAIM PROCESS AND DISBURSEMENT OF CASH PAYMENTS**

78. The Notice and the Settlement Website will explain to Settlement Class members that they may be entitled to a Settlement Class Member Benefit and how to submit a Claim Form.

79. Claim Forms may be submitted online through the Settlement Website or through U.S. Mail by sending them to the Settlement Administrator at the address designated on the Claim Form.

80. The Settlement Administrator shall collect, review, and address each Claim Form received to determine whether the Claim Form meets the requirements set forth in this Settlement and is thus a Valid Claim. The Settlement Administrator shall examine the Claim Form before designating the Claim as a Valid Claim to determine that the information on the Claim Form is reasonably complete. The Settlement Administrator shall have the sole authority to determine whether a Claim by any Claimant is a Valid Claim.

81. The Settlement Administrator shall use all reasonable efforts and means to identify and reject duplicate claims. No Settlement Class Member may submit more than one Claim Form. The Settlement Administrator shall identify any Claim Forms that appear to seek relief on behalf of the same Settlement Class member. The Settlement Administrator shall use its best efforts to determine whether there is any duplication of Claims, and if there is, contact the Settlement Class Member in an effort to determine which Claim Form is the appropriate one for consideration.

82. The Settlement Administrator shall exercise, in its discretion, all usual and customary steps to prevent fraud and abuse and take any reasonable steps to prevent fraud and abuse in the Claim Process. The Settlement Administrator may, in its discretion, deny in whole or in part any Claim Form to prevent actual or possible fraud or abuse. By agreement, the Parties can instruct the Settlement Administrator to take whatever steps it deems appropriate if the Settlement Administrator identifies actual or possible fraud or abuse relating to the submission of Claims,

including, but not limited to, denying in whole or in part any Claim to prevent actual or possible fraud or abuse. If any fraud is detected or reasonably suspected, the Settlement Administrator and Parties may require information from Claimants or deny Claims, subject to the supervision of the Parties and ultimate oversight by the Court.

83. Claim Forms that do not meet the terms and conditions of this Settlement shall be promptly rejected by the Settlement Administrator and the Settlement Administrator shall advise the Settlement Class member of the reason(s) why the Claim Form was rejected. However, if the Claim Form is rejected for containing incomplete or inaccurate information, and/or omitting required information, the Settlement Administrator may send a Notice of Deficiency explaining what information is missing or inaccurate and needed to validate the Claim and have it submitted for consideration. The Settlement Administrator shall notify the Settlement Class Member using the contact information provided in the Claim Form. The additional information and/or documentation can include, for example, answers to questions regarding the validity of the physical or e-signature. A Settlement Class Member shall have until the Claim Form Deadline, or 15 days after the date the Notice of Deficiency is sent via mail and postmarked or via email, whichever is later, to reply to the Notice of Deficiency and provide the required information. If the Settlement Class Member timely and adequately provides the requested information and/or documentation, the Claim shall be deemed a Valid Claim and processed by the Settlement Administrator. If the Settlement Class Member does not timely and completely provide the requested information and/or documentation, the Settlement Administrator shall reduce or deny the Claim unless Defendant's Counsel and Class Counsel otherwise agree.

84. Where a good faith basis exists, the Settlement Administrator may reduce or reject a Claim for, among other reasons, the following:

- a. Failure to fully complete and/or sign the Claim Form;
- b. Illegible Claim Form;
- c. The Claim Form is fraudulent;
- d. The Claim Form is duplicative of another Claim Form;
- e. The Claimant is not a Settlement Class Member;
- f. The Claimant submitted a timely and valid request to opt-out of the Settlement Class.
- g. The person submitting the Claim Form requests that payment be made to a person or entity other than the Claimant for whom the Claim Form is submitted;
- h. Failure to submit a Claim Form by the Claim Form Deadline; and/or
- i. The Claim Form otherwise does not comply with the requirements of this Settlement.

85. The Settlement Administrator's reduction or denial of a Claim is final, subject to the following dispute resolution procedures:

- a. The Settlement Administrator shall have 30 days from the Claim Form Deadline to approve or reject Claims based on findings of fraud or duplication;
- b. A request for additional information by sending a Notice of Deficiency shall not be considered a denial for purposes of this Paragraph;
- c. If a Claim is rejected for fraud or duplication, the Settlement Administrator shall notify the Claimant using the contact information provided in the Claim Form. Class Counsel and Defendant's Counsel shall be provided with copies of all such notifications to Claimants; and
- d. The Settlement Administrator's determination as to whether to approve, deny, or reduce a Claim shall be final and binding.

86. The Settlement Administrator shall provide all information gathered in investigating Claims, including, but not limited to, copies of all correspondence and email and all notes of the Settlement Administrator, the decision reached, and all reasons supporting the decision, if requested by Class Counsel or Defendant's Counsel. Additionally, Class Counsel and Defendant's Counsel shall have the right to inspect the Claim Forms and supporting documentation received by the Settlement Administrator at any time upon reasonable notice.

87. No person or entity shall have any claim against Defendant, Defendant's Counsel, Plaintiffs, the Settlement Class, Class Counsel, and/or the Settlement Administrator based on any eligibility determinations, distributions, or awards made in accordance with this Settlement.

88. No later than 75 days after Final Approval or 30 days after the Effective Date, whichever is later, the Settlement Administrator shall distribute the Settlement Class Member Benefits.

89. Cash Payments to Settlement Class Members will be made by electronic payment or by paper check. In the event the Settlement Administrator is unable to distribute funds to the person or persons entitled to receive them due to incorrect or incomplete information provided to the Settlement Administrator, the funds shall become residual funds, and the Settlement Class Member shall forfeit their entitlement right to the funds. All residual funds will be returned to Defendant.

90. The Settlement Administrator will send an email to Settlement Class Members with Valid Claims that include an election for Credit Monitoring with information on how to enroll in the Credit Monitoring, including the activation code.

#### **IX. FINAL APPROVAL ORDER AND FINAL JUDGMENT**

91. Plaintiffs shall file their Motion for Final Approval of the Settlement, inclusive of

the Application for Attorneys' Fees, Costs, and Service Award, no later than 45 days before the original date set for the Final Approval Hearing. At the Final Approval Hearing, the Court will hear argument on Plaintiffs' Motion for Final Approval of the Settlement and Application for Attorneys' Fees, Costs, and Service Award. In the Court's discretion, the Court will also hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement and/or to the Application for Attorneys' Fees, Costs, and Service Award, provided the objectors submitted timely objections that meet all of the requirements listed in this Agreement.

92. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order and final judgment thereon, and whether to grant the Application for Attorneys' Fees, Costs, and Service Award. Such proposed Final Approval Order shall, among other things:

- a. Determine that the Settlement is fair, adequate and reasonable;
- b. Finally certify the Settlement Class for settlement purposes only;
- c. Determine the completed Notice Program satisfies Due Process requirements;
- d. Bar and enjoin all Releasing Parties from asserting or otherwise pursuing any of the Released Claims at any time and in any jurisdiction, including during any appeal from the Final Approval Order; and retain jurisdiction over the enforcement of the Court's injunctions;
- e. Release Defendant and the Released Parties from the Released Claims, as specified in Section XIII below; and
- f. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Defendant, Plaintiffs, all Settlement Class Members, and all objectors, to administer, supervise, construe, and enforce this Agreement in accordance with its terms.

g. Within fourteen (14) days of Final Approval, if not dismissed through the Final Approval Order, Plaintiffs and Class Counsel shall file or cause to be filed all necessary documentation to withdraw and/or dismiss with prejudice the Complaint and all claims asserted therein against Defendant, and shall take all reasonable steps to effectuate such withdrawal and dismissal. If the Court requires any additional filings or actions to effectuate the dismissal, Plaintiffs and Class Counsel shall promptly comply with such requirements.

**X. SERVICE AWARD, ATTORNEYS' FEES AND COSTS**

93. The Parties did not discuss the payment of attorneys' fees, costs, expenses and/or service award to Plaintiffs until after the substantive terms of the settlement had been agreed upon, other than that Defendant would not object to a request for reasonable attorneys' fees, costs, expenses, and a service award to Plaintiffs as may be ordered by the Court.

94. ***Service Award*** – In recognition of the time and effort the Class Representatives expended in pursuing this Action and in fulfilling their obligations and responsibilities as Class Representatives, and of the relief conferred on all Settlement Class Members by the Settlement, Class Counsel shall request a Service Award for each of the Class Representatives in an amount not to exceed \$2,500.00, for a total Service Award amount not to exceed \$12,500.00 in the aggregate. If approved, the Service Awards shall be payable separate from the Settlement Class Member Benefits. Defendant shall pay or cause to be paid the Court-approved Service Awards by wire transfer to an account designated by Class Counsel within 30 days of the Effective Date. Class Counsel shall thereafter distribute the award of the Service Awards to Plaintiffs. Defendant and the Claims Administrator shall have no responsibility, liability, or other obligation concerning the distribution of Service Awards to Plaintiffs.

95. ***Attorneys' Fees and Costs*** - Class Counsel shall apply to the Court for an award of

attorneys' fees and costs of up to \$220,000.00, to be paid by Defendant separate from Defendant's obligation to pay Settlement Administration Costs and the Settlement Class Member Benefits to Settlement Class Members. In no event shall Defendant be obligated to pay attorneys' fees and costs in excess of the amount approved by the Court, and in no event shall Defendant be obligated to pay attorneys' fees and costs in excess of \$220,000.00. Defendant shall pay or cause to be paid the Court-approved attorneys' fees and cost award by wire transfer to an account designated by Class Counsel within 30 days of the Effective Date. Class Counsel shall thereafter distribute the award of attorneys' fees, costs, and expenses among Class Counsel. Defendant and the Claims Administrator shall have no responsibility, liability, or other obligation concerning the distribution of attorneys' fees, costs and expenses among Class Counsel.

96. The amount(s) of any award of attorneys' fees, costs, and expenses, and the Service Awards to Plaintiffs, are intended to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement. This Settlement is not contingent on approval of the request for attorneys' fees and costs or Service Award, and if the Court denies the request or grants amounts less than what was requested, the remaining provisions of the Agreement shall remain in force. These payments will not in any way reduce the consideration being made available to the Settlement Class as described herein. No order of the Court, or modification or reversal or appeal of any order of the Court, concerning the amount(s) of any attorneys' fees, costs, expenses, and/or service awards ordered by the Court to Class Counsel or Plaintiffs shall affect whether the Judgment is Final or constitute grounds for cancellation or termination of this Settlement Agreement. The provisions for attorneys' fees and costs and Service Award were not negotiated until after all material terms of the Settlement.

97. ***Defendant's Maximum Liability.*** Notwithstanding any other provision of this Agreement, Defendant's aggregate liability under this Settlement Agreement, including all Cash Payments, Credit Monitoring costs, Service Awards, attorneys' fees and costs, and Settlement Administration Costs, shall not exceed \$655,500.00, except with Defendant's prior written consent.

## **XI. RELEASES**

98. Upon the Effective Date, and in consideration of the Settlement relief and other consideration described herein, the Releasing Parties shall be deemed to have, and by operation of the Final Approval Order shall have, fully, finally, and forever released, acquitted, relinquished, and completely discharged Defendant from any and all Released Claims, including but not limited to any state law or common law claims arising out of or relating to the Data Incident that the Releasing Parties may have or had, such as under California's Consumer Privacy Act, California Civil Code section 1798.100, *et seq.* and/or California's Unfair Competition Law, California Civil Code section 17200 *et seq.* Each Party expressly waives all rights under California Civil Code section 1542, which provides:

99. ***Covenant Not to Sue.*** In addition to the release set forth herein, Plaintiffs and Settlement Class Members covenant and agree not to sue, commence, or prosecute any action or proceeding of any kind against any of the Released Parties with respect to any Released Claim, and further covenant and agree not to participate in or assist any other person or entity in commencing or prosecuting any action or proceeding of any kind against any of the Released Parties with respect to any Released Claim.

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.

The Releasing Parties also waive the provisions and rights of any law(s) that are comparable in effect to California Civil Code section 1542 (including, without limitation, California Civil Code § 1798.80, et seq., Montana Code Ann. § 28- 1-1602; North Dakota Cent. Code § 9-13-02; and South Dakota Codified Laws § 20-7-11). The Releasing Parties agree that, once this Agreement is executed, they will not, directly or indirectly, individually or in concert with another, maintain, cause to be maintained, or voluntarily assist in maintaining any further demand, action, claim, lawsuit, arbitration, or similar proceeding, in any capacity whatsoever, against any of the Released Parties based on any of the Released Claims, which includes Unknown Claims.

100. Settlement Class members who opt-out of the Settlement prior to the Opt-Out Deadline do not release their claims arising out of related to the Data Incident and will not obtain any of the Settlement Class Member Benefits under the Settlement.

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

102. Upon the Effective Date: (a) this Settlement shall be the exclusive remedy for any and all Released Claims of Plaintiffs and Settlement Class Members; and (b) Plaintiffs and Settlement Class Members stipulate to be and shall be permanently barred and enjoined by Court order from initiating, asserting, or prosecuting any Released Claim against the Released Parties, whether on behalf of Plaintiffs, any Settlement Class Member or others, in any jurisdiction, including in any federal, state, or local court or tribunal. It is further agreed that the Settlement may be pleaded as a complete defense to any proceeding subject to this section.

103. The power to enforce any term of this Settlement is not affected by the releases in this section.

## **XII. TERMINATION OF SETTLEMENT**

104. This Agreement shall be subject to and is expressly conditioned on the occurrence of all of the following events:

- a. Court approval of the Settlement consideration set forth in Section V and the Releases set forth in Section XI of this Agreement;
- b. The Court has entered the Preliminary Approval Order;
- c. The Court has entered the Final Approval Order, and all objections, if any, are overruled, and all appeals taken from the Final Approval Order are resolved in favor of Final Approval; and
- d. The Effective Date has occurred.

105. If any of the conditions specified in the preceding paragraph are not met, or if the Court otherwise imposes any modification to or condition of approval of the Settlement to which the Parties do not consent, then this Agreement shall be cancelled and terminated.

106. If: (a) the Court declines to issue the Preliminary Approval Order or Final Approval Order; (b) the Effective Date does not occur due to Court action; or (c) the Final Approval Order is modified or reversed in any material respect by any appellate or other court, the Parties shall have 60 days from the date of such non-occurrence during which the Parties shall work together in good faith in considering, drafting, and submitting reasonable modifications to this Agreement to address any issues identified by the Court or that otherwise caused the Preliminary Approval Order or Final Approval Order not to issue or the Effective Date not to occur. If such efforts are unsuccessful, either Party may at their sole discretion terminate this Agreement on 7 days written

notice to the other Party. For avoidance of any doubt, neither Party may terminate the Agreement while an appeal from an order granting approval of the Settlement is pending.

107. In the event this Agreement is terminated or fails to become effective, then the Parties shall return to the *status quo ante* in the Action as if the Parties had not entered into this Agreement, and the Parties shall jointly file a status report in the Court seeking to reopen the Action and all papers filed. In such event, the terms and provisions of this Agreement shall have no further force and effect with respect to the Parties and shall not be used in this Action or in any other action or proceeding for any other purpose, and any order entered by this Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

### **XIII. EFFECT OF TERMINATION**

108. The grounds upon which this Agreement may be terminated are set forth in Section XII. In the event of a termination, this Agreement shall be considered null and void; all of Plaintiffs', Class Counsel's, Defendant's, and Defendant's Counsel's obligations under the Settlement shall cease to be of any force and effect; and the Parties shall return to the *status quo ante* in the Action as if the Parties had not entered into this Agreement. In addition, in the event of such a termination, all of the Parties' respective pre-Settlement rights, claims, and defenses will be retained and preserved.

109. Any orders preliminarily or finally approving the certification of any class contemplated by the Settlement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity in support of claims or defenses or in support or in opposition to a class certification motion. In addition: (a) the fact that Defendant did not oppose certification of a class under the Settlement shall not be used or cited thereafter by any person or entity, including in

a contested proceeding relating to class certification and (b) in the event of such a termination, all the Parties' respective pre-Settlement claims and defenses will be preserved.

110. In the event the Settlement is terminated in accordance with the provisions of this Agreement, any discussions, offers, or negotiations associated with this Settlement shall not be discoverable or offered into evidence or used in the Action or any other action or proceeding for any purpose. In such event, all Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court.

#### **XIV. NO ADMISSION OF LIABILITY**

111. This Agreement reflects the Parties' compromise and settlement of disputed claims. This Agreement shall not be construed as or deemed to be evidence of an admission or concession of any point of fact or law. Defendant has denied and continue to deny each of the claims and contentions alleged in the Complaint. Defendant does not admit any liability or wrongdoing of any kind, by this Agreement or otherwise. Defendant has agreed to enter into this Agreement to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of any further claims that were asserted or could possibly have been asserted in the Action.

112. Class Counsel believe the claims asserted in the Action have merit, and they have examined and considered the benefits to be obtained under the proposed Settlement set forth in this Agreement, the risks associated with the continued prosecution of this complex, costly, and time-consuming litigation, and the likelihood of success on the merits of the Action. Class Counsel fully investigated the facts and law relevant to the merits of the claims, conducted discovery, and conducted independent investigation of the alleged claims. Class Counsel concluded that the

proposed Settlement set forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class.

113. This Agreement constitutes a compromise and settlement of disputed claims. No action taken by the Parties in connection with the negotiations of this Agreement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever.

114. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by Plaintiffs or Settlement Class Members, or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in the Action or in any proceeding in any court, administrative agency, or other tribunal.

115. In addition to any other defenses Defendant or the Released Parties may have at law, in equity, or otherwise, to the extent permitted by law, this Agreement may be pleaded as a full and complete defense to and may be used as the basis for an injunction against, any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of this Agreement or the Releases contained herein.

#### **XV. MISCELLANEOUS PROVISIONS**

116. ***Confidentiality.*** To the extent permitted by ethics rules, the Parties and their counsel shall keep confidential all settlement communications, including communications regarding the negotiation and drafting of this Agreement. This paragraph shall not be construed to limit or impede the Notice requirements contained in this Agreement, nor shall this paragraph be construed

to prevent Class Counsel or Defendant's Counsel from notifying or explaining that the Action has settled or limit the representations that the Parties or their counsel may make to the Court to assist in the Court's evaluation of the Settlement, Preliminary Approval, Final Approval, and any objection to the Settlement's terms. Defendant may also provide information about the Agreement to its attorneys, members, partners, insurers, brokers, agents, and other persons or entities as required by securities laws, other applicable laws and regulations, and as necessary to effect the Settlement. Neither Plaintiffs, Class Counsel, nor any Settlement Class Member shall issue any press release or make any public statement to the media regarding this Settlement that disparages Defendant or characterizes Defendant as having admitted liability or wrongdoing, and any public statement regarding this Settlement shall be consistent with the terms of this Agreement, including Section XIV (No Admission of Liability).

117. ***Gender and Plurals.*** As used in this Agreement, the masculine, feminine, or neuter gender, and the singular or plural number, shall each be deemed to include the others whenever the context so indicates.

118. ***Binding Effect.*** This Agreement shall be binding upon, and inure to and for the benefit of, the successors and assigns of the Releasing Parties and the Released Parties.

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

120. ***Plaintiffs' Cooperation.*** Class Counsel and Plaintiffs agree to cooperate fully with Defendant in responding to any objections to the Settlement and in seeking Final Approval of the Settlement. In the event any appeal is taken from the Final Approval Order, Class Counsel and Plaintiffs shall cooperate with Defendant in opposing such appeal.

121. ***Obligation to Meet and Confer.*** Before filing any motion in the Court raising a dispute arising out of or related to this Agreement, the Parties shall consult with each other and certify to the Court that they have met and conferred in an attempt to resolve the dispute.

122. ***Integration and No Reliance.*** This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. This Agreement is executed without reliance on any covenant, agreement, representation, or warranty by any Party or any Party's representative other than those expressly set forth in this Agreement. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

123. ***No Conflict Intended.*** Any inconsistency between the headings used in this Agreement and the text of the paragraphs of this Agreement shall be resolved in favor of the text.

124. ***Governing Law.*** Except as otherwise provided herein, the Agreement shall be construed in accordance with, and be governed by, the laws of the state of Minnesota, without regard to the principles thereof regarding choice of law.

125. ***Counterparts.*** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all Parties do not sign the same counterparts. Original signatures are not required. Any signature submitted through email or a PDF, including digital signatures (*e.g.* DocuSign), shall be deemed an original.

126. ***Jurisdiction.*** The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall also retain

jurisdiction over all questions and/or disputes related to the Notice Program and the Settlement Administrator. As part of the agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose. The Court shall retain jurisdiction over the enforcement of the Court's injunction barring and enjoining all Releasing Parties from asserting any of the Released Claims and from pursuing any Released Claims against the Released Parties at any time and in any jurisdiction, including during any appeal from the Final Approval Order.

127. **Notices.** All notices provided for herein shall be sent by email with a hard copy sent by overnight mail to:

**If to Plaintiffs or Class Counsel:**

Christopher P. Renz  
**Chestnut Cambronne PA**  
100 Washington Avenue South, Suite 1700  
Minneapolis, MN 55401  
crenz@chestnutcambronne.com

Raina C. Borrelli  
**Strauss Borrelli PLLC**  
One Magnificent Mile  
980 N Michigan Avenue, Suite 1610  
Chicago, IL 60611  
raina@straussborrelli.com

**If to Defendant or Defendant's Counsel:**

Jessica L. Copeland  
**Bond, Schoeneck & King, PLLC**  
Avant Building, Suite 900  
200 Delaware Ave.  
Buffalo, NY 14202  
jcopeland@bsk.com

The notice recipients and addresses designated above may be changed by written notice. Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of

objections, requests for exclusion, or other filings received as a result of the Notice Program.

128. ***Modification and Amendment.*** This Agreement may not be amended or modified, except by a written instrument signed by Class Counsel and Defendant's Counsel and, if the Settlement has been approved preliminarily by the Court, approved by the Court.

129. ***No Waiver.*** The waiver by any Party of any breach of this Agreement by another Party shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Agreement.

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

131. ***Agreement Mutually Prepared.*** Neither Plaintiffs nor Defendant shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

132. ***Independent Investigation and Decision to Settle.*** The Parties understand and acknowledge they: (a) have performed an independent investigation of the allegations of fact and law made in connection with this Action; and (b) that even if they may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Action as reflected in this Agreement, that will not affect or in any respect limit the binding nature of this Agreement. All Parties recognize and acknowledge they reviewed and analyzed data that they and their experts used to make certain determinations, arguments, and settlement positions. The Parties agree this Settlement is fair, reasonable, and adequate, and will not attempt to renegotiate or otherwise void or invalidate or terminate the Settlement irrespective

of what any unexamined data later shows. It is the Parties' intention to resolve their disputes in connection with this Action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

133. ***Receipt of Advice of Counsel.*** Each Party acknowledges, agrees, and specifically warrants that he, she, or it has fully read this Agreement and the Releases contained herein, received independent legal advice with respect to the advisability of entering into this Agreement and the Releases, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases.

***Signature Page to Follow***

**PLAINTIFFS**

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of what any unexamined data later shows. It is the Parties' intention to resolve their disputes in connection with this Action pursuant to the terms of this Agreement now and thus, in furtherance of their intentions, the Agreement shall remain in full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and this Agreement shall not be subject to rescission or modification by reason of any changes or differences in facts or law, subsequently occurring or otherwise.

133. ***Receipt of Advice of Counsel.*** Each Party acknowledges, agrees, and specifically warrants that he, she, or it has fully read this Agreement and the Releases contained herein, received independent legal advice with respect to the advisability of entering into this Agreement and the Releases, and the legal effects of this Agreement and the Releases, and fully understands the effect of this Agreement and the Releases.

***Signature Page to Follow***

**PLAINTIFFS**

*Diane E. Rezack*  
Diane E. Rezack (Mar 31, 2026 16:39:51 CDT)

Diane Rezack



Lawrence Burns

Edward Severson

Elizabeth Timmerman

Signed by:  


Mark Gore

**CLASS COUNSEL**



CHRISTOPHER P. RENZ  
CHESTNUT CAMBRONNE PA



RAINA C. BORRELLI  
STRAUSS BORRELLI PLLC

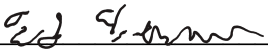
**DEFENDANT**

Diane Rezack

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Lawrence Burns

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Edward Severson

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Elizabeth Timmerman

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Mark Gore

**CLASS COUNSEL**

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CHRISTOPHER P. RENZ  
**CHESTNUT CAMBRONNE PA**

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RAINA C. BORRELLI  
**STRAUSS BORRELLI PLLC**

**DEFENDANT**

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Diane Rezack

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Lawrence Burns

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Edward Severson

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Elizabeth Timmerman (Mar 31, 2026 15:13:02 CDT)

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Elizabeth Timmerman

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Mark Gore

**CLASS COUNSEL**

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CHRISTOPHER P. RENZ  
**CHESTNUT CAMBRONNE PA**

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RAINA C. BORRELLI  
**STRAUSS BORRELLI PLLC**

**DEFENDANT**

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Diane Rezack

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Lawrence Burns

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Edward Severson

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Elizabeth Timmerman

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Mark Gore

**CLASS COUNSEL**

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CHRISTOPHER P. RENZ  
CHESTNUT CAMBRONNE PA

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RAINA C. BORRELLI  
STRAUSS BORRELLI PLLC

**DEFENDANT TWIN CITIES PAIN CLINIC**

*Andrew Ziel MD*

By: Andrew Williams  
Its President

**DEFENDANT'S COUNSEL**

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Jessica L. Copeland, Esq.  
Bond, Schoeneck & King, PLLC  
*Attorneys for Defendant Twin Cities Pain Clinic*