

This Settlement Agreement and Release is made as of April 5, 2024 by and between, as hereinafter defined, (a) the Settlement Class Representatives,<sup>1</sup> on behalf of themselves and the Settlement Class, (b) Pediatrix Medical Group, Inc. (f/k/a Mednax, Inc.), PMG Services, Inc. (f/k/a Mednax Services, Inc.), and Pediatrix Medical Group of Kansas, P.C. (collectively, “Mednax”), and (c) American Anesthesiology, Inc. (“AA” and together with Mednax, “Defendants”).<sup>2</sup> This Agreement fully and finally compromises and settles any and all claims that are, were, or could have been asserted in the litigation styled *In Re: Mednax Services, Inc., Customer Data Security Breach Litigation*, Case No. 21-md-02994-RAR, pending in the United States District Court for the Southern District of Florida, as set forth herein.

## **1. Recitals**

- 1.1.** These multidistrict litigation proceedings arose from a phishing attack that was detected by Mednax in June 2020, which involved certain accounts of Mednax and AA employees in Mednax’s Microsoft Office 365 environment.
- 1.2.** Defendants conducted investigations into the phishing attack, which revealed unauthorized activity in certain Microsoft Office 365 accounts. In December 2020 and January 2021, Defendants provided notice to all individuals whose personally identifiable information and/or protected health information was contained in any of the Microsoft Office 365 accounts that were subject to unauthorized activity.
- 1.3.** The Settlement Class Representatives are individuals who received notice from Defendants that certain of their personally identifiable information and/or protected health information, or that of their children, was included in the Microsoft Office 365

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<sup>1</sup> All capitalized terms are defined in Section 2 below.

<sup>2</sup> “Pediatrix Medical Group” is named as a Defendant in several of the individual actions that were consolidated into these multidistrict litigation proceedings but is not a legal entity.

accounts that were subject to unauthorized activity. They filed putative class action lawsuits in state and federal courts that, on June 4, 2021, were ultimately consolidated for pretrial proceedings in the United States District Court for the Southern District of Florida in the action styled *In re: Mednax Services, Inc., Customer Data Security Breach Litigation*, Case No. 0:21-md-02994-RAR.

- 1.4. On June 10, 2022, Settlement Class Representatives filed the Second Amended Consolidated Class Action Complaint, Dkt. No. 115, which, as modified by the Court's August 18, 2022, Order Granting in Part and Denying in Part Defendants' Motion to Dismiss, Dkt. No. 131, is the operative Complaint in this action.
- 1.5. Beginning May 2022 and continuing through September 2023, the Parties participated in extensive discovery, including responding to written interrogatories and requests for production, producing thousands of pages of documents, taking numerous fact witness depositions, exchanging expert reports, and taking expert depositions.
- 1.6. In April 2023, the Parties participated in a full-day mediation before Retired Judge John W. Thornton of JAMS. During this mediation, they were unable to reach a resolution. Additional follow up discussions with the mediator also did not lead to a resolution.
- 1.7. On October 26, 2023, the Court appointed Retired Federal District Court Judge Eduardo C. Robreno as Special Mediator in this matter. The Parties participated in two full days of mediation before the Special Mediator on January 16–17, 2024. During those mediation sessions, the Parties made progress on resolving this matter but did not come to an agreement. Over the next several weeks, the Parties continued to participate in settlement discussions facilitated by the Special Mediator, which culminated in the execution of a term sheet memorializing the essential terms of the settlement on February

9, 2024. Subsequently, the Parties worked on preparing this Settlement Agreement and associated exhibits.

- 1.8.** Defendants deny all material allegations of the Second Amended Consolidated Class Action Complaint and specifically deny that they failed to properly protect any personal data, had inadequate data security, acted negligently, were unjustly enriched by the use of personal data of the impacted individuals, breached any fiduciary duty or implied contract, or violated state consumer protection statutes and other laws.
- 1.9.** The Parties recognize the status of the proceeding, including pending motions and expense and length of further proceedings necessary to continue litigation of the Action through further motion practice, trial, and possible appeals. The Parties have considered the uncertainty and risk of the outcome of further litigation, and the expense, difficulties, and delays inherent in such litigation. The Parties are also aware of the burdens of proof necessary to establish liability and damages for the claims alleged in the Action and the defenses thereto. The Parties have determined that the settlement set forth in this Agreement is in their respective best interests and that the Agreement is fair, reasonable, and adequate. The Parties have therefore agreed to settle the claims asserted in the Action pursuant to the terms and provisions of this Agreement, subject to Court approval.
- 1.10.** It is the intention of the Parties to resolve the disputes and claims which they have between them on the terms set forth below.

NOW, THEREFORE, in consideration of the promises, covenants, and agreements herein described and for other good and valuable consideration acknowledged by each of the Parties to be satisfactory and adequate, and intending to be legally bound, the Parties do hereby mutually agree as follows:

## **2. Definitions**

As used in all parts of this Agreement, including the recitals above, and the exhibits hereto, the following terms have the meanings specified below:

- 2.1.** “AA” means Defendant American Anesthesiology, Inc.
- 2.2.** “Action” means the consolidated multidistrict litigation proceeding captioned *In re: Mednax Services, Inc. Customer Data Security Breach Litigation*, Case No. 0:21-md-02994 (S.D. Fla.), including all of the cases that were consolidated into that proceeding.
- 2.3.** “Administration and Notice Costs” means all costs and expenses incurred by the Settlement Administrator in carrying out its duties under this Agreement, including all costs and expenses incurred in connection with implementing and executing the Notice Plan and preparing and sending notice to appropriate state and federal officials under the Class Action Fairness Act of 2005.
- 2.4.** “Agreement” or “Settlement Agreement” means this Class Action Settlement Agreement and Release and all of its attachments and exhibits, which the Parties understand and agree set forth all material terms and conditions of the Settlement of the Action between them and which is subject to approval by the Court.
- 2.5.** “Approved Claims” means Settlement Claims completed using a Claim Form and submitted by the Claims Deadline and found to be valid and in an amount approved by the Settlement Administrator.
- 2.6.** “Attorneys’ Fees” means the attorneys’ fees that Class Counsel request the Court approve for payment from the Settlement Fund to counsel for plaintiffs in the MDL as compensation for work in prosecuting and settling the Action.
- 2.7.** “Consolidated Complaint” means the Second Amended Consolidated Class Action Complaint, Dkt. No. 115, filed in the Action on June 10, 2022.

- 2.8.** “Business Days” means Monday, Tuesday, Wednesday, Thursday, and Friday, excluding holidays observed by the U.S. federal government.
- 2.9.** “Claims Deadline” means the deadline by which Settlement Class Members must submit any Settlement Claims. Settlement Claims submitted after the Claims Deadline will not be timely, will not qualify for approval, and will be rejected. The Claims Deadline shall be set by the Court in the Preliminary Approval Order and shall be ninety (90) days after the Notice Date.
- 2.10.** “Claim Form” shall mean the claim form attached as Exhibit A, or a claim form approved by the Court that is substantially similar to Exhibit A.
- 2.11.** “Class Counsel” means William B. Federman of Federman & Sherwood and Maureen M. Brady of McShane & Brady, LLC.
- 2.12.** “Court” means the United States District Court for the Southern District of Florida, where the Action is pending.
- 2.13.** “Defendants” means Pediatrix Medical Group, Inc. (f/k/a Mednax, Inc.); PMG Services, Inc. (f/k/a Mednax Services, Inc.); Pediatrix Medical Group of Kansas, P.C.; and American Anesthesiology, Inc.
- 2.14.** “Defendants’ Counsel” means all attorneys who have appeared as counsel of record for any Defendant in this Action.
- 2.15.** “Effective Date” means the date when all of the conditions set forth in Section 6.1 of this Agreement have occurred; provided, however, that Defendants have not exercised their right of termination under Section 6.2 or Section 6.3 of this Agreement.
- 2.16.** “Entity” means any corporation, partnership, limited liability company, association, trust, or other organization of any type.

- 2.17.** “Expenses” means the reasonable costs and expenses incurred in litigating the Action that Class Counsel request the Court to approve for payment from the Settlement Fund.
- 2.18.** “Final Approval” means entry of a Final Approval Order and Judgment.
- 2.19.** “Final Approval Hearing” means the hearing to be conducted before the Court to determine the fairness, adequacy, and reasonableness of the Agreement pursuant to Federal Rule of Civil Procedure 23 and whether to enter a Final Approval Order and Judgment. The Final Approval Order and Judgment shall be entered no earlier than ninety (90) days after the CAFA notices are mailed to ensure compliance with 28 U.S.C. § 1715.
- 2.20.** “Final Approval Order and Judgment” means an order and judgment that the Court enters after the Final Approval Hearing, which, among other things, finally approves the Agreement, finally certifies the Settlement Class for settlement purposes, dismisses all claims in the Action against Defendants with prejudice, releases the Released Parties from the Released Claims as set forth herein, bars and enjoins the Releasing Parties from asserting any of the Released Claims, including during the pendency of any appeal from the Final Approval Order and Judgment, includes as an exhibit a list of individuals who timely and validly opted out of the Settlement, satisfies the settlement-related provisions of Federal Rule of Civil Procedure 23 in all respects, and in the form of or materially in the form of the proposed Final Approval Order and Judgment attached as Exhibit F.
- 2.21.** “Incident” means the unauthorized access to certain Mednax Microsoft Office365 email accounts that was the subject of notices provided by Defendants in or around December 2020 and January 2021, and which is the subject of the Action.
- 2.22.** “Judgment” means the Final Approval Order and Judgment.

- 2.23.** “Long Notice” means the long form notice attached as Exhibit C or substantially similar to the long form notice attached as Exhibit C.
- 2.24.** “Mednax” means Defendants Pediatrix Medical Group, Inc. (f/k/a Mednax, Inc.); PMG Services, Inc. (f/k/a Mednax Services, Inc.); and Pediatrix Medical Group of Kansas, P.C.
- 2.25.** “Notice Date” means the date by which notice will be fully commenced, which shall be sixty (60) days after the Court enters the Preliminary Approval Order.
- 2.26.** “Notice Plan” means the Settlement notice program attached as Exhibit A to be presented to the Court for approval in connection with a motion seeking a Preliminary Approval Order.
- 2.27.** “Objection Deadline” means the deadline by which written objections to the Settlement must be filed in the Action’s electronic docket or postmarked as set forth in the Preliminary Approval Order. Such deadline shall be sixty (60) days after the Notice Date.
- 2.28.** “Opt-Out Deadline” means the deadline by which written requests for exclusion from the Settlement must be submitted online or postmarked as set forth in the Preliminary Approval Order. Such deadline shall be sixty (60) days after the Notice Date.
- 2.29.** “Parties” means the Settlement Class Representatives, on behalf of themselves and the Settlement Class, and Defendants.
- 2.30.** “Parties’ Counsel” means all attorneys who have appeared as counsel of record for any Party in this Action.
- 2.31.** “Personal Information” is intended to be broadly construed and includes any information that could be used to identify, locate, or contact a person (whether on its own or in combination with other information). The term Personal Information also includes,

without limitation, name, address, date of birth, Social Security number, health information, and any and all other personally identifiable information. For the avoidance of doubt, the term Personal Information includes all information allegedly compromised as a result of the Incident.

**2.32.** “Preliminary Approval Order” means the Court’s order preliminarily approving the Settlement Agreement and, among other things, ordering that notice be provided to the Settlement Class, and in the form of or materially in the form of the proposed Preliminary Approval Order attached as Exhibit E.

**2.33.** “Released Claims” means all claims, defenses, demands, actions, causes of action, rights, offsets, setoffs, suits, remedies, damages, lawsuits, costs, relief for contempt, losses, attorneys’ fees, expenses, or liabilities of any kind whatsoever, in law or in equity, for any relief whatsoever, including monetary sanctions or damages for contempt, injunctive or declaratory relief, rescission, disgorgement of profits, general, compensatory, special, liquidated, indirect, incidental, consequential, or punitive damages, as well as all claims for treble damages, penalties, interest, attorneys’ fees, costs, or expenses, whether a known or Unknown Claim, suspected or unsuspected, existing or potential, contingent or vested, accrued or not accrued, liquidated or unliquidated, matured or unmatured, that in any way concern, arise out of, or relate in any way to the Incident, any legal, factual, or other allegations in the Action, or any theories of recovery that were, or could have been, raised at any point in the Action.

**2.33.1.** To avoid doubt, Released Claims are to be construed broadly and include, without limitation, any claims related to or arising from the Incident that a Releasing Party may have under the law of any jurisdiction, including, without limitation, those arising under



state or federal law of the United States (including, without limitation, any causes of action under the Maryland Consumer Protection Act, Md. Code Ann., Com. Law §§ 13-301 *et seq.*; the Arizona Consumer Fraud Act, A.R.S. §§ 44-1521 *et seq.*; the California Customer Records Act, Cal. Civ. Code §§ 1798.80 *et seq.*; the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201 *et seq.*; the Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010 *et seq.*; the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1 *et seq.*; the New York General Business Law, N.Y. Gen. Bus. Law §§ 349 *et seq.*; the Virginia Consumer Protection Act, Va. Code Ann. § 59.1-196 *et seq.*; the Washington Consumer Protection Act, Wash. Rev. Code Ann. § 19.86.020 *et seq.*; the California Consumer Privacy Act, Cal. Civ. Code §§ 1798.80 *et seq.*; and the California Confidentiality of Medical Information Act, Cal. Civ. Code §§ 56 *et seq.*); causes of action under the common or civil laws of any state in the United States, including but not limited to: unjust enrichment, negligence, bailment, conversion, negligence *per se*, breach of contract, breach of implied contract, breach of fiduciary duty, breach of implied covenant of good faith and fair dealing, misrepresentation (whether fraudulent, negligent, or innocent), fraudulent concealment or nondisclosure, invasion of privacy, public disclosure of private facts, and misappropriation of likeness and identity; any causes of action based on privacy rights provided for under the constitutions of the United States or of any states in the United States; any statutory claims under state or federal law; and also including, but not limited to, any and all claims in any state or federal court of the United States, for damages, injunctive relief, restitution, disgorgement, declaratory relief, equitable relief, attorneys' fees and expenses, pre-judgment interest, credit or financial account monitoring services,

identity theft insurance, the creation of a fund for future damages, statutory penalties, restitution, the appointment of a receiver, and any other form of relief.

- 2.34.** “Released Parties” means Settlement Class Representatives and all Settlement Class Members who do not timely and validly opt out of the Settlement, Defendants, and each of their current and former family members, relatives, parents, subsidiaries, divisions, affiliates, and affiliated medical practices, whether indirect or direct, as well as these entities’ respective predecessors, successors, assigns, directors, officers, owners, shareholders, employees, agents, vendors, insurers, reinsurers, attorneys, advisors, consultants, representatives, partners, joint venturers, contractors, wholesalers, resellers, distributors, service providers, and retailers.
- 2.35.** “Releasing Parties” means the Settlement Class Representatives, all Settlement Class Members who do not timely and validly opt out of the Settlement, and Defendants.
- 2.36.** “Settlement” means the settlement of the Action by and between the Parties, and the terms and conditions thereof as stated in this Agreement.
- 2.37.** “Settlement Administrator” means KCC Class Action Services. A different Settlement Administrator may be substituted if approved by order of the Court.
- 2.38.** “Settlement Claim” means a claim or request for settlement benefits as provided for in this Settlement Agreement.
- 2.39.** “Settlement Class” means all persons residing in the United States who were notified in or around December 2020 and January 2021, via either written or substitute notice, that their PHI and PII may have been involved in the Incident. The Settlement Class specifically excludes: (i) Defendants, any Entity in which Defendants have a controlling interest, and Defendants’ officers, directors, legal representatives, successors, subsidiaries, and

assigns; (ii) any judge, justice, or judicial officer presiding over the Action and the members of their immediate families and judicial staff; and (iii) any individual who timely and validly opts out of the Settlement.

**2.40.** “Settlement Class Member” means any person within the definition of Settlement Class.

**2.41.** “Settlement Class Representatives” means Plaintiffs Gregory Baum, as legal guardian of a minor child whose initials are A.B.; Abigail Bean, as legal guardian of a minor child whose initials are C.B.; Chaya Clark; Chelsea Cohen, as parent and legal guardian of A.H.; Jessica Jay, as legal guardian of a minor child whose initials are B.J.; Gerald Lee; Joseph Larsen, as parent and legal guardian of a minor child whose initials are A.L.; Brooke Nielsen; Michael Rumely, as legal guardian of minor children whose initials are H.R. and M.R.; Matias Soto, as legal guardian of a minor child whose initials are M.S.; and A.W. by and through her Next Friend, B.W.

**2.42.** “Settlement Fund” means the six million United States Dollars (\$6,000,000.00) that Defendants shall cause to be paid pursuant to Section 3 of this Agreement, which shall be Defendants’ total collective obligation under the Settlement.

**2.43.** “Settlement Fund Account” means the account described in Section 4 of this Agreement.

**2.44.** “Short Notice” means the short form notice attached as Exhibit B or substantially similar to the short form notice attached as Exhibit B.

**2.45.** “Taxes” means (i) any applicable taxes, duties, and similar charges imposed by a government authority (including any estimated taxes, interest, or penalties) arising in any jurisdiction with respect to the income or gains earned by or in respect of the Settlement Fund, including, without limitation, any taxes that may be imposed upon the Parties or the Parties’ Counsel with respect to any income or gains earned by or in respect of the

Settlement Fund; (ii) any other taxes, duties, and similar charges imposed by a government authority (including any estimated taxes, interest, or penalties) relating to the Settlement Fund that the Settlement Administrator determines are or will become due and owing, if any; and (iii) any and all expenses, liabilities, and costs incurred in connection with the taxation of the Settlement Fund (including without limitation, expenses of tax attorneys and accountants).

**2.46.** “Unknown Claims” means any and all Released Claims that any Settlement Class Representative or Settlement Class Member does not know or suspect to exist in his or her favor as of the Effective Date and which, if known by him or her, might have affected his or her decision(s) with respect to the Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, Settlement Class Representatives and Settlement Class Members shall have waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, the District of Columbia, or principle of common law or otherwise, which includes or is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

**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 Settlement Class Representatives and Class Counsel acknowledge, and each Settlement Class Member by operation of law shall be deemed to have acknowledged,

that the inclusion of “Unknown Claims” in the definition of Released Claims was separately bargained for and was a key element of the Settlement Agreement.

**3. Settlement Fund**

- 3.1.** The Settlement Fund shall consist of a non-reversionary fund of six million United States Dollars (\$6,000,000), which shall be paid to the Claims Administrator as follows:
- 3.1.1.** Within five (5) Business Days after entry of the Preliminary Approval Order, the Settlement Administrator will provide to Defendants an invoice for the estimated Administration and Notice Costs.
- 3.1.2.** Within twenty (20) Business Days after entry of the Preliminary Approval Order, Mednax and AA shall pay their respective shares of the invoice for the estimated Administration and Notice Costs. These payments will be credited against the Settlement Fund.
- 3.1.3.** Within twenty (20) Business Days of the Effective Date of the Settlement, Mednax and AA shall pay their respective shares of the balance of the Settlement Fund into the Settlement Fund Account.
- 3.2.** The Settlement Fund shall be used to pay for (i) Administration and Notice Costs; (ii) Attorneys’ Fees approved by the Court; (iii) Expenses approved by the Court; and (iv) all Approved Claims. Six million United States Dollars (\$6,000,000.00) shall be Defendants’ total collective obligation under the Settlement, and in no event shall Defendants be obligated to pay more than six million United States Dollars (\$6,000,000.00) in connection with the Settlement of the Action.
- 3.3.** Class Counsel and/or the Settlement Administrator shall timely furnish to Defendants any required account information, wiring instructions, or necessary forms (including a properly completed and signed IRS Form W-9 that includes the employer identification

number for the Settlement Fund Account) before the deadline for making the settlement payments set forth in Section 3.1.

**4. Settlement Fund Account**

- 4.1. The Settlement Fund monies shall be held in the Settlement Fund Account, which shall be established and maintained by the Settlement Administrator.
- 4.2. All funds held in the Settlement Fund Account shall be deemed to be in the custody of the Court until such time as the funds shall be disbursed pursuant to this Agreement or further order of the Court.
- 4.3. No amounts may be withdrawn from the Settlement Fund Account unless (i) authorized by this Agreement; (ii) authorized by the Notice Plan approved by the Court; or (iii) otherwise approved by the Court.
- 4.4. The Parties agree that the Settlement Fund Account is intended to constitute a “qualified settlement fund” within the meaning of Treasury Regulation § 1.468B-1, *et seq.*, and that the Settlement Administrator shall be the “administrator” within the meaning of Treasury Regulation § 1.468B-2(k)(3). The Parties further agree that the Settlement Fund Account shall be treated as a qualified settlement fund from the earliest date possible and agree to any relation-back election required to treat the Settlement Fund Account as a qualified settlement fund from the earliest date possible.
- 4.5. Upon or before establishment of the Settlement Fund Account, the Settlement Administrator shall apply for an employer identification number for the Settlement Fund Account utilizing IRS Form SS-4 and, in accordance with Treasury Regulation § 1.468B-2(k)(4), shall provide Defendants with that employer identification number on a properly completed and signed IRS Form W-9.

- 4.6. The Settlement Administrator shall file or cause to be filed, on behalf of the Settlement Fund Account, all required federal, state, and local tax returns, information returns, including, but not limited to, any Form 1099-series return, and tax withholdings statements, in accordance with the provisions of Treasury Regulation § 1.468B-2(k)(1) and Treasury Regulation § 1.468B-2(1)(2). Any contract, agreement, or understanding with the Settlement Administrator relating to the Settlement Fund Account shall require the Settlement Administrator or its agent to file or cause to be filed, on behalf of the Settlement Fund Account, all required federal, state, and local tax returns, information returns, including, but not limited to any Form 1099-series return, and tax withholdings statements, in accordance with the provisions of Treasury Regulation § 1.468B-2(k)(1) and Treasury Regulation § 1.468B-2(1)(2). The Settlement Administrator may, if necessary, secure the advice of a certified public accounting firm in connection with its duties and tax issues arising hereunder the costs of which shall be considered Administration and Notice Costs and paid from the Settlement Fund.
- 4.7. All Taxes relating to the Settlement Fund Account shall be paid out of the Settlement Fund Account, shall be considered to be an Administration and Notice Cost of the Settlement, and shall be timely paid by the Settlement Administrator without prior order of the Court. Further, the Settlement Fund Account shall indemnify and hold harmless the Parties and the Parties' Counsel for Taxes (including, without limitation, taxes payable by reason of any such indemnification payments).
- 4.8. Following its payment of the Settlement Fund monies as described in Section 3.1 of this Agreement, Defendants shall have no responsibility, financial obligation, or liability whatsoever with respect to selection of the Settlement Fund Account, investment of

Settlement Fund Account funds, payment of federal, state, and local income, employment, unemployment, excise, and any other Taxes, penalties, interest, or other charges related to Taxes imposed on the Settlement Fund Account or its disbursements, or payment of the administrative, legal, accounting, or other costs occasioned by the use or administration of the Settlement Fund Account.

**5. Presentation of Settlement to the Court**

- 5.1.** As soon as practicable after the execution of the Settlement Agreement, the Settlement Class Representatives and Class Counsel shall submit this Settlement Agreement to the Court and file a motion for preliminary approval of the Settlement with the Court requesting entry of a Preliminary Approval Order substantially in the form attached hereto as Exhibit E, requesting, among other things:
- 5.1.1.** Certification of the Settlement Class for settlement purposes only;
  - 5.1.2.** Preliminary approval of the Settlement Agreement;
  - 5.1.3.** Appointment of William B. Federman of Federman & Sherwood and Maureen M. Brady of McShane & Brady, LLC as Class Counsel.
  - 5.1.4.** Appointment of the Settlement Class Representatives as the settlement class representatives;
  - 5.1.5.** Approval of the Notice Plan attached hereto as Exhibit A;
  - 5.1.6.** Approval of a Short Notice substantially similar to the one attached hereto as Exhibit B;
  - 5.1.7.** Approval of a Long Notice substantially similar to the one attached hereto as Exhibit C;
  - 5.1.8.** Approval of a Claim Form substantially similar to the one attached hereto as Exhibit D;  
and
  - 5.1.9.** Appointment of the Settlement Administrator.



- 5.2. The Long Notice, Short Notice, and Claim Form shall be reviewed by the Settlement Administrator (to the extent practicable) and may be revised as agreed by the Parties prior to the submission to the Court for approval. The Long Notice, Short Notice, and Claim Form approved by the Court may be adjusted by the Settlement Administrator in consultation and agreement with the Parties as may be reasonable and necessary, so long as it is not inconsistent with such approval and does not materially alter the language approved by the Court.
- 5.3. After entry by the Court of a Preliminary Approval Order, and no later than fourteen (14) days before the Final Approval Hearing, Settlement Class Representatives shall file a motion seeking final approval of the Settlement and entry of a Final Approval Order and Judgment, including a request that the preliminary certification of the Settlement Class for settlement purposes be made final.
- 5.4. Class Counsel shall share drafts of any memoranda in support of preliminary approval, final approval, and attorneys' fees and expenses with Defendants at least two (2) days before filing same and shall consider any proposed edits by Defendants in good faith.

**6. Effective Date and Termination**

- 6.1. The Effective Date of the Settlement shall be the first Business Day after all of the following conditions have occurred:
- 6.1.1. The Parties execute this Agreement;
  - 6.1.2. The Court enters the Preliminary Approval Order without material change to the Parties' agreed-upon proposed Preliminary Approval Order attached as Exhibit E, which shall include approval of the Notice Plan;
  - 6.1.3. Notice is provided to the Settlement Class in accordance with the Preliminary Approval Order and Notice Plan;

**6.1.4.** The Court enters the Final Approval Order and Judgment consistent with the requirements of Section 2.20 and without material change to the Parties' agreed-upon proposed Final Approval Order and Judgment attached as Exhibit F; and

**6.1.5.** The Final Approval Order and Judgment has become final because (i) the time for appeal, petition, rehearing, or other review has expired; or (ii) if any appeal, petition, or request for rehearing or other review has been filed, the Final Approval Order and Judgment is affirmed without material change, or the appeal is dismissed or otherwise disposed of, and no other appeal, petition, rehearing or other review is pending, and the time for further appeals, petitions, and requests for rehearing or other review has expired.

**6.2.** Mednax or AA may, in their sole discretion, terminate this Agreement if more than five (5) percent of the Settlement Class submit valid and timely requests to exclude themselves from the Settlement, as agreed to by the Parties (and submitted to the Court for *in camera* review, if requested by the Court). If either Mednax or AA elects to terminate the Settlement pursuant to this Section 6.2, they shall provide written notice to Class Counsel no later than fifteen (15) Business Days after the Opt-Out Deadline.

**6.3.** This Settlement may be terminated by either Settlement Class Representatives or Defendants by serving on counsel for the opposing Party and filing with the Court a written notice of termination within ten (10) Business Days (or such longer time as may be agreed between Class Counsel and Defendants) after any of the following occurrences:

**6.3.1.** Class Counsel and Defendants mutually agree to termination before the Effective Date;

- 6.3.2.** The Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve the Settlement as set forth in this Settlement Agreement;
- 6.3.3.** An appellate court reverses the Final Approval Order and Judgment, and the Settlement is not reinstated and finally approved without material change by the Court on remand;
- 6.3.4.** The Court or any reviewing appellate court incorporates material terms or provisions into, or deletes or strikes material terms or provisions from, or materially modifies, amends, or changes, the proposed Preliminary Approval Order, the Preliminary Approval Order, the proposed Final Approval Order and Judgment, the Final Approval Order and Judgment, or the Settlement; or
- 6.3.5.** The Effective Date does not occur.
- 6.3.6.** Notwithstanding Sections 6.3.2–6.3.4, if the Parties fail to obtain Preliminary Approval or Final Approval of the Settlement, or if the Final Approval Order and Judgment is not upheld on appeal, the Parties shall negotiate in good faith in an attempt to modify the Settlement in a manner to effectuate the terms of this Agreement to obtain Preliminary Approval and Final Approval. If the Parties are unable to reach an agreement to modify the Settlement consistent with this Section, then either Party may terminate this Agreement by providing written notice of termination, as provided for in Sections 6.3.2–6.3.4.
- 6.4.** If this Agreement is terminated under Section 6.2 or 6.3 above, the following shall occur:

  - 6.4.1.** Within ten (10) Business Days of receiving notice of a termination event from Defendants’ Counsel, the Settlement Administrator shall pay to Defendants an

amount equal to the Settlement Fund, together with any interest or other income earned thereon, less (i) any Taxes paid or due with respect to such income and (ii) any reasonable and necessary Administration and Notice Costs already actually incurred and paid or payable from the Settlement Fund pursuant to the terms of this Agreement;

**6.4.2.** The Parties shall return to the status quo in the Action as if the Parties had not entered into this Agreement;

**6.4.3.** Any Court orders approving certification of the Settlement Class and any other orders entered pursuant to this Agreement shall be null and void and vacated, and neither those orders nor any statements made in connection with seeking approval of the Agreement may be used in or cited by any person or Entity in support of claims or defenses or in support or in opposition to a class certification motion in connection with any further proceedings in the Action or in any other action, lawsuit, arbitration, or other proceeding involving a Released Claim; and

**6.4.4.** This Agreement shall become null and void, and the fact of this Settlement and that Defendants did not oppose certification of Settlement Class shall not be used or cited by any person or Entity in support of claims or defenses or in support of or in opposition to a class certification motion in connection with any further proceedings in the Action or in any other action, lawsuit, arbitration, or other proceeding involving any Released Claims.

## **7. Settlement Benefits**

**7.1.** All Settlement Class Members who submit an Approved Claim using the Claim Form, which is attached as Exhibit D to this Settlement Agreement, are eligible to receive:

**7.1.1. Out-of-Pocket Expenses:** Reimbursement for documented out-of-pocket losses that were incurred as a result of the Incident for one or more of the following, not to exceed a total of \$5,000.00 per Settlement Class Member: (i) unreimbursed costs, expenses, losses, or charges incurred as a result of identity theft or identity fraud, falsified tax returns, or other possible misuse of a Settlement Class Member's Personal Information; (ii) costs incurred on or after December 16, 2020 associated with accessing, freezing, or unfreezing credit reports with any credit reporting agency; (iii) other miscellaneous expenses incurred related to any Out-of-Pocket Loss such as notary services, faxing, postage, copying, mileage, and long-distance telephone charges; and (iv) credit monitoring or other mitigating costs that were incurred on or after December 16, 2020 through the date of the Settlement Class Member's claim submission. Out-of-Pocket Expenses will be paid from the Settlement Fund, subject to the reasonable documentation required pursuant to Section 7.1.2. Failure to provide supporting documentation as requested on the Claim Form shall result in denial of the Settlement Claim.

**7.1.2.** Settlement Class Members who elect to submit a Settlement Claim for Out-of-Pocket Expenses must provide to the Settlement Administrator the information required to evaluate the Settlement Claim, including: (i) the Settlement Class Member's name and current address; (ii) documentation supporting the Settlement Claim; and (iii) a brief description of the documentation describing the nature of the loss, if the nature of the loss is not apparent from the documentation alone. Documentation supporting Out-of-Pocket Expenses can

include receipts or other documentation not “self-prepared” by the Settlement Class Member that documents the costs incurred by the Settlement Class Member. “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to warrant reimbursement, but these documents can be considered to add clarity to or support other submitted documentation.

**7.1.3.** Out-of-Pocket Expenses contemplated in subsections (i) and (iii) of Section 7.1.1 will be deemed to have occurred as a result of the Incident if: (i) the timing of the Out-of-Pocket Expense occurred on or after June 17, 2020; and (ii) the Personal Information used to commit any identity theft or fraud consisted of the same type of Personal Information that was involved in the Incident (if the Settlement Class Member received direct mail notice of the Incident) or consisted of the same Personal Information, attested under penalty of perjury, the Settlement Class Member provided to Defendants prior to the Incident (if the individual received substitute notice of the Incident). Individuals who received substitute notice of the Incident must also submit non-self-prepared documentation demonstrating that they or their minor child(ren) received services from a Mednax-affiliated physician prior to June 17, 2020.

**7.1.4. Attested Time Spent:** Any Settlement Class Member who spent time researching or remedying issues related to the Incident or for any actions that were taken in response to receiving a Notice of Security Incident from Defendants will be eligible to submit a Settlement Claim for time spent in an amount of \$30.00 per hour up to four (4) hours (for a total of up to \$ 120.00 for Attested Time Spent). Settlement Class Members seeking reimbursement under

this Section 7.1.4 must attest that the time and/or effort spent was incurred as a result of the Incident. Individuals who received substitute notice of the Incident must also submit non-self-prepared documentation demonstrating that they or their minor child(ren) received services from a Mednax-affiliated physician prior to June 17, 2020. Claims for Attested Time Spent will be paid from the Settlement Fund.

**7.1.5. Documented Time Spent:** Any Settlement Class Member who spent more than four (4) hours researching or remedying issues related to the Incident or for any actions that were taken in response to receiving a Notice of Security Incident from Defendants will be eligible to submit a Settlement Claim for that additional time spent, in an amount of \$30.00 per hour for up to ten (10) additional hours, provided that the Settlement Class Member provides to the Settlement Administrator the information required to evaluate the Settlement Claim, including: (i) the Settlement Class Member's name and current address; (ii) documentation supporting the time spent; and (iii) a brief description of the documentation, if the nature of the time spent is not apparent from the documentation alone. Documentation supporting this Settlement Benefit can include any documentation not "self-prepared" by the Settlement Class Member that demonstrates the time spent by the Settlement Class Member. "Self-prepared" documents such as handwritten notes are, by themselves, insufficient to warrant reimbursement, but these documents can be considered to add clarity to or support other submitted documentation. Individuals who received substitute notice of the Incident must also submit non-self-prepared

documentation demonstrating that they or their minor child(ren) received services from a Mednax-affiliated physician prior to June 17, 2020. Claims for Documented Time Spent will be paid from the Settlement Fund.

**7.1.6. Medical Monitoring and Medical Fraud Protection Services:** Settlement Class Members may elect to receive three (3) years of medical monitoring and medical fraud protection services. To receive this benefit, a Settlement Class Member need only make this election on their Claim Form, except that individuals who received substitute notice of the Incident must also submit non-self-prepared documentation demonstrating that they or their minor child(ren) received services from a Mednax-affiliated physician prior to June 17, 2020. All Medical Monitoring and Medical Fraud Protection Service codes will be distributed through the Claims Administrator. Medical Monitoring and Medical Fraud Protection Services shall be paid from the Settlement Fund.

**7.2.** Settlement Class Members making claims for any of the relief under Section 7.1 must complete and submit a written Claim Form to the Settlement Administrator, postmarked (or, if submitted electronically in accordance with the requirements for electronic submission of a Claim Form, the date of such submission) on or before the Claims Deadline. The Claim Form must be verified by the Settlement Class Member with a statement that his or her Settlement Claim is true and correct, to the best of his or her knowledge and belief and is being made under penalty of perjury.

**7.3.** If the total amount of Approved Claims submitted under Section 7.1, when aggregated with Administration and Notice Costs, Attorneys' Fees as approved by the Court, and Expenses as approved by the Court, exceeds the amount of the Settlement Fund, then Approved



Claims under Section 7.1 shall be reduced on a *pro rata* basis such that the total aggregate amount of Approved Claims under Section 7.1, Administration and Notice Costs, Attorneys' Fees as approved by the Court, and Expenses as approved by the Court, does not exceed the amount of the Settlement Fund. If the total amount of Approved Claims submitted under Section 7.1, when aggregated with Administration and Notice Costs, Attorneys' Fees as approved by the Court, and Expenses as approved by the Court, is less than the amount of the Settlement Fund, then Approved Claims under Section 7.1 shall be increased on a *pro rata* basis such that the total aggregate amount of Approved Claims under Section 7.1, Administration and Notice Costs, Attorneys' Fees as approved by the Court, and Expenses as approved by the Court, equals (as reasonably close as possible without exceeding) the amount of the Settlement Fund. The Settlement Administrator shall reasonably exercise its discretion for purposes of implementing any *pro rata* increase or decrease provided herein to account for estimated, but not yet incurred, Administration and Notice Costs. For the avoidance of doubt, in no event shall Defendants' collective liability or obligation under this Settlement Agreement exceed the Settlement Fund.

- 7.4. In the event that any checks mailed to Settlement Class Members remain uncashed after the expiration of 120 days, or an envelope containing a check mailed to a Settlement Class Member is returned and no forwarding address can be located for the Settlement Class Member after reasonable efforts have been made, then the Parties shall meet and confer regarding the appropriate use of any residual funds, including whether any such funds shall be paid to an agreed upon *cy pres* recipient, and shall present their plan with respect to the use of any residual funds to the Court. To be clear, and for the avoidance of any doubt, Defendants shall have no additional payment obligations under the settlement.

## **8. Non-Disparagement**

8.1 The Parties and the Parties' Counsel shall not disparage any Party to this litigation (including their family members, relatives, subsidiaries, affiliates, affiliated medical practices, employees, officers, directors, and owners). Plaintiffs or their counsel shall not issue any press release or any other public-facing statement or otherwise initiate press coverage of the Settlement. If contacted by the press, Plaintiffs and their counsel may respond generally by stating that they are pleased that the Settlement was reached and that it was a fair and reasonable result. Notwithstanding the foregoing, this provision shall not impinge upon or restrict in any way Plaintiffs' counsels' obligations under the Rules of Professional Conduct in connection with communications with their clients, the Settlement Class, and the Court. Plaintiffs' counsel shall be permitted to place a summary notice of the Settlement on their respective websites directing inquiries about the Settlement to the Claims Administrator or its website. Defendants shall have the right to review and approve any such summary notices before they are posted, with such approval not to be unreasonably withheld.

## **9. Selection and Duties of Settlement Administrator**

- 9.1. The Parties agree that Plaintiffs will obtain bids and select the Settlement Administrator, subject to approval by Defendants, such approval not to be unreasonably withheld.
- 9.2. The Settlement Administrator shall perform the functions specified in this Agreement, any functions specified in the Notice Plan after Court approval, and any other functions approved by the Court. In addition to other responsibilities that are described elsewhere in this Agreement (and in the Notice Plan, once approved by the Court), the duties of the Settlement Administrator shall include:

- 9.2.1.** Reviewing, determining the validity of, and processing all claims submitted by Settlement Class Members. Specifically, the Settlement Administrator, in its sole discretion to be reasonably exercised, will determine whether: (i) the claimant is a Settlement Class Member; (ii) the claimant has provided all information required to complete the Claim Form by the Claims Deadline, including any documentation that may be necessary to reasonably support amounts claimed under Section 7.1.1 or Section 7.1.5; and (iii) the information submitted would lead a reasonable person to conclude, for a Settlement Claim for Documented Out-of-Pocket Expenses submitted under Section 7.1.1, or for a Settlement Claim for Documented Time Spent submitted under Section 7.1.5, that the alleged expenses resulted from the Incident.
- 9.2.2.** The Settlement Administrator may at any time (but is not required to) request from any claimant (including via email) supplemental claim information as the Settlement Administrator may reasonably require in order to evaluate the Settlement Claim, *e.g.*, documentation requested on the Claim Form and information regarding the claimed losses. If supplemental claim information is requested, the Settlement Administrator shall give the claimant reasonable time in the Settlement Administrator's discretion but not exceeding 30 days to provide the supplemental information before rejecting the claim. Requests for supplemental claim information shall be made as promptly as reasonably possible after the Claims Deadline (or earlier in the discretion of the Settlement Administrator). If the supplemental claim information does not cure a claim defect as reasonably determined by the Settlement Administrator, then the

Settlement Claim will be deemed invalid and there shall be no obligation to pay the Settlement Claim. For the avoidance of doubt, the Settlement Administrator is not required to request supplemental claim information, and in reasonably exercising its discretion, may deny a claim without requesting supplemental claim information.

- 9.2.3.** Establishing and maintaining a post office box for receiving requests for exclusion from the Settlement;
- 9.2.4.** Establishing and maintaining a Settlement website;
- 9.2.5.** Responding to Settlement Class Member inquiries via U.S. mail, email, or telephone;
- 9.2.6.** Establishing a toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries;
- 9.2.7.** Paying all Taxes relating to the Settlement Fund and Settlement Fund Account;
- 9.2.8.** Receiving and processing all written requests for exclusion from the Settlement and providing copies thereof to the Parties' Counsel. If the Settlement Administrator receives any requests for exclusion or other requests after the Opt-Out Deadline, the Settlement Administrator shall promptly provide copies thereof to the Parties' Counsel;
- 9.2.9.** Providing weekly reports that summarize the number of claims, written requests for exclusion, objections, and any other information requested by the Parties' Counsel;
- 9.2.10.** Within five (5) Business Days after the Opt-Out Deadline, providing a final report to the Parties' Counsel summarizing the number of written requests for

exclusion (i.e., requests to opt out), a list of all individuals who have timely and validly excluded themselves from the Settlement in accordance with the requirements of the Settlement, and any other information requested by the Parties' Counsel;

- 9.2.11.** After the Effective Date, processing and transmitting any and all distributions to Settlement Class Members, including Medical Monitoring and Medical Fraud Protection Services codes;
- 9.2.12.** Prior to the Final Approval Hearing, preparing and executing an affidavit to submit to the Court that identifies each Settlement Class Member who timely and validly requested exclusion from the Settlement; and
- 9.2.13.** Performing any other functions that the Parties jointly agree are necessary to accomplish administration of the Settlement.
- 9.3.** As specified in Section 3.2, all Administration and Notice Costs incurred by the Settlement Administrator or otherwise in connection with administering the Settlement, including the costs of direct mail notice to individuals who received direct mail notice of the Incident, shall be paid from the Settlement Fund.
- 9.4.** Neither the Parties nor the Parties' Counsel shall have any liability whatsoever with respect to any act or omission of the Settlement Administrator, or any of its designees or agents, in connection with its performance of its duties under this Agreement, or under the Notice Plan once approved by the Court.
- 9.5.** The Settlement Administrator shall indemnify and hold harmless the Parties and the Parties' Counsel for any liability arising from any act or omission of the Settlement

Administrator, or any of its designees or agents, in connection with its performance of its duties under this Agreement, or under the Notice Plan once approved by the Court.

**10. Notice Plan**

- 10.1.** The Settlement Administrator shall be responsible for implementing and executing the Notice Plan. Within thirty (30) days after the Court's entry of a Preliminary Approval Order, Defendants shall provide the Settlement Administrator with a list of the individuals to which it sent direct mail notice of the Incident, as reflected in Defendants' records.
- 10.2.** Should the Settlement be terminated for any of the reasons identified in Sections 6.2 or 6.3, the Settlement Administrator shall immediately destroy all contact information received from Defendants for Settlement Class Members.
- 10.3.** As specified in Section 3.2, all costs incurred by the Settlement Administrator or otherwise relating to providing notice to Settlement Class Members shall be paid from the Settlement Fund.

**11. CAFA Notice**

- 11.1.** The Settlement Administrator, on behalf of Defendants, will serve or cause to be served the notice required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, not later than ten (10) days after this Agreement is filed with the Court. Defendants agree to pay up to \$2,000.00 of the costs incurred by the Settlement Administrator relating to providing the notice required by the Class Action Fairness Act of 2005 outside of the Settlement Fund. All additional costs incurred by the Settlement Administrator relating to providing the notice required by the Class Action Fairness Act of 2005 shall be paid from the Settlement Fund.

**12. Covenants Not to Sue**

**12.1.** The Settlement Class Representatives covenant and agree: (i) not to file, commence, prosecute, intervene in, or participate in (as class members or otherwise) any action in any jurisdiction based on or relating to any Released Claim, or the facts and circumstances relating thereto, against any of the Released Parties; (ii) not to organize or solicit the participation of Settlement Class Members, or persons who would otherwise fall within the definition of Settlement Class Member but who requested to be excluded from the Settlement, in a separate class for purposes of pursuing any action based on or relating to any Released Claim or the facts and circumstances relating thereto, against any of the Released Parties; and (iii) that the foregoing covenants and this Agreement shall be a complete defense to any Released Claim against any of the Released Parties.

### **13. Representations and Warranties**

**13.1.** Each Party represents that:

- (i) such Party has the full legal right, power, and authority to enter into and perform this Agreement, subject to Court approval;
- (ii) such Party is voluntarily entering into the Agreement as a result of arm's-length negotiations conducted by its counsel;
- (iii) such Party is relying solely upon its own judgment, belief, and knowledge, and the advice and recommendations of its own independently selected counsel, concerning the nature, extent, and duration of their rights and claims hereunder and regarding all matters which relate in any way to the subject matter hereof;
- (iv) such Party has been represented by, and has consulted with, the counsel of its choice regarding the provisions, obligations, rights, risks, and legal effects of this Agreement and has been given the opportunity to review independently this Agreement with such legal counsel and agree to the particular language of the provisions herein;
- (v) the execution and delivery of this Agreement by such Party and the consummation by such Party of the transactions contemplated by this Agreement have been duly authorized by such Party;

- (vi) except as provided herein, such Party has not been influenced to any extent whatsoever in executing the Agreement by representations, statements, or omissions pertaining to any of the foregoing matters by any Party or by any person representing any Party to the Agreement;
- (vii) each of the Parties assumes the risk of mistake as to facts or law;
- (viii) this Agreement constitutes a valid, binding, and enforceable agreement; and
- (ix) no consent or approval of any person or Entity is necessary for such Party to enter into this Agreement.

**13.2.** The Settlement Class Representatives represent and warrant that they have not assigned or otherwise transferred any interest in any of the Released Claims against any of the Released Parties, and further covenant that they will not assign or otherwise transfer any interest in any of the Released Claims against any of the Released Parties.

**13.3.** The Settlement Class Representatives represent and warrant that they have no surviving claim or cause of action against any of the Released Parties with respect to any of the Released Claims or otherwise in any way related to the Incident.

#### **14. Releases**

**14.1.** As of the Effective Date, the Releasing Parties, on behalf of themselves, their heirs, assigns, beneficiaries, executors, administrators, predecessors, and successors, and any other person purporting to claim on their behalf, hereby expressly, generally, absolutely, unconditionally, and forever release and discharge the Released Parties with respect to any and all Released Claims between and/or among them, known or unknown, arising out of or related in any way to the Incident, except for claims relating to the enforcement of the Settlement or this Agreement.

**14.2.** The Parties expressly intend that all Released Parties shall have the right to directly enforce the Releases herein.



**14.3.** The Parties understand that if the facts upon which this Agreement is based are found hereafter to be different from the facts now believed to be true, each Party expressly assumes the risk of such possible difference in facts, and agrees that this Agreement, including the releases contained herein, shall remain effective notwithstanding such difference in facts. The Parties agree that in entering this Agreement, it is understood and agreed that each Party relies wholly upon its own judgment, belief, and knowledge and that each Party does not rely on inducements, promises, or representations made by anyone other than those embodied herein. Notwithstanding any other provision of this Agreement (including, without limitation, this Section), nothing in this Agreement shall be deemed to in any way impair, limit, or preclude the Parties' rights to enforce any provision of this Agreement, or any court order implementing this Agreement, in a manner consistent with the terms of this Agreement.

**14.4.** Within ten (10) Business Days after the Effective Date, Class Counsel and the Settlement Class Representatives shall dismiss with prejudice all claims, Actions, or proceedings that are released pursuant to this Agreement, to the extent any such claims, Actions, or proceedings remain pending after the Court issues the Final Approval Order and Judgment.

**15. No Admission of Wrongdoing**

**15.1.** This Agreement compromises claims which are contested in good faith, and it shall not be deemed an admission by any of the Parties as to the merits of any claim or defense. This Agreement shall not be offered or received against Defendants as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by Defendants with respect to the truth of any fact alleged by any Settlement Class Representative or any Settlement Class Member or the validity of any claim that has been

or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, breach of duty, or other wrongdoing of Defendants.

**15.2.** This Agreement shall not be construed as or received in evidence as an admission, concession, or presumption against any Settlement Class Representative or any Settlement Class Member that any of their claims are without merit, or that any defense asserted by Defendants has any merit, or that damages recoverable in the Action would not have exceeded the Settlement Fund.

**15.3.** The negotiation, terms, and entry of the Parties into this Agreement shall remain subject to the provisions of Federal Rule of Evidence 408, all similar state statutes, rules of evidence, and arbitral rules, and the mediation privilege.

**15.4.** Notwithstanding the foregoing provisions of Section 15 or any other terms in this Settlement, Defendants may use, offer, admit, or refer to this Agreement and to the Settlement, if approved, where they deem it necessary to defend themselves in any other action, or in any judicial, administrative, regulatory, arbitral, or other proceeding, as they deem it necessary to comply with or address regulatory and/or disclosure obligations, to pursue insurance and/or other indemnification, and to enforce this Agreement and the Settlement, including the releases contained therein.

## **16. Opt-Outs**

**16.1.** Any individual who wishes to exclude themselves from the Settlement must submit a written request for exclusion to the Settlement Administrator, which shall be postmarked no later than the Opt-Out Deadline or submitted online through the claims portal and verified no later than the Opt-Out Deadline.

**16.2.** The written request for exclusion must:

- (i) Identify the case name of the Action;
- (ii) Identify the name and address of the individual seeking exclusion from the Settlement;
- (iii) Be personally signed by the individual seeking exclusion;
- (iv) Include a statement clearly indicating the individual's intent to be excluded from the Settlement; and
- (v) Request exclusion only for that one individual whose personal signature appears on the request (or, in the case of a minor, the personal signature of the minor's parent or legal guardian appears on the request).

**16.3.** To be effective and valid, opt-out requests submitted online must verify the request to opt-out no later than the Opt-Out Deadline using the link sent to the individual who submitted the request for exclusion.

**16.4.** Opt-out requests seeking exclusion on behalf of more than one individual shall be deemed invalid by the Settlement Administrator.

**16.5.** Any individual who submits a valid and timely request for exclusion in the manner described herein shall not: (i) be bound by any orders or judgments entered in connection with the Settlement; (ii) be entitled to any relief under, or be affected by, the Agreement; (iii) gain any rights by virtue of the Agreement; or (iv) be entitled to object to any aspect of the Settlement.

**16.6.** Any individual who does not submit a valid and timely request for exclusion in the manner described herein shall be deemed to be a Settlement Class Member upon expiration of the Opt-Out Deadline, and shall be bound by all subsequent proceedings, orders, and judgments applicable to the Settlement Class.

**16.7.** Class Counsel agree that this Settlement Agreement is fair, reasonable, and in the best interests of the Settlement Class Members.

## **17. Objections**

**17.1.** Any Settlement Class Member who wishes to object to the Settlement must submit a written objection to the Court on or before the Objection Deadline, as specified in the Preliminary Approval Order.

**17.2.** The written objection must include:

- (i) The case name and number of the Action;
- (ii) The name, address, and telephone number of the objecting Settlement Class Member and, if represented by counsel, of his/her counsel;
- (iii) A statement of whether the objection applies only to the objector, to a specific subset of the class, or to the entire class;
- (iv) A statement of the number of times in which the objector (and, where applicable, objector's counsel) has objected to a class action settlement within the three years preceding the date that the objector files the objection, along with the caption of each case in which the objector has made such objection;
- (v) A statement of the specific grounds for the objection; and
- (vi) A statement of whether the objecting Settlement Class Member intends to appear at the Final Approval Hearing, and if so, whether personally or through counsel.

**17.3.** In addition to the foregoing requirements, if an objecting Settlement Class Member intends to speak at the Final Approval Hearing (whether *pro se* or through an attorney), the written objection must include a detailed description of any evidence the objecting Settlement Class Member may offer at the Final Approval Hearing, as well as copies of any exhibits the objecting Settlement Class Member may introduce at the Final Approval Hearing.

**17.4.** Any Settlement Class Member who fails to object to the Settlement in the manner described in this Agreement, the Preliminary Approval Order, and in the notice provided pursuant to the Notice Plan shall be deemed to have waived any such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval

Hearing, and shall be precluded from seeking any review of the Settlement or the terms of this Agreement by appeal or any other means.

**18. Attorneys' Fees and Expenses**

- 18.1.** Class Counsel shall submit a request to the Court for payment of Attorneys' Fees, expressed as a percentage of the value conferred by the Settlement on the Settlement Class, and for reimbursement of Expenses incurred in prosecuting and settling the Action. Any request for Attorneys' Fees and Expenses must be filed with the Court at least fourteen (14) days before the Objection Deadline. If approved by the Court, such Attorneys' Fees and Expenses as determined by Class Counsel shall be paid by the Settlement Administrator to the various Plaintiffs law firms from the Settlement Fund within twenty-one (21) Business Days after the Effective Date. To avoid any doubt, Attorneys' Fees and Expenses shall be paid by the Settlement Administrator based on Class Counsel's written direction from the Settlement Fund.
- 18.2.** Defendants agree not to oppose any Attorneys' Fees request by Class Counsel of up to 30.00% of the Settlement Fund, to be paid from the Settlement Fund. Defendants also agree not to oppose a request by Class Counsel for Expenses of up to \$800,000.00, to be paid from the Settlement Fund. This term was negotiated after the Parties reached an agreement on the remaining terms of this Settlement.
- 18.3.** The Parties agree that the effectiveness of this Agreement is not contingent upon the Court's approval of the payment of any Attorneys' Fees or Expenses. If the Court declines to approve, in whole or in part, a request for Attorneys' Fees or Expenses, all remaining provisions in this Agreement shall remain in full force and effect. No decision by the Court, or modification or reversal or appeal of any decision by the Court,

concerning the payment of Attorneys' Fees or Expenses, or the amount thereof, shall be grounds for cancellation or termination of this Agreement.

**19. Confidentiality**

**19.1.** The Parties and the Parties' Counsel agree that the terms of this Settlement shall remain confidential and shall not be disclosed until the Agreement is publicly filed in connection with the Settlement Class Representatives' motion seeking a Preliminary Approval Order. Notwithstanding the foregoing, Defendants may disclose this Agreement for legal, compliance, and regulatory-related purposes.

**20. Notices**

**20.1.** All notices to Class Counsel provided for in this Agreement shall be sent by email and First-Class mail to the following:

William B. Federman  
FEDERMAN & SHERWOOD  
10205 N. Pennsylvania Ave.  
Oklahoma City, OK 73120  
wbf@federmanlaw.com

and to:

Maureen M. Brady  
MCSHANE & BRADY, LLC  
1656 Washington Street, Suite 120  
Kansas City, MO 64108  
mbrady@mcsbanebradylaw.com

**20.2.** All notices to Defendants or Defendants' Counsel provided for in this Agreement shall be sent by email and First-Class mail to the following:

Kristine M. Brown  
Gavin Reinke  
ALSTON & BIRD LLP  
1201 West Peachtree Street NW  
Atlanta, GA 30309  
kristine.brown@alston.com  
gavin.reinke@alston.com

and to:

Thomas J. Butler  
MAYNARD NEXSEN P.C.  
1901 Sixth Avenue North, Suite 1700  
Birmingham, AL 35203  
tbutler@maynardnexsen.com

and to:

J.T. Malatesta  
POLSINELLI P.C.  
2100 Southbridge Pkwy., Suite 650  
Birmingham, Alabama 35209  
jtmalatesta@polsinelli.com

- 20.3.** The notice recipients and addresses designated in this Section may be changed by written notice posted to the Settlement website.

## **21. Miscellaneous Provisions**

- 21.1.** Further Steps. The Parties agree that they each shall undertake any further required steps to effectuate the purposes and intent of this Agreement.
- 21.2.** Cooperation. The Parties: (i) acknowledge that it is their intent to consummate this Settlement Agreement and (ii) agree to cooperate to the extent reasonably necessary to effect and implement all terms and conditions of the Settlement Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of the Settlement Agreement.
- 21.3.** Contractual Agreement. The Parties understand and agree that all terms of this Agreement, including the exhibits hereto, are contractual and are not a mere recital, and each signatory warrants that he or she is competent and possesses the full and complete authority to execute and covenant to this Agreement on behalf of the Party that he or she represents.

- 21.4.** Headings. Any headings contained herein are for informational purposes only and do not constitute a substantive part of this Agreement. In the event of a dispute concerning the terms and conditions of this Agreement, the headings shall be disregarded.
- 21.5.** Integration. This Agreement constitutes the entire agreement among the Parties and no representations, warranties, or inducements have been made to any Party concerning this Agreement other than the representations, warranties, and covenants expressly contained and memorialized herein.
- 21.6.** Exhibits. The exhibits to this Agreement are expressly incorporated by reference and made part of the terms and conditions set forth herein.
- 21.7.** Drafting. The language of all parts of this Agreement shall in all cases be construed as a whole, according to their fair meaning, and not strictly for or against any Party. No Party shall be deemed the drafter of this Agreement. The Parties acknowledge that the terms of the Agreement are contractual and are the product of negotiations between the Parties and their counsel. Each Party and their counsel cooperated in the drafting and preparation of the Agreement. In any construction to be made of the Agreement, the Agreement shall not be construed against any Party and any canon of contract interpretation to the contrary shall not be applied.
- 21.8.** Modification or Amendment. This Agreement may not be modified or amended, nor may any of its provisions be waived, except by an express writing signed by the Parties who executed this Agreement, or their successors.
- 21.9.** Waiver. The failure of a Party to insist upon strict performance of any provision of this Agreement shall not be deemed a waiver of such Party's rights or remedies or a waiver by such Party of any default by another Party in the performance or compliance of any



of the terms of this Agreement. In addition, the waiver by one Party of any breach of this Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

**21.10.** Severability. Should any part, term, or provision of this Agreement be declared or determined by any court or tribunal to be illegal or invalid, the Parties agree that the Court may modify such provision to the extent necessary to make it valid, legal, and enforceable. In any event, such provision shall be separable and shall not limit or affect the validity, legality, or enforceability of any other provision hereunder.

**21.11.** Counterparts. The Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of executed counterparts shall be filed with the Court. This Agreement may be executed using DocuSign.

**21.12.** Electronic Mail. Transmission of a signed Agreement by electronic mail shall constitute receipt of an original signed Agreement by mail.

**21.13.** Successors and Assigns. The Agreement shall be binding upon, and inures to the benefit of, the heirs, executors, successors, and assigns of the Parties hereto.

**21.14.** Governing Law. All terms and conditions of this Agreement shall be governed by and interpreted according to the laws of Florida, without reference to its conflict of law provisions, except to the extent the federal law of the United States requires that federal law governs.

**21.15.** Interpretation. The following rules of interpretation shall apply to this Agreement:

- (i) Definitions apply to the singular and plural forms of each term defined.
- (ii) Definitions apply to the masculine, feminine, and neuter genders of each term defined.

(iii) Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall not be limiting but rather shall be deemed to be followed by the words “without limitation.”

**21.16.** Fair and Reasonable. The Parties and the Parties’ Counsel believe this Agreement is a fair and reasonable compromise of the disputed claims and in the best interest of the Parties. The Parties have arrived at this Agreement as a result of extensive arms-length negotiations.

**21.17.** Retention of Jurisdiction. The administration and consummation of the Settlement as embodied in this Agreement shall be under the authority of the Court, and the Court shall retain jurisdiction over the Settlement and the Parties for the purpose of enforcing the terms of this Agreement. The Court also shall retain exclusive jurisdiction over any determination of whether any subsequent suit is released by the Settlement Agreement.

**21.18.** Confidentiality of Discovery Material. The Parties, the Parties’ Counsel, and any retained or consulting experts, agree that each of them remain subject to the Court’s Protective Order with respect to any discovery materials produced formally or informally thereunder.

**21.19.** No Government Third-Party Rights or Beneficiaries. No government agency or official can claim any rights under this Agreement or Settlement.

**21.20.** No Collateral Attack. The Settlement Agreement shall not be subject to collateral attack, including by any Settlement Class Member or any recipient of notices of the Settlement after the Judgment is entered.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by themselves or by their duly authorized counsel:

**Class Counsel on behalf of the Settlement Class Representatives (who have specifically assented to the terms of this Settlement Agreement) and the Settlement Class:**



Name: William B. Federman

Date:



Name: Maureen M. Brady

Date:

**Defendant Pediatrix Medical Group, Inc. (f/k/a Mednax, Inc.)**



Name: Mary Ann E. Moore

Title: EVP, General Counsel and Secretary

Date: April 5, 2024

**Defendant PMG Services, Inc. (f/k/a Mednax Services, Inc.)**



Name: Mary Ann E. Moore

Title: EVP, General Counsel and Secretary

Date: April 5, 2024

**Defendant Pediatrix Medical Group of Kansas, P.C.:**



Name: Michael R. Santana

Title: Secretary

Date: April 5, 2024

**Defendant American Anesthesiology, Inc.**

Name:

Title:

Date:

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by themselves or by their duly authorized counsel:

**Class Counsel on behalf of the Settlement Class Representatives (who have specifically assented to the terms of this Settlement Agreement) and the Settlement Class:**

\_\_\_\_\_  
Name: William B. Federman  
Date:

\_\_\_\_\_  
Name: Maureen M. Brady  
Date:

**Defendant Pediatrix Medical Group, Inc. (f/k/a Mednax, Inc.)**

\_\_\_\_\_  
Name: Mary Ann E. Moore  
Title: EVP, General Counsel and Secretary  
Date:


**Defendant PMG Services, Inc. (f/k/a Mednax Services, Inc.)**

\_\_\_\_\_  
Name: Mary Ann E. Moore  
Title: EVP, General Counsel and Secretary  
Date:

**Defendant Pediatrix Medical Group of Kansas, P.C.:**

\_\_\_\_\_  
Name: Michael R. Santana  
Title: Secretary  
Date:

**Defendant American Anesthesiology, Inc.**

  
\_\_\_\_\_  
Name: Beth Green  
Title: Secretary  
Date: 4/5/2024