

STATE OF NORTH CAROLINA  
COUNTY OF JOHNSTON

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO.:22CVS00873-500

**MICHAEL POPE**, on behalf of herself  
and all others similarly situated,  
Plaintiff,

v.

**BENSON AREA MEDICAL CENTER,  
INC. a/k/a BENSON HEALTH,**

Defendant

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**SETTLEMENT AGREEMENT**

This Settlement Agreement, dated as of \_\_\_\_\_, 2024, is made and entered into by and among the following Settling Parties (as defined below): (i) Michael Pope (“Plaintiff”), individually and on behalf of the Class (as defined below); and (ii) Benson Area Medical Center, Inc. a/k/a Benson Health (“Benson Health” or “Defendant”). The Settlement Agreement is subject to Court approval and is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined below), upon and subject to the terms and conditions hereof.

**I. THE LITIGATION**

This class action litigation (the “Litigation”) arose from an alleged May 2021 ransomware attack perpetrated upon Benson Health that resulted in a third-party accessing some of Benson Health’s computer systems and data resulting in access to allegedly sensitive personal information associated with current and former Benson Health patients, including Plaintiff.

Plaintiff brought this action individually and on behalf of all persons whose Private Information, he alleged, was compromised and subject to unauthorized access and exfiltration, theft, or disclosure as a direct result of the ransomware attack on Benson Health's information system's security, an event disclosed on or around July 2022 (the "Data Incident"). The initial complaint was filed August 26, 2022, in North Carolina Superior Court, and pleaded claims for negligence, negligence per se, invasion of privacy, and violations of the North Carolina Unfair and Deceptive Trade Act (the "Act" or "UDTPA").

This Settlement Agreement provides for the resolution of all claims and causes of action asserted, or that could have been asserted, against Benson Health relating to the Data Incident, by and on behalf of Plaintiff and Settlement Class Members (as defined below), and any other such actions by and on behalf of any other individuals originating, or that may originate, in jurisdictions in the United States of America against Benson Health relating to the Data Incident.

## **II. CLAIMS OF PLAINTIFF AND BENEFITS OF SETTLING**

Plaintiff believes the claims asserted in the Litigation, as set forth in the complaint filed in the Litigation, have merit. Plaintiff and Class Counsel (as defined below) recognize and acknowledge, however, the expense and length of continued proceedings necessary to prosecute the Litigation against Benson Health through motions practice, trial, and potential appeals. They have also considered the uncertain outcome and risk of further litigation, as well as the difficulties and delays inherent in such litigation. Class Counsel are highly experienced in class-action litigation and very knowledgeable regarding the relevant claims, remedies, and defenses at issue generally in such litigation and in this Litigation. They have determined that the settlement set

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

### **III. DENIAL OF WRONGDOING AND LIABILITY**

Defendant denies each and all of the claims and contentions alleged against it in the Litigation. Defendant denies all charges of wrongdoing, injury, damages, or liability as alleged, or which could be alleged, in the Litigation. Nonetheless, Defendant, recognizing the uncertainty and risks inherent in litigation, has concluded that further litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

### **IV. TERMS OF SETTLEMENT**

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiff, individually and on behalf of the Class, and Benson Health, that, subject to the approval of the Court, the Litigation and the Released Claims shall be finally and fully compromised, settled, and released, and the Litigation shall be dismissed with prejudice, upon and subject to the terms and conditions of this Settlement Agreement, as follows:

#### **1. Definitions**

As used in the Settlement Agreement, whether preceding this section of the Agreement or thereafter, the following terms have the meanings specified below:

1.1 “Agreement” or “Settlement Agreement” means this agreement.

1.2 “Claims Administration” means providing notice to the Class Members and the processing and payment of claims received from Settlement Class Members by the Claims

Administrator as well as the performance of other administrative duties performed in service of this Agreement (as defined below).

1.3 “Claims Administrator” means a company selected by the Defendant, who is experienced in administering class action claims and settlements generally and specifically those of the type provided for and made in data breach litigation.

1.4 “Claims Deadline” means the postmark and/or online submission deadline for Valid Claims (as defined below) pursuant to ¶ 2.1.

1.5 “Claim Form” means the form utilized by the Settlement Class Members to submit a Settlement Claim (as defined below). The Claim Form, subject to Court approval, will be substantially in the form shown in **Exhibit A** attached hereto, which will be available on both the Settlement Website (as defined below), and in paper format for Settlement Class Members who specifically request a paper copy.

1.6 “Costs of Claims Administration” means all reasonable, actual costs for Claims Administration. The costs of Claims Administration may be subject to a not to exceed amount.

1.7 “Court” means the General Court of Justice, Superior Court Divisions for the State of North Carolina in and for Johnston County.

1.8 “Data Incident” means the ransomware incident perpetrated against Benson Health giving rise to the Litigation.

1.9 “Effective Date” means the first date by which all of the events and conditions specified in ¶ 1.10 herein have occurred and been met.

1.10 “Final” means the occurrence of all of the following events: (i) the settlement pursuant to this Settlement Agreement is finally approved by the Court; (ii) the Court has entered

a Judgment (as defined below); and (iii) the time to appeal or seek permission to appeal from the Judgment has expired or, if appealed, the appeal has been dismissed in its entirety, or the Judgment has been affirmed in its entirety by the court of last resort to which such appeal may be taken, and such dismissal or affirmance has become no longer subject to further appeal or review. Notwithstanding the above, any order modifying or reversing any attorneys' fee award for fees and expenses, or service award made in this case shall not affect whether the Judgment is "Final" as defined herein. Nor will any such modification or reversal affect any other aspect of the Judgment.

1.11 "Judgment" means a judgment rendered by the Court.

1.12 "Long Notice" means the long form notice of settlement posted on the Settlement Website, substantially in the form, subject to Court approval, shown in **Exhibit C** hereto.

1.13 "Objection Date" means the date by which Settlement Class Members must mail or email their objection to the settlement for that objection to be effective. The postmark date shall constitute evidence of the date of mailing for these purposes.

1.14 "Opt-Out Date" means the date by which Class Members must mail their requests to be excluded from the Class for that request to be effective. The postmark date shall constitute evidence of the date of mailing for these purposes.

1.15 "Person" means an individual, corporation, partnership, limited partnership, limited liability company, partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity, and their respective spouses, heirs, predecessors, successors, representatives, or assigns.

1.16 “Private Information” means certain personal information, including but not limited to, names, dates of birth, and Social Security Numbers, (“PII”) as well as certain protected health information (“PHI”).

1.17 “Plaintiff” or “Class Representative” means Michael Pope.

1.18 “Preliminary Approval Order” means the order preliminarily approving the Settlement Agreement and ordering notice be provided to the Class. The Settling Parties’ proposed form of Preliminary Approval Order is attached hereto as **Exhibit D**.

1.19 “Class Counsel” means the law firms of Milberg Coleman Bryson Phillips Grossman, PLLC and Strauss Borrelli, PLLC.

1.20 “Released Claims” shall collectively mean any and all past, present, and future claims, petitions, complaints, suits, demands, charges, causes of action, lawsuits, or other proceedings whereby a Person may seek set-offs, costs, expenses, attorneys’ fees, losses, rights, obligations, debts, contract enforcement, penalties, damages, or liabilities against another of any nature whatsoever, and including, but not limited to, any and all claims for damages, injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys’ fees and expenses, pre-judgment interest, credit monitoring services, the creation of a fund for future damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, and/or the appointment of a receiver, whether known or unknown, liquidated or unliquidated, accrued or unaccrued, fixed or contingent, direct or derivative, in law or equity, by statute or common law, matured or not yet matured, and any other form of legal or equitable relief that either has been asserted, was asserted, or could have been asserted, by any Settlement Class Member against any of the Released Parties based on, relating to, concerning or arising out of the Data Incident or the allegations, transactions,

occurrences, facts, or circumstances alleged in or otherwise described in the Litigation. Released Claims shall not include the right of any Settlement Class Member or any of the Released Parties to enforce the terms of the settlement contained in this Settlement Agreement and shall not include the claims of Settlement Class Members who have timely excluded themselves from the Class. Released claims shall not include any claims unrelated to the Data Incident that Plaintiff and Settlement Class Members have, or may have in the future, against Benson Health, and, to avoid doubt, that Benson Health may have, or may have in the future, against Plaintiff or any Settlement Class Member. As of the date of this Settlement Agreement, Plaintiff is not aware of any claims he may have against Benson Health unrelated to the Data Incident.

1.21 “Released Parties” means Benson Health and all of its past, present, and future parent companies, partnerships, subsidiaries, affiliates, divisions, employees, servants, members, providers, partners, principals, directors, officers, shareholders, and owners, and all of their respective attorneys, heirs, executors, administrators, insurers, reinsurers, joint ventures, personal representatives, predecessors, successors, transferees, trustees, authorized agents, and assigns, and includes, without limitation, any Person related to any such entities who is, was, or could have been named as a defendant in the Litigation.

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

1.23 “Class” means All individuals residing in the United States to whom Defendant sent a notice concerning the Data Incident. The Class specifically excludes: (i) Benson Health; and (ii) The judge presiding over this case and their staff and family. The class consists of approximately 28,913 persons.

1.24 "Settlement Class" means all members of the Class who do not timely and validly request exclusion from the Class (i.e., opt-out).

1.25 "Settlement Class Member(s)" or "Member(s)" means a Person(s) who falls within the definition of the Settlement Class.

1.26 "Settlement Website" means the website described in ¶ 3.2(c).

1.27 "Settling Parties" means, collectively, Benson Health and Plaintiff, individually and on behalf of the Settlement Class.

1.28 "Short Notice" means the content of the mailed notice to the proposed Settlement Class Members, substantially in the form as shown in **Exhibit B** attached hereto. The Short Notice will direct recipients to the Settlement Website and inform Settlement Class Members, among other things, of the Claims Deadline, the Opt-Out Date, the Objection Date, the requested attorneys' fees and costs, and the date of the Final Fairness Hearing (as defined below).

1.29 "Unknown Claims" means any of the Released Claims that any Settlement Class Member, including Plaintiff, does not know or suspect to exist in his/her favor at the time of the release of the Released Parties that, if known by him or her, might have affected his or her settlement with, and release of, the Released Parties, or might have affected his or her decision not to object to and/or to participate in this Settlement Agreement. With respect to any and all Released Claims, including the Unknown Claims, the Settling Parties stipulate and agree that upon the Effective Date, Plaintiff intends to and expressly shall have, and each of the other Settlement Class Members intend to and shall be deemed to have, and by operation of the Judgment shall have, waived the provisions, rights, and benefits conferred by California Civil Code § 1542, and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the



United States (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), which is similar, comparable, or equivalent to California Civil 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.

Settlement Class Members, including Plaintiff, may hereafter discover facts in addition to, or different from, those that they, and any of them, now know or believe to be true with respect to the subject matter of the Released Claims, but Plaintiff expressly shall have, and each other Settlement Class Member shall be deemed to have, and by operation of the Judgment shall have, upon the Effective Date, fully, finally and forever settled and released any and all Released Claims. The Settling Parties acknowledge, and Settlement Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

1.30 “United States” means all 50 states, the District of Columbia, and all territories.

1.31 “Valid Claims” means Settlement Claims in an amount approved by the Claims Administrator or found to be valid through the claims processing and/or dispute resolution process described in ¶ 2.5.

## **2. Settlement Benefits**

### **2.1 Expense Reimbursement.**

2.1.1 All Settlement Class Members who submit a valid Claim using the Claim Form are eligible for reimbursement for documented ordinary out-of-pocket expenses, not to exceed \$300 per Settlement Class Member, that were incurred as a result of the Data Incident, including: (i) unreimbursed bank fees; (ii) long distance phone charges; (iii) cell phone charges (only if charged by the minute); (iv) data charges (only if charged based on the amount of data used); (v) postage; (vi) gasoline for local travel; and (viii) fees for credit reports, or other identity theft protection services and plans purchased between May 1, 2021 and the claims deadline. To receive reimbursement for any of the above-referenced out-of-pocket expenses, Settlement Class Members must submit a Valid Claim, including necessary supporting documentation, to the Claims Administrator.

2.1.2 Settlement Class Members are also eligible to receive reimbursement for up to four (4) hours of lost time spent dealing with the Data Incident (calculated at the rate of \$17.50 per hour). Settlement Class Members may receive reimbursement for lost time if the Settlement Class Member includes a brief description of activities engaged in responding to the incident and the time spent on each such activity, and attests that any claimed lost time was spent responding to issues raised by the Data Incident. Claims made for lost time can be combined with reimbursement for the above referenced out-of-pocket expenses with the combined or individual time spent reimbursement being subject to the \$300 cap for ordinary out-of-pocket expenses applicable to each Settlement Class Member.

2.1.3 Settlement Class Members are also eligible to receive reimbursement for documented extraordinary losses, not to exceed \$1,000 per Settlement Class Member for documented monetary loss that: (i) is actual, documented, and unreimbursed; (ii) was more likely than not caused by the Data Incident; (iii) occurred between May 1, 2021 and the claims deadline; and (iv) is not already covered by one or more of the above-referenced reimbursed expenses in ¶ 2.1.1 and the Settlement Class Member made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion, if applicable, of the Settlement Class Member's credit monitoring insurance and identity theft insurance. To receive reimbursement for extraordinary losses, Settlement Class Members must submit a Valid Claim, including necessary supporting documentation, to the Claims Administrator.

2.1.4 Settlement Class Members seeking reimbursement under this ¶ 2.1 must complete and submit a Claim Form to the Claims Administrator, postmarked or submitted online on or before the 60th day after the deadline for the completion of notice to Class Members as set forth in ¶ 3.2. The notice to the Settlement Class will specify this deadline and other relevant dates described herein. In submitting a Claim Form, a Settlement Class Member must affirm under the laws of the United States that information and documents submitted are true and correct. The Settlement Class Member must submit reasonable documentation that the out-of-pocket expenses and charges claimed were both actually incurred and plausibly arose from the Data Incident. Failure to provide supporting documentation of the out-of-pocket expenses referenced above, as requested on the Claim Form shall result in denial of a claim. For claims for lost time claimed by Settlement Class Members, the Settlement Class Member need only provide an attestation that the

time claimed was spent responding to issues raised by the Data Incident and a description of how the time was spent.

2.2 Limitation on Reimbursable Expenses. Nothing in this Settlement Agreement shall be construed as requiring Benson Health to provide, and Benson Health shall not be required to provide, for a double payment for the same loss or injury that was reimbursed or compensated by any other source. 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 Maximum payment obligation for Defendant under this Settlement for all Claims Made under paragraph 2.1.1, 2.1.2, 2.1.3, and 2.3, shall be \$350,000.

2.3 Credit Monitoring. Settlement Class Members are eligible to claim one (1) year of one credit bureau credit monitoring and \$1 million in identity theft insurance protections. No supporting documentation is necessary to receive this Settlement benefit.

2.4 Security Enhancements/Confirmatory Discovery. Benson Health has implemented or agreed to implement enhancements to its data system security-related measures, which will provide additional protection of the Private Information of Plaintiff and Settlement Class Members still in its possession. Defendant has identified these measures for Plaintiff's counsel and provided supporting documentation with such identification and documents treated as highly confidential. Defendant will be prepared to address the disclosed measures with the Court during the settlement approval process or as otherwise specified by the Court.

2.5 Dispute Resolution for Claims.

2.5.1 The Claims 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 needed to complete the Claim Form, including any documentation that may be necessary to reasonably support the expenses described in ¶ 2.1; and (iii) the information submitted could lead a reasonable person to conclude that more likely than not the claimant has suffered the claimed losses as a result of the Data Incident. The Claims Administrator may, at any time, request from the claimant, in writing, additional information as the Claims Administrator may reasonably require to evaluate the claim, *e.g.*, documentation requested on the Claim Form, and required documentation regarding the claimed losses. There shall be no appeals from decisions by the Claims Administrator.

2.5.2 Upon receipt of an incomplete or unsigned Claim Form or a Claim Form that is not accompanied by sufficient documentation to determine whether the Claim is facially valid, the Claims Administrator shall request additional information (“Claim Supplementation”) and give the claimant thirty (30) days from the transmission of a cure notice to cure the defect before rejecting the claim. If the defect is not timely cured, then the Claim will be deemed invalid and there shall be no obligation to pay the Claim.

2.5.3 Following receipt of additional information from a claimant subject to a cure notice, the Claims Administrator shall have ten (10) days to accept, in whole or lesser amount, or reject each Claim. If, after review of the Claim and all documentation submitted by the claimant, the Claims Administrator determines that such a Claim is facially valid, then the Claim shall be paid subject to ¶ 2.5.4. If the Claims Administrator determines that such a Claim is not facially valid because the claimant has not provided all information needed to complete the Claim Form and enable the Claims Administrator to evaluate the Claim, then the Claims Administrator may reject the Claim without any further action.

2.5.4 The Claims Administrator shall administer and calculate distributions for Valid Claims. Class Counsel and counsel for Benson Health shall be given reports for the Valid Claims and have the right to challenge any such claim, including distributions thereunder. Class Counsel or counsel for Benson Health may request from the Claims Administrator and be provided through secure transmission, for any Valid Claim, the name of the Settlement Class Member, dollar amounts to be paid as extraordinary or ordinary losses, and all supporting documentation submitted for the Claim.

2.5.5 Settlement Expenses. All costs for notice to the Settlement Class as required under ¶¶ 3.1, and costs of Claims Administration under ¶¶ 8.1, 8.2, and 8.3, shall be paid by Benson Health. If this Settlement Agreement is terminated or not approved, Benson Health will be responsible only for the costs specified above incurred by the date of termination or such non-approval.

2.6 Class Certification. The Settling Parties agree, for purposes of this settlement only, to the certification of the Class. If the settlement set forth in this Settlement Agreement is not approved by the Court, or if the Settlement Agreement is terminated or cancelled pursuant to the terms of this Settlement Agreement, this Settlement Agreement, and the certification of the Class provided for herein, will be vacated and the Litigation shall proceed as though the Class had never been certified, without prejudice to any Person's or Settling Party's position on the issue of class certification or any other issue. The Settling Parties' agreement to the certification of the Class is also without prejudice to any position asserted by the Settling Parties in any other proceeding, case, or action, as to which all of their rights are specifically preserved.

### **3. Order of Preliminary Approval and Publishing of Notice of Fairness Hearing**

3.1. As soon as practicable after the execution of the Settlement Agreement, Class Counsel shall submit this Settlement Agreement to the Court, and file a motion for preliminary approval of the Settlement with the Court requesting entry of a Preliminary Approval Order in the form attached hereto as **Exhibit D**, or an order substantially similar to such form in both terms and cost, requesting, *inter alia*:

- a) certification of the Settlement Class for settlement purposes only pursuant to ¶ 2.7;
- b) preliminary approval of the Settlement Agreement as set forth herein;
- c) appointment of Milberg Coleman Bryson Phillips Grossman, PLLC and Turke & Strauss, LLC as Class Counsel;
- d) appointment of Plaintiff as Class Representative;
- e) approval of a customary form of Short Notice to be mailed by U.S. mail to Settlement Class Members in a form substantially similar to **Exhibit B**, attached hereto.
- f) approval of the Long Notice to be posted on the Settlement Website in a form substantially similar to **Exhibit C**, attached hereto, which, together with the Short Notice, shall include a fair summary of the Settling Parties' respective litigation positions, the general terms of the settlement set forth in the Settlement Agreement, instructions for how to object to or opt-out of the settlement, the process and instructions for making claims to the extent contemplated herein, the requested attorneys' fees, and the date, time and place of the Final Fairness Hearing;

- g) approval of the Claim Form to be available on the Settlement Website for submitting claims and available, upon request, in a form substantially similar to **Exhibit A**, attached hereto; and
- h) appointment of Angeion Group as the Claims Administrator.

3.2 Notice shall be provided to Settlement Class Members by the Claims Administrator as follows:

- a) *Class Member Information*: Within ten (10) days of entry of the Preliminary Approval Order, Benson Health shall provide the Claims Administrator with the notice list used to notify the Class of the Data Incident, name and physical address of each Settlement Class Member (collectively, “Class Member Information”) that Benson Health and/or the Released Entities possess. The Claims Administrator shall utilize industry standard practices for verifying the names and addresses of Settlement Class Members prior to sending Notice.
- b) The Class Member Information and its contents shall be used by the Claims Administrator solely for the purpose of performing its obligations pursuant to this Agreement and shall not be used for any other purpose at any time. Except to administer the Settlement as provided in this Agreement, or to provide data and information in its possession to the Settling Parties upon request, the Claims Administrator shall not reproduce, copy, store, or distribute in any form, electronic or otherwise, the Class Member Information. The Claims Administrator shall agree to a Business Associate Agreement and/or similar agreement, as may be requested



by Benson Health, governing the privacy and security of the Class Member Information.

- c) *Settlement Website:* Prior to the dissemination of the Short Notice, the Claims Administrator shall establish the Settlement Website, that will inform Settlement Class Members of the terms of this Agreement, their rights, relevant Settlement dates and deadlines, and related information. The Settlement Website shall include, in .pdf format and available for download, the following: (i) the Long Notice; (ii) the Claim Form; (iii) the Preliminary Approval Order; (iv) this Agreement; (v) the operative Class Action Complaint filed in the Litigation; and (vi) any other materials agreed upon by the Settling Parties and/or required by the Court. The Settlement Website shall provide Settlement Class Members with the ability to complete and submit the Claim Form, and supporting documentation, electronically.
- d) *Short Notice:* Within thirty (30) days of entry of the Preliminary Approval Order and to be substantially completed not later than forty-five (45) days after entry of the Preliminary Approval Order, subject to the requirements of this Agreement and the Preliminary Approval Order, the Claims Administrator will provide notice to the Settlement Class members as follows:
- via direct mail to the postal address provided within the Class Member Information. Before any mailing under this paragraph occurs, the Claims Administrator shall run the postal addresses of Settlement Class Members through the United States Postal Service

(“USPS”) National Change of Address database to update any change of address on file with the USPS within thirty (30) days of entry of the Preliminary Approval Order;

- in the event that a Short Notice is returned to the Claims Administrator by the USPS because the address of the recipient is not valid, and the envelope contains a forwarding address, the Claims Administrator shall re-send the Short Notice to the forwarding address within seven (7) days of receiving the returned Short Notice;
- in the event that subsequent to the first mailing of a Short Notice, and at least fourteen (14) days prior to the Opt-Out Date and the Objection Date, a Short Notice is returned to the Claims Administrator by the USPS because the address of the recipient is no longer valid, i.e., the envelope is marked “Return to Sender” and does not contain a new forwarding address, the Claims Administrator shall perform a standard skip trace, in the manner that the Claims Administrator customarily performs skip traces, in an effort to attempt to ascertain the current address of the particular Settlement Class Member in question and, if such an address is ascertained, the Claims Administrator will re-send the Short Notice within seven (7) days of receiving such information. This shall be the final requirement for mailing.

- e) Publishing, on or before the date of mailing the Short Notice, the Claim Form and the Long Notice on the Settlement Website as specified in the Preliminary Approval Order, and maintaining and updating the Settlement Website throughout the claim period;
- f) A toll-free help line shall be made available to provide Settlement Class Members with information relevant to this Settlement through the Effective Date and longer if agreed upon by the Settling Parties;
- g) The Claims Administrator also will provide hard copies of the Short Notice, Long Notice, and paper Claim Form, as well as this Settlement Agreement, upon request to Class Members; and
- h) Contemporaneously with seeking Final approval of the Settlement, Class Counsel shall cause to be filed with the Court an appropriate affidavit or declaration with respect to complying with this provision of notice.

3.3 The Short Notice, Long Notice, and other applicable communications to the Class may be adjusted by the Claims Administrator, respectively, in consultation and agreement with the Settling Parties, as may be reasonable and not inconsistent with such approval. The notice program shall be completed within thirty (30) days after entry of the Preliminary Approval Order.

3.4 Class Counsel shall request that after notice is completed, the Court hold a hearing (the “Final Fairness Hearing”) and grant final approval of the settlement set forth herein.

#### **4. Opt-Out Procedures**

4.1 Each Person wishing to opt-out of the Class shall individually sign and timely submit written notice of such intent to the designated Post Office box established by the Claims

Administrator. The written notice must clearly manifest a Person's intent to be excluded from the Class. To be effective, written notice must be postmarked no later than forty-five (45) days after the date on which the notice program is completed pursuant to ¶ 3.2.

4.2 All Persons who submit valid and timely notices of their intent to be excluded from the Class, referred to herein as "Opt-Outs," shall not receive any benefits of and/or be bound by the terms of this Settlement Agreement. All Persons falling within the definition of the Class who do not request to be excluded from the Settlement Class (i.e., Settlement Class Members) in the manner set forth in ¶ 4.1 above shall be bound by the terms of this Settlement Agreement and Judgment entered thereon.

4.3 In the event that within ten (10) days after the Opt-Out Date as approved by the Court, there have been more than forty-five (45) timely and valid Opt-Outs (i.e., exclusions) submitted, Benson Health may, by notifying Class Counsel and the Court in writing, void this Settlement Agreement. If Benson Health voids the Settlement Agreement pursuant to this paragraph, Benson Health shall be obligated to pay all settlement expenses already incurred, excluding any attorneys' fees, costs, and expenses of Class Counsel and service awards and shall not, at any time, seek recovery of same from any other party to the Litigation or from counsel to any other party to the Litigation, excepting settlement expenses paid arising from acts of fraud by the party from whom recovery is sought.

## **5. Objection Procedures**

5.1 Each Settlement Class Member desiring to object to the Settlement Agreement shall submit a timely written notice of his or her objection by the Objection Date. Such notice shall state: (i) the objector's full name, address, telephone number, and e-mail address (if any);

(ii) information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class (e.g., copy of notice, copy of original notice of the Data Incident); (iii) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (iv) the identity of any and all counsel representing the objector in connection with the objection; (v) a statement as to whether the objector and/or his or her counsel will appear at the Final Fairness Hearing; and (vi) the objector's signature and, if applicable, the signature of the objector's duly authorized attorney or other duly authorized representative. To be timely, written notice of an objection in the appropriate form must be filed with the Clerk of the Court no later than forty-five (45) days from the date on which notice program is completed pursuant to ¶ 3.2. Concurrently and by the same date, a copy of the objection must be mailed and postmarked or emailed to the Claims Administrator to the physical or email address established by the Claims Administrator and identified in the Claim Form. The Claims Administrator will forward, upon receipt, the objection to Class Counsel and counsel for Benson Health.

5.2 Any Settlement Class Member who fails to comply with the requirements for objecting in ¶ 5.1 shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement, and the Settlement Class Member shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders, and any Judgment in the Litigation. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions of ¶ 5.1. Without limiting the foregoing, any challenge to the Settlement Agreement, the final order approving this Settlement Agreement, or the Judgment to be entered upon final

approval shall be pursuant to appeal under the North Carolina Rules of Appellate Procedure and not through a collateral attack.

**6. Releases**

6.1 Upon the Effective Date, each Settlement Class Member, including Plaintiff, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims. Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, including Plaintiff, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public or in any other capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in any action in this or any other forum (other than participation in the settlement as provided herein) in which any of the Released Claims is asserted against any one or more of the Released Parties.

6.2 Upon the Effective Date, Benson Health shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged, Plaintiff, each and all of the Settlement Class Members, and Class Counsel of all claims, including Unknown Claims, based upon the institution, prosecution, settlement, or resolution of the Litigation or the Released Claims, except for enforcement of the Settlement Agreement. Notwithstanding the above, any other claims or defenses Benson Health may have against such Persons including, without limitation, any claims based upon any retail, banking, debtor-creditor, contractual, or other business relationship with such Persons not based upon the institution, prosecution, settlement, or resolution of the Litigation or the Released Claims are specifically preserved and shall not be affected by the preceding sentence.

6.3 Notwithstanding any term herein, neither Benson Health nor their Released Parties, shall have or shall be deemed to have released, relinquished or discharged any claim or defense against any Person other than Plaintiff, each and all of the Settlement Class Members, and Class Counsel.

**7. Class Counsel's Attorneys' Fees, Costs, and Expenses; Service Award to Plaintiff**

7.1 The Settling Parties did not discuss the payment of attorneys' fees, costs, expenses and/or service award to Plaintiff, as provided for in ¶¶ 7.2 and 7.3, until after the substantive terms of the settlement had been agreed upon, other than that Benson Health would not object to a request for reasonable attorneys' fees, costs, expenses, and a service award to Plaintiff as may be ordered by the Court. Benson Health and Class Counsel then negotiated and agreed to the provision described in ¶ 7.2.

7.2 Benson Health has agreed not to object to a request by Class Counsel for attorneys' fees, inclusive of any costs and expenses of the Litigation, subject to Court approval, in an amount not to exceed \$115,000. Class Counsel, in their sole discretion, shall allocate and distribute any amount of attorneys' fees, costs, and expenses awarded by the Court. No Person shall have any claim against the Claims Administrator and/or Benson Health based on allocations or distributions of attorneys' fees, costs, and expenses by Class Counsel.

7.3 Subject to Court approval, Benson Health has agreed not to object to a request for a service award in the amount of \$2,500 to named Plaintiff.

7.4 If awarded by the Court, Benson Health shall pay the attorneys' fees, costs, expenses, and service awards to Class Counsel within thirty (30) days of the Effective Date. Class

Counsel shall thereafter distribute the award of attorneys' fees, costs, and expenses among Class Counsel and the service award to Plaintiff consistent with ¶¶ 7.2 and 7.3. Benson Health and the Claims Administrator shall have no responsibility, liability, or other obligation concerning the distribution of attorneys' fees, costs and expenses among Class Counsel and service award to Plaintiff.

7.5 The amount(s) of any award of attorneys' fees, costs, and expenses, and the service award to Plaintiff, are intended to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement. 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 Plaintiff shall affect whether the Judgment is Final or constitute grounds for cancellation or termination of this Settlement Agreement.

## **8. Administration of Claims**

8.1 The Claims Administrator shall administer and calculate the claims submitted by Settlement Class Members under ¶ 2.1. Class Counsel and Benson Health shall be given reports as to both claims and distribution and have the right to review and obtain supporting documentation to the extent necessary to resolve Claims Administration issues. The Claims Administrator's determination of whether a Settlement Claim is a Valid Claim shall be binding.

8.2 Checks or electronic payment (if selected by a Settlement Class Member) for approved Valid Claims shall be mailed and postmarked or electronically transferred within thirty (30) days of the Effective Date.



8.3 All Settlement Class Members who fail to timely submit a claim for any benefits hereunder within the time frames set forth herein, or such other period as may be ordered by the Court, or otherwise expressly allowed by law or the Settling Parties' written agreement, shall be forever barred from receiving any payments or benefits pursuant to the settlement set forth herein, but will in all other respects be subject to, and bound by, the provisions of the Settlement Agreement, the releases contained herein and the Judgment.

8.4 No Person shall have any claim against the Claims Administrator, Benson Health, Released Parties, Class Counsel, Plaintiff, and/or Benson Health's counsel based on distributions of benefits to Settlement Class Members.

8.5 Information submitted by Settlement Class Members in connection with submitted claims under this Settlement Agreement shall be deemed confidential and protected as such by the Claims Administrator, Class Counsel, and counsel for Benson Health.

**9. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination**

9.1 The Effective Date of the settlement shall be conditioned on the occurrence of all of the following events:

- a) the Court has entered the Order of Preliminary Approval and Publishing of Notice of a Final Fairness Hearing, as required by ¶ 3.1;
- b) Benson Health has not exercised its option to terminate the Settlement Agreement pursuant to ¶ 4.3 or as otherwise permitted by this Settlement Agreement;
- c) the Court has entered the Judgment granting final approval to the settlement as set forth herein; and
- d) the Judgment has become Final, as defined in ¶ 1.11.

9.2 If all conditions specified in ¶ 9.1 hereof are not satisfied, the Settlement Agreement shall be canceled and terminated subject to ¶ 9.4 unless Class Counsel and counsel for Benson Health mutually agree in writing to proceed with the Settlement Agreement.

9.3 Within seven (7) days after the Opt-Out Date, the Claims Administrator shall furnish to Class Counsel and to Benson Health's counsel a complete list of all timely and valid requests for exclusion (the "Opt-Out List").

9.4 In the event that the Settlement Agreement or the releases set forth in ¶¶ 6.1, 6.2, and 6.3 above are not approved by the Court or the settlement set forth in the Settlement Agreement is terminated in accordance with its terms: (i) the Settling Parties shall be restored to their respective positions in the Litigation and shall jointly request that all scheduled Litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Settling Party or Settling Party's counsel; and (ii) the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Settling Parties and shall not be used in the Litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*. Notwithstanding any statement in this Settlement Agreement to the contrary, no order of the Court or modification or reversal on appeal of any order reducing the amount of attorneys' fees, costs, expenses, and/or service awards shall constitute grounds for cancellation or termination of the Settlement Agreement.

## **10. Miscellaneous Provisions**

10.1 The Settling Parties (i) acknowledge that it is their intent to consummate this Settlement Agreement; and (ii) agree to cooperate to the extent reasonably necessary to effectuate

and implement all terms and conditions of this Settlement Agreement, and to exercise their best efforts to accomplish the terms and conditions of this Settlement Agreement.

10.2 The Settling Parties intend this settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The settlement compromises claims that are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling Parties each agree that the settlement was negotiated in good faith by the Settling Parties and reflects a settlement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum that the Litigation was brought or defended in bad faith or without a reasonable basis. It is agreed that no Party shall have any liability to any other Party as it relates to the Litigation, except as set forth in the Settlement Agreement.

10.3 Neither the Settlement Agreement, nor the settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the settlement (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing or liability of any of the Released Parties; or (ii) 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 any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Any of the Released Parties may file the Settlement Agreement and/or the Judgment in any action that may be brought against them or any of them in order to support a defense or counterclaim based on principles of *res judicata*,

collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

10.4 The Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

10.5 This Agreement contains the entire understanding between Benson Health and Plaintiff regarding the Settlement and supersedes all previous negotiations, agreements, commitments, understandings, and writings between Benson Health and Plaintiff in connection with to the Settlement. Except as otherwise provided herein, each party shall bear its own costs. Any agreements reached between Benson Health, Plaintiff, and any third party, are expressly excluded from this provision.

10.6 Class Counsel, on behalf of the Settlement Class, are expressly authorized by Plaintiff to take all appropriate actions required or permitted to be taken by the Settlement Class pursuant to the Settlement Agreement to effectuate its terms, and also are expressly authorized to enter into any modifications or amendments to the Settlement Agreement on behalf of the Settlement Class which they deem appropriate in order to carry out the spirit of this Settlement Agreement and to ensure fairness to the Settlement Class.

10.7 Each counsel or other Person executing the Settlement Agreement on behalf of any party hereto hereby warrants that such Person has the full authority to do so.

10.8 The Settlement Agreement may be executed in one or more counterparts. All executed counterparts shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court.

10.9 The Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto. No assignment of this Settlement Agreement will be valid without the other party's prior, written permission.

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

10.11 As used herein, "he" means "he, she, or it;" "his" means "his, hers, or its," and "him" means "him, her, or it."

10.12 All dollar amounts are in United States dollars (USD).

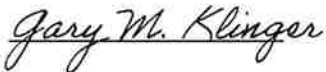
10.13 Cashing a settlement check or accepting an electronic payment of a Settlement distribution is a condition precedent to any Settlement Class Member's right to receive settlement benefits. All settlement checks shall be void ninety (90) days after issuance and shall bear the language: "This check must be cashed within ninety (90) days, after which time it is void." If a check becomes void, the Settlement Class Member shall have until three (3) months after the Effective Date to request re-issuance. If no request for re-issuance is made within this period, the Settlement Class Member will have failed to meet a condition precedent to recovery of settlement benefits, the Settlement Class Member's right to receive monetary relief shall be extinguished, and Benson Health shall have no obligation to make payments to the Settlement Class Member for expense reimbursement under ¶ 2.1 or any other type of monetary relief. The same provisions shall apply to any re-issued check. For any checks that are issued or re-issued for any reason more than

two (2) months from the Effective Date, requests for re-issuance need not be honored after such checks become void.

10.14 All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Settlement Agreement.

IN WITNESS WHEREOF, the parties hereto execute this Settlement Agreement as established by their signatures below.

Dated: June 20, 2024



Gary M. Klinger  
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Respectfully submitted,

  
/s/ 

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