



APPROVED BY COURT

07/14/2022

DATE FILED: July 14, 2022 1:12 PM
CASE NUMBER: 2020CV32175

DIANA K MAY
District Court Judge

EXHIBIT A

<p>4th DISTRICT COURT, COUNTY OF EL PASO, STATE OF COLORADO Court Address: 270 S Tejon St Colorado Springs, Colorado 80903</p> <hr/> <p>LENNIE HALL, AGNES COURSEY AND TAMMY NICHOLS, Individually and On Behalf of All Others Similarly Situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>ASPENPOINTE, INC., a Colorado non-profit Corporation,</p> <p style="text-align: center;">Defendant.</p>	<div style="text-align: center;">  COURT USE ONLY  </div>
<p>ATTORNEYS FOR PLAINTIFFS: Rick D. Bailey, Esq. Atty. Reg. #26554 Law Office of Rick D. Bailey, Esq. 1085 Lafayette St., Ste 702 Denver, Colorado 80218 Phone: (720) 676-6023 rick@rickbaileylaw.com</p> <p>MASON LLP Gary E. Mason (<i>pro hac vice</i>) 5101 Wisconsin Ave., NW, Ste. 305 Washington, DC 20016 Phone: 202.640.1160 Fax: 202.429.2294 gmason@masonllp.com</p> <p>FINKELSTEIN BLANKINSHIP FREI-PEARSON & GARBER, LLP Todd Garber (<i>pro hac vice</i>) One North Broadway, Suite 900 White Plains, New York 10601 Phone: 914.298.3281 Fax: 914.824.1561 tgarber@fbfglaw.com</p>	<p>Consolidated Case Case Number: 2020CV32175</p>

KELLER POSTMAN LLC Seth A. Meyer (<i>pro hac vice</i>) Alex J. Dravillas (<i>pro hac vice</i>) 150 N. Riverside Plaza, Suite 4100 Chicago, Illinois 60606 Phone: 312.741.5220 sam@kellerpostman.com ajd@kellerpostman.com	
SETTLEMENT AGREEMENT	

This Settlement Agreement is entered into by and among Plaintiffs LENNIE HALL, AGNES COURSEY and TAMMY NICHOLS, (“**Plaintiffs**”), on behalf of themselves and on behalf of the Settlement Class (as defined below), by and through Class Counsel (as defined below), and Defendant AspenPointe, Inc. (N.K.A. Diversus Health Inc.) (“**Defendant**”) in order to effect a full and final settlement and dismissal with prejudice of all claims brought or that could have been brought in the litigation captioned *Hall et al. v. AspenPointe, Inc.*, Consolidated Case No. 2020CV32175, on the terms set forth below and to the full extent reflected herein. Capitalized terms shall have the meaning ascribed to them in Section II of this Settlement Agreement, or where otherwise defined.

I. RECITALS

1. AspenPointe, Inc. (N.K.A. Diversus Health Inc.) is a Colorado non-profit corporation with its principal place of business in Colorado Springs, within El Paso County, Colorado.

2. This Action arises out of a data security incident, defined below as a “Data Breach,” in which an unauthorized third-party illegally accessed Defendant’s computer systems and data between September 12, 2020 and September 22, 2020, resulting in the third party’s access to personal information belonging to Plaintiffs and members of the Settlement Class.

3. Defendant denies all claims asserted against it in the Action, denies all allegations of wrongdoing and liability, and denies all material allegations of the Consolidated Class Action Complaint, filed on April 8, 2021 (“CCAC”) and prior complaints filed against Defendant regarding the data security incident.

4. Plaintiffs and Class Counsel believe that the legal claims asserted in the Action have merit. Class Counsel has investigated the facts relating to the claims and defenses alleged and the underlying events in the Action, have made a thorough study of the legal principles applicable to the claims and defenses asserted in the Action, and have conducted a thorough assessment of the strengths and weaknesses of the Parties’ respective cases.

5. The Parties desire to settle the Action and all claims arising out of or related to the allegations or subject matter of the CCAC and Action on the terms and conditions set forth herein for the purpose of avoiding the burden, expense, risk, and uncertainty of continuing to litigate the Action.

6. Beginning in August 2021 and continuing into February 2022, Counsel for the Parties engaged in extensive arm’s-length negotiations concerning a possible settlement of the claims asserted in the Action.

7. Plaintiffs and Class Counsel, on behalf of the Settlement Class, have concluded based upon their investigation, and taking into account the contested issues involved, the expense and time necessary to prosecute the Action through trial, the risks and costs associated with further prosecution of the Action, the uncertainties of complex litigation, the desired outcome from continued litigation, and the substantial benefits to be received pursuant to this Settlement Agreement, that a settlement with Defendant on the terms set forth herein is fair and reasonable

and in the best interest of Plaintiffs and the Settlement Class. Plaintiffs and Class Counsel believe that the Settlement confers substantial benefits upon the Settlement Class.

8. The Parties agree and understand that neither this Settlement Agreement, nor the Settlement it represents, shall be construed as an admission by AspenPointe, Inc. (N.K.A. Diversus Health Inc.) of any wrongdoing whatsoever, including an admission of a violation of any statute or law or of liability on the claims or allegations in this Action or any other similar claims in other proceedings, or that any such claims would be suitable for class treatment.

9. The Parties, by and through their respective duly authorized counsel of record, and intending to be legally bound hereby, agree that the Action, and all matters and claims in the CCAC, and all matters and claims arising out of or related to the allegations or subject matter of the CCAC and Action, shall be settled, compromised, and dismissed, on the merits and with prejudice, upon the following terms and conditions.

II. DEFINITIONS

10. As used herein and in the related documents attached hereto as exhibits, the following terms have the meaning specified below:

a. “**Action**” means this lawsuit entitled *Hall et al. v. AspenPointe, Inc.*, Case No. 2020CV32175 pending in the 4th District Court of El Paso County, Colorado, filed on December 11, 2020 and the lawsuit entitled *Coursey et al. v. AspenPointe, Inc.*, Case No. 2020CV32198, filed on December 17, 2020 in the same court. The two lawsuits were consolidated under No. 2020CV32175.

b. “**Claims Deadline**” means the deadline for filing claims set at a date certain no more than seventy-five (75) Days from the date notice of the Settlement is mailed or otherwise provided to the Settlement Class Members.

c. **“Claim Form”** or **“Claim Forms”** means the form members of the Settlement Class must complete and submit on or before the Claims Deadline to be eligible for the benefits described herein, and substantially in the form of Exhibit 3 to this Settlement Agreement. The Claim Form shall require a sworn signature under penalty of perjury but shall not require a notarization or any other form of verification.

d. **“Claims Period”** means the period for filing claims up until a date certain no more than seventy-five (75) Days from the date notice is mailed or otherwise provided to the Settlement Class Members.

e. **“Claimants”** shall have the meaning given in Paragraph 23.

f. **“Class Counsel”** shall mean Todd S. Garber, of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP located at One North Broadway, Suite 900, White Plains, New York 10601; Rick D. Bailey of the Law Office of Rick D. Bailey, located at 1085 Lafayette St., Ste 702, Denver, Colorado, 80218; Gary E. Mason of Mason LLP, located at 5101 Wisconsin Ave., NW, Ste 305, Washington, District of Columbia, 20016; William H. Anderson of Handley Farah & Anderson PLLC, located at 4730 Table Mesa Drive, Suite G-200, Boulder, Colorado 80305; and Seth A. Meyer and Alex J. Dravillas of Keller Postman LLC, located at 150 N. Riverside Plaza, Suite 4100, Chicago, Illinois 60606.

g. **“Court”** means the 4th District Court of El Paso County, Colorado.

h. **“Day(s)”** means calendar days, but does not include the day of the act, event, or default from which the designated period of time begins to run. Further and notwithstanding the above, when computing any period of time prescribed or allowed by this Settlement Agreement, “Days” includes the last day of the period unless it is a Saturday, a Sunday,

or a federal legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or federal legal holiday.

i. **“Data Breach”** means the alleged exposure of sensitive information of Plaintiffs and members of the Settlement Class as a result of a third-party’s unauthorized access to Defendant’s computer systems between September 12, 2020 and September 22, 2020.

j. **“Effective Date”** means the date defined in Paragraph 80 of this Settlement Agreement.

k. **“Final”** with respect to a judgment or order means that all of the following have occurred: (i) the time expires for noticing any appeal; (ii) if there is an appeal or appeals, completion, in a manner that finally affirms and leaves in place the judgment or order without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration, rehearing en banc, or petitions for review and/or certiorari, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (iii) final dismissal of any appeal or the final dismissal of any proceeding on certiorari.

l. **“Final Approval Hearing”** means the hearing to determine whether the Settlement should be given final approval and whether the applications of Class Counsel for attorneys’ fees, costs and expenses should be approved.

m. **“Final Approval Order”** means the order of the Court finally approving this Settlement.

n. **“Final Judgment”** means the dismissal with prejudice in the Action, entered in connection with the Settlement and Final Approval Order.

o. **“Long-Form Notice”** means the written notice substantially in the form of Exhibit 1 to this Settlement Agreement.

p. **“Postcard Notice”** or **“Short-Form Notice”** means the written notice to be sent to Settlement Class Members pursuant to the Preliminary Approval Order substantially in the form of Exhibit 2 to this Settlement Agreement.

q. **“Notice and Claims Administration Costs”** means all costs incurred or charged by the Settlement Administrator in connection with providing notice to members of the Settlement Class and administering the Settlement. This does not include any separate costs incurred directly by Defendant or any of Defendant’s agents or representatives in this Action.

r. **“Notice Program”** means the notice program described in Section VI.

s. **“Defendant’s Counsel”** means Christopher H. Wood and Arthur Biller of Lewis Brisbois Bisgaard & Smith LLP, located at 1700 Lincoln Street, Suite 4000, Denver, Colorado 80203.

t. **“Objection Deadline”** shall have the meaning set forth in Paragraph 49 or as otherwise ordered by the Court.

u. **“Opt-Out Deadline”** means seventy-five (75) Days from the date the Postcard Notice is mailed or as otherwise ordered by the Court.

v. **“Opt-Out Members”** shall have the meaning set forth in Paragraph 42.

w. **“Parties”** means Plaintiffs collectively and Defendant, and a “Party” means any of the Plaintiffs or the Defendant.

x. **“Plaintiffs’ Released Claims”** means all claims and other matters released in and by Section XIV of this Settlement Agreement.

y. **“Preliminary Approval Date”** means the date the Preliminary Approval Order has been executed and entered by the Court.

z. **“Preliminary Approval Order”** means the order certifying the proposed Class for settlement purposes, preliminarily approving this Settlement Agreement, approving the Notice Program, and setting a date for the Settlement Hearing.

aa. **“Released Class Claims”** means all claims and other matters released in and by Section XIV of this Settlement Agreement.

bb. **“Released Persons”** means Defendant (AspenPointe, Inc., and Diversus Health Inc.) and their present and former parents, subsidiaries, divisions, departments, affiliates, predecessors, successors, assigns, insurers, and each of the foregoing’s former or present directors, trustees, officers, employees, representatives, agents, providers, consultants, advisors, attorneys, accountants, partners, insurers, reinsurers, and subrogees.

cc. **“Settlement”** means the settlement reflected by this Settlement Agreement.

dd. **“Settlement Administrator”** means the class action settlement administrator retained to carry out the notice plan and administer the claims and settlement fund distribution process. After reviewing bids, the Parties have agreed to use Angeion Group, LLC as Settlement Administrator in this matter.

ee. **“Settlement Agreement”** means this Settlement Agreement, including releases and all exhibits hereto.

ff. **“Settlement Class”** means all persons whose full name and other personally identifiable information and/or protected health information was accessed during the Data Breach that occurred between September 12, 2020 and September 22, 2020. Defendant’s officers and directors are excluded from the class, as well as (i) all Settlement Class Members who timely and

validly request exclusion from the Settlement Class; (ii) the Judge assigned to evaluate the fairness of this settlement; and (iii) any other Person found by a court of competent jurisdiction to be guilty under criminal law of perpetrating, aiding or abetting the criminal activity occurrence of the Data Breach or who pleads *nolo contendere* to any such charge.

gg. “**Settlement Class Member[s]**” means all persons who are members of the Settlement Class.

hh. “**Settlement Website**” means a dedicated website created and maintained by the Settlement Administrator, which will contain relevant documents and information about the Settlement, including this Settlement Agreement, the Postcard Notice, the Long-Form Notice, and the Claim Form, among other things.

III. CERTIFICATION OF THE SETTLEMENT CLASS

11. For settlement purposes only, Plaintiffs will request that the Court certify the Settlement Class.

12. Solely for the purpose of implementing this Settlement Agreement and effectuating the Settlement, Defendant agrees to stipulate to the certification of the Settlement Class and will not oppose Plaintiffs’ request for certification. If this Settlement Agreement is terminated or disapproved, or if the Effective Date should not occur for any reason, then Defendant’s stipulation will be withdrawn and deemed to be of no force or effect for any purpose in this or any other proceeding.

IV. BENEFITS TO SETTLEMENT CLASS MEMBERS

13. **Compensation to Settlement Class Members.** Subject to the terms of this Settlement Agreement, Defendant shall make available the following compensation to Settlement Class Members who have submitted a timely and valid claim form approved by the Settlement

Administrator. Claims will be subject to review for completeness and plausibility by the Settlement Administrator. For claims deemed invalid, the Settlement Administrator will provide claimants an opportunity to cure in the manner set forth below.

a. Compensation For Ordinary Losses. Defendant will provide up to \$500.00 to each Settlement Class Member upon submission of a valid and timely claim form and supporting documentation for ordinary losses incurred as a direct result of the Data Breach. Ordinary losses can arise from the following categories of expense, fees and lost time. To avoid any ambiguity, the total amount of losses that can be claimed for any and all categories of ordinary losses shall not exceed \$500.00.

i. *Out of pocket expenses incurred* as a direct result of the Data Breach, including documented bank fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, or gasoline for local travel, all of which must be fairly traceable to the Data Breach, must not have been previously reimbursed by a third-party, and that are reasonably described and supported by an attestation under penalty of perjury. Bank fees must be supported by an attestation under penalty of perjury. Bank fees must be supported by documentation substantiating the full extent of the amount claimed;

ii. *Fees for credit reports, credit monitoring, or other identity theft insurance product* purchased between November 19, 2020 and the date of the close of the Claims Period that the claimant attests under penalty of perjury he/she incurred as a direct result of the Data Breach and not already paid for or reimbursed by a third-party. All such fees must be supported by documentation substantiating the full extent of the amount claimed;

iii. *Up to 4 hours of lost time*, at \$15 an hour, if at least one full hour was spent dealing with the Data Breach. All such lost time must be reasonably described and supported by an attestation under penalty of perjury that the time spent was reasonably incurred dealing with the Data Breach. Claims for lost time are included in the \$500 cap on ordinary losses.

b. Compensation For Extraordinary Losses. Claims under this category must be supported by an attestation under penalty of perjury and documentation substantiating the full extent of the amount claimed. Defendant will provide up to \$4,500 in compensation to each Settlement Class Member who submits a valid and timely claim form and who proves monetary loss directly arising from identity theft or other fraud perpetrated on or against the Settlement Class Member if:

i. The loss is an actual, documented, and unreimbursed monetary loss;

ii. The loss was fairly traceable to the Data Breach;

iii. The loss occurred after September 22, 2020 and before the date of the close of the Claims Period;

iv. The loss is not already covered by the “Compensation for Ordinary Losses” category; and the Settlement Class Member made reasonable efforts to avoid, or seek reimbursement for, the loss, including but not limited to exhaustion of all available credit monitoring insurance and identity theft insurance.

c. Monitoring. Twenty-four months of identity theft monitoring will be provided for those Settlement Class Members who timely sign up for such monitoring using the Claim Form and whose membership in the Settlement Class is confirmed by the Settlement Administrator. The identity theft monitoring will have the following minimum features:

- i. Real time monitoring of the credit file at one or more of the three bureaus;
- ii. Dark web scanning with expedited notification of potential unauthorized use upon discovery;
- iii. Comprehensive public record monitoring;
- iv. Medical identity monitoring fraud resolution;
- v. Identity theft insurance (no deductible); and
- vi. Access to fraud resolution agents to help resolve identity thefts.

14. **Remedial Measures/Security Enhancements.** Defendant will provide documentation to Class Counsel sufficient to show enhancements Defendant has made to its data security systems since the Data Breach through the date of the Claims Period. Defendant will provide Plaintiffs with a good faith estimate of the value of the security enhancements implemented within twelve (12) months of the Data Breach, and the projected value of any security enhancements that will be implemented within two (2) years of the date of the last Party signature on the Settlement Agreement.

V. SETTLEMENT ADMINISTRATION

15. All notice and settlement administration costs will be paid by Defendant to the Settlement Administrator.

16. The Parties shall jointly agree upon the proposed Settlement Administrator and Defendant will pay for the Settlement Administrator's reasonably charged fees and expenses subject to the terms of an agreement to be entered into with the Settlement Administrator. The Parties agree to solicit competitive bids for settlement administration, including Notice and Claims Administration Costs, to rely upon Postcard Notice, and to utilize email and other appropriate

forms of notice where practicable, all in order to contain the administration costs while still providing effective notice to the Settlement Class Members.

17. Defendant, through the Settlement Administrator, will provide written notice by United States mail or, where applicable, electronic mail of the settlement terms to all Settlement Class Members. The Settlement Administrator shall perform skip-tracing for any returned mail and shall re-mail notice to any Settlement Class Members whose addresses are uncovered by skip-tracing. Defendant, through the Settlement Administrator, may provide written notice by electronic mail in lieu of United States mail. However, if the Settlement Administrator is unable to determine that an email to a Settlement Class Member containing the notice has been opened, then that Settlement Class Member shall also receive notice via United States mail. Settlement Class Members shall have seventy-five (75) Days from the date the notice is mailed or transmitted electronically to opt out of the Settlement Class or object to the Settlement.

18. The Settlement Administrator shall also provide notice via publication. The publication notice is designed to reach Settlement Class Members through both digital and printed notifications. The Settlement Administrator shall use targeted social media advertising on Facebook and Instagram as well as a printed advertisement in the Denver Post to reach an estimated 70.04% of Settlement Class Members.

19. The Settlement Administrator will cause the Notice Program to be effectuated in accordance with the terms of the Settlement and any orders of the Court. The Settlement Administrator may request the assistance of the Parties to facilitate providing notice and to accomplish such other purposes as may be approved by both Class Counsel and Defendant's Counsel. The Parties shall reasonably cooperate with such requests.

20. The Settlement Administrator will administer the claims process in accordance with the terms of the Settlement and any additional processes agreed to by both Class Counsel and Defendant's Counsel, subject to the Court's supervision and direction as circumstances may require.

21. To make a claim, a Settlement Class Member must complete and submit a valid, timely, and sworn Claim Form. A Claim Form shall be submitted online or by U.S. mail and must be postmarked no later than the Claim Deadline. A Claim Form that is not timely submitted, but which is received by the Settlement Administrator prior to the Final Approval Hearing, may still potentially be redeemed subject to Court approval at the Final Approval Hearing, for good cause shown demonstrated by the applicable Settlement Class Member.

22. The Settlement Administrator will review and evaluate each Claim Form, including any required documentation submitted, for validity, timeliness, and completeness.

23. If, in the determination of the Settlement Administrator, the Settlement Class Member submits a timely but incomplete or inadequately supported Claim Form, the Settlement Administrator shall give the Settlement Class Member notice of the deficiencies, and the Settlement Class Member shall have ten (10) Days from the date of the written notice to cure the deficiencies. The Settlement Administrator will provide notice of deficiencies concurrently to Defendant's Counsel and Class Counsel. If the defect is not cured within the 10-Day period, then the Claim will be deemed invalid and the benefit claimed will not be provided unless otherwise approved by the Court at the Final Approval Hearing, for good cause shown demonstrated by the applicable Settlement Class Member. All Settlement Class Members who submit a valid and timely Claim Form, including a Claim Form deemed defective but cured within the 10-Day period, shall be considered **"Claimants."**

24. Promptly after the latter of the Claims Deadline or the time for all Settlement Class Members who submitted a deficient Claim Form to cure has passed, the Settlement Administrator shall provide to Defendant the total amount of valid and timely claims to be paid pursuant to this Settlement Agreement so that Defendant can provide the Settlement Administrator with sufficient funds to make the required payments to all Claimants. The amount of these funds shall not exceed \$1,300,000 less Notice and Claims Administration Costs and less amounts expended on monitoring pursuant to Paragraph 13(c).

25. The Settlement Administrator will maintain records of all Claim Forms submitted until one hundred and eighty (180) Days after entry of the Final Judgment. Claim Forms and supporting documentation may be provided to the Court upon request and to Defendant, Class Counsel and Defendant's Counsel to the extent necessary to resolve claims determination issues pursuant to this Settlement Agreement and Settlement. Defendant or the Settlement Administrator will provide other reports or information that the Court may request or that the Court or Class Counsel may reasonably require. Class counsel or the Settlement Administrator will provide other reports or information as Defendant may reasonably require.

26. Subject to the terms and conditions of this Settlement Agreement, fourteen (14) Days after the Effective Date, the Settlement Administrator shall mail or otherwise provide a check ("**Claim Check**") to each Claimant in the amount for which each Claimant has submitted a Claim Form approved by the Settlement Administrator or by the Court, for good cause shown, subject to *pro rata* recalculation in the event the total amount of approved Claimant claims exceed \$1,300,000 less Notice and Claims Administration Costs and less amounts expended on monitoring pursuant to Paragraph 13(c).

27. Each Claim Check shall be mailed to the address provided by the Claimant on his or her Claim Form. All Claim Checks issued under this section shall be void if not negotiated within ninety (90) calendar days of their date of issue and shall contain a legend to that effect. Claim Checks issued pursuant to this section that are not negotiated within ninety (90) calendar days of their date of issue shall not be reissued. The Settlement Administrator shall return the balance resulting from such uncashed checks, if any, to Defendant.

VI. NOTICE TO SETTLEMENT CLASS MEMBERS

28. The Parties agree the following Notice Program provides reasonable notice to the Settlement Class.

29. Direct Notice shall be provided to Settlement Class Members via U.S. Mail, or by electronic mail for those Settlement Class Members for whom email addresses are known to Defendant. Notice shall also be provided via both digital and print publication.

30. Within seven (7) Days of the entry of the Preliminary Approval Order, Defendant shall provide the Settlement Administrator and Class Counsel with the names and last-known addresses, and e-mail addresses known to Defendant for the Settlement Class Members (the “**Class List**”), subject to the terms of the Stipulated Protective Order entered in this matter and otherwise consistent with applicable law. The Settlement Administrator shall, by using the National Change of Address database maintained by the United States Postal Service (“**Postal Service**”), obtain updates, if any, to the mailing addresses.

31. Within twenty-one (21) Days following entry of the Preliminary Approval Order (“**Notice Date**”), the Settlement Administrator shall mail the Postcard Notice and Claim Form to all Settlement Class Members by first class United States mail. It has been mutually agreed by the

Parties that the Settlement Administrator may rely upon Postcard Notice and utilize email notice where practicable.

32. If any Short-Form Notice is returned by the Postal Service as undeliverable, the Settlement Administrator shall re-mail the Postcard Notice to the forwarding address, if any, provided by the Postal Service on the face of the returned mail. Other than as set forth above, neither the Parties nor the Settlement Administrator shall have any other obligation to re-mail Notices.

33. The mailed notice will consist of the Postcard Notice substantially in the form of Exhibit 2 and the Claim Form in the form of Exhibit 3. The Settlement Administrator shall have discretion to format this Postcard Notice in a reasonable manner to minimize mailing and administrative costs. Before the mailing of the Postcard Notice is commenced, Class Counsel and Defendant's Counsel shall first be provided with a proof copy (including what the items will look like in their final form) and shall have the right to inspect the same for compliance with the Settlement Agreement and the Court's orders.

34. No later than thirty (30) days following entry of the Preliminary Approval Order, the Settlement Administrator shall effectuate the publication notice by running an ad in the Denver Post and commencing the digital notice via the targeted social media advertising described above.

35. No later than thirty (30) Days following entry of the Preliminary Approval Order, and prior to the mailing of the Postcard Notice and Claim Form to all Settlement Class Members, the Settlement Administrator will create a dedicated Settlement Website. The Settlement Administrator shall cause the CCAC, Postcard Notice, Long-Form Notice, Claim Form, this Settlement Agreement, and other relevant settlement and court documents to be available on the Settlement Website. Any other content proposed to be included or displayed on the Settlement

Website shall be approved in advance by counsel for the Parties, which approval shall not be unreasonably withheld, by Class Counsel and Defendant's Counsel. The website address and the fact that a more detailed Long-Form Notice and a Claim Form are available through the website shall be included in the Postcard Notice.

36. Claimants shall be able to submit their claims via the website.

37. The Settlement Website shall be maintained from the Notice Date until sixty (60) Days after the Claims Deadline has passed.

38. Claim Forms shall be returned or submitted to the Settlement Administrator online or via U.S. mail, postmarked by the Claims Deadline set by the Court, or be forever barred unless such claim is otherwise approved by the Court at the Final Approval Hearing, for good cause shown as demonstrated by the applicable Settlement Class Member.

39. Prior to the Final Approval Hearing, the Settlement Administrator shall provide to Class Counsel to file with the Court, an appropriate affidavit or declaration from the Settlement Administrator respecting compliance with the Court-approved Notice Program.

VII. OPT-OUT PROCEDURE

40. Each member of the Settlement Class shall have the right to request exclusion from the Settlement Class and not participate in the Settlement Agreement, as provided for in the Preliminary Approval Order.

41. The Short-Form and Long-Form Notices shall inform each Settlement Class Member of his or her right to request exclusion from the Settlement Class and not to be bound by this Settlement Agreement, if, before the Opt-Out Deadline, the Settlement Class Member personally completes and mails a request for exclusion ("**Opt-Out Request**") to the Settlement Administrator at the address set forth in the Short-Form and Long-Form Notices.

42. For a Settlement Class Member's Opt-Out Request to be valid, it must (a) state his or her full name, address, and telephone number; (b) contain the Settlement Class Member's personal and original signature (or the original signature of a person previously authorized by law, such as a trustee, guardian or person acting under a power of attorney to act on behalf of the Settlement Class Member with respect to a claim or right such as those in the Action); and (c) state unequivocally the Settlement Class Member's intent to be excluded from the Settlement Class and from the Settlement. The Settlement Administrator shall promptly inform Class Counsel and Defendant's Counsel of all valid and timely Opt-Out Requests, with all such Settlement Class Members being referred to herein as "**Opt-Out Member(s).**"

43. Opt-Out Members shall receive no benefit or compensation under this Settlement Agreement and shall have no right to object to the proposed Settlement Agreement or attend the Final Approval Hearing.

44. A request for exclusion that does not comply with all of the foregoing, that is not postmarked by the Opt-Out Deadline, or that is sent to an address other than that set forth in the Short-Form and Long-Form Notices shall be invalid, and that Settlement Class Member shall remain in and be treated as being in the Settlement Class and as being bound by this Settlement Agreement and the release contained herein.

45. Prior to the Final Approval Hearing, the Settlement Administrator shall create a comprehensive list of all Opt-Out Members for submission to the Court and to be provided to Class Counsel and Defendant's counsel.

46. Opt-Out Members shall not (a) be bound by any orders or judgments entered in the Action or relating to the Settlement; (b) be entitled to relief under, or be affected by, the Settlement

Agreement; (c) gain any rights by virtue of the Settlement Agreement; or (d) be entitled to object to any aspect of the Settlement.

VIII. OBJECTIONS TO THE SETTLEMENT

47. Any Settlement Class Member who wishes to object to the proposed Settlement must file with the Court and either mail or hand-deliver a written objection(s) to the Settlement (“**Objection(s)**”) to Class Counsel and Defendant’s Counsel, at the addresses set forth in the Long-Form Notice.

48. Each Objection must (i) set forth the Settlement Class Member’s full name, current address, and telephone number; (ii) contain the Settlement Class Member’s original signature; (iii) state that the Settlement Class Member objects to the Settlement, in whole or in part; (iv) set forth a statement of the legal and factual basis for the Objection; and (v) provide copies of any documents that the Settlement Class Member wishes to submit in support of his/her position.

49. The Parties will recommend that all Objections should be filed with the Court or mailed or hand-delivered to Class Counsel and Defendant’s Counsel no later than seventy-five (75) Days after the Postcard Notice is mailed or notice is otherwise provided to the Settlement Class Members (the “**Objection Deadline**”). The Objection Deadline shall be included in the Short-Form and Long-Form Notices.

50. Settlement Class Counsel and Defendant’s Counsel may, but need not, respond to the Objections, if any, by means of a memorandum of law served prior to the Final Approval Hearing.

51. An objecting Settlement Class Member has the right, but is not required, to attend the Final Approval Hearing. If an objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, he or she must also file a notice of

appearance with the Court (as well as serve the notice on Class Counsel and Defendant's Counsel) by the Objection Deadline.

a. If the objecting Settlement Class Member intends to appear at the Final Approval Hearing through counsel, he or she must also identify the attorney(s) representing the objecting Settlement Class Member who will appear at the Final Approval Hearing and include the attorney(s) name, address, phone number, e-mail address, state bar(s) to which counsel is admitted, as well as associated state bar numbers.

b. Any Settlement Class Member who fails to timely file and serve an Objection and notice, if applicable, of his or her intent to appear at the Final Approval Hearing in person or through counsel pursuant to this Settlement Agreement, as detailed in the Long-Form Notice, and otherwise as ordered by the Court, shall not be permitted to object to the approval of the Settlement at the Final Approval Hearing and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means. Any objecting Settlement Class Member who appeals a grant of the Final Approval Order or Final Judgment will be required to post an appeal bond.

52. Any Settlement Class Member who does not submit a timely Objection in complete accordance with this Settlement Agreement, the Long-Form Notice, and otherwise as ordered by the Court, shall not be treated as having filed a valid Objection to the Settlement and shall forever be barred from raising any objection to the Settlement.

IX. ATTORNEYS' FEES, COSTS AND EXPENSES, AND SERVICE AWARD

53. Class Counsel shall request the Court to approve a service award of \$2,500 for each of the named Plaintiffs Lennie Hall, Agnes Coursey, and Tammy Nichols, which award is intended to recognize Plaintiffs for their efforts in the litigation and commitment on behalf of the Settlement

Class (“**Service Award**”). If approved by the Court, this Service Award will be paid no later than Twenty-One (21) Days after the Effective Date by Defendant. The Court approved amount shall be paid separate and apart from the amounts received by members of the Settlement Class.

54. Class Counsel shall request the Court to approve an award of attorneys’ fees and expenses not to exceed \$412,500.00. Defendant agrees to pay Class Counsel’s attorneys’ fees and expenses awarded by the Court no later than Twenty-One (21) Days after the Effective Date. The Court approved amount shall be paid separate and apart from the benefits received by members of the Settlement Class.

55. Class Counsel may file applications with the Court for the requested Service Award and attorneys’ fees and a motion in support of the final approval within thirty (30) Days of the Objection Deadline.

56. The Parties agree that Defendant will not in any event or circumstance be required to pay any amounts to Plaintiffs individually or Class Counsel in excess of the amounts identified above in Paragraphs 51 and 52, except that Plaintiffs may make claims as permitted in Section IV. The maximum payment obligation for Defendant under this Settlement for claims made under Section IV, and for the Settlement Administrator’s Notice and Claims Administration Costs under Section V, will be \$1,300,000.

57. The Parties agree that the Court’s approval or denial of any request for the Service Award and/or attorneys’ fees are not conditions to this Settlement Agreement and are to be considered by the Court separately from final approval, reasonableness, and adequacy of the Settlement. Any reduction to the Service Award and/or award of attorneys’ fees shall not operate to terminate or cancel this Settlement Agreement.

X. NOTICES

58. All notices to the Parties required by the Settlement Agreement shall be made in writing and communicated by mail to the following addresses:

All notices to Class Counsel or Plaintiffs shall be sent to:

Todd S. Garber
Finkelstein, Blankinship, Frei-Pearson & Garber, LLP
One North Broadway, Suite 900
White Plains, NY 10601
Tel: (914) 298-3283

Rick D. Bailey
Law Office of Rick D. Bailey, Esq.
1085 Lafayette St, Suite 702
Denver, Colorado 80218
Tel: (720) 676-6023

Gary E. Mason
Mason LLP
5101 Wisconsin Ave., NW, Suite 305
Washington, DC 20016
Tel: (202) 640.1160

William H. Anderson
Handley Farah & Anderson PLLC
4730 Table Mesa Drive, Suite G-200
Boulder, Colorado 80305
Tel: (303) 800-9109

Seth A. Meyer
Alex J. Dravillas
Keller Postman LLC
150 N. Riverside Plaza, Suite 4100
Chicago, Illinois 60606
Tel: (312) 741-5220

All notices to Defendant's Counsel or AspenPointe, Inc.

(N.K.A. Diversus Health Inc.) shall be sent to:

Christopher H. Wood
Arthur Biller
Lewis Brisbois Bisgaard & Smith LLP
1700 Lincoln Street, Suite 4000
Denver, Colorado 80203
Tel.: (303)861-7760

59. Other than attorney-client communications or communications otherwise protected from disclosure pursuant to law or rule, the Parties shall promptly provide to each other copies of comments, Objections, Opt-Out Requests, or other documents or filings received from a Settlement Class Member as a result of the Notice Program.

XI. SETTLEMENT APPROVAL PROCESS

60. After execution of this Settlement Agreement, the Parties shall promptly move the Court to enter the Preliminary Approval Order, which:

- a. Preliminarily approves this Settlement Agreement;
- b. Certifies the Settlement Class;
- c. Finds the proposed Settlement is sufficiently fair, reasonable, adequate, and in the best interests of the Settlement Class;
- d. Finds the Notice Program constitutes valid, due and sufficient notice to the Settlement Class Members, and constitutes the best notice practicable under the circumstances, complying fully with the requirements of the laws of Colorado, the Constitution of the United

States, and any other applicable law and that no further notice to the Class is required beyond that provided through the Notice Program;

e. Appoints the Settlement Administrator in accordance with the provisions of Section V;

f. Directs the Settlement Administrator to provide notice to Settlement Class Members in accordance with the Notice Program provided for in this Settlement Agreement;

g. Approves the Claim Form and directs the Settlement Administrator to administer the Settlement in accordance with the provisions of this Settlement Agreement;

h. Approves the Opt-Out and Objection procedures as outlined in this Settlement Agreement;

i. Schedules a Final Approval Hearing to consider the final approval, reasonableness, and adequacy of the proposed Settlement and whether it should be finally approved by the Court; and,

j. Contains any additional provisions agreeable to the Parties that might be necessary or advisable to implement the terms of this Settlement Agreement and the Settlement.

XII. FINAL APPROVAL HEARING

59. The Parties will recommend that the Final Approval Hearing shall be scheduled no earlier than one hundred and fifty (150) Days after the entry of the Preliminary Approval Order.

60. The Parties may file with the Court their briefs regarding final approval, attorneys' fees, and Service Award, including responses to any Objections, no later than thirty (30) Days after the Objection Deadline.

61. Any Settlement Class Member who wishes to appear at the Final Approval Hearing, whether pro se or through counsel, must, by the Objection Deadline, either mail or hand-deliver to

the Court or file a notice of appearance in the Action, take all other actions or make any additional submissions as may be required in the Long-Form Notice or as otherwise ordered by the Court, and mail that notice and any other such pleadings to Class Counsel and Defendant's Counsel as provided in the Long-Form Notice.

62. The Parties shall ask the Court to enter a Final Approval Order and Judgment which includes the following provisions:

a. A finding that the Notice Program fully and accurately informs all Settlement Class Members entitled to notice of the material elements of the Settlement, constitutes the best notice practicable under the circumstances, constitutes valid, due, and sufficient notice, and complies fully with the laws of Colorado, the United States Constitution, and any other applicable law;

b. A finding that after proper notice to the Class, and after sufficient opportunity to object, no timely objections to this Settlement Agreement have been made, or a finding that all timely objections have been considered and denied;

c. Approval of the Settlement, as set forth in the Settlement Agreement, as fair, reasonable, adequate, and in the best interests of the Class, in all respects, finding that the settlement is in good faith, and ordering the Parties to perform the Settlement in accordance with the terms of this Settlement Agreement;

d. A finding that neither the Final Judgment, the Settlement, nor the Settlement Agreement shall constitute an admission of liability by the Parties, or any liability or wrongdoing whatsoever by any Party;

e. Subject to the reservation of jurisdiction for matters discussed in subparagraph (g) below, a dismissal with prejudice of the Action;

f. A finding that Plaintiffs shall as of the entry of the Final Judgment, conclusively be deemed to have fully, finally, and forever completely released, relinquished, and discharged the Released Persons from the Plaintiffs' Released Claims.

g. A finding that all Settlement Class Members not opting out or who have not properly opted out of the Settlement Class shall, as of the entry of the Final Judgment, conclusively be deemed to have fully, finally, and forever completely released, relinquished, and discharged the Released Persons from the Released Class Claims; and

h. A reservation of exclusive and continuing jurisdiction over the Action and the Parties for the purposes of, among other things, (i) supervising the implementation, enforcement, construction, and interpretation of the Settlement Agreement, the Preliminary Order, and the Final Judgment; and (ii) supervising the administration and distribution of the relief to the Settlement Class and resolving any disputes that may arise with regard to the foregoing.

63. If and when the Settlement becomes Final, the Action shall be dismissed with prejudice, with the Parties to bear their own costs and attorneys' fees, costs, and expenses not otherwise awarded in accordance with this Settlement Agreement.

XIII. TERMINATION OF THIS SETTLEMENT AGREEMENT

64. Each Party shall have the right to terminate this Settlement Agreement if:

a. The Court denies preliminary approval of this Settlement Agreement (or grants preliminary approval through an order that materially differs in substance to Exhibit 4 hereto);

b. The Court denies final approval of this Settlement Agreement (or grants final approval through an order that materially differs in substance from Exhibit 5 hereto);

c. The Final Approval Order and Final Judgment do not become final by reason of a higher court reversing final approval by the Court, and the Court thereafter declines to enter a further order or orders approving the Settlement on the terms set forth herein; or

d. The Effective Date cannot occur.

65. Class Counsel agrees to work in good faith to effectuate this Settlement Agreement and will not solicit or encourage, in any manner, Settlement Class Members to submit Opt-Out Requests.

66. If a Party elects to terminate this Settlement Agreement under this Section XIII, that Party must provide written notice to the other Party's counsel, by hand delivery, mail, or e-mail within ten (10) Days of the occurrence of the condition permitting termination.

67. Nothing shall prevent Plaintiffs and/or Defendant from appealing or seeking other appropriate relief from an appellate court with respect to any denial by the Court of final approval of the Settlement.

68. If this Settlement Agreement is terminated or disapproved, or if the Effective Date should not occur for any reason, then: (i) this Settlement Agreement, the Preliminary Approval Order, and the Final Approval Order (if applicable) and all of their provisions shall be rendered null and void; (ii) the Action and all Parties shall be deemed to have reverted to their respective status in the Action as of the date and time immediately preceding the execution of this Settlement Agreement; (iii) except as otherwise expressly provided, the Parties shall stand in the same position and shall proceed in all respects as if this Settlement Agreement and any related orders had never been executed, entered into, or filed; (iv) no term or draft of this Settlement Agreement nor any part of the Parties' settlement discussions, negotiations, or documentation (including any declaration or brief filed in support of the motion for preliminary approval or motion for final

approval), nor any rulings regarding class certification for settlement purposes (including the Preliminary Approval Order and, if applicable, the Final Approval Order and Final Judgment), will have any effect or be admissible into evidence for any purpose in the Action or any other proceeding.

69. If the Court does not approve the Settlement or the Effective Date cannot occur for any reason, Defendant shall retain all its rights and defenses in this Action. For example, Defendant shall have the right to object to the maintenance of the Action as a class action, to move for summary judgment, and to assert defenses at trial, and nothing in this Settlement Agreement or other papers or proceedings related to the Settlement shall be used as evidence or argument by any Party concerning whether the Action may properly be maintained as a class action, or for any other purpose.

XIV. RELEASE

70. The Final Approval Order and Final Judgment shall provide that the Action is dismissed with prejudice as to the Plaintiffs and all Settlement Class Members who are not Opt-Out Members.

71. On the Effective Date, Plaintiffs and each and every Settlement Class Member who is not an Opt-Out Member (i.e., has not been excluded from the Settlement Class by the Court), shall be bound by this Settlement Agreement and shall have recourse only to the benefits, rights, and remedies provided hereunder. No other action, demand, suit, arbitration, or other claim or proceeding, regardless of forum, may be pursued against Released Persons with respect to the Plaintiffs' Released Claims or the Released Class Claims.

72. On the Effective Date and in consideration of the promises and covenants set forth in this Settlement Agreement, Plaintiffs will be deemed to have fully, finally, and forever

completely released, relinquished, and discharged the Released Persons from any and all past, present and future claims, counterclaims, lawsuits, set-offs, costs, expenses, attorneys' fees and costs, losses, rights, demands, charges, complaints, actions, suits, causes of action, obligations, debts, contracts, penalties, damages, or liabilities of any nature whatsoever, known, unknown, or capable of being known, in law or equity, fixed or contingent, accrued or unaccrued and matured or not matured that arise out of, are connected to, or relate in any way to the Data Breach that were or could have been asserted in the Action (the "**Plaintiffs' Release**"). The Plaintiffs' Release shall be included as part of the Final Approval Order so that all claims released thereby shall be barred by principles of res judicata, collateral estoppel, and claim and issue preclusion (the "**Plaintiffs' Released Claims**"). The Plaintiffs' Released Claims shall constitute and may be pled as a complete defense to any proceeding arising from, relating to, or filed in connection with the Plaintiffs' Released Claims.

73. On the Effective Date and in consideration of the promises and covenants set forth in this Settlement Agreement, each Settlement Class Member who is not an Opt-Out Member will be deemed to have fully, finally, and forever completely released, relinquished, and discharged the Released Persons from any and all past, present and future claims, counterclaims, lawsuits, set-offs, costs, expenses, attorneys' fees and costs, losses, rights, demands, charges, complaints, actions, suits, causes of action, obligations, debts, contracts, penalties, damages, or liabilities of any nature whatsoever, known, unknown, or capable of being known, in law or equity, fixed or contingent, accrued or unaccrued and matured or not matured that arise out of, are connected to, or relate in any way to the Data Breach that were or could have been asserted in the Action (the "**Settlement Class Release**"). The Settlement Class Release shall be included as part of the Final Approval Order so that all claims released thereby shall be barred by principles of res judicata,

collateral estoppel, and claim and issue preclusion (the “**Released Class Claims**”). The Released Class Claims shall constitute and may be pled as a complete defense to any proceeding arising from, relating to, or filed in connection with the Released Class Claims.

74. Subject to Court approval, as of the Effective Date, Plaintiffs and all Settlement Class Members who are not Opt-Out Members shall be bound by this Settlement Agreement and the Settlement Class Release and all of Plaintiffs’ Released Claims and the Released Class Claims shall be dismissed with prejudice and released, irrespective of whether the Settlement Class Members received actual notice of the Action or this Settlement.

75. The Plaintiffs’ Released Claims and the Released Class Claims include the release of Unknown Claims. “**Unknown Claims**” means claims that could have been raised in the Action and that any of the Plaintiffs or Settlement Class Members (other than Opt-Out Members), and each of their respective heirs, executors, administrators, representatives, agents, partners, trustees, successors, attorneys, and assigns do not know to exist or suspects to exist, which, if known by him, her or it, might affect his, her or its agreement to release Defendant and all other Released Persons, or might affect his, her or its decision to agree to, or object or not to object to the Settlement. Upon the Effective Date, the Plaintiffs and Settlement Class Members (other than Opt-Out Members), and each of their respective heirs, executors, administrators, representatives, agents, partners, trustees successors, attorneys, and assigns shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, which provides as follows:

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

76. On the Effective Date, each of the Plaintiffs and Settlement Class Members (other than Opt-Out Members), and each of their respective heirs, executors, administrators, representatives, agents, partners, trustees, successors, attorneys, and assigns shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state, the District of Columbia or territory of the United States, by federal law, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to Section 1542 of the California Civil Code. The Plaintiffs and Settlement Class Members (other than Opt-Out Members), and each of their respective heirs, executors, administrators, representatives, agents, partners, trustees, successors, attorneys, and assigns acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Plaintiffs' Released Claims and the Released Class Claims, but that it is their intention to finally and forever settle and release those claims, including but not limited to any of the above-referenced unknown claims they may have.

77. On entry of the Final Approval Order and Final Judgment, the Plaintiffs and Settlement Class Members (other than Opt-Out Members) shall be enjoined from prosecuting, respectively, the Plaintiffs' Released Claims and the Released Class Claims, in any proceeding in any forum against any of the Released Persons or based on any actions taken by any Released Persons authorized or required by this Settlement Agreement or the Court or an appellate court as part of this Settlement.

78. Without in any way limiting the scope of the Plaintiffs' Release or the Settlement Class Release (the "**Releases**"), the Releases cover, without limitation, any and all claims for attorneys' fees, costs or disbursements incurred by Class Counsel or any other counsel representing Plaintiffs or Settlement Class Members, or any of them, in connection with or related in any manner to the Action, the Settlement, the administration of such Settlement and/or the Plaintiffs' Released Claims or the Released Class Claims as well as any and all claims for the Service Award to Plaintiffs.

79. Nothing in the Releases shall preclude any action to enforce the terms of this Settlement Agreement, including participation in any of the processes detailed herein.

XV. EFFECTIVE DATE

80. The "**Effective Date**" of this Settlement Agreement shall be the first Day after the date when all of the following conditions have occurred:

- a. This Settlement Agreement has been fully executed by all Parties and their counsel;
- b. Orders have been entered by the Court certifying the Settlement Class, granting preliminary approval of this Settlement Agreement and approving the Notice Program and Claim Form, all as provided above;
- c. The Court-approved Postcard Notice has been mailed and other notice required by the Notice Program has been effectuated and the Settlement Website has been duly created and maintained as ordered by the Court;
- d. The Court has entered a Final Approval Order finally approving this Settlement Agreement, as provided above; and
- e. The Final Approval Order and Final Judgment have become Final.

81. The recitals and exhibits to this Settlement Agreement are integral parts of the Settlement and are expressly incorporated and made a part of this Settlement Agreement.

82. This Settlement Agreement is for settlement purposes only. Neither the fact of nor any provision contained in this Settlement Agreement nor any action taken hereunder shall constitute or be construed as an admission of the validity of any claim or any fact alleged in the CCAC or Action or of any wrongdoing, fault, violation of law or liability of any kind on the part of Defendant or any admission by Defendant of any claim in this Action or allegation made in any other proceeding, including regulatory matters, directly or indirectly involving the Data Breach or allegations asserted in the CCAC and Action. This Settlement Agreement shall not be offered or be admissible in evidence against the Parties or cited or referred to in any action or proceeding between the Parties, except in an action or proceeding brought to enforce its terms. Nothing contained herein is or shall be construed or admissible as an admission by Defendant that Plaintiffs' claims or any similar claims are suitable for class treatment.

83. In the event that there are any developments in the effectuation and administration of this Settlement Agreement that are not dealt with by the terms of this Settlement Agreement, then such matters shall be dealt with as agreed upon by the Parties, and failing agreement, as shall be ordered by the Court. The Parties shall execute all documents and use their best efforts to perform all acts necessary and proper to promptly effectuate the terms of this Settlement Agreement and to take all necessary or appropriate actions to obtain judicial approval of this Settlement Agreement to give this Settlement Agreement full force and effect.

84. No person shall have any claim against Plaintiffs, Class Counsel, Defendant, Defendant's Counsel, the Settlement Administrator or the Released Persons or any of the foregoing's agents or representatives based on the administration of the Settlement substantially

in accordance with the terms of the Settlement Agreement or any order of the Court or appellate court.

85. This Settlement Agreement constitutes the entire Settlement Agreement between and among the Parties with respect to the Settlement of the Action. This Settlement Agreement supersedes all prior negotiations and Settlement Agreements and may not be modified or amended except by a writing signed by the Parties and their respective counsel. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation or understanding concerning any part of the subject matter of this Settlement Agreement has been made or relied on except as expressly set forth in this Settlement Agreement.

86. There shall be no waiver of any term or condition in this Settlement Agreement absent an express writing to that effect by the non-waiving Party. No waiver of any term or condition in this Settlement Agreement shall be construed as a waiver of a subsequent breach or failure of the same term or condition, or waiver of any other term or condition of this Settlement Agreement.

87. In the event a third-party, such as a bankruptcy trustee, former spouse, or other third-party has or claims to have a claim against any payment made to a Settlement Class Member, it is the responsibility of the Settlement Class Member to transmit the funds to such third-party. Unless otherwise ordered by the Court, the Parties will have no, and do not agree to any responsibility for such transmittal.

88. This Settlement Agreement shall not be construed more strictly against one Party than another merely because it may have been prepared by counsel for one of the Parties, it being recognized that because of the arm's-length negotiations resulting in this Settlement Agreement, all Parties hereto have contributed substantially and materially to the preparation of the Settlement

Agreement. All terms, conditions and exhibits are material and necessary to this Settlement Agreement and have been relied upon by the Parties in entering into this Settlement Agreement.

89. This Settlement Agreement shall be construed under and governed by the laws of the State of Colorado without regard to its choice of law provisions.

90. If any press release is to be issued by the Parties, including their respective counsel, concerning the Settlement, it will be a joint press release for which the Parties will agree upon the language therein prior to release.

91. In the event that one or more of the provisions contained in this Settlement Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the other provisions of the Settlement Agreement, which shall remain in full force and effect as though the invalid, illegal or unenforceable provision(s) had never been a part of this Settlement Agreement as long as the benefits of this Settlement Agreement to Defendant or the Settlement Class Members are not materially altered, positively or negatively, as a result of the invalid, illegal or unenforceable provision(s).

92. This Settlement Agreement will be binding upon and inure to the benefit of the successors and assigns of the Parties, Released Persons, and Settlement Class Members. The Parties waive the right to appeal or collaterally attack the Final Judgment entered under this Settlement Agreement.

93. The headings used in this Settlement Agreement are for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement. In construing this Settlement Agreement, the use of the singular includes the plural (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).

94. The Parties stipulate to stay all proceedings in the Action until the approval of this Settlement Agreement has been finally determined, except the stay of proceedings shall not prevent the filing of any motions, affidavits, and other matters necessary to obtain and preserve judicial approval of this Settlement Agreement.

95. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original as against any Party who has signed it and all of which shall be deemed a single Settlement Agreement.


96. Each Party to this Settlement Agreement and the signatories thereto warrant that he, she, or it is acting upon his, her or its independent judgment and the advice of his, her or its counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other Party, other than the warranties and representations expressly made in this Settlement Agreement.

97. Each signatory below warrants that he or she has authority to execute this Settlement Agreement and bind the Party on whose behalf he or she is executing the Settlement Agreement.

IN WITNESS WHEREOF, the Parties have hereby accepted and agreed to the Settlement Agreement.

<p>Dated: May __, 2022</p> <p><u><i>Lloyd K. Light</i></u></p> <p>/s/ <u>Lloyd K Light (Jun 23, 2022 12:56 MDT)</u></p> <p>Defendant AspenPointe, Inc.</p>	<p>Dated: June 7, 2022</p> <p><u><i>[Signature]</i></u></p> <p>/s/ <u>Lennie Lee Hall Jr. (Jun 7, 2022 14:03 MDT)</u></p> <p>Plaintiff Lennie Hall</p> <p>Dated: May __, 2022</p> <p>Plaintiff Agnes Coursey</p> <p>/s/ _____</p> <p>Dated: May __, 2022</p> <p>/s/ _____</p> <p>Plaintiff Tammy Nichols</p>
--	--

<p>Dated: May __, 2022</p> <p>/s/ _____</p> <p>Defendant AspenPointe, Inc.</p>	<p>Dated: May __, 2022</p> <p>/s/ _____</p> <p>Plaintiff Lennie Hall</p> <p>Dated: May __, 2022</p> <p>Plaintiff Agnes Coursey</p> <p>/s/ <u>Agnes Coursey</u></p> <p>5/18/2022</p> <p>Dated: May __, 2022</p> <p>/s/ _____</p> <p>Plaintiff Tammy Nichols</p>
--	--

<p>Dated: May __, 2022</p> <p>/s/ _____</p> <p>Defendant AspenPointe, Inc.</p>	<p>Dated: May __, 2022</p> <p>/s/ _____</p> <p>Plaintiff Lennie Hall</p> <p>Dated: May __, 2022</p> <p>Plaintiff Agnes Coursey</p> <p>/s/ _____</p> <p>Dated: May <u>16</u>, 2022</p> <p>/s/  _____ <small>Tammy I. Nichols (May 16, 2022 20:18 CDT)</small></p> <p>Plaintiff Tammy Nichols</p>
--	--

Approved as to form:

Dated: May __, 2022

/s/

Christopher H. Wood
Arthur Biller
LEWIS BRISBOIS BISGAARD
& SMITH LLP
1700 Lincoln Street, Suite 4000
Denver, Colorado 80203
Tel: (303) 861-7760
Fax: (303) 861-7767

Attorneys for Defendant

Approved as to form:

Dated: May __, 2022

/s/

Todd S. Garber
FINKELSTEIN, BLANKINSHIP,
FREI-PEARSON & GARBER, LLP
One North Broadway, Suite 900
White Plains, New York 10601
Tel: (914) 298-3283
Fax: (914) 298-4383

/s/

Rick D. Bailey, Esq.
LAW OFFICE OF RICK D.
BAILEY, ESQ.
1085 Lafayette St., Ste 702
Denver, Colorado 80218
Tel: (720) 676-6023

/s/

Gary E. Mason
MASON LLP
5101 Wisconsin Ave., NW, Ste. 305
Washington, DC 20016
Tel: (202) 640-1160
Fax: (202) 429-2294

/s/

William H. Anderson
HANDLEY FARAH & ANDERSON
PLLC
4730 Table Mesa Drive, Suite G-200
Boulder, Colorado 80305
Tel: (303) 800-9109

/s/

Seth A. Meyer
Alex J. Dravillas
KELLER POSTMAN LLC
150 N. Riverside Plaza, Suite 4100
Chicago, Illinois 60606
Tel: (312) 741-5220

*Attorneys for Plaintiffs and the Settlement
Class*

Approved as to form:

Dated: May __, 2022

/s/ _____

Christopher H. Wood
Arthur Biller
LEWIS BRISBOIS BISGAARD
& SMITH LLP
1700 Lincoln Street, Suite 4000
Denver, Colorado 80203
Tel: (303) 861-7760
Fax: (303) 861-7767

Attorneys for Defendant

Approved as to form:

Dated: June 2022

/s/  _____

Todd S. Garber
FINKELSTEIN, BLANKINSHIP,
FREI-PEARSON & GARBER, LLP
One North Broadway, Suite 900
White Plains, New York 10601
Tel: (914) 298-3283
Fax: (914) 298-4383

/s/  _____

Rick D. Bailey, Esq.
LAW OFFICE OF RICK D.
BAILEY, ESQ.
1085 Lafayette St., Ste 702
Denver, Colorado 80218
Tel: (720) 676-6023

/s/  _____
Gary Mason (Jul 1, 2022 08:03 EDT)

Gary E. Mason
MASON LLP
5101 Wisconsin Ave., NW, Ste. 305
Washington, DC 20016
Tel: (202) 640-1160
Fax: (202) 429-2294

/s/  _____
William Anderson (Jul 1, 2022 06:13 MDT)

William H. Anderson
HANDLEY FARAH & ANDERSON
PLLC
4730 Table Mesa Drive, Suite G-200
Boulder, Colorado 80305
Tel: (303) 800-9109

/s/  _____
Seth Meyer (Jul 1, 2022 07:16 CDT)

Seth A. Meyer
Alex J. Dravillas
KELLER POSTMAN LLC
150 N. Riverside Plaza, Suite 4100
Chicago, Illinois 60606
Tel: (312) 741-5220

*Attorneys for Plaintiffs and the Settlement
Class*

EXHIBIT A-1

If you were notified by AspenPointe regarding a September 2020 Data Breach, you may be eligible for a payment and credit monitoring services from a class action settlement.

Para una notificación en Español, visitar www.XXXXXXXXXXXXXX.com.

A state court authorized this Notice. This is not junk mail, an advertisement, or a solicitation from a lawyer.

- A settlement has been reached in a class action lawsuit against AspenPointe, Inc. (N.K.A. Diversus Health Inc.) (“AspenPointe” or “Defendant”) relating to a cyberattack against Defendant’s computer systems that occurred between September 12, 2020 and September 22, 2020 (the “Data Breach”). The computer systems affected by the Data Breach contained personal identifying information and protected health information of certain individuals. The Plaintiffs claim that Defendant was responsible for the Data Breach and currently assert claims such as negligence, breach of implied contract, and breach of fiduciary duty. Defendant denies all of the claims.
- If your full name and other personally identifiable information and/or protected health information was accessed during the Data Breach, you are included in this Settlement as a “Settlement Class Member.”
- The Settlement provides payments to Settlement Class Members who submit valid and timely claims for expenses, monetary loss and lost time arising from the Data Breach, and for credit monitoring and identity protection services. It also provides for equitable relief in the form of data security enhancements.
- Your legal rights are affected regardless of whether you do or do not act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM BY [DATE]	This is the only way you can get payment or a code for credit monitoring services. However, in submitting a claim you will release your claims against Defendant.
EXCLUDE YOURSELF FROM THE SETTLEMENT BY [DATE]	You will not get any payment or credit monitoring from the Settlement, but you also will not release your claims against Defendant. This is the only option that allows you to be part of any other lawsuit against Defendant or related parties for the legal claims resolved by this Settlement.
OBJECT TO THE SETTLEMENT BY [DATE]	Write to the Court with reasons why you do not agree with the Settlement.

GO TO THE FINAL FAIRNESS HEARING ON [DATE]	You may ask the Court for permission for you or your attorney to speak about your objection at the Final Fairness Hearing.
DO NOTHING	You will not get any compensation or credit monitoring from this Settlement and you will give up certain legal rights. Submitting a claim form is the only way to obtain payment or credit monitoring from this Settlement.

- These rights and options—and the deadlines to exercise them—are explained in this Notice. For complete details, view the Settlement Agreement, available at www.XXXXXXXXXXXXXX.com, or call 1- - - .
- The Court in charge of this case still has to decide whether to grant final approval of the Settlement. Payments and other identified benefits will only be made after the Court grants final approval of the Settlement and after any appeals are resolved.

WHAT THIS NOTICE CONTAINS

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2. What is this lawsuit about?
3. What is a class action?
4. Why is there a Settlement?

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5. How do I know if I am part of the Settlement?
6. Are there exceptions to being included in the Settlement?

THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY PAGE 4

7. What does the Settlement provide?
8. What payments are available for Expense Reimbursement?
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10. How do I get benefits from the Settlement?
11. How will claims be decided?
12. When will I get my payment?

REMAINING IN THE SETTLEMENTPAGE 5

13. Do I need to do anything to remain in the Settlement?
14. What am I giving up as part of the Settlement?

EXCLUDING YOURSELF FROM THE SETTLEMENT..... PAGE 6

15. If I exclude myself, can I still get payment from the Settlement?
16. If I do not exclude myself, can I sue AspenPointe for the same thing later?
17. How do I get out of the Settlement?

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18. Do I have a lawyer in this case?
19. How will Class Counsel be paid?

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BASIC INFORMATION

1. Why is this Notice being provided?

The Court directed that this Notice be provided because you have a right to know about a proposed settlement that has been reached in this class action lawsuit and about all of your options before the Court decides whether to grant final approval of the Settlement. If the Court approves the Settlement, and after objections or appeals, if any, are resolved, the Settlement Administrator appointed by the Court will distribute the payments and other benefits the Settlement allows. This Notice explains the lawsuit, the Settlement, your legal rights, what payments and other benefits are available, who is eligible for them, and how to get them.

The Court in charge of this case is the 4th District Court, County of El Paso, State of Colorado. The case is known as *Hall et al. v. AspenPointe, Inc.*, Consolidated Case No. 2020CV32175 (the “Lawsuit”). The people who filed the Lawsuit are called the Plaintiffs and the entity they sued, AspenPointe, Inc., is called the Defendant.

2. What is this lawsuit about?

The Lawsuit claims Defendant was responsible for the Data Breach and currently asserts claims such as: negligence, breach of implied contract, and breach of fiduciary duty. The Lawsuit seeks, among other things, payment for persons who were injured by the Data Breach.

Defendant has denied and continues to deny all of the claims made in the Lawsuit, as well as all charges of wrongdoing or liability against it.

3. What is a class action?

In a class action, one or more people called Class Representatives (in this case, Lennie Hall, Agnes Coursey, and Tammy Nichols) sue on behalf of people who have similar claims. Together, all these people are called a Class or Class members. One Court and one judge resolves the issues for all Class members, except for those who exclude themselves from the Settlement Class.

4. Why is there a Settlement?

The Court did not decide in favor of the Plaintiffs or Defendant. Instead, the parties negotiated a settlement that allows them to avoid the risks and costs of lengthy litigation and the uncertainty of a trial and appeals. It also allows Settlement Class members to obtain payments as specified and credit monitoring services without further delay. The Class Representatives and their attorneys think the Settlement is best for all Settlement Class members. This Settlement does not mean that Defendant did anything wrong.

WHO IS INCLUDED IN THE SETTLEMENT?

5. How do I know if I am part of the Settlement?

You are part of this Settlement as a Settlement Class member if your full name and other personally identifiable information and/or protected health information was accessed during the Data Breach.

6. Are there exceptions to being included in the Settlement?

Yes. Specifically excluded from the Settlement Class are: (i) Defendant and its officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the Judge assigned to evaluate the fairness of this settlement; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Breach or who pleads *nolo contendere* to any such charge.

THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

7. What does the Settlement provide?

Each Settlement Class Member can claim up to \$500, in total for: (1) Ordinary Expense Reimbursements and (2) Lost Time (Question 8, below). Settlement Class Members can also claim up to an additional \$4,500 in Extraordinary Expense Reimbursements (Question 8, below). You may submit a claim for either or both types of payments. To claim each type of payment, you must provide specified documentation with the Claim Form.

Settlement Class Members can also make a claim for up to 24-months of credit monitoring and identity protection services (Question 9, below).

Ordinary Expense Reimbursements, Lost Time, Extraordinary Expense Reimbursements, Credit Monitoring and the cost of Notice and Claims Administration combined are capped at \$1,300,000. Should the valid claims and costs of administration total over \$1,300,000, the awards to class members will be reduced on a pro rata basis.

The Settlement also addresses remedial measures and security enhancements undertaken by Defendant and Defendant's security obligations over a 24-month period.

8. What payments are available for Expense Reimbursement?

Class Members are eligible to receive reimbursement of up to \$500 (in total) for the following attested to out-of-pocket expenses, as supported by documentation substantiating the full extent of the amount claimed and having resulted from the Data Breach including but not limited to:

- bank fees,
- long distance phone charges,
- cell phone charges (only if charged by the minute),
- data charges (only if charged based on the amount of data used),
- postage
- gasoline for local travel
- reimbursement of fees for credit reports, credit monitoring, or other identity theft insurance products purchased between November 19, 2020 and the date of the close of the claims period.

Included within the \$500, Settlement Class Members may make a claim for up to four (4) hours of time spent dealing with the Data Breach, to be paid at \$15 per hour. To receive payment, the time spent must be reasonably described and supported by an attestation. Such time can include:

- time spent dealing with replacement card issues, reversing fraudulent charges, rescheduling medical appointments and/or finding alternative medical care and treatment, retaking or submitting to medical tests, locating medical records, retracing medical history, and any other demonstrable form of disruption to medical care and treatment, but only if at least one full hour was spent.

Settlement Class Members may also make a claim for up to \$4,500 in Extraordinary Expense Reimbursement for actual documented losses fairly traceable to the Data Breach and meeting other requirements set forth in Settlement Agreement, which is available at **INSERT**.

9. What credit monitoring and identity theft protections are available?

Class Members who submit a valid claim are eligible to enroll in a total of 24-months of credit monitoring services through **INSERT SERVICE**. **NAME SERVICE** services include: **INSERT DESCRIPTION**.

More details are provided in the Settlement Agreement, which is available at **www.XXXXXXXXXXXXXX.com**.

HOW TO GET BENEFITS—SUBMITTING A CLAIM FORM

10. How do I get benefits from the Settlement?

To ask for a payment, you must complete and Submit a Claim Form. Claim Forms are available at **www.XXXXXXXXXXXXXX.com**, or you may request one by mail by calling **1-XXX-XXX-XXXX**. Read the instructions carefully, fill out the Claim Form, and mail it postmarked no later than **Month Day, 2022** to:

AspenPointe Data Breach Claims Administrator
PO Box XXXXX
City, State zip code

11. How will claims be decided?

The Claims Administrator will initially decide whether the information provided on a Claim Form is complete and valid. The Claims Administrator may require additional information from any claimant. If the required information is not timely provided, the claim will be considered invalid and will not be paid.

Additional information regarding the claims process can be found in Section V of the Settlement Agreement, available at [WEBSITE].

12. When will I get my payment?

The Court will hold a Final Fairness Hearing at __:00.m. on Month __, 2022 to decide whether to approve the Settlement. If the Court approves the Settlement, there may be appeals. It is always uncertain whether appeals can be resolved favorably, and resolving them can take time. It also takes time for all the Claim Forms to be processed, depending on the number of claims submitted and whether appeals are filed. Please be patient.

REMAINING IN THE SETTLEMENT

13. Do I need to do anything to remain in the Settlement?

You do not have to do anything to remain in the Settlement, but if you want to qualify for a payment or credit monitoring services you must submit a valid Claim Form postmarked by Month Day, 2022.

14. What am I giving up as part of the Settlement?

If the Settlement becomes final, you will give up your right to sue AspenPointe for the claims being resolved by this Settlement. The specific claims you are giving up against AspenPointe are described in Section XIV of the Settlement Agreement. You will be “releasing” AspenPointe and all related people or entities as described in Paragraph 10.bb of the Settlement Agreement. The Settlement Agreement is available at www.XXXXXXXXXXXXXX.com.

The Settlement Agreement describes the released claims with specific descriptions, so read it carefully. If you have any questions about what this means you can talk to the law firms listed in Question 18 for free or you can, of course, talk to your own lawyer at your own expense.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a payment from this Settlement, but you want to keep the right to sue AspenPointe about issues in the Litigation, then you must take steps to get out of the Settlement

Class. This is called excluding yourself from – or is sometimes referred to as “opting out” of – the Settlement Class.

15. If I exclude myself can I still get payment or credit monitoring from the Settlement?

No. If you exclude yourself from the Settlement, you will not be entitled to any benefits of the Settlement, but you will not be bound by any judgment in this case.

16. If I do not exclude myself can I sue AspenPointe for the same thing later?

No. Unless you exclude yourself from the Settlement, you give up any right to sue AspenPointe for the claims that this Settlement resolves. You must exclude yourself from the Settlement Class to start your own lawsuit or to be part of any different lawsuit relating to the claims in this case. If you exclude yourself, do not submit a Claim Form to ask for a payment or other benefits.

17. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must send a letter by mail stating that you want to be excluded from the Settlement in *Hall v. AspenPointe, Inc.*, Consolidated Case No. 2020CV32175. Your letter must also include your name, address, telephone number and signature. You must mail your exclusion request postmarked no later than **Month Day, 2022** to:

AspenPointe Data Breach Settlement Administrator

P.O. Box _____

[City] [ST] _____ - _____

THE LAWYERS REPRESENTING YOU

18. Do I have a lawyer in this case?

Yes. The Court appointed Todd S. Garber, of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP located at One North Broadway, Suite 900, White Plains, New York 10601; Rick D. Bailey of the Law Office of Rick D. Bailey, located at 1085 Lafayette St., Ste 702, Denver, Colorado, 80218; Gary E. Mason of Mason LLP, located at 5101 Wisconsin Ave., NW, Ste 305, Washington, District of Columbia, 20016; William H. Anderson of Handley Farah & Anderson PLLC, located at 4730 Table Mesa Drive, Suite G-200, Boulder, Colorado 80305; and Seth A. Meyer and Alex J. Dravillas of Keller Lenkner LLC, located at 150 N. Riverside Plaza, Suite 4100, Chicago, Illinois 60606, to represent you and other Settlement Class members. These lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

19. How will Class Counsel be paid?

If the Settlement is approved and becomes final, Class Counsel will ask the Court to award attorneys' fees and litigation costs in the amount of \$412,500. Class Counsel will also request approval of a service award of \$2,500 for each of the three Class Representatives. If approved, these amounts, as well as the costs of notice and settlement administration, will be paid separately by Defendant and will not reduce the amount of total payments available to Settlement Class members.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement or some part of it.

20. How do I tell the Court that I do not like the Settlement?

If you are a Settlement Class member, you can object to the Settlement if you do not like it or a portion of it. You can give reasons why you think the Court should not approve the Settlement. The Court will consider your views before making a decision. To object, you must file with the Court and mail copies to Class Counsel and Defendant's Counsel a written notice stating that you object to the Settlement in *Hall v. AspenPointe, Inc.*, Consolidated Case No. 2020CV32175.

Your objection must:

- (i) set forth the Settlement Class Member's full name, address, telephone number and original signature;
- (ii) state that the Settlement Class Member objects to the Settlement, in whole or in part;
- (iii) set forth a statement of the legal and factual basis for the Objection; and
- (iv) provide copies of any documents that the Settlement Class Member wishes to submit in support of his/her position.

Your objection must be filed with the Clerk of the District Court, County of El Paso, State of Colorado, 270 S. Tejon Street, Colorado Springs, Colorado 80903 or mailed or hand delivered to Class Counsel and Defendant's Counsel at the addresses below no later than **Month Day, 2022**.

CLASS COUNSEL	ASPENPOINTE'S COUNSEL
<p>Todd S. Garber Finkelstein, Blankinship, Frei-Pearson & Garber, LLP One North Broadway, Suite 900, White Plains, New York 10601</p> <p>Rick D. Bailey Law Office of Rick D. Bailey</p>	<p>Christopher H. Wood Arthur Biller Lewis Brisbois Bisgaard & Smith LLP 1700 Lincoln Street, Suite 4000 Denver, CO 80203</p>

<p>1085 Lafayette St., Ste 702, Denver, Colorado, 80218;</p> <p>Gary E. Mason Mason LLP 5101 Wisconsin Ave., NW, Ste 305, Washington, District of Colombia, 20016</p> <p>William H. Anderson Handley Farah & Anderson PLLC 4730 Table Mesa Drive, Suite G-200, Boulder, Colorado 80305</p> <p>Seth A. Meyer and Alex J. Dravillas Keller Lenkner LLC 150 N. Riverside Plaza, Suite 4100, Chicago, Illinois 60606</p>	
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21. What is the difference between objecting to and excluding myself from the Settlement?

Objecting is telling the Court that you do not like something about the Settlement. Excluding yourself is telling the Court that you do not want to be part of the Class in this Settlement. If you exclude yourself from the Settlement, you have no basis to object or submit a Claim Form because the Settlement no longer affects you.

THE COURT’S FINAL FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you do not have to. You cannot speak at the hearing if you exclude yourself from the Settlement.

22. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Fairness Hearing at :_0 _m. on Month Day, 2022, in the 4th District Court, County of El Paso, State of Colorado, 270 S Tejon Street, Colorado Springs, Colorado 80903. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will take into consideration any properly-filed written objections and may also listen to people who have asked to speak at the hearing (*see* Question 20). The Court will also decide whether to approve fees and costs to Class Counsel, and the service award to the Class Representatives.

23. Do I have to come to the Final Fairness Hearing?

No. Class Counsel will answer any questions the Court may have. However, you are welcome to attend at your own expense. If you file an objection, you do not have to come to Court to talk about it. You may also hire your own lawyer to attend, at your own expense, but you are not required to do so.

24. May I speak at the Final Fairness Hearing?

Yes, you may ask the Court for permission to speak at the Final Fairness Hearing. To do so, you must follow the instructions provided in Question 20 above. You cannot speak at the hearing if you exclude yourself from the Settlement.

IF YOU DO NOTHING

25. What happens if I do nothing?

If you do nothing, you will not receive any compensation from this Settlement. If the Court approves the Settlement, you will be bound by the Settlement Agreement and the Release. This means you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendant or related parties about the issues involved in the Lawsuit, resolved by this Settlement, and released by the Settlement Agreement.

GETTING MORE INFORMATION

26. Are more details about the Settlement available?

Yes. This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement, which is available at www.XXXXXXXXXXXXXX.com, or by writing to the AspenPointe Data Breach Settlement Administrator, P.O. Box , [City] [ST] _____ - _____.

27. How do I get more information?

Go to www.XXXXXXXXXXXXXX.com, call 1 _____, or write to the AspenPointe Data Breach Settlement Administrator, P.O. Box _____, [City] [ST] _____ - _____.

***Please do not call the Court or the Clerk of the Court for additional information.
They cannot answer any questions regarding the Settlement or the Lawsuit***

EXHIBIT A-2

IF YOU WERE NOTIFIED BY ASPENPOINTE REGARDING A SEPTEMBER 2020 DATA BREACH, YOU MAY BE ELIGIBLE FOR PAYMENT AND CREDIT MONITORING SERVICES FROM A CLASS ACTION SETTLEMENT.

Si desea recibir esta notificación en español, llámenos o visite nuestra página web.

A settlement has been reached in a class action lawsuit against AspenPointe, Inc. (N.K.A. Diversus Health Inc.) (“Defendant”) relating to a cyberattack against Defendant’s computer systems that occurred between September 12th and 22nd 2020 (the “Data Breach”). The computer systems possibly affected by the Data Breach potentially contained personal and protected health information of certain individuals. The Plaintiffs claim that Defendant was responsible for the Data Breach and assert claims such as negligence, breach of implied contract, and breach of fiduciary duty. Defendant denies all of the claims.

WHO IS INCLUDED? Defendant’s records show that your personal identifying and/or private health information may have been affected by the Data Breach, therefore, you are included in this Settlement as a “Settlement Class Member.”

SETTLEMENT BENEFITS. The Settlement provides for \$1,300,000 in monetary relief and other benefits including: 1) reimbursement of up to \$500 for ordinary out-of-pocket expenses and lost time that resulted from the Data Breach; 2) reimbursement of up to \$4,500 for extraordinary expenses resulting from the Data Breach; 3) up to 24-months of credit monitoring and identity protection services; and 4) equitable relief in the form of data security enhancements to be implemented by Defendant.

THE ONLY WAY TO RECEIVE A MONETARY BENEFIT OR CREDIT MONITORING IS TO FILE A CLAIM. To get a Claim Form, visit the website www.XXXXXXXXXXXXXX.com, or call 1-XXX-XXX-XXXX. The claim deadline is **Month Day, 2022**.

OTHER OPTIONS. If you do nothing, you will remain in the class, you will not be eligible for benefits, and you will be bound by the decisions of the Court and give up your rights to sue Defendant for the claims resolved by this Settlement. If you do not want to be legally bound by the Settlement, you must exclude yourself by **Month Day, 2022**. If you stay in the Settlement, you may object to it by **Month Day, 2022**. A more detailed notice is available to explain how to exclude yourself or object. Please visit the website or call 1-XXX-XXX-XXXX for a copy of the more detailed notice. On **Month Day, 2022**, the Court will hold a Fairness Hearing to determine whether to approve the Settlement, Class Counsel’s request for attorneys’ fees and litigation expenses of \$412,500, and a service award of \$2,500 for each of the three Representative Plaintiffs. The Motion for attorneys’ fees will be posted on the website after it is filed. You or your own lawyer, if you have one, may ask to appear and speak at the hearing at your own cost, but you do not have to. This is only a summary. For more information, call or visit the website below.

www.XXXXXXXXXXXXXX.com

1-XXX-XXX-XXXX

EXHIBIT A-3

CLAIM FORM

This claim form should be filled out online or submitted by mail if you received a notification from AspenPointe, Inc. (N.K.A. Diversus Health Inc.) ("Defendant") relating to a cyberattack against Defendant's computer systems that occurred in September 2020 (the "Data Breach"), and you had expenses or lost time spent dealing with the Data Breach, or you wish to claim credit monitoring and identity protection services to be paid for by Defendant. You may get a check if you fill out this claim form, if the settlement is approved, and if you are found to be eligible for a payment.

The settlement notice describes your legal rights and options. Please visit the official settlement administration website, www._____.com, or call 1-_____ for more information.

If you wish to submit a claim for a settlement payment, you need to provide the information requested below. Please print clearly in blue or black ink. This claim form must be mailed and postmarked **by _____, 2022.**

1. CLASS MEMBER INFORMATION.

Name (**REQUIRED**): _____

Number and Street (**REQUIRED**)

City (**REQUIRED**)

State (**REQUIRED**)

Zip Code (**REQUIRED**)

Telephone Number (**REQUIRED**): () _____

Email Address (optional) _____

2. PAYMENT ELIGIBILITY INFORMATION.

Please review the notice and section IV of the Settlement Agreement (available at www._____.com) for more information on who is eligible for a payment and the nature of the expenses or losses that can be claimed.

Please provide as much information as you can to help us figure out if you are entitled to a settlement payment.

PLEASE PROVIDE THE INFORMATION LISTED BELOW:

Check the box for each category of benefits you would like to claim. Categories include: reimbursement of out-of-pocket expenses and lost time spent as a result of the Data Incident (up to a maximum of \$500.00), reimbursement of extraordinary expenses incurred as a result of the Data Incident (up to a maximum of \$4,500), and up to 24-months of credit monitoring and identity protection services to be paid for by Defendant. Please be sure to fill in the total amount you are claiming for each category and to attach documentation of the charges as described in bold type (if you are asked to provide account statements as part of proof required for any part of your claim, you may mark out any unrelated transactions, account numbers, or personal information (other than name) if you wish).

a. Ordinary Out-of-Pocket Expenses Resulting from the Data Breach:

_____ I incurred unreimbursed charges as a result of the Data Breach.

Examples - unreimbursed losses relating to fraud or identity theft; professional fees including attorneys' fees, accountants' fees and fees for credit repair services; costs associated with freezing or unfreezing credit with any credit reporting agency; credit monitoring costs that were incurred on or after November 19, 2020 through **[INSERT CLAIM DEADLINE]**; and miscellaneous expenses such as notary, fax, postage, copying, mileage, long-distance telephone charges, and data charges (only if charged based on the amount of data used) that were incurred on or after September 12, 2020, through **[INSERT CLAIM DEADLINE]**.

Total amount for this category \$ _____

Describe each ordinary expense(s) below, including the date on which an expense was incurred and its relation to the Data Incident.

Documentation of out-of-pocket expenses is required.

If you are seeking reimbursement for fees, expenses, or charges, you MUST attach a copy of a statement from the company that charged you, or a receipt for the amount you incurred.

If you are seeking reimbursement for credit reports, credit monitoring, or other identity theft insurance product purchased between November 19, 2020, through [INSERT CLAIM DEADLINE], you MUST attach a copy of a receipt or other proof of purchase for each credit report or product purchased. (Note: By claiming reimbursement in this category, you certify that you purchased the credit monitoring or identity theft insurance product because of the Data Breach and not for any other purpose).

Supporting documentation must be provided. You may mark out any transactions, account numbers, or personal information (other than name) that are not relevant to your claim before sending in the documentation.

b. Extraordinary Expenses Resulting from the Data Breach

_____ I incurred extraordinary expenses as a result of the Data Breach.

Total amount for this category \$ _____

- Check this box to confirm that you have exhausted all applicable insurance policies, including credit monitoring insurance and identity theft insurance.

Describe each extraordinary expense(s) below, including the date on which an expense was incurred and its relation to the Data Incident.

Documentation of the extraordinary loss is REQUIRED. The loss must be an actual, documented, and unreimbursed monetary loss, fairly traceable to the Data Breach, must have occurred between September 12, 2020 and the [insert claims deadline] and must not already be covered by the ordinary reimbursement category.

You may mark out any transactions, account numbers, or personal information (other than name) that are not relevant to your claim before sending in the documentation.

c. Between one and four hours of documented time spent dealing with the Data Breach

_____ I certify that I spent time dealing with the effects of the Data Breach.

Examples – You spent at least one full hour calling customer service lines, writing letters or emails, or on the Internet in order to get fraudulent charges reversed or in updating automatic payment programs because of the Data Breach. You spent

at least one full hour rescheduling medical appointments and/or finding alternative medical care and treatment, retaking or submitting to medical tests, locating medical records, retracing medical history as a result of the Data Incident.

I certify that I spent the following amount of time in response to the Data Breach:

____ 1 hour ____ 2 hours ____ 3 hours ____ 4 hours

Provide a brief description of each activity completed during the above-described time:

d. Claim up to 24-months of credit monitoring and identity protection services.

_____ I would like to claim up to 24--months of credit monitoring and identity protection services.

The Settlement requires Defendant to provide up to 24-months of credit monitoring and identity protection services for Settlement Class Members that submit timely and valid claims.

3. SIGN AND DATE YOUR CLAIM FORM.

I declare under penalty of perjury under the laws of the United States, the laws of Colorado, and the laws of my State of residence that the information supplied in this claim form by the undersigned is true and correct, and that this form was executed on the date set forth below.

I understand that I may be asked to provide supplemental information by the Settlement Administrator before my claim will be considered complete and valid.

Signature _____
Print Name _____
Month/Day/Year

4. MAIL YOUR CLAIM FORM, OR SUBMIT YOUR CLAIM FORM ONLINE.

This claim form must be:

Postmarked by _____, 2022 and mailed to: _____, c/o _____; OR

Emailed by midnight on _____, 2022 to: _____; OR

Submitted through the Settlement Website by midnight on _____, 2022 at: _____.

EXHIBIT A-4

<p>4th DISTRICT COURT, COUNTY OF EL PASO, STATE OF COLORADO Court Address: 270 S Tejon St Colorado Springs, Colorado 80903</p> <hr/> <p>LENNIE HALL, AGNES COURSEY AND TAMMY NICHOLS, Individually and On Behalf of All Others Similarly Situated,</p> <p>Plaintiff, v.</p> <p>ASPENPOINTE, INC., a Colorado non-profit Corporation,</p> <p>Defendant.</p>	<p style="text-align: center;">▲ COURT USE ▲ ONLY</p>
<p>ATTORNEYS FOR PLAINTIFFS: Rick D. Bailey, Esq. Atty. Reg. #26554 Law Office of Rick D. Bailey, Esq. 1085 Lafayette St., Ste 702 Denver, Colorado 80218 Phone: (720) 676-6023 rick@rickbaileylaw.com</p> <p>MASON LLP Gary E. Mason (<i>pro hac vice</i>) 5101 Wisconsin Ave., NW, Ste. 305 Washington, DC 20016 Phone: 202.640.1160 Fax: 202.429.2294 gmason@masonllp.com</p> <p>FINKELSTEIN BLANKINSHIP FREI-PEARSON & GARBER, LLP Todd Garber (<i>pro hac vice</i>) One North Broadway, Suite 900 White Plains, New York 10601 Phone: 914.298.3281 Fax: 914.824.1561 tgarber@fbfglaw.com</p> <p>KELLER LENKNER LLC Seth A. Meyer (<i>pro hac vice</i>) Alex J. Dravillas (<i>pro hac vice</i>)</p>	<p>Consolidated Case Case Number: 2020CV32175</p>

150 N. Riverside Plaza, Suite 4100 Chicago, Illinois 60606 Phone: 312.741.5220 sam@kellerlenkner.com ajd@kellerlenkner.com	
[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT	

This matter came before the Court on Plaintiffs’ Motion for Preliminary Approval of Class Settlement Agreement. Plaintiffs Lennie Hall, Agnes Coursey, and Tammy Nichols (“Plaintiffs” or “Representative Plaintiffs”), individually and on behalf of the proposed Settlement Class, and Defendant AspenPointe, Inc. (N.K.A. Diversus Health Inc.) (“Defendant”), have entered into a Settlement Agreement (the “Settlement Agreement”) that settles the above-captioned litigation.

Between approximately September 12, 2020 and September 22, 2020, Defendant was the victim of a data security incident in which an unauthorized third-party illegally accessed Defendant’s computer systems and data, resulting in that third party’s access to personal information belonging to Plaintiffs and members of the Settlement Class (hereafter the “Data Breach”). In total, approximately 275,000 individuals’ data was potentially impacted by the Data Breach.

On December 11, 2020, Plaintiffs Lennie Hall and Tammy Nichols filed their original class action against Defendant in the 4th District Court for the County of El Paso. On December 17, 2020, Plaintiff Agnes Coursey filed a similar action. On February 5, 2021, Plaintiffs Hall, Nichols, and Coursey moved to consolidate their actions: the Court granted the motion on February 5, 2021. The Consolidated Class Action Complaint (“CCAC”), filed on April 8, 2021 on behalf of Plaintiffs

by interim class counsel alleged eight causes of action, three of which survived Defendant's motion to dismiss in full: (1) negligence; (2) breach of implied contract; (3) and breach of fiduciary duty.

From August 2021 through February 2022, the Parties, through Class Counsel and Defendant's counsel, engaged in extensive arm's length negotiations concerning a possible settlement of the claims asserted in the CCAC. On or about February 10, 2022, the Parties executed a confidential term sheet outlining the central terms of the Settlement Agreement, which itself was finalized and executed on or about July 1, 2022.

The Settlement Agreement is the result of the settlement discussions and is intended to memorialize and supersede the terms set forth in the Settlement Term Sheet. The Parties have agreed to settle this action, pursuant to the terms of the Settlement Agreement, and subject to the approval and determination of the Court as to the fairness, reasonableness, and adequacy of the Settlement which, if approved, will result in dismissal of this action with prejudice.

Plaintiffs and Class Counsel, on behalf of the Settlement Class, have concluded based upon their investigation, and taking into account the contested issues involved, the expense and time necessary to prosecute the Action through trial, the risks and costs associated with further prosecution of the Action, the uncertainties of complex litigation, the desired outcome from continued litigation, and the substantial benefits to be received pursuant to this Settlement Agreement, that a settlement with Defendant on the terms set forth herein is fair and reasonable and in the best interest of Plaintiffs and the Settlement Class. Plaintiffs and Class Counsel believe that the Settlement confers substantial benefits upon the Settlement Class.

Having reviewed the Settlement Agreement, including the exhibits attached thereto, and all prior proceedings herein, and for good cause shown, it is hereby **ORDERED** that Plaintiffs' Unopposed Motion for Preliminary Approval is granted as set forth herein.¹

1. Class Certification for Settlement Purposes Only. For settlement purposes only and pursuant to Colorado Rule of Civil Procedure 23, the Court provisionally certifies a Settlement Class in this matter defined as follows:

Settlement Class

All persons whose full name and other personally identifiable information and/or protected health information was accessed during the Data Breach that occurred between September 12, 2020 and September 22, 2020.

The Settlement Class specifically excludes: (i) Defendant's officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the Judge assigned to evaluate the fairness of this settlement; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge. The Settlement Class includes approximately 275,000 people.

The Court provisionally finds, for settlement purposes only, that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members would be impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims and defenses of the Settlement Class Representatives are typical of the claims and defenses of the Settlement Class Members; (d) the Settlement Class Representatives and Settlement Class Counsel will fairly and adequately protect the interests of the Settlement Class as the Settlement Class Representatives

¹ Unless otherwise indicated, capitalized terms used herein have the same meaning as in the Settlement Agreement.

have no interest antagonistic to or in conflict with the Settlement Class and have retained experienced and competent counsel to prosecute this matter on behalf of the Settlement Class; (e) questions of law or fact common to Settlement Class Members predominate over any questions affecting only individual members; and (f) a class action and class settlement is superior to other methods available for a fair and efficient resolution of this controversy.

2. Settlement Class Representatives and Settlement Class Counsel.

Plaintiffs Lennie Hall, Tammy Nichols, and Agnes Coursey are hereby provisionally designated and appointed the Settlement Class Representatives. The Court provisionally finds that the Settlement Class Representatives are similarly situated to absent Class Members and therefore typical of the Class and that they will be adequate Settlement Class Representatives.

The Court finds that the following counsel are experienced and adequate counsel and are hereby provisionally designated as Settlement Class Counsel: Todd S. Garber, of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP located at One North Broadway, Suite 900, White Plains, New York 10601; Rick D. Bailey of the Law Office of Rick D. Bailey, located at 1085 Lafayette St., Ste 702, Denver, Colorado, 80218; Gary E. Mason of Mason LLP, located at 5101 Wisconsin Ave., NW, Ste 305, Washington, District of Columbia, 20016; William H. Anderson of Handley Farah & Anderson PLLC, located at 4730 Table Mesa Drive, Suite G-200, Boulder, Colorado 80305; and Seth A. Meyer and Alex J. Dravillas of Keller Lenkner LLC, located at 150 N. Riverside Plaza, Suite 4100, Chicago, Illinois 60606.

3. Preliminary Settlement Approval. Upon preliminary review, the Court concludes and finds that the proposed Settlement is fair, reasonable, and adequate to warrant providing Notice of the Settlement to the Settlement Class and accordingly is preliminarily approved.

4. **Jurisdiction.** The Court concludes that it has subject matter jurisdiction and personal jurisdiction over the Parties before it for the purposes of the Settlement. Additionally, venue is proper in this District pursuant to Colo. R. Civ. P. 98(c).

5. **Final Approval Hearing.** A Final Approval Hearing shall be held on _____ at ____:_0 _m. on Month , 2022, in the 4th District Court for El Paso County, 270 S Tejon Street, Colorado Springs, Colorado 80903, to determine, among other things, whether: (a) this matter should be finally certified as a class action for settlement purposes pursuant to Colorado Rule of Civil Procedure 23(b)(3); (b) the Settlement should be finally approved as fair, reasonable, and adequate pursuant to Colorado Rule of Civil Procedure 23(e); (c) the action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (d) Settlement Class Members should be bound by the releases set forth in the Settlement Agreement; (e) the motion of Settlement Class Counsel for an award of attorneys' fees, costs, and expenses (the "Fee Request") should be approved; and (f) the motion of the Settlement Class Representatives for Service Award (the "Service Award Request") should be approved. Plaintiffs' Motion for Attorneys' Fees, Costs, and Plaintiffs' Service Award shall be filed at least 14-days prior to Settlement Class Members' deadline to object or opt-out of the Settlement. Plaintiffs' Motion for Final Approval of the Settlement, Service Award Request, and Fee Request shall be filed with the Court at least 30 Days prior to the Final Approval Hearing. By no later than 14 Days prior to the Final Approval Hearing, the Parties shall file responses, if any, to any objections, and any replies in support of final approval of the Settlement and/or the Service Award Request and Fee Request.

6. **Administration.** The Court appoints Angeion Group LLC as the Settlement Administrator, with responsibility for class notice and claims administration and to fulfill the duties of the Settlement Administrator set forth in the Settlement Agreement. Defendant shall pay

all agreed upon costs and expenses associated with providing notice to Settlement Class Members including, but not limited to, the Settlement Administrator's fees, as well as the costs associated with administration of the Settlement.

7. Notice to the Class. The proposed Notice Program set forth in the Settlement Agreement, and the Claim Form, Short-Form Notice, and Long-Form Notice attached to the Settlement Agreement as Exhibits 1-3 satisfy the requirements of Colorado Rule of Civil Procedure 23(e), provide the best notice practicable under the circumstances, and are hereby approved. Non-material modifications to these Exhibits may be made without further order of the Court. The Settlement Administrator is directed to carry out the Notice Program in conformance with the Settlement Agreement.

Within **21 days from the date of this Order** (the "Notice Deadline"), the Settlement Administrator shall complete the Notice Program in the manner set forth in Section 3 of the Settlement Agreement.

8. Findings and Conclusions Concerning Notice. The Court finds that the form, content, and method of giving notice to the Settlement Class as described in Paragraph 7 of this Order and Section VI of the Settlement Agreement (including the exhibits thereto): (a) will constitute the best practicable notice to the Settlement Class; (b) are reasonably calculated to apprise Settlement Class Members of the pendency of the action, the terms of the proposed Settlement, and their rights under the proposed Settlement, including but not limited to their rights to object to or exclude themselves from the proposed Settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Class Members and other persons entitled to receive notice; and (d) the Court concludes that the Notice Program meets all applicable requirements of law, including Colorado Rule of Civil

Procedure Rule 23, and the Due Process Clause(s) of the United States Constitution. The Court further finds that the Notice is written in plain language, uses simple terminology, and is designed to be readily understandable by Class Members.

9. Exclusion from Class. Any Settlement Class Member who wishes to be excluded from the Settlement Class must mail a written notification of the intent to exclude himself or herself from the Settlement Class to the Settlement Administrator at the address provided in the Notice, postmarked no later than **75 Days from the date Postcard Notice is Mailed** (the “Opt-Out Period”). The written notification must include the individual’s full name, address, and telephone number; an unequivocal statement that he or she wants to be excluded from the Settlement Class; and the original signature of the individual or a person previously authorized by law, to act on behalf of the individual with respect to the claims asserted in this Action.

The Settlement Administrator shall provide the Parties with copies of all completed opt-out notifications, and a final list of all who have timely and validly excluded themselves from the Settlement Class, which Settlement Class Counsel may move to file under seal with the Court no later than **10 Days prior to the Final Approval Hearing**.

Any Settlement Class Member who does not timely and validly exclude herself or himself from the Settlement shall be bound by the terms of the Settlement Agreement. If Final Order and Judgment is entered, any Settlement Class Member who has not submitted a timely, valid written notice of exclusion from the Settlement Class shall be bound by all proceedings, orders, and judgments in this matter, including but not limited to the Release set forth in the Final Order and Judgment, including Settlement Class Members who have previously initiated or who subsequently initiate any litigation against any or all of the Released Persons relating to the claims and transactions released in the Settlement Agreement. All Settlement Class Members who submit

valid and timely notices of exclusion from the Settlement Class shall not be entitled to receive any benefits of the Settlement.

10. Objections and Appearances. A Settlement Class Member who complies with the requirements of this paragraph may object to the Settlement, the Service Award Request, or the Fee Request.

No Settlement Class Member shall be heard, and no papers, briefs, pleadings, or other documents submitted by any Settlement Class Member shall be received and considered by the Court, unless the objection is (a) filed with the Court by the Objection Date; or (b) mailed first-class postage prepaid to Plaintiffs' Counsel and Defendant's Counsel at the addresses listed in the Notice, and postmarked by no later than the Objection Date, as specified in the Notice. For an objection to be considered by the Court, the objection must also include all of the information set forth in Section VII of the Settlement Agreement, which is as follows:

- (a) the objector's full name, address, telephone number, and e-mail address (if any);
- (b) the Settlement Class Member's original signature;
- (c) state that the Settlement Class Member objects to the Settlement, in whole or in part;
- (d) set forth a statement of the legal and factual basis for the Objection; and
- (e) provide copies of any documents that the Settlement Class Member wishes to submit in support of his/her position.

Any Settlement Class Member who fails to comply with the provisions in this Paragraph may waive and forfeit any and all rights he or she may have to object, and shall be bound by all the terms of the Settlement Agreement, this Order, and by all proceedings, orders, and judgments

in this matter, including, but not limited to, the release in the Settlement Agreement if Final Order and Judgment is entered.

Any Settlement Class Member, including a Settlement Class Member who files and serves a written objection, as described above, may appear at the Final Approval Hearing, either in person or through counsel hired at the Settlement Class Member's expense, to object to or comment on the fairness, reasonableness, or adequacy of the Settlement, the Service Award Request, or the Fee Request. If an objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, he or she must also file a notice of appearance with the Court (as well as serve on Settlement Class Counsel and Defendants' Counsel) by the Objection Date. If the objecting Settlement Class Member intends to appear at the Final Approval Hearing through counsel, he or she must also identify the attorney(s) representing the objecting Settlement Class Member who will appear at the Final Approval Hearing and include the attorney(s) name, address, phone number, e-mail address, state bar(s) to which counsel is admitted, as well as associated state bar numbers, and a list identifying all objections such counsel has filed to class action settlements in the past three (3) years, the results of each objection, any court opinions ruling on the objections, and any sanctions issued by a court in connection with objections filed by such attorney. If the objecting Settlement Class Member intends to request the Court for permission to call witnesses at the Final Approval Hearing, the objecting Settlement Class Member must provide a list of any such witnesses together with a brief summary of each witness's expected testimony at least sixty (60) Days before the Final Approval Hearing.

If Final Order and Judgment is entered, any Settlement Class Member who fails to object in the manner prescribed herein shall be deemed to have waived his or her objections and shall be forever barred from making any such objections in this action or in any other proceeding or from

challenging or opposing, or seeking to reverse, vacate, or modify any approval of the Settlement Agreement, the Service Award Request, or the Fee Request.

11. Claims Process and Distribution and Allocation Plan. Settlement Class Representatives and Defendant have created a process for assessing and determining the validity and value of claims and a payment methodology to Settlement Class Members who submit a timely, valid Claim Form. The Court preliminarily approves the plan for remuneration described in Section V of the Settlement Agreement and directs that the Settlement Administrator effectuate the distribution of Settlement consideration according to the terms of the Settlement Agreement, should the Settlement be finally approved.

Settlement Class Members who qualify for and wish to submit a Claim Form shall do so in accordance with the requirements and procedures specified in the Notice and the Claim Form. If Final Order and Judgment is entered, all Settlement Class Members who qualify for any benefit under the Settlement but fail to submit a claim in accordance with the requirements and procedures specified in the Notice and the Claim Form shall be forever barred from receiving any such benefit, but will in all other respects be subject to and bound by the provisions in the Settlement Agreement, the Release included in that Settlement Agreement, and the Final Order and Judgment.

12. Termination of Settlement. This Order shall become null and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing as of the date of the execution of the Settlement Agreement if the Settlement is not finally approved by the Court or is terminated in accordance with the Settlement Agreement. In such event, the Settlement and Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to for any purpose whatsoever.

13. Use of Order. This Order shall be of no force or effect if Final Order and Judgment is not entered or there is no Effective Date and shall not be construed or used as an admission, concession, or declaration by or against Defendant of any fault, wrongdoing, breach, liability, or the certifiability of any class. Nor shall this Order be construed or used as an admission, concession, or declaration by or against the Settlement Class Representatives or any other Settlement Class Member that his or her claim lacks merit or that the relief requested is inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claim he, she, or it may have in this litigation or in any other lawsuit.

14. Stay of Proceedings. Except as necessary to effectuate this Order, all proceedings and deadlines in this matter are stayed and suspended pending the Final Approval Hearing and issuance of the Final Order and Judgment, or until further order of this Court.

15. Continuance of Hearing. The Court reserves the right to adjourn or continue the Final Approval Hearing and related deadlines without further written notice to the Settlement Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on the website maintained by the Settlement Administrator.

16. Summary of Deadlines. The preliminarily approved Settlement shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the Settlement Agreement and this Order include but are not limited to:

Notice Completion Deadline (Deadline to Mail Postcard Notice): 21 Days after Preliminary Approval

Motion for Final Approval: 30 Days before Final Approval Hearing

Motion for Service Awards, Attorneys' Fees and Costs: 14-Days prior to the Objection Deadline and Opt-Out Deadline

Opt-Out Deadline: 75 Days after Notice Completion

Objection Deadline: 75 Days after Notice Completion

Replies in Support of Final Approval, Service Awards and Fee Requests: 14 Days before Final Approval Hearing

Claim Deadline: 75 Days after Notice Completion

Final Approval Hearing: at least 120 Days after Preliminary Approval

IT IS SO ORDERED this ____ day of _____, 2022

BY THE COURT:

G. David Miller
District Court Judge

Presented By:

Dated: April __, 2022

/s/ _____

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Attorneys for Defendant

Dated: April __, 2022

/s/ _____

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*Attorneys for Plaintiffs and the Settlement
Class*

EXHIBIT A-5

<p>4th DISTRICT COURT, COUNTY OF EL PASO, STATE OF COLORADO Court Address: 270 S Tejon St Colorado Springs, Colorado 80903</p> <hr/> <p>LENNIE HALL, AGNES COURSEY AND TAMMY NICHOLS, Individually and On Behalf of All Others Similarly Situated,</p> <p>Plaintiff, v.</p> <p>ASPENPOINTE, INC., a Colorado non-profit Corporation,</p> <p>Defendant.</p>	<div style="text-align: center;">  COURT USE ONLY  </div>
<p>ATTORNEYS FOR PLAINTIFFS: Rick D. Bailey, Esq. Atty. Reg. #26554 Law Office of Rick D. Bailey, Esq. 1085 Lafayette St., Ste 702 Denver, Colorado 80218 Phone: (720) 676-6023 rick@rickbaileylaw.com</p> <p>MASON LLP Gary E. Mason (<i>pro hac vice</i>) 5101 Wisconsin Ave., NW, Ste. 305 Washington, DC 20016 Phone: 202.640.1160 Fax: 202.429.2294 gmason@masonllp.com</p> <p>FINKELSTEIN BLANKINSHIP FREI-PEARSON & GARBER, LLP Todd Garber (<i>pro hac vice</i>) One North Broadway, Suite 900 White Plains, New York 10601 Phone: 914.298.3281 Fax: 914.824.1561 tgarber@fbfglaw.com</p> <p>KELLER LENKNER LLC Seth A. Meyer (<i>pro hac vice</i>) Alex J. Dravillas (<i>pro hac vice</i>)</p>	<p>Consolidated Case Case Number: 2020CV32175</p>

150 N. Riverside Plaza, Suite 4100 Chicago, Illinois 60606 Phone: 312.741.5220 sam@kellerlenkner.com ajd@kellerlenkner.com	
[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT	

Before the Court is Plaintiffs’ unopposed motion requesting that the Court enter an Order granting final approval of the class action Settlement involving Plaintiffs Lennie Hall, Agnes Coursey, and Tammy Nichols (“Plaintiffs” or “Representative Plaintiffs”) and Defendant AspenPointe, Inc. (N.K.A. Diversus Health Inc.) (“Defendant”) as fair, reasonable, and adequate.

Having reviewed and considered the Settlement Agreement and the motion for final approval of the settlement, and having conducted a Final Approval Hearing, the Court makes the findings and grants the relief set forth below approving the Settlement upon the terms and conditions set forth in this Final Order and Judgment.

THE COURT not being required to conduct a trial on the merits of the case or determine with certainty the factual and legal issues in dispute when determining whether to approve a proposed class action settlement; and

THE COURT being required under Colorado Rule of Civil Procedure 23(e) to make the findings and conclusions hereinafter set forth for the limited purpose of determining whether the Settlement should be approved as being fair, reasonable, adequate and in the best interests of the Settlement Class;

IT IS ON THIS ____ day of _____, 2022,

ORDERED that:

1. The Settlement involves allegations in Plaintiffs' Consolidated Class Action Complaint that Defendant failed to safeguard and protect the personally identifiable information and/or protected health information of Settlement Class Members and that this alleged failure caused injuries to Plaintiffs and the Class.

2. The Settlement does not constitute an admission of liability by Defendant, and the Court expressly does not make any finding of liability or wrongdoing by Defendant.

3. Unless otherwise noted, capitalized terms in this Order have the same meaning as set forth in the Settlement Agreement.

4. On _____ the Court entered an Order which among other things: (a) approved the Notice to the Settlement Class, including approval of the form and manner of notice under the Notice Program set forth in the Settlement Agreement; (b) provisionally certified a class in this matter, including defining the class, appointed Plaintiffs as the Settlement Class Representatives, and appointed Settlement Class Counsel; (c) preliminarily approved the Settlement; (d); set deadlines for opt-outs and objections; (e) approved and appointed the Claims Administrator; and (f) set the date for the Final Approval Hearing.

5. In the Order Granting the Motion for Preliminary Approval of Class Settlement Agreement, pursuant to Colorado Rule of Civil Procedure 23(b)(3) and (e), for settlement purposes only, the Court certified the Settlement Class, defined as follows:

Settlement Class

All persons whose full name and other personally identifiable information and/or protected health information was accessed during the Data Breach that occurred between September 12, 2020 and September 22, 2020.

The Settlement Class specifically excludes: (i) Defendant's officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class;

(iii) the Judge assigned to evaluate the fairness of this settlement; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Incident or who pleads *nolo contendere* to any such charge. The Settlement Class includes approximately 275,000 people.

6. The Court, having reviewed the terms of the Settlement Agreement submitted by the parties, grants final approval of the Settlement Agreement and defines the Settlement Class as defined therein and in the Preliminary Approval Order, and finds that the settlement is fair, reasonable, and adequate and meets the requirements of Colorado Rule of Civil Procedure 23.

7. The Settlement Agreement provides, in part, and subject to a more detailed description of the settlement terms in the Settlement Agreement, for:

- a. A process for Settlement Class Members to submit claims for compensation of up to \$500 per Class Member in Ordinary Expense Reimbursements and Lost Time, and up to \$4,500 per Class Member in Extraordinary Expense Reimbursements, all of which will be evaluated by the Court-approved Claims Administrator.
- b. A process for Settlement Class Members to submit claims for enrollment in 24-months of credit monitoring services.
- c. Equitable relief in the form of data security enhancements designed to better protect Settlement Class Members' PII and PHI.
- b. Defendant to pay all Notice and Settlement Claims Administration costs.
- c. Defendant to pay a Court-approved amount for attorneys' fees, costs, and expenses of Settlement Class Counsel up to \$412,500.
- d. Defendant to pay a Service Award of up to \$2,500 to each of the three named Class Representatives.

8. The terms of the Settlement Agreement are fair, reasonable, and adequate and are hereby approved, adopted, and incorporated by the Court. The Parties, their respective attorneys, and the Claims Administrator are hereby directed to consummate the Settlement in accordance with this Order and the terms of the Settlement Agreement.

9. Notice of the Final Approval Hearing, the proposed motion for attorneys' fees, costs, and expenses, and the proposed Service Award payment to Plaintiff have been provided to Settlement Class Members as directed by this Court's Orders, and an affidavit or declaration of the Settlement Administrator's compliance with the Notice Program has been filed with the Court.

10. The Court finds that such Notice as therein ordered, constitutes the best possible notice practicable under the circumstances and constitutes valid, due, and sufficient notice to all Settlement Class Members in compliance with the requirements of Colorado Rule of Civil Procedure 23(e).

11. As of the final date of the Opt-Out Period, _____ potential Settlement Class Members have submitted a valid Opt-Out Request to be excluded from the Settlement. The names of those persons are set forth in Exhibit A to this Order. Those persons are not bound by this Final Order and Judgment, as set forth in the Settlement Agreement.

12. The Court has considered all the documents filed in support of the Settlement, and has fully considered all matters raised, all exhibits and affidavits filed, all evidence received at the Final Approval Hearing, all other papers and documents comprising the record herein, and all oral arguments presented to the Court.

13. Pursuant to the Settlement Agreement, Defendants, the Claims Administrator, and the Claims Referee shall implement the Settlement in the manner and time frame as set forth therein.

14. Pursuant to Settlement Agreement Section XIV and upon the Effective Date, Plaintiffs and Settlement Class Members shall have released all claims against Defendants and all Released Persons, as those persons and entities, Effective Date, and releases are defined in the Settlement Agreement

15. On the Effective Date and in consideration of the promises and covenants set forth in this Settlement Agreement, (i) Plaintiffs and each Settlement Class Member, and each of their respective spouses and children with claims on behalf of the Settlement Class Member, executors, representatives, guardians, wards, heirs, estates, trustees, successors, predecessors, next friends, co-borrowers, co-obligors, co-debtors, legal representatives, attorneys, agents, and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf (including the government in the capacity as *parens patriae* or on behalf of creditors or estates of the releasors), and each of them (collectively and individually, the “Releasing Persons”), and (ii) Settlement Class Counsel and each of their past and present law firms, partners, or other employers, employees, agents, representatives, successors, or assigns will be deemed to have, and by operation of the Final Order and Judgment shall have, fully, finally, completely, and forever released and discharged the Released Persons from the Released Claims.

16. The matter is hereby dismissed with prejudice and without costs except that the Court reserves jurisdiction over the consummation and enforcement of the Settlement.

17. In accordance with Colo. R. Civ. P. 23, this Final Order and Judgment resolves all claims against all parties in this Action and is a final order. There is no just reason to delay the entry of final judgment in this matter, and the Clerk is directed to file this Order as the final judgment in this matter.

Done and ordered this ____ day of _____, 2022.

Presented By:

Dated: April __, 2022

/s/ _____

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Dated: April __, 2022

/s/ _____

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