

## **CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

This Class Action Settlement Agreement and Release (“**Settlement Agreement**”) dated as of the date of this Agreement is fully executed (“**Effective Date**”) is entered by and between Plaintiff Jonathan Kindler, on behalf of himself (“**Plaintiff**”) and a settlement class as defined herein (“**Settlement Class**”), on one hand, and Defendant Healthgrades Marketplace, LLC (“**Healthgrades**”), on the other hand. Plaintiff, the Settlement Class, and Healthgrades may be referred to collectively as the “**Parties**” or singularly referred to as a “**Party**.” This Settlement Agreement is conditioned upon and subject to approval of the Court. Class Counsel (as defined below) and the Parties hereby stipulate and agree that, in consideration of the promises and covenants set forth in this Settlement Agreement, the Lawsuit (as defined below), and all Released Claims (as defined below) shall be finally and fully settled, compromised, and released, on the following terms and conditions. This Settlement Agreement includes the attached exhibits, which are incorporated herein by reference as though fully set forth herein:

Exhibit A – Preliminary Approval Order

Exhibit B – Final Approval Order and Judgment

Exhibit C – Publication Notice

Exhibit D – Illustration of Content Described in Injunctive Relief Measure

### **RECITALS**

WHEREAS, on December 21, 2022, Plaintiff filed a Class Action Petition in the 16th Judicial Circuit Court of Jackson County, Missouri styled *Kindler v. Healthgrades Marketplace, LLC*, case number 2316-CV00209 alleging that Healthgrades’ commercial use of healthcare provider data without consent as part of an online provider directory accessible to the general public at <www.healthgrades.com> (“**Provider Directory**”) violated Plaintiff’s and the Settlement Class’s privacy and publicity rights (“**Lawsuit**”);

WHEREAS, while Plaintiff contests the commercial use of this data, Plaintiff does not contest the legality or propriety of Healthgrades’ methods for collecting data for use in creating its Provider Directory, and Healthgrades represents that it obtains this data through public and commercial sources;

WHEREAS, Healthgrades has denied and continues to deny all material allegations of the Lawsuit, and maintains that its collection and use of data to create the Provider Directory as well as its opportunities for sponsorship and advertising, has been, and continues to be, lawful and appropriate;

WHEREAS, the Parties desire to resolve all claims and disputes that are asserted or could have been asserted, or arise from or are otherwise related to the Lawsuit concerning the allegations made against Healthgrades;

WHEREAS, Plaintiff believes that the proposed settlement embodied in this Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class, and that this Settlement Agreement should be approved by the Court under Mo. Sup. Ct. (“**Rule**”) 52.08(e);

WHEREAS, Healthgrades, while denying any wrongdoing and without admitting any liability, is entering into this Settlement Agreement solely to avoid further burden and expenses of litigation, and believes that the proposed settlement embodied in this Settlement Agreement is fair, reasonable, and adequate, and that this Settlement Agreement should be approved by the Court under Rule 52.08(e);

WHEREAS, the Settlement Agreement resolves all Released Claims—as set forth below—in their entirety as to Healthgrades, without any admission of liability, and the Parties intend this Settlement Agreement to bind the Parties; and

WHEREAS, the Parties believe that this Settlement Agreement can and should be approved to avoid the time, expense, and uncertainty of protracted litigation; and in the event that this Settlement Agreement does not receive final and binding approval from the Court or is terminated according to its terms, Plaintiff expressly reserves the right to pursue litigation and to try their case to judgment, while Healthgrades reserves the right to challenge said litigation and reserves its full defenses.

NOW THEREFORE, based upon the promises and covenants contained herein and the recitals set forth above, all of which are an integral part of this Settlement Agreement and are incorporated herein by reference, and for good and valuable consideration, the Parties hereby stipulated and agree, subject to the approval of the Court, as follows:

**1. DEFINITIONS.** In addition to the terms defined herein, and as used in this Settlement Agreement, the following terms shall be defined as follows:

**1.1. “Bar Date”** means the final date by which (ii) any objection to the Settlement Agreement must be filed and served pursuant to the terms of this Settlement Agreement; and (iii) any request to be excluded from the Settlement Class must be sent to the Settlement Administrator pursuant to the terms of the Settlement Agreement. The Bar Date shall be 90 calendar days after the Notice Date, as defined herein, or the date otherwise set forth in the Preliminary Approval Order entered by the Court. The Bar Date may be extended by written agreement of the Parties through Class Counsel and Defense Counsel without further approval of the Court or notice to the Settlement Class, provided that the Settlement Website administered by the Settlement Administrator shall be promptly updated to reflect any extension of the Bar Date.

**1.2. “Class Counsel”** means the law firms of DLM Law LLC; White Graham, Buckley & Carr, L.L.C.; and Clayton Jones, Attorney at Law.

**1.3. “Class Representative”** means Plaintiff.

**1.4. “Court”** means the 16th Judicial Circuit Court of Jackson County, Missouri.

**1.5. “Defense Counsel”** means the law firm of Gordon Rees Scully Mansukhani, LLP.

**1.6. “Final Fairness Hearing”** means the hearing that is to take place after entry of the Preliminary Approval Order and after the Notice Date for purposes of: (i) entering the Final Approval Order and Judgment and dismissing the Lawsuit with prejudice; (ii) determining whether the Settlement should be approved as fair, reasonable, adequate and in the best interests of the Settlement Class Members; and (iii) ruling upon an application by Class Counsel for an award of reasonable attorneys’ fees and expenses.

**1.7. “Final Approval Order”** means the order entered by the Court granting final approval of the settlement embodied in this Settlement Agreement with respect to relief to the class (including Class Representative’s service award, and expressly exempting attorneys’ fees and expenses) and dismissing with prejudice all Released Claims against Healthgrades, which the parties will request be entered as a separate judgment under Rule 74.01. The Final Approval Order shall be in a form substantially the same in all material respects to **Exhibit B**, attached to this Settlement Agreement.

**1.8. “Natural Person”** means a human being acting and appearing as him- or herself and expressly excludes any form of business or social organization and any other non-governmental legal entity, including, but not limited to, a corporation, partnership, association, trust, or unincorporated organization.

**1.9. “Notice Plan”** means the dissemination by publication of the Rule 52.08(c) and (e) notice of settlement advising individual class members (A) about the Settlement Agreement and the Court’s approval of the same; (B) that the court will exclude the member from the class if requested by a specified date; (C) that the judgment, whether favorable or not, will include all members who do not request exclusion; and (D) that any member who does not request exclusion may, if desired, enter an appearance through counsel, all as described more fully below.

**1.10. “Preliminary Approval Order”** means the Order preliminarily approving the Settlement, in the form attached hereto as Exhibit A, or as approved by the Court, and the agreed Notice Plan, as defined herein.

**1.11. “Provider Profile”** means the end result landing page featuring a specific healthcare professional when a consumer uses the search engine on the healthgrades.com platform by submitting a healthcare professional’s first and/or last name.

**1.12. “Released Claims”** means any and all actual or potential claims, counterclaims, actions, causes of action, suits, cross claims, third party claims, contentions, disputes, allegations, fees (including attorneys’ fees), and assertions of wrongdoing, and any demands for injunctive relief or any other type of equitable or legal relief, whether known or unknown, suspected or unsuspected, contingent or non-contingent, discovered or undiscovered, brought or that could be brought under the same factual predicate in the Petition or under the Lawsuit against any of the Released Parties.

**1.13. “Released Parties”** means Healthgrades together with its predecessors, successors (including, without limitation, acquirers of all or substantially all of its assets, stock or other ownership interests) and assigns; the past, present, and future, direct and indirect, parents (including, but not limited to holding companies), subsidiaries and affiliates of any of the above; and the past, present, and future principals, trustees, partners (including, without limitation, affinity, agent bank, and private label and co-brand partners), officers, directors, employees, former employees, agents, attorneys, insurance companies, reinsurers, accountants, administrators, shareholders, advisors, representatives, trustees, members, firms and corporations acting on Healthgrades’ behalf, predecessors, successors (including, without limitation, acquirers of all or substantially all of their assets, stock, or other ownership interests), assigns, representatives, heirs, executors, and administrators of any of the above. **“Released Parties”** expressly does not include WedMD, LLC or Vitals, Inc. and nothing in this Settlement Agreement shall be construed to release or relate in any way to those companies.

**1.14. “Requesting Provider”** means an individual healthcare professional who is making a request on their own behalf; it does not include a health system, a health group administrator, or a practice group. For purposes of clarity, “administrator” shall not include a provider’s secretary, office administrator or other administrative staff who may typically prepare or execute paperwork for an individual provider.

**1.15. “Settlement Administrator”** means the qualified independent third party selected by the Parties and approved by the Court in the Preliminary Approval Order to administer the Settlement, including providing notice to the Settlement Class, processing claims, and distributing the Class Settlement Fund, as defined below, all pursuant to the terms and conditions of this Settlement Agreement and the Court’s Preliminary Approval Order. The Parties agree to recommend that the Court appoint Angeion Group as the Settlement Administrator. If Angeion Group becomes unable to fulfill that role or the Parties agree otherwise, the Parties may recommend a different proposed Settlement Administrator.

**1.16. “Settlement Class”** means: All Natural Persons in the United States who have an active National Provider Identifier issued pursuant to 42 U.S.C. § 1320d *et seq.* and 45 C.F.R. § 160.103 *et seq.* (“NPI”) and appear as a basic listing on Healthgrades’ Provider Directory, but excluding: (a) shareholders, officers and employees of Healthgrades, and (b) all judicial officers presiding over this or any related Lawsuit.

## **2. PRELIMINARY CERTIFICATION OF THE SETTLEMENT CLASS.**

**2.1. Stay of Action.** Upon the signing of this Settlement Agreement by all Parties, the Parties agree to stay all pending deadlines and proceedings in the Action, except those proceedings necessary to carry out or enforce the terms and conditions of this Settlement Agreement.

**2.2.** This Settlement Agreement is expressly conditioned upon its approval by the Court.

**2.3.** Upon execution of this Settlement Agreement, the Plaintiffs shall file a Motion for Preliminary Approval asking the Court to preliminarily approve the Settlement and enter the Preliminary Approval Order in the form attached hereto as Exhibit A, or as approved by the Court. Pursuant to that Motion for Preliminary Approval, Plaintiffs will request that the Court:

a. approve the Notice Plan, and find that the plan for publication notice, established pursuant to this Settlement Agreement and which shall be set forth in the appropriate written submission from the Settlement Administrator (the "Notice Plan"), constitutes the best notice practicable under the circumstances and satisfies the requirements of due process, Mo. R. Civ. P. 52.08, and Fed. R. Civ. P. 23;

b. find that the requirements for provisional certification of the Settlement Class have been satisfied, appointing Plaintiff as the representative of the Settlement Class, and Class Counsel as counsel for the Settlement Class, and preliminarily approving the Settlement as being within the range of reasonableness such that notice shall be provided pursuant to the terms of the Settlement Agreement;

c. schedule the Final Fairness Hearing to determine whether the Settlement should be finally approved as fair, reasonable, adequate and in the best interests of the Settlement Class Members, and to determine whether a Final Approval Order and Judgment should be entered dismissing the Action with prejudice;

d. preliminarily approve the form of the Final Approval Order and Judgment;

e. approve the appointment of Angeion Group, upon reasonable terms and conditions, as the Settlement Administrator;

f. direct that notice of the Settlement and of the Final Fairness Hearing shall be provided to the Settlement Class pursuant to terms of this Settlement Agreement;

g. provide that any objections by any Settlement Class Member to the certification of the Settlement Class for purposes of settlement, the proposed Settlement, or entry of the Final Approval Order and Judgment, shall be submitted and heard, if appropriate, pursuant to terms and conditions set forth in this Settlement Agreement;

h. provide that Settlement Class Members shall be bound by the Final Approval Order and Judgment dismissing the Action with prejudice unless such Settlement Class Members timely submit valid written requests for exclusion or opt-out in accordance with the terms and conditions of this Settlement Agreement;

i. establish a date by which the Parties shall file and serve all papers in support of the Motion for Final Approval of the Settlement and in response to any valid and timely objections;

j. stay all proceedings in the Action pending the Final Fairness Hearing, other than those proceedings necessary to carry out or enforce the terms and conditions of this Settlement Agreement and the Preliminary Approval Order; and

k. enjoin Plaintiffs and Settlement Class Members, and any of them, from commencing or prosecuting, either directly or indirectly, any action asserting any of the Released Claims, pending the Final Fairness Hearing.

2. **Notice.** Following entry of the Preliminary Approval Order, notice shall be provided to the Settlement Class pursuant to Section VII of this Settlement Agreement and as directed and approved by the Court in its Preliminary Approval Order.

a.

2.4. Preliminary certification of the Settlement Class and appointment of the Class Representative and Class Counsel shall be binding only with respect to the proposed settlement. In the event the proposed settlement is not consummated for any reason, whether due to a termination of this Settlement Agreement in accordance with its terms, a failure or refusal of the Court to approve the proposed settlement, or a reversal or modification of the Court's approval of the proposed settlement on appeal, or any other reason, then the certification of the Settlement Class and the appointment of Class Representative or Class Counsel shall be deemed void and vacated; the Parties shall litigate this lawsuit as though the Settlement Agreement had never been entered and the Settlement Class had never been certified; and the Parties shall retain all of their respective rights as they existed prior to execution of this Settlement Agreement.

3. **INJUNCTIVE RELIEF TO THE SETTLEMENT CLASS.** In consideration for the complete and final settlement of this Lawsuit, the Releases, and other promises and covenants set forth in this Settlement Agreement, and subject to the other terms and conditions herein, Healthgrades agrees to the following injunctive relief:

3.1. **Right to Opt-Out of Certain Content.** Healthgrades will include a link on the healthgrades.com website to an opt-out form (the "Form") that Requesting Providers can print, complete, sign and return by mail or appropriate electronic means to Healthgrades. The Form shall provide the option for a Requesting Provider to request and consent that Healthgrades to remove from the Requesting Provider's Profile page any and all references to other individual healthcare providers; specifically, the removal of providers illustrated, through example, as depicted in Exhibit D. This may include disabling or removing software widgets which would cause such references to appear. Healthgrades may include the link to the Form anywhere on its website it chooses, so long as the link is readily accessible to all healthcare providers whose Provider Profiles appear on the website and the link is adjacent to logically-related content. Healthgrades may require, as a condition of removing content, that the Requesting Provider "claim" their profile. This condition shall be stated in the Form itself. A Requesting Provider must submit the Form; it is not sufficient for a practice group, a health group administrator, or a health system to submit Forms for a Requesting Provider, multiple Requesting Providers, or an entire group or practice. This condition shall be stated in the Form itself. Healthgrades shall act on instructions delivered through a Requesting Provider's Form within thirty (30) days of receiving the Requesting Provider's Form. Healthgrades estimates the reasonable value of this relief to each class member is greater than \$1,000 because, in the absence of this settlement, only class members are eligible to pay to enhance their Provider Profile, which among other things, would otherwise preclude the relief described herein.

b.

3.2. **Educational Resources.** Healthgrades will update its platform to ensure that Healthgrades' educational resources created for providers and general consumers is more visible to all users.

**4. SETTLEMENT APPROVAL.** The Parties shall cooperate in good faith to take all reasonably necessary steps to obtain the Court's preliminary and final approval of the terms of this Settlement Agreement ("**Preliminary Approval Order**").

**5. SETTLEMENT ADMINISTRATOR.**

**5.1.** The Parties shall request contemporaneously with seeking preliminary approval that the Court appoint a Settlement Administrator ("**Settlement Administrator**"). The Parties request that the Court appoint Angeion Group as the Settlement Administrator.

**5.2.** The Settlement Administrator shall administer the Settlement in accordance with the terms and conditions of this Settlement Agreement and, without limiting the foregoing, shall:

a. treat any and all documents, communications, and other information and materials received in connection with the administration of the Settlement as strictly confidential, shall not use any of them for any purpose other than administration of the Settlement, and shall not disclose any such documents, communications or other information to any Person or entity except as expressly provided for in this Settlement Agreement or by Court order; and

b. receive and process opt-out and other requests from Settlement Class Members to exclude themselves from the Settlement and provide to Class Counsel and Defense Counsel a copy thereof within three (3) days of receipt. If the Settlement Administrator receives any exclusion forms or other requests from Settlement Class Members to exclude themselves from the Settlement after the deadline for the submission of such forms and requests, the Settlement Administrator shall promptly provide Class Counsel and Defense Counsel with copies thereof; and

**5.3.** The Settlement Administrator shall establish a single F.D.I.C.-insured interest bearing escrow account, at a financial institution with more than \$20 billion in an account or accounts insured by an agency or agencies of the United States government, with insurance that exceeds any amounts deposited therein, for use in this lawsuit to facilitate the effectuation and payment of class notice and attorneys' fees (the "**Escrow Account**" or "**Payment Fund**"). The Settlement Administrator may only use the funds paid by Healthgrades into the Payment Fund as specified in and consistent with the terms of the Settlement Agreement. Healthgrades shall pay all administrative expenses of the class settlement, including the cost of any required class notice. Further, for the avoidance of doubt, any expenses or fees associated or caused by the setting up of and/or maintaining the Escrow Account shall not be paid by Healthgrades, but by Class Counsel.

**5.4.** The Settlement Administrator shall be responsible for effectuating class notice and administering the Payment Fund consistent with the terms of the Settlement Agreement.

**6. NOTICE TO SETTLEMENT CLASS.**

**6.1.** Healthgrades shall pay reasonable and actual costs of notice to the Settlement Class.

**6.2.** Within twenty-one (21) days of the entry of the Preliminary Approval Order, Healthgrades shall pay to the Payment Fund the reasonable costs of such notice. If at the conclusion of administering the Notice Plan, the amount of notice costs paid by Healthgrades exceeds the actual costs of notice, the Settlement Administrator shall pay any balance to Healthgrades within seven (7) calendar days of the conclusion of administering the Notice Plan.

**6.3. Settlement Website.** Within thirty (30) days after entry of the Preliminary Approval Order, but no later than the Notice Date, the Settlement Administrator shall create and maintain an operating website that: (i) contains downloadable copies of the Preliminary Approval Order, Publication Class Notice, Settlement Agreement, and, when filed, Class Counsel's motion for reasonable attorneys' fees and expenses, and for incentive awards for the Class Representative; (ii) will post any subsequent notices agreed upon by the Parties; and (iii) allows Settlement Class Members to submit opt-outs. This website shall be referred to as the "Settlement Website."

**6.4. Toll-Free Settlement Phone Number.** Within thirty (30) days after entry of the Preliminary Approval Order, but no later than the Notice Date, the Settlement Administrator shall set up a toll-free telephone number for receiving toll-free calls related to the Settlement. That telephone number shall be maintained until sixty (60) calendar days after the Bar Date. After that time, and for a period of ninety (90) calendar days thereafter, either a person or a recording will advise any caller to the toll-free telephone number that the deadline for submitting claims has passed and the details regarding the Settlement may be reviewed on the Settlement Website.

**6.5. Publication Notice.** On the Notice Date, or as close thereto as is reasonably practicable under the circumstances, the Settlement Administrator shall cause the Publication Notice in the form attached hereto as Exhibit C, or as approved by the Court, to be published in that form, as well as in an abbreviated form, in electronic and print publications pursuant to the Notice Plan developed by the Settlement Administrator, in coordination with Class Counsel and Defense Counsel, and approved by the Court as part of the Preliminary Approval Order. Such published notice may include newspaper and other print publications and/or digital publication. In the event the Parties cannot agree on any issue relating to any such additional notice or any other aspect of published notice, that dispute will be submitted to the Court

**6.6. Declaration of Settlement Administrator.** The Settlement Administrator has provided Class Counsel and Defense Counsel the Notice Plan for publication notice, established pursuant to this Settlement Agreement, and will provide such Notice Plan in the form of a written declaration that is appropriate for submission to the Court along with the Motion for Preliminary Approval. The Notice Plan describes the notice to be provided to the Settlement Class as set forth in this Settlement Agreement and as agreed upon by the Parties, together with a detailed written explanation supporting the adequacy and appropriateness of the notice under Mo. R. Civ. P. 52.08 and any other applicable law and detailing the costs of such plan. The Notice Plan, including its reasonable fees, costs, and expenses, shall be subject to Court approval at the preliminary approval hearing.

**6.7.** Subject to Court approval, the content of the Notice of Proposed Class Action Settlement shall be substantially similar in all material respects to **Exhibit C**, attached to this Settlement Agreement.

## **7. OBJECTIONS AND OPT-OUTS**

**7.1 Objecting to the Settlement.** Any Settlement Class Member who intends to object to the fairness, reasonableness, or adequacy of the Settlement must, no later than the Bar Date or the deadline for submitting objections otherwise set forth in the Court's Preliminary Approval Order: (i) file a written objection with the Court, either by mailing it to the Office of the Clerk of Court, 415 East 12<sup>th</sup> Street, Kansas City, Missouri 64106, or by filing it in person at the Jackson County Circuit Court, or by electronic filing; and (ii) serve a copy of the same on Class Counsel and Defense Counsel at the addresses set forth in this Settlement Agreement.

**7.2 Content of the Objection.** In the written objection, the Settlement Class Member must state the member's full name, current address, telephone number, the reasons for the objection, whether he/she/it intends to appear at the fairness hearing on his/her/its own behalf or through counsel, and a list of all cases in which the objector or objector's counsel has objected to a class-action settlement in the last five (5) years. Any documents supporting the objection must also be attached to the written objection, and if the objecting Settlement Class Member intends to call witnesses at the Final Fairness Hearing, any such witness must be identified, including by providing each such witness's name, address and telephone number. Objections must be signed by the Settlement Class Member or by his/her/its counsel. Any Settlement Class Member who fails to file and serve timely written objections in the manner specified herein shall be deemed to have waived all objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

**7.3 Appearance at Fairness Hearing.** Any Settlement Class Member who has timely filed a written objection, as provided for herein, may appear at the Final Fairness Hearing, either in person or through an attorney hired at the Settlement Class Member's own expense, to object to the fairness, reasonableness, or adequacy of the Settlement. A Settlement Class Member, or his, her, or its attorney, intending to make an appearance at the Fairness Hearing must: (i) file a notice of appearance with the Court no later than ten (10) business days prior to the Final Fairness Hearing, or as the Court may otherwise direct; and (ii) serve a copy of such notice of appearance on counsel for all Parties.

**7.4 Opting Out of the Settlement.** Settlement Class Members may elect to be excluded from the Settlement (opt out), thereby relinquishing their rights to benefits under the Settlement. Settlement Class Members wishing to opt out of the Settlement must send a written request to be excluded from the Settlement to the Settlement Administrator by fax, United States mail, e-mail, or electronically via the Settlement Website on or before the Bar Date or the opt-out deadline otherwise provided in the Court's Preliminary Approval Order. Any request for exclusion or opt out sent to the Settlement Administrator by United States mail must be postmarked on or before the Bar Date or the opt-out deadline otherwise provided in the Court's Preliminary Approval Order. The date of the postmark on the mailing envelope shall be the exclusive means used to determine whether a request for exclusion sent by United States mail has been timely submitted. Settlement Class Members who fail to submit a valid and timely request for exclusion on or before the Bar Date or the date otherwise specified in the Court's

Preliminary Approval Order shall be bound by all terms of this Settlement Agreement and the Final Approval Order and Judgment, regardless of whether they have requested exclusion from the Settlement.

**7.5 Content of Opt-Out Notice.** The request to be excluded from the Settlement Class must include the Settlement Class Member's name, address, and telephone number and provide a clear statement communicating that he/she/it elects to be excluded from the Settlement Class, does not wish to be a Settlement Class Member, and elects to be excluded from any judgment entered pursuant to the Settlement.

**7.6 Effect of Submitting a Valid Opt-Out Notice.** Any Settlement Class Member who submits a valid and timely request for exclusion or opt out may not file an objection to the Settlement and shall be deemed to have waived any rights or benefits under this Settlement Agreement. Settlement Class Members who opt out of the Settlement will not release their claims against the Released Parties by operation of this Settlement Agreement.

**7.7 Reporting Opt-Outs.** Not later than three (3) business days after the deadline for submission of requests for exclusion or opt out, the Settlement Administrator shall provide to Class Counsel and Defense Counsel a complete opt-out list together with copies of the opt-out requests.

## **8. FINAL REPORT AND FAIRNESS HEARING**

**8.1 Final Approval of Settlement.** On the date set forth in the Preliminary Approval Order, a Final Fairness Hearing shall be conducted to determine final approval of the Settlement.

**8.2 Report of Settlement Administrator.** No later than thirty (30) calendar days after the Bar Date, the Settlement Administrator shall serve on Class Counsel and Defense Counsel a declaration verifying that the notice required by this Settlement Agreement and Preliminary Approval Order has been completed in accordance with their terms, and provide a report stating a list of the valid exclusion requests received by the Settlement Administrator pursuant to this Agreement, including the name and address of each member who validly requested exclusion.

**8.3 Request for Final Approval and Judgment and Responses to Any Objections.** If the Settlement is approved preliminarily by the Court, and all other conditions precedent to the Settlement have been satisfied, no later than ten (10) business days prior to Final Fairness Hearing, or on another date established by the Court, the Parties shall both request, individually or collectively, that the Court enter the Final Approval Order and Judgment in the form attached hereto as Exhibit B, or as approved by the Court, with Class Counsel filing a memorandum of points and authorities in support of the request. Counsel for the Class and Defendants may file a memorandum addressing any objections submitted to the Settlement. Any list of Settlement Class Members who elect to opt out of the Settlement that is to be filed as part of the final approval process shall be filed with the Court under seal.

**8.4 Final Fairness Hearing.** At the Final Fairness Hearing, the Court will consider and determine whether the provisions of this Settlement Agreement should be finally approved,

whether the Settlement should be finally approved as fair, reasonable and adequate, whether any objections to the Settlement should be overruled, whether the fee award and incentive payments to the Class Representatives should be approved, and whether a judgment finally approving the Settlement should be entered.

**8.5 Final Approval Order and Judgment.** This Settlement Agreement is subject to and conditioned upon the issuance by the Court of a Final Approval Order and Judgment which grants final approval of this Agreement and:

- (a) finds that the notice provided satisfies the requirements of due process and Mo. R. Civ. P. 52.08(e)(2);
- (b) finds that Settlement Class Members have been adequately represented by the Class Representatives and Class Counsel;
- (c) finds that the Settlement Agreement is fair, reasonable and adequate to the Settlement Class, that each Settlement Class Member shall be bound by this Agreement, including the release and the covenant not to sue set forth in this Settlement Agreement, and that this Settlement Agreement should be and is finally approved;
- (d) dismisses on the merits and with prejudice the Action, including all claims of the Settlement Class Members asserted against Defendants, with each Party waiving all rights to appeal and waiving all rights to seek reimbursement of attorneys' fees or costs (except as expressly provided in this Settlement Agreement);
- (e) permanently enjoins each and every Settlement Class Member from bringing, joining, or continuing to prosecute any Released Claims against any of the Released Parties, or from assisting others in so doing; and,
- (f) retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation and enforcement of this Settlement.

## **9. ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS.**

**9.1.** Class Counsel shall apply (and Healthgrades shall not object) to the Court for the award of (a) fees and expenses which do not exceed a cap of \$300,000.00 ("**Healthgrades' Payment Cap**"), and (b) a Class Representative service award of \$5,000.00. The Parties acknowledge and agree that an award of (a) fees and expenses and (b) the Class Representative's service award shall be paid by Healthgrades within thirty (30) days of the later of the Court's orders relating to such awards.

**9.2.** Healthgrades shall not have any responsibility for, or interest in, or liability whatsoever with respect to the allocation among Class Counsel, or any other person who may assert some claim thereto, of any fee expense award that the Court may make under the terms of this Settlement Agreement.

## 10. RELEASES AND WAIVERS OF RIGHTS.

**10.1. Release.** Plaintiff covenants and agrees that he will not take any step whatsoever to assert, sue on, continue, pursue, maintain, prosecute, assist, cooperate, facilitate, or enforce any of the Released Claims, directly or indirectly, against the Released Parties.

**10.2. Releases Relating To Litigation Conduct.** The Parties and their respective counsel agree to release each other from any and all claims relating in any way to any Party or counsel's conduct in this Lawsuit, including but not limited to any claims of abuse of process, malicious prosecution, or any other claims arising out of the institution, prosecution, assertion or resolution of this Lawsuit.

**11. NO ADMISSION OF LIABILITY OR WRONG DOING.** Healthgrades expressly and completely disclaims and denies any wrongdoing or liability whatsoever. This Settlement Agreement, and any and all negotiations, statements, documents, and/or proceedings in connection with this Settlement Agreement, shall not be construed or deemed to be evidence of any admission or concession by Healthgrades of any liability or wrongdoing by Healthgrades or any of its affiliates, subsidiaries, agents, employees, former employees, directors, representatives, vendors, or any other person or entity acting on its behalf with respect to hosting the Provider Directory or the data collected and used in the creation and maintenance of the Provider Directory, or that the case was properly brought as a class action, and shall not be construed or deemed to be evidence of any admission or concession that any person suffered compensable harm or is entitled to any relief with respect to hosting the Provider Directory or the data collected and used in the creation and maintenance of the Provider Directory. Healthgrades may file this Settlement Agreement in any action or proceeding that may be brought against it in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

**12. FAIR, REASONABLE, AND ADEQUATE SETTLEMENT.** The Parties believe this Settlement Agreement is a fair, reasonable, and adequate settlement of this Lawsuit and have arrived at this Settlement Agreement through arms-length negotiations, taking into account all relevant factors, present and potential.

**13. PRESS STATEMENTS.** The Parties shall not issue any press releases, make social media posts or podcasts, or otherwise announce the settlement. In response to any media inquiries regarding the settlement, the Parties may refer to publicly-filed documents in this Lawsuit. The Parties shall not otherwise make any other public comments or statements to the media concerning the settlement.

## 14. AUTHORITY

**14.1. Real Parties in Interest.** In executing this Settlement Agreement, Plaintiff, on behalf of himself and the Settlement Class, represent and warrant that, as far as they are aware, Settlement Class members are the only persons having any interest in any of the claims that are described or referred to herein, or in any of the pleadings, records, and papers in this lawsuit, and, except as provided herein, Plaintiff is unaware of said claims or any part thereof having been assigned, granted or transferred in any way to any other person, firm, or entity.

**14.2. Voluntary Agreement.** This Settlement Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of the Parties, or of any other person, firm or entity.

**14.3. Binding On Successors.** This Settlement Agreement shall bind and inure to the benefit of the respective successors, assigns, legatees, heirs, and personal representatives of each of the Parties.

**14.4. Parties Represented by Counsel.** The Parties hereby acknowledge that they have been represented in negotiations for and in the preparation of this Settlement Agreement by independent counsel of their own choosing, that they have read this Settlement Agreement and have had it fully explained to them by such counsel, and that they are fully aware of the contents of this Settlement Agreement and of its legal effect.

**14.5. Authorization.** Each Party warrants and represents that there are no liens or claims of lien or assignments in law or equity or otherwise of or against any of the claims or causes of action released herein and, further, that each Party is fully entitled and duly authorized to give this complete and final release and discharge.

## **15. MISCELLANEOUS.**

**15.1. Construction and Interpretation.** Neither the Parties nor their respective counsel shall be deemed the drafter of this Settlement Agreement for purposes of interpreting any provision hereof in any judicial or other proceeding that may arise between or among them.

**15.2. Modifications And Amendments.** No amendment, change or modification of this Settlement Agreement or any part thereof shall be valid unless in writing and signed by the Parties.

**15.3. Governing Law.** This Settlement Agreement is entered into in accordance with the laws of the State of Missouri and shall be governed by and interpreted in accordance with the laws of the State of Missouri, without regard to its conflict of law principles.

**15.4. Further Assurances.** Each of the Parties hereto shall execute and deliver any and all additional papers, documents and other assurances and shall do any and all acts or things reasonably necessary in connection with the performance of its obligations hereunder to carry out the express intent of the Parties hereto.

**15.5. Termination.** Notwithstanding previous termination provisions, this Settlement may be terminated by either Plaintiff or Healthgrades by serving on counsel for the opposing party and filing with the Court a written notice of termination within ten (10) days (or such longer time as may be agreed between Settlement Class Counsel and Healthgrades) after any of the following occurrences:

- B.** The Court rejects, materially modifies, or materially amends or changes the terms of the settlement as embodied in this Settlement Agreement;

- C. The Court declines to enter without material change the material terms in the proposed Preliminary Approval Order or the Final Approval Order; or
- D. An appellate court reverses the Final Approval Order and the settlement is not reinstated and finally approved without material change by the Court on remand.


**15.6. Continuing Jurisdiction.** The Parties to this Settlement Agreement stipulate that the Court shall retain personal and subject matter jurisdiction over the implementation and enforcement of this Settlement Agreement, the order preliminarily approving the Settlement Agreement, the Final Approval Order, and any award of fees and expenses.


**15.7. Counterparts.** This Settlement Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. The several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies of executed copies of this Settlement Agreement may be treated as originals.

IN WITNESS WHEREOF, each of the signatories has read and understood this Settlement Agreement, has executed it, and represents that he or she is authorized to execute this Settlement Agreement on behalf of the Party or Parties he or she represents, who or which has agreed to be bound by its terms and has entered into this Settlement Agreement.

Dated: 10/8/2024

Dated: 10/8/2024

Signed by:  
  
96D18E9CA8AF4EF...  
 Jonathan Kindler  
*Plaintiff and Class Representative*

**HEALTHGRADES MARKETPLACE, LLC**  
 Signed by:  
  
F44E71B85A3B4B3...  
 By: Stephen Olin  
 Title: President

**EXHIBIT A**

**PRELIMINARY APPROVAL ORDER**

**EXHIBIT A**

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT KANSAS CITY**

JONATHAN KINDLER,  
on behalf of himself and other members of the  
putative class,

Plaintiffs,

vs.

HEALTHGRADES MARKETPLACE, LLC,

Defendant.

Case No.: 2316-CV00209

**PRELIMINARY APPROVAL ORDER [PROPOSED]**

Upon review and consideration of the Motion for Preliminary Approval of the Class Action Settlement and the Settlement Agreement and Release with accompanying Exhibits, all of which have been filed with the Court, it is HEREBY ORDERED, ADJUDGED and DECREED as follows:

1. The Court has carefully reviewed the Settlement Agreement and Release, as well as the files, records, and proceedings to date in the above-captioned action (the “Action”). The definitions in the Settlement Agreement and Release are hereby incorporated as though fully set forth in this Order, and capitalized terms shall have the meanings attributed to them in the Settlement Agreement and Release.

2. The Parties have agreed to settle the Action, subject to Court approval following notice to the proposed Settlement Class, upon the terms and conditions set forth in the Settlement Agreement and Release, which has been filed with the Court. The Settlement Agreement and

Release, including all Exhibits thereto, is preliminarily approved as fair, reasonable, and adequate.

3. Plaintiff, by and through their counsel, have investigated the facts and law relating to the matters alleged in the Class Action Petition, including extensive legal research as to the sufficiency of the claims, and an evaluation of the risks associated with continued litigation, class certification, trial, and potential appeal.

4. The settlement was reached as a result of extensive arms-length negotiations between counsel for Plaintiff and counsel for Defendant.

5. The Settlement confers substantial benefits upon the Settlement Class, and does so without the costs, uncertainties, delays, and other risks associated with continued litigation, class certification, trial, and potential appeal.

6. The Court conditionally certifies, for settlement purposes only, the following settlement class:

All natural persons in the United States who have an active National Provider Identifier (“NPI”) issued pursuant to 42 U.S.C. § 1320d *et seq.* and 45 C.F.R. § 160.103 *et seq.* and appear as a standard listing on Healthgrades’ Provider Directory but excluding (a) all shareholders, officers and employees of Defendant Healthgrades, and (b) all judicial officers presiding over this or any related Lawsuit.

7. Based on its review of the Settlement Agreement and Release, including all Exhibits thereto and on its familiarity with all of the files, records, and proceedings herein, the Court conditionally finds, for settlement purposes only and conditioned upon entry of the Final Approval Order and Judgment and the occurrence of the Effective Date, that the prerequisites for a class action under Rule 52.08 (a) and (b) of the Missouri Rules of Civil Procedure have been satisfied in that: (a) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement

Class; (c) Plaintiff's claims are typical of the claims of the Settlement Class for purposes of settlement; (d) Plaintiff has fairly and adequately represented the interests of the Settlement Class and will continue to do so, and Plaintiff has retained experienced counsel to represent him; and (e) Defendant has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole. In making these findings, the Court has exercised its discretion in conditionally certifying, for settlement purposes only, the Settlement Class on a nationwide basis. Defendant retains all rights to assert that this Action may not be certified as a Class Action except for settlement purposes.

8. The Court appoints David Marcus of the law firm DLM LAW, LLC, Bryan White from the law firm of White, Graham, Buckley & Carr, LLC, and Clayton Jones of the Clayton Jones Law Firm as counsel for the Class ("Class Counsel"). For purposes of these settlement approval proceedings, the Court finds that Class Counsel are competent and capable of exercising their responsibilities as Class Counsel. The Court designates named Plaintiff Jonathan Kindler as the representative of the Settlement Class.

9. The Final Fairness Hearing shall be held before this Court on \_\_\_\_\_, 2024, at \_\_\_\_\_ a.m./p.m., to determine whether the Settlement Agreement and Release is fair, reasonable, and adequate and should receive final approval. The Court will rule on Class Counsel's application for an award of reasonable attorneys' fees and expenses (the "Fee Application") at that time. Papers in support of final approval of the Settlement Agreement and Release and the Fee Application shall be filed with the Court according to the schedule set forth below. The Final Fairness Hearing may be postponed, adjourned, or continued by order of the Court without further notice to the Settlement Class. After the Final Fairness Hearing, the Court

may enter a Final Approval Order and Judgment in accordance with the Settlement Agreement and Release that will adjudicate the rights of the Settlement Class Members (as defined in the Settlement Agreement and Release) with respect to the claims being settled.

10. Pending the Final Fairness Hearing, all proceedings in the Action, other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement Agreement and Release and this Order, are stayed.

11. The Court approves, as to form and content, the publication notice, attached as Exhibit C to the Settlement Agreement and Release.

12. The Court finds that publication notice is sufficient in light of the fact that Plaintiff seeks a Settlement Class under Rule 52.08(b)(2) of the Missouri Rules of Civil Procedure. The Court finds publication notice complies with Rule 52.08(e) of the Missouri Rules of Civil Procedure as it is a reasonable manner of providing notice to those Settlement Class Members who would be bound by the Settlement, and is reasonably calculated, under all the circumstances, to apprise the members of the Settlement Class of the pendency of this Action, the terms of the Settlement, and their right to object to the Settlement.

13. The Court Orders that within thirty (30) business days after entry of this Order, Defendant shall cause notice in substantially the form attached to the Settlement Agreement as Exhibit C to be published in the publications and by the means set forth in the Notice Plan. The Notice Plan, including its reasonable fees, costs, and expenses, is approved by the Court.

14. Any Settlement Class Member may ask the Court to deny approval by filing an objection. Settlement Class Members cannot ask the Court to order a different settlement; the Court can only approve or deny the settlement being proposed. If the Court denies approval, the lawsuit will continue. If any Settlement Class Member wants that to happen, they must object in

accordance with the following procedure:

- (a) Any Settlement Class Member who intends to object to the fairness, reasonableness, or adequacy of the Settlement must, no later than the Bar Date: (i) file a written objection with the Court either by mailing that objection to the Office of the Clerk of Court, Circuit Court of Jackson County, State of Missouri, 415 E. 12<sup>th</sup> Street, Kansas City, Missouri 64106, or by filing the objection in person at the Circuit Court of Jackson County, Missouri, or by electronic filing; and (ii) serve a copy of the same on Class Counsel and Defense Counsel at the addresses set forth in the Settlement Agreement and Release.
- (b) In the written objection, the Settlement Class Member must state their full name, current address, telephone number, the reasons for the objection, whether he or she intends to appear at the fairness hearing on his or her own behalf or through counsel, and a list of all cases in which the objector or objector's counsel has objected to a class-action settlement in the last five (5) years. Any documents supporting the objection must also be attached to the written objection, and if the objecting Settlement Class Member intends to call witnesses at the Final Fairness Hearing, any such witness must be identified, including by providing each such witness's name, address and telephone number. Objections must be signed by the Settlement Class Member or by his, her, or its counsel. Any Settlement Class Member who fails to file and serve timely written objections in the manner specified herein, shall be deemed to have waived all objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.
- (c) Any Settlement Class Member who has timely filed a written objection, as provided

for herein, may appear at the Final Fairness Hearing, either in person or through an attorney hired at the Settlement Class Member's own expense, to object to the fairness, reasonableness, or adequacy of the Settlement. A Settlement Class Member, or his, her, or its attorney, intending to make an appearance at the Fairness Hearing must: (i) file a notice of appearance with the Court no later than ten (10) business days prior to the Final Fairness Hearing, or as the Court may otherwise direct; and (ii) serve a copy of such notice of appearance on counsel for all Parties.

15. Class Counsel shall file their Fee Application for reasonable attorneys' fees and expenses ten (10) business days before the Bar Date.

16. Papers in support of final approval of the Settlement Agreement and Release, and in response to any objections to the Settlement Agreement and Release or to Class Counsels' Fee Application, shall be filed with the Court ten (10) business days in advance of the date of the Final Fairness Hearing.

17. The Bar Date shall be ninety (90) calendar days after the Notice Date. The Bar Date may be extended by written agreement of the parties through Class Counsel and Defense Counsel without further approval of the Court or notice to the Settlement Class, provided that the settlement website administered by the Settlement Administrator shall be promptly updated to reflect any extension of the Bar Date.

18. These dates of performance may be extended by order of the Court, for good cause shown, without further notice to the Settlement Class. Settlement Class Members may also access the Court docket in this case through the Missouri CaseNet, or by visiting the office of the Clerk of the Court for the Circuit Court of Jackson County, State of Missouri, 415 E. 12<sup>th</sup> Street, Kansas City, Missouri 64106, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court

holidays.

19. If for any reason a Final Approval Order and Judgment as contemplated in the Settlement Agreement and Release is not entered, or the Settlement Agreement and Release is terminated pursuant to its terms for any reason, or the Effective Date does not occur for any reason, the following shall apply:

- (a) All orders and findings entered in connection with the Settlement Agreement and Release shall become null and void and have no force and effect whatsoever, shall not be used or referred to for any purposes whatsoever, and shall not be admissible or discoverable in this or any other proceeding;
- (b) The conditional certification of the Settlement Class pursuant to this Order shall be vacated automatically, and the Actions shall proceed as though the Settlement Class had never been certified pursuant to this Settlement Agreement and Release and such findings had never been made; and
- (c) All of the Court's prior orders having nothing whatsoever to do with the certification of the Settlement Class shall, subject to this Order, remain in force and effect, subject to extensions or modifications of deadlines as appropriate under the circumstances and in the Court's discretion; and
- (d) Nothing in this Order or pertaining to the Settlement Agreement and Release, including any of the documents or statements generated or received pursuant to the claims administration process, shall be used as evidence in any further proceeding in this case or in any other action, proceedings, or matter, whether civil, criminal, or administrative.

20. Pending final determination of whether the proposed settlement should be approved, no Settlement Class Member, directly, derivatively, in a representative capacity, or in

any other capacity, may commence or continue, or assist others in commencing or continuing, any action against any of the Released Parties in any court or tribunal asserting any of the Released Claims (as that term is defined in the Settlement Agreement and Release).

21. Nothing contained in this Order is, or may be construed as, a presumption, concession or admission by or against Defendants, or any Released Party (as that term is defined in the Settlement Agreement and Release) of any alleged or asserted default, liability or wrongdoing as to any facts or claims alleged or asserted in the Action, or in any actions or proceedings, whether civil, criminal or administrative.

22. Class Counsel and Defense Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Settlement Agreement and Release, including making, without further approval of the Court, minor changes to the form or content of the Long Form Class Notice, Summary Class Notice, and other exhibits that they jointly agree are reasonable or necessary.

**IT IS SO ORDERED**, this \_\_\_ day of \_\_\_\_\_, 2024.

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Hon. Kevin D. Harrell  
Jackson County Circuit Court Judge

**EXHIBIT B**

**Final Approval Order and Judgment**

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT KANSAS CITY**

<p>JONATHAN KINDLER, on behalf of himself and other members of the putative class,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>HEALTHGRADES MARKETPLACE, LLC,</p> <p style="text-align: center;">Defendant.</p>	<p>Case No.: 2316-CV00209</p> <p>Div. No.: 10</p>
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**ORDER APPROVING SETTLEMENT OF CLASS ACTION**

This matter came before the Court on XXXX on XXXX, pursuant to the Court’s Preliminary Approval Order dated XXXX. The Court has considered the Class Action Settlement Agreement and Release (the “Settlement”) between Plaintiff Jonathan Kindler (“Plaintiff”) and Healthgrades Marketplace, LLC (“Healthgrades” or “Defendant”), the record in the Lawsuit, and the arguments and authorities of counsel, including in any papers filed and proceedings had herein. Good cause appearing, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

1. Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Settlement Agreement. *See* XXX, at Ex. XXX.
  
2. This Court has jurisdiction over the subject matter of this Lawsuit pursuant to R.S. Mo. §§ 506.500, 508.101, and has personal jurisdiction over the Parties and all Settlement Class Members. Venue is proper in this Circuit.

3. By entering this Order, the Court does not make any finding of liability or wrongdoing as to Defendant.

4. The Court, for purposes of this Final Approval Order, (a) approves the Settlement described in Plaintiff's preliminary and final approval papers; (b) enters this Order and a separate judgment pursuant to Mo. Sup. Ct. ("**Rule**") 52.08; and (c) adopts herein the terms and definitions set forth in the Settlement Agreement.

5. The Court finds that the notice to the Settlement Class, which consisted of, among other things, (i) the pendency of the Lawsuit and of the Settlement, including the terms thereof; (ii) the Class Representative's application for a service award; (iii) the procedure for objecting to the Settlement; (iv) contact information for Class Counsel and a toll-free number to ask questions about the Settlement; (v) important dates in the settlement approval process, including the date of the Fairness Hearing; (vi) exclusion requirements; and (vii) Class Counsel's request for an award of reasonable attorneys' fees and expenses, as detailed in Plaintiff's preliminary approval papers and as previously approved by this Court, has been implemented and fully complied with the requirements of Rule 52.08(c)(2)(A) ("In any class action maintained under Rule 52.08(b)(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort") and due process.

6. Notice was provided to Settlement Class Members in compliance with this Court's Preliminary Approval Order, paragraphs XXX and XXX of the Settlement Agreement, due process, and Rule 52.08.

7. The notice given was the best method for providing such notice that was practicable under the circumstances. The notice: (i) fully and accurately informed Settlement

Class Members about the lawsuit and settlement; (ii) provided sufficient information so that Settlement Class Members were able to decide whether to accept the benefits offered, opt-out and pursue their own remedies, or object to the proposed Settlement; (iii) provided procedures for Settlement Class Members to file written objections to the proposed settlement, to appear at the hearing, and to state objections to the proposed Settlement; and (iv) provided the time, date, and place of the final approval hearing.

8. There were XXX objections to the Settlement Agreement.

9. The Court approves the Settlement as fair, reasonable, and adequate and in the best interests of the Settlement Class Members. The Court specifically has considered the factors relevant to class settlement approval (*see, e.g.*, Rule 52.08(e) and *State ex rel. Byrd v. Chadwick*, 956 S.W.2d 369, 378 n. 6 (Mo.App. W.D. 1997)), including, *inter alia*, the strength of Plaintiff's case; the risk, expense, complexity, and likely duration of further litigation; the risk of certifying the proposed Settlement Class and — if successful — maintaining class action status throughout trial; the relief provided for in the Settlement; the extent of discovery completed and stage of the proceedings; the experience and views of Class Counsel and highly-qualified mediators; and the reaction of Settlement Class Members to the proposed Settlement. The Court specifically has considered the factors relevant to class settlement approval, including whether:

- A. the Class Representative and Class Counsel have adequately represented the Settlement Class;
- B. the Settlement was negotiated at arm's length;
- C. the relief provided for the Settlement Class is adequate, taking into account:
  - i. the costs, risks, and delay of trial and appeal;

- ii. the reasonableness of Rule 52.08(c)(2), (e) notice of the Settlement to the Settlement Class Members;
  - iii. the terms of any proposed Class Representative service awards, including the timing of payment and any justification for the service awards; and
  - iv. any agreement made in connection with the settlement;
- D. the number of Class Members who objected to or commented on the Settlement; and
- E. the Settlement treats Settlement Class Members equitably relative to each other.

10. The Court has scrutinized the Settlement and negotiation history for any signs of potential collusion (*see, e.g., Ring v. Metro. St. Louis Sewer Dist.*, 41 S.W.3d 487, 492 (Mo.App. E.D. 2000)), and finds that the Settlement is not the product of collusion. For settlement purposes only, this finding is supported by, among other things: the fact that the Settlement was facilitated by experienced, well-qualified counsel from three different law firms; the Settlement provides substantial benefits to Settlement Class Members and such benefits are not disproportionate to the attorneys' fees and expenses sought separately by Class Counsel; the benefits provided to Settlement Class Members are appropriate under the circumstances of this Lawsuit; and the Parties began negotiating attorneys' fees and expenses only after reaching an agreement regarding the key deal terms, including significant injunctive relief provisions which comprise the core benefit of the Settlement.

11. Healthgrades has agreed to meaningful injunctive relief to protect the privacy and publicity rights of all healthcare professionals with a National Provider Identifier under 42

U.S.C. § 1320d *et seq.* and 45 C.F.R. § 160.103 *et seq.* (“NPI”). The Settlement Agreement with Healthgrades, including all terms of the agreed-upon injunctive relief, are adopted herein.

12. Injunctive Relief: Healthgrades will include a link on the healthgrades.com website to an opt-out form (the “Form”) that Requesting Providers can print, complete, sign and return by mail or appropriate electronic means to Healthgrades. The Form shall provide the option for a Requesting Provider to request and consent that Healthgrades remove from the Requesting Provider’s Profile page any and all references to other individual healthcare providers; specifically, the removal of providers illustrated, through example, as depicted in Exhibit D to the Settlement Agreement. This may include disabling or removing software widgets which would cause such references to appear. Healthgrades may include the link to the Form anywhere on its website it chooses, so long as the link is readily accessible to all healthcare providers whose Provider Profiles appear on the website and the link is adjacent to logically-related content. Healthgrades may require, as a condition of removing content, that the Requesting Provider “claim” their profile. This condition shall be stated in the Form itself. A Requesting Provider must submit the Form; it is not sufficient for a practice group, a health group administrator, or a health system to submit Forms for a Requesting Provider, multiple Requesting Providers, or an entire group or practice. This condition shall be stated in the Form itself. Healthgrades shall act on instructions delivered through a Requesting Provider’s Form within thirty (30) days of receiving the Requesting Provider’s Form. Healthgrades estimates the reasonable value of this relief to each class member is greater than \$1,000 because, in the absence of this settlement, only class members are eligible to pay to enhance their Provider Profile, which among other things, would otherwise preclude the relief described herein.

13. The Parties are to bear their own costs, except as awarded by this Court in a separate judgment and Order on Attorneys' Fees which implements the agreements between the Parties as to reasonable attorneys' fees and expenses.

14. The Parties and Settlement Class Members are bound by the terms and conditions of the Settlement. Upon the Effective Date of this Settlement, Plaintiff and each and every Settlement Class Member shall be deemed to have released, acquitted and forever discharged the Defendant from any and all Released Claims.

15. Per the terms of the Settlement, as of the Effective Date, the Class Representative and Settlement Class Members shall be deemed to have agreed not to take any step whatsoever to assert, sue on, continue, pursue, maintain, prosecute, or enforce any of the Released Claims, directly or indirectly, against Defendant.

16. The Court hereby certifies, pursuant to Rule 52.08(b)(2) and (c)(3), Plaintiff's claims of (i) invasion of privacy – appropriation of name and likeness; and (ii) right of publicity on behalf of the settlement class as follows:

All Natural Persons in the United States who have an active National Provider Identifier issued pursuant to 42 U.S.C. § 1320d *et seq.* and 45 C.F.R. § 160.103 *et seq.* (“NPI”) and appear as a basic listing on Healthgrades' Provider Directory, but excluding: (a) shareholders, officers and employees of Healthgrades, and (b) all judicial officers presiding over this or any related Lawsuit.

17. The Court finds, for settlement purposes only, that the Settlement Class satisfies the requirements of Rule 52.08(a): (1) Numerosity: The Settlement Class readily satisfies the numerosity requirement, because Healthgrades' website known as the Provider Directory includes millions of healthcare providers ; (2) Commonality: Plaintiff readily meets this standard

as the claims of the Settlement Class all arise from a common course of alleged conduct and common questions underlie all class members' claims, including whether Defendant displayed profiles of the Settlement Class allowing general consumers to interface with the website by comparing providers to one another. (3) Typicality: the Class Representative's claims are typical of those of the Settlement Class Members he seeks to represent, as the Class Representative is also displayed on the Provider Directory in a manner that allows general consumers to compare him to other providers within the directory; and (4) Adequacy: the Settlement Class Representative and Class Counsel have fairly and adequately protected the interests of the Settlement Class, and shall continue to do so.

18. The Court finds that the Settlement Class satisfies the requirements of Rule 52.08(a) and (b)(2), because the agreed-upon injunctive relief "is generally applicable to the class." Rule 52.08(b)(2). This is because the Settlement Agreement requires Defendant to make uniform changes that impact all members of the Settlement Class.

19. The Court has reviewed the application for an award of service awards to the Settlement Class Representative submitted by Class Counsel and the memoranda of law and other materials submitted regarding that application. The benefits described above are the only consideration the Defendant shall be obligated to give to the Settlement Class Members, with the exception of the service awards to be paid to the Class Representative, which are supported by—among other things—evidence of the Class Representative's active involvement in the Lawsuit. Those service awards shall be paid by Healthgrades as follows within thirty days of the entry of this Order: Mr. Jonathan Kindler: \$5,000.

20. Defendant has denied any liability, fault, or wrongdoing of any kind in connection with the allegations in this action, and as such, neither this Order, the Settlement Agreement, nor

any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by Defendant of the truth of any of Plaintiff's allegations, or of any liability, fault, or wrongdoing of any kind.

21. If the Settlement Agreement terminates for any reason, this action will revert to its previous status in all respects as it existed before the Parties executed the Settlement Agreement. This Order will not waive or otherwise impact the Parties' rights or arguments.

22. The Settlement Agreement's provisions, and all related drafts, communications and documents shall not be deemed as or deemed to be evidence of an admission or concession by Defendant of any wrongdoing, by any Person or entity, and cannot be offered or received into evidence or requested in discovery in this Action or any other action or proceeding as evidence of an admission, concession, or presumption regarding such matters. However, the Settlement Agreement may be introduced as evidence of the Parties' respective obligations under the Court's continuing jurisdiction over the injunctive relief set forth in the Settlement Agreement.

23. Without affecting the finality of this Order or the final judgment in any way, the Court reserves exclusive and continuing jurisdiction over the Lawsuit, the Class Representative, the Settlement Class Members, and the Defendant for the purposes of supervising the implementation, enforcement, and construction of the Settlement and this Order.

IT IS SO ORDERED.

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**EXHIBIT C**

**Publication Notice**

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT KANSAS CITY**

<p>JONATHAN KINDLER, on behalf of himself and other members of the putative class,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>HEALTHGRADES MARKETPLACE, LLC,</p> <p style="text-align: center;">Defendant.</p>	<p>Case No.: 2316-CV00209</p> <p>Div. No.: 10</p>
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**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

*A court of law has authorized this Notice. This is not a solicitation from a lawyer.*

**PLEASE READ THIS NOTICE CAREFULLY, AS IT MAY AFFECT YOUR RIGHTS.**

A class action settlement (“Settlement”) has been reached with Healthgrades Marketplace, LLC (“Healthgrades”) affecting all natural persons in the United States who have an active National Provider Identifier issued pursuant to 42 U.S.C. § 1320d *et seq.* and 45 C.F.R. § 160.103 *et seq.* (“NPI”) and appear as a listing on Healthgrades’ online provider directory accessible to the general public at <www.healthgrades.com> (“Provider Directory”). The Settlement resolves a lawsuit alleging that Healthgrades’ creation and maintenance of the Provider Directory infringes privacy and publicity rights of the providers included on the site. Healthgrades denies the allegations in the lawsuit, and the Court has not made a determination regarding Plaintiff’s allegations.

Pursuant to the Settlement, Healthgrades agrees to implement certain changes to the user interface of Healthgrades’ Provider Directory allowing providers to opt-out of certain content contained within Healthgrades’ Provider Directory. The business practices that Healthgrades will implement as part of the injunctive relief provided by the Settlement include making the following changes to the Provider Directory: (a) embedding a hyperlink to an opt-out form on the Provider Directory that is on its website adjacent to logically related content and readily accessible to all providers and (b) updating the Provider Directory to ensure that Healthgrades’ vast educational resources for providers is more visible. The exact details of those changes can be found here. The Settlement does not provide money compensation to the class members. Class Counsel will request that the Court award them reasonable attorneys’ fees and expenses as for their obtaining the business practice changes required by the Settlement.

You are not required to take any action. This Notice further explains the litigation, the Settlement, and how you may object to any portion of the Settlement, including Class Counsel's request for attorneys' fees and expenses and/or the request for a service award for the named Plaintiff, if you want.

### **Settlement Class**

Generally, you may be affected by and may be interested in the Settlement if you are a natural person in the United States who has an active National Provider Identifier ("NPI") and appear as a listing in Healthgrades' Provider Directory.

### **Summary of the Lawsuit**

The class action lawsuit was filed on December 21, 2022, in the 16th Circuit Court of Jackson County, Missouri. Jonathan Kindler ("Plaintiff" or "Class Representative") is the named plaintiff and the representative on behalf of all members of the Settlement Class in the lawsuit. Plaintiff alleges that Healthgrades' Provider Directory uses the names and likenesses of providers by allowing general consumers to interface with the website by comparing providers to one another.

The Court has not made a determination of any wrongdoing by Healthgrades, which denies the allegations and Plaintiff's claims. The parties agreed to settle all claims in the Lawsuit to avoid the costs and disruption of litigation. The precise terms and conditions of the Settlement are provided here, or can be obtained by contacting Class Counsel (see below section, "Contacting Class Counsel"), by accessing the Court docket in this case, for a fee, through the Missouri electronic court records system at [www.courts.mo.gov](http://www.courts.mo.gov).

### **Your Rights May Be Affected by the Settlement**

- a. If you are a healthcare provider who has an active National Provider Identifier and you opt-out from the class, your rights may be affected by this Settlement. You do not have to take any action to receive the benefits of the settlement. In exchange for the injunctive relief specified in the Settlement Agreement, all members of the class will release Healthgrades, and each of its predecessors, successors (including, without limitation, acquirers of all or substantially all of its assets, stock or other ownership interests) and assigns; the past, present, and future, direct and indirect, direct or indirect parents (including, but not limited to holding companies), subsidiaries and affiliates of any of the above; and the past, present, and future principals, trustees, partners (including, without limitation, affinity, agent bank, and private label and co-brand partners), officers, directors, employees, former employees, agents, attorneys, insurance companies, reinsurers, accountants, administrators, shareholders, advisors, representatives, trustees, members, firms and corporations acting

on Healthgrades' behalf, predecessors, successors (including, without limitation, acquirers of all or substantially all of their assets, stock, or other ownership interests), assigns, representatives, heirs, executors, and administrators of any of the above from claims related to the facts or defenses asserted in the action from any and all actual or potential claims, counterclaims, actions, causes of action, suits, cross claims, third party claims, contentions, disputes, allegations, fees (including attorneys' fees), and assertions of wrongdoing, and any demands for injunctive relief or any other type of equitable or legal relief, whether known or unknown, suspected or unsuspected, contingent or non-contingent, discovered or undiscovered, brought or that could be brought under the same factual predicate in the Petition or under the Claims against any of the Released Parties. The release is set forth in full in the Settlement Agreement, which can be viewed online at [www.XXXXXXXXXXX.com](http://www.XXXXXXXXXXX.com), or requested from Class Counsel.

If approved by the Court, the Settlement will affect your right to seek monetary, injunctive, declaratory and other equitable relief against Healthgrades. You may obtain copies of the Settlement Agreement and related court filings, including the Attorneys' Fees & Expenses Application, by downloading them from the Settlement website at [www.XXXXXXXXXXX.com](http://www.XXXXXXXXXXX.com), or by making a written request to XXXXXXXXXX, c/o Settlement Administrator, Angeion Group, or emailing [info@XXXXXXXXXXXXXXXX.com](mailto:info@XXXXXXXXXXXXXXXX.com), or by voicemail request at the toll-free number (XXX) XXX-XXXX.

### Right to Opt-Out

You can exclude yourself from the Settlement Class by making a written request to XXXXXXXXXX, c/o Settlement Administrator, Angeion Group, or emailing [info@XXXXXXXXXXXXXXXX.com](mailto:info@XXXXXXXXXXXXXXXX.com) by **DATE**. You cannot exclude yourself by telephone or email. Your written Request for Exclusion must contain:

- Your name, address, and telephone number
- Your National Provider Identifier ("NPI")
- The date you first obtained your NPI
- This Lawsuit's case name and case number (*Kindler v. Healthgrades Marketplace, LLC*, case number 2316-CV00209)
- A statement certifying that you are a Settlement Class Member
- A statement that "I hereby request that I be excluded from the Settlement Class."

You must sign your Request for Exclusion even if counsel represents you. Any Request for Exclusion that does not include all of the foregoing information, does not have a proper signature, that is sent to an address other than the one designated above, or that is not sent by the deadline shall be invalid, and the person(s) filing such an invalid request shall stay a Settlement Class Member and shall be bound by the Settlement, if approved. Requests for Exclusion must be sent by U.S. first class mail.

***Request for exclusion must be received no later than DATE.***

If you submit a valid and timely Request for Exclusion in the manner set forth above, you will not be bound by the Settlement Agreement and can independently pursue claims you may have against the Defendants at your own expense. However, if you exclude yourself from the Settlement, you will have no rights under the Settlement. In addition, if you exclude yourself from the Settlement Class, you will not be entitled to object to the Settlement or appear at the Fairness Hearing.

You may object to this Settlement, in whole or in part, **without** submitting a Request for Exclusion.

**Service Awards**

Class Counsel will also request that the named Plaintiff in this Lawsuit receive a service award of \$5,000.00 to recognize the contribution made by Plaintiff by filing suit in the 16th Circuit Court of Jackson County, Missouri against Healthgrades; to obtain a change to the user interface of Healthgrades' Provider Directory. Any requests for service awards made to the Court at the preliminary approval stage will be subject to the Court's determination at final approval. Those requests are and will be available for review on the Settlement website at [www.XXXXXXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXXXXXX.com).

**Class Counsel's Request for Reasonable Attorneys' Fees and Expenses**

The individual plaintiff and the Settlement Class are represented by the following two law firms: DLM Law LLC; White Graham, Buckley & Carr, L.L.C.; and Clayton Jones, Attorney at Law. ("Class Counsel"). Class Counsel has designated the following local counsel with the authority to act as attorney of record for all purposes: David L. Marcus of DLM Law LLC, Bryan T. White of White, Graham, Buckley & Carr, L.L.C., and Clayton Jones of Clayton Jones, Attorney at Law. Class Counsel will request an award from the Court of reasonable attorneys' fees and reimbursement of their expenses for litigating and resolving this Lawsuit and obtaining the Settlement for the benefit of the Settlement Class members.

The Parties agreed to Healthgrades' change to the user interface of Healthgrades' Provider Directory that comprises the core benefit of the Settlement before negotiating the maximum amounts of attorneys' fees and expenses Class Counsel could seek from Healthgrades subject to Court approval. The Parties further agreed they will accept and not appeal the Court's award of attorneys' fees and expenses.

The Settlement Agreement provides that Class Counsel's request for attorneys' fees and expenses will not exceed \$300,000.00.

The Parties have asked the Court to assess any requested fees and expenses in a separate attorneys' fees motion after (but on the same day as) considering the motion for final approval and the injunctive relief contained therein. Class Counsel's requests for an award of attorney's fees and expenses will be filed with the Court on or before XXXXXX, 2024, and will be available for review on the Settlement website at [www.XXXXXXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXXXXXX.com).

## **Final Approval Hearing of the Settlement**

The proposed Settlement will not be final unless and until the 16th Circuit Court of Jackson County, Missouri grants final approval. The Court has set a final approval hearing about the proposed Settlement at XXXX a.m./p.m., on XXXX, 2024, before the Honorable XXXXX, Judge, XXXXXXXXXXXXXXXX, Missouri, to determine whether: (a) the proposed Settlement is fair, reasonable, and adequate; (b) a judgment and order of final approval should be entered by the Court to dismiss the Lawsuit with prejudice; (c) Plaintiff's request for a Service Award to the named Plaintiff be approved; and (d) Class Counsel's fees and expenses application should be approved.

THE DATE OF THE FINAL APPROVAL HEARING IS CURRENTLY SET FOR XXXXXXXX, 2024 AND MAY CHANGE WITHOUT FURTHER NOTICE TO THE CLASS MEMBERS.

## **How to Object to the Settlement**

You can object to the Settlement, including Class Counsel's request for attorney's fees and expenses and/or the request for service awards for the named Plaintiff, by filing an objection. You cannot ask the Court to order a different settlement; the Court can only approve or reject the Settlement. If the Court denies approval of the Settlement, none of the agreed-upon business practice changes in the Settlement will be required to be implemented, and the lawsuit will continue. If you do not want the Court to approve the Settlement, you must object.

Any objection to the proposed Settlement must be in writing and made only to the Court. If you file a timely written objection, you may, but are not required to, appear at the final approval hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must: (a) clearly identify the case name and number: XXXXXXXXXXXXXXXX, (b) be submitted to the Court either by mailing them to XXXXXXXXXXXX, Boise, Idaho, or by filing them in person at any location of the United States District Court for the District of Idaho, and (c) be filed or postmarked on or before XXXXXXXX. If you do not submit a timely written objection, or if you do not request participation in the final approval hearing, you will not be able to participate in the final approval hearing.

## **Contacting Class Counsel**

Class Counsel may be contacted as follows:

DLM LAW LLC  
David L. Marcus, MO Bar #47846

DLM LAW LLC  
4700 Belleview Ave., Suite 200  
Kansas City, MO 64112  
Telephone: 816.256.4699  
Fax: 816.222.0534  
[Dmarcus@dlmlaw.com](mailto:Dmarcus@dlmlaw.com)

WHITE, GRAHAM, BUCKLEY  
& CARR, L.L.C  
Bryan T. White MO Bar #58805  
19049 East Valley View Parkway  
Independence, Missouri 64055  
Phone: (816) 373-9080  
Fax: (816) 373-9319  
[Bwhite@wagblaw.com](mailto:Bwhite@wagblaw.com)

CLAYTON JONES, ATTORNEY AT LAW  
Clayton Jones MO Bar #51802  
P.O. Box 257  
405 W. 58 Hwy.  
Raymore, MO 64083  
Office: (816) 318-4266  
Fax: (816) 318-4267  
[clayton@claytonjoneslaw.com](mailto:clayton@claytonjoneslaw.com)

### More Information

You may obtain more information by contacting the Settlement Administrator at XXXXXXXXXX, c/o Settlement Administrator, Angeion Group, or by emailing [info@XXXXXXXXXX.com](mailto:info@XXXXXXXXXX.com), or by calling toll-free XXXXXXXXXX. **PLEASE DO NOT CONTACT THE DISTRICT COURT OR THE CLERK'S OFFICE WITH QUESTIONS REGARDING THIS NOTICE.**

This Notice is not an expression of any opinion by the Court as to the merits of the lawsuit or as to the fairness of the Settlement. This notice is published to advise you of the pendency of the Lawsuit, the Settlement, and your associated rights.

**EXHIBIT D**

**Illustration of Content Described in Injunctive Relief Measures**

Compare versions:

1.

The screenshot shows a Healthgrades profile for Jonathan Kindler, a counselor in Lees Summit, MO. The page includes a search bar, navigation menu, and a comparison section for other counselors at Memorial Health University Medical Center.

**Jonathan Kindler**  
Counseling • Male  
Jonathan Kindler is a counselor in Lees Summit, MO.  
★ ★ ★ ★ ★ (0 Ratings) [Leave a review](#)

**Practice**  
521 SE 2nd St Ste C Lees Summit, MO 64063  
[Show Phone Number](#) [Share](#) [Save](#)

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**Memorial Health**  
These providers are on the medical staff of Memorial Health University Medical Center.

**Compare with other Counselors**  
Compare Jonathan Kindler with our nearby Counselors at Memorial Health University Medical Center.

Filter by:

Provider	Specialty	Healthgrades Choice	Rating	Learn More
Joseph Bowick, MS	Explains Conditions Well	No	30 Ratings	<a href="#">Learn More</a>
Karen Hanno, MS	Explains Conditions Well	No	13 Ratings	<a href="#">Learn More</a>
William Hartley, LMFT	Explains Conditions Well	Yes	50 Ratings	<a href="#">Learn More</a>
Randy Bottner, PHD	Explains Conditions Well	Yes	5 Ratings	<a href="#">Learn More</a>
Maria Thomas, MS	Explains Conditions Well	No	3 Ratings	<a href="#">Learn More</a>
Kevin Swearingen, MHC	Explains Conditions Well	No	5 Ratings	<a href="#">Learn More</a>

2.

healthgrades

Jonathan Kinder, MD

Jonathan Kinder is a counselor in Lees Summit, MO

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Practice  
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**At a Glance**

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Dr. Kinder is an expert in the areas of Cardiovascular Disease, Interventional Cardiology & Internal Medicine. [See board-certified specialties](#)
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Choose Plan Type

81% of patients who used this insurance plan received care at this hospital.

81% of patients who used this insurance plan received care at this hospital.







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