

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SOLANO**

ANN ST. JAMES, Individually and on behalf of  
all others similarly situated,

Plaintiff,

v.  
PARTNERSHIP HEALTHPLAN OF  
CALIFORNIA,

Defendants.

1. Case No. FCS059095

**CLASS ACTION SETTLEMENT  
AGREEMENT**

This Settlement Agreement,<sup>1</sup> dated as of November 18, 2022 is made and entered into by and among the following Settling Parties: Ann St. James, Relina Alvarado, Timothy Kennedy, Thomas Shriver, James Lee, Brandyn Gomes, Neil Kenney, William Yost, Alesha Blake, Anthony Hingtgen, and Stacey Ohn Manybanseng in their individual capacities and on behalf of all others similarly situated (collectively, “Plaintiffs”), individually and on behalf of the Settlement Class, by and through their counsel of record, and Partnership HealthPlan of California (“PHC” or “Defendant” and, together with Plaintiffs, the “Settling Parties”), by and through their counsel of record. The Settlement Agreement is subject to Court approval and is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims, upon and subject to the terms and conditions hereof.

**I. THE LITIGATION**

This class action arises out of the recent targeted cyberattack and data breach in March 2022 on Defendant’s network that resulted in unauthorized access to its patients’ sensitive personal data. Plaintiffs allege that as a result of the data breach, Plaintiffs and approximately 854,0913 Class Members<sup>1</sup> had their most sensitive personal information accessed, exfiltrated, and stolen, causing them to suffer ascertainable losses in the form of the loss of the benefit of their bargain, out-of-pocket expenses and the value of their time reasonably incurred to remedy or mitigate the

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<sup>1</sup> All Capitalized terms are defined below.

effects of the attack. Information compromised in the data breach includes individuals' names, Social Security numbers, dates of birth, driver's license numbers, tribal ID numbers (if provided), addresses, email addresses ("personally identifying information" or "PII") and medical record numbers, treatment, diagnosis, prescription, and other medical information, health insurance information, member portal usernames and passwords ("protected health information" or "PHI"). Plaintiffs refer to both PII and PHI collectively as "Private Information." Plaintiffs brought this class action lawsuit on behalf of those similarly situated to address Defendant's inadequate safeguarding of Plaintiffs' and Class Members' Private Information that it collected and maintained.

## **II. CLAIMS OF REPRESENTATIVE PLAINTIFFS AND BENEFITS OF SETTLING**

Plaintiffs believe the claims asserted in the Litigation, as set forth in their Class Action Complaint have merit. Plaintiffs and Proposed Settlement Class Counsel recognize and acknowledge, however, the expense and length of continued proceedings necessary to prosecute the Litigation against PHC through motion practice, trial, and potential appeals. Plaintiffs and Proposed Settlement Class Counsel have also considered the uncertain outcome and risk of further litigation, as well as the difficulties and delays inherent in such litigation, especially in complex class actions. Proposed Settlement Class Counsel are highly experienced in class action litigation and very knowledgeable regarding the relevant claims, remedies, and defenses at issue generally in such litigation and in this Litigation. They have determined that the settlement set forth in this Settlement Agreement is fair, reasonable, and adequate, and in the best interests of the Settlement Class.

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

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

considered the uncertainty and risks inherent in any litigation. PHC has, therefore, determined that it is desirable and beneficial that the Litigation be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

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

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiffs, individually and on behalf of the Settlement Class, Proposed Settlement Class Counsel, and PHC that, subject to the approval of the Court, the Litigation and the Released Claims shall be finally and fully compromised, settled, and released, and the Litigation shall be dismissed with prejudice as to the Settling Parties and the Settlement Class, except those members of the Settlement Class who lawfully opt-out of the Settlement Agreement, upon and subject to the terms and conditions of this Settlement Agreement, as follows:

##### **1. Definitions**

As used in the Settlement Agreement, the following terms have the meanings specified below:

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

1.2 “Claims Administration” means the processing and payment of claims received from members of the Settlement Class by the Claims Administrator.

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

1.4 “Claims Deadline” means the postmark and/or online submission deadline for valid claims submitted pursuant to ¶¶ 2.1, 2.2, and 2.3, which shall be ninety (90) days from the Notice Commencement Date.

1.5 “Claim Form” means the claim form to be used by members of the Settlement Class to submit a Settlement Claim, either through the mail or online through the Settlement Website, substantially in the form as shown in Exhibit 1 to this agreement.

1.6 “Costs of Claims Administration” means all actual costs associated with or arising from Claims Administration.

1.7 “Court” means the Superior Court for the State of California, County of Solano.

1.8 “Data Incident” means the cyberattack perpetrated on PHC in March 2022, in which third-party criminals launched a cyber-attack and potentially gained unauthorized access to the Private Information of Settlement Class Members.

1.9 “Dispute Resolution” means the process for resolving disputed Settlement Claims as set forth in this Agreement.

1.10 “Effective Date” means the first date by which all of the events and conditions specified in ¶ 1.11 herein have occurred and been met.

1.11 “Final” means the occurrence of all of the following events: (i) the settlement pursuant to this Settlement Agreement is approved by the Court; (ii) the Court has entered a Judgment; and (iii) the time to appeal or seek permission to appeal from the Judgment has expired or, if appealed, the appeal has been dismissed in its entirety, or the Judgment has been affirmed in its entirety by the court of last resort to which such appeal may be taken, and such dismissal or affirmance has become no longer subject to further appeal or review. Notwithstanding the above, any order modifying or reversing any attorneys’ fee award or service award made in this case shall not affect whether the Judgment is “Final” or any other aspect of the Judgment.

1.12 “Final Approval Order” means the order finally approving the Settlement Agreement and entering final judgment. The Settling Parties’ proposed form of Final Approval Order is attached hereto as Exhibit 2 to this Agreement.

1.13 “Final Fairness Hearing” is the final hearing before the Court where it will determine whether this Settlement is fair, reasonable, and adequate.

1.14 “Judgment” means a judgment rendered by the Court.

1.15 “Litigation” means the cases initiated by Plaintiffs Ann St. James, Relina Alvarado, Timothy Kennedy, Thomas Shriver, James Lee, Brandyn Gomes, Neil Kenney, William Yost, Alesha Blake, Anthony Hingtgen, and Stacey Ohn Manybanseng.

1.16 “Long Notice” means the long form notice of settlement posted on the Settlement Website, substantially in the form as shown in Exhibit 3 to this Agreement.

1.17 “Notice Commencement Date” means twenty-one days following entry of the Preliminary Approval Order.

1.18 “Objection Date” means the date by which members of the Settlement Class must mail to Proposed Settlement Class Counsel and counsel for PHC or, in the alternative, file with the Court their objection to the Settlement Agreement for that objection to be effective. The postmark date shall constitute evidence of the date of mailing for these purposes. The Objection Date shall be sixty (60) days from the Notice Commencement Date.

1.19 “Opt-Out Date” means the date by which members of the Settlement Class must mail to the Claims Administrator their requests to be excluded from the Settlement Class for that request to be effective. The postmark date shall constitute evidence of the date of mailing for these purposes. The Opt-Out Date shall be sixty (60) days from the Notice Commencement Date.

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

1.21 “Plaintiffs” and/or “Representative Plaintiffs” means Ann St. James, Relina Alvarado, Timothy Kennedy, Thomas Shriver, James Lee, Brandyn Gomes, Neil Kenney, William Yost, Alesha Blake, Anthony Hingtgen, and Stacey Ohn Manybanseng.

1.22 “Preliminary Approval Order” means the order preliminarily approving the Settlement Agreement and ordering that notice be provided to the Settlement Class. The Settling Parties’ proposed form of Preliminary Approval Order is attached hereto as Exhibit 4.

1.23 “Settlement Class Counsel” means, Jeffrey S. Goldenberg of Goldenberg Schneider, LPA, Charles E. Schaffer of Levin, Sedran & Berman, John Yanchunis of Morgan and

Morgan Complex Litigation Group, Gary Klinger, Milberg Coleman Bryson Phillips Grossman, PLLC, and Patrick N. Keegan of Keegan & Baker LLP.

1.24 “Related Entities” means PHC’s respective past or present parents, subsidiaries, divisions, and related or affiliated entities, including any California counties PHC services in a County Organized Health System (COHS) capacity or otherwise, and each of their respective predecessors, successors, directors, Boards of Supervisors, officers, employees, principals, agents, attorneys, insurers, and reinsurers, and includes, without limitation, any Person related to any such entity who is, was, or could have been named as a defendant in any of the actions in the Litigation, other than any Person who is found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting the Data Incident or who pleads *nolo contendere* to any such charge.

1.25 “Released Claims” shall collectively mean any and all past, present, and future claims and causes of action including, but not limited to, any causes of action arising under or premised upon any statute, constitution, law, ordinance, treaty, regulation, or common law of any country, state, province, county, city, or municipality, including 15 U.S.C. §§ 45, *et seq.*, and all similar statutes in effect in any states in the United States; violations of the California Confidentiality of Medical Information Act, Cal. Civ. Code § 56, *et seq.* and all similar state privacy-protection statutes; violations of the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.* and all similar statutes in effect in any states in the United States; negligence; negligence *per se*; breach of contract; breach of implied contract; breach of fiduciary duty; breach of confidence; invasion of privacy; fraud; misrepresentation (whether fraudulent, negligent or innocent); unjust enrichment; bailment; wantonness; failure to provide adequate notice pursuant to any breach notification statute or common law duty; and including, but not limited to, any and all claims for damages, injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys’ fees and expenses, pre-judgment interest, credit monitoring services, the creation of a fund for future damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, and/or the appointment of a receiver, whether known or unknown, liquidated or

unliquidated, accrued or unaccrued, fixed or contingent, direct or derivative, and any other form of legal or equitable relief that either has been asserted, was asserted, or could have been asserted, by any member of the Settlement Class against any of the Released Persons based on, relating to, concerning or arising out of the Data Incident and alleged theft of payment card data or other personal information or the allegations, transactions, occurrences, facts, or circumstances alleged in or otherwise described in the Litigation. Released Claims shall not include the right of any Settlement Class Member or any of the Released Persons to enforce the terms of the settlement contained in this Settlement Agreement and shall not include the claims of members of the Settlement Class Members who have timely excluded themselves from the Settlement Class, although this settlement may affect claims of timely excluded members for injunctive and equitable relief.

1.26 “Released Persons” means PHC and its Related Entities and each of their past or present parents, subsidiaries, divisions, and related or affiliated entities, and each of their respective predecessors, successors, directors, officers, employees, principals, agents, attorneys, insurers, and reinsurers.

1.27 “Service Award” means the payment of \$1,000.00 to Representative Plaintiffs for their time and effort pursuing this matter on behalf of their fellow Settlement Class Members.

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

1.29 “Settlement Class” means all persons whose Private Information was maintained on PHC’s system that was compromised in the Data Incident, including all those who were sent written notice of the Data Incident. The Settlement Class specifically excludes: (i) PHC and its respective officers and directors; (ii) all members of the Settlement Class 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 Data Incident or who pleads *nolo contendere* to any such charge.

1.30 “Settlement Class Member(s)” means all persons meeting the definition of the Settlement Class.

1.31 “Settlement Website” means a website, the URL for which to be mutually selected by the Settling Parties, that will inform Settlement Class Members of the terms of this Settlement Agreement, their rights, dates and deadlines and related information, as well as provide the Settlement Class Members with the ability to submit a Settlement Claim online.

1.32 “Settling Parties” means, collectively, PHC and Plaintiffs, individually and on behalf of the Settlement Class.

1.33 “Short Notice” means the short-form notices of the proposed class action settlement, substantially in the form as shown in Exhibit 5 to this agreement. The Short Notice will direct recipients to the Settlement Website and inform members of the Settlement Class of, among other things, the Claims Deadline, the Opt-Out and Objection Deadlines, and the date of the Final Fairness Hearing (if set prior to the Notice Commencement Date).

1.34 “Unknown Claims” means any of the Released Claims that any member of the Settlement Class, including Plaintiff, does not know or suspect to exist in his/her favor at the time of the release of the Released Persons that, if known by him or her, might have affected his or her settlement with, and release of, the Released Persons, or might have affected his or her decision not to object to and/or to participate in this Settlement Agreement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that upon the Effective Date, Plaintiffs intend to and expressly shall have, and each of the other members of the Settlement Class intend to and shall be deemed to have, and by operation of the Judgment shall have waived the provisions, rights, and benefits conferred by California Civil Code § 1542, and also any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States (including, without limitation, California Civil Code §§ 1798.80 *et seq.*, Montana Code Ann. § 28-1-1602; North Dakota Cent. Code § 9-13-02; and South Dakota Codified Laws § 20-7-11), which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

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

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

1.35 “United States” as used in this Settlement Agreement includes the District of Columbia and all territories.

1.36 “Valid Claims” means Settlement Claims in an amount approved by the Claims Administrator or found to be valid through the claims processing and/or Dispute Resolution process.

## **2. Settlement Benefits**

PHC shall fund a non-reversionary common settlement fund (“Settlement Fund”) in the amount of \$3,700,000 pursuant to Paragraph 10. Settlement Class Members shall be afforded the opportunity to claim the following relief from this Settlement Fund as follows:

2.1 Tier 1: All Settlement Class Members may elect to claim a cash payment of \$100. Should the amount of cash payments claimed exceed the net amount available from the Settlement Fund (after payment of settlement administration, attorneys’ fees, and case expenses), the amount of these cash payments will be subject to a *pro rata* reduction.

2.2 Tier 2: All Settlement Class Members who elect to claim Tier 2 benefits (in lieu of Tier 1 benefits) can claim:

2.2.1 Out-of-Pocket Expenses. Up to \$2,500 in out-of-pocket expenses that were incurred as a result of the Data Incident, including but not limited to:

- i. Out of pocket expenses incurred as a result of the Data Incident, such as: unreimbursed bank fees; unreimbursed card reissuance fees; unreimbursed overdraft fees; unreimbursed charges related to unavailability of funds; unreimbursed late fees; unreimbursed over-limit fees; long distance telephone charges; cell phone charges (if charged by minute); Internet data charges (if charged by the minute or by the amount of data usage and incurred solely as a result of the Data Incident); text messages (if charged by the message and incurred solely as a result of the Data Incident); postage; gasoline for local charges; unreimbursed charges from banks or credit card companies; interest on payday loans due to card cancellation or due to over-limit situation incurred solely as a result of the Data Incident; and
- ii. Costs of credit reports, credit monitoring, or other identity theft insurance products purchased by members of the Settlement Class between March 2022 and the Claims Deadline.

To receive reimbursement for any of the above-referenced out-of-pocket expenses, Settlement Class Members must submit (i) their name and current address; (ii) supporting documentation of such out-of-pocket expenses; and (iii) a description of the loss, if not readily apparent from the documentation.

2.2.2 Lost Time. Tier 2 Settlement Class Members are also eligible to receive up to ten (10) hours of lost time spent dealing with issues arising out of the Data Incident (calculated at the rate of \$25 per hour). Members of the Settlement Class must attest on the Claim Form to the time spent. No documentation other than a description of their actions and the attestation shall be required for members of the Settlement Class to receive

compensation for attested time. Claims made for lost time can be combined with claims made for out-of-pocket expenses and, together with the out-of-pocket expenses, are subject to the \$2,500 cap for each Settlement Class Member.

2.2.3 Compensation for Extraordinary Losses. Tier 2 Settlement Class Members are also eligible for \$10,000.00 in compensation to each Claimant for proven monetary loss if:

- i. The loss is an actual, documented, and unreimbursed monetary loss;
- ii. The loss was more likely than not caused by the Data Incident;
- iii. The loss occurred during a specified time period;
- iv. The loss is not already covered by one or more of the normal reimbursement categories; 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.

Should the amount of Tier 2 benefits claimed exceed the net amount available from the Settlement Fund (after payment of settlement administration, attorneys' fees, and case expenses), the amount of these cash payments will be subject to a *pro rata* reduction.

## 2.3 Cybersecurity Enhancements.

2.3.1 PHC has agreed to implement and maintain certain cybersecurity and business practice enhancements after the Data Incident and due to this Settlement. The enhancements are detailed in Exhibit 6 to this agreement.

## 2.4 Dispute Resolution for Claims.

2.4.1 The Claims Administrator, in its sole discretion to be reasonably exercised, will determine whether: (1) the claimant is a Settlement Class Member; (2) the claimant has provided all information needed to complete the Claim Form, including any documentation that may be necessary to reasonably support the out-of-expenses described in ¶ 2.2; and (3) the information submitted could lead a reasonable person to conclude that more likely than not the claimant has suffered the claimed losses as a result of the Data Incident. The Claims Administrator

may, at any time, request from the claimant, in writing, additional information as the Claims Administrator may reasonably require to evaluate the claim;. For any such Claims that the Claims Administrator determines to be implausible, the Claims Administrator will submit those Claims to the Settling Parties (one Plaintiffs' lawyer shall be designated to fill this role for all Plaintiffs). If the Settling Parties do not agree with the claimant's claim, after meeting and conferring, then the Claim shall be referred for resolution to the claim referee, to be selected by the Parties if needed. Any costs associated with work performed by the claims referee shall be paid from the common fund.

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

2.4.3            Following receipt of additional information requested by the Claims Administrator, the Claims Administrator shall have thirty (30) days to accept, in whole or lesser amount, or reject each claim. If, after review of the claim and all documentation submitted by the claimant, the Claims Administrator determines that such a claim is facially valid, then the claim shall be paid. If the claim is not facially valid because the claimant has not provided all information needed to complete the Claim Form and evaluate the claim, then the Claims Administrator may reject the claim without any further action. If the claim is rejected in whole or in part, for other reasons, then the claim shall be referred to the claims referee.

2.4.4            Settlement Class Members shall have thirty (30) days from receipt of the offer to accept or reject any offer of partial payment received from the Claims Administrator. If a Settlement Class Member rejects an offer from the Claims Administrator, the Claims Administrator shall have fifteen (15) days to reconsider its initial adjustment amount and make a final determination. If the claimant approves the final determination, then the approved amount shall be the amount to be paid. If the claimant does not approve the final determination within

thirty (30) days, then the dispute will be submitted to the claims referee within an additional ten (10) days.

2.4.5 If any dispute is submitted to the claims referee, the claims referee may approve the Claims Administrator's determination by making a ruling within fifteen (15) days. The claims referee may make any other final determination of the dispute or request further supplementation of a claim within thirty (30) days. The claims referee's determination shall be based on whether the claims referee is persuaded that the claimed amounts are reasonably supported in fact and were more likely than not caused by the Data Incident. The claims referee shall have the power to approve a claim in full or in part. The claims referee's decision will be final and non-appealable. Any claimant referred to the claims referee shall reasonably cooperate with the claims referee, including by either providing supplemental information as requested or, alternatively, signing an authorization allowing the claims referee to verify the claim through third-party sources, and failure to cooperate shall be grounds for denial of the claim in full. The claims referee shall make a final decision within thirty (30) days of receipt of all supplemental information requested.

2.5 Confirmatory Discovery. PHC has provided or will provide reasonable access to confidential confirmatory discovery regarding the number of Settlement Class Members and state of residence, as well as the facts and circumstances of the Data Incident and PHC's response thereto. In addition, PHC agrees to provide confirmatory discovery on establishing the appropriateness of the settlement terms as contemplated under Cal. R. Civ. P. 382 and 384. PHC improved information security enhancements to date, and will commit to additional information security enhancements in each of years 2023, 2024 and 2025. Plaintiffs will evaluate and propose appropriate injunctive relief once they learn more about the security failures that led to the Data Incident and the steps that have been taken since the discovery of the Data Incident..

2.6 Settlement Expenses. All costs for notice to the Settlement Class as required under ¶¶ 3.1 and 3.2, Costs of Claims Administration under ¶¶ 8.1, 8.2, and 8.3, and the costs of Dispute

Resolution described in ¶ 2.4, shall be paid from the Settlement Fund. Should the Settlement not be finally approved, the costs of notice shall be borne by PHC.

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

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

3.1. As soon as practicable after the execution of the Settlement Agreement, Proposed Settlement Class Counsel and counsel for PHC shall jointly submit this Settlement Agreement to the Court, and Proposed Settlement Class Counsel will file a motion for preliminary approval of the settlement with the Court requesting entry of a Preliminary Approval Order in the form to be agreed upon by the parties, or an order substantially similar to such form in both terms and cost, requesting, among other things:

- a) certification of the Settlement Class for settlement purposes only pursuant to ¶ 2.7;
- b) preliminary approval of the Settlement Agreement as set forth herein;
- c) appointment of Proposed Settlement Class Counsel as Settlement Class Counsel;
- d) appointment of Plaintiffs as Class Representatives;
- e) approval of a customary form of Short Notice to be emailed or, where a working email address is not available, mailed to Settlement Class

Members, in a form substantially similar to the Short Form attached as Exhibit 5;

- f) approval of the Long Notice to be posted on the Settlement Website in a form substantially similar to the one attached as Exhibit 3, which, together with the Short Notice, shall include a fair summary of the parties' respective litigation positions, the general terms of the settlement set forth in the Settlement Agreement, instructions for how to object to or opt-out of the settlement, the process and instructions for making claims to the extent contemplated herein, and the date, time and place of the Final Fairness Hearing; and
- g) appointment of Angeion Group as the Claims Administrator.

The Short Notice and Long Notice have been reviewed and approved by the Claims Administrator but may be revised as agreed upon by the Settling Parties prior to submission to the Court for approval.

3.2 Notice to the Settlement Class shall be provided in accordance with the Preliminary Approval Order, and the costs of such notice, together with the Costs of Claims Administration. Attorneys' fees, costs, and expenses of Settlement Class Counsel, and Service Awards to Representative Plaintiffs, as approved by the Court, shall be paid from the Settlement Fund as set forth in ¶ 7 below. Notice shall be provided to Settlement Class Members by the Claims Administrator as follows:

- a) *Class Member Information*: No later than seven (7) days after entry of the Preliminary Approval Order, PHC shall provide the Claims Administrator with the name, email address (where available), , and last known physical address of each Settlement Class Member (collectively, "Class Member Information") that PHC possesses.
  - The Class Member Information and its contents shall be used by the Claims Administrator solely for the purpose of performing its

obligations pursuant to this Settlement Agreement and shall not be used for any other purpose at any time. Except to administer the settlement as provided in this Settlement Agreement, or provide all data and information in its possession to the Settling Parties upon request, the Claims Administrator shall not reproduce, copy, store, or distribute in any form, electronic or otherwise, the Class Member Information.

- b) *Settlement Website:* Prior to the dissemination of the Class Notice, the Claims Administrator shall establish the Settlement Website that will inform Settlement Class Members of the terms of this Settlement Agreement, their rights, dates and deadlines and related information. The Settlement Website shall include, in .pdf format and available for download, the following: (i) the Long Notice; (ii) the Claim Form; (iii) the Preliminary Approval Order; (iv) this Settlement Agreement; (v) the operative Class Action Complaint(s), filed in the Litigation; and (vi) any other materials agreed upon by the Parties and/or required by the Court. The Settlement Website shall provide Class Members with the ability to complete and submit the Claim Form electronically.
- c) *Short Notice:* Within twenty-one (21) days after the entry of the Preliminary Approval Order and to be substantially completed not later than thirty (30) days after entry of the Preliminary Approval Order, and subject to the requirements of this Agreement and the Preliminary Approval Order, the Claims Administrator will provide notice to the Settlement Class as follows:
- To all class members for whom PHC is in possession of an email address, via email to the email address provided to PHC either by or for the Settlement Class Members;

- To all class members for whom PHC does not have in its possession a valid email address (including email addresses that were returned as undeliverable), via mail to the postal address provided to PHC either by or for the Settlement Class. Before any mailing under this Paragraph occurs, the Claims Administrator shall run the postal addresses of Settlement Class Members through the United States Postal Service (“USPS”) National Change of Address database to update any change of address on file with the USPS;
- In the event that a mailed Short Notice is returned to the Claims Administrator by the USPS because the address of the recipient is no longer valid, and the envelope contains a forwarding address, the Claims Administrator shall re-send the Short Notice to the forwarding address within seven (7) days of receiving the returned Short Notice;
- In the event that subsequent to the first mailing of a Short Notice, and at least fourteen (14) days prior to the Opt-Out and Objection Deadline, a Short Notice is returned to the Claims Administrator by the USPS because the address of the recipient is no longer valid, *i.e.*, the envelope is marked “Return to Sender” and does not contain a new forwarding address, the Claims Administrator shall perform a standard skip trace, in the manner that the Claims Administrator customarily performs skip traces, in an effort to attempt to ascertain the current address of the particular Settlement Class Member in question and, if such an address is ascertained, the Claims Administrator will re-send the Short Notice within seven (7) days of receiving such information. This shall be the final requirement for mailing.

- Fourteen (14) days prior to the Opt-Out and Objection Deadline and also Seven (7) days prior to the Opt-Out and Objection Deadline, a reminder notice will be transmitted to all Settlement Class Members via e-mail for the Settlement Class Members for whom the Claims Administrator has been provided by PHC with a valid e-mail.
- d) Publishing, on or before the Notice Commencement Date, the Short Notice, Claim Form, and Long Notice on the Settlement Website, as specified in the Preliminary Approval Order, and maintaining and updating the website throughout the claim period;
- e) A toll-free help line shall be made available to provide Settlement Class Members with additional information about the settlement. The Claims Administrator also will provide copies of the forms of Short Notice, Long Notice, and paper Claim Form, as well as this Settlement Agreement, upon request; and
- f) Contemporaneously with seeking Final Approval of the Settlement, Proposed Settlement Class Counsel and PHC shall cause to be filed with the Court an appropriate affidavit or declaration with respect to complying with this provision of notice.

3.3 The Short Notice, Long Notice, and other applicable communications to the Settlement Class may be adjusted by the Claims Administrator, respectively, in consultation and agreement with the Settling Parties, as may be reasonable and not inconsistent with such approval. The Notice Program shall commence within twenty-one (21) days after entry of the Preliminary Approval Order and shall be substantially completed within thirty (30) days after entry of the Preliminary Approval Order.

3.4 Proposed Settlement Class Counsel and PHC's counsel shall request that after notice is completed, the Court hold a hearing (the "Final Fairness Hearing") and grant final approval of the settlement set forth herein.

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

4.1 Each Person wishing to opt-out of the Settlement Class shall individually sign and timely submit written notice of such intent to the designated Post Office box established by the Claims Administrator. The written notice must clearly manifest a Person's intent to opt-out of the Settlement Class. To be effective, written notice must be postmarked no later than the Opt-Out Date.

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

#### **5. Objection Procedures**

5.1 Each Settlement Class Member desiring to object to the Settlement Agreement shall submit a timely written notice of his or her objection by the Objection Date. Such notice shall state: (i) the objector's full name and address; (ii) the case name and docket number – *St. James v. Partnership HealthPlan of California*, Case No. FCS059095 (Sup. Ct. Solano County) (iii) information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class (e.g., copy of the objector's settlement notice, copy of original notice of the Data Incident, or a statement explaining why the objector believes he or she is a Settlement Class Member); (iv) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (v) the identity of any and all counsel representing the objector in connection with the objection; (vi) a statement whether the objector and/or his or her counsel will appear at the Final Fairness Hearing; and (vii) the objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative (if any) representing him or her in connection with the objection. To be

timely, written notice of an objection in the appropriate form must be filed with the Court or mailed to Class Counsel and PHC's Counsel.

5.2 Any Settlement Class Member who fails to comply with the requirements for objecting in ¶ 5.1 shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement, and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders and judgments in the Litigation. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions of ¶ 5.1. Without limiting the foregoing, any challenge to the Settlement Agreement, the final order approving this Settlement Agreement, or the Judgment to be entered upon final approval shall be pursuant to appeal under the California Rules of Appellate Procedure and not through a collateral attack.

## **6. Releases**

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

6.2 Upon the Effective Date, PHC shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged, Representative Plaintiffs, each and all of the Settlement Class Members, Proposed Settlement Class Counsel, of all claims, including Unknown Claims, based upon or arising out of the institution, prosecution, assertion, settlement, or resolution of the Litigation or the Released Claims, except for enforcement of the Settlement Agreement. Any other claims or defenses PHC may have against such Persons including, without limitation, any claims based upon or arising out of any debtor-creditor, contractual, or other business relationship with such Persons that are not

based upon or do not arise out of the institution, prosecution, assertion, settlement, or resolution of the Litigation or the Released Claims are specifically preserved and shall not be affected by the preceding sentence.

6.3 Notwithstanding any term herein, neither PHC nor its Related Parties shall have or shall be deemed to have released, relinquished or discharged any claim or defense against any Person other than Representative Plaintiffs, each and all of the Settlement Class Members, and Proposed Settlement Class Counsel.

**7. Plaintiffs' Counsel's Attorneys' Fees, Costs, and Expenses; Service Awards to Representative Plaintiffs**

7.1 The Settling Parties did not discuss the payment of attorneys' fees, costs, expenses and/or service award to Plaintiffs, as provided for in ¶¶ 7.2 and 7.3, until after the substantive terms of the settlement had been agreed upon, other than that Plaintiffs and their counsel would seek reasonable attorneys' fees, costs, expenses, and a service award to Plaintiffs from the Settlement Fund and/or as ordered by the Court.

7.2 Settlement Class Counsel shall seek a combined award of attorneys' fees and expenses in an amount not to exceed 33% of the Settlement Fund. Proposed Settlement Class Counsel, in their sole discretion, shall allocate and distribute the amount of attorneys' fees, costs, and expenses awarded by the Court among Plaintiffs' Counsel.

7.3 Proposed Settlement Class Counsel may make an application for an order from the Court awarding \$1,000 in Service Awards to Ann St. James, Relina Alvarado, Timothy Kennedy, Thomas Shriver, James Lee, Brandyn Gomes, Neil Kenney, William Yost, Alesha Blake, Anthony Hingtgen, and Stacey Ohn Manybanseng.

7.4 If awarded by the Court, the attorneys' fees, costs, expenses, and Service Awards to Plaintiffs, as set forth above in ¶¶ 7.2 and 7.3, within fourteen (14) days after the Effective Date. Service Awards to Class Representatives and attorneys' fees, costs, and expenses, will be mailed or wired by the Claims Administrator to Proposed Settlement Class Counsel, Gary Klinger.

Proposed Settlement Class Counsel shall thereafter distribute the award of attorneys' fees, costs, and expenses among Plaintiffs' Counsel and Service Awards to Representative Plaintiffs consistent with ¶¶ 7.2 and 7.3.

7.5 The amount(s) of any award of attorneys' fees, costs, and expenses, and the Service Awards to Plaintiffs, are intended to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement. No order of the Court, or modification or reversal or appeal of any order of the Court, concerning the amount(s) of any attorneys' fees, costs, expenses, and/or service award ordered by the Court to Proposed Settlement Class Counsel or Plaintiffs shall affect whether the Judgment is Final or constitute grounds for cancellation or termination of this Settlement Agreement.

## **8. Administration of Claims**

8.1 The Claims Administrator shall administer and calculate the claims submitted by Settlement Class Members under ¶¶ 2.1 and 2.2. Proposed Settlement Class Counsel and counsel for PHC shall be given reports as to both claims and distribution, and have the right to review and obtain supporting documentation and challenge such reports if they believe them to be inaccurate or inadequate. The Claims Administrator's and claims referee's, as applicable, determination of whether a Settlement Claim is a Valid Claim shall be binding, subject to the dispute resolution process set forth in ¶ 2.4.

8.2 Checks for Valid Claims shall be mailed and postmarked within sixty (60) days of the Effective Date, or within thirty (30) days of the date that the claim is approved, whichever is later.

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

8.4 No Person shall have any claim against the Claims Administrator, claims referee, PHC, Proposed Settlement Class Counsel, Plaintiffs, and/or PHC's counsel based on distributions of benefits to Settlement Class Members.

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

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

- a) the Court has entered the Order of Preliminary Approval and Publishing of Notice of a Final Fairness Hearing, as required by ¶ 3.1;
- b) the Court has entered the Judgment granting final approval to the settlement as set forth herein; and
- c) the Judgment has become Final, as defined in ¶ 1.11.

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

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

9.4 In the event that the Settlement Agreement or the releases set forth in paragraphs 6.1, 6.2, and 6.3 above are not approved by the Court or the settlement set forth in the Settlement Agreement is terminated in accordance with its terms, (i) the Settling Parties shall be restored to their respective positions in the Litigation and shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Settling Party or Settling Party's counsel, and (b) the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Settling Parties and shall not be used in the Litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*. Notwithstanding any statement in this Settlement Agreement to the contrary, no order of the Court

or modification or reversal on appeal of any order reducing the amount of attorneys' fees, costs, expenses, and/or service awards shall constitute grounds for cancellation or termination of the Settlement Agreement. Further, notwithstanding any statement in this Settlement Agreement to the contrary, PHC shall be obligated to pay amounts already billed or incurred for costs of notice to the Settlement Class, Claims Administration, and Dispute Resolution pursuant to ¶ 2.4 above and shall not, at any time, seek recovery of same from any other party to the Litigation or from counsel to any other party to the Litigation.

#### **10. Settlement Fund**

10.1 Deposits. PHC agrees to make a payment of Three Million Seven Hundred Thousand Dollars and No Cents (\$3,700,000.00) and deposit that payment into the Settlement Fund as follows: (i) PHC will deposit Five Hundred and Thirty Thousand Dollars and no Cents (\$530,000.00) of the Settlement Fund into the Escrow Account within fifteen (15) business days after the Court enters the Preliminary Approval Order, which shall in part be available to cover reasonable costs associated with the Notice Plan and any other Administrative Expenses incurred prior to entry of the Final Approval Order and Judgment; (ii) PHC will deposit the balance of the Settlement Fund, Three Million, One-Hundred and Seventy Thousand Dollars and No Cents (\$3,170,000), into the Escrow Account fifteen (15) business days after the Effective Date. For the avoidance of doubt, and for purposes of this Settlement Agreement only, PHC's liability shall not exceed Three Million Seven Hundred Thousand Dollars and No Cents (\$3,700,000.0) absent an express written agreement between the Parties to the contrary.

10.2 Custody of the Settlement Fund. The Settlement Fund shall be deposited into an appropriate trust established by the Claims Administrator but shall remain subject to the jurisdiction of the Court until such time as the entirety of the Settlement Fund is distributed pursuant to the Settlement Agreement or returned to those who paid the Settlement Fund in the event this Settlement Agreement is voided, terminated, or cancelled.

10.3 Treasury Regulations and Fund Investment. The Parties agree that the Settlement Fund is intended to be maintained as a qualified settlement fund within the meaning of Treasury

Regulation § 1.468 B-1, and that the Claims Administrator, within the meaning of Treasury Regulation § 1.468 B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of the Settlement Fund and paying from the Settlement Fund any taxes owed with respect to the Settlement Fund. The Parties agree that the Settlement Fund shall be treated as a qualified settlement fund from the earliest date possible and agree to any relation-back election required to treat the Settlement Fund as a qualified settlement fund from the earliest date possible. Any and all funds held in the Settlement Fund shall be held in an interest-bearing account insured by the Federal Deposit Insurance Corporation (“FDIC”) at a financial institution determined by the Claims Administrator and approved by the Parties. Funds may be placed in a non-interest bearing account as may be reasonably necessary during the check clearing process. The Claims Administrator shall provide an accounting of any and all funds in the Settlement Fund, including any interest accrued thereon and payments made pursuant to this Agreement, upon request of any of the Parties. Any funds remaining in the Settlement Fund after payment of all valid Claims and expenses shall be distributed to the Electronic Frontier Foundation.

10.4 Taxes. All taxes relating to the Settlement Fund shall be paid out of the Settlement Fund, shall be considered an Administrative Expense, and shall be timely paid by the Claims Administrator without prior order of the Court. Further, the Settlement Fund shall indemnify and hold harmless the Parties and their counsel for taxes (including, without limitation, taxes payable by reason of any such indemnification payments). The Parties and their respective counsel have made no representation or warranty with respect to any tax treatment by any Class Representative or any Settlement Class Member of any payment or transfer made pursuant to this Agreement or derived from or made pursuant to the Settlement Fund. Each Class Representative and Settlement Class Member shall be solely responsible for the federal, state, and local tax consequences to him, her, they, or it of the receipt of funds from the Settlement Fund pursuant to this Agreement.

## **11. Miscellaneous Provisions**

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

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

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

11.3 Neither the Settlement Agreement, nor the settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the settlement (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing or liability of any of the Released Persons; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Released Persons in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Any of the Released Persons may file the Settlement Agreement and/or the Judgment in any action that may be brought against them or any of them 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.

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

11.5 This Agreement contains the entire understanding between PHC and Plaintiffs regarding the payment of the Litigation settlement and supersedes all previous negotiations,

agreements, commitments, understandings, and writings between PHC and Plaintiffs in connection with the payment of the Litigation settlement. Except as otherwise provided herein, each party shall bear its own costs.

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

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

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

11.9 The Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto.

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

11.11 As used herein, “he” means “he, she, or it;” “his” means “his, hers, or its,” and “him” means “him, her, or it.”

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

11.13 Cashing a settlement check is a condition precedent to any Settlement Class Member’s right to receive monetary settlement benefits. All settlement checks shall be void ninety (90) days after issuance and shall bear the language: “This check must be cashed within ninety (90) days, after which time it is void.” If a check becomes void, the Settlement Class Member

shall have until six months after the Effective Date to request re-issuance. If no request for re-issuance is made within this period, the Settlement Class Member will have failed to meet a condition precedent to recovery of monetary settlement benefits, the Settlement Class Member's right to receive monetary relief shall be extinguished, and PHC shall have no obligation to make payments to the Settlement Class Member for expense reimbursement under ¶¶ 2.1 or 2.2 or any other type of monetary relief. The same provisions shall apply to any re-issued check. For any checks that are issued or re-issued for any reason more than one hundred eighty (180) days from the Effective Date, requests for re-issuance need not be honored after such checks become void. The total amount of uncashed settlement checks will not revert back to PHC and shall instead be paid to a charitable organization to be agreed upon by PHC and Class Counsel, and approved by the Court, for the provision of services to victims of identity theft and fraud-related crimes or, alternatively, to a charitable organization that conducts services the Court deems appropriate given the facts underlying the Litigation.

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

IN WITNESS WHEREOF, the parties hereto have caused the Settlement Agreement to be executed, by their duly authorized attorneys.

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