

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT DEPARTMENT
CIVIL SESSION B

JULIE KESNER and DENNIS O'BRIEN,
Individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

UMASS MEMORIAL HEALTH CARE,
INC.,

Defendant.

Case No. 2185 CV 01210

**DECLARATION OF DAVID PASTOR IN SUPPORT OF ASSENTED TO MOTION
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

David Pastor, on oath, hereby declares as follows:

1. I am an adult, I have personal knowledge of the facts stated herein, and I am competent to so testify.

2. This Declaration is submitted in Support of Plaintiffs' Assented to Motion for Preliminary Approval of Class Action Settlement filed contemporaneously herewith.

3. On May 5, 2022, the Court held a hearing on Defendant UMass Memorial Healthcare, Inc.'s ("Defendant" or "UMMHC") Rule 12(b)(6) Motion to Dismiss ("Motion to Dismiss"), after which the Court informed the parties that it would take the Motion to Dismiss under advisement.

4. During the pendency of the Motion to Dismiss, the parties began to discuss the possibility of settlement, including engaging a mediator to assist in the possible resolution of the matter.

5. In advance of the mediation, the parties negotiated for the confidentiality of documents and information to be produced by Defendant and submitted detailed mediation statements to the mediator. Plaintiffs also requested informal pre-mediation discovery, and UMMHC produced many pages of documents to Plaintiffs in order to allow for a meaningful evaluation of the claims and to better inform the parties in preparation for the mediation.

6. On August 2, 2022, the Parties engaged in a full day mediation before Hon. Bonnie H. McLeod (Ret.) of JAMS. Despite the diligent efforts of the Parties and the mediator, the mediation did not result in a settlement. However, during the week following the mediation, the Parties continued to engage in arms-length negotiations, exchanging draft term sheets until they were able to reach an agreement in principle for a settlement.

7. Thereafter, the Parties negotiated and finalized the details of the Settlement,

exchanging drafts of the Settlement Agreement and its exhibits (including the claim form, the forms of class notice, the proposed preliminary approval order and the proposed final order and judgment).

8. The Parties finalized the Settlement Agreement and executed it on October 14, 2022.

9. Plaintiffs also obtained competitive bids from various experienced settlement administrators and thereafter chose Angeion to serve as Settlement Administrator, subject to the Court's approval. Angeion is an experienced and nationally recognized class action settlement administrator that will provide notice to the Class in accordance with the terms of the Settlement Agreement and as approved by the Court.

10. Based on information provided by UMMHC, the Settlement Class consists of approximately 209,047 individuals.

11. Plaintiffs' counsel expended significant efforts in their initial investigation of this matter, researching and preparing the Complaint, researching and preparing the papers in opposition to Defendant's Motion to Dismiss, and conducting their continuing investigation of the Data Breach. Counsel also spent significant time reviewing and analyzing the documents and information produced by Defendant as part of the pre-mediation discovery. As a result of these efforts, Plaintiffs' counsel developed a clear understanding of the strengths and weaknesses of the claims and defenses in this case and they were thus well-prepared to evaluate the fairness, reasonableness, and adequacy of the Settlement.

12. The proposed Settlement is the result of prolonged, arms-length negotiations, including the full day mediation with an experienced mediator and numerous telephone calls and emails between experienced counsel.

13. The Parties did not discuss or agree upon payment of attorneys' fees, costs and expenses until they agreed on all material terms of relief to the Settlement Class.

14. Annexed to this Declaration as **Exhibit 1** is a true and correct copy of the Settlement Agreement dated October 14, 2022 ("Settlement Agreement").

15. Annexed to this Declaration as **Exhibit 1A** is a true and correct copy of the Claim Form to be used by Settlement Class members for submitting claims.

16. Annexed to this Declaration as **Exhibit 1B** is a true and correct copy of the Long Form Notice which will be posted on the settlement website.

17. Annexed to this Declaration as **Exhibit 1C** is a true and correct copy of the Postcard or Summary Notice to be sent to Settlement Class members.

18. Annexed to this Declaration as **Exhibit 1D** is a true and correct copy of the Proposed Order Allowing Preliminary Approval of Class Action Settlement, Forms of Notice and Notice Program, and Implementation of the Notice Program.

19. Annexed to this Declaration as **Exhibit 1E** is a true and correct copy of the Proposed Final Approval Order and Judgment.

20. I have significant experience in class action litigation, including litigation on behalf of consumers, tenants, employees, and recipients of robocalls (in actions brought under the Telephone Consumer Protection Act and the Massachusetts Telephone Solicitation Act), as well as class actions involving privacy issues, including data breach issues.

21. I have been appointed as class counsel in numerous class actions, both in this Court and other state and federal courts, including *Kinsella v. Seaport Apartments LLC*, No. 12-2408-BLS1 (Suffolk Superior Court Dec. 18, 2013); *Miller v. J. Crew Group, Inc.*, No. 13-11487-RGS (D. Mass. Oct. 15, 2014); *Perry v. Equity Residential Mgmt., L.L.C.*, 2014 WL 4198850 (D. Mass.

Aug. 26, 2014); *Goodman v. Hangtime, Inc.*, No. 1:14-cv-01022 (N.D. Ill. Oct. 7, 2015); *Miller v. Urban Outfitters, Inc.*, 13-12276 -ADB (D. Mass. Nov. 12, 2015); *In re OSB Antitrust Litigation*, Master File No. 06-826 (PSD) (E.D. Pa.); *Phillips v. Equity Residential Mgmt., L.L.C.*, No. 13-12092-RWZ (D. Mass. May 3, 2018); *Baker v. Equity Residential Mgmt., L.L.C.*, No. 13-3630 (Middlesex Superior Court June 27, 2017) and 18-11175-PBS (D. Mass. Nov. 4, 2019);¹ and *Pierre Louis v. Bayada Home Health Care, Inc.*, No. 1982CV01957 (Middlesex Super. Ct. Jan. 19, 2022).

22. I have been counsel in several reported decisions involving significant points of law, including *Weld v. Glaxo Wellcome, Inc.*, 434 Mass. 81 (2001) (class certified against defendants with which plaintiff had no contact or transaction, under juridical links doctrine; also frequently cited for class certification standards under Mass. R. Civ. P. 23); *In re Blech Securities Litig.*, 961 F. Supp. 569 (S.D.N.Y. 1997) (post-*Central Bank* case finding sufficient allegations of primary liability for securities fraud on the part of Bear Stearns (clearing broker for stock manipulator) where Bear Stearns directed and contrived allegedly fraudulent trades); *Sebago, Inc. v. Beazer East, Inc.*, 18 F. Supp. 2d 70 (D. Mass. 1998) (RICO claim alleging joint venture between manufacturers upheld in product defect action, reliance not required for mail and wire fraud predicates); *Kelley v. CVS Pharmacy, Inc.*, 23 Mass. L. Rptr. 87, 2007 WL 2781163 (Suffolk Superior Court, Aug. 24, 2007) (Gants, J.) (Court found that defendant's undisclosed profit from unfair and deceptive conduct constituted c. 93A injury and that disgorgement of defendant's profits was an available remedy on the c. 93A claim); *Martin v. Mead Johnson Nutrition Co.*, 2010 WL 3928707 (D. Mass. Sept. 30, 2010) (recognizing link between false product claims and price premium in false advertising case); *Baker v. Equity Residential, L.L.C.*, 390 F. Supp. 3d 246 (DI

¹ Classes were certified initially in Superior Court and again in U.S. District Court on motion to decertify after removal.

Mass. 2019) (first case to certify tenant classes on claims for breach of implied warranty of habitability and breach of covenant of quiet enjoyment based on utility outages).

23. I have regularly litigated cases in state and federal trial and appellate courts in various jurisdictions. I have been a member of the bar of the Commonwealth of Massachusetts and the U. S. District Court for the District of Massachusetts since 1979, and I am admitted to practice before the First, Third, and Eighth Circuit Courts of Appeal.

24. I have more than 40 years of experience as a practicing attorney, approximately half of which has been spent primarily on class action litigation.

25. I am well-positioned to serve as class counsel in view of my extensive experience as summarized herein.

26. A true and correct copy of the Pastor Law Office, PC Firm Resume is attached hereto as **Exhibit 2**.

I hereby certify that the foregoing is true and correct. Executed at Boston, Massachusetts on October 14, 2022.


David Pastor

EXHIBIT 1

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT DEPARTMENT
CIVIL SESSION B

JULIE KESNER and DENNIS O'BRIEN,
individually and on behalf of all others
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Plaintiffs,

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UMASS MEMORIAL HEALTH CARE,
INC.,

Defendant.

Case No. 2185 CV 01210

CLASS ACTION

SETTLEMENT AGREEMENT

This Settlement and Release Agreement (“Agreement” or “Settlement Agreement”) is entered into by and between UMass Memorial Health Care, Inc. (“Defendant” or “UMMHC”), and Julie Kesner and Dennis O’Brien (“Plaintiffs”), both individually and on behalf of the Settlement Class, in the case of *Kesner v. UMass Memorial Health Care, Inc.*, No. 2185 CV 01210 (Worcester Sup. Ct.), currently pending in the Worcester County Superior Court (the “Litigation”). Defendant and Plaintiffs are each referred to as a “Party” and are collectively referred to herein as “the Parties.”

I. Recitals

1. UMass Memorial Health Care, Inc. is a non-profit corporation incorporated in Massachusetts and located in and around Worcester County, Massachusetts.

2. The Litigation arises out of a data security incident, defined below as a “Data Breach,” in which plaintiffs allege an unauthorized third party illegally accessed Defendant’s computer systems and data during the period of June 24, 2020 to January 7, 2021 allegedly resulting in the third party’s access to personal information belonging to Plaintiffs and members of the Settlement Class.

3. Defendant denies all claims asserted against it in the Litigation, denies all allegations of wrongdoing and liability, and denies all material allegations of the Class Action Complaint, filed on November 8, 2021 (“CAC”).

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

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

6. On August 2, 2022, Counsel for the Parties engaged in a full day mediation before Hon. Bonnie H. MacLeod (Ret.) concerning a possible settlement of the claims asserted in the Litigation. This mediation did not result in a settlement. However, the Parties continued to engage in arm's length negotiations until they were able to reach an agreement in principle.

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

8. The Parties agree and understand that neither this Settlement Agreement, nor the settlement it represents, shall be construed as an admission by Defendant of any wrongdoing whatsoever, including an admission of a violation of any statute or law or of liability on the claims or allegations in the Litigation or any other similar claims in other proceedings, or that any such claims would be suitable for class treatment.

9. The Parties, by and through their respective duly authorized counsel of record, and intending to be legally bound hereby, agree that the Litigation, and all matters and claims in the

CAC, and all matters and claims arising out of or related to the allegations or subject matter of the CAC and Litigation, shall be settled, compromised, and dismissed, on the merits and with prejudice, upon the following terms and conditions.

II. Definitions

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

a. “Claims Deadline” means the deadline for filing claims set at a date certain ninety (90) Days from the Notice Date, as defined in Paragraph 45.

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

c. “Claims Period” means the period for filing claims up until a date certain ninety (90) Days from the Notice Date.

d. “Claimants” shall have the meaning given in Paragraph 34.

e. “Class Counsel” shall mean Ben Barnow and Anthony L. Parkhill of Barnow and Associates, P.C. located at 205 W. Randolph Street, Suite 1630, Chicago, Illinois 60606, Andrew W. Ferich of Ahdoot & Wolfson PC located at 201 King of Prussia Road, Suite 650, Radnor, PA 19087, and David Pastor of Pastor Law Office, PC, located at 63 Atlantic Avenue, 3d Floor, Boston, Massachusetts 02110.

f. “Court” means the Worcester County Superior Court.

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

h. “Data Breach” means the alleged exposure of personal information of Plaintiffs and members of the Settlement Class as a result of a third-party’s alleged unauthorized access to Defendant’s computer systems between June 24, 2020 and January 7, 2021.

i. “Defendant’s Counsel” means David A. Carney, James H. Rollinson, and Melissa M. Bilancini of Baker & Hostetler LLP, located at 127 Public Square, Suite 2000, Cleveland, Ohio 44114.

j. “Effective Date” means the date defined in Paragraph 87 of this Settlement Agreement.

k. “Attorneys’ Fees, Costs, and Expenses Award” means the amount of attorneys’ fees, expenses, and reimbursement of Litigation Costs awarded by the Court to Class Counsel.

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

arising out of any subsequent appeal or appeals following decisions on remand); or (iii) final dismissal of any appeal or the final dismissal of any proceeding on certiorari.

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

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

o. “Final Judgment” means the dismissal with prejudice in the Litigation, entered in connection with the Settlement and Final Approval Order.

p. “Litigation” means the lawsuit entitled *Kesner et al. v. UMass Memorial Health Care, Inc.*, No. 2185CV01210, pending in Worcester County Superior Court, Massachusetts, filed on November 8, 2021.

q. “Litigation Costs” means costs and expenses incurred by Class Counsel in connection with commencing, prosecuting, mediating, settling the Litigation, and obtaining an order of final judgment.

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

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

t. “Net Settlement Fund” means the amount of funds that remain in the Settlement Fund after funds are paid from or allocated for payment from the Settlement Fund for the following: (i) reasonable Notice and Claims Administration Costs incurred pursuant to this Settlement Agreement, (ii) any taxes owed by the Settlement Fund, (iii) any Service Awards approved by the Court, and (iv) any Attorneys’ Fees, Costs, and Expenses approved by the Court.

u. “Notice Program” means the notice program described in Section VII.

v. “Objection Deadline” shall have the meaning set forth in Paragraph 56 or as otherwise ordered by the Court.

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

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

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

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

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

bb. “Related Entities” means UMMHC’s past or present parents, subsidiaries, divisions, and related or affiliated entities of any nature whatsoever, whether direct or indirect, as well as each of UMMHC’s and these entities’ respective predecessors, successors, members,

directors, officers, employees, principals, agents, attorneys, providers, customers, 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 this Litigation.

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

dd. “Released Persons” means Defendant and the Related Entities, and each of their present and former parents, subsidiaries, divisions, departments, affiliates, predecessors, successors, assigns, insurers, and each of the foregoing’s former or present directors, trustees, officers, employees, representatives, agents, providers, consultants, advisors, attorneys, accountants, partners, vendors, customers, insurers, reinsurers, and subrogees.

ee. “Settlement” means the settlement reflected by this Settlement Agreement.

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

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

hh. “Settlement Class” means all persons whose personal information was potentially compromised in the Data Breach, as defined in Paragraph 10(h) above. Excluded from the Class is UMMHC and its affiliates, parents, subsidiaries, officers, and directors, as well as the judge(s) presiding over this matter and the clerks of said judge(s). This exclusion does not apply, and should not be read to apply, to those employees of UMMHC and its Related Entities who received notification regarding the Data Breach.

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

jj. “Settlement Fund” means the non-reversionary sum of one million two hundred thousand dollars and no cents (\$1,200,000), to be paid by Defendant as specified in this Agreement, including any interest accrued thereon after payment.

kk. “Settlement Website” means a dedicated website created and maintained by the Settlement Administrator, which will contain relevant documents and information about the Settlement, including this Settlement Agreement, the Postcard Notice, the Long-Form Notice, and the Claim Form, among other things as agreed upon by the Parties and approved by the Court as required.

III. CERTIFICATION OF THE SETTLEMENT CLASS

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

12. If this Settlement Agreement is terminated or disapproved, or if the Effective Date should not occur for any reason, then the Parties’ request for certification of the Settlement Class will be withdrawn and deemed to be of no force or effect for any purpose in this or any other proceeding.

IV. THE SETTLEMENT FUND

13. **The Settlement Fund:** Defendant agrees to make a payment of One Million Two Hundred Thousand Dollars and No Cents (\$1,200,000.00) and deposit that payment into the Settlement Fund as follows: (i) Defendant shall pay Three Hundred Thousand Dollars and No Cents (\$300,000) into the Settlement Fund thirty (30) Days after this Court enters the Preliminary Approval Order, which shall be available to cover Notice and Claims Administration Costs

incurred prior to entry of the Final Approval Order and Final Judgment, (ii) Defendant shall pay the balance of the Settlement Fund, Nine Hundred Thousand Dollars and No Cents (\$900,000.00), thirty (30) Days after the Effective Date. For the avoidance of doubt, and for purposes of this Settlement Agreement only, Defendant's liability shall not exceed One Million Two Hundred Thousand Dollars and No Cents (\$1,200,000.00), inclusive of attorneys' fees, costs, and expenses. The timing set forth in this provision is contingent upon the receipt of a W-9 from Angeion Group for the Settlement Fund by the date that the Preliminary Approval Order is issued. If Defendant does not receive this information by the date that the Preliminary Approval Order is issued, the payments specified by this paragraph shall be made within thirty (30) days after UMMHC receives this information.

14. **Custody of the Settlement Fund:** The Settlement Fund shall be deposited in an appropriate trust account established by the Settlement 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 this Agreement or returned to those who paid the Settlement Fund in the event this Agreement is voided, terminated, or cancelled.

- a. In the event this Agreement is voided, terminated, or cancelled due to lack of approval from the Court or any other reason: (i) the Class Representatives and Class Counsel shall have no obligation to repay any of the Notice and Claims Administration Costs that have been paid or incurred in accordance with the terms and conditions of this Agreement; (ii) any amounts remaining in the Settlement Fund after payment of Notice and Claims Administration Costs paid or incurred in accordance with the terms and conditions of this Agreement, including all interest earned on the Settlement

Fund net of any taxes, shall be returned to Defendant; and (iii) no other person or entity shall have any further claim whatsoever to such amounts.

15. **Non-Reversionary:** This settlement is not a reversionary settlement. As of the Effective Date, all rights of Defendant in or to the Settlement Fund shall be extinguished, except in the event this Settlement Agreement is voided, cancelled, or terminated, as described in Section XIII of this Agreement. In the event the Effective Date occurs, no portion of the Settlement Fund shall be returned to Defendant.

16. **Use of the Settlement Fund:** As further described in this Agreement, the Settlement Fund shall be used by the Settlement Administrator to pay for: (i) reasonable Notice and Claims Administration Costs incurred pursuant to this Settlement Agreement as approved by the Parties and approved by the Court, (ii) any taxes owed by the Settlement Fund, (iii) any Service Awards approved by the Court, (iv) any Attorneys' Fees, Costs, and Expenses Award as approved by the Court, and (v) any benefits to Settlement Class Members, pursuant to the terms and conditions of this Agreement.

17. **Financial Account:** The Settlement Fund shall be an account established and administered by the Settlement Administrator, at a financial institution recommended by the Settlement Administrator and approved by Class Counsel and Defendant, and shall be maintained as a qualified settlement fund pursuant to Treasury Regulation § 1.468 B-1, *et seq.*

18. **Payment/Withdrawal Authorization:** No amounts may be withdrawn from the Settlement Fund unless (i) expressly authorized by the Settlement Agreement, or as may be (ii) approved by the Court. The Parties, by agreement, may authorize the periodic payment of actual reasonable Notice and Claims Administration Costs from the Settlement Fund as such expenses are invoiced without further order of the Court. The Settlement Administrator shall

provide Class Counsel and Defendant with notice of any withdrawal or other payment the Settlement Administrator proposes to make from the Settlement Fund before the Effective Date at least seven (7) business days prior to making such withdrawal or payment.

19. **Payments to Class Members:** The Settlement Administrator, subject to such supervision and direction of the Court and Class Counsel as may be necessary or as circumstances may require, shall administer and oversee distribution of the Settlement Fund to Claimants pursuant to this Agreement.

20. **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 Settlement 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 by 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 Settlement 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 Settlement 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.

21. **Taxes:** All taxes owed by the Settlement Fund shall be paid out of the Settlement Fund, shall be considered a Notice and Claims Administration Cost, and shall be timely paid by the Settlement 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 the 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, or it of the receipt of funds from the Settlement Fund pursuant to this Agreement.

22. **Limitation of Liability**

a. Defendant and its counsel shall not have any responsibility for or liability whatsoever with respect to (i) any act, omission, or determination of Class Counsel, the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment or distribution of the Settlement Fund; (iii) the formulation, design, or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns. Defendant also shall have no obligation to communicate with Settlement Class Members and others regarding amounts paid under the Settlement.

b. The Class Representatives and Class Counsel shall not have any liability whatsoever with respect to (i) any act, omission, or determination of the Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii) the formulation, design, or terms of the disbursement of the Settlement Fund; (iv) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by or fluctuations in the value of the Settlement Fund; or (vi) the payment or withholding of any taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.

V. BENEFITS TO SETTLEMENT CLASS MEMBERS

23. **Compensation to Settlement Class Members.** Settlement Class Members must submit a valid Claim Form in order to receive a settlement benefit. Claims will be subject to review for completeness and plausibility by the Settlement Administrator. For claims deemed invalid, the Settlement Administrator will provide claimants an opportunity to cure in the manner set forth below. Settlement Class Members may elect to file a claim for either 1) a cash payment, as set forth in Paragraph 25 below or 2) a claim for reimbursement of certain losses and credit monitoring.

24. **Reimbursement/Credit Monitoring Claims.** Settlement Class Members who submit a Claim for Reimbursement/Credit Monitoring can seek reimbursement for each of 1) certain ordinary losses, 2) lost time, 3) certain extraordinary losses, and 4) two (2) years of 3 bureau credit monitoring and insurance, all subject to the terms explained below.

a. Compensation For Ordinary Losses. Settlement Class Members may claim up to one hundred fifty dollars (\$150.00) by submitting a valid and timely claim form and

supporting documentation for ordinary losses incurred as a result of the Data Breach. Ordinary losses can arise from the following categories:

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

ii. *Fees for credit reports, credit monitoring, or other identity theft insurance product* purchased between June 24, 2020, and the date of the close of the Claims Period that the claimant attests under penalty of perjury he/she incurred as a result of the Data Breach and not already paid for or reimbursed by a third-party. All such fees must be supported by documentation substantiating the full extent of the amount claimed.

b. Compensation For Lost Time. Settlement Class Members may claim up to three (3) hours of lost time, at twenty-five dollars (\$25) per hour, if at least one-half hour of documented time was spent dealing with the Data Breach. All such lost time must be reasonably described and supported by an attestation under penalty of perjury that the time spent was reasonably incurred dealing with the Data Breach.

c. Compensation For Extraordinary Losses. Claims under this category must be supported by an attestation under penalty of perjury and documentation substantiating the full extent of the amount claimed. Class members may submit claims for up to five thousand dollars (\$5,000) in compensation by submitting a valid and timely claim form that proves more likely than

not a monetary loss directly arising from identity theft or other fraud perpetrated on or against the Settlement Class Member if:

- i. The loss is an actual, documented, and unreimbursed monetary loss;
- ii. The loss was more likely than not the result of the Data Breach;
- iii. The loss occurred between June 24, 2020, and the Claims Deadline;
- iv. The loss is not already covered by the “Compensation for Ordinary

Losses” category; and

v. 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 and other available insurance.

d. Credit Monitoring. Twenty-four (24) months of identity theft monitoring will be provided for those Settlement Class Members who submit valid claims for such monitoring.

The identity theft monitoring will have the following features:

- i. Real time monitoring of the credit file at all three major credit bureaus;
- ii. Identity theft insurance (no deductible) of one million dollars (\$1,000,000); and
- iii. Access to fraud resolution agents to help resolve identity thefts.

25. **Cash Compensation**. In lieu of reimbursement and credit monitoring as described in Paragraph 24(a)-(d), Settlement Class Members may file a claim for a cash payment that is allocated by proration as described in Paragraph 37.

VI. SETTLEMENT ADMINISTRATION

26. All agreed upon and reasonable Notice and Settlement Administration Costs will be paid from the Settlement Fund.

27. The Parties agree to solicit and did solicit competitive bids for settlement administration, including Notice and Claims Administration Costs, to rely upon Postcard Notice, and to utilize other appropriate forms of notice where practicable, in order to contain the administration costs while still providing effective notice to the Settlement Class Members.

28. The Settlement Administrator will provide written notice by United States First Class mail of the settlement terms to all Settlement Class Members for whom Defendant has provided a valid mailing address. The Settlement Administrator shall perform skip-tracing for any returned mail and shall re-mail notice to any Settlement Class Members whose addresses are uncovered by skip-tracing. Settlement Class Members shall have sixty (60) Days from the Notice Date to object to the Settlement Agreement.

29. The Settlement Administrator shall also provide notice via publication to the extent such notice is deemed appropriate by the Settlement Administrator in consultation with the Parties in order to provide the best notice practicable under the circumstances.

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

31. The Settlement Administrator will administer the claims process in accordance with the terms of the Settlement Agreement and any additional processes agreed to by both Class

Counsel and Defendant's Counsel, subject to the Court's supervision and direction as circumstances may require.

32. To make a claim, a Settlement Class Member must complete and submit a valid, timely, and sworn Claim Form. A Claim Form shall be submitted online at the Settlement Website or by U.S. mail and must be postmarked no later than the Claim Deadline.

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

34. If, in the determination of the Settlement Administrator, the Settlement Class Member submits a timely but incomplete or inadequately supported Claim Form, the Settlement Administrator shall give the Settlement Class Member notice of the deficiencies, and the Settlement Class Member shall have twenty-one (21) Days from the date of the written notice to cure the deficiencies. The Settlement Administrator will provide notice of deficiencies concurrently to Defendant's Counsel and Class Counsel. If the defect is not cured within the 21-Day period, then the Claim will be deemed invalid. All Settlement Class Members who submit a valid and timely Claim Form, including a Claim Form deemed defective but timely cured, shall be considered "Claimants."

35. The Settlement Administrator will maintain records of all Claim Forms submitted until three hundred and sixty (360) Days after entry of the Final Judgment. Claim Forms and supporting documentation may be provided to the Court upon request and to Defendant, Class Counsel and Defendant's Counsel to the extent necessary to resolve claims determination issues pursuant to this Settlement Agreement. Class Counsel or the Settlement Administrator will provide other reports or information that the Court may request or that the Court or Defendant's Counsel may reasonably require.

36. Subject to the terms and conditions of this Settlement Agreement, forty-five (45) Days after the Effective Date, the Settlement Administrator shall mail or otherwise provide Claimants who selected Monitoring services under Paragraph 24(d) with enrollment instructions for those services.

37. Subject to the terms and conditions of this Settlement Agreement, forty-five (45) Days after the Effective Date, the Settlement Administrator shall mail or otherwise provide a payment via check (“Claim Check”) or digital payment selected in consultation with the Settlement Administrator (collectively, “Claim Payment”) to each Claimant in the amount for which each Claimant has submitted a Claim Form approved by the Settlement Administrator or by the Court, for good cause shown, in accordance with the following distribution procedures:

a. The Settlement Administrator will first apply the Net Settlement Fund to pay for Monitoring services as described in Paragraph 24(d) claimed by Claimants. If Net Settlement Funds remain after paying for the Monitoring services, the Settlement Administrator will next use it to pay for valid claims for Compensation for Ordinary Losses (as described in Paragraph 24(a)), Compensation for Lost Time (as described in Paragraph 24(b)), and Compensation for Extraordinary Losses (as described in Paragraph 24(c)). The amount of the Net Settlement Fund remaining after all payments for Monitoring, Compensation for Ordinary Losses, Compensation for Lost Time, and Compensation for Extraordinary Losses are made shall be referred to as the “Post-Loss Net Settlement Fund.”

b. The Settlement Administrator shall then utilize the Post-Loss Net Settlement Fund to make all Cash Compensation payments as described in Paragraph 25. The amount of each Cash Compensation payment shall be calculated by dividing the Post-Loss Net Settlement Fund by the number of valid claims for Cash Compensation.

38. Each Claim Check shall be mailed to the address provided by the Claimant on his or her Claim Form. All Claim Checks issued under this section shall be void if not negotiated within ninety (90) calendar days of their date of issue and shall contain a legend to that effect. Claim Checks issued pursuant to this section that are not negotiated within ninety (90) calendar days of their date of issue shall not be reissued.

39. To the extent any monies remain in the Net Settlement Fund more than one hundred twenty (120) Days after the distribution of Claim Payments to the Claimants, a subsequent payment will be evenly made to all Claimants who cashed or deposited their initial Claim Payments they received, provided that the average payment amount is equal to or greater than Three Dollars and No Cents (\$3.00). The distribution of this remaining Net Settlement Fund shall continue until the average payment amount in a distribution is less than Three Dollars and No Cents (\$3.00), whereupon the amount remaining in the Net Settlement Fund, if any, shall be distributed by mutual agreement of the Parties and the Court.

40. For any Claim Check returned to the Settlement Administrator as undeliverable (including, but not limited to, when the intended recipient is no longer located at the address), the Settlement Administrator shall make reasonable efforts to find a valid address and resend the Claim Check within thirty (30) Days after the check is returned to the Settlement Administrator as undeliverable. The Settlement Administrator shall only make one attempt to resend a Claim Check.

41. No portion of the Settlement Fund shall revert or be repaid to Defendant after the Effective Date. Any residual funds remaining in the Net Settlement Fund, after all payments and distributions are made pursuant to the terms and conditions of this Agreement shall be distributed according to the provisions outlined in Paragraph 39.

VII. NOTICE TO SETTLEMENT CLASS MEMBERS

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

43. Direct Notice shall be provided to Settlement Class Members via U.S. Mail for Settlement Class Members for whom the Settlement Administrator has a valid address. Additional Notice may be provided via publication pursuant to Paragraph 29, to the extent such notice is deemed appropriate by the Settlement Administrator in consultation with the Parties in order to provide the best notice practicable under the circumstances.

44. Within fifteen (15) Days of the entry of the Preliminary Approval Order, Defendant shall provide the Settlement Administrator with the names and last addresses known to Defendant for the Settlement Class Members (the “Class List”). The Settlement Administrator shall, by using the National Change of Address database maintained by the United States Postal Service (“Postal Service”), obtain updates, if any, to the mailing addresses.

45. Within forty-five (45) Days following entry of the Preliminary Approval Order (“Notice Date”), the Settlement Administrator shall mail the Postcard Notice to all Settlement Class Members by first class United States mail. The Settlement Administrator shall mail a Claim Form to Settlement Class Members upon written or telephonic request.

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

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

48. No later than forty-five (45) Days following entry of the Preliminary Approval Order, the Settlement Administrator shall effectuate any publication notice made pursuant to paragraph 30, to the extent that this notice is deemed to be necessary by the Parties.

49. No later than forty-five (45) Days following entry of the Preliminary Approval Order, and prior to the mailing of the Postcard Notice to all Settlement Class Members, the Settlement Administrator will create a dedicated Settlement Website. The Settlement Administrator shall cause the CAC, Postcard Notice, Long-Form Notice, Claim Form, this Settlement Agreement, and other relevant settlement and court documents to be available on the Settlement Website. Any other content proposed to be included or displayed on the Settlement Website shall be approved in advance by counsel for the Parties, which approval shall not be unreasonably withheld, by Class Counsel and Defendant's Counsel. The website address and the fact that a more detailed Long-Form Notice and a Claim Form are available through the website shall be included in the Postcard Notice.

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

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

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

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

VIII. OBJECTIONS TO THE SETTLEMENT

54. Any Settlement Class Member who wishes to object to the proposed Settlement Agreement must file with the Court and serve a written objection(s) to the settlement (“Objection(s)”) on Class Counsel and Defendant’s Counsel, at the addresses set forth in the Long-Form Notice.

55. Each Objection must (i) set forth the Settlement Class Member’s full name, current address, telephone number, and email address; (ii) contain the Settlement Class Member’s original signature; (iii) contain proof that the Settlement Class Member is a member of the Settlement Class (e.g., copy of settlement notice, copy of original notice of the Data Security Incident); (iv) state that the Settlement Class Member objects to the Settlement, in whole or in part; (v) set forth a statement of the legal and factual basis for the Objection; (vi) provide copies of any documents that the Settlement Class Member wishes to submit in support of his/her position; (vii) identify all counsel representing the Settlement Class Member, if any; (viii) contain the signature of the Settlement Class Member’s duly authorized attorney or other duly authorized representative, along with documentation setting forth such representation; and (ix) contain a list, including case name,

court, and docket number, of all other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement in the past three (3) years.

56. Objections must be filed with the Court and served on Class Counsel and Defendant's Counsel no later than sixty (60) Days after the Notice Date (the "Objection Deadline"). The Objection Deadline shall be included in the Short-Form and Long-Form Notices.

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

58. An objecting Settlement Class Member has the right, but is not required, to attend the Final Approval Hearing. If an objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, he or she must also file a notice of appearance with the Court (as well as serve the notice on Class Counsel and Defendant's Counsel) by the Objection Deadline.

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

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

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

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

60. Class Counsel shall request the Court to approve an award of attorneys' fees not to exceed four hundred thousand dollars (\$400,000) and for reasonable costs and expenses incurred in prosecuting the litigation. Class Counsel's attorneys' fees, costs, and expenses awarded by the Court shall be paid no later than forty-five (45) Days after the Effective Date. For the avoidance of doubt, the Court approved amount of any attorneys' fees, costs, and expenses shall be paid from the Settlement Fund. The Parties did not discuss or agree upon payment of attorneys' fees, costs, and expenses until after they agreed on all materials terms of relief to the Settlement Class.

61. Class Counsel shall request the Court to approve a service award of three thousand dollars (\$3,000) for each of the named Plaintiffs, Julie Kesner and Dennis O'Brien, which award is intended to recognize Plaintiffs for their efforts in the litigation and commitment on behalf of the Settlement Class ("Service Award"). If approved by the Court, this Service Award will be paid no later than forty-five (45) Days after the Effective Date. For the avoidance of doubt, the Court approved amount for any Service Awards shall be paid from the Settlement Fund. The Parties did not discuss or agree upon payment of service awards until after they agreed on all materials terms of relief to the Settlement Class.

62. Class Counsel will file applications with the Court for the requested Service Awards and attorneys' fees, costs, and expenses no later than fourteen (14) Days prior to the Objection Deadline.

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

X. NOTICES

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

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

Ben Barnow
Barnow and Associates, P.C.
205 W. Randolph Street, Suite 1630
Chicago, Illinois 60606
Tel: (312) 621-2000

All notices to Defendant's Counsel or Defendant shall be sent to:

David A. Carney
Baker & Hostetler LLP
127 Public Square, Suite 2000
Cleveland, Ohio 44114
Tel: (216) 621-0200

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

XI. SETTLEMENT APPROVAL PROCESS

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

- a. Preliminarily approves this Settlement Agreement;
- b. Provisionally certifies the Settlement Class;
- c. Finds the proposed settlement is sufficiently fair, reasonable, adequate, and in the best interests of the Settlement Class;
- d. Finds the Notice Program constitutes valid, due, and sufficient notice to the Settlement Class Members, and constitutes the best notice practicable under the circumstances, complying fully with the requirements of the laws of Massachusetts, the Constitution of the United States, and any other applicable law and that no further notice to the Class is required beyond that provided through the Notice Program;
- e. Appoints the Settlement Administrator;
- f. Directs the Settlement Administrator to provide notice to Settlement Class Members in accordance with the Notice Program provided for in this Settlement Agreement;
- g. Approves the Claim Form and directs the Settlement Administrator to administer the Settlement in accordance with the provisions of this Settlement Agreement;
- h. Approves the Objection procedures as outlined in this Settlement Agreement;
- i. Schedules a Final Approval Hearing to consider the final approval, reasonableness, and adequacy of the proposed settlement and whether it should be finally approved by the Court; and,
- j. Contains any additional provisions agreeable to the Parties that might be necessary or advisable to implement the terms of this Settlement Agreement.

XII. FINAL APPROVAL HEARING

67. The Parties will recommend that the Final Approval Hearing shall be scheduled no earlier than one hundred thirty (130) Days after the entry of the Preliminary Approval Order.

68. The Parties may file a response to any objections and a Motion for Final Approval no later than fourteen (14) Days after the Objection Deadline.

69. Any Settlement Class Member who wishes to appear at the Final Approval Hearing, whether pro se or through counsel, must, by the Objection Deadline, either mail or hand-deliver to the Court or file a notice of appearance in the Litigation, take all other actions or make any additional submissions as may be required in the Long-Form Notice, this Settlement Agreement, or as otherwise ordered by the Court, and mail that notice and any other such pleadings to Class Counsel and Defendant's Counsel as provided in the Long-Form Notice.

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

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

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

c. Approval of the settlement, as set forth in the Settlement Agreement, as fair, reasonable, adequate, and in the best interests of the Class, in all respects, finding that the

settlement is in good faith, and ordering the Parties to perform the Settlement in accordance with the terms of this Settlement Agreement;

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

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

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

g. A finding that all Settlement Class Members shall, as of the entry of the Final Judgment, conclusively be deemed to have fully, finally, and forever completely released, relinquished, and discharged the Released Persons from the Released Class Claims; and

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

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

XIII. TERMINATION OF THIS SETTLEMENT AGREEMENT

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

- a. The Court denies preliminary approval of this Settlement Agreement (or grants preliminary approval through an order that materially differs in substance to **Exhibit D** hereto);
- b. The Court denies final approval of this Settlement Agreement (or grants final approval through an order that materially differs in substance from **Exhibit E** hereto);
- c. The Final Approval Order and Final Judgment do not become final by reason of a higher court reversing final approval by the Court, and the Court thereafter declines to enter a further order or orders approving the settlement on the terms set forth herein; or
- d. The Effective Date cannot occur.

73. The Parties agree to work in good faith to effectuate this Settlement Agreement.

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

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

76. If this Settlement Agreement is terminated or disapproved, or if the Effective Date should not occur for any reason, then: (i) this Settlement Agreement, the Preliminary Approval Order, the Final Approval Order (if applicable), and all of their provisions shall be rendered null and void; (ii) all Parties shall be deemed to have reverted to their respective status in the Litigation as of the date and time immediately preceding the execution of this Settlement Agreement;

(iii) except as otherwise expressly provided, the Parties shall stand in the same position and shall proceed in all respects as if this Settlement Agreement and any related orders had never been executed, entered into, or filed; and (iv) no term or draft of this Settlement Agreement nor any part of the Parties' settlement discussions, negotiations, or documentation (including any declaration or brief filed in support of the motion for preliminary approval or motion for final approval), nor any rulings regarding class certification for settlement purposes (including the Preliminary Approval Order and, if applicable, the Final Approval Order and Final Judgment), will have any effect or be admissible into evidence for any purpose in the Litigation or any other proceeding.

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

XIV. RELEASE

78. The Final Approval Order and Final Judgment shall provide that the Litigation is dismissed with prejudice as to the Plaintiffs and all Settlement Class Members.

79. On the Effective Date, Plaintiffs and each and every Settlement Class Member shall be bound by this Settlement Agreement and shall have recourse only to the benefits, rights, and remedies provided hereunder. No other action, demand, suit, arbitration, or other claim or proceeding, regardless of forum, may be pursued against Released Persons with respect to the Plaintiffs' Released Claims or the Released Class Claims.

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

81. On the Effective Date and in consideration of the promises and covenants set forth in this Settlement Agreement, each Settlement Class Member will be deemed to have fully, finally, and forever completely released, relinquished, and discharged the Released Persons from any and all past, present, and future claims, counterclaims, lawsuits, set-offs, costs, expenses, attorneys' fees and costs, losses, rights, demands, charges, complaints, actions, suits, causes of action, obligations, debts, contracts, penalties, damages, or liabilities of any nature whatsoever, known, unknown, or capable of being known, in law or equity, fixed or contingent, accrued or unaccrued and matured or not matured that arise out of, are connected to the Data Breach that were or could have been asserted in the Litigation (the "**Settlement Class Release**"). The Settlement Class

Release shall be included as part of the Final Approval Order so that all claims released thereby shall be barred by principles of res judicata, collateral estoppel, and claim and issue preclusion (the “Released Class Claims”). The Released Class Claims shall constitute and may be pled as a complete defense to any proceeding arising from, relating to, or filed in connection with the Released Class Claims.

82. Subject to Court approval, as of the Effective Date, Plaintiffs and all Settlement Class Members shall be bound by this Settlement Agreement and the Settlement Class Release and all of Plaintiffs’ Released Claims and the Released Class Claims shall be dismissed with prejudice and released.

83. The Plaintiffs’ Released Claims and Released Class Claims include the release of Unknown Claims. “Unknown Claims” means claims that could have been raised in the Litigation and that any of the Plaintiffs and each of their respective heirs, executors, administrators, representatives, agents, partners, trustees, successors, attorneys, and assigns do not know to exist or suspects to exist, which, if known by him, her or it, might affect his, her, or its agreement to release Defendant and all other Released Persons, or might affect his, her, or its decision to agree to, or object or not to object to the Settlement.

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

85. Without in any way limiting the scope of the Plaintiffs’ Release or the Settlement Class Release (the “Releases”), the Releases cover, without limitation, any and all claims for

attorneys' fees, costs or disbursements incurred by Class Counsel or any other counsel representing Plaintiffs or Settlement Class Members, or any of them, in connection with or related in any manner to the Litigation, the Settlement, the administration of such Settlement and/or the Plaintiffs' Released Claims or the Released Class Claims as well as any and all claims for the Service Award to Plaintiffs.

86. Nothing in the Releases shall preclude any action to enforce the terms of this Settlement Agreement, including participation in any of the processes detailed herein. Nor shall the Releases be construed to release claims arising out of physical injuries alleged to arise from the treatment Plaintiffs and Settlement Class Members received from Defendant.

XV. EFFECTIVE DATE

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

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

- e. The Final Approval Order and Final Judgment have become Final, as defined in Paragraph 10(l).

XVI. MISCELLANEOUS PROVISIONS

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

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

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

91. In the event the Net Settlement Fund is insufficient to cover the payment for Monitoring services claimed by Claimants, the duration of the coverage described in Paragraph 24(d) will be reduced to exhaust the fund. In such an event, no Net Settlement Funds would be distributed for the benefits described in Paragraph 24(a)-(c) and 25. In the event the aggregate amount of all payments for Compensation for Ordinary Losses, Compensation for Lost Time, and Compensation for Extraordinary Losses exceeds the total amount of the Net Settlement Fund, then the value of those payments shall be reduced on a pro rata basis, such that the aggregate value of Compensation for Ordinary Losses, Compensation for Lost Time, and Compensation for Extraordinary Losses and payments for Monitoring services does not exceed the Net Settlement Fund. In such an event, no Net Settlement Funds would be distributed to Claimants seeking Cash Compensation. All such determinations shall be performed by the Settlement Administrator.

92. No person shall have any claim against Plaintiffs, Class Counsel, Defendant, Defendant's Counsel, the Settlement Administrator, or the Released Persons, or any of the foregoing's agents or representatives based on the administration of the Settlement substantially in accordance with the terms of the Settlement Agreement or any order of the Court or appellate court.

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

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

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

96. This Settlement Agreement shall not be construed more strictly against one Party than another merely because it may have been prepared by counsel for one of the Parties, it being recognized that because of the arm's-length negotiations resulting in this Settlement Agreement, all Parties hereto have contributed substantially and materially to the preparation of the Settlement Agreement. All terms, conditions, and exhibits are material and necessary to this Settlement Agreement and have been relied upon by the Parties in entering into this Settlement Agreement.

97. This Settlement Agreement shall be construed under and governed by the laws of the Commonwealth of Massachusetts without regard to its choice of law provisions.

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

99. In the event that one or more of the provisions contained in this Settlement Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such

invalidity, illegality, or unenforceability shall not affect the other provisions of the Settlement Agreement, which shall remain in full force and effect as though the invalid, illegal, or unenforceable provision(s) had never been a part of this Settlement Agreement as long as the benefits of this Settlement Agreement to Defendant or the Settlement Class Members are not materially altered, positively or negatively, as a result of the invalid, illegal, or unenforceable provision(s).

100. This Settlement Agreement will be binding upon and inure to the benefit of the successors and assigns of the Parties, Released Persons, and Settlement Class Members.

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

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

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

104. Each Party to this Settlement Agreement and the signatories thereto warrant that he, she, or it is acting upon his, her or its independent judgment and the advice of his, her, or its counsel and not in reliance upon any warranty or representation, express or implied, of any nature

or kind by any other Party, other than the warranties and representations expressly made in this Settlement Agreement.

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

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

Approved as to form and content by counsel for Plaintiffs and the Settlement Class:

DocuSigned by:
By: Ben Barnow
Ben Barnow

Barnow and Associates, P.C.
205 West Randolph Street, Ste. 1630
Chicago, IL 60606
Tel: (312) 621-2000
b.barnow@barnowlaw.com

DocuSigned by:
By: Andrew W. Ferich
Andrew W. Ferich

Ahdoot & Wolfson, PC
201 King of Prussia Road, Suite 650
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DocuSigned by:
By: David Pastor
David Pastor

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Approved as to form and content by counsel for Defendant:

By: David A. Carney
David A. Carney

Baker & Hostetler LLP
127 Public Square, Suite 2000

Cleveland, Ohio, 44114
Tel: (216) 621-0200
dcarney@bakerlaw.com

EXHIBIT A

**Your claim
must be
postmarked by:**

XXXXXXX

COMMONWEALTH OF MASSACHUSETTS

Kesner v. UMass Memorial Health Care, Inc.,
Case No. 2185 CV 01210

Claim Form

**UMass
Memorial
Health Care**

This claim form should be filled out online or submitted by mail if your personal information was allegedly compromised as a result of the data incident that UMass Memorial Health Care, Inc. discovered on or about January 27, 2021 (the "Data Incident"), and you would like to receive a benefit from the settlement. You may receive a payment or other benefit if you fill out this claim form, if the settlement is approved, and if you are found to be eligible for a payment.

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

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

I. CLASS MEMBER NAME AND CONTACT INFORMATION

Provide your name and contact information below. You must notify the Settlement Administrator if your contact information changes after you submit this form.

First Name

Last Name

Street Address

City

State

Zip Code

Phone Number

Email Address

II. RELIEF SELECTION

Please select the relief you would like from either Section 2.A **or** Section 2.B below.

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

If you do not clearly indicate whether you would prefer option 2.A or 2.B below, your claim form may be deemed invalid.

2.A. I choose a cash payment of approximately \$40, subject to proration in accordance with the Settlement.

_____ By marking this line, I willingly forego all compensation under Section 2.B. of this Claim Form and instead opt for a flat cash payment of approximately \$40, subject to proration depending on how many claims are made.

**Your claim
must be
postmarked by:**

XXXXXXX

COMMONWEALTH OF MASSACHUSETTS

Kesner v. UMass Memorial Health Care, Inc.,
Case No. 2185 CV 01210

Claim Form

**UMass
Memorial
Health Care**

2.B. I choose credit monitoring and payment for ordinary expenses, lost time, and extraordinary expenses.

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

PLEASE PROVIDE THE INFORMATION LISTED BELOW:

Check the box for each category of benefits you would like to claim. Categories include: reimbursement for ordinary losses (up to a maximum of \$150.00), reimbursement for lost time (up to 3 hours at \$25 per hour), reimbursement of extraordinary losses incurred as a result of the Data Incident (up to a maximum of \$5,000), and 24-months of identity theft monitoring to be paid for by Defendant. Please be sure to fill in the total amount you are claiming for each category and to attach documentation of the charges as described in bold type (if you are asked to provide account statements as part of proof required for any part of your claim, you may mark out any unrelated transactions if you wish).

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

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

Examples - documented bank fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, gasoline for local travel, and bank fees. This category also includes fees for credit reports, credit monitoring, or other identity theft insurance product purchased between June 24, 2020, and **[Claim Deadline]**.

All ordinary out-of-pocket expenses must be more likely than not attributable to the Data Incident.

Total amount for this category \$ _____

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

Documentation of out-of-pocket expenses is required.

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

If you are seeking reimbursement for credit reports, credit monitoring, or other identity theft insurance product purchased between June 24, 2020, and **[CLAIM DEADLINE]**, you MUST attach a copy of a receipt or other proof of purchase for each credit report or product purchased. (Note: By claiming reimbursement in this category, you certify that you purchased the credit monitoring or identity theft insurance product primarily because of the Data Incident and not for any other purpose).

Supporting documentation must be provided. You may mark out any transactions that are not relevant to your claim before sending in the documentation.

**Your claim
must be
postmarked by:**

XXXXXXX

COMMONWEALTH OF MASSACHUSETTS

*Kesner v. UMass Memorial Health Care, Inc.,
Case No. 2185 CV 01210*

Claim Form

**UMass
Memorial
Health Care**

b. Extraordinary Expenses Resulting from the Data Incident

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

Total amount for this category \$ _____

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

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

*Documentation of the extraordinary loss is required. The loss **MUST** be actual, documented, and unreimbursed monetary loss that occurred between June 24, 2020, and **[CLAIM DEADLINE]**. Additionally, the loss **MUST** be more likely than not the result of the Data Incident and **MUST** not already be covered by the ordinary reimbursement category.*

You may mark out any transactions that are not relevant to your claim before sending in the documentation.

c. Between one and three hours of documented time spent dealing with the Data Incident

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

Examples – You spent at least one-half hour calling customer service lines, writing letters or emails, or on the Internet in order to get fraudulent charges reversed or in updating automatic payment programs because your card number changed. You spent at least one-half hour rescheduling medical appointments and/or finding alternative medical care and treatment, retaking or submitting to medical tests, locating medical records, retracing medical history as a result of the Data Incident.

I certify that I spent the following amount of time in response to the Data incident: ____ hours

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

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

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

Your claim
must be
postmarked by:

XXXXXXX

COMMONWEALTH OF MASSACHUSETTS

Kesner v. UMass Memorial Health Care, Inc.,
Case No. 2185 CV 01210

Claim Form

UMass
Memorial
Health Care

The Settlement requires Defendant to provide up to 24-months of credit monitoring and identity protection services.

III. PAYMENT OPTIONS

Please select from **one** of the following payment options:

PayPal - Enter your PayPal email address: _____

Venmo - Enter the mobile number associated with your account: ____-____-____

Zelle - Enter the mobile number or email address associated with your account:

Mobile Number: ____-____-____ or Email Address: _____

Physical Check - Payment will be mailed to the address provided above.

IV. SIGN AND DATE YOUR CLAIM FORM

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

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

Your signature

Date: _____
MM DD YYYY

Your name

MAIL YOUR CLAIM FORM OR SUBMIT YOUR CLAIM FORM ONLINE.

This claim form must be:

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

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

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

EXHIBIT B

COMMONWEALTH OF MASSACHUSETTS

If your personal information was affected by a 2020 Data Incident at UMass Memorial Health Care, you may be eligible for a payment and/or credit monitoring services from a class action settlement.

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

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

- A settlement has been reached in a class action lawsuit against UMass Memorial Health Care, Inc. (“UMMHC” or “Defendant”) relating to a data security incident impacting Defendant’s computer systems that occurred between June 24, 2020 and January 7, 2021 (the “Data Incident”). The computer systems affected by the Data Incident contained personal identifying information and protected health information of certain individuals. The Plaintiffs claim that Defendant was responsible for the Data Incident and assert claims such as negligence, negligence per se, breach of express and implied contract, breach of fiduciary duty, and unjust enrichment. Defendant denies all of the claims.
- If you received a notification from Defendant of the Data Incident, you are included in this Settlement as a “Settlement Class Member.”
- The Settlement provides payments to people who submit valid claims for expenses and lost time relating to the Data Incident, and for credit monitoring and identity protection services. Alternately, you may forego those benefits for a cash payment of approximately \$40.00 that is subject to proration, depending on how many claims are made.
- Your legal rights are affected regardless of whether you do or do not act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM BY [DATE]	This is the only way you can get payment or a code for credit monitoring services.
OBJECT TO THE SETTLEMENT BY [DATE]	Write to the Court with reasons why you do not agree with the Settlement.
GO TO THE FINAL FAIRNESS HEARING ON [DATE]	You may ask the Court for permission for you or your attorney to speak about your objection at the Final Fairness Hearing.

DO NOTHING	You will not get any compensation or credit monitoring from this Settlement and you will give up certain legal rights. Submitting a claim form is the only way to obtain payment or credit monitoring from this Settlement.
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- These rights and options—and the deadlines to exercise them—are explained in this Notice. For complete details, view the Settlement Agreement, available at www.XXXXXXXXXXXXXX.com, or call 1- - - .
- The Court in charge of this case still has to decide whether to grant final approval of the Settlement. Payments will only be made after the Court grants final approval of the Settlement and after any appeals of the Court’s order granting final approval are resolved.

WHAT THIS NOTICE CONTAINS

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3. What is a class action?
4. Why is there a Settlement?

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9. What credit monitoring and identity theft protections are available?
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22. What happens if I do nothing?

GETTING MORE INFORMATION..... PAGE 8

23. Are more details about the Settlement available?
24. How do I get more information?

BASIC INFORMATION

1. Why is this Notice being provided?

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

The Court in charge of this case is the Worcester County Superior Court, Worcester, Massachusetts. The case is known as *Kesner v. UMass Memorial Health Care, Inc.*, Case No. 2185 CV 01210 (the “Lawsuit”). The people who filed the Lawsuit are called the Plaintiffs and the entity they sued, UMass Memorial Health Care, Inc., is called the Defendant.

2. What is this lawsuit about?

The Lawsuit claims that the Defendant was responsible for the Data Incident and asserts claims such as: negligence, negligence per se, breach of fiduciary duty, breach of express and implied contract, and unjust enrichment. The Lawsuit seeks, among other things, payment for persons who were allegedly injured by the Data Incident.

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

3. What is a class action?

In a class action, one or more people called Class Representatives sue on behalf of people who have similar claims. Together, all these people are called a Class or Class members. One Court and one judge resolves the issues for all Class members.

4. Why is there a Settlement?

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

WHO IS INCLUDED IN THE SETTLEMENT?

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

You are part of this Settlement as a Settlement Class Member if your personal information was compromised in the Data Incident or you previously received a notification from Defendant pertaining to the Data Incident.

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

Yes. Specifically excluded from the Settlement Class are: (i) Defendant and its affiliates, parents, subsidiaries, officers and directors; (ii) the Judge(s) presiding over this matter and the clerks of said judges. This exclusion does not apply to the Defendant's employees who received notification regarding the Data Incident.

THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

7. What does the Settlement provide?

Under the Settlement, Defendant will pay \$1,200,000.00 into a non-reversionary Settlement Fund that will be used to provide the following benefits:

- Settlement Class Members may elect to file a claim for either 1) a claim for reimbursement of certain losses and credit monitoring or 2) a cash payment. Specifically, Settlement Class Members can claim:
 - Settlement Class Members can claim: (i) up to \$150 for Ordinary Expense Reimbursements (Question 8, below); (ii) Lost Time of up to 3 hours (Question 8, below); and (iii) up to \$5,000 in Extraordinary Expense Reimbursements (Question 8, below). You may submit a claim for any or all of these types of payments. In order to claim each type of payment, you must provide related documentation with the Claim Form. Settlement Class Members can also make a claim for (iv) up to 24-months of credit monitoring and identity protection services (Question 9, below); or
 - Settlement Class Members can forego the benefits outlined above in exchange for a one-time Cash Payment of approximately \$40 that is subject to proration, depending on how many claims are made.
- Attorneys' fees and expenses as approved by the Court (Question 17, below), service awards as approved by the Court (Question 17, below) and the costs of notifying the class and administering the Settlement.

Depending on the number of valid claims, the costs of settlement administration, and the amount awarded by the Court for attorneys' fees and costs and service awards, payments for certain benefits may be reduced proportionally or withheld as set forth in paragraphs 37 and 91 of the Settlement Agreement.

8. What payments are available for Expense Reimbursement?

Settlement Class Members are eligible to receive reimbursement of up to \$150 (in total) for the following categories of documented out-of-pocket expenses resulting from the Data Incident including but not limited to:

- bank fees,
- long distance phone charges,
- cell phone charges (only if charged by the minute),
- data charges (only if charged based on the amount of data used),
- postage, and
- gasoline for local travel.

Settlement Class Members can also receive reimbursement of fees for credit reports, credit monitoring, or other identity theft insurance products, purchased between June 24, 2020, and the date of the close of the claims period.

In addition to these reimbursements, Settlement Class Members may make a claim for up to three (3) hours of lost time spent dealing with the Data Incident, to be paid out at \$25 per hour. Such time can include, for example:

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

Settlement Class Members may also make a claim for up to \$5,000 in Extraordinary Expense Reimbursements for monetary losses proven more likely than not to directly arise from identity theft or other fraud perpetrated against Settlement Class Members if those losses: are actual, documented, and unreimbursed monetary losses; more likely than not resulted from the Data Incident; occurred between June 24, 2020, and the date of the close of the claims period; are not already covered by Ordinary Expense Reimbursements; and Settlement Class Members made reasonable efforts to avoid or seek reimbursement for losses.

Claims for Ordinary Expense Reimbursements, Lost Time, and Extraordinary Expense Reimbursements must be supported by reasonable documentation.

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

Settlement Class Members who submit a valid claim are eligible to enroll in a total of 24-months of credit monitoring services through [INSERT SERVICE]. [NAME SERVICE] services include: real time monitoring of the credit file at all three major credit bureaus, identity theft insurance (no deductible) of one million dollars (\$1,000,000), and access to fraud resolution agents to help resolve identity thefts.

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

10. What cash compensation is available?

In lieu of the benefits described in Questions 8 and 9 above, Settlement Class Members may file a claim for a cash payment estimated at \$40. This cash payment is subject to proration, depending on how many claims are made.

HOW TO GET BENEFITS—SUBMITTING A CLAIM FORM

11. How do I get benefits from the Settlement?

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

UMass Memorial Health Care Data Incident Claims Administrator
PO Box XXXXX
City, State zip code

12. How will claims be decided?

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

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

13. When will I get my payment?

The Court will hold a Final Fairness Hearing at : 0 .m. on Month, 2023 to decide whether to approve the Settlement. If the Court approves the Settlement, there may be appeals. It is always uncertain whether any appeals can be resolved favorably and resolving them can take time. It also takes time for all the Claim Forms to be processed, depending on the number of claims submitted and whether any appeals are filed. Please be patient.

REMAINING IN THE SETTLEMENT

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

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

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

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

The Settlement Agreement describes the released claims with specific descriptions, so read it carefully. If you have any questions about what this means you can talk to the law firms listed in Question 16 for free or you can, of course, talk to your own lawyer at your own expense.

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this case?

Yes. The Court appointed Ben Barnow and Anthony Parkhill of Barnow and Associates, P.C., located at 205 W. Randolph St., Ste. 1630, Chicago, IL 60606; Andrew W. Ferich of Ahdoot & Wolfson, PC, located at 201 King of Prussia Road, Suite 650, Radnor, PA 19087; and David Pastor of Pastor Law Office, PC, located at 63 Atlantic Avenue, 3d Floor, Boston, Massachusetts 02110, to represent you and other Settlement Class members. These lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

17. How will Class Counsel be paid?

If the Settlement is approved and becomes final, Class Counsel will ask the Court to award attorneys’ fees in the amount of \$400,000 plus reasonable litigation costs and expenses. Class Counsel will also request approval of a service award of \$3,000 for each of the two Class Representatives. If approved, these amounts, as well as the costs of notice and settlement

administration, will be taken from the settlement amount prior to payments made to Settlement Class Members.

OBJECTING TO THE SETTLEMENT

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

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

If you are a Settlement Class Member, you can object to the Settlement if you do not like it or a portion of it. You can give reasons why you think the Court should not approve the Settlement. The Court will consider your views before making a decision. To object, you must file with the Court and mail copies to Class Counsel and Defendant's Counsel a written notice stating that you object to the Settlement in *Kesner v. UMass Memorial Health Care, Inc.*, Case No. 2185 CV 01210.

Your objection must:

- (i) set forth your full name, current address, telephone number, and email address;
- (ii) contain your original signature;
- (iii) contain proof that you are a member of the Settlement Class (e.g., copy of settlement notice, copy of original notice of the Data Incident);
- (iv) state that you object to the Settlement, in whole or in part;
- (v) set forth a statement of the legal and factual basis for the Objection;
- (vi) provide copies of any documents that you wish to submit in support of your position;
- (vii) identify all counsel representing you, if any;
- (viii) contain the signature of your duly authorized attorney or other duly authorized representative, along with documentation setting forth such representation; and
- (ix) contain a list, including case name, court, and docket number, of all other cases in which you and/or your counsel has filed an objection to any proposed class action settlement in the past three (3) years.

Your objection must be filed with the Clerk of the Worcester County Superior Court, 225 Main St., Worcester, Massachusetts 01608 and served upon Class Counsel and Defendant's Counsel at the addresses below no later than **Month Day, 2022**.

CLASS COUNSEL	DEFENDANT'S COUNSEL

<p>Ben Barnow Barnow and Associates, P.C. 205 W. Randolph St., Suite 1630 Chicago, Illinois 60606</p>	<p>David A. Carney Baker & Hostetler, LLP 127 Public Square, Suite 2000 Cleveland, Ohio 44114</p>
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An objecting Settlement Class Member has the right, but is not required, to attend the Final Approval Hearing. If you intend to appear at the Final Approval Hearing, either with or without counsel, you must also file a notice of appearance with the Court (as well as serve the notice on Class Counsel and Defendant's Counsel) by the Objection Deadline.

If you intend to appear at the Final Approval Hearing through counsel, you must also identify the attorney(s) representing you who will appear at the Final Approval Hearing and include the attorney(s) name, address, phone number, e-mail address, state bar(s) to which counsel is admitted, as well as associated state bar numbers.

If you fail to timely file and serve an Objection and notice, if applicable, of your intent to appear at the Final Approval Hearing in person or through counsel, you will not be permitted to object to the approval of the Settlement at the Final Approval Hearing and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means.

THE COURT'S FINAL FAIRNESS HEARING

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

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

The Court will hold a Final Fairness Hearing at :_0_.m. on Month Day, 2022, in the Worcester County Superior Court, Room ___, 225 Main St., Worcester, Massachusetts 01608. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will take into consideration any properly-filed written objections and may also listen to people who have asked to speak at the hearing (*see* Question 18). The Court will also decide whether to approve fees and reasonable litigation costs to Class Counsel, and the service award to the Class Representatives.

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

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

21. May I speak at the Final Fairness Hearing?

Yes, you may ask the Court for permission to speak at the Final Fairness Hearing. To do so, you must follow the instructions provided in Question 18 above.

IF YOU DO NOTHING

22. What happens if I do nothing?

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

GETTING MORE INFORMATION

23. Are more details about the Settlement available?

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

24. How do I get more information?

Go to www.XXXXXXXXXXXXXX.com, call 1 _____, or write to the UMass Memorial Health Care Data Incident Claims Administrator, P.O. Box _____, [City] [ST] _____ - _____.

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

EXHIBIT C

**IF YOUR PERSONAL INFORMATION WAS AFFECTED BY A 2020 DATA INCIDENT, YOU
MAY BE ELIGIBLE FOR PAYMENT AND CREDIT MONITORING SERVICES FROM A
CLASS ACTION SETTLEMENT.**

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

A settlement has been reached in a class action lawsuit against UMass Memorial Health Care, Inc. (“Defendant”) relating to a data security incident impacting Defendant’s computer systems that occurred between June 24, 2020 and January 7, 2021 (the “Data Incident”). The computer systems possibly affected by the Data Incident potentially contained personal information of certain individuals. The Plaintiffs claim that Defendant was responsible for the Data Incident and assert claims such as negligence, negligence per se, breach of express and implied contract, breach of fiduciary duty, and unjust enrichment. Defendant denies all of the claims.

WHO IS INCLUDED? Defendant’s records show that your personal information may have been impacted; therefore, you are included in this Settlement as a “Settlement Class Member.”

SETTLEMENT BENEFITS. The Settlement provides for \$1,200,000 in relief including: A) a cash payment of approximately \$40 subject to proration, depending on how many claims are made, or B) reimbursement of up to \$150 for ordinary out-of-pocket expenses; compensation for up to 3 hours of lost time that resulted from the Data Incident; reimbursement of up to \$5,000 for extraordinary expenses resulting from the Data Incident; and up to 24-months of credit monitoring and identity protection services.

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

OTHER OPTIONS. If you do nothing, you will not be eligible for benefits, and you will be bound by the decisions of the Court and give up your rights to sue Defendant for the claims resolved by this Settlement. You may object to the Settlement by **Month Day, 2022**. A more detailed notice is available to explain how to object. Please visit the website or call 1-XXX-XXX-XXXX for a copy of the more detailed notice. On **Month Day, 2022**, the Court will hold a Fairness Hearing to determine whether to approve the Settlement, Class Counsel’s request for attorneys’ fees of \$400,000 and reasonable litigation costs and expenses, and a service award of \$3,000 for each of the two Representative Plaintiffs. The Motion for attorneys’ fees will be posted on the website after it is filed. You or your own lawyer, if you have one, may ask to appear and speak at the hearing at your own cost, but you do not have to. This is only a summary. For more information, call or visit the website below.

www.XXXXXXXXXXXXXX.com

1-XXX-XXX-XXXX

EXHIBIT D

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT DEPARTMENT
CIVIL SESSION B

JULIE KESNER and DENNIS O'BRIEN,
Individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

UMASS MEMORIAL HEALTH CARE,
INC.,

Defendant.

Case No. 2185 CV 01210

**[PROPOSED] ORDER ALLOWING PRELIMINARILY APPROVAL OF CLASS
ACTION SETTLEMENT AND DIRECTING NOTICE OF PROPOSED SETTLEMENT**

The Court, having considered Plaintiffs' Assented to Motion for Preliminary Approval of the Class Action Settlement ("Motion for Preliminary Approval"), the supporting Memorandum, the Parties' Settlement Agreement, dated October ____ 2022, the proposed Postcard Notice (also known as the "Short-Form Notice"), Long-Form Notice, and Claim Form, and being otherwise fully advised in the premises, finds and orders as follows:

PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT

1. The Settlement Agreement is incorporated fully herein by reference. The definitions used in the Settlement Agreement are adopted in this Order and shall have the same meaning ascribed in the Settlement Agreement.
2. The Court has jurisdiction over the claims at issue in this Litigation, Plaintiffs Julie Kesner and Dennis O'Brien, (collectively, "Plaintiffs" or "Class Representatives"), individually

and on behalf of all others similarly situated (the “Settlement Class”), and Defendant UMass Memorial Health Care, Inc. (“UMMHC” and together with Plaintiffs, the “Parties”).

3. The Court finds that the Parties’ Settlement Agreement is fair, reasonable, and adequate and is within the range of possible approval, and was entered into after extensive, arm’s-length negotiations, such that it is hereby preliminarily approved, and that notice of the Settlement should be provided to the Settlement Class Members.

4. Pending the Final Approval Hearing, all proceedings in the Litigation, other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement and this Order, are hereby stayed.

Procedural Posture and History of Negotiations

5. This is a putative class action brought by Plaintiffs arising out of a data security incident in which Plaintiffs allege an unauthorized third party illegally accessed Defendant’s computer systems and data during the period of June 24, 2020 to January 7, 2021, allegedly resulting in the exposure of personal information of Plaintiffs and members of the Settlement Class (the “Data Breach”).

6. On November 8, 2021, Plaintiffs filed this putative class action in the Worcester County Superior Court captioned *Kesner v. UMass Memorial Health Care, Inc.*, No. 2185 CV 01210 (the “Litigation”). Plaintiffs allege in their Complaint six causes of action: (1) negligence; (2) negligence *per se*; (3) breach of fiduciary duty; (4) breach of express contract; (5) breach of implied contract; and (6) unjust enrichment.

7. On February 21, 2022, UMMHC filed a Rule 9A package with the Superior Court, containing its fully briefed Motion to Dismiss Plaintiffs’ Complaint pursuant to Mass. R. Civ. P.

12(b)(6). UMMHC argued that Plaintiffs did not sufficiently allege injury or damages to bring the lawsuit, and that Plaintiffs' claims should be dismissed for failure to state a claim for relief.

8. While the motion was pending, the parties decided to mediate the Litigation. On August 2, 2022, counsel for the Parties engaged in a full day mediation before Hon. Bonnie H. MacLeod (Ret.) concerning a possible settlement of the claims asserted in the Litigation. This mediation did not result in a settlement. However, the Parties continued to engage in arm's length negotiations until they were able to reach an agreement in principle. Thereafter, the Parties negotiated the details of the Settlement Agreement and its exhibits. The Settlement Agreement was finalized and executed on October ___, 2022.

Settlement Benefits

9. Settlement Class Members may qualify and submit a Claim Form for the following settlement benefits:

a. Ordinary Losses: Each Settlement Class Member is eligible to submit a claim for up to one hundred fifty dollars (\$150.00) in Ordinary Losses. There are two forms of Ordinary Losses: (1) reimbursement for out-of-pocket expenses; and (2) reimbursement for fees for credit monitoring and insurance:

i. *Out-of-Pocket Expenses*: Settlement Class Members are eligible to submit claims for out-of-pocket expenses incurred as a result of the Data Breach, including documented bank fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, gasoline for local travel, and bank fees.

ii. *Fees for Credit Monitoring and Insurance:* Settlement Class Members are eligible to submit claims for expenses incurred for credit reports, credit monitoring, or other identity theft insurance products purchased between June 24, 2020, and the date of the close of the Claims Period.

b. Lost Time: Settlement Class Members are eligible to submit claims for lost time that they spent responding to issues raised by the Data Breach. Settlement Class Members may claim up to three (3) hours of lost time at a rate of twenty-five dollars (\$25.00) per hour. All such lost time must be reasonably described and supported by an attestation under penalty of perjury that the time spent was reasonably incurred dealing with the Data Breach.

c. Extraordinary Expenses: Settlement Class Members are eligible to submit claims for up to five thousand dollars (\$5,000.00) in extraordinary expenses for proven monetary loss arising from identity theft or other fraud perpetrated on or against the Settlement Class member if:

- i. The loss is an actual, documented, and unreimbursed monetary loss;
- ii. The loss was more likely than not caused by the Data Breach;
- iii. The loss occurred between June 24, 2020, and the Claims Deadline;
- iv. The loss is not already covered by the “Compensation for Ordinary Losses” category; and
- v. 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 and other available insurance.

d. Credit Monitoring: Twenty-four (24) months of identity theft monitoring will be provided for those Settlement Class Members who submit valid claims for such monitoring.

The identity theft monitoring will have the following features:

- i. Real time monitoring of the credit file at all three major credit bureaus;
- ii. Identity theft insurance (no deductible) of one million dollars (\$1,000,000); and
- iii. Access to fraud resolution agents to help resolve identity thefts.

e. Cash Compensation: In lieu of the credit monitoring described in Paragraph 9(d), Settlement Class Members may file claims for cash payments that are allocated by proration as described in Paragraph 36 of the Settlement Agreement.

CLASS CERTIFICATION

10. For the purposes of settlement only, and pursuant to Mass. R. Civ. P. 23, the Court provisionally certifies the class, defined as follows: “all persons whose personal information was potentially compromised in the Data Breach, as defined in Paragraph 10(h) of the Settlement Agreement.”

11. The Settlement Class specifically excludes UMMHC and its affiliates, parents, subsidiaries, officers, and directors, as well as the judge(s) presiding over this matter and the clerks of said judge(s). This exclusion does not apply, and should not be read to apply, to those employees of UMMHC and its Related Entities who received notification regarding the Data Breach.

12. The Court provisionally finds, pursuant to Mass. R. Civ. P. 23, that, for purposes of this settlement only, the: (a) the Settlement Class is so numerous that joinder of all Settlement

Class Members is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the Class Representatives' claims are typical of the Settlement Class's claims; (4) the Class Representatives will fairly and adequately protect the Settlement Class's interests; and (5) questions of law or fact in this Litigation predominate over any questions affecting only individual members of the Settlement Class, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

SETTLEMENT CLASS COUNSEL AND THE CLASS REPRESENTATIVES

13. Plaintiffs Julie Kesner and Dennis O'Brien are hereby provisionally designated and appointed as the Class Representatives. The Court provisionally finds that the Class Representatives are similarly situated to absent Settlement Class Members, and are typical of the Settlement Class, and, therefore, they will be adequate Class Representatives.

14. The Court finds that Ben Barnow and Anthony L. Parkhill of Barnow and Associates, P.C., Andrew W. Ferich of Ahdoot & Wolfson PC, and David Pastor of Pastor Law Office, PC are experienced and adequate counsel and are provisionally designated as Class Counsel.

NOTICE TO SETTLEMENT CLASS

15. The forms of the Claim Form, Long-Form Notice, and Postcard Notice, attached as **Exhibits A, B, and C**, respectively, to the Settlement Agreement (the "Notice"), are constitutionally adequate, and are hereby approved. The Notice contains all essential elements required to satisfy Massachusetts requirements and Due Process. The Court further finds that the form, content, and method of providing notice to the Settlement Class, as described in the Settlement Agreement, including the exhibits thereto: (a) constitute the best practicable notice to

the Settlement Class; (b) are reasonably calculated to apprise Settlement Class Members of the pendency of the action, the terms of the Settlement, their rights under the Settlement, including, but not limited to, their rights to object to Settlement; and (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members. The Parties, by agreement, may revise the Notice in ways that are appropriate to update the Notice for purposes of accuracy and clarity, and may adjust the layout of those notices for efficient electronic presentation and mailing.

16. The Notice Program set forth in the Settlement Agreement satisfies the requirements of Rule 23 of the Massachusetts Rules of Civil Procedure, provides the best notice practicable under the circumstances, and is hereby approved.

17. The Settlement Administrator is directed to carry out the Notice Program as set forth in the Settlement Agreement.

18. Forty-five (45) days after entry of this Order (the “Notice Date”), the Settlement Administrator shall mail the Postcard Notice to all Settlement Class Members in the manner set forth in the Settlement Agreement. Contemporaneously with the mailing, the Settlement Administrator shall cause copies of the Settlement Agreement, Postcard Notice, Long-Form Notice, and Claim Form, in forms available for download, to be posted on a website developed for the Settlement (“Settlement Website”).

CLAIMS AND OBJECTIONS

19. The timing of the claims process is structured to ensure that all Settlement Class Members have adequate time to review the terms of the Settlement Agreement, make a claim, or decide whether they would like to object.

20. Settlement Class Members will have ninety (90) Days after the Notice Date to complete and submit a claim to the Settlement Administrator.

21. Settlement Class Members who comply with the requirements of this paragraph may object to the Settlement. A Settlement Class Member who seeks to object to the Settlement must file timely, written notice of his or her objection. This Objection must (i) set forth the Settlement Class Member's full name, current address, telephone number, and email address; (ii) contain the Settlement Class Member's original signature; (iii) contain proof that the Settlement Class Member is a member of the Settlement Class (e.g., copy of settlement notice, copy of original notice of the Data Security Incident); (iv) state that the Settlement Class Member objects to the Settlement, in whole or in part; (v) set forth a statement of the legal and factual basis for the Objection; (vi) provide copies of any documents that the Settlement Class Member wishes to submit in support of his/her position; (vii) identify all counsel representing the Settlement Class Member, if any; (viii) contain the signature of the Settlement Class Member's duly authorized attorney or other duly authorized representative, along with documentation setting forth such representation; and (ix) contain a list, including case name, court, and docket number, of all other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement in the past three (3) years.

22. To be timely, Objections must be filed with the Court and served on Class Counsel and Defendant's Counsel no later than sixty (60) Days after the Notice Date (the "Objection Deadline").

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

24. An objecting Settlement Class Member has the right, but is not required, to attend the Final Approval Hearing. If an objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, he or she must also file a notice of appearance with the Court (as well as serve the notice on Class Counsel and Defendant's Counsel) by the Objection Deadline.

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

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

ADMINISTRATION OF THE SETTLEMENT

27. The Class Representatives, Class Counsel, and UMMHC have created a process for assessing the validity of claims and a payment methodology to Settlement Class Members who submit timely, valid Claim Forms. The Court hereby preliminarily approves the Settlement benefits to the Settlement Class, and the plan for distributing Settlement benefits as described in Sections V-VI of the Settlement Agreement.

28. The Court appoints Angeion Group as the Settlement Administrator.

29. The Court directs the Settlement Administrator to effectuate the distribution of Settlement benefits according to the terms of the Settlement Agreement should the Settlement be finally approved.

30. Settlement Class Members who qualify for Settlement benefits and who wish to submit a Claim Form shall do so in accordance with the requirements and procedures specified in the Notice.

31. If Final Judgment is entered, all Settlement Class Members who fail to submit a claim in accordance with the requirements and procedures specified in the Notice shall be forever barred from receiving any Settlement benefit and will in all other respects be subject to and bound by the provisions of the Settlement Agreement, including the Releases contained therein, and the Final Approval Order and Judgment.

32. Prior to the Final Approval Hearing, Class Counsel and UMMHC shall cause to be filed with the Court an appropriate affidavit or declaration regarding compliance with the provisions of the Settlement Agreement relating to the Notice Program.

FINAL APPROVAL HEARING

33. A Final Approval Hearing shall be held on _____, 202_ at __:__0 __.m. at the Worcester County Superior Court, Courtroom _____, located at 225 Main Street, Worcester, Massachusetts 01608, to be noticed on the Settlement Website.

34. The Court may require or allow the Parties and any objectors to appear at the Final Approval Hearing by telephone or videoconference.

35. At the Final Approval Hearing, the Court will determine whether: (1) this Litigation should be finally certified as a class action for settlement purposes pursuant to the Massachusetts

Rules of Civil Procedure; (2) the Settlement should be finally approved as fair, reasonable, and adequate; (3) Class Counsel's application for attorneys' fees, costs, and expenses should be approved; (4) the Class Representatives' requests for service awards should be approved; (5) the Parties, their respective attorneys, and the Settlement Administrator should consummate the Settlement in accordance with the terms of the Settlement Agreement; (6) Settlement Class Members should be bound by the Releases set forth in the Settlement Agreement; and (7) the Litigation should be dismissed with prejudice pursuant to the terms of the Settlement Agreement.

36. Plaintiffs' application for attorneys' fees, costs, expenses, and service awards and all supporting papers shall be filed with the Court no later than fourteen (14) Days prior to the Objection Deadline.

37. Plaintiffs' Motion for Final Approval of the Class Action Settlement and all supporting papers shall be filed with the Court no later than fourteen (14) Days after the Objection Deadline.

RELEASE

38. Upon entry of the Court's Final Approval Order and Judgement, the Class Representatives and all Settlement Class Members, whether or not they have filed a Claim Form within the time provided, shall be permanently enjoined and barred from asserting any claims (except through the Claim Form procedures) against UMMHC and the Released Persons arising from the Plaintiffs' Released Claims or Released Class Claims, and the Representative Plaintiffs and Settlement Class Members conclusively shall be deemed to have fully, finally, and forever released any and all such Plaintiffs' Released Claims or Released Class Claims.

TERMINATION

39. In the event that the Effective Date does not occur, class certification shall be automatically vacated and this Preliminary Approval Order, and all other orders entered and releases delivered in connection herewith, shall be vacated and shall become null and void.

SUMMARY OF DEADLINES

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

EVENT	DATE
Defendant to provide class list to Settlement Administrator	15 Days after entry of Preliminary Approval Order
Notice Date	45 Days after the entry of the Preliminary Approval Order
Deadline for Plaintiffs to File Motion for Attorneys' Fees, Costs, Expenses, and Service Awards for Class Representatives	14 Days prior to Objection Deadline
Objection Deadline	60 Days after Notice Date
Deadline for Class Members to Submit Claim Forms	90 Days after Notice Date
Deadline for Plaintiffs to File Motion for Final Approval of Class Action Settlement	14 Days prior to Final Approval Hearing
Final Approval Hearing	COURT TO FILL IN DATE NO EARLIER THAN 130 DAYS AFTER PRELIMINARY APPROVAL

41. Upon application of the Parties and good cause shown, the deadlines set forth in this Order may be extended by order of the Court, without further notice to the Settlement Class. Settlement Class Members must check the Settlement Website regularly for updates and further

detail regarding extensions of these deadlines. The Court reserves the right to adjourn or continue the Final Approval Hearing, and/or to extend the deadlines set forth in this Order, without further notice of any kind to the Settlement Class.

ORDERED this ____ day of _____, 2022.

Justice of the Superior Court

EXHIBIT E

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT DEPARTMENT
CIVIL SESSION B

JULIE KESNER and DENNIS O'BRIEN,
Individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

UMASS MEMORIAL HEALTH CARE,
INC.,

Defendant.

Case No. 2185 CV 01210

[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT

On _____[DATE], this Court entered an order allowing preliminary approval (the "Preliminary Approval Order") (Doc. ____) of the settlement (the "Settlement") between Plaintiffs Julie Kesner and Dennis O'Brien (collectively, "Plaintiffs" or "Class Representatives"), individually and on behalf of all others similarly situated (the "Settlement Class"), and Defendant UMass Memorial Health Care, Inc. ("UMMHC" and together with Plaintiffs, the "Parties"), as memorialized in the Settlement Agreement, dated October , 2022.

On _____[DATE], pursuant to the notice requirements set forth in the Settlement Agreement and in the Preliminary Approval Order, the Settlement Class was notified of the terms of the proposed Settlement Agreement and the right of Settlement Class Members to object to the Settlement Agreement and to be heard at a Final Approval Hearing.

On _____[DATE], the Court held a Final Approval Hearing to determine, *inter alia*: (1) whether the terms and conditions of the Settlement Agreement are fair,

reasonable, and adequate for the release of the claims contemplated by the Settlement Agreement; and (2) whether judgment should be entered dismissing this action with prejudice. Prior to the Final Approving Hearing, an affidavit or declaration of compliance with the provisions of the Settlement Agreement and Preliminary Approval Order relating to notice was filed with the Court as required by the Preliminary Approval Order. Therefore, the Court is satisfied that Settlement Class Members were properly notified of their right to appear at the Final Approval Hearing in support of or in opposition to the proposed Settlement Agreement, the Attorneys' Fees, Costs, and Expenses Award to Settlement Class Counsel, and the payment of Service Awards to the Class Representatives.

Having given an opportunity to be heard to all requesting persons in accordance with the Preliminary Approval Order, having heard the presentation of Settlement Class Counsel and counsel for UMMHC, having reviewed all of the submissions presented with respect to the proposed Settlement Agreement, having determined that the Settlement Agreement is fair, adequate, and reasonable, having considered the application made by Class Counsel for attorneys' fees and costs and the application for Service Awards to the Class Representatives, and having reviewed the materials in support thereof, and good cause appearing:

IT IS HEREBY ORDERED THAT:

1. The Court has jurisdiction over the subject matter of this action and over all claims raised therein and all Parties thereto, including the Settlement Class.
2. The Settlement Agreement was entered into in good faith following arm's length negotiations and is non-collusive.

3. The Settlement Agreement is, in all respects, fair, reasonable, and adequate, is in the best interests of the Settlement Class, and is therefore approved. The Court finds that the Parties faced significant risks, expense, delays, and uncertainties, including as to the outcome, including on appeal, of continued litigation of this complex matter, which further supports the Court's finding that the Settlement Agreement is fair, reasonable, adequate and in the best interests of the Settlement Class Members. The Court finds that the uncertainties of continued litigation in both the trial and appellate courts, as well as the expense associated with it, weigh in favor of approval of the settlement reflected in the Settlement Agreement.

4. This Court grants final approval of the Settlement Agreement, including, but not limited to, the releases in the Settlement Agreement, including the Plaintiffs' Released Claims and Released Class Claims and the plans for implementation and distribution of the settlement benefits. The Court finds that the Settlement Agreement is in all respects fair, reasonable, and in the best interest of the Settlement Class. Therefore, all Class Members are bound by this Final Approval Order and Judgment, approving the Settlement Agreement.

5. The Parties shall effectuate the Settlement Agreement in accordance with its terms. The Settlement Agreement and every term and provision thereof shall be deemed incorporated herein as if explicitly set forth herein and shall have the full force of an Order of this Court.

OBJECTIONS

6. _____ objections were filed by Settlement Class Members. The Court has considered all objections and finds the objections do not counsel against Settlement Agreement approval, and the objections are hereby overruled in all respects.

7. All Settlement Class Members who have not objected to the Settlement Agreement in the manner provided in the Settlement Agreement are deemed to have waived any objections by appeal, collateral attack, or otherwise.

CLASS CERTIFICATION

8. For purposes of the Settlement Agreement and this Final Approval Order and Judgment only, the Court hereby finally certifies the following class (the “Settlement Class”):

[A]ll persons whose personal information was potentially compromised in the Data Breach, as defined in Paragraph 10(h) of the Settlement Agreement.

9. The Settlement Class specifically excludes:

UMMHC and its affiliates, parents, subsidiaries, officers, and directors, as well as the judge(s) presiding over this matter and the clerks of said judge(s). This exclusion does not apply, and should not be read to apply, to those employees of UMMHC and its Related Entities who received notification regarding the Data Breach.

10. The Court readopts and incorporates herein by reference its preliminary conclusions as to the satisfaction of Massachusetts Rule of Civil Procedure 23 set forth in the Preliminary Approval Order.

11. The Court grants final approval to the appointment of Plaintiffs Julie Kesner and Dennis O’Brien as Class Representatives. The Court concludes the Class Representatives have fairly and adequately represented the Settlement Class and will continue to do so.

12. The Court grants final approval to the appointment of Ben Barnow and Anthony L. Parkhill of Barnow and Associates, P.C., Andrew W. Ferich of Ahdoot & Wolfson PC, and David Pastor of Pastor Law Office, PC as Class Counsel. The Court concludes that Class Counsel have adequately represented the Settlement Class and will continue to do so.

NOTICE TO THE SETTLEMENT CLASS

13. The Court finds that the Notice Program, set forth in the Settlement Agreement and effectuated pursuant to the Preliminary Approval Order, was the best notice practicable under the circumstances, was reasonably calculated to provide and did provide due and sufficient notice to the Settlement Class of the pendency of the Litigation, certification of the Settlement Class for settlement purposes only, the existence and terms of the Settlement Agreement, and the right of Settlement Class members to object and to appear at the final approval hearing, and satisfied the requirements of Mass. R. Civ. P. 23, the United States Constitution, and other applicable law.

AWARD OF ATTORNEYS' FEES, COSTS, EXPENSES, AND SERVICE AWARDS

14. The Court has considered Class Counsel's Motion for attorneys, fees, costs, expenses, and service awards. The Court awards Class Counsel the sum of \$_____ as an award of attorneys' fees and \$_____ as an award of costs, and the Court finds this amount of fees and costs to be fair and reasonable. These payments shall be paid in accordance with the Settlement Agreement.

15. The Court grants Class Counsel's request for service awards to the Class Representatives and awards \$_____ to Plaintiff Julie Kesner and \$_____ to Plaintiff Dennis O'Brien. The Court finds that these payments are justified by Class Representatives' service to the Settlement Class. These payments shall be paid in accordance with the Settlement Agreement.

OTHER PROVISIONS

16. The Parties to the Settlement Agreement shall carry out their respective obligations thereunder.

17. Within the time period set forth in the Settlement Agreement, the benefits provided for in the Settlement Agreement shall be made available to the various Settlement Class Members submitting valid Claim Forms on approved claims, pursuant to the terms and conditions of the Settlement Agreement.

18. As of the Effective Date, and in consideration of the promises and covenants set forth in this Settlement Agreement, (i) 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 of Plaintiffs' Released Claims and Released Class Claims against all Released Persons. 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 Plaintiffs' Released Claim(s) or Released Class Claim(s) is/are asserted.

19. Notwithstanding any of the terms in the Settlement Agreement, neither UMMHC nor the Released Persons, shall have or shall be deemed to have released, relinquished, or discharged any claim or defense against any Person other than Plaintiffs, each and all of the Settlement Class Members, and Class Counsel.

20. The terms of the Settlement Agreement and this Final Approval Order and Judgment shall have maximum *res judicata*, collateral estoppel, and all other preclusive effect in any and all claims for relief, causes of action, suits, petitions, demands in law or equity, or any

allegations of liability, damages, debts, contracts, agreements, obligations, promises, attorneys' fees, costs, interest, or expenses that arise out of or relate to the allegations or subject matter of the Litigation and/or the Class Action Complaint filed in *Kesner v. UMass Memorial Health Care, Inc.*, No. 2185 CV 01210 (Worcester Cty. Sup. Ct.).

21. This Final Approval Order and Judgment and the Settlement Agreement, and all acts, statements, documents, or proceedings relating to the Settlement Agreement are not, and shall not be construed as, used as, or deemed to be evidence of, an admission by or against UMMHC of any claim, any fact alleged in the Litigation, any fault, any wrongdoing, any violation of law, or any liability of any kind on the part of UMMHC or of the validity or certifiability for litigation of any claims that have been, or could have been, asserted in the action. This Final Approval Order and Judgment, the Settlement Agreement, and all acts, statements, documents or proceedings relating to the Settlement Agreement shall not be offered or received or be admissible in evidence in any action or proceeding, or be used in any way as an admission or concession or evidence of any liability or wrongdoing of any nature or that Plaintiffs, any Settlement Class Member, or any other person has suffered any damage; provided, however, that the Settlement Agreement and this Final Approval Order and Judgment may be filed in any action by UMMHC, Class Counsel, or Settlement Class Members seeking to enforce the Settlement Agreement or the Final Approval Order and Judgment (including, but not limited to, enforcing the releases contained herein).

22. Any of the Released Persons may file the Settlement Agreement and/or this Final Approval Order and Judgment in any action that may be brought against them or any of them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel,

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

23. The Settlement Agreement and Final Approval Order and Judgment shall not be construed or be admissible as an admission by UMMHC that Plaintiffs' claims or any similar claims are suitable for class treatment. The Settlement Agreement's terms shall be forever binding on, and shall have *res judicata* and preclusive effect in, all pending and future lawsuits or other proceedings as to Plaintiffs' Released Claims and Released Class Claims and other prohibitions set forth in this Final Approval Order and Judgment that are maintained by, or on behalf of, any Settlement Class Member or any other person subject to the provisions of this Final Approval Order and Judgment.

24. The Court hereby dismisses the Class Action Complaint filed in *Kesner v. UMass Memorial Health Care, Inc.*, No. 2185 CV 01210 (Worcester Cty. Sup. Ct.) and the Litigation and all claims therein on the merits and with prejudice and with said dismissal to be without fees or costs to any Party, except as provided in this Final Approval Order and Judgment.

25. Without affecting the finality of this Final Approval Order and Judgment, the Court will retain jurisdiction over the subject matter and the Parties with respect to the interpretation and implementation of the Settlement Agreement for all purposes.

ORDERED this ____ day of _____, 2023.

Justice of the Superior Court

EXHIBIT 2

PASTOR LAW OFFICE, PC

FIRM RESUME

PASTOR LAW OFFICE, PC concentrates in class action litigation on behalf of consumers and small businesses, relating to unfair and deceptive acts and practices, including false advertising and other unlawful sales and marketing practices, privacy issues, and landlord-tenant issues. The firm (including work done by its predecessor firm, Gilman and Pastor, LLP) has broad experience in the areas of consumer protection, false advertising, Telephone Consumer Protection Act Litigation, antitrust, *qui tam* actions and other types of complex litigation. The firm litigates cases in various jurisdictions, including both federal and state courts.

REPRESENTATIVE CASES BY AREA OF PRACTICE

Consumer Protection

COVID-19 Closure/Tuition Refund Cases against Colleges and Universities. Pastor Law Office is litigating several class action cases on behalf of current and former college and university students, seeking refunds of tuition and student fees resulting from the COVID-19-related switch to remote instruction and the suspension of access to campus facilities and services. The claims are based on the university's agreement to provide traditional, in-person instruction and access to campus facilities and services in exchange for the payment of full in-person tuition and fees and the fact that when the switch was made from in-person to remote instruction during the Spring 2020 semester, the university retained all of the prepaid tuition and fees, without refunding any portion to reflect the lack of in-person instruction and lack of access to campus facilities and services. Current cases include Bahrani v. Northeastern University, 20-cv-10946-RGS (D. Mass.); Foti v. Suffolk University, 20-cv-11581-WGY (D. Mass.); and Barkhordar v. Harvard University, No. 20-cv-10968-IT (D. Mass.). The universities have filed motions to dismiss in all three cases; In the Northeastern case, the motion to dismiss has been denied by the Court, and the case is proceeding to discovery; the motions to dismiss in the Harvard and Suffolk cases are still pending.

Freedman v. Dan O'Brien Kia Norwood, et al., No. 2081cv01255 (Middlesex Superior Court, Mass.), is a class action on behalf of customers at O'Brien's Massachusetts auto dealerships for unfair and deceptive sales practices, including alteration of window stickers by the addition of an addendum (making it appear as if the MSRP is higher than it actually is) and imposing unlawful charges and markups.

Schuster v. Wynn Resorts Holdings, Inc., No. 19-cv-11679-ADB (D. Mass.), is a case alleging unlawful gaming practices at the Encore Boston Harbor Casino, specifically involving the defendants' practices relating to Blackjack payouts (in violation of the Massachusetts Gaming Commission's rules) and distribution of slot machine winnings at the casino's redemption

machines. The District Court denied the defendants' motion to dismiss, and later certified a question relating its decision on the Blackjack claims to the Massachusetts Supreme Judicial Court.

Telephone Consumer Protection Act Cases. Pastor Law Office has filed several class actions and individual actions against marketers and sellers of various services and products (including solar energy installations, home renovation, insurance, mortgages, and energy services), lead providers and lead generators, and telemarketers under the federal Telephone Consumer Protection Act and the Massachusetts Telephone Solicitation Act.

Baker v. Equity Residential Management, LLC, No. 1:18cv11175-PBS (D. Mass.), was the first case anywhere to certify tenant classes on claims for breach of the implied warranty of habitability and the implied covenant of quiet enjoyment. The case was resolved for a cash settlement after mediation and substantial trial preparation.

Phillips v. Equity Residential Management, LLC, No. 13-12092-RWZ (D. Mass.), involved claims for violations of the Massachusetts security deposit law. After the plaintiff was granted summary judgment, the plaintiff ended up with nominal judgment (approximately \$650); appeals were taken, resulting in briefing and argument before the First Circuit Court of Appeals and the Massachusetts Supreme Judicial Court. After argument at the SJC, the case settled for 100% of the class damages (approximately \$900,000).

Vukovick v. KT Health Holdings, Inc., No. 15cv13696-GAO (D. Mass.), was a false advertising action against a manufacturer of athletic tape claimed to have special properties for use in prevention and treatment of sports injuries. The case was settled after mediation with the defendant and its insurers, resulting in a cash settlement and significant injunctive relief consisting of labeling changes with no durational limitation.

Perry v. Equity Residential Management, LLC, No. 13-10779-RWZ (D. Mass.), was a class action on behalf of residential tenants who were charged unlawful fees by the largest residential landlord in Massachusetts, in violation of Massachusetts law. The plaintiffs obtained summary judgment on liability for the unlawful fees and the court certified three subclasses of tenants. The case was set for a trial on damages but settled prior to the commencement of the trial, with a settlement providing for 100% refunds of the unlawfully charged fees, plus interest at 10%.

Kinsella v. Seaport Apartments, LLC, No. 12-2408-BLS1 (Suffolk Superior Court, Mass.), involved claims on behalf of a class of tenants who were charged unlawful amenity fees and pet fees prior to moving into their apartments. The case was settled for 100% refunds of the amenity fees and partial refunds of the pet fees.

Massachusetts ZIP Code Cases. There were six cases against Massachusetts retailers, alleging unlawful collection of customers' personal identification information (including ZIP codes) at the point of sale during credit card transactions. Each case was settled for substantial consumer benefits, including gift cards or gift certificates for retail purchases and injunctive relief prohibiting the retailers from collecting ZIP codes and other personal identification information in violation of Massachusetts law.

Goodman/Sims v. Hangtime, Inc., No. 14-1022 (N.D. Ill.), was brought on behalf of a class of persons who received unsolicited text messages in violation of the Telephone Consumer Protection Act (TCPA). The case was settled for substantial injunctive relief, prohibiting the defendant from sending unsolicited texts and engaging in other conduct in violation of the TCPA.

In re: Reebok EasyTone Litigation, No. 10-cv-11977-FDS (D. Mass.), involved allegations that Reebok made false and deceptive claims in its labeling and advertising for its EasyTone “toning” shoes and apparel, including claims that the shoes and apparel would increase muscle tone, strength and/or activation. A settlement creating a \$25 million fund from which payments to consumers who purchased the products can be made, as well as permanent injunctive relief prohibiting Reebok from making certain unsubstantiated claims about its EasyTone products, has been reached and has received final court approval.

Wiener v. the Dannon Company, Inc., et al. , No. 08-00415-SJO (AGRx) (N.D. Cal); Gemelas v. The Dannon Company, Inc., 08-civ-00236 (N.D. Ohio), involved allegations of false advertising by Dannon in connection with its Activia yogurt and DanActive drinkable yogurt products. Dannon allegedly made false and deceptive claims about the effect that its Activia Yogurt products would have in improving consumers’ digestive health and about the effect that its DanActive products would have in improving consumers’ immune systems. The case was settled on a nationwide basis, providing for a fund in the sum of \$35 million from which to pay consumer claims, consisting of cash refunds up to a maximum amount per claimant. The settlement also provided for injunctive relief in the form of various changes to the advertising and labeling for the subject products.

Martin v. Mead Johnson Nutrition Company, et al., No. 09-CIV-11609 NMG (D. Mass.), **In re: Enfamil LIPIL Marketing and Sales Practices Litigation, No. 11-MD-02222 JIC (S.D. Fla.)**, involved allegations that Mead Johnson falsely and deceptively advertised its Enfamil LIPIL infant formula products by representing that these products were unique and superior in that they were the only infant formula products to be supplemented with certain specific ingredients and the only ones to have the ability to enhance infants’ visual and mental development. These claims were alleged to be false because other infant formulas, some costing substantially less, had and have the same specified ingredients and possessed the same ability to enhance infants’ mental and visual development. The case has been settled, with the settlement providing for a minimum fund of \$8 million, and a maximum fund of \$12 million in cash and/or product, from which consumer claims can be paid. The settlement allows class members to elect to receive either cash or product.

In re: Checking Account Overdraft Litigation (Citizens Bank), No. 09-MD-02036-JLK (S.D. Fla.), is a collection of consolidated and coordinated actions against Citizens Bank and various other banks, alleging unfair and deceptive practices in connection with the banks’ charging of overdraft fees to customers on debit card transactions. The complaints allege that the banks manipulate and alter customers’ transaction records in order to increase the occurrence of overdrafts and thereby maximize the overdraft fees charged, including unfairly and deceptively, in all cases, re-sequencing customers’ debit card transactions from highest to lowest. The

litigation against Citizens has been settled for substantial monetary benefits to affected customers.

Payment Protection Litigation is a collection of cases in various courts around the country (with no consolidated or coordinated proceedings) against several credit card issuers, alleging unfair and deceptive practices in connection with the issuers' payment protection programs (programs purportedly designed to relieve the cardholder from making the minimum monthly payments on the card in the event of job loss, disability or other circumstances). The complaints alleged unfair and deceptive conduct in the enrollment of customers in the payment protection programs (including involuntary enrollment or "slamming"), enrolling consumers who are ineligible for benefits at the time of enrollment, failing to adequately disclose the exclusions from and limitations on coverage and other practices. These cases have been settled for substantial benefits to affected customers.

Kelley v. CVS Pharmacy, Inc., et al. No. 98-0897-BLS2 (Suffolk Superior Court, Mass.), was a case alleging that CVS' use of its customers' confidential prescription information in a marketing program consisting of prescription refill reminders and "switch" letters promoting different medications violated the Massachusetts consumer protection act. On cross-motions for summary judgment, the court ruled that CVS' conduct of using customer information, that it obtained for the sole purpose of filling prescriptions, for its own financial gain without the consent of the pharmacy customer constituted an unfair and deceptive practice under the Massachusetts consumer protection act. See Kelley v. CVS Pharmacy, Inc., 23 Mass. L. Rptr. 87 (Mass. Super. Aug. 24, 2007).

Labor/Employment

Pierre Louis v. Bayada Home Health Care, Inc., No. 1981CV01957 (Middlesex Super. Ct. Mass.), is a class action on behalf of home health care employees for unlawful earnings deductions and failure to properly itemize deductions on employees' earnings statements, in violation of the Massachusetts wage act. The case is in the discovery phase, and discovery is near completion.

Qui Tam

Commonwealth of Mass ex re. Doe v. Faisal, No. 1684cv01089 (Suffolk Superior Court, Mass.), is a *qui tam* action under the Massachusetts False Claims Act to recover security deposit sums constituting abandoned property that a large Boston area residential landlord failed to turn over to the treasurer's unclaimed property division, as statutorily required. Plaintiff/Relator obtained a denial of Defendants' summary judgment motion, and discovery is ongoing.

Antitrust

Salvi v. Netflix, No. 09-cv-00377-PJH (N.D. Cal.), **In re Online DVD Litigation, No. 09-md-02029-PJH (N.D. Cal.)**, is an antitrust action against Netflix and Wal-Mart on behalf of Netflix subscribers, alleging antitrust misconduct in connection with an alleged agreement between Netflix and Wal-Mart to divide the market for sales and online DVD rentals in the United States. A partial settlement has been reached with Wal-Mart, which has been granted preliminary

approval by the Court. The Wal-Mart settlement provides for a settlement fund in the sum of \$27 million, from which the claims of class members can be satisfied. The settlement provides for gift cards (or in the alternative, cash payments in the same amounts, at class members' election) to be issued to class members.

OSB Antitrust Litigation (E.D. Pa.), was an antitrust case on behalf of indirect purchasers of OSB, a plywood alternative used in home and building construction, primarily framing and decking, brought against the five largest manufacturers of OSB, and alleging a conspiracy to fix prices for the product. The indirect purchaser case resulted in substantial monetary settlements with each of the defendant manufacturers

In re Carbon Fibers Antitrust Litigation, No. 02-2385A (Middlesex Superior Court, Mass.), is an antitrust suit alleging a price-fixing conspiracy by the manufacturers of carbon fiber. After extensive litigation, settlements totaling in excess of \$2.7 million were reached on behalf of a class of Massachusetts end-users of carbon fiber products.

In re Microsoft Massachusetts Consumer Protection Litigation, No. 00-2456 (Middlesex Superior Court, Mass.), was a case alleging antitrust misconduct by Microsoft in connection with certain versions of its Windows operating system. The case resulted in a court-approved settlement valued at \$34 million.

Fortin v. Ajinomoto, et al. (Civil Action No. 02-2345C, Middlesex Superior Court, Mass.), was a price fixing antitrust action against the manufacturers of monosodium glutamate (MSG), brought by indirect purchasers. The case resulted in class settlements totaling \$8.2 million.

Ciardi v. F. Hoffman-LaRoche, Ltd., et al., Civil Action No. 99-03244 (Middlesex Superior Court, Mass.), created new law in Massachusetts, conferring standing upon indirect purchasers for claims arising from price-fixing or other anti-competitive conduct. Settlement funds valued at over \$22.5 million were obtained and distributed to over 300 charitable organizations providing food and nutrition programs in Massachusetts.

Boos v. Abbott Laboratories, No. 95-10091 (D.Mass.), was the first case in which indirect purchasers in Massachusetts recovered damages arising from a price-fixing conspiracy. The case was settled in 1997 for \$2.5 million.

Defective Products

Sebago, Inc., et al. v. Beazer East, Inc., et al., No. 96-10069 (D. Mass.), was a suit on behalf of owners of commercial buildings with corrosive phenolic foam roof insulation, alleging, among other thing, failure to disclose known defects in the insulation products. The case resulted in a significant decision upholding RICO claims against the manufacturers. See Sebago, Inc. v. Beazer East, Inc., 18 F. Supp. 2d 70 (D.Mass. 1998). The case also resulted in court-approved nationwide class settlements with the two manufacturers of the phenolic foam insulation, worth a combined estimated value in excess of \$100 million.

Coleman, et al. v. GAF Building Materials Corporation, No. CV-96-0954-GALANOS (Circuit Court of Mobile County, Alabama), involved claims on behalf of a nationwide class of persons who owned properties with defective roofing shingles, resulting in a settlement with benefits estimated at more than \$50 million.

Paradis v. Bird Incorporated, No. 00-C-0235 (Merrimack, N.H. Superior Court), was a suit on behalf of purchasers of defective roofing shingles. The settlement obtained was valued at approximately \$9.6 million.

Securities

Magidson v. HeartWare, Inc., et al., No. 11-2398 (Massachusetts Superior Court, Suffolk County, Business Litigation Session), is a case brought on behalf of holders of certain series of preferred corporate stock against corporate officers and directors and others, claiming breach of fiduciary duty and breach of contract and alleging, among other things, that the defendants took actions to squeeze out the preferred shareholders and to deprive them of certain liquidation rights. The case was resolved with a substantial cash settlement.

In re Tremont Securities Law, State Law and Insurance Litigation, No. 08-CIV-11117 (TPG), is a collection of coordinated and consolidated class actions brought on behalf of classes of investors in a number of Madoff feeder funds, *i.e.*, funds whose assets were invested, in whole or in part, with Bernard Madoff or Bernard L. Madoff Investment Securities. The complaints alleged, among other things, that the defendants (including Mass Mutual, Oppenheimer and Tremont) fraudulently misrepresented, among other things (in offering memoranda for the funds and other documents) that they would and did conduct due diligence in connection with investing the funds' assets with Madoff, that the funds' assets would be invested as represented and that the reported financial results of the funds reflected the funds' actual performance. The litigation was settled with a cash settlement fund of \$100 million, plus other monetary and non-monetary relief, some of which is contingent on future events.

In re Transkaryotic Therapies, Inc. Securities Litigation, No. 03-10165-RWZ (D. Mass.), was a securities fraud case brought on behalf of a class of purchasers of company stock, alleging misrepresentations about correspondence from the FDA with respect to prospects for approval of one of the company's key products. The case was settled for a cash fund of \$50 million.

In re Blech Securities Litigation, 94-CIV-7696-RWS (S.D. N.Y.), involved market manipulation claims against the brokerage firm of D. Blech & Co., its principals, its clearing broker, and several other alleged participants in connection with an alleged scheme to inflate the prices of various biotechnology securities. The case resulted in various settlements which are confidential-settlement was reached 10 days before trial, after most trial prep, including mock trial, had been completed. This case also resulted in several reported opinions, including two that have been frequently cited and referred to by commentators on the issue of clearing broker liability. See In re Blech Securities Litigation, 961 F. Supp. 569 (S.D. N.Y. 1997) and In re Blech Securities Litigation, 2002 WL 31356498 (S.D.N.Y. Oct. 17, 2002).

Hynes v. The Enstar Group, Inc., et al. 90-C-1204-N (M.D. Alabama), was a securities fraud action on behalf of a class of purchasers of Enstar stock. Due to the bankruptcy (and consequent immunity from suit) of Enstar and of Enstar's chairman who was the chief architect of the fraud, the case was litigated against secondary actors, including a major accounting firm, a major law firm and former outside directors of the company. The case resulted in settlements totaling \$19 million, and subsequently, an additional \$4.1 million was recovered for the class in collateral litigation against Michael Milken and related entities.

Lynn v. Infinity Investors Limited, et al. 3:97-CV-226 (E.D. Tenn.), was a case asserting claims for open market securities fraud and for breach of contract on behalf of a class of purchasers of United Petroleum Corporation stock, arising out of an alleged complex scheme to evade the requirements of Regulation S of the Securities Act of 1933 and to manipulate the market prices of United Petroleum stock. The case also involved litigation in the bankruptcy court (D. Del.), because of the necessity of objecting to the company's bankruptcy plan, which objection was successful. The case resulted in a \$4 million cash settlement, which constituted a substantial portion of the actual losses claimed by class members.

ATTORNEYS

DAVID PASTOR is a 1979 graduate of Boston University School of Law and a 1976 graduate of Haverford College. Mr. Pastor is a member of the bar of the Commonwealth of Massachusetts, the U.S. District Court for the District of Massachusetts and the U.S. Courts of Appeals for the First, Third and Eighth Circuits. Mr. Pastor has served, and currently serves as class counsel in numerous class actions in various state and federal courts and has substantial experience in various types of complex class action litigation. Certain of Mr. Pastor's cases have produced significant legal developments, including In re Blech Securities Litigation, 961 F. Supp. 569 (S.D.N.Y. 1997) and 2002 WL 31356498 (S.D.N.Y. Oct. 17, 2002)(court sustained claim for liability of a clearing broker as primary violator for scheme initiated by one of the clearing broker's correspondent broker-dealers); Sebago v. Beazer East, Inc., 18 F. Supp. 2d 70 (D. Mass. 1998) (RICO claim alleging joint venture between manufacturers of defective roofing insulation upheld, rejecting defendants' argument that reliance was required for mail fraud and wire fraud predicates); Weld v. Glaxo Wellcome, Inc., 434 Mass. 81, 746 N.E.2d 522 (2001) (certification of class action against several defendants engaged in parallel conduct where most defendants had no contact with the plaintiff and engaged in no conduct which directly affected the plaintiff-also frequently cited for class certification elements under Mass. R. Civ. P. 23); Kelley v. CVS Pharmacy, Inc., et al., 23 Mass. L. Rptr. 87 (Mass. Super. Aug. 24, 2007) (ruling that the pharmacy's conduct of using customer information, that it obtained for the sole purpose of filling

prescriptions, for its own financial gain in a marketing program, without the consent of the pharmacy customer, constituted an unfair and deceptive practice under the Massachusetts consumer protection act); Martin v. Mead Johnson Nutrition Company, 2010 WL 3928707 (D. Mass. Sept. 30, 2010) (rejecting magistrate judge's dismissal recommendation and recognizing link between false product claims and price premium in false advertising case); Commonwealth v. Fremont Inv. & Loan, 459 Mass. 209 (2011) (involving certain issues of first impression under Massachusetts public records law); Perry v. Equity Residential Management LLC, 2014 WL 4198850 (D. Mass. Aug. 26, 2014) (granting summary judgment for plaintiffs for several types of unlawful fees paid by tenants and certifying three tenant subclasses); and Baker v. Equity Residential Management, LLC, 390 F. Supp. 3d 246 (D. Mass. 2019) (certified two classes of tenants for claims relating to persistent heat and hot water outages at apartment complex-first case anywhere to certify tenant classes on claims for breach of implied warranty of habitability and implied covenant of quiet enjoyment).